ADVISORY COMMITTEE
ON
BANKRUPTCY RULES

Pasadena, CA
April 20-21, 2015

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TAB 1

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ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of April 20-21
Pasadena, CA

1. Greetings. (Judge Ikuta)

2. Approval of minutes of Charleston meeting of September 29-30, 2014. (Judge Ikuta)

    ● Draft minutes.

3. Oral reports on meetings of other committees:

    (A) January 8-9, 2015 meeting of the Committee on Rules of Practice and Procedure. (Judge Ikuta, Professor Gibson and Professor McKenzie)

    ● Draft minutes of the January 2014 Standing Committee meeting.

    (B) December 11-12, 2014 meeting of the Committee on the Administration of the Bankruptcy System. (Judge Bernstein, Judge Smith)

    (C) October 30-31, 2014 and April 9-10, 2015 meetings of the Advisory Committee on Civil Rules. (Judge Harris)

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues. (Judge Harris, Professor Gibson, and Professor McKenzie)

    (A) Suggestion 14-BK-B from CACM to amend various rules regarding redaction of private information in closed cases. *Consent.*

    The Subcommittee is continuing to consider the matter and will provide a report at the fall meeting.

    (B) Report concerning Suggestion 12-BK-I by Judge John E. Waites (on behalf of the Bankruptcy Judges Advisory Group) to amend Rule 1006(b) to provide that courts may require a minimum initial payment with requests to pay filing fees in installments. (Judge Harris, Professor Gibson) *Discuss.*

    ● Memo of March 25, 2015, by Professor Gibson recommending an amendment to Rule 1006(b) that the petition and installment application must be accepted even if no initial payment is made.

(C) Report concerning suggestion 13-BK-G that Rule 1015(b) be changed to use the word "spouse"; approved at the spring 2014 meeting (revisions needed to Committee Note when a decision is made to go forward with recommended change). (Judge Harris, Professor Gibson) *Consent.*

The Subcommittee will consider this matter after the Supreme Court issues its opinion in Obergefell v. Hodges.

(D) Proposed changes to Official Forms 106A/B (or 6B) *–the debtor's property schedules*; 122A-2 (or 22A-2)-*the chapter 7 means test forms,* and 122C-2 (or 22C-2)-*the chapter 13 means test forms*, to reflect passage of the Achieving a Better Life Experience Act of 2014 (the ABLE Act), Public Law No. 113-295, and the bankruptcy treatment of certain tax qualified accounts created under the ABLE Act (Judge Harris, Professor Gibson) *Discuss.*

● Memo of March 25, 2015, by Professor Gibson showing proposed changes and proposed committee notes. *If proposed amendments are approved, the appropriate forms, existing or modernized versions, will be revised after the meeting in accordance with the Advisory Committee's decision at Agenda Item 6(A).*

5. Joint Report by the Subcommittees on Consumer Issues and Forms. (Judge Harris, Judge Dow, Professor Gibson, Professor McKenzie, Mr. Kilpatrick)

(A) Discussion regarding proposed chapter 13 plan form (Official Form 113), and related proposed amendments to certain bankruptcy rules. (Mr. Kilpatrick, Professor McKenzie, Professor Gibson) *Discuss.*

● Memo of March 19, 2015 by Professor McKenzie; attachments.

. ● Proposed Official Form 113.

● Summary of chapter 13 related comments at Appendix A.

(B) Report concerning the development of forms for subsections (f) and (g) of Rule 3002.1-*Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence*, and additional amendments to the rule. (Judge Goldgar and Professor Gibson) *Consent.*

The 3002.1 Working Group is working with the proposed 3002.1(f) and (g) forms that were developed by the National Association of Chapter Thirteen Trustees and considering whether additional amendments to Rule 3002.1 should be proposed.

The Joint Subcommittees will have a report and recommendation at the fall meeting.

(C) Review of comments and recommendation regarding published amendments to Rule 3002.1. *Discuss.*

● Memo of March 23, 2015, by Professor Gibson.

6. Report by the Subcommittee on Forms. (Judge Ikuta, Judge Dow, Professor Gibson, Mr. Myers, Ms. Healy)

(A) Report and recommendation on the proposed effective date of the modernized bankruptcy forms. *Discuss*.

● Memo of March 23, 2015, by Judge Ikuta and Mr. Myers concerning factors to consider in recommending that the modernized bankruptcy forms published in 2013 and 2014 go into effect on December 1, 2015, or a later date; attachments.

● Memo of April 1, 2015, by Professor Gibson addressing the feasibility of continuing to use the existing bankruptcy forms for a pilot electronic filing program used by unrepresented debtors in the Central District of California, the District of New Mexico, and the District of New Jersey.

(B) Report and recommendation concerning comments on forms published for comment in 2014 and comments concerning previously approved modernized forms. (Judge Dow, Professor Gibson, Ms. Healy, Mr. Myers) *Discuss*.

● Memo of March 31, 2015, by Professor Gibson reviewing comments concerning forms published for comment in 2014. *Discuss.*

● Summary of modernized forms comments at Appendix B.

● Memo of March 18, 2015 by Ms. Healy recommending technical changes to modernized forms published in 2013. *Consent.*

(C) Review of comments to Official Form 410A-*Mortgage Proof of Claim Attachment*. (Judge Harris and Professor Gibson) *Discuss.*

● Memo of March 24, 2015, by Professor Gibson.

Appendix C- *Forms Appendix*

● Proposed Official Forms 11A, 11B, 106A/B, 106D, 106E/F, 106J, 106J-2, 122A-1, 122A-1Supp, 122A-2, 122B, 122C-1, 122C-2, 201, Exhibit A to 201, 202, 204, 205, 206Sum, 206A/B, 206D, 206E/F, 206G, 206H, 207, 309A-I, 312, 313, 314, 315, 401, 410, 410A, 410S1, 410S2, 416A, 416B, 416D, and 424; Committee Notes; Instructions.

● Modernized Bankruptcy Forms Numbering Conversion Chart.

7. Report by the Subcommittee on Business Issues. (Judge Bernstein, Professor Gibson, Professor McKenzie)

(A) Recommendation concerning whether and when to publish for comment proposed amendments to Form 309F-*Notice of Chapter 11 Bankruptcy Case*, recommended in response to suggestion 12-BK-I by Judge Stuart Bernstein. (Judge Bernstein and Professor Gibson) *Discuss.*

● Memo of March 21, 2015 by Professor Gibson.
Official Form 309F included Appendix C.

(B) Report concerning creation of Noticing Working Group (Judge Bernstein and Professor McKenzie) *Consent*.

The Subcommittee is conducting research on this matter. No discussion is planned.

(C) Report concerning business related forms still to be modernized: Forms 25A, *Plan of Reorganization in Small Business Case…*; 25B, *Disclosure Statement in Small Business Case…;* 25C, *Small Business Monthly Operating Report*; 26, *Periodic Report Regarding … Entities [the debtor controls];* and Exhibit A to Form 201. *Consent.*

The Subcommittee is continuing to consider this matter and expects to make a report at the fall 2015 meeting.

(D) Recommendation concerning proposed amendments to Rule 9006(f) concerning the 3 day rule. (Professor Gibson) *Discuss.*

● Memo of March 21, 2015 by Professor Gibson.

8. Report by the Subcommittee on Privacy, Public Access, and Appeals. (Judge Jordan, Professor Gibson) *Consent.*

(A) Recommendation that the Advisory Committee approve revisions to the Uniform Numbering System for Local Bankruptcy Rules to conform with recently approved and renumbered bankruptcy appellate rules. *Consent.*

● Memo of March 24, 2015, by Mr. Wannamaker.

● Uniform Numbering System for Local Bankruptcy Rules.

9. Report by the Subcommittee on Technology and Cross Border Insolvency. (Judge Hamilton, Professor Gibson)

(A) Recommendation considering issue raised by the CM/ECF Subcommittee about whether to amend the rules to provide that electronic alternatives are included in rule references to paper documents and physical transmission of documents. (Professor Gibson). *Discuss.*

● Memo of March 26, 2015, by Professor Gibson.

● Memo of April 1, 2015, by Professor Gibson; attachments.

(B) Review and recommendations concerning comments addressing the proposed Official Form 401 for chapter 15 petitions and related rule amendments. (Professor Gibson). *Discuss.*

● Memo of March 25, 2015, by Professor Gibson.
Official Form 401 included in Appendix C.

10. Report by the Subcommittee on Attorney Conduct and Health Care. (Judge Jonker and Professor McKenzie)

(A) Status report concerning the Subcommittee's consideration of Suggestion 13-BK-C by the American Bankruptcy Institute's Task Force on National Ethics Standards to amend Rule 2014 to specify the relevant connections that must be described in the verified statement accompanying an application to employ professionals. (Judge Jonker and Professor McKenzie)

Information Items

11. Oral update on opinions interpreting section 109(h) of the Bankruptcy Code. (Professor Gibson)

12. Oral report on the status of bankruptcy-related legislation. (Professor McKenzie, Professor Gibson, Mr. Myers)

13. *Deferred Recommendations.* Recommendations approved for submission to the Committee on Practice and Procedure in the future:

    (A) Proposed revisions to Rule 8002(a)(5) in response to Comment 12-BK-033. *Approved at the fall 2013 Advisory Committee meeting.*

    (B) Proposed revisions to Rule 8006(b) in response to Comment 12-BK-033. *Approved at the fall 2013 Advisory Committee meeting.*

    (C) Proposed revisions to Rule 8023. *Approved at the spring 2014 Advisory Committee meeting.*

    (D) Proposed revision to Rule 3002.1(a) that notice requirements for payment changes for HELOCs may be modified by court order. *Approved at the fall 2014 Advisory Committee meeting.*

14. *Future Consideration.* Suggestions and issues deferred for future consideration.

    (A) Suggestion 12-BK-M by Judge Scott Dales to amend Rule 2001(h) to mitigate the cost of giving notice to creditors who have not filed proof of claim. *Placed on the Future Consideration list at the fall 2013 meeting pending receipt of comments on the Chapter 13 Plan Form and related rules amendments.*

    (B) Comments 12-BK–005, 12-BK-015, 12-BK-040 regarding designation of the record in bankruptcy appeals.

    (C) Recommendation concerning previously approved, and then withdrawn, *Stern* amendments to Rules 7008, 7012, 7016, 9027, and 9033, as well as Alan Resnick Suggestion 12-BK-H to amend Part VIII rules to allow appellate court to treat bankruptcy court judgment as proposed findings and conclusions—awaiting decision in *Wellness*.

15. Future meetings: Fall 2015 meeting, October 1-2, in Washington, D.C. Suggestions for possible locations and dates for the spring 2016 meeting.

16. New business. *Suggestions not yet assigned.*

    (A) Suggestion 14-BK-G by Gary Streeting the Rule 2002(a)(1) be amended so that only the last 4 digits of a debtor's Social Security Number are included in the 341 meeting notice sent to creditors.

(B) Suggestion 15-BK-A by Derek S. Tarson that the bankruptcy schedules be revised to reflect ownership categories that are gender neutral so that they can be accurately completed by same sex spouses.

(C) Suggestion 15-BK-B by Judge S. Martin Teel, Jr. to revise Director's Form 263-*Bill of Costs*.

(D) Suggestion 15-BK-C by Professor Kenneth N. Klee to amend Rule 8018-*Serving and Filing Briefs; Appendices.*

17. Adjourn.

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Chair: **Honorable Sandra Segal Ikuta** United States Court of Appeals Richard H. Chambers Court of Appeals Building 125 South Grand Avenue, Room 305 Pasadena, CA 91105-1621	
Reporter: **Professor S. Elizabeth Gibson** Burton Craige Professor of Law 5073 Van Hecke-Wettach Hall University of North Carolina at Chapel Hill C.B. #3380 Chapel Hill, NC 27599-3380	**Assistant Reporter:** **Professor Troy A. McKenzie** New York University School of Law 40 Washington Square South New York, NY 10012 (through March 31, 2015)
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Honorable Robert James Jonker United States District Court Gerald R. Ford Federal Building 110 Michigan Street, N.W., Room 685 Grand Rapids, MI 49503	**Honorable Amul R. Thapar** United States District Court United States Courthouse 35 West Fifth Street, Suite 473 Covington, KY 41011
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Advisory Committee on Bankruptcy Rules

Subcommittee/Liaison Assignments, Effective December 29, 2014

Subcommittee on Consumer Issues Judge Arthur I. Harris, Chair Judge Adalberto Jordan Judge Dennis R. Dow Jeff J. Hartley, Esq. Jill Michaux, Esq. Richardo I. Kilpatrick, Esq. Professor Edward R. Morrison James J. Waldron, *ex officio* Ramona D. Elliott, Esq., *EOUST liaison*	**Subcommittee on Business Issues** Judge Stuart M. Bernstein, Chair Judge Jean C. Hamilton Judge Robert James Jonker Judge Amul R. Thapar Jeff J. Hartley, Esq. Tom Mayer, Esq. James J. Waldron, *ex officio* Ramona D. Elliott, Esq., *EOUST liaison*
Subcommittee on Forms Judge Dennis R. Dow, Chair Judge A. Benjamin Goldgar Judge Arthur I. Harris Richardo I. Kilpatrick, Esq. Jill Michaux, Esq. James J. Waldron, *ex officio* Diana Erbsen, Esq., *ex officio* Ramona D. Elliott, Esq., *EOUST liaison*	**Subcommittee on Style** Judge A. Benjamin Goldgar, Chair Judge Arthur I. Harris Jeff J. Hartley, Esq. Diana Erbsen, Esq., *ex officio* Ramona D. Elliott, Esq., *EOUST liaison*
Subcommittee on Privacy, Public Access and Appeals Judge Adalberto Jordan, Chair Judge A. Benjamin Goldgar Judge Jean C. Hamilton Diana Erbsen, Esq., *ex officio* Tom Mayer, Esq. Ramona D. Elliott, Esq., *EOUST liaison*	**Subcommittee on Attorney Conduct and Healthcare** Judge Robert James Jonker, Chair Jeff J. Hartley, Esq. Tom Mayer, Esq. Ramona D. Elliott, Esq., *EOUST liaison*
Subcommittee on Technology and Cross Border Insolvency Judge Jean C. Hamilton Judge Arthur I. Harris Professor Edward R. Morrison Ramona D. Elliott, Esq., *EOUST liaison*	**Ad Hoc Subcommittee on Rule 3002.1 (joint project of Consumer & Forms)** Judge A. Benjamin Goldgar – Chair Judge Dennis R. Dow Judge Arthur I. Harris Jill Michaux, Esq. Richardo I. Kilpatrick, Esq James J. Waldron, *ex officio* Ramona D. Elliott, Esq., *EOUST liaison*
	Civil Rules Liaison: Judge Arthur I. Harris

TAB 2

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ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of September 29-40, 2014
Charleston, S.C.

The following members attended the meeting:

Bankruptcy Judge Eugene R. Wedoff, Chair
Circuit Judge Sandra Segal Ikuta
Circuit Judge Adalberto Jordan
District Judge Jean Hamilton
District Judge Robert J. Jonker
District Judge Amul R. Thapar
Bankruptcy Judge Arthur I. Harris
Bankruptcy Judge Elizabeth L. Perris
Bankruptcy Judge Stuart M. Bernstein
Professor Edward R. Morrison
Michael St. Patrick Baxter, Esquire
Richardo I. Kilpatrick, Esquire
Matthew Troy, Esquire
David A. Lander, Esquire
Jill Michaux, Esquire

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
Professor Troy A. McKenzie, assistant reporter
Circuit Judge Jeffrey S. Sutton, Chair of the Committee on Rules of Practice and Procedure (Standing Committee)
Roy T. Englert, Jr., Esq., liaison from the Standing Committee
Professor Daniel Coquillette, reporter for the Standing Committee
Jonathan Rose, Secretary, Standing Committee and Rules Committee Officer
Ramona D. Elliott, Deputy Director /General Counsel, Executive Office for U.S. Trustees
Bankruptcy Judge John E. Waites, liaison from the Committee on the Administration of the Bankruptcy System
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
Scott Myers, Esq., Administrative Office
Bridget Healy, Esq., Administrative Office
Molly Johnson, Senior Research Associate, Federal Judicial Center
Michael T. Bates, Senior Company Counsel, Wells Fargo
Jon M. Waage, Chapter 13 Trustee, Middle District of Florida
Raymond J. Obuchowski, National Association of Bankruptcy Trustees
Patricia Ketchum, consultant to the Committee

James Wannamaker, consultant to the Committee
Michael McCormick, McCalla Raymer LLC, Atlanta, GA

Introductory Items

1. Greetings and expression of appreciation

Judge Eugene Wedoff opened the meeting and expressed his appreciation to those members leaving the Committee, including Judge Elizabeth Perris, Michael St. Patrick Baxter, and David Lander. Judge Sandra Ikuta thanked Judge Wedoff for his service to the Committee, and Judge Wedoff thanked the group for their work, specifically noting the work by Judge Perris on the Forms Modernization Project (FMP).

Judge Wedoff welcomed new members Judge Stuart Bernstein, Judge Dennis Dow, Judge A. Benjamin Goldgar, Jeffery Hartley, and Thomas Mayer. Finally, he noted that Judge John Waites was attending the meeting in place of Judge Erithe Smith to report on the work of the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee).

2. Approval of minutes of Austin meeting of April 22-23, 2014.

The minutes of the meeting of April 22-23, 2014 were approved.

3. Oral reports on meetings of other committees:

(A) May 2014 meeting of the Committee on Rules of Practice and Procedure

Judge Wedoff noted that the draft minutes from the May 2014 Standing Committee meeting were included in the agenda materials at Tab 3A. All of the recommendations from this Committee were approved by the Standing Committee. The non-individual forms were approved for publication, along with the revised version of the chapter 13 plan form and related rules, the chapter 15 petition and related rules, Official Form 410A (attachment to the proof of claim form), and amended Bankruptcy Rule 9006(f) to eliminate the three-day extension of service for electronic service. These were published in August 2014.

(B) Intercommittee - CM/ECF Subcommittee.

The Reporter updated the Committee on the work on the subcommittee. The subcommittee is reviewing whether the national rules should be amended to make electronic filing mandatory, rather than leaving the decision up to local rules. She advised that Bankruptcy Rule 5005 authorizes local rules to require electronic filing and all districts have exercised this authority, but because Bankruptcy Rule 7005 refers to

Civil Rule 5, the Committee should review Bankruptcy Rule 7005 if Civil Rule 5 is amended to mandate electronic filing subject to local rules exceptions. The subcommittee is also looking at whether the requirement of consent should be eliminated from rules allowing electronic service; however, such a change is likely to have little practical impact on bankruptcy practice since registration with the CM/ECF system is deemed to constitute consent to electronic service.

The Reporter stated that the Committee on Court Administration and Case Management (CACM) asked the subcommittee to look at the issue of whether a notice of electronic filing (NEF) can be considered the equivalent of a certificate of service**.** If this change is made, the Committee should consider whether there are any amendments required to the bankruptcy rules as a result. Judge Elizabeth Perris noted a caveat with allowing the NEF as proof of service, stating that it would increase the work for bankruptcy courts because it would require judges to check various places to determine if service was properly completed.

The Reporter concluded that the final issue being considered by the subcommittee is whether electronic alternatives should be added to any definitions in the rules regarding transmitting or filing documents. The Committee discussed the specific issues that could impact bankruptcy courts if this change was adopted. The Chair referred the matter to the Subcommittee on Technology and Cross Border Insolvency for further consideration.

(C) June 2014 meeting of the Committee on the Administration of the Bankruptcy System.

Judge Waites reported on the June 2014 Bankruptcy Committee meeting. He stated that the Bankruptcy Committee determined to support converting temporary judgeships to permanent judgeship positions and creating new permanent judgeships. In connection with this issue, Judge Waites advised that the bankruptcy case weights formula was changed for evaluating the need for new judgeships. To assist with current judgeship needs, the Bankruptcy Committee recommended that districts with open judgeship positions "lend" the judgeships to districts with a need for judgeships. The new judge would be appointed for a 14 year term but would spend approximately five years in the district with the need for a new judgeship. This recommendation was approved by the Judicial Conference. Currently, this impacts the District of South Dakota, the Middle District of Florida, the District of Iowa, and the Eastern District of Michigan.

Judge Waites noted several other issues under consideration by the Bankruptcy Committee, including its oversight of the Bankruptcy Administrator program. In addition, the Bankruptcy Committee is reviewing a pilot program run by the Third Circuit in which funds obtained through savings in chambers costs remain within the circuit.

Finally, Judge Waites stated that the Judicial Resources Committee raised several issues for consideration by the Bankruptcy Committee: the administration of smaller courts; the desirability of the continuation of the Bankruptcy Administrator program, and the operation of bankruptcy clerks' offices. The Bankruptcy Committee is reviewing these issues and will respond in due course.

(D) Spring 2014 meeting of the Advisory Committee on Civil Rules and hearing on rules published for comment.

Judge Arthur Harris reported that the proposed amended civil rules, including a package of proposed amendments focusing on changes to discovery rules, frequently referred to as the "Duke Rules Package," which was published in August 2014, and the new electronic discovery sanctions, were approved by the Standing Committee and the Judicial Conference.

(E) April 2014 meeting of the Advisory Committee on Appellate Rules.

Judge Adalberto Jordan reported that the Advisory Committee on Appellate Rules considered three main issues. First, the time at which a mailing is effective if filed from prison by an inmate. Second, the change from page count to word count for appellate briefs. Third, whether amicus briefs can be permitted at the rehearing stage. The Appellate Committee considered a few other items, but none of them impacts bankruptcy practice.

(F) Bankruptcy Next Generation of CM/ECF Working Group.

This report was provided as part of the Forms Modernization Project report.

At the conclusion of the reports from other committees, Judge Wedoff noted that the Committee will no longer maintain liaisons to the Appellate and Evidence Committees.

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues.

(A) Suggestion 14-BK-B from CACM to amend various rules regarding redaction of private information in closed cases.

Judge Arthur Harris provided a brief overview of the issue, referring to the memo at Tab 4A. The Judicial Conference adopted a policy that a case does not need to be reopened to redact a previously filed document. CACM has suggested that Rule 5010 be amended to reflect this policy. The subcommittee preliminarily concluded that such an

amendment should be made to Rule 9037 instead, along with the inclusion of procedures for redacting previously filed documents. There was no recommendation for specific language from the Consumer Subcommittee, but it will present language at the spring 2015 meeting. Judge Harris explained that Bankruptcy Rule 9037 prohibits the inclusion of certain information on filed documents and there were several cases involving large creditors redacting large numbers of previously filed documents. The method of redaction varies among districts, including how notice is provided. The subcommittee will consider several issues related to redaction, including when and how notice of a request for redaction should be provided to affected persons.

(B) Report concerning Suggestion 12-BK-I by Judge John Waites (on behalf of the Bankruptcy Judges Advisory Group) to amend Bankruptcy Rule 1006(b) to provide that courts may require a minimum initial payment with requests to pay filing fees in installments.

Judge Harris explained that this issue has been under consideration for several years and that a report on the topic was completed by the Federal Judicial Center (FJC). Professor Gibson's memo on the topic was included at Tab 4B, and Molly Johnson's memo and research were included at Tab 4B.1. As background, Judge Harris stated that a debtor may seek to pay filing fees in installments. Often debtors do not complete the installment payments if a case is dismissed prior to completion of payment. Some courts instituted required minimum payments with applications to pay in installments. The subcommittee determined that minimum payments are permissible under the current rules with the limitations that (1) Rule 1017 does not permit a case to be summarily dismissed for lack of payment of the minimum fee and (2) a clerk cannot refuse to accept a petition if the upfront installment payment is not provided. Judge Harris concluded that the subcommittee does not believe any change to the current rules is required to permit upfront installment payments, so long as petitions are not refused or summarily dismissed for failure to make upfront installment payments.

Judge Harris advised that the research regarding upfront minimum payments showed a very small percentage difference in the number of fee waiver requests for courts that require an upfront payment for applications to pay in installments. Molly Johnson provided further detail about her report, stating that there was a very low rate of fee waiver filings, making it difficult to draw any conclusions about the potential impact on the level of fee waiver filings in courts that require upfront installment payments.

Judge Wedoff summarized that the subcommittee determined that the underlying Bankruptcy Code and rule provisions permit the practice of requiring upfront minimum payments with applications to pay in installments and that making a rule governing judges' discretion would be inappropriate. Several members commented that the FJC research includes evidence that some courts are rejecting filings when debtors do not have the upfront payments. Judge Wedoff responded that the legal requirements will be

communicated to judges through the minutes of this Committee, the response to the Bankruptcy Judges Advisory Group, and the educational programs of the FJC. A separate but related question was raised regarding the proper procedure in a case in which a debtor has unpaid fees from a prior case and requests to pay the filing fee for a subsequent case in installment payments. Judge Wedoff referred this matter as well as the issue of dismissing or rejecting petitions for failure to pay upfront minimum installment payments to the Consumer Subcommittee. For this reason, any communication to the Bankruptcy Judges Advisory Group will be delayed until after the spring 2015 meeting.

(C) Report concerning Suggestion 12-BK-M by Judge Scott W. Dales to amend Rule 2002(h) to mitigate the cost of giving notice to creditors who have not filed proofs of claim.

Judge Harris reported that the subcommittee suggested setting up a working group to consider whether an overall review of noticing in the Bankruptcy Code and Bankruptcy Rules is necessary, and if so, the process for doing so. He advised that there were several suggestions for revising noticing procedures, and that each of the suggestions could be reviewed by the working group. These suggestions are outlined in memos at Tabs 4C and 7C.

Judge Stuart Bernstein spoke about the second suggestion (Item 7C), which was considered by the Business Subcommittee and stated that subcommittee supports the suggestion to create a working group.

(D) Oral report concerning suggestion 11-BK-N by David Yen regarding fee waiver forms to implement 28 U.S.C. § 1930(f)(3).

Judge Harris explained that the suggestion had been under consideration for some time. Given that there is no current guidance from the Judicial Conference to assist with consideration of the issue, the subcommittee recommended that the suggestion no longer remain under consideration. If the Conference does issue guidance, the suggestion can be revisited. For this reason, the subcommittee recommended taking no action on this suggestion, and the Committee agreed.

(E) Oral report concerning suggestion 13-BK-G that Rule 1015(b) be changed to use the word “spouse.”

Judge Harris reminded the group that the suggestion was discussed at the spring 2014 meeting and the Committee recommended waiting for further legal developments before making any changes to the rule given that this issue will likely be before the Supreme Court in the future. He further explained in response to a question that even if a change is made to the rule, a change is also required to the Bankruptcy Code; therefore it

makes sense to wait for further guidance from the Supreme Court. Several members noted that this issue exists in many federal statutes and Supreme Court precedent may make the wording of a rule or statute irrelevant.

Judge Sutton noted that the Committee could, but did not have to, make a conditional recommendation to the Standing Committee, one that would be dependent on the Supreme Court's resolution of the constitutional status of same-sex marriages. Judge Wedoff reminded the group that if the Committee makes a recommendation at either the winter or summer meeting of the Standing Committee, the timing for publication would be the same.

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

(A) Issues Related to Home Equity Loans and Lines of Credit: (1) Suggestion 14-BK-A by Michael Bates, Senior Company Counsel, Wells Fargo, to amend Bankruptcy Rule 3002.1 to address notices related to home equity loans and lines of credit, and (2) additional proposed amendments to Bankruptcy Rule 3002.1: (i) suggestion to add procedures for objecting to notice of payment changes; (ii) suggestion for declaring mortgage current when no arrearage is provide for in the chapter 13 plan; (iii) suggestion to clarify whether court approved charges must be reported; and (iv) whether the claims docket should continue to be used for filing notices of fees and expenses.

The Reporter explained the history of the mortgage forms revisions and the differences between traditional mortgage loans and home equity loans and lines of credit (HELOCs). The differences between the types of loans were discussed at the mini-conference held in the fall of 2012 and it was agreed that HELOCs should be treated differently than other mortgage loans for the reporting of payment changes during the course of a chapter 13 plan. The suggestion from Mr. Bates would retain a notice requirement for HELOC payment changes but would reduce the burden on servicers by limiting who must receive notice in some situations and by making easier the means of providing notice. The notice procedure would vary depending on whether the debtor makes the HELOC payments directly (non-conduit) or the trustee makes them (conduit). If the debtor is making payments directly, the mortgage servicer would provide notice of the change to the debtor only through a regular monthly statement. If the trustee is making the payments, the servicer would provide an electronic file to the trustee with the old payment amount and the new payment amount. If the change in payment amount is less than $25, the servicer would provide also provide notice to the debtor in the same manner as it provides notice of payment changes outside of bankruptcy. For changes exceeding $25, the servicer would have to comply with the current notice requirements of Bankruptcy Rule 3002.1(b) in addition to providing the electronic file to the trustee. A memo on the topic was included in the materials at Tab 5A.

The subcommittees concluded that the suggestion was too complex, and they recommended a simpler solution of adding a sentence that the notice requirements for payment changes for HELOCs could be modified by court order. In addition, the subcommittee recommended a Committee Note explaining the reasoning behind the added language and suggesting that local rules could be adopted or that procedures could be adopted in each case. The subcommittees asked that the Committee approve the language but not send it to the Standing Committee pending other changes that are in progress. A motion was made to approve the language, and the motion was approved.

Professor Edward Morrison asked about current practice. Judge Harris stated that Bankruptcy Rule 9006 can be used to modify the time requirements of Bankruptcy Rule 3002.1 in cases involving HELOCs, and he has not seen opposition to these types of requests by creditors. Professor Coquillette noted his continued concern regarding straying from uniformity in national practice.

Michael Bates provided some background regarding changes in payment amounts for HELOCs, stating that most changes are the result of a variable interest rate or because of the number of days in a month and are generally *de minimis*. The monthly statements debtors receive comply with other legal requirements such as the Truth in Lending Act.

A motion was made to hold the recommendation rather than to send it to the Standing Committee and the motion was adopted.

The Reporter continued with a suggested change to Official Form 410S1's language to reflect the fact that HELOCs are based on an account rather than a note. The subcommittees recommended this change; however because the form is currently out for publication, this suggestion will be considered with other comments at the spring 2015 meeting. The Reporter suggested that a language change could be made at that time with a notation that it was a change made after publication.

The Reporter concluded her report by stating that the remaining outstanding issues regarding the mortgage rules and forms were considered by the subcommittees and they recommended that a working group review these issues and suggest any possible amendments to Bankruptcy Rule 3002.1. With regard to the suggestion to place mortgage actions on the main docket rather than on the claims docket, the subcommittees recommended no action. The Committee accepted the subcommittees' recommendation.

(B) Suggestion from the National Association of Chapter 13 Trustees (NACTT) Mortgage Liaison Committee for proposed forms to implement Rule 3002.1(f) and (g).

The Reporter discussed the suggestion for proposed forms to implement Bankruptcy Rule 3002.1(f) and (g) and referred to the memo at Tab 5B. The

subcommittees considered the suggestion regarding proposed forms and reviewed the draft forms submitted by the NACTT's Mortgage Liaison Committee. The subcommittees agreed that the forms were well-drafted and believed that they would be useful as Director's Forms after review by a broader group. The subcommittees suggested that a working group review the forms, and the Committee agreed with the recommendation.

Judge Wedoff referred the review of the proposed forms to a working group and explained the difference between Official Forms and Director's Forms. Official Forms are reviewed and approved by the Committee, published, approved by the Standing Committee, and approved by the Judicial Conference. Director's Forms are drafted by the Administrative Office and often reviewed by the Committee, but are not mandatory and do not require any official approval or recommendation.

(C) Suggestion 14-BK-C from Professor Timothy Tarvin to amend Director's Form 201A to provide pre-filing notice of the privilege against self-incrimination in consumer bankruptcy cases.

The Assistant Reporter discussed the suggestion to add a warning to Director's Form 201A about the privilege against self-incrimination. A memo was provided at Tab 5C of the agenda materials. The subcommittees discussed the issue and noted that while this type of warning is provided in some other legal materials and the privilege against self-incrimination exists in bankruptcy, there are a number of issues with including the warning on Director's Form 201A. First, there is case law suggesting that a case may be dismissed if it cannot be administered because a debtor invoked the privilege, and second, including the language would be complicated and potentially incomplete. Another factor considered by the subcommittees was that the cases cited in the suggestion to support the inclusion of the warning may not have been decided differently if the privilege was invoked. Based on these reasons, the subcommittees recommended that no further action be taken on the suggestion, and the Committee agreed with the recommendation.

6. Report by the Subcommittee on Forms and the Forms Modernization Project.

(A) Report on the status of the Forms Modernization Project (FMP) including: (1) clean up issues pertaining to the means test forms; (2) proposed technical changes to previously approved individual debtor forms; (3) renumbering modernized Official Forms 3A, 3B, 6I, 22A-1, 22A-1Supp, 22A-2, 22B, 22C-1, 22C-2; and (4) renumbering proposed Official Form 112 to Official Form 108.

Judge Perris started the discussion with an explanation of the basis of the FMP, explaining that at the time the project started the forms had not been reviewed in total for over 20 years. The Next Generation of CM/ECF (Next Gen) project started at

approximately the same time and it made sense to plan to utilize the newly modernized CM/ECF system in connection with the forms.

Prior to giving a more detailed report on the FMP, Judge Perris provided an update on the work on the Next Gen CM/ECF Working Group (Next Gen Working Group). She provided a brief overview of the work of the Next Gen Working Group, stating that the group was reduced to a smaller group to prioritize the tasks to be done for Next Gen. The modernized forms are not a priority for completion for the Next Gen Working Group. Representatives of the Administrative Office's (AO) technology group were involved with the FMP from its inception and represented that the forms would be data-enabled and expandable. In addition, the AO technology group indicated that the data could be used to create a number of reports, both existing and to be developed. At some point after the creation of the modernized forms, the AO technology group determined that the development of the data elements on the forms would be delayed beyond the first release of Next Gen and that a business objects program would be used with the data. Jim Waldron explained the business objects program and advised that the issue of providing data to outside users is on hold.

Several members noted experiences with court employees assisting with program development for the AO, and they suggested that this procedure may assist with the completion of the work required to make the modernized forms useful in Next Gen.

Judge Perris stated that the Committee needs to continue pressuring the AO to complete the work on the forms. David Lander made the point that the cost to the bar, trustees, and debtors should not be overlooked, and that the new forms will have a real impact on cost without the technology piece.

Judge Perris cited the form chart included at Tab 6 listing the status of each form, and advised that all the forms are drafted and almost all have been published or approved by the Standing Committee. The few remaining forms, which have been reviewed and drafted, include the small business forms. The FMP recommended that these forms be referred to the Business Subcommittee for review, along with Exhibit A to current Official Form 1 (to be renamed Official Form 201A, see below). Tom Mayer explained the issue with this form, mainly that many companies de-register their companies prior to filing for bankruptcy. The form could be revised to reflect this practice, as well as to expand the time period for required reporting. A motion was made to refer the small business forms and Exhibit A to Official Form 1 to the Business Subcommittee for review, and the motion was approved. Judge Perris stated that a final project to be completed is the modernization of the Director's Forms.

Next Judge Wedoff explained a small change required to Official Form 22B to reflect the fact that a non-filing spouse's income is not relevant in an individual debtor case if it is not used to support the debtor or debtor's dependents. The change - the

deletion of lines 12-14 - will be made when the re-numbered forms are made effective with the other modernized forms (discussed below). Judge Wedoff confirmed that this is not a change that would require publication. A memo explaining the change was included in the materials at Tab 6.

Scott Myers reported on the modernized forms that must be renumbered to match the remainder of the modernized forms. Mr. Myers advised that the forms were included within the agenda materials at Tab 6 and he provided background regarding the purpose of the renumbering of the forms. A suggestion was submitted to renumber Official Forms 22A-1 through 22C-2 to Official Form 122A-1 through 122C-2. As a result, Official Form 8 will be renumbered as Official Form 108 rather than Official Form 112. The form number changes do not need to be published and can go into effect with the remainder of the modernized forms. A motion was made to approve the revised and renumbered forms and the motion was approved.

Mr. Myers continued that Exhibit A to Official Form 1 should be renumbered as Official Form 201A until any revised version of the form becomes effective. A motion was made to revise the motion previously made to include the renumbering of Exhibit A, and the motion was approved. The revised motion to approve the revised and renumbered forms was approved.

7. Report by the Subcommittee on Business Issues.

(A) Recommendation concerning *Stern* amendments to Bankruptcy Rules 7008, 7012, 7016, 9027, and 9033 previously approved by the Judicial Conference, but withdrawn from presentation to the Supreme Court in light of the pending *Arkison* matter.

The Assistant Reporter explained the history of the *Stern*-related amendments, namely that *Executive Benefits Insurance Agency v. Arkison* was heard by the Supreme Court during the 2013 Term, causing the Standing Committee to withdraw from Supreme Court consideration its proposed rule amendments based on *Stern*. The Court has now granted certiorari in *Wellness Int'l Network v. Sharif*, and the issue of consent may be considered in that case. The amendments will be held pending a decision in *Wellness*.

(B) Recommendation concerning suggestion 12-BK-I by Judge Stuart Bernstein, that Official Forms 9F and 9F(Alt.) be amended to address complaints to deny discharge for a debt "of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit."

Judge Bernstein explained that this was a suggestion he made prior to membership on the Committee. The issue raised concerns with the language used on Official Forms 9F and 9F(Alt.) regarding the commencement of a dischargeability action

and the deadline for filing such an action. The subcommittee's suggested change was to narrow the language in the forms by limiting the statutory reference to section 523(c) of the Bankruptcy Code to reflect a potential ambiguity in section 1141(d)(6)(A) of the Bankruptcy Code. A motion was made to accept the recommendation to change line 8 on Official Forms 9F and 9F(Alt.) (to be renumbered Form 309F), and the motion was approved. Judge Wedoff asked the group to consider whether this change requires republication, and the Reporter reminded the group that it is instructional language on the form. Judge Bernstein stated that parties rely on this language in litigation, so the conclusion was that the form should likely be republished. A decision about publication will be made at the spring 2015 meeting.

(C) Suggestion by David Lander for a rule change to address limiting notice in large cases for motions that do not impact all creditors.

This issue was discussed as part of Agenda Item 4C.

(D) Suggestion by Judge Harris to amend Bankruptcy Rule 1001 to track pending changes to Civil Rule 1.

The Reporter discussed the suggestion to amend Bankruptcy Rule 1001. An amendment to Civil Rule 1 to emphasize the need for cooperation among parties has been approved by the Judicial Conference, and Rule 1001 is largely based on Civil Rule 1 (with the exception of the term "administered"). The related amended civil discovery rules will be automatically incorporated in the Bankruptcy Rules, so it the subcommittee determined that it made sense to ensure that the language of Bankruptcy Rule 1001 parallels Civil Rule 1 with an explanation of the change in the Committee Note.

Professor Coquillette suggested that the reference to attorneys be removed from the Committee Note, given that the language was objected to as part of the revision of Civil Rule 1. Judge Harris suggested that the language be revised to incorporate the Civil Rule 1 amendments by reference. Further discussion was had regarding the reference to attorneys, and Professor Coquillette explained that the American Bar Association and other groups objected to the idea that all attorneys have the same types of practice and responsibilities with regard to Civil Rule 1. The Reporter explained that the reference to attorneys appears in the Committee Note accompanying an earlier amendment to Civil Rule 1 that is now being incorporated into Rule 1001. A motion was made to adopt the suggested changes to the rule and Committee Note and the motion was approved.

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

(A) Suggestion 12-BK-H by Alan Resnick to amend Rule 8013 to allow an appellate body to treat a bankruptcy court's judgment, order, or decree as proposed findings and conclusions if there is a constitutional issue in the bankruptcy court's ruling.

The Assistant Reporter provided the report, citing a memo included at Tab 8A of the agenda materials. The subcommittee discussed this suggestion and determined to wait for further developments in light on the uncertainty in this area. The Supreme Court will consider *Wellness Int'l Network v. Sharif* this Term, and following a decision in that case, the subcommittee will revisit the issue.

(B) Status report concerning issues pending in: (1) the bullpen - amendments previously approved for publication to Rules 8002, 8006, and to 8023; and (2) the dugout - consideration of Comments 12-BK - 005, 12-BK-015, 12-BK040 regarding designation of the record in bankruptcy appeals.

Judge Jordan provided the report on these issues, citing a memo included at Tab 8B. He advised that there are three matters currently in the bull pen that relate to appellate issues. The amended rules will be effective December 1, 2014, so these issues will remain in the bull pen until after the effective date of the rules. Judge Jordan explained the various items in the bull pen, and there was no objection from the Committee to retaining the issues in the bull pen. He noted that for the issue regarding the record on appeal, the subcommittee is waiting for action from several other Judicial Conference committees.

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

There was no report from this subcommittee.

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

(A) Status report concerning the subcommittee's consideration of Suggestion 13-BK-C by the American Bankruptcy Institute's (ABI) Task Force on National Ethics Standards to amend Rule 2014 to specify the relevant connections that must be described in the verified statement accompanying an application to employ professionals.

Judge Robert Jonker discussed the subcommittee's work on this issue. A memo was included in the materials at Tab 10. The suggestion is from the ABI to make changes to Bankruptcy Rule 2014 governing the retention of professionals. The broad language of the rule has led to some problems for attorneys in larger cases. The subcommittee felt that the suggestion was too elaborate but that some change should be made to the rule. The subcommittee noted that there was a suggestion similar to the ABI's suggestion put forward fifteen years ago and there was objection from the Judicial Conference.

The subcommittee's current working draft revises the "all connections" language by providing an exception for "cause shown" to limit the broad nature of the required

disclosures. Members of the subcommittee raised a concern that any discretion regarding disclosure should not be left to the attorney making the disclosure. Another concern was that the lack of disclosure of relevant connections rarely causes any problems. The subcommittee determined to seek the input of various experts in the field, including judges and attorneys, to evaluate the best way forward.

Several members asked about the supplemental filing suggestion and whether an attorney would be required to disclose supplemental information relevant to another member of his or her firm but not relevant to the attorney. It was suggested that the subcommittee consider this issue. A suggestion was made to provide a "safe harbor" for any inadvertent lack of disclosure through a narrative describing the nature of the attorney's employment.

Information Items

11. Recommended revisions to proposed chapter 13 plan form.

Judge Wedoff updated the group on the proposed revisions to the chapter 13 plan form. He reviewed the changes to the chapter 13 plan form that the Working Group proposed in response to suggestions and comments that were made since the spring 2014 Committee meeting. Judge Wedoff stated Judge Ikuta has asked him to remain involved with the Working Group after he leaves the Committee.

12. Oral update on opinions interpreting section 109(h) of the Bankruptcy Code.

Professor Gibson explained that the opinions involved a technical change regarding the timing of consumer debtor's completion of credit-counseling briefing. The issue is whether it is permissible for debtors to complete the credit-counseling briefing on the day of the filing of the petition but after the time of the filing of the petition. The majority of the cases have held that the briefing had to occur prior to the filing of the petition but one case held the opposite. This case was appealed directly to the Seventh Circuit. The case may be moot because the underlying chapter 13 case was dismissed for other reasons. The Reporter will continue to monitor case law interpreting section 109(h).

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

Judge Wedoff stated that there is a pending piece of legislation called the Financial Institutions Bankruptcy Act which concerns Systematically Important Financial Institutions (or "too big to fail companies") that are currently covered by the Dodd Frank Act. Under the legislation, in certain circumstances the Federal Reserve would file a petition in support of the bankruptcy of the institution with a bankruptcy judge (one of 10 on a panel selected by the Chief Justice). If the petition is opposed, the bankruptcy judge

would have 18 hours to make a decision and any appeal would have to be filed in one hour. The court of appeals would be required to decide the appeal within 14 hours. The concept is that the decision would be made while the world markets are closed. Judge Wedoff advised there is little chance that this legislation will be passed in this session of Congress, but it is possible in the next session.

14. *Bullpen*: The following items have been approved for submission to the Committee on Practice and Procedure in the future:

    (A) Proposed revisions to Rule 8002(a)(5) in response to Comment 12-BK-033. *Approved at the fall 2013 Advisory Committee meeting, see Agenda Item 8(B);*

    (B) Proposed revisions to Rule 8006(b) in response to Comment 12-BK-033. *Approved at the fall 2013 Advisory Committee meeting, see Agenda Item 8(B);*

    (C) Proposed revisions to Rule 8023. *Approved at the spring 2014 Advisory Committee meeting, see Agenda Item 8(B);*and

    (D) Suggestion 13-BK-G that Rule 1015(b) be changed to use the word "spouse." Approved at the spring 2014 meeting, s*ee Agenda Item 4(E).*

15. *Dugout*. Suggestions and issues deferred for future consideration.

    (A) Recommendation concerning Suggestion 11-BK-N by David S. Yen for fee waiver forms addressing fees other than the chapter 7 filing fee. *See Agenda Item 4(D).*

    (B) Suggestion 12-BK-M by Judge Scott Dales to amend Rule 2001(h) to mitigate the cost of giving notice to creditors who have not filed proof of claim. *Placed in dugout at fall 2013 meeting pending receipt of comments on the Chapter 13 Plan Form and related rules amendments, see Agenda Item 4(C).*

16. Future meetings: Spring 2015 meeting, April 21-22 in Pasadena, California.

    Judge Ikuta welcomed everyone to Pasadena on April 21-22, 2015. The meeting will be held at the courthouse. As for the fall 2015 meeting, the Committee may meet in Washington D.C.

17. New business.

    There was no new business.

18. Adjourn.

Judge Wedoff thanked everyone for attending and for the work of each member of the Committee.

TAB 3A

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COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
Meeting of January 8–9, 2015
Phoenix, Arizona

Draft Minutes

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ATTENDANCE

The winter meeting of the Judicial Conference Committee on Rules of Practice and Procedure was held in Phoenix, Arizona, on January 8 and 9, 2015. The following members were present:

Judge Jeffrey S. Sutton, Chair
Dean C. Colson, Esquire
Associate Justice Brent E. Dickson
Roy T. Englert, Jr., Esquire
Gregory G. Garre, Esquire
Judge Neil M. Gorsuch
Judge Susan P. Graber
Dean David F. Levi
Judge Patrick J. Schiltz
Judge Amy J. St. Eve
Judge Richard C. Wesley
Judge Jack Zouhary

Elizabeth J. Shapiro, Esq., represented the Department of Justice in place of Deputy Attorney General James M. Cole. Larry D. Thompson, Esq., was unable to attend.

Also present were Professor Geoffrey C. Hazard, Jr., consultant to the committee; Professor R. Joseph Kimble, the committee's style consultant; and Judge Jeremy D. Fogel, director of the Federal Judicial Center. Judge Anthony J. Scirica, Judge Sidney A. Fitzwater, and Judge Eugene R. Wedoff participated in a panel discussion chaired by Judge Sutton. Associate Justice Sandra Day O'Connor attended as an observer.

The advisory committees were represented by:

Advisory Committee on Appellate Rules —
Judge Steven M. Colloton, Chair
Professor Catherine T. Struve, Reporter (tel)
Advisory Committee on Bankruptcy Rules —
Judge Sandra Segal Ikuta, Chair
Professor S. Elizabeth Gibson, Reporter
Professor Troy A. McKenzie, Associate Reporter
Advisory Committee on Civil Rules —
Judge David G. Campbell, Chair
Professor Edward H. Cooper, Reporter
Professor Richard L. Marcus, Associate Reporter
Advisory Committee on Appellate Rules —
Judge Reena Raggi, Chair
Professor Sara Sun Beale, Reporter (tel)
Advisory Committee on Evidence Rules —
Judge William K. Sessions III, Chair
Professor Daniel J. Capra, Reporter (tel)
Subcommittee on CM/ECF
Judge Michael A. Chagares, Chair

The committee's support staff consisted of:

Professor Daniel R. Coquillette	Reporter, Standing Committee
Jonathan C. Rose	Secretary, Standing Committee; Rules Committee Officer
Julie Wilson	Attorney, Rules Committee Support Staff (tel)
Scott Myers	Attorney, Rules Committee Support Staff (tel)
Bridget M. Healy	Attorney, Rules Committee Support Staff (tel)
Andrea L. Kuperman	Chief Counsel to the Rules Committee
Frances F. Skillman	Rules Office Paralegal Specialist
Toni Loftin	Rules Office Administrative Specialist
Michael Shih	Law Clerk to Judge Jeffrey S. Sutton

INTRODUCTORY REMARKS

Judge Sutton called the meeting to order by thanking the Rules Office staff and the marshals for their service. He introduced one new member of the Committee, Associate Justice Brent E. Dickson of the Indiana Supreme Court. He also introduced Judge Sandra Segal Ikuta of the Ninth Circuit, the new chair of the Bankruptcy Committee, and Judge William K. Sessions III of the District of Vermont, the new chair of the Evidence Committee. Finally, he introduced Judge Anthony Scirica of the Third Circuit, who helped coordinate the afternoon's panel discussion on pilot projects.

He then summarized the results of the September 2014 Judicial Conference, which unanimously approved both the Bankruptcy Committee's one proposal and the entire Duke Package. The proposed amendments are now before the Supreme Court of the United States.

Finally, Judge Sutton announced that, on December 1, 2014, many other proposals took effect, including Criminal Rule 12 and a multitude of changes to the Bankruptcy Rules and Forms. He thanked Judge Raggi and Judge Wedoff for their efforts in making those proposals law.

APPROVAL OF THE MINUTES OF THE LAST MEETING

The Committee, by voice vote and without objection, approved the minutes of its previous meeting, held on May 29–30, 2014, as well as a set of technical amendments to those minutes proposed by Professor Cooper.

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Judge Colloton presented the advisory committee's report, set out in his memorandum and attachments of December 15, 2014 (Agenda Item 3). He reported that the committee has published a package of rules changes for public comment. It plans to consider those comments after the February deadline expires, and to give a complete report at the upcoming spring meeting. He then highlighted three items currently on the committee's agenda.

Informational Items

FED. R. APP. P. 41

The advisory committee is considering how to relieve the tension between two provisions of Appellate Rule 41. Rule 41(d)(2) requires a court of appeals to issue its mandate immediately after the Supreme Court denies a petition for certiorari. However, Rule 41(b) allows courts of appeals to "extend the time" for issuing mandates under certain circumstances. These provisions present two questions. May a court of appeals stay its mandate after certiorari is denied? If so, must it do so in an order, or does mere inaction suffice?

The Supreme Court has twice considered these questions. As to the first issue, it has assumed without deciding that a court of appeals has authority to delay issuing a mandate, but

only if "extraordinary circumstances" exist. As to the second, it has concluded that Rule 41(b) does not clearly foreclose delay through inaction.

Judge Colloton reported that the committee is inclined to insert the words "by order" into Rule 41(b) to clarify that a court of appeals may not delay a mandate by letting the matter lie fallow. (Those words had actually been removed from a previous version of the Rule, most likely to reduce redundancy). However, it is still working through the more fundamental question of whether such authority exists. It has considered reaffirming what Rule 41(d)(2) already appears to say: A mandate must issue immediately after certiorari is denied. But if appellate courts retain authority to recall an already-issued mandate under extraordinary circumstances, any change to Rule 41(d)(2) would serve little purpose. It thus might make more sense to codify the "extraordinary circumstances" rule. In either case, the committee will make a formal proposal to the Standing Committee, perhaps as early as the spring meeting.

DISCLOSURE RULES

The advisory committee has been considering what disclosures parties must make in briefs for a long time. Its review revealed a bevy of local disclosure requirements that augment the Appellate Rules to different degrees. Concerned that the Rules are insufficiently thorough, the committee is considering expanding their scope: for example, by extending them to intervenors, partnerships, victims in criminal cases, and amici curiae. It is also consulting the Committee on Codes of Conduct for additional guidance. Judge Colloton reported that, because the project remains ongoing, the committee may or may not be able to present a concrete proposal at the spring meeting.

One member proposed that, instead of taking the lead, the Appellate Committee should coordinate with judges at all levels of the federal judiciary. Another suggested that the Appellate Committee coordinate with its sister advisory committees, all of which have an interest in the outcome. In response, Judge Colloton noted that the project was still in a nascent stage and expressed willingness to solicit input from other committees once it had crystallized its thinking.

CM/ECF PROPOSALS

The advisory committee has been working with Judge Chagares and the CM/ECF subcommittee to resolve issues related to electronic filing. Judge Colloton deferred consideration of those issues to Judge Chagares's presentation.

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Ikuta presented the advisory committee's report, set out in her memorandum and attachments of December 11, 2014 (Agenda Item 4).

Amendment for Final Approval

FED. R. BANKR. P. 1001

On behalf of the advisory committee, Judge Ikuta sought approval to amend Bankruptcy Rule 1001, the bankruptcy counterpart to Civil Rule 1. Rather than incorporate the Civil Rule by reference, the Bankruptcy Rule echoes its language. However, Rule 1001 does not reflect recent amendments—approved and pending—to Rule 1. The proposal brings Rule 1001 in line with those changes, stating that "These rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding."

The committee, without objection and by voice vote, approved the proposed amendment to Rule 1001 for publication.

Informational Items

PROPOSED CHAPTER 13 NATIONAL PLAN FORM

The advisory committee has been working on a national chapter 13 plan form since 2011. Currently, more than a hundred chapter 13 forms exist. Led by Judge Wedoff, the committee distilled those forms into one. It also developed amendments to the Bankruptcy Rules to bring them in line with that form. After publishing the first version of the form and amendments in 2013, the committee received many critical comments. So it went back to the drawing board and published a revised proposal in 2014. The comment period has not yet expired, but the reaction to the revisions has been mixed.

Judge Ikuta reported that, in her view, the committee can fix specific concerns about the form. The real question is whether the need for national uniformity should override local preferences. She recommends implementing the national form incrementally—for instance, by making the form optional and asking various bankruptcy districts to opt into the form.

A professor wondered whether it was possible to make the national form an alternative to local ones. Judge Ikuta confirmed that his question tracked the committee's proposed incremental approach. By making the national form optional and soliciting compliance from individual districts, the committee hoped to build support for it over time.

An appellate judge asked why a national form was necessary. Professor McKenzie gave four reasons. First, the existing forms have generated a tremendous amount of confusion. Second, bankruptcy judges have an independent duty to scrutinize proposed plans, and a national form would reduce uncertainty about where such information may be found. Third, a national form could generate data more effectively. Finally, a national form would let entrepreneurs develop cheaper software for debtors' use.

Judge Wedoff explained why the committee decided to devise a national form in the first place. One bankruptcy judge said that, in the form's absence, bankruptcy courts could not easily

discharge their duty to independently scrutinize chapter 13 plans. And a bankruptcy lawyers' association said that its members had trouble processing chapter 13 forms from different jurisdictions—and lacked the resources to obtain local counsel. Professor McKenzie added that the committee surveyed the chief judge of every bankruptcy court in the country before getting the project started. The response was overwhelmingly positive.

A district judge asked about the reaction from bankruptcy practitioners. Their comments, Professor McKenzie said, were mixed. Some lawyers liked the idea so long as this word or that word could be changed. Others opposed it. A few lawyers candidly explained that they feared the competition an easily accessible national form would create.

FORMS MODERNIZATION PROJECT

The advisory committee's forms modernization project is almost complete. Unfortunately, the Administrative Office is having trouble integrating the new forms into its new CM/ECF system and may miss its December 2015 deadline—when the forms are scheduled to take effect. The question is whether to delay rolling out the forms until all technological kinks have been ironed out.

Judge Ikuta reported that the committee will discuss the issue at its April meeting, but she recommends releasing the forms on schedule. Doing so, she said, would not disrupt operations in the vast majority of courts. True, three bankruptcy districts give pro se debtors access to forms software on court-run computer terminals. But not enough debtors use that service to justify delaying the forms' national release.

A district judge said that the AO had told her that forms integration was mutually exclusive with the CM upgrade project. As it turns out, Judge Ikuta received that same answer too, but the AO changed its mind once it realized what the forms integration project entailed.

CM/ECF PROPOSALS

The advisory committee considered three of the CM/ECF subcommittee's proposals at its fall meeting. It will defer decision on two of them until the Civil Rules Committee acts. It is independently considering whether to redefine the word "information" to include electronic documents and the word "action" to include electronic action.

REPORT OF THE INTER-COMMITTEE CM/ECF SUBCOMMITTEE

Judge Chagares presented the subcommittee's report, set out in his memorandum and attachments of November 30, 2014 (Agenda Item 8). He announced that the subcommittee had successfully completed its work.

Informational Items

ABROGATION OF THE THREE-DAY RULE AS APPLIED TO ELECTRONIC SERVICE

The subcommittee previously proposed that parties should not receive three extra days to take action after electronic service. It worked with the relevant advisory committees to draft amendments to Appellate Rule 26(c), Bankruptcy Rule 9006, Civil Rule 6, and Criminal Rule 45. These amendments, Judge Chagares reported, thus far have been well received.

ELECTRONIC SIGNATURES

The subcommittee previously proposed that Bankruptcy Rule 5005 be changed to provide for more flexible electronic signatures, but the Bankruptcy Committee withdrew that proposed amendment after public comment. After that withdrawal, the subcommittee asked the Administrative Office to figure out how local rules treated electronic signatures. Judge Chagares thanked the AO for its diligence and hard work.

The AO's exhaustive survey revealed that nearly every local rule treats filing users' login and password as an electronic signature. The various districts are not nearly so uniform when it comes to nonfilers, but the most prevalent rule requires the user to obtain and retain the signatory's ink signature. In light of these findings, Judge Chagares concluded, the Bankruptcy Committee's decision was probably correct. The local rules appeared sufficient to meet present needs, and any formal rulemaking risked being overtaken by rapid technological developments.

CIVIL AND CRIMINAL RULES REQUIRING ELECTRONIC FILING

The subcommittee previously recommended that Civil Rule 5(d)(3) and Criminal Rule 49(e) be amended to mandate electronic filing as opposed to merely permitting it. Judge Chagares reported that the advisory committees are still considering those proposals.

UNIFORM AMENDMENTS TO ACCOMMODATE ELECTRONIC FILING AND INFORMATION

The current rules do not appear to accommodate electronic filing and information. Thus, the subcommittee proposed defining "information" to include electronic documents and "action" to include electronic action. The advisory committees considered these proposals but reached different conclusions. For example, the Appellate and Civil Rules Committees have decided not to adopt them, while the Bankruptcy and Criminal Rules Committees have submitted them to subcommittees for further study. Judge Chagares reported that the proposal to redefine "information" appears to be the more viable of the two.

Dissolution of the Subcommittee

Judge Sutton thanked Judge Chagares, Professor Capra, Julie Wilson, and Bridget Healy for their hard work, and praised the subcommittee for fulfilling its mandate quickly and efficiently. Professor Capra reiterated Judge Sutton's comments and thanked his fellow reporters.

Judge Sutton and Judge Chagares have agreed that, now that the subcommittee has run its course, there is no need to keep it in place.

REPORT OF THE ADMINISTRATIVE OFFICE

Mr. Rose presented the Administrative Office's report (Agenda Item 10).

Informational Items

The Administrative Office is preparing an updated version of its 2010 *Strategic Plan for the Federal Judiciary*. Because the Long-Range Planning Committee will be meeting in March, Mr. Rose noted, the time for input is now.

Mr. Rose asked anybody corresponding with the Office to copy both the head of the Rules Office and Frances Skillman. That, he said, is the best way to ensure the message gets where it needs to go. He also summarized recent personnel arrivals and departures at the AO.

Finally, Mr. Rose announced that this meeting would be his last as head of the Rules Office. He thanked the committee for the opportunity to work with and learn from such talented people. Judge Sutton thanked Mr. Rose for his leadership and lauded his commitment to public service over a long and distinguished career. He also introduced Rebecca Womeldorf, Mr. Rose's successor, and described her impressive background.

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Raggi presented the advisory committee's report, set out in her memorandum and attachments of December 11, 2014 (Agenda Item 6). She announced that the amendments to Criminal Rule 12 have now taken effect.

Informational Items

FED. R. CRIM. P. 4

The Standing Committee previously approved for comment a proposed amendment to Rule 4 that would govern service of process abroad. Judge Raggi reported that the advisory committee has received no critical feedback on that proposal.

FED. R. CRIM. P. 41

The Standing Committee previously approved for comment a proposed amendment to Rule 41 to govern venue for searches of electronic devices whose location is unknown. The advisory committee held a lengthy hearing and reviewed extensive public comments. Judge Raggi reported that the critical response has largely focused not on the amendment itself but on concerns about electronic searches more generally.

These thought-provoking comments led the committee to request a response from the U.S. Department of Justice. The Department endorsed the proposal and suggested ways for the government to satisfy the particularity requirement if the amendment takes effect. Judge Raggi noted that the Federal Judicial Center might consider educating judges about how to analyze such warrant applications down the road. But that, she concluded, is a question for later. For now, the committee is debating whether the amendment needs to be changed. Judge Raggi expects the committee to propose something at the spring meeting, although the current proposal may be tweaked.

SUGGESTED AMENDMENT TO RULE 52

A Second Circuit judge asked the advisory committee to consider amending Rule 52 to provide fresh review—as opposed to plain-error review—for defaulted sentencing errors. He reasoned that, unlike a new trial, a resentencing proceeding imposes an incidental burden on the judiciary. And it is unfortunate when a prisoner is forced to remain in jail longer than he deserves.

Judge Raggi reported that the committee decided not to proceed with this request. Professor Nancy King, the committee's associate reporter, surveyed cases in this area and discovered that the number of defaulted sentencing errors is not high—and were typically corrected on plain-error review. The committee was also concerned that the proposal would generate extensive frivolous litigation. Finally, drawing on its experience with the 2014 Rule 12 amendments, it expressed doubts that the Supreme Court would be willing to create an exception to the general rule that defaulted claims are reviewed for plain error.

One appellate judge proposed an alternative. He suggested that the rules might be amended to reflect what many circuits have already held: that a clear guidelines-calculation error presumptively satisfies the last two elements of plain-error review. The judge acknowledged, however, that his suggestion came close to the edge of the committee's rulemaking authority. Another appellate judge wondered whether a different approach might solve the problem. In his circuit, a defendant can never forfeit a substantive reasonableness challenge, so arguments that a sentence is unjustly long are always reviewed afresh. Judge Raggi responded that, in her view, no judge should ever rely on the guidelines unless that sentence also satisfies the § 3553 factors. Plain-error review is enough to fix the vast majority of problems, and loosening Rule 52's standards would open the floodgates to a host of defaulted sentencing claims. She suggested instead that circuits interested in these alternative proposals adopt them as a local rule or as circuit-specific precedent.

FED. R. CRIM. P. 11

The judges of the Northern District of California asked the advisory committee to let judges refer criminal cases to their colleagues to explore the possibility of a plea bargain. Judges in that district had routinely used this procedure until the Supreme Court held that the Criminal Rules barred it.

Judge Raggi reported that the committee decided not to proceed with this request either. 95% of criminal cases are already resolved by plea bargains nationally, and the Northern District is no exception to that norm. More, implementing this change would create a host of practical problems—and might raise separation-of-powers concerns to boot.

Judge Raggi also reported that, at around the same time, a judge from the Southern District of New York published an article advocating judicial involvement in plea bargaining to reduce the risk that someone would plead guilty to a crime he didn't commit. The committee was not persuaded by this argument either. If a district judge is not convinced that a defendant is guilty of the crime to which he pleaded guilty, the judge should reject that plea under Criminal Rule 11.

HABEAS RULE 5

A judge from the Eastern District of Pennsylvania asked the advisory committee to amend Habeas Rule 5. Currently, that Rule requires a State to give a habeas petitioner copies of all exhibits attached to its response. The judge proposed relieving the State of that obligation in the absence of a judicial order to the contrary.

Judge Raggi reported that the advisory committee unanimously rejected this proposal. Every court expects these documents to be provided, and the States themselves have not complained about the problem.

FED. R. CRIM. P. 35

The New York Council of Defense Attorneys asked the committee to grant judges authority to reduce a sentence if (1) the defendant can identify new evidence casting doubt on his conviction, (2) the defendant can show he has been fully rehabilitated, or (3) the defendant can point to medical problems justifying his release.

Judge Raggi reported that a subcommittee is still examining this proposal, but she thinks it will not ultimately succeed. Proposal 1 effectively repeals AEDPA's statutory time limits on presenting such evidence in a habeas petition. Proposal 2 would subject the courts to a flood of rehabilitation claims. And Proposal 3 is redundant, since prisoners can already be released on humanitarian grounds when appropriate.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Campbell presented the advisory committee's report, set out in his memorandum and attachments of December 2, 2014 (Agenda Item 5).

Informational Items

CM/ECF PROPOSALS

Judge Campbell reported that the advisory committee has finished considering the CM/ECF Subcommittee's proposals. It recommended that the Civil Rules mandate electronic filing and service with appropriate exceptions for good cause. It recommended against changing the Rules' approach to electronic signatures, having observed the Bankruptcy Rules Committee's experience. It also recommended against defining "information" or "action" to include "electrons" (e.g., electronic filing), although it remains open to making that change if the existing regime becomes unworkable.

FED. R. CIV. P. 68

The advisory committee considered several proposals to amend Civil Rule 68, which governs offers of judgment. The committee has studied the Rule twice in the last two decades, and it provoked a storm of controversy both times. Nevertheless, Judge Campbell reported that the committee is once again looking at the question—this time by surveying how the States implement their own offer-of-judgment procedures. The committee will consider next steps at its April meeting.

FED. R. CIV. P. 26

The advisory committee considered a proposal to add the presence of third-party litigation financing to the list of Civil Rule 26(a) disclosures. The committee agreed that the issue is important but determined that rulemaking is not yet appropriate. Litigation finance is a relatively new field. Besides, judges already have tools to obtain this information when relevant. And the absence of a mandatory-disclosure rule does not appear to hinder the resolution of cases involving litigation financiers.

FED. R. CIV. P. 23 SUBCOMMITTEE ACTIVITY

The advisory committee appointed a subcommittee to consider issues related to Civil Rule 23. Currently, it is charged with gathering facts to identify questions worth further study. So far, Judge Campbell reported, the subcommittee has spotted six primary issues. It plans to present a set of conceptual proposals to the full committee at its April meeting that may generate more concrete proposals for the fall. It is also considering convening a mini-conference in 2016 to evaluate any suggestions that might emerge.

One member asked the subcommittee to examine the procedures governing multidistrict litigation. He said that mass-tort MDLs make up half the federal courts' civil docket, and the rules regulating them may be worth reexamining. He also observed that the MDL bar is a small and tightly knit group of lawyers with links to the MDL Panel. None of this is to say that MDLs are being mishandled. But because MDLs occupy such a large part of the civil system, the subcommittee ought to ensure that the process is working.

Two members responded that, judging from their past experience with the subject, they doubted whether Rule 23—and for that matter the Rule 23 subcommittee—was the best place to address any problems MDLs might pose. Two judges who have presided over MDL cases also expressed their doubts. One reported that, in his experience, the MDL process *was* working. The other reported hearing complaints about the system, but those focused more on the process of MDL certification and counsel selection than on the process of trying MDL cases once certified. Both questioned whether a one-size-fits-all approach was possible or desirable. Finally, a practitioner pointed out that a small bar is an efficient bar. MDL trial firms get along with MDL defense firms, so MDL cases tend to run smoothly. And from most firms' perspective, the cost of entering the MDL arena is prohibitively high, making MDL cases poor investments.

REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES

Judge Sessions presented the advisory committee's report, set out in his memorandum and attachments of November 15, 2014 (Agenda Item 7). The committee considered proposals developed from its April 2014 Symposium on the Challenges of Electronic Evidence. The *Fordham Law Review* has published the proceedings from that Symposium.

Informational Items

FED. R. EVID. 803(16)

Evidence Rule 803(16) provides a hearsay exception for authenticated documents over twenty years old. Judge Sessions reported that this Rule has almost never been used, but it may become more significant in an era of electronic evidence. The advisory committee thinks this Rule is inappropriate but is still deciding what to do about it. One option is to leave it be. Another is to abrogate it or narrow it to exclude electronically stored information. Still another is to amend it to require a showing of necessity or reliability.

RECENT PERCEPTIONS

The advisory committee considered whether to add a new hearsay exception for electronically reported recent perceptions to Evidence Rules 801(d)(1) and 804(b). This change would arguably prevent reliable statements made in texts, tweets, and Facebook posts from being excluded.

Judge Sessions reported that the committee is continuing to study whether these changes are necessary. With respect to Rule 801(d)(1), the committee has decided not to change that provision without first asking whether prior statements of testifying witnesses should even be defined as hearsay. It will begin that study at its next meeting. With respect to Rule 804(b), the committee is continuing to monitor the caselaw to see if courts have actually been excluding reliable evidence of this sort. A district judge asked the committee to study whether a witness's prior statement should be treated as hearsay when that witness is available to testify. Professor Capra responded that such a rule might open the door to all prior consistent statements.

STANDARDS FOR AUTHENTICATING ELECTRONIC EVIDENCE

The advisory committee considered whether to amend Evidence Rules 901 and 902 to provide specific grounds for authenticating electronic evidence. Judge Sessions reported that, in the committee's view, devising authentication standards against a rapidly changing technological backdrop would create more problems than they would solve. However, it unanimously decided to develop a best-practices manual to guide courts and litigants.

FED. R. EVID. 902

The advisory committee considered two proposals to make it easier for litigants to authenticate certain kinds of electronic evidence. They mirror the self-authentication procedure for business records in Evidence Rule 902(11) by shifting the burden for proving inadmissibility to the opposing party. Judge Sessions reported that the committee unanimously supports these proposals and will consider introducing them as formal amendments at its next meeting.

CONCLUDING REMARKS

Judge Sutton concluded this portion of the meeting by recognizing four departing individuals for their service: Jonathan Rose, Andrea Kuperman, Judge Sidney Fitzwater, and Judge Eugene Wedoff. He summarized their remarkable achievements and thanked them all for their tremendous work on the committee's behalf.

PROMOTING JUDICIAL EDUCATION THROUGH VIDEOS

The committee considered the Federal Judicial Center's proposal to produce videos that would educate judges and lawyers about changes to the Federal Rules. Judge Sutton explained how the proposal came to be. Education has always been a key component of the Duke Package, which was designed in part to change the culture of civil litigation. Judge Fogel came up with the idea of disseminating information through video presentations. Initially, the FJC planned to create test videos for all of the rules that took effect in December 2014. However, the committee expressed concern that such videos—if released to the public—would constitute a form of post-enactment legislative history. So it postponed a final decision on the FJC's proposal until it could review a sample video.

Judge Fogel showed a sample film featuring Judge Sessions and Professor Capra, who discussed recent amendments to Evidence Rules 801 and 803. He acknowledged concerns about post-enactment legislative history but argued that the video format was a much more dynamic way to communicate information. He also explained that the videos would reach a wide audience even if restricted to judges and judicial employees. For example, a thousand viewers watched a recent webinar on § 1983 litigation.

Many members supported the FJC proposal. The Duke Package depends on education for its success, and videos might help reach previously inaccessible constituencies. Several judges recommended presenting the videos to their law clerks and at judicial meetings both private and

public. As for the legislative-history concern, that issue can be solved with a disclaimer—or a rule that no such video could be used in court.

One appellate judge expressed reservations. He argued that the written word is superior to video in conveying this sort of information. In response, a member proposed releasing the transcript of the video with the video itself. Another member suggested that the videos might be more useful if they provided practice tips. This triggered concerns that expanding the videos beyond the text of the committee notes would stretch the bounds of proper rulemaking.

Judge Sutton recommended that the FJC proceed slowly. He asked it to work with any committee chairs and reporters willing to produce videos describing significant rule changes that took effect in December 2014. Those videos would be then placed on the private judicial intranet. The committee could then use that experience to determine whether to continue the program and whether to make the videos public. He thanked Judge Fogel, Judge Sessions, and Professor Capra for putting together the demonstration video.

PANEL DISCUSSION ON THE CREATION OF PILOT PROJECTS

Introduction

Judge Sutton presided over a panel discussion on the creation of pilot projects to facilitate civil discovery reform. When coupled with the Duke Package reforms, pilot projects offer a powerful way to change litigation norms for the better and to gather data for future reforms in the process. By convening the panel, he hoped to give the Civil Rules Committee some potential projects to consider. Judge Sutton introduced the panelists: Judge Eugene Wedoff of the Bankruptcy Court for the Northern District of Illinois, Judge Anthony Scirica of the Third Circuit, and Judge Sidney Fitzwater of the Northern District of Texas. Finally, he welcomed a special guest: Associate Justice Sandra Day O'Connor, who joined the Standing Committee for this panel discussion and for the dinner that followed.

Judge Wedoff: Improving the Speed of Case Administration

PRESENTATION

Judge Wedoff spoke about the impact of "rocket dockets" on case administration. The term was first applied to the Eastern District of Virginia, which implemented a series of procedural reforms in the 1970s. It has since been applied to several other jurisdictions that have adopted similar procedures, including the Western District of Wisconsin and the Eastern District of Texas. But their reputations sometimes do not match the data. The Eastern District of Virginia is truly one of the fastest courts in the country—but the Eastern District of Texas operates *above* the nation's median case disposition time, and the Western District of Wisconsin has fallen off substantially. Meanwhile the Southern District of Florida works with remarkable speed despite not being labeled a rocket-docket court.

Based on this study, Judge Wedoff concluded that judges affect case-disposition time more powerfully than rules. Judges who impose credible deadlines, for example, resolve cases

faster than judges who don't. At the same time, efficient districts have certain procedural rules in common. For example, the Eastern District of Virginia sets short deadlines for discovery and trial that cannot be altered without a substantial showing to the court. For its part, the Southern District of Florida places every case into one of three tranches: expedited, standard, and complex. None of these tranches allows discovery to exceed one year.

DISCUSSION

The first question is whether to encourage district courts to adopt rocket-docket procedures district-wide. Many members said yes. Competition for litigants among courts can help everyone, said one professor, pointing to the creation of an omnibus hearing as an example of a useful procedural innovation that arose from one bankruptcy district's attempt to entice debtors to file there. Other committee members observed that, even if rocket-docket procedures make things harder for lawyers and judges, such procedures are *always* good for clients. And pilot projects implementing them may well change attorneys' hearts and minds in the process.

Attendees made several suggestions about what such pilot projects might look like. One recommended setting hard and credible trial deadlines. Another recommended capping not only a party's total deposition hours but also the number of hours he has available to conduct each deposition. He also recommended creating a tranches system for document production. And everybody who spoke emphasized the importance of making the pilot project mandatory.

The committee then moved to the question of implementation. Certain rocket-docket procedures—like the Eastern District of Virginia's weekly argument day—might conflict with local rules mandating one judge per case. More fundamentally, creating a rocket docket from scratch would be much harder than studying the ones that already exist, since district courts are unlikely to change in the absence of a strong leader backing the project.

One member counseled against implementing pilot projects too quickly. He recommended letting the FJC study the existing projects first, and moving only when the committee was sure that the projects' contents would work. Judge Sutton responded that he saw no reason why pilot-project advocacy should stop—especially since such advocacy isn't designed to mandate effective procedures but to suggest potentially useful ones. Another member agreed, and pointed out that studies and pilot projects could always take place simultaneously.

Finally, members sounded a note of caution about research methodology. One stressed the importance of getting independent opinions from participants, recalling an instance where rocket-docket practitioners were asked about their views on the process in full view of rocket-docket judges. Two district judges reiterated that numbers do not tell the whole story. Sometimes a case gets delayed for wholly appropriate reasons. And sometimes statistics are skewed by background factors not immediately apparent.

Judge Scirica: Requiring Initial Disclosure of Unfavorable Material

PRESENTATION

Judge Scirica explored the feasibility of requiring parties to disclose material unfavorable to their side by rule. In the 1990s, he said, the committee tried to do just that, but the proposal triggered a firestorm. Opponents argued that most cases did not require adverse disclosures, and that aggressive discovery techniques would ferret out such information in the cases that did. They also invoked the adversarial nature of the American justice system, arguing that a "civil *Brady* regime" would disrupt the attorney-client relationship. Eventually, the committee settled on a compromise position—explored through pilot projects in the Central District of California and the Northern District of Alabama—that retained initial disclosures but eliminated the requirement to disclose unfavorable material.

Today, Judge Scirica continued, an expanded initial disclosure regime might find a warmer reception. To test the waters, he envisioned two separate types of pilot projects. One would apply a robust but general initial disclosure regime to all civil cases. Another would apply a tailored initial disclosure requirement to certain categories of cases—say, employment discrimination or civil rights. The former is best left to the Standing and Civil Rules Committee, he advised; the latter, to a committee of experienced lawyers from both sides of the podium.

DISCUSSION

Every member who spoke expressed support for an expanded initial disclosure regime. One provided an especially powerful example from Arizona. In 1991, the Arizona Supreme Court adopted a robust mandatory disclosure rule that covered favorable and unfavorable material. The same debate took place. Now, however, Arizona's local rules have overwhelming support. In fact, seventy percent of lawyers who practice in both federal and Arizona state court prefer the state disclosure system to the federal one.

Another speaker, who served on the committee during its first attempt to mandate adverse disclosures, argued that the committee should not be traumatized by that experience. The committee, he said, had been right all along. And this time, it knows what pitfalls to avoid. For example, it will not keep the bar in the dark until the very end of the process.

The committee also endorsed category-specific disclosures. Many district judges have already embraced the Federal Initial Discovery Protocols for Employment Cases. One member reported that, although the Protocols encountered initial resistance, the employment bar now loves them because they generate information that would otherwise require a six- to seven-month discovery battle to get. Another member explained that the Southern District of New York had successfully implemented similar protocols for § 1983 cases that helped clear out its cluttered docket. One district judge advised the committee to make sure it doesn't define categories too narrowly. She has used the Employment Protocols for two years, in which time only three cases have qualified under its definition of "employment." Finally, one member reiterated his belief that the committee should not endorse new pilot projects without studying the existing ones more thoroughly.

Judge Sutton concluded that the committee appears to support studying an expanded initial disclosure system. This, he said, might be the time to try again.

Judge Fitzwater: Streamlined Procedure

PRESENTATION

Judge Fitzwater surveyed the many existing pilot projects that offer litigants streamlined procedures. According to the Institute for the Advancement of the American Legal System (IAALS), successful projects have five key features:

- a short trial that limits time to present evidence,
- a credible trial date,
- an expedited and focused pretrial process,
- relaxed evidentiary standards that encourage parties to agree to admission, and
- voluntary participation.

Judge Fitzwater then summarized two examples of what such a pilot project might look like. He could not find data about how often summary procedures had been used, but the procedures themselves are well-known. He started with the short-trial regime established by the District of Nevada in 2013. Litigants who opt into that system lose their right to discovery. In return, they receive a trial within 150 days of initial assignment, with a 60-day continuance available in limited circumstances. Evidence may be admitted without authentication or foundation by a live witness, and parties are encouraged to submit expert testimony through reports and not live testimony. At the trial itself, each party receives 9 hours to allocate among all trial phases as it chooses. The litigants present their arguments before a condensed jury—and once the trial is over, their ability to file post-trial motions is limited.

He then contrasted Nevada's system with the short-trial process in the Western District of Pennsylvania. That district does not eliminate a party's right to discovery but instead puts numerical limits upon it. Each party only has three hours to present evidence to the jury, with additional time for jury selection allocated at the judge's discretion. Finally, and most critically, the system bars parties from filing motions for summary judgment or motions in limine. Other pretrial motions may be filed only with leave of court.

Judge Fitzwater placed particular emphasis on this last provision. In the mine-run civil case, dispositive motions—not discovery disputes—were the main source of delay. Ironically, the Criminal Justice Reform Act's reporting procedures reinforce the incentive to work on motions, not cases: Judges must report a motion as pending after six months, but need not report a case as pending until three years elapse.

DISCUSSION

Many committee members expressed skepticism that a voluntary program would succeed. One pointed out that the Northern District of California abandoned a similar short-trial

procedure after litigants declined to use it. Several district judges on the committee who have given litigants an expedited-trial option encountered the same problem. In light of that experience, they recommended that any pilot project in this area be mandatory, not voluntary.

Judge Sutton asked Professor Cooper why his proposal in the 1990s to apply simplified procedural rules to small-stakes cases failed to gain traction. Professor Cooper explained that the proposal failed after a district judge pronounced it "elegant on paper but of no practical use." He also pointed out two potential implementation issues: First, different lawyers define a "small-stakes case" differently; and second, how should a simplified system treat a small-stakes case with a demand for injunctive relief?

One appellate judge recommended against defining "small stakes" using a dollar amount. She cited her experience with the Class Action Fairness Act, which contains a similar dollar-amount requirement, and collateral litigation over manipulation of that requirement. Another appellate judge warned that mandating streamlined procedures for certain categories of cases, but not others, will be tricky.

* * *

Judge Sutton summed up the conversation. At a minimum, he said, everybody agrees that the committee should study the many pilot projects in existence. And nobody thinks the committee should refrain from considering the possibility of civil litigation reform; the only worry is that specific reforms might be more complicated than anticipated. As such, he asked the Civil Rules Committee to study this topic and give its thoughts at the upcoming May meeting. He also advised it to consult Judge Fogel to see what FJC resources are available, and to coordinate with IAALS and the legal academy as well.

NEXT COMMITTEE MEETING

Judge Sutton concluded the meeting by announcing that the committee will next convene on May 28–29, 2015, in Washington, D.C.

Respectfully submitted,

Judge Jeffrey S. Sutton
Chair

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

RE: REQUIREMENT OF UPFRONT PAYMENT OF FILING FEE INSTALLMENT

DATE: MARCH 25, 2015

Once again before the Committee is Suggestion 12-BK-I, which Bankruptcy Judge John Waites (D.S.C.) submitted on behalf of the Bankruptcy Judges Advisory Group ("BJAG"). The suggestion proposes that Rule 1006(b) be amended to clarify that courts may require a debtor who applies to pay the filing fee in installments to make an initial installment payment with the petition and the application. BJAG further suggests that any requirement for an initial installment payment at the time of filing be limited to 25% of the total filing fee.[1]

Past Deliberations

The Advisory Committee has been considering this suggestion for more than two-and-a-half years. Initially the Subcommittee recommended that the Committee propose an amendment to Rule 1006(b) to provide that local rules may require that an initial installment payment of no more than 25% of the filing fee be paid at the time the petition and application are filed. At the fall 2012 meeting, the Committee decided to take no action on the Subcommittee's recommendation. It instead referred the suggestion back to the Subcommittee to undertake additional research to determine the scope of the problem that the suggestion seeks to address

[1] The current filing fees are as follows: Chapter 7 – $335; Chapter 11 – $1717; Chapter 12 – $275; Chapter 13 – $ 310.

and the likelihood that requiring an initial installment at the time of filing will increase chapter 7 fee waiver requests.

The Federal Judicial Center ("FJC") carried out that research and reported its findings to the Subcommittee in 2014. The research revealed that just over one-third of the bankruptcy courts (33) require an installment payment at the time of filing the petition and the application to pay the filing fee in installments. The amount of the required initial payment ranges from $40 to $135, and for courts that specify the required payment as a percentage of the total fees due upon filing, the percentage ranges from 25% to 50%. Many of the courts do not specify the consequences of failing to make the required payment. Of those that do, a few courts state that the application to pay in installments may or will be denied if the initial installment is not paid at filing. A greater number of courts provide for the possible dismissal of the case or rejection of the petition, by the clerk or by the court, with or without further notice.

The FJC researchers found a small, but statistically insignificant, increase in the rate of chapter 7 fee waiver applications in districts requiring an upfront installment payment. In 2013 the median percentage of non-business chapter 7 cases in which fee waiver applications were filed in upfront-installment districts was 5.37%, while in other districts it was 4.26%. The FJC found no material difference in the denial rates for fee waiver applications in the two types of districts.

The Subcommittee discussed the FJC research and the suggestion during the summer of 2014. Upon this further consideration, the Subcommittee concluded that Rule 1006(b) is not inconsistent with requiring an upfront installment payment. The rule requires a petition to be "accepted for filing if accompanied by the debtor's signed application" to pay the filing fee in installments. Subcommittee members read the provision to mean that a court could not refuse to

accept a petition because of the failure to make an initial installment payment, but they did not think that the rule prohibited requiring an upfront payment. They further concluded that because the clerk would have to accept the petition, resulting in the commencement of a case, the appropriate action for a court to take for the failure of a debtor to make a required initial payment would be dismissal of the case pursuant to Rule 1017(b)(1). That provision allows the court, "after a hearing on notice to the debtor and the trustee," to dismiss a case for the failure to pay any installment of the filing fee. Under this reading, the practice of some courts of refusing to accept a petition or summarily dismissing a case because of the failure to make an installment payment at the time of filing is inconsistent with Rules 1006(b)(1) and 1017(b)(1).

The Subcommittee concluded that no further action should be taken on the suggestion for an amendment to Rule 1006(b)(1). It made that recommendation at the fall 2014 meeting and suggested that the Committee communicate to BJAG its views about the appropriate procedure for responding to the nonpayment of a required upfront installment payment.

The Advisory Committee generally agreed with the Subcommittee's interpretation of Rules 1006(b)(1) and 1017(b)(1), but members questioned what should be done about courts that are summarily dismissing petitions for failure to pay initial installments and what procedure should be followed when a debtor seeks to pay in installments but still owes fees from an earlier case. The draft minutes of the fall 2014 meeting describe the discussion as follows:

> Judge Wedoff summarized that the subcommittee determined that the underlying Bankruptcy Code and rule provisions permit the practice of requiring upfront minimum payments with applications to pay in installments and that making a rule governing judges' discretion would be inappropriate. Several members commented that the FJC research includes evidence that some courts are rejecting filings when debtors do not have the upfront payments. Judge Wedoff responded that the legal requirements will be communicated to judges through the minutes of this Committee, the response to the Bankruptcy Judges Advisory Group, and the educational programs of the FJC. A separate but related question was raised regarding the proper procedure in a case in which a debtor has unpaid

> fees from a prior case and requests to pay the filing fee for a subsequent case in installment payments. Judge Wedoff referred this matter as well as the issue of dismissing or rejecting petitions for failure to pay upfront minimum installment payments to the Consumer Subcommittee. For this reason, any communication to the Bankruptcy Judges Advisory Group will be delayed until after the spring 2015 meeting.

The Reporter's notes also indicate that a Committee member suggested that Rule 1006(b) be amended to state that failure to pay an upfront installment should not be a basis for nonacceptance of a petition and that support for that view was expressed.

The Subcommittee's Recommendations

1. *Consequence of failure to make upfront payment*. The Subcommittee considered several possible ways to respond to what seemed to be the consensus of the fall Committee meeting—that Rule 1006(b)(1) should be amended to clarify the proper procedure for dealing with a debtor's failure to make a required, upfront installment payment of filing fees. The Subcommittee's discussion focused on what would be an appropriate provision to include in a bankruptcy rule, as opposed to an approach better left to advice from the Administrative Office ("AO") to clerks' offices. The Subcommittee concluded that an amendment to Rule 1006(b)(1), as indicated below, together with an accompanying Committee Note that cross-references Rule 1017(b)(1), would provide appropriate guidance to clerks' offices while at the same time alerting lawyers and debtors to the proper procedure for handling failures to make required, upfront fee installments. Such an amendment would also indicate indirectly that the rule does not prohibit a local requirement that the first installment be paid when the petition is filed—the matter that was the subject of BJAG's suggestion.

Rule 1006. Filing Fee

* * * * *

(b) PAYMENT OF FILING FEE IN INSTALLMENTS.

(1) *Application to Pay Filing Fee in Installments.* A voluntary petition by an individual shall be accepted for filing, regardless of whether any portion of the filing fee is paid, if accompanied by the debtor's signed application, prepared as prescribed by the appropriate Official Form, stating that the debtor is unable to pay the filing fee except in installments.

* * * * *

COMMITTEE NOTE

Subdivision (b)(1) is amended to clarify that an individual debtor's voluntary petition, accompanied by an application to pay the filing fee in installments, must be accepted for filing, even if the court requires the initial installment to be paid at the time the petition is filed and the debtor fails to make that payment. Because the debtor's bankruptcy case is commenced upon the filing of the petition, dismissal of the case due to the debtor's failure to make the initial or a subsequent installment payment is governed by Rule 1017(b)(1).

2. *What action may a court take with respect to a debtor who still owes filing fees from an earlier case?* This issue was not presented by the BJAG suggestion but was raised at the fall meeting and referred to the Subcommittee. Because the law on this question appears to be unsettled, the Subcommittee recommends that no rulemaking on this topic be pursued now.

The situation arises when a debtor is authorized in a bankruptcy case to pay the filing fee in installments but the case is dismissed prior to full payment. In that situation, the debtor remains liable for the installments that were not paid, but payment may not be forthcoming. The Bankruptcy Fee Compendium III (June 1, 2014 edition)—a publication to courts maintained by the AO's Court Services Office—provides the following guidance about this situation:

> **Dismissals.** If the court dismisses a case before the due date of the last installment payment, the debtor still must pay in full the fees due upon filing. If the court dismisses a case before the debtor pays all fees due upon filing, the court may include a statement that fees are owing in its order of dismissal. The order also may include a statement that the court will decline to entertain a motion to reconsider the dismissal unless the debtor pays the balance of all fees due when

> the motion is made. The order allowing payment of the fees in installments, and a statement from the clerk of court addressing the status of payments, would support the court's finding that fees are due.

Id. at 26.

If a debtor who still owes filing fees from an earlier case files a subsequent petition, a variety of approaches have been suggested for dealing with this debtor.

1. If the new case is filed within 180 days of dismissal of the earlier case, it can be dismissed under the authority of § 109(g)(1) of the Code ("[N]o individual . . . may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if . . . the case was dismissed by the court for willful failure of the debtor to abide by orders of the court . . . ."). *See* Bankruptcy Fee Compendium III at 27.
2. If the debtor waits more than 180 days to refile, other authority must be invoked. One possibility is to deny the debtor's application to pay the new filing fee in installments because of the unpaid filing fee from the earlier case. *See, e.g.*, *In re* Campbell, 356 B.R. 722, 726 (Bankr. W.D. Mo.) ("Debtor filed another application to pay the filing fee in installments, despite the fact that he should have known that request would be summarily denied as a result of his failure to pay the filing fees in the prior two cases."); Bankruptcy Fee Compendium III at 27 ("If a debtor with unpaid fees files a new case after l80 days pass, the bankruptcy clerk should bring the unpaid fees to the attention of the court, and the court may consider the debtor's default in deciding whether to allow the debtor again to pay the filing fee in installments.").[2]

[2] This approach is consistent with bankruptcy court's authority under Rule 1006(b)(2) to grant or deny an application to pay in installments. The bankruptcy fee statute, however, provides unconditionally that

3. There are conflicting decisions on whether a bankruptcy court can dismiss a case because of the debtor's failure to pay the filing fee in a prior case. Chapters 7, 11, 12, and 13 all provide that a case may be dismissed for cause, including "nonpayment of any fees or charges required under chapter 123 of title 28." *See* §§ 707(a)(2); 1112(b)(4)(K); 1208(c)(2); 1307(c)(2). The question is whether "any fees" includes fees owed for a prior case. *Compare In re* Domenico, 364 B.R. 418 (Bankr. D.N.M. 2007) ("any fees" is not limited to fees arising out of the current case); *with In re* Howard, 333 B.R. 826 (Bankr. W.D. Wis. 2005) ("[T]he statute must be read to only include current cases before the court."); *In re* Machdanz, 1994 W.L. 740457 (Bankr. D. Idaho 1994) (same).
4. The Bankruptcy Fee Compendium takes the position that if a debtor owes filing fees from a prior case, that debt should be treated as an unsecured claim in the current case. Thus it advises the clerk to take no action to collect the unpaid fees. Instead, the clerk should consult with the local U.S. Attorney to determine which office has the authority to file a proof of claim for the unpaid fees. Bankruptcy Fee Compendium III at 27.

The Subcommittee concluded that, should the Committee ever decide to take up this issue, it would be appropriate to consult with a broader group, including the Bankruptcy Administration Committee and relevant AO personnel.

"[a]n individual commencing a voluntary case or joint case under title 11 may pay such fee in installments." 28 U.S.C. § 1930(a).

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

RE: ABLE ACCOUNTS AND POSSIBLE OFFICIAL FORM AMENDMENTS

DATE: MARCH 25, 2015

Recently enacted legislation authorizes the creation of so-called ABLE accounts—tax-free savings accounts that enable families with disabled children to set aside funds to cover various living expenses, such as housing, transportation, medical treatment, and education or vocational training—and it provides special bankruptcy treatment for the accounts. During a conference call on January 30, the Subcommittee considered whether the legislation requires any rule or form amendments to implement its bankruptcy-related provisions. **As discussed below, the Subcommittee proposes amendments to Official Forms 106A/B, 122A-2, and 122C-2 and recommends that the Committee seek approval without publication of the amended forms, with a suggested effective date of December 1, 2015.**[1]

ABLE Accounts

Public Law No. 113-295, the Tax Increase Prevention Act of 2014, authorizes the creation of tax-free ABLE savings accounts under newly-added § 529A of the Internal Revenue Code. The Achieving a Better Life Experience Act of 2014 ("ABLE Act") is just a small portion of Public Law No. 113-295, which the President signed into law on December 19, 2014. ABLE accounts are modeled on other tax-free savings accounts, such as Internal Revenue Code § 529 college savings accounts and individual retirement accounts (IRAs).

[1] This memorandum makes the assumption that the renumbered, modernized forms will go into effect on December 1, 2015. As discussed in the memo, if that effective date is delayed, the Subcommittee's recommendations will apply to existing forms.

ABLE accounts are limited to the support of individuals with significant disabilities that arose before the disabled individual reached 26 years of age. Individuals already receiving Supplemental Security Income (SSI) or Supplemental Security Disability Income are automatically eligible, while those who are not receiving those benefits at the time they apply are eligible if they would qualify for SSI benefits. Individuals and their families may cumulatively contribute up to $14,000 annually, subject to annual adjustment. These contributions are after-tax contributions for the contributor, but funds in the ABLE account grow tax free.

An additional major benefit of ABLE accounts is their treatment with respect to the individual resources limit imposed on SSI payment eligibility. Under existing law, disabled individuals receiving SSI benefits lose their eligibility if their "countable" resources exceed $2,000. However, the first $100,000 in a disabled individual's ABLE account does not count against the SSI resources limit. This allows disabled persons to maintain eligibility for crucial government assistance programs while setting aside funds for future expenses.

Section 102 of the ABLE Act provides for ABLE accounts to apply to taxable years after December 31, 2014, and for the Secretary of the Treasury to promulgate necessary regulations within six months of the day of enactment—in other words, within six months of December 19, 2014.

Bankruptcy Provisions of the ABLE Act

The ABLE Act includes several bankruptcy provisions regarding the newly created ABLE accounts. First, § 104 of the ABLE Act amends § 541(b) of the Bankruptcy Code to exclude from the bankruptcy estate funds contributed to a qualified ABLE account. The new language mirrors the existing language in § 541(b)(5), which excludes from the bankruptcy estate funds contributed to education IRAs.

Second, § 104 of the ABLE Act amends § 707(b)(2)(A)(ii)(II) of the Bankruptcy Code to

state that the existing means test deduction for expenses for the care of family members may include contributions to a qualified ABLE account.

Third, § 104 of the ABLE Act amends § 521(c) of the Bankruptcy Code by adding interests in ABLE accounts to the list of interests for which debtors must file records with the bankruptcy court. Previously, § 521(c) only required debtors to file records of interests in education IRAs or under § 529 college savings accounts.

Finally, § 104 of the ABLE Act specifies that these amendments shall apply to bankruptcy cases filed on or after the date of enactment—Dec. 19, 2014.

Recommendation of Necessary Amendments

The Subcommittee concluded that no rule changes are needed in response to the ABLE Act. While the new law adds ABLE accounts to the types of accounts for which debtors must provide records under § 521(c) of the Bankruptcy Code, existing Rule 1007(b)(1)(F) refers generically to accounts or programs specified under § 521(c), rather than to the specific types of accounts listed there. As a result, the statutory amendment of § 521(c) automatically brings ABLE accounts within the requirement of Rule 1007(b)(1).

The Subcommittee concluded, however, that some minor amendments need to be made to three Official Forms.

1. Official Form 106A/B – Schedule A/B (Property), applicable in individual debtor cases, now asks on line 24 about interests in an education IRA or under a § 529 qualified state tuition plan. The Subcommittee recommends that ABLE accounts be added to the question, as follows:

> 24. **Interest in an education IRA** as defined in 26 U.S.C. § 530(b)(1)**, in an account in a qualified ABLE program** as defined under 26 U.S.C. § 529A(b)**, or under a qualified state tuition plan** as defined in 26 U.S.C. § 529(b)(1).

The Subcommittee also recommends that the underlined sentences below be added to the

Committee Note for the modernized individual debtor schedules, at the end of discussion of Part 4 of Schedule A/B:

> Part 4, *Describe Your Financial Assets*, prompts a listing of the debtor's financial assets through several questions providing separate space, after each listed type of account or deposit, for the institution or issuer name and the value of the debtor's interest in the asset. Two new categories of financial assets are added: "Bonds, mutual funds, or publicly traded stocks" and "Claims against third parties, whether or not you have filed a lawsuit or made a demand for payment." In addition, qualified ABLE accounts, as defined by 26 U.S.C. § 529A(b), are added to the list of accounts in question 24. This change is made in response to the Tax Increase Prevention Act of 2014, Pub. Law No. 113-295, which excludes ABLE account contributions meeting the specified requirements from property of the estate.

2. Means Test Forms—Official Forms 122A-2 & 122C-2

As previously stated, the new ABLE legislation amends § 707(b)(2)(A)(ii)(II) of the Bankruptcy Code to state that the existing means test deduction for expenses for the care of family members (which is reflected in line 26 of the means test forms) may include contributions to a qualified ABLE account. The Subcommittee recommends that an additional statement be added to line 26 of the chapter 7 and chapter 13 means test forms (Official Forms 122A-2 and 122C-2). The provision is almost identical on the two forms, and the recommended amendment is indicated below by underlining:

> 26. **Continued**[2] **contributions to the care of household or family members**. The actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. These expenses may include contributions to an account of a qualified ABLE program as defined by 26 U.S.C. § 529A(b).

The modernized versions of the means test forms are already in effect; they will just be renumbered when all of the other modernized forms go into effect. The addition of the instruction

[2] Current Official Form 22A-2 uses the word "continued," whereas Official Form 22C-2 uses "continuing." The Committee may want to reconcile these headings when the renumbered means test forms are promulgated.

about ABLE accounts would need to be explained in a brief new Committee Note. The Subcommittee recommends the following note:

COMMITTEE NOTE

A statement is added to line 26 of Forms 122A-2 and 122C-2 explaining that contributions to qualified ABLE accounts, as defined by 26 U.S.C. § 529A(b), may be included in the deduction for contributions to the care of household or family members. Authorization of the deduction of such contributions was added to Bankruptcy Code § 707(b)(2)(A)(ii)(II) by the Tax Increase Prevention Act of 2014, Pub. Law No. 113-295.

Recommendation About Timing

The Subcommittee recommends that approval be sought for the amended forms to go into effect on December 1, 2015, whether or not the other modernized forms go into effect then. The ABLE Act's amendments to the Bankruptcy Code apply to all bankruptcy cases filed on or after December 19, 2014, although states are just starting to enact enabling legislation and the Secretary of the Treasury has not yet issued implementing regulations. If the Committee approves the proposed amendments at this meeting, it can seek approval of them without publication—because they are conforming amendments—at the May Standing Committee meeting, and then final approval can be sought from the Judicial Conference in September. The amendments would then be able to go into effect on December 1, 2015, along with some technical amendments to the means test forms that were approved at the fall 2014 meeting in Charleston.

If the Committee decides at this meeting to seek an effective date for the modernized forms of December 1, 2015, the recommendations in this memorandum will apply to Official Forms 106A/B, 122A-2, and 122C-2, as discussed above. If the Committee decides to delay the implementation of the modernized and renumbered forms to a later date, the recommended amendments will be made initially to Official Forms 6B, 22A-2, and 22C-2, and a separate Committee Note will be written for the Form 6B amendment.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: TROY A. McKENZIE, ASSISTANT REPORTER

RE: NATIONAL CHAPTER 13 PLAN FORM AND RELATED AMENDMENTS TO THE BANKRUPTCY RULES—SUMMARY OF PROJECT HISTORY, PUBLIC COMMENTS, AND ALTERNATIVE PROPOSAL

DATE: MARCH 19, 2015

At its spring meeting, the Advisory Committee will consider whether to seek adoption of Official Form 113—the proposed national form for chapter 13 plans—and related amendments to the Bankruptcy Rules. This memorandum (i) summarizes the status of the project with a brief recital of its history, (ii) summarizes public comments received after republication of the plan form and rule amendments last August, and (iii) discusses a proposal offered as an alternative to the national plan form by a group of judges and bankruptcy professionals.

I. History of the Chapter 13 Plan Form Project

This description of the history of the project is offered with two goals in mind. First, a number of public comments, as well as some of the testimony at the January 23 public hearing, raised concerns about the process by which the Advisory Committee created the form and rule amendments. A review of that process may inform the Advisory Committee's assessment of those concerns. Second, because the form and rule amendments have been developed over a multi-year timespan, and because several new members have recently joined the Advisory Committee, recalling the "landmarks" in that development may also inform the Advisory Committee's evaluation of whether to adopt, modify, or table the project.

A. Starting Points

In 2010, the Advisory Committee received two suggestions urging the development of a national chapter 13 plan form. The first (10-BK-G) came from Bankruptcy Judge Margaret Mahoney (S.D. Ala.), who wrote:

> Such a form would make it easier to insure proper notice of plan provisions for judges, trustees, and parties in interest. Everyone would know where to look for items that concern them. Although a complete form plan might be achievable, it might be easier to gain acceptance if the form was only a framework for a plan to allow for each district's own wording.

The second suggestion (10-BK-M) came from the States' Association of Bankruptcy Attorneys (SABA). They invoked the Supreme Court's then-recent decision in *United Student Aid Funds v. Espinosa*, 559 U.S. 260 (2010), and, like Judge Mahoney, encouraged the creation of a national form that could be reviewed more efficiently. Unlike Judge Mahoney, however, SABA stressed that "the goal should be to have a single plan, not a framework for creating separate plans in each district."

Both suggestions were considered at the Advisory Committee's spring 2011 meeting. At that meeting, the joint Subcommittees on Consumer Issues and Forms recommended—and the Committee approved—the formation of a working group to study the development of a chapter 13 plan form.

Shortly thereafter, the Advisory Committee received a suggestion (11-BK-B) from Bankruptcy Judge A. Benjamin Goldgar (N.D. Ill.) to amend Rule 3002(a). Judge Goldgar suggested that the rule be amended to explicitly require all creditors, including secured creditors, to file proofs of claim. That suggestion was discussed at the fall 2011 Advisory Committee meeting and referred to the Chapter 13 Plan Form Working Group.[1]

B. Information Gathering

The Working Group began in the spring and summer of 2011 by compiling information from local chapter 13 plan forms from around the country. That survey produced a list of the categories of common plan provisions. The Working Group initially considered limiting the project to a framework of these provisions—perhaps with the creation of "modules" of plan terms that local districts could opt into. Instead, the Working Group decided to create a

[1] The Working Group was drawn from the Advisory Committee, although some members continued to serve as part of the Working Group after the end of their tenure on the Advisory Committee.

complete, integrated form. Two reasons drove that decision. First, the Working Group thought that it would be difficult to create a series of modules without first seeing whether and how they interacted as a complete form. Second, members of the Working Group also contemplated that it would be difficult to draft amendments to the Bankruptcy Rules without a stable, complete form with which those rule amendments would be integrated.

The Working Group followed these initial steps by notifying bankruptcy courts of the plan form project. Through the Director of the Administrative Office of the U.S. Courts, the chair of the Advisory Committee, Judge Wedoff, sent a message to all chief bankruptcy judges in August 2011. That message announced that the Advisory Committee had undertaken to draft an Official Form for chapter 13 plans and appropriate revisions to the Bankruptcy Rules. It requested information about local plan forms, including whether the recipients' local forms had provisions that were particularly helpful or problematic. Judge Wedoff's message included a request for plan terms that were essential or that should be included as options and a request for suggested rule revisions to improve chapter 13 procedures, the plan confirmation process, or the impact of a confirmed plan.

The Working Group received 31 responses (including responses from chapter 13 trustees to whom chief judges had referred Judge Wedoff's request). Four responses expressed opposition to—or serious doubts about—a national plan form.[2] On balance, however, the

[2] These responses came from: Chief Judge Richard Taylor (E.D. Ark.); Chief Judge Thomas Perkins (C.D. Ill.); William Bonney, Standing Chapter 13 Trustee (E.D. Okla.); and Chief Judge David Kennedy (W.D. Tenn.). Those opposing the adoption of a national form invoked the difficulty of making optimal choices in a form that would be used across the country in districts with differing needs and practices. Chief Judge Kennedy's response raised the concern that a national plan form would violate the right of a debtor to file a plan under the Bankruptcy Code. See § 1321 ("The debtor shall file a plan."). Similarly, Chief Judge Perkins questioned whether adoption of a national plan form honored the philosophy of §§ 1321 and 1322 (setting forth the required and permissible contents of a chapter 13 plan).

responses did not object to the Advisory Committee's pursuit of a national plan form. Instead, responses pointed to common areas of concern: the treatment of secured claims (particularly mortgages) and the mismatch between the claims bar date in Rule 3002(c) and the Code's requirement for when a confirmation hearing in a chapter 13 case must be scheduled. A number of responses also sought greater clarity about whether and when a chapter 13 plan or a proof of claim would control the treatment of a creditor's claim. A number of the responding judges were contacted to ask follow up questions about their submissions.

The Working Group then set about to create a draft of the plan form and rule amendments. Drafts of the form and amendments to eight rules (3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009) were presented for discussion at the Advisory Committee's fall 2012 meeting. At that meeting, the Advisory Committee authorized the Working Group to seek input on the project from interested groups by organizing a mini-conference modeled on a successful mini-conference about the handling of mortgage claims.

C. Chicago Mini-Conference

The plan form mini-conference, held in Chicago in January 2013, brought together members of the Working Group and seventeen invited participants representing a cross-section of interests (trustees, judges, clerks, mortgage servicers, unsecured creditors' attorneys, and debtors' attorneys) and locales. Participants were assigned to three panels, each of which was responsible for leading a discussion of various parts of the draft form and rule amendments. Notice of the pending mini-conference was disseminated to attorneys, judges, and trustees through the American Bankruptcy Institute and other channels. These outreach efforts generated additional comments about the plan form and rule amendments for consideration by the mini-conference participants.

The Chicago mini-conference prompted the Working Group to make a number of significant changes to the draft form and rules. Before the mini-conference, the draft form was designed so that a plan would control the amount and treatment of claims notwithstanding any contrary proof of claim. Based on feedback from the mini-conference, the Working Group determined that this approach would risk generating a large number of objections to confirmation if applied across the board. The Working Group altered its default approach so that the amount given by the party in the better position to know the value in question would generally control. Accordingly, the amount listed on a proof of claim would generally control over the amount listed on a plan. But when a plan sought the valuation of a non-governmental creditor's secured claim, the plan amount would control. The mini-conference also prompted the Working Group to alter the amendment to Rule 3002(c) to set a later deadline for mortgage creditors to file the additional supporting documents required under Rule 3001(c)(1) and (d).

More generally, the mini-conference made clear to the Working Group that the divergence in local practices called for parsimony when including items in the form. For example, the Working Group realized that it would be too difficult to include a detailed order of distribution in a national form without upsetting local practices. The mini-conference also confirmed the Working Group's decision not to include a provision detailing pre-confirmation adequate protection payments. Although some participants viewed that provision as a standard term in a chapter 13 plan, the great divergence in local practice prompted the Working Group to leave it out of the national form with the expectation that a separate, optional Director's Form would be pursued.

After the mini-conference, the Working Group also decided to include an amendment to Rule 2002 as part of the accompanying rules package. The amended rule would clarify the

required notice period for the confirmation hearing and for the deadline to object to confirmation.

D. Initial Publication and Comments

The revised plan form and amendments to nine rules were presented to the Advisory Committee and recommended for publication at the spring 2013 meeting. After approval by the Standing Committee, the package was published in August 2013. The project drew a large number of comments—about 150—and many of them were quite negative.

The chief concern expressed in the comments was that the form would unduly limit the flexibility of debtors and courts in the chapter 13 process. In particular, judges from a number of districts (such as the Bankruptcy Court for the District of Kansas) opposed the form on the ground that it would interfere with their local requirement that debtors make ongoing mortgage payments through the conduit of the trustee. The published form included an optional checkbox for a debtor to indicate if she elected to make those payments directly to creditors. As a result, judges in "conduit" districts viewed the form as taking a position, in essence, on the question whether the Code gives debtors the right *not* to make ongoing payments to creditors through the trustee.

The Working Group ultimately decided that this concern rested on a misunderstanding of the purpose and function of the chapter 13 plan form. To address that misunderstanding, the Working Group set about to make clear that the form was merely that—a form presenting features typically found in a range of chapter 13 plans in an ordered sequence—and not, in itself, a plan. The Working Group decided to add a prominent warning to the front of the form to

reiterate that the presence of an option on the form did not mean that the option would be acceptable to the debtor's local court.

In response to comments from the first round of publication, the Working Group made a number of other changes. The order of distribution in Part 7 of the form, which was partially completed and partially blank in the version published in August 2013, received heavy criticism. The Working Group further simplified this part by including language allowing the trustee to determine the order of distribution if the debtor elected not to provide one. The comments also prompted the Working Group to include a provision for represented debtors to sign the form in Part 10. In other parts of the form, the Working Group took heed of comments seeking greater flexibility. The portion of Part 2 setting forth debtors' payments to the trustee was altered to provide for plan payments in multiple "steps." Similarly, more options were included for the revesting of property of the estate in the debtor.

Although the rule amendments garnered fewer comments, two significant changes resulted from the August 2013 public comment period. The language of Rule 3012 was altered to clarify when enhanced service of plans was required. The Working Group also made significant revisions to Rule 9009 to allow greater flexibility to alter Official Forms.

Because the Advisory Committee considered these changes—and, in particular, the changes to the plan form—to be significant, the form and rule amendments were republished for public comment in August 2014. Upon republication, they were accompanied by a note seeking specific public comment on whether the rule amendments should be adopted even if the form is not adopted.[3]

[3] The publication note stated in pertinent part:

> The Advisory Committee now seeks to direct attention to an issue that was not specifically identified when the form and rule amendments were published last year. The

II. Public Comments After Republication of the Form and Rule Amendments

As did the initial round of publication, republication has produced a large, albeit slightly diminished, volume of public comments—approximately 120 that address the chapter 13 project. Last year, the Working Group engaged in an extensive, detailed review of the comments and then formulated suggested changes to the form and rule amendments for the Advisory Committee's consideration. That time-consuming process was curtailed this year as it became clear that the level of negative comments had not changed appreciably after republication.

The latest round of comments demonstrate that the central question for the Advisory Committee is not whether particular portions of the form and rule amendments should be adjusted, shuffled, or reworded in order to answer specific technical objections. Rather, the volume and tenor of the comments present a more basic policy question for the Advisory Committee's consideration—whether the concept of a single, national Official Form for chapter 13 plans should be pursued at all. Accordingly, this memorandum, unlike the memorandum synthesizing the comments received in the August 2013 round of publication, will not recount the comments in granular detail. A separate memorandum will give brief summaries of each comment.

Advisory Committee drafted the form and rule amendments as complementary parts of a project to improve the chapter 13 process. Several committee members believe that this complementary relationship should be maintained, and that the rule amendments should be considered only in conjunction with adoption of the plan form. The Advisory Committee would appreciate public comment on this issue. Specifically, the Committee invites comment on the following question:

> To what extent is it preferable that the amendments to Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009 be adopted in conjunction with a chapter 13 plan form?

Perhaps the most significant development from the public comment period, however, is the submission of a proposed alternative to the approach taken by the Advisory Committee. This proposal, styled a "compromise solution," is discussed later in the memorandum.

A. General Summary of Comments

A substantial majority of comments oppose the adoption of the plan form as a mandatory form. Relatively fewer comments specifically addressed the rule amendments, with the exception of Rule 3002 (altering the time to file proofs of claim) and Rules 3015 and 9009 (requiring use of the chapter 13 plan form and limiting alterations to an Official Form), which generated opposition. Few comments specifically addressed the question posed by the note accompanying the republished form and rules—that is, whether the rule amendments should be adopted only in conjunction with adoption of the plan form.

In general, comments opposing the adoption of the plan form raised the same objections articulated by negative comments in the last round of publication: (i) that the form diminishes the freedom of debtors to propose lawful chapter 13 plans and infringes upon the authority of local bankruptcy courts to adjudicate and administer chapter 13 cases; (ii) that the form will be ill-suited for the local variations in chapter 13 practice across the country; (iii) that current, non-uniform chapter 13 practice is satisfactory or even ideal, and therefore the plan form is a solution in search of a problem; (iv) that the form will not achieve the goal of greater uniformity in chapter 13 law, because local variations will inevitably persist; (v) that the form will impose serious transition costs for lawyers, trustees, and court staff and cause uncertainty and litigation; (vi) that the form will encourage the growth of a national chapter 13 practice for creditors and debtors at the expense of the benefits derived from the expertise and accessibility of the local bar; and (vii) that the form, in seeking to capture the range of options in chapter 13 practice

around the country, is too long and complicated and will be costly to complete, review, and administer.

There were notable comments in favor of the plan form and rule amendments. Judge Keith Lundin (Bankr. M.D. Tenn.) (Comment 9) strongly endorsed the project and testified in support of it at the public hearing. Judge Lundin, who authors the leading treatise on chapter 13 practice, acknowledged that there will be a transition period when the plan form and rule amendments go into effect but saw significant benefits in the prospect of greater clarity in chapter 13—clarity in the treatment of claims, and clarity in the case law when disputes are no longer tied to the peculiarities of local forms. Professor Katherine Porter of the University of California, Irvine (Comment 128), a leading academic expert on chapter 13 who serves as California's monitor for the national mortgage settlement, expressed strong approval of greater uniformity in chapter 13 practice. In her experience, mortgage creditors had difficulties in training, supervising, and auditing workers servicing bankruptcy cases because of the vast differences in local chapter 13 practices. In Professor Porter's view, "[a] uniform national chapter 13 plan would greatly increase creditor compliance with bankruptcy law," which in turn would redound to the benefit of debtors, as well as to the integrity of the system.

B. Reaction to Changes Made to the Plan Form on Republication

On republication, the Advisory Committee set out to respond to specific concerns about the plan form—especially those complaints about places in which the plan form could provide more flexibility in use by accommodating a variety of options. The comments show that these efforts have not made an appreciable difference in the level of opposition. In particular, the addition of warning language about the availability of options, as well as changes to Part 2, Part 7, and Part 10, still drew objections.

1. Warning Language

Once again, the most prominent theme across the comments, expressed in different guises, is that local control in chapter 13 practice should be preserved. Last year, the Working Group tried to respond to this concern by reiterating the purpose of the form and by including language capturing that purpose. As the Working Group explained in its April 2, 2014, memorandum to the Advisory Committee:

> The form is merely that—a form. It is not, in itself, a plan. Rather, it presents features typically found in a range of chapter 13 plans in an ordered sequence. For debtors, the form does not limit their ability to propose any plan in conformity with the Code. That is the principal reason for the inclusion of a place on the form (Part 9) for provisions not found elsewhere in, or contrary to, the form. Nothing in the form diminishes the debtor's ability to propose a plan of the debtor's choosing.
>
> Similarly, the form does not mandate that a court must accept the debtor's choice of a particular option included on the form. The inclusion of various options reflects the range of features commonly found in chapter 13 plans, but it does not require the availability of an option in any particular court. . . .

The Working Group therefore recommended, and the Advisory Committee approved, the inclusion of explicit language in Part 1 of the plan form to make this point clear. Because a number of negative comments had come from lawyers and judges in conduit mortgage districts, a notice to debtors was crafted to indicate that local courts might not accept the debtors' choice of an option provided on the form. At the beginning of the republished form, the following warning was added in bold: "This form sets out options that may be appropriate in some cases,

but the presence of an option on the form does not indicate that the option is appropriate in your circumstances or that it is permissible in your judicial district."

The warning language has not persuaded opponents. Judge Janice M. Karlin (Bankr. D. Kan.) (Comment 30) found this language insufficient, because the form still leaves open the possibility that a debtor could select an option unavailable in a particular judicial district. Judge Karlin predicted that the form would impair her court's conduit mortgage program if debtors attempted to make direct payments to creditors—an option found in the form. As a result, she described the form, in conjunction with amendments to Rules 3015 and 9009, as an "unprecedented invasion of judicial discretion."

Another expression of this point of view was given by K. Michael Fitzgerald (Comment 15), a chapter 13 trustee in Washington state, who commented that debtors will conclude that if the form offers an option, then that option must be available, regardless of contrary warnings. Given this view, it is difficult to think of additional warning language that would reassure opponents about the purpose and use of the plan form. At the same time, Henry Sommer (Comment 34), of the National Association of Consumer Bankruptcy Attorneys, read the new warning language in Part 1 as *too* strong, because in his view it suggested that a local court could interfere with a debtor's right to propose a plan that otherwise satisfies the requirements for confirmation under Code § 1325.

2. Other Changes on Republication

Other changes made to the form in response to last year's comments were similarly unavailing in addressing the concerns of opponents. The revised order of distribution provision pleased few opponents. The most common complaint was that leaving any space for debtors to propose an order of distribution would lead to mischief and draw objections. Many comments

took the position of Keith Rucinski (Comment 45), a chapter 13 trustee in Ohio, who urged that Part 7 be deleted for that reason. The republished form's provision for the trustee to determine the order of distribution if a debtor elects to leave it blank also drew objections. Judge Marvin Isgur (Bankr. S.D. Tex.), who testified in opposition to the plan form at the January public hearing, objected that the Code requires a chapter 13 plan to include an order of distribution, and that leaving this determination to the trustee was not transparent and not appropriate. Marilyn O. Marshall (Comment 19), a chapter 13 trustee in Illinois who does not oppose the plan form, expressed similar concerns about the lack of a prescribed standard order of distribution in the form.

Notwithstanding the Advisory Committee's efforts to add greater flexibility in Part 2 (plan payments and length of plan), opponents continued to object to various features of that portion of the plan form. Common objections included concerns about the treatment of income tax returns and refunds. Indeed, Judge Karlin (Comment 30) took the position that the original published version of the plan form was preferable to the republished version in its handling of income tax returns.

Similarly, the republished form's provision for the signature of represented debtors, if debtors choose to sign, was still deemed unacceptable by a number of comments. Rod Danielson (Comment 11), a chapter 13 trustee in California, for example, expressed the view that if the plan is to have evidentiary value, the debtor's signature must be required. Ryan W. Johnson (Comment 84), Clerk of Court of the Bankruptcy Court for the Northern District of West Virginia, took the same position and complained that clerk's offices would be required to check if debtors had signed plans that propose the valuation of collateral.

C. Committee of Concerned Bankruptcy Judges

Of particular significance, an ad hoc group called the Committee of Concerned Bankruptcy Judges submitted a letter (Comment 16) opposing the plan form. Their letter was signed by 144 bankruptcy judges—about 40% of the bankruptcy bench. The letter raised some specific concerns about features included (or not included) in the form, such as the lack of a standard order of distribution in Part 7. More broadly, however, the letter took aim at the Advisory Committee's reasons for pursuing a single national form for chapter 13 plans. At bottom, the group expressed the view that there is no need to move toward uniformity in chapter 13 practice and that attempting to do so without a consensus would be detrimental to the bankruptcy system.

The Committee of Concerned Bankruptcy Judges raised a series of related concerns. First, they predicted that there would be no significant benefits—and very significant harms—from the transition to a national mandatory plan form. Courts would have to alter their local rules, and counsel would have to be retrained in new procedures to accommodate the new form. In their view, local courts would struggle to maintain their own approaches to the administration of chapter 13 cases that are already adapted to meet local differences in case law and culture. In their view, local courts would be unable to implement conduit mortgage or car payment programs, because the national form lacks the specific language preferred in each conduit district. They also believe that the use of Part 9 would not be a satisfactory solution, because the imposition of mandatory nonstandard provisions by local rule or general court order would arguably violate the restrictions on modifying the plan form under proposed Rules 3015 and 9009. The Committee of Concerned Bankruptcy Judges predicted that the use of "inconsistent, nonstandard provisions, uniquely drafted by debtor's counsel in each case (or mandated by local

court rule) will make the application of uniform procedures (such as the payment of conduit mortgages) nearly impossible to regulate."

Second, the Committee of Concerned Bankruptcy Judges objected that a national form will not be easily adaptable as the law or best practices change. Because changes to national forms can take upwards of two years to implement, a local court facing changes in case law or statutes would not be able to adjust the form promptly in response. Two of the judges who organized the letter (Judge Isgur and Judge Brian Lynch (W.D. Wash.)) amplified the point during the public hearing. They expressed the concern that innovations in chapter 13 procedures that are being tested at the local level would be incompatible with a national form. For example, the growing use of debtors' "emergency funds" that some local plan forms have incorporated would be squelched, in their view.

The Committee of Concerned Bankruptcy Judges also fear that a national form would give rise to national consumer bankruptcy law practices. In their view, this would encourage regional and national consumer debtor firms to solicit clients in distant jurisdictions, with client meetings conducted electronically. The result would be in-court appearances by counsel with limited client contact or time for preparation.

D. Comments on the Rules

The rule amendments drew far fewer comments than the plan form. Rules 3015 and 9009 drew the most comments, driven almost entirely by objections to making use of the plan form mandatory. The only other rule amendment that generated significant comments was Rule 3002. Unlike last year, the comments were largely silent on the requirement in amended Rule 3002(a) for secured creditors to file a proof of claim to have an allowed claim. Instead, Rule 3002(c) drew the most attention.

A number of comments opposed shortening the time to file proofs of claim in Rule 3002(c). Traci Cotton (Comment 3), was concerned that a 60-day filing period would be too short for institutional creditors. She and others suggested that a 90-day period was more realistic. Linh K. Tran (Comment 134), senior counsel with a servicer for secured and unsecured creditors, predicted that a 60-day period would lead to more late-filed claims. This concern was echoed by others. The changes to Rule 3002(c), however, also drew supportive comments, although supporters took issue with other portions of the proposed amendment. Michael W. Gallagher (Comment 102), a debtor's attorney in Pennsylvania, expressed concern about the provision for a bifurcated claims bar date under proposed Rule 3002(c)(7).

E. Compromise Proposal

Near the close of the public comment period, a group of bankruptcy judges and lawyers submitted a proposal (Comment 61) for an alternative to the approach taken by the Advisory Committee. Their compromise solution, in broad strokes, takes the following form. First, each bankruptcy court could choose to adopt its own local plan form or to accept Official Form 113. A district could also choose to do both. Second, a local plan form would have to conform to requirements set forth in a substantially revised amendment to Rule 3015(c). These requirements include the contents of the form and the manner of the local form's adoption. Third, every chapter 13 plan—whether submitted on Official Form 113 or on a conforming local plan form—would have to include an information statement disclosing whether the plan contains particular features. Fourth, the time to file a proof of claim in Rule 3002(c) would be changed to 70 days after the order for relief instead of 60 days. The compromise proposal is attached to this memorandum.

Those who crafted this proposal do not all agree on the merits of Official Form 113, but they do agree that the compromise is worthy of the Advisory Committee's consideration. The proponents are three bankruptcy judges,[4] three lawyers who represent creditors,[5] and three chapter 13 trustees.[6]

The drafters of the compromise proposal report that they have canvassed, and received support for their efforts from, a broad group of interested parties who hold differing views about the merits of the national plan form. They have contacted: (i) lenders who service the vast majority of residential mortgages that would be affected by chapter 13 plans; (ii) lenders who are among the largest automobile financers holding claims in chapter 13 cases; (iii) prominent consumer debtor attorneys; (iv) multiple states' attorneys who handle consumer bankruptcy cases; (v) a large number of chapter 13 trustees; and (vi) multiple bankruptcy judges who have opposed the national plan form as well as multiple bankruptcy judges who have supported the plan form. Some of those contacted support the compromise as the best approach. Others favor the national plan form or the status quo but find the compromise proposal an acceptable second-best alternative.

These views are reflected in the public comments that touched on the compromise proposal. Although it was submitted late in the public comment period, the compromise proposal garnered about a dozen supportive comments. Some of the supporters, such as Judge Marci McIvor (Bankr. E.D. Mich.) (Comment 71) and Judge Dennis Montali (Bankr. N.D. Cal.)

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[4] The judges are Judge Isgur and Chief Judges Rebecca Connelly (Bankr. W.D. Va.) and Roger Efremsky (Bankr. N.D. Cal.).

[5] The lawyers are Michael T. Bates of Wells Fargo, Alane Becket of Becket & Lee, and Karen Cordry of the National Association of Attorneys General.

[6] The trustees are David G. Peake, George Stevenson, and Rick A. Yarnall.

(Comment 85), firmly oppose the adoption of a mandatory national chapter 13 plan form. The board of the NACTT (Comment 135) also endorsed the compromise, although members had divergent views about the merits of the national plan form. Other comments endorsing the compromise, however, were submitted by those who otherwise favor the adoption of a national plan form. William Mark Bonney (Comment 90), a chapter 13 trustee in Oklahoma, and Professor Porter (Comment 128) support the compromise as an alternative to maintaining the status quo.

Support for the compromise was not unanimous. Joyce Bradley Babin (Comment 120), a chapter 13 trustee in Arkansas, opposed the adoption of a national plan form. Because there is no local plan form in the Eastern or Western District of Arkansas, Ms. Babin also opposed the compromise, because it requires the adoption of a conforming local plan form in each district that chooses not to accept the national form. In her view, local bankruptcy courts should be able to opt out of having a plan form entirely. Judge Terrence L. Michael (Bankr. N.D. Okla.) (Comment 112), who opposes a national plan form, believes the compromise is worthy of consideration but "is not ripe for adoption" without an opportunity for public comment.

III. Considerations for Members of the Advisory Committee

In light of the history of the development of this project, the reaction to the initial publication and republication, and the recent compromise proposal, it seems clear that further alteration of the plan form will not mollify those who oppose the project as currently formulated. To put the point bluntly, heels have been dug in and are unlikely to budge. Realistically, the Advisory Committee has a choice of one of these four next steps: (i) seek final approval of the plan form and rule amendments with substantially no changes; (ii) "unbundle" the project and seek final approval of the rule amendments without the form or with a Director's Form rather

than an Official Form; (iii) table the project and take no further action on the plan form or rule amendments; or (iv) pursue the compromise, which in turn would entail revamping Rule 3015(c) and altering the claims bar date in Rule 3002(c). Pursuing the compromise proposal would also present the question whether it should be adopted without republication.

A. Final Approval of the Form and Rule Amendments

The Advisory Committee could pursue final approval of the form and rule amendments if members conclude that the benefits of the project (primarily national uniformity, increased clarity, and enhanced compliance with bankruptcy law) justify adoption in the face of significant—and quite passionate—opposition. It may also be the case that opposition to the project would subside once judges and bankruptcy professionals adjusted to the operation of the plan form and rules. The Advisory Committee has not always awaited consensus within the bankruptcy community before proceeding with significant changes to the Bankruptcy Rules and forms. The recent amendments to Rule 2019 (which requires disclosures by groups representing creditors and equity security holders) generated a good deal of interest and opposition.

The level of opposition to the chapter 13 plan form project, however, is notable for its intensity and durability. The Advisory Committee has consulted exhaustively with interested parties, worked through multiple drafts of the rules and form, and gone through two rounds of publication—all without persuading a sizeable group of opponents of the merits of the project. That may give pause to members of the Advisory Committee, particularly in light of the further stages of institutional review required before the plan form and rules would go into effect. The Standing Committee and the Judicial Conference might react unfavorably to the Advisory Committee's pursuit of a controversial project.

B. Final Approval of the Rule Amendments Without an Official Form

In the alternative, the Advisory Committee could seek final approval of the amendments to the Bankruptcy Rules but abandon Official Form 113 or convert it to a Director's Form. Because the republished version of Rule 3015(c) contemplates that there might not be an operative Official Form for chapter 13 plans, no changes to the rule amendments would be necessary.

There are two difficulties with this approach. First, it will almost certainly generate significant opposition among creditor interests. As Alane Becket testified at the January public hearing, the plan form and rule amendments work together and represent offsetting burdens and benefits. Permitting secured claim valuation and lien avoidance through a chapter 13 plan, and reducing the time to file proofs of claim all impose additional burdens on creditors. Those burdens are counterbalanced by the benefits of having a standardized form that will reduce the costs to creditors of reviewing chapter 13 plans. Unbundling the plan form and rule amendments would throw off that balance. Second, the rule amendments were designed from the start with Official Form 113 in mind. Although the republished version of Rule 3015(c) leaves open the possibility that there might not be an Official Form for chapter 13 plans, the Advisory Committee has not given careful thought to how these amended rules would operate in a world without a mandatory Official Form 113. Unintended mischief could be caused by the interaction of the amended rules and a kaleidoscope of local chapter 13 plan forms.

C. Tabling the Plan Form Project

The Advisory Committee could also choose to table the project. After four years of intense effort, abandoning the plan form and rule amendments is not an attractive option. On the other hand, if members of the Advisory Committee are inclined to proceed only where there is a

showing of consensus in the bankruptcy community, it is clear that the project as currently conceived has not achieved consensus and is unlikely to do so under present circumstances. Nevertheless, there are reasons not to table the project. Members of the Advisory Committee could decide that there are some parts of the rule amendments (apart from the ones likely to draw criticism when unbundled from the plan form) that could be salvaged. For example, the amendment to Rule 9009, which has a reach beyond chapter 13 cases, might be considered for adoption on its own. Also, abandoning any further work on the plan form project would pretermit consideration of the compromise proposal. That proposal holds out the possibility of creating a pathway for the adoption of the plan form and rule amendments, as modified to allow local opt outs.

D. Consideration of the Compromise Proposal

The compromise proposal has a number of potential benefits. First, it appears to have garnered the support of some of the most dedicated critics of Official Form 113. Adoption of the compromise is therefore likely to generate more support and less opposition than the current plan form project. Second, adoption of the compromise proposal would allow Official Form 113 to go into effect (in those districts that choose to accept it) together with the rule amendments designed to make it effective.

Accordingly, the compromise offers the ability to gather information about real-world experiences with the operation of the national form and rule amendments. Based on that information, the Advisory Committee could more easily take stock of whether the plan form generates the benefits the Committee anticipates—or the negative consequences the project's opponents fear. Favorable experience with the plan form might eventually persuade some opponents to adopt, voluntarily, Official Form 113. Favorable experience with the plan form

might even inform a future decision by the Advisory Committee to remove the local opt out and make Official Form 113 mandatory.

The Civil Rules Committee followed a similar approach in 1993 when adopting changes to Rule 26 that required initial disclosures. In the face of significant opposition, that Committee allowed district courts to opt out of the initial disclosure provision by local rule. After several years, the Committee decided to remove the opt out provision and make initial disclosures mandatory. (Nevertheless, some opposition remained, and the Civil Rules Committee narrowed the scope of the initial disclosure rule at the time the opt out was removed in 2000.)

In addition, the compromise proposal would accomplish many of the benefits the Advisory Committee attempted to realize in proposing the national plan form. It would achieve greater uniformity, because each district would either have to accept the national form or adopt a single form for the district by local rule. This would replace the current 200 forms (because many districts have multiple forms) with fewer than half that number. Under the compromise, local forms would have to conform to a series of requirements, which holds out the prospect of convergence in how information is presented in chapter 13 plans. The compromise would also require local forms to identify clearly particular terms, such as nonstandard provisions, thereby addressing the concerns raised by *Espinosa*.

E. Next Steps

If the members of the Advisory Committee are inclined to pursue development of an alternative approach along the lines of the compromise proposal, it would require a lengthier time frame to proceed through the typical procedure for formulating rules. That would include the process of Subcommittee deliberation, further consideration by the Advisory Committee, and public notice and comment.

A review of the compromise proposal suggests it would benefit from further consideration and review by the Committee. The language of the proposal was crafted within a very compressed time frame and is not entirely clear. The language would have to be reworked to adhere to the style conventions of the Bankruptcy Rules. Furthermore, not all elements of the compromise seem equally well considered. For instance, the compromise's requirement of an information statement at the beginning of chapter 13 plans includes information about some topics—such as whether the plan cures defaults or maintains payments on a claim that is secured by the debtor's principal residence, provides for the treatment of a domestic support obligation, or provides for treatment of a claim described in the "hanging paragraph" of § 1325(a) (*e.g.*, a 910-day car claim)—that are very common features of chapter 13 plans and do not seem to require heightened judicial or creditor attention.

Finally, the compromise proposal would benefit from being vetted with stakeholders and interest groups through the publication and comment process. This concern was raised by Judge Michael (Comment 112), who opposes adoption of the compromise proposal without publication. Technically, the Advisory Committee could proceed to approval of the compromise without republication. The proposal is less restrictive than the published version of the plan form project, in that the compromise allows local bankruptcy courts to opt out of accepting the national form. On the other hand, the approach taken by the compromise proposal is a significant departure from the approach of the plan form project. It also imposes on bankruptcy courts the responsibility of adopting a single, district-wide local plan form. This may not be a significant burden for some courts, but it will be for others. Those districts without any local plan form would bear the weight of this requirement, as Joyce Babin (Comment 120), a chapter 13 trustee in a district without any local form, objected.

In order to give the compromise proposal the appropriate scrutiny and revision, a likely scenario would have a subset of the Advisory Committee deliberate on the compromise proposal over the summer before taking up further consideration at the fall 2015 meeting. If the Standing Committee approved publication, that would occur in August 2016. Final approval of the rules by the Judicial Conference and the Supreme Court would not occur before 2018.

This more thorough process will take additional time, but is more likely to result in a well-designed and well-vetted form that will have more likelihood of acceptance.

Attachment A

Compromise Proposal
(Letter and Amended Rules)

February 10, 2015

COMMENTS ON PROPOSED NATIONAL CHAPTER 13 PLAN:
A DIVERSE GROUP OF BANKRUPTCY PROFESSIONALS
PROPOSE A COMPROMISE SOLUTION

Dear Judge Ikuta and Members of the Committee:

We are a diverse group of bankruptcy professionals who have worked to arrive at a compromise to the current divide concerning the issue of a national form plan. Many of us testified before you in January of this year.

While each of us are members of various entities and have had numerous conversations with other bankruptcy professionals, the views expressed here are our own and are not the official position of any of those entities.

In forming this compromise, we consulted with a vast array of constituents. These included:

- Lenders who service the vast majority of residential mortgages[1] that are the subject of chapter 13 plans.

- Lenders who are some of the largest auto lenders holding claims in chapter 13 cases.

- One of the principal leaders of an organization that seeks to promote the interests of individuals who file chapter 13 bankruptcies.

- Attorneys for multiple states who handle consumer bankruptcy cases for those states.

- A large number of chapter 13 bankruptcy trustees from around the nation.

- Multiple bankruptcy judges who signed a letter opposing adoption of the national plan.

- Multiple bankruptcy judges who signed a letter favoring adoption of the national plan.

Not everyone who we consulted endorses the compromise. Many wish to remain committed to supporting or opposing the adoption of a mandatory national plan. But, *everyone* who we consulted falls into one of three groups:

[1] Mortgage servicers who have already indicated support for the compromise include Wells Fargo, J.P. Morgan Chase, and Nationstar.

- Some support the compromise as the best alternative. This group believes that the compromise is acceptable, and has the benefit of healing any rift that may have developed in the bankruptcy community.

- Some continue to believe that adoption of the national plan is the best alternative. However, *everyone* who we spoke with in this group believes that this proposed compromise is superior to the status quo.

- Some continue to believe that preservation of the status quo is the best alternative. However, *everyone* who we spoke with in this group believes that this proposed compromise is superior to the adoption of the mandatory national plan.

Like most compromises, this one has features that various parties dislike. However, we have incorporated significant changes advocated by individuals, such as the leading consumer advocate referenced above, who have not joined in proposing the compromise. Our goal was to arrive at a compromise that was acceptable to a broad range of parties, was consistent with the law, and that was functional to administer.

Several of us believe that an official form for the chapter 13 plan, used nationally, will be very beneficial to the bankruptcy system, in part by providing a solution to the due process defect exposed in the Supreme Court decision, *United Student Aid Funds v. Espinosa*, and by eliminating current barriers to information sharing regarding chapter 13 plan terms. We believe that the current draft of Official Form 113(with whatever final changes may emerge from this last round of rule-making) provides an effective vehicle to permit debtors to exercise their rights under chapter 13 while providing better due process to creditors and flexibility to accommodate local variations as needed. This group includes Bankruptcy Judge Rebecca Connelly, and Attorney Karen Cordry.

Attorney Mike Bates and Attorney Alane Becket prefer a national plan, but see the compromise contained in this letter as an excellent alternative.

Judge Marvin Isgur, Judge Roger Efremsky, Chapter 13 Trustee David Peake, Chapter 13 Trustee George Stevenson, and Chapter 13 Trustee Rick Yarnell have concluded that—although we initially preferred no action by the Committee—the adoption of the proposed compromise is the best alternative. We respect the views of some of our colleagues who believe that the existence of a national plan would be beneficial to practice in their districts. Although we have not seen significant problems following *Espinosa,* we understand the desire to avoid future problems by having a locally-mandated form. And, we respect the desire of many creditors to be able to review plans with greater ease and efficiency.

Despite our divergent views, we have reached a true compromise. It contains features that each of us dislikes, but that all of us can tolerate. Accordingly, in the interest of compromise, we ask for the Committee to:

- Adopt the draft of Rule 3015(c) that is attached to this letter.

- Adopt an Informational Statement, in the form attached to this letter.

- Set the deadline for the filing of proofs of claims by non-governmental entities at 70 days (rather than at 60 days) from the petition date.

Accordingly, each of us commits to support this compromise. We respectfully request that the Committee consider this compromise before proceeding to a vote on the adoption of the mandatory national plan.

Michael T. Bates
Senior Company Counsel
Wells Fargo Bank

Alane Becket
Partner
Becket & Lee, LLP

Rebecca Connelly
Chief United States Bankruptcy Judge
Western District of Virginia

Karen Cordry
Bankruptcy and Special Issues Counsel
National Association of Attorneys General

Roger Efremsky
Chief United States Bankruptcy Judge
Northern District of California

Marvin Isgur
United States Bankruptcy Judge
Southern District of Texas

David G. Peake
Chapter 13 Trustee and Current Treasurer and Board Member of the National Association of Chapter 13 Trustees

George Stevenson
Chapter 13 Trustee and Past President of the National Association of Chapter 13 Trustees

Rick A. Yarnall
Chapter 13 Trustee and Past President of the National Association of Chapter 13 Trustees

DRAFT COMPROMISE RULE 3015(c)

RULE 3015(c). Plans for Use in Chapter 13 Bankruptcy Cases.

(i) FORM OF CHAPTER 13 PLAN. Each District may mandate the use of a chapter 13 plan that conforms with this Rule (a "Conforming Plan"). If a District does not mandate the use of a single Conforming Plan, then only Official Form 113 may be utilized to propose a chapter 13 plan. Provisions not otherwise included in the Conforming Plan or in Official Form 113 or that deviate from the Conforming Plan or Official Form 113 are effective only if they are included in a section designated for nonstandard provisions and are also identified in accordance with any other requirements of the Conforming Plan or Official Form 113.

(ii) REQUIREMENTS FOR A LOCAL RULE ADOPTING A CONFORMING PLAN. A Conforming Plan must be adopted pursuant to a local rule or Order that:

1. Requires that the Conforming Plan must be used for all proposed chapter 13 plans in the District.

2. Prohibits alteration of the Conforming Plan.

3. Mandates that all non-standard provisions be contained only in the final paragraph of the Conforming Plan in a paragraph labeled "**Non Standard Provisions."**

4. Mandates that each proposed Conforming Plan contain a certification by the debtors and their lawyer that no changes had been made to the Conforming Plan (other than the possible inclusion of Non Standard Provisions in the final paragraph of the Conforming Plan) and that the Debtor does not seek confirmation of any provision that has been deemed not to be effective under these Rules.

5. Is available as part of Local Rule 3015 or is posted on the Court's website.

(iii) CONSPICUOUS LABELING. Each paragraph of a Conforming Plan must be labeled, in bold, with a title setting for the general subject matter of the paragraph. Examples are "**Payments Made to Chapter 13 Trustee**", "**Treatment of Secured Claims**", "**Executory Contracts**", etc.

(iv) PROCEDURE FOR ADOPTING A CONFORMING PLAN. A District electing to adopt a Conforming Plan must do so only after public notice and opportunity for public comment. If a District determines that exigent circumstances require an amendment to the Conforming Plan without full notice and opportunity for public comment, the amendment must be subject to reconsideration following notice and opportunity for public comment.

(v) REQUIREMENT OF INFORMATIONAL STATEMENT. Each debtor who proposes a plan (whether the plan is a Conforming Plan or a plan on Official Form 113) must include an Informational Statement. The Informational Statement must be contained in a cover page or at the beginning of the proposed plan. The Informational Statement must indicate whether the Plan:

1. Contains any Non Standard provisions.

2. Limits the amount of any secured claim based on a valuation of the collateral for the claim.

3. Avoids any security interest or lien.

4. Cures defaults and/or maintains payments on a claim that is secured by property that is the Debtor's principal residence.

5. Provides for the treatment of a Domestic Support Obligation.

6. Provides for a treatment of the type described in the final paragraph of § 1325(a) of the Bankruptcy Code.

The Informational Statement must substantially conform to Official Form 113A.

(vi) PROPERTY THAT IS SURRENDERED UNDER A CONFIRMED PLAN. If a confirmed plan provides for the surrender of property, the stays arising under § 362 and § 1301 of the Bankruptcy Code terminate with respect to the surrendered property on the effective date of the plan without the requirement of any further order. The termination of the stays does not authorize actions to impose personal liability or to collect the debt from any property that is not surrendered. A plan that provides for the surrender of property will constitute a request by the Debtor for relief from the co-debtor stay to the extent provided in this subsection.

(vii) DETERMINING AMOUNTS OF CLAIMS AND AMOUNTS OF MONTHLY MORTGAGE PAYMENTS. Subject to Rule 3015(g), a provision in a confirmed plan that purports to reduce the aggregate amount of a claim is ineffective. A provision in a plan that purports to alter the amount of a contractual mortgage payment on a claim secured only by a security interest in real property that is the debtor's principal residence is ineffective unless (i) the claim is of the type described in § 1322(c)(2) of the Bankruptcy Code; (ii) the holder of the claim has agreed in writing to the alteration; or (iii) the alteration is subject to the approval of the holder of the claim.

(viii) DETERMINING WHETHER TO AVOID A LIEN. A Conforming Plan may include a provision that provides for the avoidance of a lien in a manner consistent with these Rules. A Conforming Plan is not required to include such a provision.

(ix) DETERMINING VALUE OF COLLATERAL. A Conforming Plan may include a provision that values collateral. A Conforming Plan is not required to include such a provision.

(x) DISTRICT OPTION. Notwithstanding Rule 3015(c)(ii)(1), a District that has mandated the use of a Conforming Plan may (i) require a debtor to file only the Conforming Plan; or (ii) allow a debtor to file either the Conforming Plan or Official Form 113.

OFFICIAL FORM 113A

INFORMATIONAL STATEMENT TO BE INCLUDED AT BEGINNING OF EVERY CHAPTER 13 PLAN

Answer "Yes" or "No" for each statement:

Yes	No	This Plan contains non-standard provisions in [identify part/paragraph/ section number].
Yes	No	This Plan limits the amount of secured claims in [identify part/paragraph/ section number] based on a valuation of the collateral for the claim.
Yes	No	This Plan avoids a security interest or lien in [identify part/paragraph/ section number].
Yes	No	This Plan cures or maintains a loan secured by the Debtor's principal residence in [identify part/paragraph/section number].
Yes	No	This Plan provides for the treatment of a Domestic Support Obligation in [identify part/paragraph/section number].
Yes	No	This plan includes a claim that was either: (1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor(s); or (2) incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value.

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RULE 3002(c)

(c) TIME FOR FILING. In a voluntary chapter 7 case, chapter 12 case or chapter 13 case, a proof of claim is timely filed if it is filed not later than 70 days after the order for relief or the date of the order of conversion to a case under chapter 12 or chapter 13. In an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the order for relief is entered. But in all cases, the following exceptions apply:

Attachment B

Possible Revisions to Compromise Proposal

Re: Bankruptcy Rules Committee - Report on National Chapter 13 Plan Form and Related Amendments

Eugene Wedoff (Bankr Judge) to: 03/24/2015 11:40 PM

History: This message has been replied to.

To the members of the Advisory Committee on Bankruptcy Rules–

To assist in the Committee's discussion of the compromise, Judge Ikuta has asked me to circulate a revision of the compromise proposal submitted by Judge Isgur. The revision incorporates the major provisions of the compromise proposal, but makes changes to address some difficulties pointed out by the Committee's bankruptcy judges. Both the compromise proposal and the revision are attached.

The central feature of the compromise–authorization for courts to adopt a local plan form as a substitute or alternative to the proposed official plan form, while making any local form subject to a number of requirements–is set out in an alternative amendment of Rule 3015. The revision deals primarily with this alternative amendment. Specifically–

(1) Instead of the term "Conforming Plan," which the compromise uses to refer to its permitted local plan form, the revision uses the term "Local Form."

(2) Instead of a separate provision for the non-modifiability of a local form (Compromise, parts i and ii, ¶¶ 2-3), the revision expands published Rule 3015(c)(1) to cover local forms as well as the national form.

(3) Instead of a certification that nonstandard provisions are not included in a local plan (Compromise, part ii, ¶ 4), the revision requires a local form to provide that nonstandard provisions placed other than in the required location are ineffective. This would enforce amended Rule 3015(c)(1) and avoid the possibility of a nonstandard provision, improperly placed, being effective under *United Student Aid Funds, Inc. v. Espinosa,* 559 U.S. 260 (2010).

(4) Instead of setting out special procedures for adopting a local form (Compromise, part iv), the

revision incorporates Rule 9029.

(5) Instead of having a cover sheet for notices to creditors, set out in a new official form (Compromise, part v), the revision requires appropriate notices to be set out in the initial paragraph of a local form.

(6) Other items that the compromise would place in a cover sheet (Compromise, part v, ¶¶ 3-5) are instead required to be placed in separate paragraphs of the local form.

(7) The compromise's provision for termination of the automatic stay upon surrender (Compromise, part vi) is treated through the alternative of requesting termination of the stay. Termination of the stay on request of a party is provided for by both § 362(d) and § 1301(c); the Bankruptcy Code does not provide for termination of the stay upon surrender.

(8) The compromise's provision for the ineffectiveness of certain claim treatment set out in a plan (Compromise, part vii) is deleted as unnecessary and in conflict with *Espinosa*.

(9) Provisions in the compromise stating that a local form may, but need not, include particular provisions (Compromise, parts viii and ix) are deleted as unnecessary.

The compromise would amend Rule 3002(c) to set out a 70-day time limit for filing proofs of claim. This amendment is also included in the attachment.

Consistent with a basic premise of the compromise—that local rules may require use of a local plan form rather than the official form—Rule 9029(a) would need to be amended to provide an exception to its provision that use of official forms must always be permitted. The attachment includes such an amendment.

Finally, to be consistent with compromise, the published national form would need to be revised (1) to state that surrender includes a request for stay termination; (2) to specify that the form's paragraph providing for payment of priority claims includes domestic support obligations, and (3) to provide that nonconforming provisions placed other than in Part 9 of the form are ineffective. Revisions of the form for this purpose are also included in the attachment.

If you have questions about any of this, please let me know. I hope that the revision will the Committee's discussion.

Gene


Compromise Rule Amendments.pdfRevision of Compromise.pdf

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Fax 312-408-5114

Revisions of the published rule amendments and plan form to effectuate the suggested compromise

[The changes in red type were made in the published proposal. The revisions to effectuate the suggested compromise are set out in green type.]

Rule 3015. Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 ~~Family Farmer's Debt~~ ~~Adjustment~~ or a Chapter 13 ~~Individual's Debt Adjustment~~ Case

(a) FILING OF CHAPTER 12 PLAN. The debtor may file a chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within the time prescribed by § 1221 of the Code.

(b) FILING OF CHAPTER 13 PLAN. The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 14 days thereafter, and such time may not be further extended 14 except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as 18 the court may direct.

(c) ~~DATING. Every proposed plan and any modification thereof shall be dated.~~FORM OF CHAPTER 13 PLAN.

(1) If there is an Official Form for a plan filed in a chapter 13 case, that form must be used~~.~~ unless a Local Form has been adopted pursuant to paragraph (2). With either the Official Form or a Local Form, provisions not otherwise included in the form or deviating from it are effective only if they are included in a section of the form designated for nonstandard provisions and are also identified in accordance with any other requirements of the form

(2) A Local Form for a plan filed in a chapter 13 case may be adopted pursuant to Rule 9029, and a local rule may require that the Local Form be used instead of the Official Form, if the following conditions are satisfied.

(A) A single Local Form is adopted for the district.

(B) Each paragraph of the Local Form is labeled in boldface type, with a title stating the general subject matter of the paragraph.

(C) The Local Form contains an initial paragraph stating whether the plan—

(i) includes any additional or nonstandard provision;

(ii) limits the amount of a secured claim based on a valuation of the collateral for the claim; or

(iii) avoids a security interest or lien;

(C) The Local Form contains separate paragraphs providing for—

(i) the cure of any default and maintenance of payments on a claim secured by the debtor's principal residence;

(ii) payment of a domestic support obligation;

(iii) payment of a claim described in the final paragraph of § 1325(a); and

(iv) surrender of property securing a claim, requiring a request that, upon confirmation of the plan, the stay under 11 U.S.C. § 362(a) be terminated as to that property only and the stay under 11 U.S.C. § 1301 be fully terminated.

(D) The Local Form contains a final paragraph for the placement of nonstandard plan provisions, with a statement that any

nonstandard provision placed elsewhere in the plan is void.

(d) NOTICE ~~AND COPIES~~. If the plan ~~The plan or a summary of the plan shall be~~ is not included with the~~each~~ notice of the hearing on confirmation mailed pursuant to 31 Rule 2002, the debtor shall serve the plan on the trustee and all creditors when it is filed with the court. ~~If required by~~ 33 ~~the court, the debtor shall furnish a sufficient number of~~ 34 ~~copies to enable the clerk to include a copy of the plan with~~ 35 ~~the notice of the hearing.~~

(e) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall forthwith transmit to the United States trustee a copy of the plan and any modification thereof filed pursuant to subdivision (a) or (b) of this rule.

(f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH IN THE ABSENCE OF AN OBJECTION. An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, before confirmation of the plan at least seven days before the date set for the hearing on confirmation. An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such 53 issues.

(g) EFFECT OF CONFIRMATION. Upon the confirmation of a chapter 12 or chapter 13 case—

(1) any determination made in accordance with Rule 3012 of the amount of a secured claim under § 506(a) of the Code is binding on its holder, even if the holder files a contrary proof of claim under Rule 3002 or the debtor schedules that

claim under § 521(a) of the Code, and regardless of whether an objection to the claim has been filed under Rule 3007.

(2) any request for termination of the stay imposed by § 362(a) or §1301 is granted to the extent of the request.

~~(g)~~(h) MODIFICATION OF PLAN AFTER 63 CONFIRMATION. A request to modify a plan pursuant to § 1229 or § 1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. ~~If required by the court, the proponent shall furnish a sufficient number of copies of the proposed modification, or a summary thereof, to enable the clerk to include a copy with each notice.~~ If a copy is not included with the notice and the proposed modification is ought by the debtor, a copy shall be served on the trustee and all creditors in the manner provided for service of the plan by subdivision (d) of this rule. Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.

Committee Note

This rule is amended and reorganized.

Subdivision (c) is amended to require use of an Official Form if one is

adopted for chapter 13 plans, unless a Local Form has been adopted consistent with paragraph (c)(2). Paragraph (c)(1) provides that nonstandard provisions in a chapter 13 plan must be set out in the section of the Official Form specifically designated for such provisions and identified in the manner required by the Official Form. Paragraph (c)(2) sets out features required for all Local Forms, promoting consistency among them.

Subdivision (d) is amended to ensure that the trustee and creditors are served with the plan in advance of confirmation. Service may be made either at the time the plan is filed or with the notice under Rule 2002 of the hearing to consider confirmation of the plan.

Subdivision (f) is amended to require service of an objection to confirmation at least seven days before the hearing to consider confirmation of a plan. The seven-day notice period may be altered in a particular case by the court under Rule 9006.

Subdivision (g) is amended to set out two effects of confirmation. Paragraph (g)(1) ~~amended to~~ provides that the amount of a secured claim under § 506(a) may be determined through a chapter 12 or chapter 13 plan in accordance with Rule 3012. That determination controls over a contrary proof of claim, without the need for a claim objection under Rule 3007, and over the schedule submitted by the debtor under § 521(a). The amount of a secured claim of a governmental unit, however, may not be determined through a chapter 12 or chapter 13 plan under Rule 3012. Paragraph (g)(2) provides for termination of the automatic stays of §§ 362(a) and 1301 to the extent requested in the plan.

Subdivision (h) was formerly subdivision (g). It is redesignated and amended to clarify that service of a proposed plan modification must be made in accordance with subdivision (d) of this rule. The option to serve a summary of the proposed modification has been retained. Unless required by another rule, service under this subdivision does not need to be made in the manner provided for service of a summons and complaint by Rule 7004. objection under Rule 3007, and over the schedule submitted by the debtor under § 521(a). The amount of a secured claim of a governmental unit, however, may not be determined through a chapter 12 or chapter 13 plan under Rule 3012.

Rule 3002. Filing Proof of Claim or Interest

(c) TIME FOR FILING. In a voluntary chapter 7 ~~liquidation~~case, chapter 12 ~~family farmer's debt adjustment~~case, or chapter 13 ~~individual's debt adjustment~~ case, a proof of claim is timely filed if it is filed not later than ~~90~~60~~70~~ days after the order for relief or the date of the order of conversion to a case under chapter 12 or chapter 13. In an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the order for relief is entered.the first date set for the meeting of creditors called under § 341(a) of the Code, except as follows: . . . .

Committee Note

* * *

Subdivision (c) is amended to alter the calculation of the bar date for proofs of claim in chapter 7, chapter 12, and chapter 13 cases. The amendment changes the time for filing a proof of claim in a voluntary chapter 7 case, a chapter 12 case, or a chapter 13 case from 90 days after the § 341 meeting of creditors to ~~60~~70 days after the petition date. If a case is converted to chapter 12 or chapter 13, the ~~60~~70-day time for filing runs from the order of conversion. In an involuntary chapter 7 case, a 90-day time for filing applies and runs from the entry of the order for relief.

Rule 9029. Local Bankruptcy Rules; Procedure When There Is No Controlling Law

(a) Local Bankruptcy Rules. (1) Each district court acting by a majority of its district judges may make and amend rules governing practice and procedure in all cases and proceedings within the district court's bankruptcy jurisdiction which are consistent with — but not duplicative of — Acts of Congress and these rules and which, unless otherwise allowed by these rules, do not prohibit or limit the use of the Official Forms. Rule 83 F.R.Civ.P. governs the procedure for making local rules. A district court may authorize the bankruptcy judges of the district, subject to any limitation or condition it may prescribe and the requirements of 83 F.R.Civ.P., to make and amend rules of practice and procedure which are consistent with — but not duplicative of — Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms. Local rules shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States.

Committee Note

Paragraph (a)(1) is amended to allow local rules to prohibit or limit the use of Official Forms to the extent permitted by the national bankruptcy rules.

Revisions to the proposed Official Form 113

[The changes are highlighted in yellow.]

3.5 Surrender of collateral.

Check one.

❑ **None.** *If "None" is checked, the rest of § 3.5 need not be completed or reproduced.*

❑ The debtor(s) elect to surrender to each creditor listed below the collateral that secures the creditor's claim. The debtor(s) request that, upon confirmation of this plan, the stay under 11 U.S.C. § 362(a) be terminated as to the collateral only and the stay under11 U.S.C. § 1301 be fully terminated. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in Part 5 below.

Part 4: Treatment of Trustee's Fees and Priority Claims

4.1 General

Trustee's fees and all allowed priority claims, including domestic support obligations other than those treated in § 4.5, will be paid in full without interest.

Part 9: Nonstandard Plan Provisions

❑ **None.** *If "None" is checked, the rest of Part 9 need not be completed or reproduced.*

Under Bankruptcy Rule 3015(c), nonstandard provisions are required to be set forth below. Nonstandard provisions set out elsewhere in this plan are ineffective

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TAB 5A(2)

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Debtor _____

United States Bankruptcy Court for the:_____
[Bankruptcy district]

Case number: _____

❑ Check if this is an amended plan

Official Form 113
Chapter 13 Plan

12/16

Part 1: Notices

To Debtors: **This form sets out options that may be appropriate in some cases, but the presence of an option on the form does not indicate that the option is appropriate in your circumstances or that it is permissible in your judicial district.**
In the following notice to creditors, you must check each box that applies.

To Creditors: **Your rights may be affected by this plan. Your claim may be reduced, modified, or eliminated.**

You should read this plan carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation at least 7 days before the date set for the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court. The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. See Bankruptcy Rule 3015. In addition, you may need to file a timely proof of claim in order to be paid under any plan.

The following matters may be of particular importance to you. ***Boxes must be checked by debtor(s) if applicable.***

❑ **The plan seeks to limit the amount of a secured claim, as set out in Part 3, Section 3.2, which may result in a partial payment or no payment at all to the secured creditor.**

❑ **The plan requests the avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest as set out in Part 3, Section 3.4.**

❑ **The plan sets out nonstandard provisions in Part 9.**

Part 2: Plan Payments and Length of Plan

2.1 Debtor(s) will make regular payments to the trustee as follows:

$ _____ per_____ for _____ months

[and $ _____ per_____ for _____ months.] *Insert additional lines if needed.*

If fewer than 60 months of payments are specified, additional monthly payments will be made to the extent necessary to make the payments to creditors specified in Parts 3 through 6 of this plan.

2.2 Regular payments to the trustee will be made from future earnings in the following manner:

Check all that apply.

❑ Debtor(s) will make payments pursuant to a payroll deduction order.

❑ Debtor(s) will make payments directly to the trustee.

❑ Other (specify method of payment):_____.

2.3 Federal income tax refunds.

Check one.

- ❑ Debtor(s) will retain any federal tax refunds received during the plan term.
- ❑ Debtor(s) will supply the trustee with a copy of each federal tax return filed during the plan term within 14 days of filing the return and will turn over to the trustee all federal income tax refunds, other than earned income tax credits, received during the plan term.
- ❑ Debtor(s) will supply the trustee with federal tax returns filed during the plan term and will turn over to the trustee a portion of any federal income tax refunds received during the plan term as specified below.

_____

_____

2.4 Additional payments.

Check one.

- ❑ **None.** *If "None" is checked, the rest of § 2.4 need not be completed or reproduced.*
- ❑ Debtor(s) will make additional payment(s) to the trustee from other sources, as specified below. Describe the source, estimated amount, and date of each anticipated payment.

_____

_____

2.5 The total amount of estimated payments to the trustee provided for in §§ 2.1 and 2.4 is $ _____.

Part 3: Treatment of Secured Claims

3.1 Maintenance of payments and cure of any default.

Check one.

- ❑ **None.** *If "None" is checked, the rest of § 3.1 need not be completed or reproduced.*
- ❑ The debtor(s) will maintain the contractual installment payments on the claims listed below, with any changes required by the applicable contract, and cure any default in payments on the secured claims listed below. The allowed claim for any arrearage amount will be paid under the plan, with interest, if any, at the rate stated. Unless otherwise ordered by the court, the amounts listed on a proof of claim or modification of a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) control over any contrary amounts listed below as to the current installment payment and arrearage. If relief from the automatic stay is ordered as to any item of collateral listed in this paragraph, then, unless otherwise ordered by the court, all payments under this paragraph as to that collateral will cease and all secured claims based on that collateral will no longer be treated by the plan. The final column includes only payments disbursed by the trustee rather than by the debtor.

Name of creditor	**Collateral**	**Current installment payment** (including escrow)	**Amount of arrearage**	**Interest rate on arrearage** (if applicable)	**Monthly plan payment on arrearage**	**Estimated total payments by trustee**
_____	_____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	_____%	$_____	$_____
_____	_____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	_____%	$_____	$_____

Insert additional claims as needed.

3.2 Request for valuation of security and claim modification. *Check one.*

❑ **None.** *If "None" is checked, the rest of § 3.2 need not be completed or reproduced.*

The remainder of this paragraph will be effective only if the applicable box in Part 1 of this plan is checked.

❑ The debtor(s) request that the court determine the value of the secured claims listed below. For each non-governmental secured claim listed below, the debtor(s) state that the value of the secured claim should be as stated below in the column headed *Amount of secured* claim. For secured claims of governmental units, unless otherwise ordered by the court, the amounts listed in proofs of claim filed in accordance with the Bankruptcy Rules control over any contrary amounts listed below. For each listed secured claim, the controlling amount of the claim will be paid in full under the plan with interest at the rate stated below.

The portion of any allowed claim that exceeds the amount of the secured claim will be treated as an unsecured claim under Part 5 of this plan. If the amount of a creditor's secured claim is listed below as having no value, the creditor's allowed claim will be treated in its entirety as an unsecured claim under Part 5 of this plan. Unless otherwise ordered by the court, the amount of the creditor's total claim listed on the proof of claim controls over any contrary amounts listed in this paragraph.

The holder of any claim listed below as having value in the column headed *Amount of secured claim* will retain the lien until the earlier of:

(a) payment of the underlying debt determined under nonbankruptcy law, or

(b) discharge under 11 U.S.C. § 1328, at which time the lien will terminate and be released by the creditor. See Bankruptcy Rule 3015.

Name of creditor	Estimated amount of creditor's total claim	Collateral	Value of collateral	Amount of claims senior to creditor's claim	Amount of secured claim	Interest rate	Monthly payment to creditor	Estimated total of monthly payments
_____	$_____	_____	$_____	$_____	$_____	___%	$_____	$_____
_____	$_____	_____	$_____	$_____	$_____	___%	$_____	$_____
_____	$_____	_____	$_____	$_____	$_____	___%	$_____	$_____

Insert additional claims as needed.

3.3 Secured claims excluded from 11 U.S.C. § 506.

Check one.

❑ **None.** *If "None" is checked, the rest of § 3.3 need not be completed or reproduced.*

❑ The claims listed below were either:

(1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor(s), or

(2) incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value.

These claims will be paid in full under the plan with interest at the rate stated below. Unless otherwise ordered by the court, the claim amount stated on a proof of claim or modification of a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) controls over any contrary amount listed below. The final column includes only payments disbursed by the trustee rather than by the debtor.

Name of creditor	Collateral	Amount of claim	Interest rate	Monthly plan payment	Estimated total payments by trustee
_____	_____	$_____	_____%	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____
_____	_____	$_____	_____%	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____

Insert additional claims as needed.

3.4 Lien avoidance.

Check one.

❑ **None.** *If "None" is checked, the rest of § 3.4 need not be completed or reproduced.*

The remainder of this paragraph will be effective only if the applicable box on Part 1 of this plan is checked.

❑ The judicial liens or nonpossessory, nonpurchase money security interests securing the claims listed below impair exemptions to which the debtor(s) would have been entitled under 11 U.S.C. § 522(b). A judicial lien or security interest securing a claim listed below will be avoided to the extent that it impairs such exemptions upon entry of the order confirming the plan. The amount of the judicial lien or security interest that is avoided will be treated as an unsecured claim in Part 5. The amount, if any, of the judicial lien or security interest that is not avoided will be paid in full as a secured claim under the plan. See 11 U.S.C. § 522(f) and Bankruptcy Rule 4003(d). *If more than one lien is to be avoided, provide the information separately for each lien.*

Information regarding judicial lien or security interest	**Calculation of lien avoidance**		**Treatment of remaining secured claim**
Name of creditor	a. Amount of lien	$_____	**Amount of secured claim after avoidance** (line a minus line f) $_____
_____	b. Amount of all other liens	$_____	
Collateral	c. Value of claimed exemptions	+ $_____	**Interest rate** (if applicable)
_____	d. Total of adding lines a, b, and c	$_____	_____ %
Lien identification (such as judgment date, date of lien recording, book and page number)	e. Value of debtor's interest in property	− $_____	**Monthly plan payment** $_____
_____ _____	f. Subtract line e from line d.	$_____	**Estimated total payments on secured claim** $_____

Extent of exemption impairment (*Check applicable box*):

❑ **Line f is equal to or greater than line a**.
The entire lien is avoided. *(Do not complete the next column.)*

❑ **Line f is less than line a.**
A portion of the lien is avoided. (*Complete the next column.)*

Insert additional claims as needed.

3.5 Surrender of collateral.

Check one.

❑ **None.** *If "None" is checked, the rest of § 3.5 need not be completed or reproduced.*

❑ The debtor(s) elect to surrender to each creditor listed below the collateral that secures the creditor's claim. The debtor(s) consent to termination of the stay under 11 U.S.C. § 362(a) and § 1301 with respect to the collateral upon confirmation of the plan. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in Part 5 below.

Name of creditor	**Collateral**
_____	_____
_____	_____

Insert additional claims as needed.

Part 4: Treatment of Trustee's Fees and Priority Claims

4.1 General

Trustee's fees and all allowed priority claims other than those treated in § 4.5 will be paid in full without interest.

4.2 Trustee's fees

Trustee's fees are estimated to be _____% of plan payments; and during the plan term, they are estimated to total $_____.

4.3 Attorney's fees

The balance of the fees owed to the attorney for the debtor(s) is estimated to be $_____.

4.4 Priority claims other than attorney's fees and those treated in § 4.5.

Check one.

- ❑ **None.** *If "None" is checked, the rest of § 4.4 need not be completed or reproduced.*
- ❑ The debtor estimates the total amount of other priority claims to be _____.

4.5 Domestic support obligations assigned or owed to a governmental unit and paid less than full amount.

Check one.

- ❑ **None**. *If "None" is checked, the rest of § 4.5 need not be completed or reproduced.*
- ❑ The allowed priority claims listed below are based on a domestic support obligation that has been assigned to or is owed to a governmental unit and will be paid less than the full amount of the claim under 11 U.S.C. § 1322(a)(4), but not less than the amount that would have been paid on such claim if the estate of the debtor were liquidated under chapter 7, see 11 U.S.C. § 1325(a)(4).

Name of creditor	Amount of claim to be paid
_____	$_____
_____	$_____

Insert additional claims as needed.

Part 5: Treatment of Nonpriority Unsecured Claims

5.1 General

Nonpriority unsecured claims will be paid to the extent allowed as specified in this Part.

5.2 Nonpriority unsecured claims not separately classified.

Allowed nonpriority unsecured claims that are not separately classified will be paid, pro rata. If more than one option is checked, the option providing the largest payment will be effective. *Check all that apply.*

- ❑ The sum of $_____.
- ❑ _____% of the total amount of these claims.
- ❑ The funds remaining after disbursements have been made to all other creditors provided for in this plan.

If the estate of the debtor(s) were liquidated under chapter 7, nonpriority unsecured claims would be paid approximately $_____. Regardless of the options checked above, payments on allowed nonpriority unsecured claims will be made in at least this amount.

5.3 Interest on allowed nonpriority unsecured claims not separately classified. *Check one.*

❑ **None.** *If "None" is checked, the rest of § 5.3 need not be completed or reproduced.*

❑ Interest on allowed nonpriority unsecured claims that are not separately classified will be paid at an annual percentage rate of ____ % under 11 U.S.C. §1325(a)(4), and is estimated to total $ _____.

5.4 Maintenance of payments and cure of any default on nonpriority unsecured claims. *Check one.*

❑ **None.** *If "None" is checked, the rest of § 5.4 need not be completed or reproduced.*

❑ The debtor(s) will maintain the contractual installment payments and cure any default in payments on the unsecured claims listed below on which the last payment is due after the final plan payment. The allowed claim for the arrearage amount will be paid under the plan.

Name of creditor	Current installment payment	Amount of arrearage to be paid	Estimated total payments by trustee
_____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	$_____
_____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	$_____

Insert additional claims as needed.

5.5 Other separately classified nonpriority unsecured claims. *Check one.*

❑ **None.** *If "None" is checked, the rest of § 5.5 need not be completed or reproduced.*

❑ The nonpriority unsecured allowed claims listed below are separately classified and will be treated as follows:

Name of creditor	Basis for separate classification and treatment	Amount to be paid on the claim	Interest rate (if applicable)	Estimated total amount of payments
_____	_____	$_____	_____%	$_____
_____	_____	$_____	_____%	$_____

Insert additional claims as needed.

Part 6: Executory Contracts and Unexpired Leases

6.1 The executory contracts and unexpired leases listed below are assumed and will be treated as specified. All other executory contracts and unexpired leases are rejected. *Check one.*

❑ **None.** *If "None" is checked, the rest of § 6.1 need not be completed or reproduced.*

❑ **Assumed items.** The final column includes only payments disbursed by the trustee rather than by the debtor.

Name of creditor	Property description	Treatment (Refer to other plan section if applicable)	Current installment payment	Amount of arrearage to be paid	Estimated total payments by trustee
_____	_____	_____ _____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	$_____
_____	_____	_____ _____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	$_____

Insert additional contracts or leases as needed.

Part 7: Order of Distribution of Trustee Payments

7.1 The trustee will make the monthly payments required in Parts 3 through 6 in the following order, with payments other than those listed to be made in the order determined by the trustee:

a. Trustee's fees

b. _____

c. _____ *Insert additional lines if needed.*

Part 8: Vesting of Property of the Estate

8.1 Property of the estate shall revest in the debtor(s) upon

Check the applicable box:

❑ plan confirmation.

❑ closing of the case.

❑ other: _____.

Part 9: Nonstandard Plan Provisions

❑ **None.** *If "None" is checked, the rest of Part 9 need not be completed or reproduced.*

Under Bankruptcy Rule 3015(c), nonstandard provisions are required to be set forth below.

These plan provisions will be effective only if the applicable box in Part 1 of this plan is checked.

_____

_____

_____

_____

_____

Part 10: Signatures

✘ _____ Date_____

Signature of Attorney for Debtor(s)

✘ _____ Date_____

✘ _____ Date_____

Signature(s) of Debtor(s) (required if not represented by an attorney; otherwise optional)

Chapter 13 Plan Exhibit: Estimated Amounts of Trustee Payments

The trustee will make the following estimated payments on allowed claims in the order set forth in Section 7.1:

a.	**Maintenance and cure payments on secured claims** (*Part 3, Section 3.1 total*):		$_____
b.	**Modified secured claims** (*Part 3, Section 3.2 total*):		$_____
c.	**Secured claims excluded from 11 U.S.C. § 506** (*Part 3, Section 3.3 total*):		$_____
d.	**Judicial liens or security interests partially avoided** (*Part 3, Section 3.4 total*):		$_____
e.	**Administrative and other priority claims** (*Part 4 total*):		$_____
f.	**Nonpriority unsecured claims** (*Part 5, Section 5.2 total*):		$_____
g.	**Interest on allowed unsecured claims** (*Part 5, Section 5.3 total*)		$_____
h.	**Maintenance and cure payments on unsecured claims** (*Part 5, Section 5.4 total*)		$_____
i.	**Separately classified unsecured claims** (*Part 5, Section 5.5 total*)		$_____
j.	**Arrearage payments on executory contracts and unexpired leases** *(Part 6, Section 6.1 total)*	+	$_____

Total of lines a through j..... $_____

Committee Note

Official Form 113 is new and is the required plan form in all chapter 13 cases. *See* Bankruptcy Rule 3015. Alterations to the text of the form or the order of its provisions, except as permitted by the form itself, must comply with Bankruptcy Rule 9009. As the form explains, spaces for responses may be expanded or collapsed as appropriate, and sections that are inapplicable do not need to be reproduced. Portions of the form provide multiple options for provisions of a debtor's plan, but some of those options may not be appropriate in a given debtor's situation or may not be allowed in the court presiding over the case. Debtors are advised to refer to applicable local rulings.

Part 1. This part sets out warnings to both debtors and creditors. For creditors, if the plan includes one or more of the provisions listed in this part, the appropriate boxes must be checked. For example, if Part 9 of the plan proposes a provision not included in, or contrary to, the Official Form, that nonstandard provision will be ineffective if the appropriate check box in Part 1 is not selected.

Part 2. This part states the proposed periodic plan payments, the estimated total plan payments, and sources of funding for the plan. Section 2.1 allows the debtor or debtors to propose periodic payments in other than monthly intervals. For example, if the debtor receives a paycheck every week and wishes to make plan payments from each check, that should be indicated in § 2.1. If the debtor proposes to make payments according to different "steps," the amounts and intervals of those payments should also be indicated in § 2.1. Section 2.2 provides for the manner in which the debtor will make regular payments to the trustee. If the debtor selects the option of making payments pursuant to a payroll deduction order, that selection serves as a request by the debtor for entry of the order. Whether to enter a payroll deduction order is determined by the court. See Code § 1325(c). If the debtor selects the option of making payments other than by direct payments to the trustee or by a payroll deduction order, the alternative method (*e.g.*, a designated third party electronic funds transfer program) must be specified.

Part 3. This part provides for the treatment of secured claims.

Section 3.1 provides for the treatment of claims under Code § 1322(b)(5) (maintaining current payments and curing any arrearage). For the claim of a secured creditor listed in § 3.1, an estimated arrearage amount should be given. A contrary arrearage amount listed on the creditor's proof of claim, unless contested by objection or motion, will control over the amount given in the plan.

In § 3.2, the plan may propose to determine under Code § 506(a) the value of a secured claim. For example, the plan could seek to reduce the secured portion of a creditor's claim to the value of the collateral securing it. For the secured claim of a non-governmental creditor, that determination would be binding upon confirmation of the plan. For the secured claim of a governmental unit, however, a contrary valuation listed on the creditor's proof of claim, unless contested by objection or motion, would control over the valuation given in the plan. *See* Bankruptcy Rule 3012. Bankruptcy Rule 3002 contemplates that a debtor, the trustee, or another entity may file a proof of claim if the creditor does not do so in a timely manner. *See* Bankruptcy Rules 3004 and 3005. Section 3.2 will not be effective unless the appropriate check box in Part 1 is selected.

Section 3.3 deals with secured claims that may not be bifurcated into secured and unsecured portions under Code § 506(a), but it allows for an interest rate other than the contract rate to be applied to payments on such a claim. If appropriate, a claim may be treated under § 3.1 instead of § 3.3.

In § 3.4, the plan may propose to avoid certain judicial liens or security interests encumbering exempt property in accordance with Code § 522(f). This section includes space for the calculation of the amount of the judicial lien or security interest that is avoided. A plan proposing avoidance in § 3.4 must be served in the manner provided by Bankruptcy Rule 7004 for service of a summons and complaint. *See* Bankruptcy Rule 4003. Section 3.4 will not be effective unless the appropriate check box in Part 1 is selected.

Section 3.5 provides for elections to surrender collateral and consent to termination of the stay under § 362(a) and § 1301 with respect to the collateral

surrendered. Termination will be effective upon confirmation of the plan.

Part 4. This part provides for the treatment of trustee's fees and claims entitled to priority status. Section 4.1 provides that trustee's fees and all allowed priority claims (other than those domestic support obligations treated in § 4.5) will be paid in full. In § 4.2, the plan lists an estimate of the trustee's fees. Although the estimate may indicate whether the plan will be feasible, it does not affect the trustee's entitlement to fees as determined by statute. In § 4.3, the form requests the balance of attorney's fees owed. Additional details about payments of attorney's fees, including information about their timing and approval, are left to the requirements of local practice. In § 4.4, the plan calls for an estimated amount of priority claims. A contrary amount listed on the creditor's proof of claim, unless changed by court order in response to an objection or motion, will control over the amount given in § 4.4. In § 4.5, the plan may propose to pay less than the full amount of a domestic support obligation that has been assigned to, or is owed to, a governmental unit, but not less than the amount that claim would have received in a chapter 7 liquidation.

Part 5. This part provides for the treatment of unsecured claims that are not entitled to priority status. In § 5.2, the plan may propose to pay nonpriority unsecured claims in accordance with several options. One or more options may be selected. For example, the plan could propose simply to pay unsecured creditors any funds remaining after disbursements to other creditors, or also provide that a defined percentage of the total amount of unsecured claims will be paid. In § 5.4, the plan may provide for the separate classification of nonpriority unsecured claims (such as co-debtor claims) as permitted under Code § 1322(b)(1).

Part 6. This part provides for executory contracts and unexpired leases. An executory contract or unexpired lease is rejected unless it is listed in this part. If the plan proposes neither to assume nor reject an executory contract or unexpired lease, that treatment would have to be set forth as a nonstandard provision in Part 9.

Part 7. This part provides an order of distribution of payments under the plan. Other than the trustee's fees, the order of distribution is left to be completed by the debtor in keeping with the requirements of the Code. The debtor may instead elect to have the trustee direct the order of distribution.

Part 8. This part defines when property of the estate will revest in the debtor or debtors. One choice must be selected—upon plan confirmation, upon closing the case, or upon some other specified event. This plan provision is subject to a contrary court order under Code § 1327(b).

Part 9. This part gives the debtor or debtors the opportunity to propose provisions that are not otherwise in, or are contrary to, the Official Form. All such nonstandard provisions must be set forth in this part and nowhere else in the plan. This part will not be effective unless the appropriate check box in Part 1 is selected. *See* Bankruptcy Rule 3015.

Part 10. The plan must be signed by the attorney for the debtor or debtors. If the debtor or debtors are not represented by an attorney, they must sign the plan, but the signature of represented debtors is optional.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEES ON CONSUMER ISSUES AND FORMS

SUBJECT: COMMENTS SUBMITTED ON PUBLISHED AMENDMENTS TO RULE 3002.1(a)

DATE: MARCH 23, 2015

Rule 3002.1, which applies only in chapter 13 cases, requires creditors whose claims are secured by a security interest in the debtor's principal residence to provide the debtor and the trustee notice of any changes in the periodic payment amount or the assessment of any fees or charges while the bankruptcy case is pending. The rule was promulgated in 2011 in order to ensure that debtors who attempt to maintain their home mortgage payments while they are in chapter 13 will have the information they need to do so.

The proposed amendments that were published last summer seek to clarify three matters on which courts had disagreed:

1) The rule applies whenever a debtor will make ongoing mortgage payments during the chapter 13 case, whether or not a prepetition default is being cured.
2) The rule applies regardless of whether it is the debtor or the trustee who is making the payments to the mortgagee.
3) The rule generally ceases to apply when an order granting relief from the stay becomes effective with respect to the debtor's residence.

The two Subcommittees considered the comments that were submitted in response to the publication of the Rule 3002.1 amendments during their joint conference call on March 16.

They recommend that the Advisory Committee approve the amended rule as published and forward it to the Standing Committee for approval.

The Amendments

Rule 3002.1, as proposed for amendment, and the accompanying Committee Note provide as follows:

Rule 3002.1. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence

(a) IN GENERAL. This rule applies in a chapter 13 case to claims (1) that are ~~(1)~~ secured by a security interest in the debtor's principal residence, and (2) for which the plan provides that either the trustee or the debtor will make contractual installment payments ~~provided for under § 1322(b)(5) of the Code in the debtor's plan~~. Unless the court orders otherwise, the notice requirements of this rule cease to apply when an order terminating or annulling the automatic stay becomes effective with respect to the residence that secures the claim.

* * * * *

COMMITTEE NOTE

Subdivision (a) is amended to clarify the applicability of the rule. Its provisions apply whenever a chapter 13 plan provides that contractual payments on the debtor's home mortgage will be maintained, whether they will be paid by the trustee or directly by the debtor. The reference to § 1322(b)(5) of the Code is deleted to make clear that the rule applies even if there is no prepetition arrearage to be cured. So long as a creditor has a claim that is secured by a security interest in the debtor's principal residence and the plan provides that contractual payments on the claim will be maintained, the rule applies.

Subdivision (a) is further amended to provide that, unless the court orders otherwise, the notice obligations imposed by this rule cease on the effective date of an order granting relief from the automatic stay with regard to the debtor's principal residence. Debtors and trustees typically do not make payments on mortgages after the stay relief is granted, so there is generally no need for the

> holder of the claim to continue providing the notices required by this rule. Sometimes, however, there may be reasons for the debtor to continue receiving mortgage information after stay relief. For example, the debtor may intend to seek a mortgage modification or to cure the default. When the court determines that the debtor has a need for the information required by this rule, the court is authorized to order that the notice obligations remain in effect or be reinstated after the relief from the stay is granted.

The Comments

Four comments were submitted on the proposed amendments to Rule 3002.1(a):

0062 – National Conference of Bankruptcy Judges. The NCBJ supports the proposed amendment to Rule 3002.1.

0091 – Pennsylvania Bar Association. The proposed amendments to Rule 3002.1 serve to clarify several important conflicts that have arisen since the rule was originally adopted. Adoption of Rule 3002.1 is recommended.

0105 – Hilary Bonial (Buckley Madole, P.C.). Rule 3002.1 should be further amended to exclude junior liens and home equity lines of credit (HELOCs) because payments can change often, even monthly, with a HELOC. It can be burdensome for both creditors and courts to file monthly notices. These creditors should instead be allowed to send statements to debtors advising of payment changes instead of filing notices with the court.

0116 – Alberta Hultman (USFN). Rule 3002.1 should include an exception for de minimis payment changes, such as frequently occur with HELOCs. Notices for payment changes below a certain threshold amount should either not be required or be required only biannually.

Recommendation

The Subcommittees recommend that the Advisory Committee approve the amendments to Rule 3002.1(a) as published. The comments by Ms. Bonial and Ms. Hultman relate to an

issue that the Committee considered at the fall 2014 meeting. In response to the recommendation of these Subcommittees, the Committee voted to propose the addition of the following language to the end of Rule 3002.1(b) (Notice of Payment Changes): "For claims arising from home equity lines of credit, this requirement may be modified by court order." The Committee decided to hold that proposed amendment in abeyance until it decides whether to propose any additional amendments to Rule 3002.1, so that all of them can be published as a package. The Committee had decided, however, to proceed with the amendments published last summer because, besides clarifying two issues that had caused some confusion in the courts, they include the new provision about termination of the reporting obligation after the grant of relief from the stay. The Committee concluded that it was important to go ahead and resolve that issue, which is not currently addressed by the rule. For the same reason, the Subcommittees recommend that, if the Committee approves the amendments to Rule 3002.1 that were published last summer, it ask the Standing Committee at its next meeting to approve them and send them to the Judicial Conference.

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MEMORANDUM

To: Advisory Committee on Bankruptcy Rules

From: Judge Ikuta and Scott Myers

Re: Issues Related to the Proposed Effective Date for the Modernized Individual and Non-individual Debtor Forms.

Date: March 23, 2015

At the Advisory Committee's September 2014 meeting, we learned that the Administrative Office (AO) was experiencing delays in upgrading the federal courts' case management system. This report details the effect this delay will have on our prior plan to make the modernized individual and non-individual debtor forms effective on December 1, 2015, and it assesses the potential costs and benefits of moving forward with the current effective date.

Background

The current case management system used by most federal courts is called Case Management / Electronic Case Filing (CM/ECF). It interfaces with the third party software used by most bankruptcy attorneys when they open a bankruptcy case. This proprietary software is like the Turbo Tax program. The software asks the attorney a series of questions, and then uses that information to complete the current bankruptcy forms. The bankruptcy forms are then uploaded to the court's CM/ECF. When the forms are uploaded to CM/ECF, the system is programmed to also capture and store 80 essential data elements used in completing the forms - such as the debtor's name and address, and the total dollar amount of the debtor's assets and liabilities. Capturing these 80 data elements is necessary to comply with reporting requirements under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). If a bankruptcy case is opened with hard copy forms, the 80 data elements are input into the computer system manually.

About six years ago, the Administrative Office decided to create an improved case management system, which it calls Next Generation CM/ECF or NextGen. The AO wanted the NextGen case management system to capture and store all material individual pieces of data used to complete the forms so that users

such as the court and clerk's office would be able to prepare reports, putting the data in any order the user wanted. This is in effect a database program that can run different reports designed by the user.

In conjunction with the development of NextGen, Judge Perris and the Advisory Committee's Forms Subcommittee established the Forms Modernization Project (FMP), and began working with the AO to modernize our forms. The FMP, working hand-in-glove with the AO's NextGen project team, redesigned the bankruptcy forms to facilitate data collection and to make them easier to understand.

As a result of this effort, the FMP developed a set of vastly improved, user friendly forms, that will clearly be a benefit to the bankruptcy community (including pro se filers) even if additional data is not collected. Notably, by designing different sets of case opening forms for use in individual and non-individual debtors' cases, the FMP was able ask questions in a way that makes more sense to each category of debtor. As an example, we've attached a copy of our current form for a general purpose petition and our modernized counterpart for individual debtors.

Status of Modernized Forms

The current status of our forms modernization project is as follows. The first group of forms was published for comment in August 2012, and four of those forms (the fee waiver and fee installment forms, and the income and expenses schedules) went into effect on December 1, 2013.

In August 2013, we published the three modernized appellate forms and 27 modernized forms for individual debtor cases. We republished means test forms, which had been revised after their 2012 publication. The Standing Committee gave its final approval to this second group of forms at the May 2014 meeting. On December 1, 2014, the appellate forms and the means test forms went into effect. We held the other modernized individual debtor forms in abeyance to allow them to go into effect simultaneously with the modernized forms for non-individual debtors.

The third group of modernized forms, consisting of 36 forms, was published

in August 2014. This group includes the case opening forms for non-individual debtors. The Forms Subcommittee has reviewed the comments on these forms and will make recommendations to the Advisory Committee. At present, it does not appear that any of the recommended changes require republication. If the Advisory Committee approves the third group of forms, we will seek the Standing Committee's final approval at its May 2015 meeting. At that point, if they are approved, the non-individual debtor forms as well as the previously approved individual debtor forms will be ready to go to the Judicial Conference for approval, which would give the modernized forms a December 1, 2015, effective date.[1]

Status of NextGen Case Management System

Although we developed the modernized forms in a manner that would facilitate data collection by the NextGen case management system, we have learned that the roll-out of the NextGen system is proceeding more slowly than expected.

Based on our research, the migration to the new case management system has several steps. First, each court will have to migrate from a local server to a centralized server in San Diego CA, or Ashburn, VA. Second, the AO will have to create a "backend database" that can capture and store the answers input by the debtors in response to the questions on the forms. Third, each bankruptcy court will have to migrate from CM/ECF to the NextGen case management system.

The migration to the centralized server is still under way. There are 94 bankruptcy courts nationwide. Based on recent discussions with the AO, 42 courts already have moved to the centralized server and 24 are scheduled to move by December 2015. Twenty-eight courts haven't committed to a schedule yet.

The migration to the NextGen case management system is much slower. The AO is in the process of building a backend database for the NextGen case

[1]There remains one small group of modernized forms (Official Forms 25A, 25B, 25C, and 26) that have not yet been published. The Business Subcommittee is reviewing those forms and will make a report to the Advisory Committee at this meeting.

management system. Judge Perris, Judge Dow, and other bankruptcy judges are working with the AO to provide what the AO calls "user stories," meaning the ways that bankruptcy judges and court personnel typically use data from bankruptcy forms. These user stories help the programmers who are creating the backend database to link frequently used data.[2]

The AO now estimates that by December 2016, the NextGen case management system will have the capacity to capture and store all the data elements from forms filed by individual debtors, using our modernized forms (about 70 percent of our cases). And by December 2017, the AO estimates that the NextGen case management system will be able to capture and store all the data elements by all debtors, using our modernized forms.

Once the NextGen case management system is developed, a handful of pilot bankruptcy courts will test it. At the same time, software vendors will test how their forms work with the new case management system. The AO was originally planning to build a backend database that would work only with the current bankruptcy forms, not with our new modernized forms. The AO planned to have the software vendors test the NextGen case management system with the current

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[2] Here are some examples suggested by Judge Dow:

Lift stay motions – to evaluate a motion for relief from stay, the court needs information on the value of the property and the debt against it, in order to determine whether equity exists. This information is included in Schedules A and D.

Motions for lien avoidance - to evaluate whether a lien against property of the debtor may be avoided under the bankruptcy code, the court must review information found on particular line items of the forms. The relevant debt, the value of the property and amount of other liens against it are all included on Schedules A and D. The amount of any exemption claimed by the debtor is listed on Schedule C.

Disposable income issues in Chapter 13 plan confirmation - analyzing these issues involves reviewing income and expense data from various lines on Schedules I and J and on Form 22C.

forms. The AO would then have to repeat this process for the modernized forms.

The AO estimates that it takes two months to install, configure, and test the NextGen case management system with the pilot courts. The AO will then monitor the system to make sure the NextGen package works, whether additional changes must be made, or whether the AO can begin rolling out this version to other bankruptcy courts.

Assuming the AO stays on schedule, by the end of 2015, no more than a handful of bankruptcy courts will be on the NextGen case management system. By December 2017, the AI expects that all or nearly all of the bankruptcy courts will be on the NextGen case management system.

The Electronic Self-Representation (eSR) Issue

Making our modernized forms effective in December 2015 will have an impact on a pilot program currently in place in three bankruptcy courts.

The United States Bankruptcy Court for the District of New Jersey developed a program that lets pro se filers use what is essentially a Turbo Tax-like system to complete and file a chapter 7 bankruptcy case electronically. This concept, which was further developed by the court and the AO, was named the electronic self representation (eSR) pathfinder program, and has been expanded to include two other courts, the United States Bankruptcy Court for the Central District of California and the United States Bankruptcy Court for the District of New Mexico, At present, only the New Jersey bankruptcy court is very active; it has at least 102 eSR cases open. The Central District of California and New Mexico bankruptcy courts have only 14 and 10 cases open respectively, but they have not been publicizing the availability of this program. The courts that have implemented this eSR program emphasize its importance as an access to justice issue.

The eSR program is linked to the current Chapter 7 forms. The eSR data entry screens and database won't work with modernized forms, and the AO has stated that it cannot readily reprogram the eSR program so that it will be able to produce the modernized forms for filing. Accordingly, if we make our modernized forms effective in December 2015, the eSR program will not be able

to function until 2017, unless we allow the eSR courts to continue using the current forms (as discussed below). The AO estimates that by 2017, eSR will work with the new forms.

Decision for the Advisory Committee

The Advisory Committee must decide whether to continue with our recommendation to make the non-individual debtor forms, as well as the previously approved individual debtor forms, effective as of December 1, 2015 or delay the effective date until 2016 or 2017.

If the Advisory Committee decides to make the modernized forms effective on December 1, 2015, the AO will be able to build a backend database that will store the information from the modernized forms. This is much more cost-effective than the AO's prior plan to create a backend database for the current forms, and then redo the backend database for the modernized forms. Adopting a December 1, 2015 effective date will not add to the AO's costs. The AO also reports that adopting this effective date will not affect the AO's current ability to capture the 80 data points required for BAPCPA.

There is one major disadvantage to this approach: its effect on the eSR system. The three pilot courts using the eSR system are concerned that they will lose momentum if the eSR program must be put on hold until the AO's NextGen case management system catches up in 2017. We have talked with representatives of the affected courts and discussed possible approaches to mitigate this impact. The approach requested by the pilot courts would be for the Advisory Committee to recommend that the Judicial Conference designate the current forms as the Official Forms (even after December 2015) for use only by the eSR programs used in these three courts, and only until the end of 2017. This would allow the eSR program to continue while updates are being made.

There are also a handful of other concerns raised by making our modernized forms effective in December 2015. First, we originally drafted the modernized forms to require specific answers to many questions. This approach made it easier for a debtor to input the required information accurately, and also made it easier for the case management system to capture and store the data. As a result, the modernized forms are longer than the current forms, and the data is not necessarily

in the form or order most useful to judges and court personnel. Ultimately this will not be a problem: once the CM/ECF is able to capture and store all relevant data, judges and court personnel will be able to prepare reports that include only the information they want. But if this ability is delayed by one to two years, the courts will have to work with longer forms without the benefit of being able to prepare customized reports during that time.

Second, the AO and software vendors thought they would have the ability to test the functionality of the NextGen case management system on the current forms. Because of uncertainty about the effective date of the modernized forms, the AO and software vendors have put their efforts to test the current forms on hold. This may end up being more cost-effective, since the current forms will be superseded by the modernized forms in due course.

Conclusion

The Advisory Committee should discuss: (1) whether it is feasible to allow the eSR program to continue using the current forms as Official Forms; and (2) whether we should maintain the December 1, 2015 effective date for the bulk of the modernized forms given the costs and benefits of doing so.

Attachments

Official Form 1- *Voluntary Petition*;

Official Form 101-*Voluntary Petition for Individual Debtors*

UNITED STATES BANKRUPTCY COURT	VOLUNTARY PETITION

Name of Debtor (if individual, enter Last, First, Middle):	Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all):	Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all):
Street Address of Debtor (No. and Street, City, and State): ZIP CODE	Street Address of Joint Debtor (No. and Street, City, and State): ZIP CODE
County of Residence or of the Principal Place of Business:	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address): ZIP CODE	Mailing Address of Joint Debtor (if different from street address): ZIP CODE
Location of Principal Assets of Business Debtor (if different from street address above): ZIP CODE	

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

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

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

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

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

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

Chapter 15 Debtors

Country of debtor's center of main interests:

Each country in which a foreign proceeding by, regarding, or against debtor is pending:

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

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

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

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

Filing Fee (Check one box.)

- ☐ Full Filing Fee attached.
- ☐ Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A.
- ☐ Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.

Chapter 11 Debtors

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

Check if:
- ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than $2,490,925 (*amount subject to adjustment on 4/01/16 and every three years thereafter*).

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

Statistical/Administrative Information

- ☐ Debtor estimates that funds will be available for distribution to unsecured creditors.
- ☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

THIS SPACE IS FOR COURT USE ONLY

Estimated Number of Creditors

☐ 1-49	☐ 50-99	☐ 100-199	☐ 200-999	☐ 1,000-5,000	☐ 5,001-10,000	☐ 10,001-25,000	☐ 25,001-50,000	☐ 50,001-100,000	☐ Over 100,000

Estimated Assets

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

Estimated Liabilities

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

Voluntary Petition *(This page must be completed and filed in every case.)*	Name of Debtor(s):	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet.)		
Location Where Filed:	Case Number:	Date Filed:
Location Where Filed:	Case Number:	Date Filed:
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet.)		
Name of Debtor:	Case Number:	Date Filed:
District:	Relationship:	Judge:

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts.)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b).

X _____

Signature of Attorney for Debtor(s) (Date)

Exhibit C

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.

☐ No.

Exhibit D

(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)

☐ Exhibit D, completed and signed by the debtor, is attached and made a part of this petition.

If this is a joint petition:

☐ Exhibit D, also completed and signed by the joint debtor, is attached and made a part of this petition.

Information Regarding the Debtor - Venue

(Check any applicable box.)

☐ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.

Certification by a Debtor Who Resides as a Tenant of Residential Property

(Check all applicable boxes.)

☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)

_____

(Name of landlord that obtained judgment)

_____

(Address of landlord)

☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and

☐ Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.

☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).

Voluntary Petition
(This page must be completed and filed in every case.)

Name of Debtor(s):

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Debtor

X _____
Signature of Joint Debtor

_____
Telephone Number (if not represented by attorney)

_____
Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only **one** box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.

☐ Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X _____
(Signature of Foreign Representative)

_____
(Printed Name of Foreign Representative)

_____
Date

Signature of Attorney*

X _____
Signature of Attorney for Debtor(s)

_____
Printed Name of Attorney for Debtor(s)

_____
Firm Name

_____
Address

_____
Telephone Number

_____
Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Authorized Individual

_____
Printed Name of Authorized Individual

_____
Title of Authorized Individual

_____
Date

Signature of Non-Attorney Bankruptcy Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

_____
Printed Name and title, if any, of Bankruptcy Petition Preparer

_____
Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

_____
Address

X _____
Signature

_____
Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

Fill in this information to identify your case:

United States Bankruptcy Court for the:

_____ District of _____
(State)

Case number (*If known*): _____ Chapter you are filing under:

- ❑ Chapter 7
- ❑ Chapter 11
- ❑ Chapter 12
- ❑ Chapter 13

❑ Check if this is an amended filing

Official Form 101

Voluntary Petition for Individuals Filing for Bankruptcy 12/15

The bankruptcy forms use *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, these forms use *you* to ask for information from both debtors. For example, if a form asks, "Do you own a car," the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Identify Yourself

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
1. Your full name Write the name that is on your government-issued picture identification (for example, your driver's license or passport). Bring your picture identification to your meeting with the trustee.	_____ First name _____ Middle name _____ Last name _____ Suffix (Sr., Jr., II, III)	_____ First name _____ Middle name _____ Last name _____ Suffix (Sr., Jr., II, III)
2. All other names you have used in the last 8 years Include your married or maiden names.	_____ First name _____ Middle name _____ Last name _____ First name _____ Middle name _____ Last name	_____ First name _____ Middle name _____ Last name _____ First name _____ Middle name _____ Last name
3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)	XXX – XX – ____ ____ ____ ____ OR **9** XX – XX – ____ ____ ____ ____	XXX – XX – ____ ____ ____ ____ OR **9** XX – XX – ____ ____ ____ ____

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
4. Any business names and Employer Identification Numbers (EIN) you have used in the last 8 years Include trade names and *doing business as* names	❑ I have not used any business names or EINs. Business name Business name __ __ – __ __ __ __ __ __ __ EIN __ __ – __ __ __ __ __ __ __ EIN	❑ I have not used any business names or EINs. Business name Business name __ __ – __ __ __ __ __ __ __ EIN __ __ – __ __ __ __ __ __ __ EIN
5. Where you live	Number Street City State ZIP Code County **If your mailing address is different from the one above, fill it in here.** Note that the court will send any notices to you at this mailing address. Number Street P.O. Box City State ZIP Code	**If Debtor 2 lives at a different address:** Number Street City State ZIP Code County **If Debtor 2's mailing address is different from yours, fill it in here.** Note that the court will send any notices to this mailing address. Number Street P.O. Box City State ZIP Code
6. Why you are choosing *this district* to file for bankruptcy	*Check one:* ❑ Over the last 180 days before filing this petition, I have lived in this district longer than in any other district. ❑ I have another reason. Explain. (See 28 U.S.C. § 1408.)	*Check one:* ❑ Over the last 180 days before filing this petition, I have lived in this district longer than in any other district. ❑ I have another reason. Explain. (See 28 U.S.C. § 1408.)

Part 2: Tell the Court About Your Bankruptcy Case

7. The chapter of the Bankruptcy Code you are choosing to file under

Check one. (For a brief description of each, see *Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy* (Form B2010)). Also, go to the top of page 1 and check the appropriate box.

- ❑ Chapter 7
- ❑ Chapter 11
- ❑ Chapter 12
- ❑ Chapter 13

8. How you will pay the fee

- ❑ **I will pay the entire fee when I file my petition**. Please check with the clerk's office in your local court for more details about how you may pay. Typically, if you are paying the fee yourself, you may pay with cash, cashier's check, or money order. If your attorney is submitting your payment on your behalf, your attorney may pay with a credit card or check with a pre-printed address.
- ❑ **I need to pay the fee in installments**. If you choose this option, sign and attach the *Application for Individuals to Pay Your Filing Fee in Installments* (Official Form 103A).
- ❑ **I request that my fee be waived** (You may request this option only if you are filing for Chapter 7. By law, a judge may, but is not required to, waive your fee, and may do so only if your income is less than 150% of the official poverty line that applies to your family size and you are unable to pay the fee in installments). If you choose this option, you must fill out the *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 103B) and file it with your petition.

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

- ❑ No
- ❑ Yes. District _____ When _____ Case number _____
  MM / DD / YYYY

  District _____ When _____ Case number _____
  MM / DD / YYYY

  District _____ When _____ Case number _____
  MM / DD / YYYY

10. Are any bankruptcy cases pending or being filed by a spouse who is not filing this case with you, or by a business partner, or by an affiliate?

- ❑ No
- ❑ Yes. Debtor _____ Relationship to you _____

  District _____ When _____ Case number, if known_____
  MM / DD / YYYY

  Debtor _____ Relationship to you _____

  District _____ When _____ Case number, if known_____
  MM / DD / YYYY

11. Do you rent your residence?

- ❑ No. Go to line 12.
- ❑ Yes. Has your landlord obtained an eviction judgment against you and do you want to stay in your residence?
  - ❑ No. Go to line 12.
  - ❑ Yes. Fill out *Initial Statement About an Eviction Judgment Against You* (Form 101A) and file it with this bankruptcy petition.

Part 3: Report About Any Businesses You Own as a Sole Proprietor

12. Are you a sole proprietor of any full- or part-time business?

A sole proprietorship is a business you operate as an individual, and is not a separate legal entity such as a corporation, partnership, or LLC.

If you have more than one sole proprietorship, use a separate sheet and attach it to this petition.

- ❑ No. Go to Part 4.
- ❑ Yes. Name and location of business

_____
Name of business, if any

_____
Number Street

_____

_____ _____ _____
City State ZIP Code

Check the appropriate box to describe your business:

- ❑ Health Care Business (as defined in 11 U.S.C. § 101(27A))
- ❑ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- ❑ Stockbroker (as defined in 11 U.S.C. § 101(53A))
- ❑ Commodity Broker (as defined in 11 U.S.C. § 101(6))
- ❑ None of the above

13. Are you filing under Chapter 11 of the Bankruptcy Code and are you a *small business debtor*?

For a definition of *small business debtor*, see 11 U.S.C. § 101(51D).

If you are filing under Chapter 11, the court must know whether you are a small business debtor so that it can set appropriate deadlines. If you indicate that you are a small business debtor, you must attach your most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. 1116(1)(B).

- ❑ No. I am not filing under Chapter 11.
- ❑ No. I am filing under Chapter 11, but I am NOT a small business debtor according to the definition in the Bankruptcy Code.
- ❑ Yes. I am filing under Chapter 11 and I am a small business debtor according to the definition in the Bankruptcy Code.

Part 4: Report if You Own or Have Any Hazardous Property or Any Property That Needs Immediate Attention

14. Do you own or have any property that poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety? Or do you own any property that needs immediate attention?

For example, do you own perishable goods, or livestock that must be fed, or a building that needs urgent repairs?

- ❑ No
- ❑ Yes. What is the hazard? _____

_____

If immediate attention is needed, why is it needed? _____

_____

Where is the property? _____
Number Street

_____

_____ _____ _____
City State ZIP Code

Part 5: Explain Your Efforts to Receive a Briefing About Credit Counseling

15. Tell the court whether you have received briefing about credit counseling.

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

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

About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
You must check one:	*You must check one:*
❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.** Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.	❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.** Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.
❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.** Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.	❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.** Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.
❑ **I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.** To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case. Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy. If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed. Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.	❑ **I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.** To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case. Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy. If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed. Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.
❑ **I am not required to receive a briefing about credit counseling because of:** ❑ **Incapacity.** I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances. ❑ **Disability.** My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so. ❑ **Active duty.** I am currently on active military duty in a military combat zone. If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.	❑ **I am not required to receive a briefing about credit counseling because of:** ❑ **Incapacity.** I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances. ❑ **Disability.** My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so. ❑ **Active duty.** I am currently on active military duty in a military combat zone. If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

Part 6: Answer These Questions for Reporting Purposes

16. What kind of debts do you have?

16a. **Are your debts primarily consumer debts?** *Consumer debts* are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."

- ❑ No. Go to line 16b.
- ❑ Yes. Go to line 17.

16b. **Are your debts primarily business debts?** *Business debts* are debts that you incurred to obtain money for a business or investment or through the operation of the business or investment.

- ❑ No. Go to line 16c.
- ❑ Yes. Go to line 17.

16c. State the type of debts you owe that are not consumer debts or business debts.

_____

17. Are you filing under Chapter 7?

Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available for distribution to unsecured creditors?

- ❑ No. I am not filing under Chapter 7. Go to line 18.
- ❑ Yes. I am filing under Chapter 7. Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available to distribute to unsecured creditors?
  - ❑ No
  - ❑ Yes

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

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

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

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

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

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

Part 7: Sign Below

For you

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

If I have chosen to file under Chapter 7, I am aware that I may proceed, if eligible, under Chapter 7, 11,12, or 13 of title 11, United States Code. I understand the relief available under each chapter, and I choose to proceed under Chapter 7.

If no attorney represents me and I did not pay or agree to pay someone who is not an attorney to help me fill out this document, I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I understand making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

✘ _____
Signature of Debtor 1

Executed on _____
MM / DD / YYYY

✘ _____
Signature of Debtor 2

Executed on _____
MM / DD / YYYY

For your attorney, if you are represented by one

If you are not represented by an attorney, you do not need to file this page.

I, the attorney for the debtor(s) named in this petition, declare that I have informed the debtor(s) about eligibility to proceed under Chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each chapter for which the person is eligible. I also certify that I have delivered to the debtor(s) the notice required by 11 U.S.C. § 342(b) and, in a case in which § 707(b)(4)(D) applies, certify that I have no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

✘ _____ Date _____

Signature of Attorney for Debtor MM / DD / YYYY

_____

Printed name

_____

Firm name

_____

Number Street

_____

_____ _____ _____

City State ZIP Code

Contact phone _____ Email address _____

_____ _____

Bar number State

For you if you are filing this bankruptcy without an attorney

If you are represented by an attorney, you do not need to file this page.

The law allows you, as an individual, to represent yourself in bankruptcy court, but **you should understand that many people find it extremely difficult to represent themselves successfully. Because bankruptcy has long-term financial and legal consequences, you are strongly urged to hire a qualified attorney.**

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

You must list all your property and debts in the schedules that you are required to file with the court. Even if you plan to pay a particular debt outside of your bankruptcy, you must list that debt in your schedules. If you do not list a debt, the debt may not be discharged. If you do not list property or properly claim it as exempt, you may not be able to keep the property. The judge can also deny you a discharge of all your debts if you do something dishonest in your bankruptcy case, such as destroying or hiding property, falsifying records, or lying. Individual bankruptcy cases are randomly audited to determine if debtors have been accurate, truthful, and complete. **Bankruptcy fraud is a serious crime; you could be fined and imprisoned.**

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

Are you aware that filing for bankruptcy is a serious action with long-term financial and legal consequences?

- ❑ No
- ❑ Yes

Are you aware that bankruptcy fraud is a serious crime and that if your bankruptcy forms are inaccurate or incomplete, you could be fined or imprisoned?

- ❑ No
- ❑ Yes

Did you pay or agree to pay someone who is not an attorney to help you fill out your bankruptcy forms?

- ❑ No
- ❑ Yes. Name of Person_____.
  Attach *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119).

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

✘ _____	✘ _____
Signature of Debtor 1	Signature of Debtor 2
Date _____ MM / DD / YYYY	Date _____ MM / DD / YYYY
Contact phone _____	Contact phone _____
Cell phone _____	Cell phone _____
Email address _____	Email address _____

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ELIZABETH GIBSON, REPORTER

SUBJECT: USE OF ALTERNATIVE OFFICIAL FORMS IN THE THREE DISTRICTS WITH ELECTRONIC SELF-REPRESENTATION SYSTEM

DATE: APRIL 2, 2015

As the memorandum by Judge Ikuta and Scott Myers discusses, one issue affecting the choice of the effective date for the modernized forms is the impact the promulgation of the new forms could have on the electronic self-representation ("eSR") project currently underway in the bankruptcy courts of three districts—New Jersey, Central California, and New Mexico. Judge Ikuta and Mr. Myers explain that the eSR program is based on the existing Official Forms for opening a chapter 7 case and cannot be set up to work with the modernized forms until 2017. If the Committee decides that the modernized forms should otherwise go into effect in December 2015, a possible solution to the eSR problem would be to allow the three districts to continue to use the applicable current forms for eSR filers until December 2017. This memorandum discusses how that two-form solution could be accomplished.

Legal Authority

I am unaware of any precedent for the issuance of alternative Official Forms, but there does not appear to be any legal reason that the Judicial Conference could not do that.[1] Rule 9009 provides that "the Official Forms prescribed by the Judicial Conference of the United States shall be observed and used with alterations as may be appropriate." The original Committee Note to the rule explained the dual significance of that provision as follows:

[1] Several years ago the Committee approved the issuance of alternative Director's Forms for reaffirmation agreements. *See* Director's Forms B 240A and B 240A/B ALT. Those forms, however, are not obligatory.

> The rule continues the obligatory character of the Official Forms in the interest of facilitating the processing of the paperwork of bankruptcy administration, but provides that Official Forms will be prescribed by the Judicial Conference of the United States. The Supreme Court and the Congress will thus be relieved of the burden of considering the large number of complex forms used in bankruptcy practice.

The rule therefore authorizes the Judicial Conference to prescribe obligatory Official Forms, but it does not restrict that authority to issuing only a single set of forms.

Use of Different Official Forms for eSR Filers

A *pro se* debtor using the eSR system for initiating a chapter 7 case uses an on-line program that elicits information used to populate the following existing forms (referred to collectively by the courts as the "electronic bankruptcy package"):

- Official Form 1 (Petition);
- Official Forms 6A-J and summaries (Schedules);
- Official Form 7 (Statement of Financial Affairs);
- Official Form 8 (Individual Debtor's Statement of Intention);
- Official Form22A-1, and if applicable Official Forms 22A-1Supp and 22A-2 (Means Test forms); and
- a mailing matrix as prescribed by local rule or form.

The debtor does not see those forms when supplying the required information electronically. Instead, the debtor answers a series of questions, and completed forms are produced at the end of the process. Hard copies of only the signature pages must be later presented to the court for filing (within a specified number of days after submitting the electronic bankruptcy package).

Because of the almost invisible use of the case-opening forms, the continued use of existing forms for eSR filings should not cause undue confusion in the three bankruptcy courts after the modernized forms go into effect generally. The existing forms will not be posted on the

courts' websites or available in paper form in the clerk's office. Non-eSR chapter 7 debtors, whether represented or *pro se*, will have official access only to the modernized forms.

How to Implement the Two-Form Solution

If the Committee decides to seek final approval of the modernized forms with an effective date of December 1, 2015, it will need to seek a carve-out for the existing forms used in the eSR project in the three districts that have implemented it. The continuation of Official Form status for the applicable forms will need to be expressed in the Judicial Conference's approval of the package of modernized forms and reflected in the report of its September 2015 meeting. To avoid later confusion, the statement should state precisely the scope of the carve-out. The following is a suggested statement of the eSR exception:

> Notwithstanding the approval of new Bankruptcy Official Forms to take effect on December 1, 2015, the following forms in effect on November 30, 2015, will remain Official Forms until December 1, 2017, in the United States Bankruptcy Courts for the Central District of California, the District of New Jersey, and the District of New Mexico, only for use by *pro se* debtors who initiate a chapter 7 case by using the court's Electronic Self-Representation (eSR) system: Official Form 1, Official Forms 6A-J and summaries, Official Form 7; Official Form 8; and Official Forms 22A-1, 22A-1Supp, and 22A-2.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

SUBJECT: COMMENTS SUBMITTED ON PROPOSED MODERNIZED FORMS PUBLISHED FOR PUBLIC COMMENT IN AUGUST 2014

DATE: MARCH 31, 2015

At the request of the Advisory Committee, the Standing Committee last summer published for comment the last major group of Official Forms produced by the Forms Modernization Project ("FMP"). This group of forms consists primarily of case opening forms for non-individual debtor cases, chapter 11-related forms, the proof of claim form and supplements, and orders and court notices for use in all types of cases. Also published were two revised individual debtor forms and an announcement of the proposed abrogation of two Official Forms.

The response to the publication of this set of forms was milder than the response to the previously published individual debtor forms. Eleven comments were submitted,[1] ranging in length from one paragraph addressing a single form to 20 pages addressing multiple forms. Almost all of the comments made very specific suggestions for changes to wording, format, or substance, rather than questioning the wisdom of the project or its overall results.

After all of the comments were received, the Subcommittee chair—Judge Dow—designated a small group of Subcommittee members to undertake the initial review of the comments. Aided by former Committee member and FMP chair Judge Elizabeth Perris, the

[1] This count does not include comments submitted only on the mortgage proof of claim attachment (Official Form 410A), the chapter 15 petition (Official Form 401), the chapter 13 plan form (Official Form 113), or previously published individual debtor forms (Official Forms 106A/B and 106E/F). Those comments are addressed elsewhere on the agenda in separate memoranda.

small group considered and proposed a response to each comment. The full Subcommittee then considered the group's recommendations during a conference call on March 5. **The Subcommittee now recommends that the Advisory Committee approve all but three of the modernized forms that were published last summer, as modified by the changes that are noted in this memorandum.** The Subcommittee does not believe that the proposed changes require republication of any of the forms.

Because of the very detailed and generally uncontroversial nature of most of the comments, they are summarized in a chart located in Appendix B. This memorandum lists all of the changes that the Subcommittee recommends be made to the published forms. It also discusses the comments that prompted those changes, as well as additional ones that, while not acted on by the Subcommittee, are deemed appropriate for full Committee discussion. Committee members, however, are invited to identify any other comments they would like to have discussed at the meeting.

The Published Forms

The modernized forms that were published for public comment in August 2014 and are the subject of this memorandum are the following:

*11A	General Power of Attorney (Abrogated)
*11B	Special Power of Attorney (Abrogated)
*106J	Schedule J: Your Expenses
*106J-2	Schedule J-2: Expenses for Separate Household of Debtor 2
201	Voluntary Petition for Non-Individuals Filing for Bankruptcy
202	Declaration Under Penalty of Perjury for Non-Individual Debtors
204	Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders
205	Involuntary Petition Against a Non-Individual
206Sum	Summary of Assets and Liabilities for Non-Individuals
206A/B	Schedule A/B: Assets—Real and Personal Property
206D	Schedule D: Creditors Who Have Claims Secured by Property
206E/F	Schedule E/F: Creditors Who Have Unsecured Claims
206G	Schedule G: Executory Contracts and Unexpired Leases

206H	Schedule H: Codebtors
*207	Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy
309A	Notice of Chapter 7 Bankruptcy Case—No Proof of Claim Deadline (For Individuals or Joint Debtors)
309B	Notice of Chapter 7 Bankruptcy Case—Proof of Claim Deadline Set (For Individuals or Joint Debtors)
309C	Notice of Chapter 7 Bankruptcy Case—No Proof of Claim Deadline (For Corporations or Partnerships)
309D	Notice of Chapter 7 Bankruptcy Case—Proof of Claim Deadline Set (For Corporations or Partnerships)
309E	Notice of Chapter 11 Bankruptcy Case (For Individuals or Joint Debtors)
309F	Notice of Chapter 11 Bankruptcy Case (For Corporations or Partnerships)
309G	Notice of Chapter 12 Bankruptcy Case (For Individuals or Joint Debtors)
309H	Notice of Chapter 12 Bankruptcy Case (For Corporations or Partnerships)
309I	Notice of Chapter 13 Bankruptcy Case
312	Order and Notice for Hearing on Disclosure Statement
313	Order Approving Disclosure Statement and Fixing Time for Filing Acceptances and Rejections of Plan, Combined With Notice Thereof
*314	Class [ ] Ballot for Accepting or Rejecting Plan of Reorganization
315	Order Confirming Plan
410	Proof of Claim
410S1	Notice of Mortgage Payment Change
410S2	Notice of Postpetition Mortgage Fees, Expenses, and Charges
416A	Caption (Full)
416B	Caption (Short Title)
416D	Caption for Use in Adversary Proceeding
*424	Certification to Court of Appeals by All Parties

An instruction booklet for non-individuals was also published for comment, but it does not need to go through the forms promulgation process.

No comments were submitted regarding the forms marked by an asterisk, and the Subcommittee recommends that the Committee approve them as published. Discussed below are the forms on which comments were submitted.

General Comments on the Published Forms

1. The National Conference of Bankruptcy Judges ("NCBJ") (0062) commented that the titles of all of the forms numbered in the 200s should include the word "non-individual" so that they will not be confused with forms to be used by individuals.

The Subcommittee noted that while many of the 200-numbered forms do include "non-individual" in the title, the schedules do not. To avoid making the titles of those forms unwieldy, the Subcommittee decided that they should not be revised. It concluded that users are not likely to confuse the individual and non-individual forms due to the different form numbers for the two sets of forms and because all of the non-individual forms will be packaged together in software, in paper copy booklets, and on the U.S. Courts' website.

2. Raymond Obuchowski on behalf of the National Association of Bankruptcy Trustees (0123) commented generally on the Forms Modernization Project. He expressed disappointment that it now appears that electronic data from the new forms will not be made available to users outside the judiciary. The prospect for access to this data was a selling point for the modernized forms at the outset, he said, and the ability to produce customized reports was explained as offsetting the necessity of dealing with longer forms.

The Subcommittee noted that this comment raised policy issues that are outside the control of the Advisory Committee and concluded that, even without providing access to electronic data, the new forms provide sufficient benefits to users to outweigh the inconveniences of adapting to them.

Official Form 201—Voluntary Petition for Non-Individuals Filing for Bankruptcy

The Subcommittee recommends that the following changes be made to the published form:

- In Question 7, delete the request for NAICS 6-digit code.
- In Question 8, delete the first checkbox under chapter 11, which states, "Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates)

are less than $2,490,925 (amount subject to adjustment on 4/01/16 and every 3 years after that)."

- In Question 11, reword the inquiry about venue to read, "**Why is the case filed in *this district*?**"

Comments

1. Ryan Johnson (0084), Clerk of the Bankruptcy Court for the Northern District of West Virginia, commented that there is no reason to ask debtors to list their NAICS (North American Industry Classification System) code on the petition and that the requirement will lead to confusion and incorrect information.

The Subcommittee noted that this information is not currently sought and was unable to identify any reason for requesting it. It therefore voted to recommend that this question be removed.

After the Subcommittee's conference call, communications between Beth Wiggins (FJC) and Scott Myers revealed the reason that the request for the NAICS code was added to the non-individual debtor petition. Ms. Wiggins explained that this information would assist the Administrative Office of the Courts ("AO") in identifying debtors that are financial institutions— information that the AO needs in order to fulfill its reporting duty under the Dodd Frank Act. She suggested that other judicial reasons might arise for knowing about the industrial classification of debtors. Ms. Wiggins said, however, that it might be preferable to ask for only a four-digit code, rather than six-digit. That somewhat broader classification would provide sufficient information for AO statisticians, might be easier for unsophisticated debtors to select accurately, and is preferable to the AO programmers.

2. Ryan Johnson (0084) and NCBJ (0062) commented that it seems unnecessary to ask a chapter 11 debtor to indicate (a) whether its aggregate noncontingent liquidated debts are less than $2,490,925 and (b) whether it is a small business debtor as defined in § 101(51D) of the Code, since the specified debt limit is one of the requirements for being a small business debtor. Mr. Johnson said that the inclusion of both checkboxes on the current petition causes confusion.

The Subcommittee agreed that the first checkbox is subsumed by the second and should be removed.

Ms. Wiggins explained the reason for asking both questions in her subsequent email correspondence with Mr. Myers. The AO has been asked by Congress how many debtors satisfy the debt limit but do not identify themselves as small business debtors (either mistakenly or because they do not meet the small business definition for other reasons). As a result, the AO plans to collect data on both questions.

3. Professor Anne Lawton (Michigan State Univ. College of Law) (0122) commented on the petition and several other forms as they apply to small business debtors. She said that empirical evidence shows that small business debtors do a poor job of self-reporting their status. She suggested several changes to Official Forms 201, 206Sum, 206D, and 206E/F that would "walk[] debtor's counsel step by step through the process for determining small business status."

The Subcommittee thought that Professor Lawton's proposals should be treated as a new suggestion that could be more fully considered in the future by either the Business or Forms Subcommittee.

4. Ryan Johnson (0084) objected to the question about venue, which in the published form was worded, "Why is venue proper in *this district?*" He said that improper venue can be waived and that his district has a significant number of chapter 7 debtors who live outside of

West Virginia. They would not be able to check either box on the form (each of which states a proper basis for venue).

The Subcommittee concluded that the question is valid and noted that it is asked on the current petition. In response to Mr. Johnson's comment about intentional filings in an improper district, the Subcommittee recommends that the question be reworded slightly: "Why is ~~venue proper~~ the case filed in *this district?"* The checkboxes will remain the same, so a debtor filing in a district in which venue is improper would not check either box. That response would put others on notice that venue is not proper; they could then decide whether to seek transfer of the case on that basis.

Official Form 202—Declaration Under Penalty of Perjury for Non-Individual Debtors

The Subcommittee recommends that the following change be made to the published form:

- Add a checkbox for Official Form 204—Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders.

Comments

Gary Streeting (0067) submitted the only comment on this form. He pointed out that Official Form 204 no longer has a space for the debtor's declaration that the information is true and correct. Because that form is not specifically listed on Form 202, he thought debtors would be confused about whether they are required to make such a declaration. He suggested that Form 204 be included as a separate item on Form 202, rather than leaving it up to the debtor to include it under "Other documents that require a declaration." The Subcommittee agreed.

Official Form 204—Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders

The Subcommittee recommends that this form be approved as published.

Official Form 205—Involuntary Petition Against a Non-Individual

The Subcommittee recommends that this form be approved as published.

Official Form 206Sum—Summary of Assets and Liabilities for Non-Individuals

The Subcommittee recommends that this form be approved as published.

Official Form 206A/B—Schedule A/B: Assets – Real and Personal Property

The Subcommittee recommends that the following changes be made to the published form:

- In Part 5, Question 24, delete "Is any of the property listed in Part 5 subject to or part of a possible PACA claim?" and the two checkboxes following that inquiry.
- Change the title of Part 6 to "Farming and Fishing-Related Assets."
- Change Question 27 to "Does the debtor own any farming or fishing-related assets?"
- Change line 32 to "Other farming or fishing-related assets not already listed in Part 6."
- Change line 85 to "Farming and Fishing-Related Assets."
- Add the following instruction to Question 70: "Include all interests [with a positive net value] in executory contracts and unexpired leases not previously included on this form."

Comments

NCBJ (0062) was the only commenter on Official Form 206A/B. Its comment addressed several provisions for which the Subcommittee recommends changes to the published form.

1. NCBJ suggested that the reference to "a possible PACA claim" in Question 24 be clarified by adding a citation to the PACA statute (Perishable Agricultural Commodities Act).

The Subcommittee concluded that there is no reason to ask in this schedule whether any of the debtor's property is subject to a PACA claim. The purpose of the inquiry in Question 24

is just to determine whether any property needs immediate attention because of its perishable nature. The Subcommittee therefore recommends that the inquiry about PACA claims be deleted.

In discussions after the Subcommittee's conference call, Judge Perris suggested that Question 24 should be removed in its entirety. There is no reason, she said, for Schedule A/B to ask about perishable assets because Question 12 on the petition (Form 201) asks whether the debtor owns or has possession of any property that needs immediate attention. The petition then poses follow-up questions about the reason for the need, the location of the property, and whether it is insured. Similar questions are included in the individual petition (Form 101), and Form 106A/B does not ask about perishable assets.

2. NCBJ pointed out that Part 6 is labeled "Agricultural assets," but one of the questions (31) asks about fishing assets. The Subcommittee agreed with the comment that the description of the category should be expanded to include "fishing-related assets."

3. NCBJ commented that Schedule G (Executory Contracts and Unexpired Leases) and its instructions indicate that executory contracts and unexpired leases with a positive net value should also be listed on Schedule A/B, but there is no specific category on Schedule A/B for doing so. It suggested that a new category be added to Schedule A/B for that purpose.

The Subcommittee decided that rather than adding a new category to the form, an instruction should be added to Question 70 (other assets not yet reported) to elicit information about executory contracts and unexpired leases that may be valuable to the estate.

Official Form 206D—Schedule D: Creditors Who Have Claims Secured by Property

The Subcommittee recommends that the following changes be made to the published form:

- Change the heading of Column A to read, "**Amount of claim**
  Do not deduct the value of collateral"
- Change the heading of Column B to read, "**Value of collateral that supports this claim**."
- For each claim, remove the fourth checkbox that reads, "Liquidated and neither contingent nor disputed."

Comments

1. NCBJ (0062) commented that the statement in Column A—Do not deduct the value of the lien—is unclear. It suggested labeling the column, "Total amount of claim" without any further instruction.

The Subcommittee recommends that this problem be addressed by using the same headings for columns A and B as are used on Schedule D for individuals (Official Form 106D).

2. NCBJ commented that the fourth checkbox (liquidated and neither contingent nor disputed) is unnecessary. If a debtor does not check any of the first three checkboxes (contingent – unliquidated – disputed), the claim must be liquidated, noncontingent, and undisputed.

The Subcommittee agreed that there is no reason to have the debtor affirmatively indicate what is otherwise implied by the failure to check any of the other three boxes and that the fourth checkbox should be removed.

3. Professor Anne Lawton (0122) commented that the instructions for Form 206D refer to a column C that would show the unsecured portion of an undersecured creditor's claim. That column does not appear on the form. She suggested that it be added.

The Subcommittee determined that this instruction was derived from the instructions for the individual debtor version of Schedule D (Official Form 106D). Column C was removed from Form 206D to simplify the form. The column is needed on the individual debtor version of

the form for a congressionally mandated report about individual debtors. Because the same information is not needed for non-individual debtors, the Subcommittee recommends that column C not be added to Form 206D and that the reference in the instructions to column C be removed.

Official Form 206E/F—Schedule E/F: Creditors Who Have Unsecured Claims

The Subcommittee recommends that the following changes be made to the published form:

- Replace the instructions on the form for Part 3 (line 5) with the following language: "**List in alphabetical order any others who must be notified for a debt already listed in Parts 1 and 2. Examples of entities that may be listed are collection agencies, assignees of claims listed above, and attorneys for unsecured creditors. If no others need to be notified for the debts listed in Parts 1 and 2, do not fill out or submit this page. If additional pages are needed, copy this page,**"
- Change the first sentence in line 2 to read, "**List in alphabetical order all creditors who have unsecured claims that are entitled to priority, in whole or in part.**"

Comments

NCBJ (0062) was the only commenter on Official Form 206E/F. Its comment addressed two provisions for which the Subcommittee recommends changes to the published form.

1. NCBJ noted a discrepancy between the instructions for Part 2 of Schedule D and for the parallel part (Part 3) of Schedule E/F. Schedule D says not to submit that part if there are no others that need to be notified, whereas Schedule E/F requires checking a "no" box and submitting that part if no others need to be notified.

The Subcommittee agreed that the two forms should be consistent and recommends changing the instructions for Schedule E/F to conform to Schedule D's instructions.

2. NCBJ made an editorial suggestion for the instruction in line 2, which the Subcommittee accepted.

Official Form 206G—Schedule G: Executory Contracts and Unexpired Leases

The Subcommittee recommends that this form be approved as published.

Official Form 206H—Schedule H: Codebtors

The Subcommittee recommends that this form be approved as published.

Official Forms 309A-I

The Subcommittee recommends that the following change be made to the published versions of all of the 309 forms (Bankruptcy Case Commencement Notices):

- Edit the second bolded line at the beginning of all the forms as follows: "**This notice has important information about the case for creditors, debtors, and trustees, including information regarding the meeting of creditors and deadlines. Read ~~it~~ both pages carefully."** [This will hereinafter be referred to as the macro change.]

Comments

1. Scott Ford, on behalf of the Bankruptcy Clerks Advisory Group, (0088) commented that "Meeting of Creditors and Deadlines" should be reinserted into the title of the 309 forms so that those important dates will not be overlooked. Similarly, NCBJ (0062) commented that the deadlines should be stated prominently on the first page of the forms, rather than on the second page.

The Subcommittee noted that the new format of these notices is clearer than the existing format and makes it easier for a reader to spot important information. It recommends, however,

that greater attention be called to the deadlines by referring to the meeting of creditors and deadlines in bold at the beginning of the form and pointing out that the form consists of two pages.

2. Ryan Johnson (0084) commented that under proposed Rule 9009, it is unclear whether a clerk's office could include additional deadlines in these notices. He stated that currently his district (Bankr. N.D. W. Va.) adds a deadline for objecting to venue.

The Subcommittee concluded that this comment really addressed the proposed amendments to Rule 9009, rather than Official Forms 309. It suggests that this issue be considered as part of the discussion of Rule 9009's impact outside the context of chapter 13 plans.

Official Form 309A—Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline

(For Individuals or Joint Debtors)

The Subcommittee recommends no changes to the published form other than the macro change.

Official Form 309B—Notice of Chapter 7 Bankruptcy Case – Proof of Claim Deadline Set

(For Individuals or Joint Debtors)

The Subcommittee recommends that the following change be made to the published form, in addition to the macro change:

- In item 9 under "Deadlines for filing proof of claim," edit the second sentence as follows: "~~If a proof of claim form is not included with this notice, obtain one~~ A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office."

Comments

Matthew T. Loughney, on behalf of the Bankruptcy Noticing Working Group, (0081) commented that the Bankruptcy Noticing Center no longer sends out proof of claim forms with this notice. In light of that information, the Subcommittee agreed that the sentence in question should be revised.

Official Form 309C—Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline (For Corporations or Partnerships)

The Subcommittee recommends no changes to the published form other than the macro change.

Official Form 309D—Notice of Chapter 7 Bankruptcy Case – Proof of Claim Deadline Set (For Corporations or Partnerships)

The Subcommittee recommends that the following change be made to the published form, in addition to the macro change:

- In item 8, edit the second sentence after the deadlines as follows: "~~If a proof of claim form is not included with this notice, obtain one~~ A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office."

Official Form 309E—Notice of a Chapter 11 Bankruptcy Case (For Individuals or Joint Debtors)

The Subcommittee recommends that the following change be made to the published form, in addition to the macro change:

- In item 7 under "Deadline for filing proof of claim," edit the second sentence as follows: "~~If a proof of claim form is not included with this notice, obtain one~~ A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office."

Official Form 309F—Notice of Chapter 11 Bankruptcy Case (For Corporations and Partnerships)

The Subcommittee recommends that the following change be made to the published form, in addition to the macro change:

- In item 7 under "Deadline for filing proof of claim," edit the second sentence as follows: "~~If a proof of claim form is not included with this notice, obtain one~~ A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office."

Comments

Anne Small, on behalf of the Securities and Exchange Commission's Office of General Counsel, (0115) commented that Official Form 309F should be revised to state that a party seeking an exception under Section 1141(d)(6) from the discharge of a debt "may be required to" start a judicial proceeding.

The Subcommittee noted that the Committee addressed this issue last fall in response to Judge Bernstein's suggestion and proposed an amendment to the form. Elsewhere on the agenda for this meeting, the Business Subcommittee will discuss the timing of publication of the proposed amendment.

Official Form 309G—Notice of Chapter 12 Bankruptcy Case (For Individuals or Joint Debtors)

The Subcommittee recommends that the following change be made to the published form, in addition to the macro change:

- In item 8 under "Deadlines for filing proof of claim," edit the second sentence as follows: "~~If a proof of claim form is not included with this notice, obtain one~~ A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office."

Official Form 309H—Notice of Chapter 12 Bankruptcy Case (For Corporations or Partnerships)

The Subcommittee recommends that the following change be made to the published form, in addition to the macro change:

- In item 10, edit the second sentence after the deadlines as follows: "~~If a proof of claim form is not included with this notice, obtain one~~ A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office."

Official Form 309I—Notice of Chapter 13 Bankruptcy Case

The Subcommittee recommends that the following change be made to the published form, in addition to the macro change:

- In item 8 under "Deadlines for filing proof of claim," edit the second sentence as follows: "~~If a proof of claim form is not included with this notice, obtain one~~ A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office."

Official Form 312—Order and Notice for Hearing on Disclosure Statement

Official Form 313—Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof

Official Form 315—Order Confirming Plan

The Subcommittee recommends that these forms be approved as published, but it recommends that the instructions for these forms indicate that they may be altered by the issuing judge.

Comments

NCBJ (0062) suggested that these three forms be made Director's Forms rather than Official Forms. It stated that there is no need for uniformity in appearance or content of court

orders and expressed concern that proposed Rule 9009 would prevent adjustments to the forms to meet the needs of particular cases.

The Subcommittee noted that these forms merely modernized existing Official Forms 12, 13, and 15. Official Form 315 is called for by Rule 3020(c)(1), which requires an order of confirmation to conform to the appropriate Official Form. In response to the concerns raised by NCBJ, the Subcommittee recommends that the national instructions authorize modification of these forms. Such an authorization would allow modification consistent with proposed Rule 9009.

Official Form 410—Proof of Claim

The Subcommittee recommends that the following changes be made to the published form:

- In the instruction at the beginning of the form, edit the second sentence of the first paragraph as follows: "~~**Use this form to make**~~ **This form is for making a claim for payment in a bankruptcy case.**"
- In the same instructions, edit the first sentence of the second paragraph as follows: "~~The law requires that f~~Filers **must leave out or redact** information that is entitled to privacy on this form or on any attached documents."
- In Question 7, delete "**For leases state only the amount of default**."
- In Question 8, edit the instruction about supporting documents as follows: "Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c)."
- Change Question 11 to "**Is this claim subject to a right of setoff**?"

Comments

1. NCBJ (0062) made several editorial suggestions that the Subcommittee accepted.

2. NCBJ questioned the basis for the instruction in Question 7 to state only the amount of default for lease claims. It said that, like most other claims, a claim based on a lease could include future amounts due. It also noted that the response to this question would duplicate the response to Question 10, which asks for the amount required to cure any default on a lease as of the date of the petition.

The Subcommittee agreed that the instruction in Question 7 should be deleted.

3. Ryan Johnson (0084) commented that the form should not suggest that claimants must use a paper version of this form to file proofs of claim because many bankruptcy courts allow filing proofs of claim through their websites. Although the Subcommittee thought that the Official Form must be used even if it is filed electronically, it recommends rewording the statement to explain the purpose of the form without suggesting that electronic filing is not permitted.

Official Form 410S1—Notice of Mortgage Payment Change

The Subcommittee recommends that the following changes be made to the published form:

- Change the first sentence of the instruction at the beginning of the form to read, "**If the debtor's plan provides for payment of postpetition contractual installments on your claim secured by a security interest in the debtor's principal residence, you must use this form to give notice of any changes in the installment payment amount**."
- In Part 4, delete "(Attach copy of power of attorney, if any.)" after the second checkbox.

Comments

1. NCBJ (0062) pointed out that the instruction at the beginning of the form was not revised to conform with the proposed amendment to Rule 3002.1(a). The Subcommittee agreed and recommends that it be revised to use the rule's language about when notice of a payment change must be given.

2. Hilary Bonial of Buckley Madole, P.C. (0105) commented that the proof of claim form no longer requires a creditor's agent to attach a power of attorney and suggested that it should not be required for this form or for Official Form 410S2.

The Subcommittee recognized that Rule 9010(c) excepts the execution and filing of a proof of claim from the general requirement that the authority of an agent to represent a creditor be evidenced by a power of attorney. The Subcommittee concluded that supplements to a proof of claim fall within that exception and therefore the direction to attach a power of attorney, if any, should be removed.

Official Form 410S2—Notice of Postpetition Mortgage Fees, Expenses, and Charges

The Subcommittee recommends that the following changes be made to the published form:

- Change the first sentence of the instruction at the beginning of the form to read, "**If the debtor's plan provides for payment of postpetition contractual installments on your claim secured by a security interest in the debtor's principal residence, you must use this form to give notice of any fees, expenses, and charges incurred after the bankruptcy filing that you assert are recoverable against the debtor or the debtor's principal residence**."
- In Part 2, delete "(Attach copy of power of attorney, if any.)" after the second checkbox.

Comments

NCBJ and Hilary Bonial made comments about this form similar to their comments on Form 410S1.

Official Forms 416A, 416B, 416D—Captions

The Subcommittee recommends that the new caption forms be withdrawn and that the current caption forms (Official Forms 16A, 16B, 16D) be renumbered as Official Forms 416A, 416B, and 416D.

Comments

Both NCBJ (0062) and the Pennsylvania Bar Association (0091) opposed adoption of the new caption forms. NCBJ commented that it did not perceive a need for altering a format that has been used by litigants and the courts for decades and adopting a format that differs from the caption format used in the district courts and courts of appeal. The Pennsylvania Bar Association stated that while the Forms Modernization Project is to be commended, changing the style of the caption from a standard legal caption to a form-based caption denigrates the dignity of the Bankruptcy Court and suggests that its filings are purely administrative in nature.

The Subcommittee agreed with these objections.

Instructions

Comments were submitted on the Instructions for Proof of Claim, Instructions for Mortgage Proof of Claim Attachment, and Instructions for Bankruptcy Forms for Non-Individuals. NCBJ (0062) repeated the comment that it made regarding the Instructions for Bankruptcy Forms for Individuals—that the instructions are inappropriate because they give legal advice and attempt to distill bankruptcy law into something a lay person can understand. The Advisory Committee was not persuaded by this criticism of the individual form instructions,

and the Subcommittee recommends that that this objection again be rejected. Despite its overall criticism of the instructions, NCBJ provided useful editorial and substantive comments, as did other commenters, and the Subcommittee recommends that a number of them be accepted.

The comments on the three sets of instructions and the Subcommittee's recommendations are included in the chart in Appendix B. The instructions do not have to be approved by the Standing Committee or the Judicial Conference. Typically Official Form instructions are drafted by the AO with input only from the Advisory Committee. These instructions, however, were published for public comment along with the modernized forms in order to provide additional explanations about the forms and to obtain broad input on these more-substantial-than-normal instructions.

All of the comments on the instructions were reviewed by the Subcommittee. Any comments or recommendations on the instructions that Committee members want to discuss will be placed on the discussion agenda at Pasadena meeting.

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MEMORANDUM

TO: Advisory Committee on Bankruptcy Rules

FROM: Bridget Healy

SUBJECT: Additional Comments and Suggestions for the Bankruptcy Forms

DATE: March 18, 2015

Several comments submitted in connection with the published non-individual debtor bankruptcy forms included suggestions for changes to the individual debtor bankruptcy forms. In addition, the Rules Committee Support Office (RCSO) received informal suggestions for changes to the individual debtor bankruptcy forms from software vendors. Finally, a suggestion was received by RSCO staff from a clerk working with the Electronic Self-Representation project for a change to several of the Form 122s (the means test forms). The comments and suggestions are detailed below, along with a recommended course of action for each comment or suggestion.

1. Some comments were submitted in connection with the published non-individual debtor bankruptcy forms. Each of the comments is copied below. These comments were discussed by the Forms Subcommittee and its recommendations are included at the end of each comment.

    a. Walter Oney, comment #55: There is a logical inconsistency and ambiguity in the proposed 106A/B form. The instructions for each part ask for legal and equitable interests, which would include the value of leasehold interests but not the value of the leased property. The instructions for Part 2 (vehicles) ask the debtor to list leased vehicles. Yet, the check boxes in parts 1 and 2 do not include "owned by someone else only" as an option. Furthermore, I believe that most pro-se debtors and many attorneys will not understand the relationship between Schedule A/B, Schedule G, and line 23 of the SOFA (proposed form 107). **The Forms Subcommittee recommends changing the wording of the question about who the owner of the property is to "Who has an interest in the property?"** The revised form is included as part of Appendix C.

    b. The National Conference of Bankruptcy Judges (NCBJ), comment #62: As part of the information to be disclosed regarding creditors and their claims, 206D adds another category to the traditional "contingent, unliquidated, disputed" inquiry. There is a 4th box for "Liquidated and neither contingent nor disputed." The NCBJ does not see the purpose of the 4th box. The instruction already says check all boxes that apply. Presumably, a debtor checking only the "liquidated" box is representing that it is neither contingent nor disputed. **While this comment refers to Form 206D, the same issue exists in Form 106D, and the Forms Subcommittee recommends making the edit to Form 106D as well, and to**

remove the fourth box. The NCBJ made the same comment with respect to Form 206E/F, and it similarly applies to Form 106E/F. **The Forms Subcommittee recommends making the same change to Form 106E/F.** Both of the revised forms are included in Appendix C.

c. Gary Streeting, comment #66: There is an item on individual Schedule E/F that I wanted to point out and suggest for revision. I understand that it was out for comment last year, but I think that it really needs to be addressed. We came across it after reviewing the non-individual E/F and noticing one of the differences. The individual E/F has an instruction below the caption that reads "If you have no information to report in a Part, do not file that Part." This is a problem. First of all, Part 1 is on the same page as the caption, so it would be hard not to file it and simply file Part 2. Second, both Part 1 and Part 2 have check boxes to indicate whether the debtor has any claims in that category. If they have no claims and are not filing that Part, why have the check box? Third, Part 2 instructs the debtor who checks "No" to submit the form to the court. This contradicts the instruction not to file it. Finally, going by the instruction just below the caption to not file a Part if the debtor has no information to report in that part, the debtor would apparently not file Schedule E/F if the debtor has no information to report in Part 1 and Part 2 (if this is not the intent, then this is very misleading). If there is a continued 341 meeting that is not concluded until after 45 days, and it is determined that the debtor should have reported something in Part 1 or 2, the debtor would be subject to the automatic dismissal provision of Sec. 521(i). The debtor would not be filing an amended schedule since the debtor did not file the schedule in the first place. This can all be avoided by simply removing the one sentence instructing the debtor not to file a Part if there is no information to report in that Part. The best thing to do would be to have the debtor simply check the "No" box in that part indicating that there is no information to report in that part and filing the form. This instruction is not on the non-individual E/F. **The Forms Subcommittee recommends accepting the comment and eliminating the instruction,** and the revised Form 106E/F is included in Appendix C.

d. NCBJ, comment #62: There is a discrepancy between Schedule D and F with respect to the instruction regarding notification of persons other than the holder of a particular claim (e.g., listing not only the creditor, but the creditor's attorney). In Schedule D, the form states, "If no others need to be notified for the debts listed in Part 1, do not fill out or submit this page. If additional pages are needed, copy this page." In Schedule F, the form asks, "Does the debtor want to notify additional parties about the claims listed in Parts 1 and 2 or for some other reason?" The two forms should be consistent. The NCBJ suggests using the Schedule F language. **As with item B, this comment was filed in connection with Form 206E/F, but the same issue exists on Form 106E/F. Therefore, the Forms Subcommittee recommends that the change be made on Form 106E/F and that the language from Form 106D be used on both forms.** The revised form is included in Appendix C.

2. Several comments and suggestions were submitted informally to RCSO staff by software vendors. Only the first of these items is a comment that staff recommends should be accepted and the change made to the form. Staff recommends that the remainder be deemed suggestions to be considered by the Forms Subcommittee in the future.

    a. A suggestion was made that the Committee Note for Form 107 has an incorrect reference to Form 106F in Part 1. The reference should be changed to 106H. **RCSO staff recommends that this proofreading edit be made, and the form reference changes to Form 106H,** and the revised Committee Note is included in Appendix C, along with Form 107 for reference.

    b. A suggestion was made to add an instruction to choose one of the business types on Form 101, Question 12. **RCSO staff recommends that this be considered a suggestion to be taken up by the Forms Subcommittee at a later date.**

    c. A suggestion was made to add ownership categories to additional question on Form 106A/B (beyond questions 1-5). **RCSO staff recommends that this be considered a suggestion to be taken up by the Forms Subcommittee at a later date.**

    d. A suggestion was made to reverse the order of lines 2 and 3 on Form 106C. **RCSO staff recommends that this be considered a suggestion to be taken up by the Forms Subcommittee at a later date.**

    e. A suggestion was made to add a line for a creditor's name (similar to Form 206H) on Form 106H and to remove line number references on the form. **RCSO staff recommends that this be considered a suggestion to be taken up by the Forms Subcommittee at a later date.**

3. One of the members of the group working on the Electronic Self-Representation project ("eSR" formerly known as the Pro Se Pathfinder project) suggested that an additional worksheet space be added to Questions 5 and 6 on Forms 122A-1, B, and C-1 for calculations by a second debtor, if applicable. **RCSO staff recommends that the worksheet space be added, and the revised forms are included in Appendix C.**

4. One of the members of group working on eSR also suggested a change to an instruction included on each question for Part 1 of Official Form 106A/B. In Part 1 the debtor must separately list real property, and describe that property by picking from a list of eight options, such as "Single-family home", "Land", or "Other." The eSR member suggested that the instruction to "Check all that apply" may be confusing given the many options, such as "Land" could be checked in every

circumstance. **RCSO staff agrees, and recommends that the instruction be changed to "Check best description."**

TAB 6C(1)

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

RE: COMMENTS SUBMITTED ON PROPOSED AMENDMENTS TO OFFICIAL FORM 410A (MORTGAGE PROOF OF CLAIM ATTACHMENT)

DATE: MARCH 24, 2015

Official Form 410A (currently Form 10A) is the Mortgage Proof of Claim Attachment. In an individual debtor case, a creditor that asserts a security interest in the debtor's principal residence must file the form with its proof of claim. The current form requires a statement of the principal and interest due as of the petition date; a statement of prepetition fees, expenses, and charges that remain unpaid; and a statement of the amount necessary to cure any default as of the petition date. The revised form that was published for public comment last August would replace the existing form with one that requires a mortgage claimant to provide a loan payment history and other information about the mortgage claim, including calculations of the claim and the arrearage amounts. The revised form was drafted by a Mortgage Forms Working Group that consisted of several members of the Committee, the Reporter, an invited bankruptcy judge, a chapter 13 trustee, and an attorney for a mortgage lender and servicer. The Advisory Committee unanimously approved it for publication at the spring 2014 meeting.

Six comments were submitted on Form 410A or its instructions. They were reviewed initially by a subset of the Subcommittee and then by the entire Subcommittee during a conference call on March 5. **The Subcommittee recommends that Official Form 410A be approved as published and that some minor changes, discussed below, be made to the form's instructions.**

The Comments and the Subcommittee's Recommended Responses

1. **0007 – Laura Faulkner.** An exception to the loan history requirement should be made for debtors who file proofs of claim on behalf of mortgagees. Debtors will not have access to the loan history required by Official Form 410A.

The Subcommittee considered this comment to be a suggestion for an amendment to Rule 3001(c)(2)(C) ("If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim."), rather than a comment on the proposed Attachment A. As such, the Subcommittee recommends that the Committee refer it to the Subcommittee on Consumer Issues for future consideration.

2. **0062 – National Conference of Bankruptcy Judges.** The NCBJ suggested a wording change to the instruction about information required in Part 1, which the Subcommittee recommends be accepted. The third bullet point would then read: "the last 4 digits of the loan account number or any other number used to identify the account."[1]

3. **0091 -- Pennsylvania Bar Association.** Revised Form 410A should not be adopted simultaneously with the proposed amendments to Rule 3002(c), which will require secured creditors to file claims within 60 days of the petition, and to Rule 9009, which will require strict adherence to the Official Forms. It would be better to implement Official Form 410A and Rule 3002 in stages, first allowing creditors to adjust to the additional information required by the form and then imposing the shorter time limit of amended Rule 3002(c).

The Subcommittee recommends that no change be made in response to the comment. The Advisory Committee will be deciding at this meeting whether to proceed with or postpone

[1] Form instructions do not go through the formal approval and promulgation process. They are posted on the AO website along with the Official Forms.

seeking approval of the amendments to Rules 3002 and 9009, which are part of the package of rules related to the proposed chapter 13 plan form. Even if the Committee seeks approval of those rule amendments and Form 410A at the May 2015 Standing Committee meeting, implementation would be staggered because the rule-promulgation process takes a year longer than form promulgation.

4. **0105 – Hilary Bonial (Buckley Madole, P.C.).** Proposed Form 410A provides two lines in Part 3 for escrow included in the arrearage. This division of escrow into advanced amounts and projected escrow shortage will not align with the escrow shortage amount on many bankruptcy escrow statements created by creditors to comply with Rule 3001(c)(2)(C). Even though the total arrearage amount will be the same, this may create more confusion and lead to more objections and litigation, which this form seeks to avoid.

The Subcommittee recommends that no change be made in response to the comment. One of the members of the group that drafted the form is counsel to a major mortgage lender and servicer, and he vetted the form with others in the industry. No other comments suggested that there are problems with this part of the form.

5. **0116 – Alberta Hultman (USFN).** *Comment 1.* The third bullet point of the instructions on Part 2 of proposed Form 410A (Total Debt Calculation) should require the listing of "any fees, expenses, or other charges incurred before the petition was filed," rather than "any fees or costs owed under the note or mortgage and outstanding as of the date of the bankruptcy filing." There are two reasons for this recommendation. First, the recommended language mirrors the language in Bankruptcy Rule 3001(c)(2)(A). Second, the recommended language eliminates the use of the words "note" and "mortgage." This is important because home equity

lines of credit ("HELOCs") are not evidenced by a note, and not all loans or lines of credit are secured by a mortgage.

The Subcommittee recommends that part of the comment be acted upon. In order to cover HELOCs, the phrase "owed under the note or mortgage and" should be deleted. The Advisory Committee approved a similar change to Official Form 410S1 at the fall 2014 meeting in recognition of the fact the HELOCs often do not involve a note. But the Subcommittee recommends that "outstanding as of the date of the bankruptcy filing" not be changed to "incurred before the petition was filed." The wording of the instruction was intended to prevent inclusion of any charges that were incurred but paid off prior to bankruptcy. That instruction is not inconsistent with Rule 3001(c)(2)(A), which refers to prepetition charges that are included in a claim. Only amounts still outstanding as of the petition date would be included.

Comment 2. The first sentence of the instructions for Part 4 of Form 410A (Monthly Mortgage Payment) should be revised to require listing "the principal and interest amount of the first postpetition payment," rather than the amount as of the petition date. Part 4 is intended to reflect the amount of the debtor's first postpetition payment, not the amount of the debtor's payment as of the petition date.

The Subcommittee recommends that the suggested change be made for the reason stated in the comment.

6. **0126 – Diana Erbsen (U.S. Department of Justice).** – Current Form 10A, which proposed Form 410A would replace, requires the itemization of fees, expenses, and charges ("fees") in accordance with a specified list. Because the proposed form omits the listing of specified types of fees, creditors might aggregate fees into a single entry. As a result, there will be less transparency, accuracy, and efficiency in the bankruptcy claims process.

The Subcommittee recommends that no action be taken in response to the comment. The Committee proposed the revision of Attachment A in response to arguments by several constituencies that a loan-history attachment would be preferable to the existing form. The Committee was told that disclosure of the information on a loan history would enable a debtor to see the basis for a mortgage claim and the arrearage amount, thereby facilitating resolution of disputes about mortgage amounts in some cases and providing a basis for objecting to claim amounts in others, and that the proposed loan-history form would be better for creditors because its completion could be automated, unlike the existing form that must be completed by hand. The Subcommittee also noted that each entry of a fee or other charge in the loan history must be accompanied by a description.

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Current Form Number	Current Form Name	New Number	New Name	Status of Form
B 1	Voluntary Petition	B101	Voluntary Petition for Individuals Filing for Bankruptcy *(incorporates exhibits – carves out eviction judgment statement as new form B101AB)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
		B101A	Initial Statement About an Eviction Judgment Against You	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
		B101B	Statement About Payment of an Eviction Judgment Against You	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
		B201	Voluntary Petition for Non-Individuals Filing for Bankruptcy	Published, August, 2014
	Exhibit A	B201A	Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy Under Chapter 11	Drafting in progress; technical amendment to change to conforming number (from Exhibit A to 201A) to be effective with non-individual forms.
	Exhibit C	B101 B201	*Hazardous Property or Property That Needs Immediate Attention -- incorporated in Forms B101 and B201*	Not Applicable

Current Form Number	Current Form Name	New Number	New Name	Status of Form
	Exhibit D	B101	*Individual Debtor's Statement of Compliance with Credit Counseling Requirement – Incorporated in Form B101*	
	[Chapter 15 questions from Petition]	B401	Petition for Recognition of Foreign Proceeding	Published, August 2014
B 2	Declaration under Penalty of Perjury on Behalf of a Corporation or Partnership	B202	Declaration Under Penalty of Perjury On Behalf of a Corporation or Partnership *(For petition, schedules, SOFA, etc).*	Published, August 2014
B 3A	Application and Order to Pay Filing Fee in Installments	B103A	Application for Individuals to Pay the Filing Fee in Installments	Effective 12/1/2013, technical amendments requested effective 12/1/2014
B 3B	Application for Waiver of Chapter 7 Filing Fee	B103B	Application to Have the Chapter 7 Filing Fee Waived	Effective 12/1/2013, technical amendments requested effective 12/1/2014
B 4	List of Creditors Holding 20 Largest Unsecured Claims	B104	For Individual Chapter 11 Cases: The List of Creditors Who Have the 20 Largest Unsecured Claims Against You Who Are Not Insiders *(individuals)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
		B204	For Chapter 11 Cases: The List of Creditors Who Have the 20 Largest Unsecured Claims Against You Who Are Not Insiders *(non-individuals)*	Published, August 2014
B 5	Involuntary Petition	B105	Involuntary Petition Against an Individual	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
		B205	Involuntary Petition Against a Non-Individual	Published, August 2014
B6	Cover Sheet for Schedules	No coversheet created		
B6	Summary of Schedules (Includes	B106 --	A Summary of Your Assets and	Drafted, publication complete, approved by Standing

Current Form Number	Current Form Name	New Number	New Name	Status of Form
	Statistical Summary of Certain Liabilities)	Summary	Liabilities and Certain Statistical Information (*individuals)*	Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
		B206 -- Summary	A Summary of Your Assets and Liabilities (*non-individuals)*	Published, August 2014
B 6A	Schedule A - Real Property	B106A/B	Schedule A/B: Property (*combines real and personal property, individuals)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 6B	Schedule B - Personal Property	B206A/B	Schedule A/B: Property (*combines real and personal property, non-individuals)*	Published, August 2014
B 6C	Schedule C - Property Claimed as Exempt	B106C	Schedule C: The Property You Claim as Exempt (*individuals)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 6D	Schedule D - Creditors Holding Secured Claims	B106D	Schedule D: Creditors Who Hold Claims Secured By Property (*against individuals*)	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
		B206D	Schedule D: Creditors Who Hold Claims Secured By Property *(against non-individuals)*	Published, August 2014
B 6E	Schedule E - Creditors Holding Unsecured Priority Claims	B106E/F	Schedule E/F: Creditors Who Have Unsecured Claims *(against individuals, combines priority and non-priority)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 6F	Schedule F - Creditors Holding Unsecured Nonpriority Claims	B206E/F	Schedule E/F: Creditors Who Have Unsecured Claims (*against non-individuals, combines priority and non-priority)*	Published, August 2014
B 6G	Schedule G - Executory Contracts and Unexpired Leases	B106G	Schedule G: Executory Contracts and Unexpired Leases (*individuals)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the

Current Form Number	Current Form Name	New Number	New Name	Status of Form
				same status before being transmitted to JCUS
		B206G	Schedule G: Executory Contracts and Unexpired Leases (*non-individuals)*	Published, August 2014
B 6H	Schedule H - Codebtors	B106H	Schedule H: Your Codebtors (*individuals)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
		B206H	Schedule H: Your Codebtors (*non-individuals)*	Published, August 2014
B 6I	Schedule I - Current Income of Individual Debtor(s)	B106I	Schedule I: Your Income (*individuals – published as 6I)*	Effective, 12/1/2013
		B206I	To be a Director's Form	
B 6J	Schedule J - Current Expenditures of Individual Debtor(s)	B106J	Schedule J: Your Expenses (*individuals- published as 6J)* Effective, 12/1/13	Amendment published, August 2013.
		B106J-2	Schedule J-2: Expenses for Separate Household of Debtor 2	Published, August 2014.
		B206J	To be a Director's Form	
B 6	Declaration Concerning Debtor's Schedules	B106 -- Declaration	Declaration About an Individual Debtor's Schedules	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
		B202	Declaration Under Penalty of Perjury On Behalf of a Corporation or Partnership *(For petition, schedules, SOFA, etc)*	Published, August 2014
B 7	Statement of Financial Affairs	B107	Your Statement of Financial Affairs for Individuals Filing for Bankruptcy	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS

Current Form Number	Current Form Name	New Number	New Name	Status of Form
		B207	Statement of Your Financial Affairs *(non-Individuals)*	Published, August 2014
B 8	Chapter 7 Individual Debtor's Statement of Intention	B108	Statement of Intention for Individuals Filing Under Chapter 7	Drafted as form 112 (later renumbered), publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 9	Notice of Commencement of Case under the Bankruptcy Code, Meeting of Creditors, and Deadlines	No coversheet created.		
B 9A	Chapter 7 Individual or Joint Debtor No Asset Case	B309A	(For Individuals or Joint Debtors) Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline	Published, August 2014
B 9B	Chapter 7 Corporation/Partnership No Asset Case	B309C	(For Corporations or Partnerships) Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline Set	Published, August 2014
B 9C	Chapter 7 Individual or Joint Debtor Asset Case	B309B	(For Individuals or Joint Debtors) Notice of Chapter 7 Bankruptcy Case – Proof of Claim Deadline Set	Published, August 2014
B 9D	Chapter 7 Corporation/Partnership Asset Case (12/11)	B309D	(For Corporations or Partnerships) Notice of Chapter 7 Bankruptcy Case – Proof of Claim Deadline Set	Published, August 2014
B 9E	Chapter 11 Individual or Joint Debtor Case	B309E	(For Individuals or Joint Debtors) Notice of Chapter 11 Bankruptcy Case *(former Alt version combined with Form B309-E)*	Published, August 2014
B 9E(Alt.)	Chapter 11 Individual or Joint Debtor Case			
B 9F	Chapter 11 Corporation/Partnership Case	B309F	(For Corporations or Partnerships) Notice of Chapter 11 Bankruptcy Case *(former Alt version combined with Form B309-F)*	Published, August 2014
B 9F(Alt.)	Chapter 11 Corporation/Partnership Case			
B 9G	Chapter 12 Individual or Joint	B309G	(For Individuals or Joint Debtors)	Published, August 2014

Current Form Number	Current Form Name	New Number	New Name	Status of Form
	Debtor Family Farmer		Notice of Chapter 12 Bankruptcy Case	
B 9H	Chapter 12 Corporation/Partnership Family Farmer	B309H	(For Corporations or Partnerships) Notice of Chapter 12 Bankruptcy Case	Published, August 2014
B 9I	Chapter 13 Case	B309I	Notice of Chapter 13 Bankruptcy Case	Published, August 2014
B 10	Proof Of Claim	B410	Proof Of Claim	Published, August 2014
B 10A	Proof Of Claim, Attachment A	B410A	Proof Of Claim, Attachment A	Published, August 2014
B 10S1	Proof Of Claim, Supplement 1	B410S1	Proof Of Claim, Supplement 1	Published, August 2014
B 10S2	Proof Of Claim, Supplement 2	B410S2	Proof Of Claim, Supplement 2	Published, August 2014
B 11A	General Power of Attorney	B4110A	*Reissued as Director's Form*	Abrogation published, August 2014
B 11B	Special Power of Attorney	B4110B	*Reissued as Director's Form*	Abrogation published, August 2014
B 12	Order and Notice for Hearing on Disclosure Statement	B312	Same	Published, August 2014
B 13	Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof	B313	Same	Published, August 2014
B 14	Ballot for Accepting or Rejecting Plan	B314	Same	Published, August 2014
B 15	Order Confirming Plan	B315	Same	Published, August 2014
B 16A	Caption	B416A	Same	Published, August 2014
B 16B	Caption (Short Title)	B416B	Same	Published, August 2014
B 16C	[Abrogated]	N/A	Same	
B 16D	Caption for Use in Adversary Proceeding other than for a Complaint Filed by a Debtor	B416D	Same	Published, August 2014
B 17	Notice of Appeal under 28 U.S.C.	B417A	Notice Of Appeal And Statement Of	Effective date 12/1/2014

Current Form Number	Current Form Name	New Number	New Name	Status of Form
	§158(a) or (b) from a Judgment, Order or Decree of a Bankruptcy Court		Election	
		B417B (new)	Optional Appellee Statement Of Election To Proceed In District Court	Effective date 12/1/2014
		B417C (new)	Certificate of Compliance With Rule 8015(a)(7)(B) or 8016(d)(2)	Effective date 12/1/2014
B 18	Discharge of Debtor	B318	Discharge of Debtor in a Chapter 7 Case	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 19	Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer	B119	Bankruptcy Petition Preparer's Notice, Declaration and Signature	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 20A	Notice of Motion or Objection	B420A	Notice of Motion or Objection	On hold until completion of the chapter 13 plan project.
B 20B	Notice of Objection to Claim	B420B	Notice of Objection to Claim	On hold until completion of the chapter 13 plan project.
B 21	Statement of Social Security Number	B121 *updated from B102*	Your Statement About Your Social Security Numbers	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 22A	Statement of Current Monthly Income and Means Test Calculation (Chapter 7)	B122A-1	Chapter 7 Statement of Your Current Monthly Income and Means-Test Calculation *(published as 22A-1)*	Effective date 12/1/2014
		B122-1Supp	Chapter 7 Means Test Exemption Attachment (*published as 22A-1Supp*)	Effective date 12/1/2014
		B122A-2	Chapter 7 Means Test Calculation *(published as 22A-2)*	Effective date 12/1/2014
B 22B	Statement of Current Monthly Income (Chapter 11)	B122B	Chapter 11 Statement of Your Current Monthly Income *(published as 22B)*	Effective date 12/1/2014
B 22C	Statement of Current Monthly Income and Calculation of	B122C-1	Chapter 13 Statement of Your Current Monthly Income and	Effective date 12/1/2014

Current Form Number	Current Form Name	New Number	New Name	Status of Form
	Commitment Period and Disposable Income (Chapter 13)		Calculation of Commitment Period *(published as 22C-1)*	
		B122-2	Chapter 13 Calculation of Your Disposable Income *(published as 22C-2)*	Effective date 12/1/2014
B 23	Debtor's Certification of Completion of Instructional Course Concerning Financial Management	B423	Certification About a Financial Management Course *(was B 113)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 24	Certification to Court of Appeals	B424	Same	Published, August 2014
B 25A	Plan of Reorganization in Small Business Case under Chapter 11	B425A	Same	Drafting in progress
B 25B	Disclosure Statement in Small Business Case under Chapter 11	B425B	Same	Drafting in progress
B 25C	Small Business Monthly Operating Report	B425C	Same	Drafting in progress
B 26	Periodic Report Regarding Value, Operations and Profitability of Entities in Which the Debtor's Estate Holds a Substantial or Controlling Interest	B426	Same	Drafting in progress
B 27	Reaffirmation Agreement Cover Sheet	B427	Cover Sheet for Reaffirmation Agreement	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
DIRECTOR FORMS				
B 13S	Order Conditionally Approving Disclosure Statement, Fixing Time for Filing Acceptances or Rejections of Plan, and Fixing the Time for Filing Objections to the Disclosure Statement and to the Confirmation of the Plan, Combined with Notice Thereof and of the Hearing on Final Approval of	B1300S		Drafting in progress

Current Form Number	Current Form Name	New Number	New Name	Status of Form
	the Disclosure Statement and the Hearing on Confirmation of the Plan			
B 15S	Order Finally Approving Disclosure Statement and Confirming Plan	B1500S		Drafting in progress
B 18F	Discharge of Debtor After Completion of Chapter 12 Plan	B1800F		Drafting in progress
B 18FH	Discharge of Debtor Before Completion of Chapter 12 Plan	B1800FH		Drafting in progress
B 18J	Discharge of Joint Debtors (Chapter 7)	B318	Order of Discharge *(combined with Forms 18 and 18JO)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 18JO	Discharge of One Joint Debtor (Chapter 7)	B318	Order of Discharge *(combined with Forms 18 and 18J)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 18RI	Discharge of Individual Debtor in a Chapter 11 Case	B1800RI		Drafting in progress
B 18W	Discharge of Debtor After Completion of Chapter 13 Plan	B1800W		Drafting in progress
B 18WH	Order Discharging Debtor Before Completion of Chapter 13 Plan	B1800WH		Drafting in progress
B 104	Adversary Proceeding Cover Sheet	B1040		Drafting in progress
B 131	Exemplification Certificate	B1310		Drafting in progress
B 132	Application for Search of Bankruptcy Records	B1320		Drafting in progress
B 133	Claims Register	B1330		Drafting in progress
B 200	Required Lists, Schedules, Statements and Fees	B2000		Drafting in progress
B 201A	Notice to Individual Consumer Debtor	B2010	Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy *Does this need to be a stand-alone form anymore. It is incorporated into the instruction booklet for individual*	

Current Form Number	Current Form Name	New Number	New Name	Status of Form
			debtors	
B 201B	Certification of Notice to Individual Consumer Debtor(s)	B101	Not needed because certification is in petition	
B 202	Statement of Military Service	B2020		Drafting in progress
B 203	Disclosure of Compensation of Attorney for Debtor	B2030	Attorney's Disclosure of Compensation	Drafting in progress
B 204	Notice of Need to File Proof of Claim Due to Recovery of Assets	B2040		Drafting in progress
B 205	Notice to Creditors and Other Parties in Interest	B2050		Drafting in progress
B 206	Certificate of Commencement of Case	B2060		Drafting in progress
B 207	Certificate of Retention of Debtor In Possession	B2070		Drafting in progress
B 210A	Transfer of Claim Other Than for Security	B2100A		Drafting in progress
B 210B	Notice of Transfer of Claim Other Than for Security	B2100B		Drafting in progress
B 230A	Order Confirming Chapter 12 Plan	B2300A		Drafting in progress
B 230B	Order Confirming Chapter 13 Plan	B2300B		Drafting in progress
B 231A	Order Fixing Time to Object to Proposed Modification of Confirmed Chapter 12 Plan	B2310A		Drafting in progress
B 231B	Order Fixing Time to Object to Proposed Modification of Confirmed Chapter 13 Plan	B2310B		Drafting in progress
B 240A	Reaffirmation Documents	B2400A		Drafting in progress
B 240B	Motion for Approval of Reaffirmation Agreement	B2400B		Drafting in progress
B 240C	Order on Reaffirmation Agreement	B2400C		Drafting in progress
B	Reaffirmation Agreement	B2400A/B ALT		Drafting in progress

Current Form Number	Current Form Name	New Number	New Name	Status of Form
240A/B ALT				
B 240C ALT	Order on Reaffirmation Agreement	B2400C ALT		Drafting in progress
B 250A	Summons in an Adversary Proceeding	B2500A		Drafting in progress
B 250B	Summons and Notice of Pretrial Conference in an Adversary Proceeding	B2500B		Drafting in progress
B 250C	Summons and Notice of Trial in an Adversary Proceeding	B2500C		Drafting in progress
B 250D	Third-Party Summons	B2500D		Drafting in progress
B 250E	Summons to Debtor in Involuntary Case	B2500E		Drafting in progress
B 250F	Summons in a Chapter 15 Case Seeking Recognition of a Foreign Nonmain Proceeding	B2500F		Drafting in progress
B 253	Order for Relief in an Involuntary Case	B2530		Drafting in progress
B 254	Subpoena for Rule 2004 Examination	B2540		Drafting in progress
B 255	Subpoena in an Adversary Proceeding	B2550		Drafting in progress
B 256	Subpoena in a Case Under the Bankruptcy Code	B2560		Drafting in progress
B 260	Entry of Default	B2600		Drafting in progress
B 261A	Judgment by Default	B2610A		Drafting in progress
B 261B	Judgment by Default	B2610B		Drafting in progress
B 261C	Judgment in an Adversary Proceeding	B2610C		Drafting in progress
B 262	Notice of Entry of Judgment	B2620		Drafting in progress
B 263	Bill of Costs	B2630		Drafting in progress

Current Form Number	Current Form Name	New Number	New Name	Status of Form
B 264	Writ of Execution to the United States Marshal	B2640		Drafting in progress
B 265	Certification of Judgment for Registration in Another District	B2650		Drafting in progress
B 270	Notice of Filing of Final Report of Trustee, of Hearing on Applications for Compensation [and of Hearing on Abandonment of Property by the Trustee]	B2700		Drafting in progress
B 271	Final Decree	B2710		Drafting in progress
B 280	Disclosure of Compensation of Bankruptcy Petition Preparer	B2800	Disclosure of Compensation of Bankruptcy Petition Preparer	Drafting in progress
B 281	Appearance of Child Support Creditor or Representative	B2810		Drafting in progress
B 283	Chapter 13 Debtor's Certifications Regarding Domestic Support Obligations and Section 522(q)	B2830		Drafting in progress

TAB 7A

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

SUBJECT: PUBLICATION OF PROPOSED AMENDMENT TO OFFICIAL FORM 309F (NOTICE OF CHAPTER 11 BANKRUPTCY CASE—FOR CORPORATIONS OR PARTNERSHIPS)

DATE: MARCH 21, 2015

At the fall 2014 meeting, the Advisory Committee gave initial approval to an amendment to modernized Official Form 309F. The proposed amendment would change the instruction on the form concerning the deadline in a chapter 11 case for seeking an exception to the discharge of a debt owed by a corporate or partnership debtor. The amendment is proposed in response to recent case law that raises questions about whether the current instruction reflects an accurate interpretation of Code § 1141(d)(6)(A). The Advisory Committee referred the matter back to the Subcommittee for a recommendation about whether and when the proposed amendment should be published for comment. For the reasons discussed below, **the Subcommittee recommends that the proposed amendment to Official Form 309F be published for comment but that publication be deferred until at least August 2016.**

The Proposed Amendment

The reverse sides of current Forms 9F and 9F(Alt) provide explanations of terms and procedures relevant to the subjects of the forms. The explanation about the discharge of debts on both forms states:

> Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. *See* Bankruptcy Code § 1141(d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. **If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 1141(d)(6)(A), you must start a**

> **lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side.** The bankruptcy clerk's office must receive the complaint and any required filing fee by that deadline.

(Emphasis added.) Because recent bankruptcy and district court decisions in the *Hawker Beechcraft* case read § 1141(d)(6)(A) as either never or not always requiring a creditor to initiate a dischargeability proceeding,[1] the Committee voted to propose an amendment to the instruction on line 8 of new Official Form 309F (which merges current Forms 9F and 9F(Alt)). The amended instruction would state:

> If § 523(c) applies to your claim and you seek to have it excepted from discharge, ~~Y~~you must start a judicial proceeding by filing a complaint by the deadline stated below ~~if you want to have a debt excepted from discharge under 11 U.S.C. § 1141(d)(6)(A)~~.

Committee Note

> Line 8 previously stated that a creditor seeking to have a debt excepted from discharge under § 1141(d)(6)(A) must file a complaint by the stated deadline. That statement has been revised in light of ambiguities in § 1141(d)(6)(A) regarding its relationship with § 523. Specifically, the provision is unclear about whether not only a debt "owed to a domestic governmental unit" but also a debt "owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute" must be of the type described by § 523(a)(2)(A) and (B). The provision is also unclear about whether the procedural requirements of § 523(c)(1) apply, given that § 1141(d)(6)(A) specifically refers to § 523(a) but not to § 523(c). Rather than take a position on the proper interpretation of § 1141(d)(6)(A), the form leaves to creditors the determination of whether § 523(c) applies to their claims, in which case they must commence a dischargeability proceeding by the Rule 4007(c) deadline that is stated on the form.

[1] Under the bankruptcy court's reading, only creditors holding debts owed to a domestic governmental unit would have to seek a dischargeability determination under §§ 1141(d)(6)(A) and 523(c). United States *ex rel.* Minge v. Hawker Beechcraft Corp. (*In re* Hawker Beechcraft, Inc.), 493 B.R. 696 (Bankr. S.D.N.Y. 2013). Under the district court's reading, no creditor would have to seek such a determination under those provisions. 515 B.R. 416 (S.D.N.Y. 2014).

The Subcommittee's Recommendation

The Subcommittee discussed the need for and timing of publication of the proposed amendment during its conference call on February 10, 2015. The Subcommittee first concluded that the amendment should be published. Because it raises questions about the interpretation of a Code section that has been reflected on Official Forms 9F and 9F(Alt) since 2005, it seems to be of sufficient significance to merit an opportunity for public comment before final approval is sought. Indeed, the SEC commented on this very issue in response to the 2014 publication of Form 309F. *See* Comment from Anne Small, Securities and Exchange Commission, http://www.regulations.gov/#!documentDetail;D=USC-RULES-BK-2014-0001-0115.

The Subcommittee then concluded that publication of an amendment to Form 309F should be delayed until the new form goes into effect. Seeking publication of the amendment this summer would cause confusion with what might be a simultaneous request to the Standing Committee to give final approval to all of the modernized forms, including Form 309F. The Subcommittee believes that a more orderly process would be to wait until the modernized forms go into effect and then seek publication of the proposed amendment to this form. The question of the effective date of the modernized forms will be discussed elsewhere on the agenda. If the Committee decides to recommend an effective date of December 1, 2015, and that recommendation is accepted, the Committee could seek publication of the Form 309F amendment in August 2016, which could lead to an effective date for the amended form of December 1, 2017.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

SUBJECT: COMMENTS ON PUBLISHED AMENDMENT TO RULE 9006(f)

DATE: MARCH 21, 2015

Among the proposed amendments published last summer was an amendment to Rule 9006(f) (Computing and Extending Time—Additional Time After Service by Mail etc.) that would eliminate the 3-day extension to time periods when service is made electronically. The amendment, which was recommended by this Subcommittee, was initially proposed by the Standing Committee's CM/ECF Subcommittee. It was published simultaneously with similar amendments to Civil Rule 6(d), Appellate Rule 26(c), and Criminal Rule 45(c). The text of the proposed amendment and its Committee Note appear at the end of this memorandum.

Five comments were submitted on the proposed bankruptcy rule amendment. They are summarized below, followed by the **Subcommittee's recommendation that the amendment be approved as published, but with a new paragraph added to the Committee Note.**

The Comments

0084 – Ryan Johnson (Clerk, Bankr. N.D.W. Va.). It is unclear whether the proposed amendments to Rule 3007(a) [Objections to Claims – Time and manner of service] and to Rule 9006(f) allow 33 days or just 30 for a response to an objection to a claim.

0091 – Pennsylvania Bar Association. Adoption of the proposed amendment is recommended.

0094 – Ellie Bertwell (Aderant CompuLaw). It is unclear whether the amended rule will apply to documents served before the rule's effective date if the time period for taking action extends after the effective date.

0106 – Stephanie Edmondson (Clerk, Bankr. E.D.N.C.). The proposed amendment will result in different deadlines for taking action in response to service of a single document if there are different methods of service.

0126 – Diana Erbsen (U.S. Department of Justice). Elimination of the 3-day rule for electronic service could result in prejudice or unfairness to the recipient because, unlike personal service, electronic service does not ensure actual receipt by the person served. If the amendment is adopted, the following language should be added to the Committee Note:

> This amendment is not intended to discourage courts from providing additional time to respond in appropriate circumstances. When, for example, electronic service is effected in a manner that will shorten the time to respond, such as service after business hours or from a location in a different time zone, or an intervening weekend or holiday, that service may significantly reduce the time available to prepare a response. In those circumstances, a responding party may need to seek an extension, sometimes on short notice. The courts should accommodate those situations and provide additional response time to discourage tactical advantage or prevent prejudice to the responding party.

The Department of Justice made a similar comment regarding Civil Rule 6(d), Appellate Rule 26(d), and Criminal Rule 45(c).

The Subcommittee's Recommendation

After discussion of the comments during its conference call on March 12, the Subcommittee concluded that only DOJ's comment should be acted on.[1] The Subcommittee was

[1] The Subcommittee concluded that the interaction of amended Rules 9006(f) and 3007(a) would not be problematic. The 30-day deadline in Rule 3007(a) is not triggered by being served; therefore neither service of the objection nor the response would be affected by Rule 9006(f). Any issues about transition to the amended rule will be addressed by the Supreme Court's order of promulgation, which will provide that the amendment "shall take effect on December 1, 20__, and shall govern in all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then

informed that the Department's proposed language had stimulated conflicting responses in early discussions among the Reporters for the several advisory committees. Some believe it would be useful to add the language to alleviate concerns about possible unfairness and abuse of the rule. Others believe that the general principle of economy in Committee Notes should prevail because courts are likely to accommodate the needs of a party who has been put at a disadvantage by the circumstances of electronic service.

Members of the Subcommittee agreed with the view that it would be useful for the Committee Note to acknowledge the court's authority to grant extensions of time in appropriate circumstances. The added discussion would signal that the elimination of the 3-day extension for electronic service was adopted with the understanding that the court's authority to extend time periods would provide a safety valve against an unfair application of the amended rule. It would also provide a reminder to attorneys and parties of the court's authority to provide additional time when appropriate.

The Subcommittee therefore recommends that the language suggested by DOJ, subject to a minor editorial change, be added as a final paragraph of the Committee Note. Adopting a suggestion of the Reporter for the Appellate Rules Committee, the Subcommittee recommends adding the words "just before" in the second sentence before "an intervening weekend or holiday." The text of the proposed Committee Note, as edited, appears at the close of this memorandum with the proposed post-publication change underlined.

The parallel amendments to Bankruptcy Rule 9006(f), Civil Rule 6(d), Appellate Rule 26(c), and Criminal Rule 45(c) were proposed and published simultaneously in order to achieve as much uniformity as possible on this issue across the several sets of federal rules. It does not

pending." The determination of what is just and equitable is left to judicial determination. Finally, Rule 9006(f) currently results in different periods to respond based on different methods of service. The amendment would just eliminate the 3-day rule for another type of service.

appear that the other advisory committees are likely to propose any changes to the published rules themselves. As noted above, however, there may be varied responses to the Department of Justice's comment. Should the Committee be interested in knowing what decisions the other advisory committees make regarding the wording of the Committee Note, that information will be available at the Pasadena meeting because this committee is the last one to hold its spring meeting.

Rule 9006. Computing and Extending Time; Time for Motion Papers

* * * * *

(f) ADDITIONAL TIME AFTER SERVICE BY MAIL OR UNDER RULE 5(b)(2)(D)~~, (E),~~ OR (F) F.R. CIV. P. When there is a right or requirement to act or undertake some proceedings within a prescribed period after being served and that service is by mail or under Rule 5(b)(2)(D) (leaving with the clerk)~~, (E),~~ or (F) (other means consented to) F.R. Civ. P., three days are added after the prescribed period would otherwise expire under Rule 9006(a).

* * * * *

Committee Note

Subdivision (f) is amended to remove service by electronic means under Civil Rule 5(b)(2)(E) from the modes of service that allow three added days to act after being served.

Rule 9006(f) and Civil Rule 6(d) contain similar provisions providing additional time for actions after being served by mail or by certain modes of service that are identified by reference to Civil Rule 5(b)(2). Rule 9006(f)—like Civil Rule 6(d)—is amended to remove the reference to service by electronic means under Rule 5(b)(2)(E). The amendment also adds clarifying parentheticals identifying the forms of service under Rule 5(b)(2) for which three days will still be added.

Civil Rule 5(b)—made applicable in bankruptcy proceedings by Rules 7005 and 9014(b)—was amended in 2001 to allow service by electronic means with the consent of the person served. Although electronic transmission seemed virtually instantaneous even then, electronic service was included in the modes of service that allow three added days to act after being served. There were concerns that the transmission might be delayed for some time, and particular concerns that incompatible systems might make it difficult or impossible to open attachments. Those concerns have been substantially alleviated by advances in technology and in widespread skill in using electronic transmission.

A parallel reason for allowing the three added days was that electronic service was authorized only with the consent of the person to be served. Concerns about the reliability of electronic transmission might have led to refusals of consent; the three added days were calculated to alleviate these concerns.

Diminution of the concerns that prompted the decision to allow the three added days for electronic transmission is not the only reason for discarding this indulgence. Many rules have been changed to ease the task of computing time by adopting 7-, 14-, 21-, and 28-day periods that allow “day-of-the-week” counting. Adding three days at the end complicated the counting, and increased the occasions for further complication by invoking the provisions that apply when the last day is a Saturday, Sunday, or legal holiday.

Eliminating Rule 5(b) subparagraph (2)(E) from the modes of service that allow three added days means that the three added days cannot be retained by consenting to service by electronic means. Consent to electronic service in registering for electronic case filing, for example, does not count as consent to service "by any other means" of delivery under subparagraph (F).

This amendment is not intended to discourage courts from providing additional time to respond in appropriate circumstances. When, for example, electronic service is effected in a manner that will shorten the time to respond, such as service after business hours or from a location in a different time zone, or just before an intervening weekend or holiday, that service may significantly reduce the time available to prepare a response. In those circumstances, a responding party may need to seek an extension, sometimes on short notice. The courts should accommodate those situations and provide additional response time to discourage tactical advantage or prevent prejudice to the responding party.

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TAB 8A(1)

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MEMORANDUM

TO: Advisory Committee on Bankruptcy Rules

FROM: Subcommittee on Privacy, Public Access and Appeals

RE: Revising Uniform Numbering System for Local Bankruptcy Court Rules

DATE: March 24, 2015

During a conference call on February 28, 2015, the Subcommittee considered revisions to the Uniform Numbering System for Local Bankruptcy Court Rules. Revisions are needed to the numbering system for local bankruptcy rules to conform it to the bankruptcy appellate rules that became effective in 2014 as well as other changes to the bankruptcy rules that have occurred since the numbering system was last revised in 2003. **As discussed below, the Subcommittee recommends that the Advisory Committee approve the attached proposed revisions to the Uniform Numbering System for Local Bankruptcy Court Rules.**

A. Introduction.

The Advisory Committee developed the bankruptcy uniform numbering system pursuant to a directive from the Judicial Conference, JCUS-MAR 96, pp. 34-35, and Fed. R. Bankr. P. 8018 (now 8026) and 9029. The Conference set April 15, 1997, as the date for compliance. (The bankruptcy uniform numbering system had been approved by the Advisory Committee in September 1995 and by the Committee on Rules of Practice and Procedure (the Standing Committee) in January 1996.)

The Director of the Administrative Office transmitted the uniform number systems for local civil, criminal, and bankruptcy rules to the courts with a memorandum dated April 29, 1996. The transmittal also included a memorandum by the chair of the Standing Committee. As the Director's memorandum explained, the uniform numbering systems were intended to "assist the bar in locating local rules applicable to a particular subject, reduce the chance of a trap for unwary counsel, and ease incorporation of local rules into indexing and computer systems."

The Advisory Committee revised the bankruptcy system in April 2003 to include rules for electronic filing and amendments to the Bankruptcy Code and Rules.

Although the Standing Committee approved the original bankruptcy uniform numbering system, the Advisory Committee did not request the Standing Committee's approval of the 2003 revisions. Because the revisions did not change the character or structure of the system, the Advisory Committee authorized them pursuant to the Judicial Conference's directive and the Standing Committee's approval of the original system.

The uniform numbering system is based on the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules) and is arranged numerically. Each local rule number also has a stated topic. Cross-references are provided for many rule numbers to assist users in locating other local rules related to the rule that is the starting point. An alphabetical listing follows the numerical one. Like the uniform numbering systems for civil rules and criminal rules, the bankruptcy uniform numbering system was intended to facilitate practicing in multiple federal courts by making it easier to find relevant local rules.

The numbering system consists of a four-digit national rule number, a dash, and a fifth digit, starting with 1. For instance, local rules relating to chapter 13 trustees are assigned the number 2015-1, and local rules relating to United States trustees are assigned the number 2020-1. Frequently encountered local rule topics for which there is no related national rule have been assigned to the part of the national rules to which each topic is most closely related and have been given available, unused numbers within that part of the national rules, starting with 1070, 2070, etc.

The existence of a model local rule number is not intended as a recommendation that a court have a local rule on the topic. Likewise, many national rules address matters about which there is no apparent need for local rules. Accordingly, users may perceive "gaps" in the numbering system where there is no uniform local rule number assigned to a national rule. This exclusion of various national rules from the model numbering system is not intended to preclude a court from prescribing a local rule using one or more numbers not found in the uniform numbering system. The Judicial Conference has mandated only that the number of a particular local rule correspond with the relevant number of the Federal Rules of Practice and Procedure, if there is one.

B. Bankruptcy Appellate Rules.

The December 2014 amendments extensively revised the rules governing bankruptcy appeals, including reorganizing the rules and changing many of the numbers for the 8000 rules. The uniform numbering system needs to be updated to continue the correlation with the national rules numbers.

The attached list sets out a suggested update of uniform numbering system. As was done in the original uniform numbering system, each number consists of a four-digit national rule number, a dash, and a fifth digit, starting with 1. A revised alphabetical listing follows the numerical one. (Suggested changes are indicated by underlining and strikeouts.)

The draft includes new uniform numbers for certifying direct appeals to the court of appeals, indicative rulings, continuing proceedings in the bankruptcy court, and damages and costs for a frivolous appeal, which were not included in the national Bankruptcy Rules when the uniform system was developed. The uniform numbers for the time for filing an appendix and for disposition of an appeal have been deleted be-

cause the December 2014 amendments deleted them from the 8000 rules.

C. Additional Proposed Changes.

Updating the 8000 uniform numbers affords an opportunity to review the rest of the uniform numbering system. The Bankruptcy Code and Rules have changed dramatically since the original numbering system was developed, as has practice in the bankruptcy courts. The attached list includes several suggested updates, including additional uniform numbers and restyling to more closely follow the titles of the corresponding national rules.

The update includes new uniform numbers for chapter 15 petitions and chapter 15 generally, claims secured by a security interest in the debtor's principal residence, supporting information for claims, redaction and other privacy protections, court operations in emergency conditions, proposed findings of fact and conclusions of law, health care business cases, patient records, patient care ombudsmen, chapter 12 plans, and reports on entities in which a chapter 11 estate owns an interest. It also reflects changes in the names and numbers of the national rules.

Both the original uniform numbering system and the revisions include matters which may not be included in many bankruptcy courts' local rules. Locating local rules on these matters, or their absence, however, may be particularly helpful for practitioners.

D. Recommendation.

The Subcommittee recommends that the Advisory Committee approve the revised Uniform Numbering System for Local Bankruptcy Court Rules. Because the proposed changes merely update local rule numbers and titles to conform them to the revised Bankruptcy Rules, they are consistent with the Judicial Conference's 1996 mandate to adopt a numbering system for local rules that corresponds with the relevant rules of federal procedure. The the Advisory Committee may therefore approve them and transmit the revisions to the Administrative Office for distribution to the courts and posting on the Internet, as it did with the 2003 changes.

Attachment

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TAB 8A(2)

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MEMORANDUM

TO: Advisory Committee on Bankruptcy Rules

FROM: Subcommittee on Privacy, Public Access and Appeals

RE: Revising Uniform Numbering System for Local Bankruptcy Court Rules

DATE: March 24, 2015

During a conference call on February 28, 2015, the Subcommittee considered revisions to the Uniform Numbering System for Local Bankruptcy Court Rules. Revisions are needed to the numbering system for local bankruptcy rules to conform it to the bankruptcy appellate rules that became effective in 2014 as well as other changes to the bankruptcy rules that have occurred since the numbering system was last revised in 2003. **As discussed below, the Subcommittee recommends that the Advisory Committee approve the attached proposed revisions to the Uniform Numbering System for Local Bankruptcy Court Rules.**

A. Introduction.

The Advisory Committee developed the bankruptcy uniform numbering system pursuant to a directive from the Judicial Conference, JCUS-MAR 96, pp. 34-35, and Fed. R. Bankr. P. 8018 (now 8026) and 9029. The Conference set April 15, 1997, as the date for compliance. (The bankruptcy uniform numbering system had been approved by the Advisory Committee in September 1995 and by the Committee on Rules of Practice and Procedure (the Standing Committee) in January 1996.)

The Director of the Administrative Office transmitted the uniform number systems for local civil, criminal, and bankruptcy rules to the courts with a memorandum dated April 29, 1996. The transmittal also included a memorandum by the chair of the Standing Committee. As the Director's memorandum explained, the uniform numbering systems were intended to "assist the bar in locating local rules applicable to a particular subject, reduce the chance of a trap for unwary counsel, and ease incorporation of local rules into indexing and computer systems."

The Advisory Committee revised the bankruptcy system in April 2003 to include rules for electronic filing and amendments to the Bankruptcy Code and Rules.

Although the Standing Committee approved the original bankruptcy uniform numbering system, the Advisory Committee did not request the Standing Committee's approval of the 2003 revisions. Because the revisions did not change the character or structure of the system, the Advisory Committee authorized them pursuant to the Judicial Conference's directive and the Standing Committee's approval of the original system.

The uniform numbering system is based on the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules) and is arranged numerically. Each local rule number also has a stated topic. Cross-references are provided for many rule numbers to assist users in locating other local rules related to the rule that is the starting point. An alphabetical listing follows the numerical one. Like the uniform numbering systems for civil rules and criminal rules, the bankruptcy uniform numbering system was intended to facilitate practicing in multiple federal courts by making it easier to find relevant local rules.

The numbering system consists of a four-digit national rule number, a dash, and a fifth digit, starting with 1. For instance, local rules relating to chapter 13 trustees are assigned the number 2015-1, and local rules relating to United States trustees are assigned the number 2020-1. Frequently encountered local rule topics for which there is no related national rule have been assigned to the part of the national rules to which each topic is most closely related and have been given available, unused numbers within that part of the national rules, starting with 1070, 2070, etc.

The existence of a model local rule number is not intended as a recommendation that a court have a local rule on the topic. Likewise, many national rules address matters about which there is no apparent need for local rules. Accordingly, users may perceive "gaps" in the numbering system where there is no uniform local rule number assigned to a national rule. This exclusion of various national rules from the model numbering system is not intended to preclude a court from prescribing a local rule using one or more numbers not found in the uniform numbering system. The Judicial Conference has mandated only that the number of a particular local rule correspond with the relevant number of the Federal Rules of Practice and Procedure, if there is one.

B. Bankruptcy Appellate Rules.

The December 2014 amendments extensively revised the rules governing bankruptcy appeals, including reorganizing the rules and changing many of the numbers for the 8000 rules. The uniform numbering system needs to be updated to continue the correlation with the national rules numbers.

The attached list sets out a suggested update of uniform numbering system. As was done in the original uniform numbering system, each number consists of a four-digit national rule number, a dash, and a fifth digit, starting with 1. A revised alphabetical listing follows the numerical one. (Suggested changes are indicated by underlining and strikeouts.)

The draft includes new uniform numbers for certifying direct appeals to the court of appeals, indicative rulings, continuing proceedings in the bankruptcy court, and damages and costs for a frivolous appeal, which were not included in the national Bankruptcy Rules when the uniform system was developed. The uniform numbers for the time for filing an appendix and for disposition of an appeal have been deleted be-

cause the December 2014 amendments deleted them from the 8000 rules.

C. Additional Proposed Changes.

Updating the 8000 uniform numbers affords an opportunity to review the rest of the uniform numbering system. The Bankruptcy Code and Rules have changed dramatically since the original numbering system was developed, as has practice in the bankruptcy courts. The attached list includes several suggested updates, including additional uniform numbers and restyling to more closely follow the titles of the corresponding national rules.

The update includes new uniform numbers for chapter 15 petitions and chapter 15 generally, claims secured by a security interest in the debtor's principal residence, supporting information for claims, redaction and other privacy protections, court operations in emergency conditions, proposed findings of fact and conclusions of law, health care business cases, patient records, patient care ombudsmen, chapter 12 plans, and reports on entities in which a chapter 11 estate owns an interest. It also reflects changes in the names and numbers of the national rules.

Both the original uniform numbering system and the revisions include matters which may not be included in many bankruptcy courts' local rules. Locating local rules on these matters, or their absence, however, may be particularly helpful for practitioners.

D. Recommendation.

The Subcommittee recommends that the Advisory Committee approve the revised Uniform Numbering System for Local Bankruptcy Court Rules. Because the proposed changes merely update local rule numbers and titles to conform them to the revised Bankruptcy Rules, they are consistent with the Judicial Conference's 1996 mandate to adopt a numbering system for local rules that corresponds with the relevant rules of federal procedure. The the Advisory Committee may therefore approve them and transmit the revisions to the Administrative Office for distribution to the courts and posting on the Internet, as it did with the 2003 changes.

Attachment

UNIFORM NUMBERING SYSTEM FOR LOCAL BANKRUPTCY COURT RULES

(Revised May 2003~~, and January 2012,~~ and April 2015)

INTRODUCTION

At its March 1996 session, the Judicial Conference of the United States approved a recommendation to "adopt a numbering system for local rules of court that corresponds with the relevant Federal Rules of Practice and Procedure." JCUS-MAR 96, pp. 34-34. This action by the Judicial Conference implemented amendments to several federal procedural rules that became effective December 1, 1995, and which provided that local court rules "must conform to any uniform numbering system prescribed by the Judicial Conference." See, Fed. R. App. P. 47, Fed. R. Bankr. P. 8026 and 9029, Fed. R. Civ. P. 87, and Fed. R. Crim. P. Rule 47, ~~Fed. R. App. P., Rules 8018 and 9029, Fed. R. Bankr. P., Rule 83, Fed. R. Civ. P., and Rule 57, Fed. R. Crim. P.~~

The attached numbering system is based on the Federal Rules of Bankruptcy Procedure and was developed for local bankruptcy court rules by the Judicial Conference Advisory Committee on Bankruptcy Rules. The Advisory Committee reviews the numbering system periodically and revises it to accommodate amendments to the national rules. The numbering system is arranged numerically, and each suggested local rule number also has a stated topic. Cross-references are provided for many rule numbers to assist users in locating other topics or local rules related to the rule that is the starting point. An alphabetical listing follows the numerical one.

The numbering system for local bankruptcy court rules consists of a four-digit national rule number, a dash, and a fifth digit, starting with 1. For instance, local rules relating to chapter 13 trustees are assigned the number 2015-1, and local rules relating to United States trustees are assigned the number 2020-1. The national bankruptcy rules are divided into "parts," each covering a general subject, e.g., Part V, "Courts and Clerks." Frequently encountered local rule topics for which there is no related national rule have been assigned to the Part of the national rules to which each topic is most closely related and have been given available, unused numbers within the Part, starting with 1070, 2070, etc.

The existence of a model local rule number should not be interpreted as a recommendation that a court have a local rule on the topic. Likewise, many national rules address matters about which there is no apparent need for local rules. Accordingly, users may perceive "gaps" in the numbering system where there is no uniform local rule number assigned to a national rule. This exclusion of various national rules from the model numbering system is deliberate, but is not intended to preclude a court from prescribing a local rule using one or more numbers not found in the attached material. The Judicial Conference has mandated only that the number of a particular local rule correspond with the relevant number of the Federal Rules of Practice and Procedure.

Questions about the Uniform Numbering System for Local Bankruptcy Court Rules should be directed to the ~~Bankruptcy Judges Division~~ Rules Committee Support Office, Administrative Office of the United States Courts, by telephone at (202) 502-1820 ~~502-1900~~, or by e-mail to Rules_Support@ao.uscourts.gov ~~AOdb_Bankruptcy Judges Division/DCA/AO/USCOURTS~~.

UNIFORM NUMBERING SYSTEM FOR LOCAL BANKRUPTCY RULES

(Revised February 2015)

Cite as "_____LBR_____-___." Example: "E.D. Va. LBR 1007-1."
(District) (Number)

If a rule is prescribed by a circuit council for a Bankruptcy Appellate Panel Service, cite as "_____ Cir. BAP LBR_____-___." Example: "9th Cir. BAP LBR 8009-1."

The topic names are part of this uniform numbering system and should be used in addition to the rule numbers.

PART I

Uniform Local Rule Number	Topic	See Also LBR
1002-1	PETITION - GENERAL	1004-1, 1005-1, 1010-1, 5005-2
1004-1	PETITION - PARTNERSHIP	
1004.2-1	PETITION - CHAPTER 15	
1005-1	PETITION - CAPTION	9004-2
1006-1	FEES - INSTALLMENT PAYMENTS	5080-1, 5081-1
1007-1	LISTS, SCHEDULES, & STATEMENTS	5005-2
1007-2	MAILING - LIST OR MATRIX	
1007-3	STATEMENT OF INTENTION	
1007-4	FINANCIAL DISCL. BY CORP. DEBTOR	7007.1-1
1007-5	STATEMENT OF ~~SSN~~ SOCIAL SECURITY NUMBER - SUBMISSION & ~~(~~PRIVACY~~)~~	
1009-1	AMENDMENTS TO LISTS & SCHEDULES	
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DETERMINATION OF MOTION - APPEAL	~~8011-3~~ 8013-3
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ENTRY OF JUDGMENT BY CLERK OF DISTRICT COURT OR BAP	~~8016-1~~ 8024-1
FILING PAPERS - APPEAL	~~8008-1~~ 8011-1
FORMS OF BRIEFS - APPEAL	~~8010-1~~ 8014-1
INDICATIVE RULINGS	8008-1
LENGTH OF BRIEFS - APPEAL	~~8010-3~~ 8015-1
LOCAL RULES OF CIRCUIT JUDICIAL COUNCIL OR DISTRICT COURT	~~8018-1~~ 8026-1
MANNER OF SERVING PAPERS - APPEAL	~~8008-3~~ 8011-3
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MOTION FOR REHEARING - APPEAL	~~8015-1~~ 8022-1
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NOTICE OF ORDER OR JUDGMENT – APPEAL	~~8016-2~~ 8024-2
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PROOF OF SERVICE OF FILED PAPERS – APPEAL	~~8008-4~~ 8011-4
RECORD FOR PRELIMINARY HEARING - APPEAL	~~8007-4~~ 8010-3
REPRODUCTION OF STATUTES, ETC. – APPEAL	~~8010-2~~ 8014-2
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STAY PENDING APPEAL	~~8005-1~~ 8007-1
STAY PENDING APPEAL TO COURT OF APPEALS	~~8017-1~~ 8025-1
SUSPENSION OF PART VIII, FED.R. BANKR.P.	~~8019-1~~ 8028-1
TIME FOR FILING APPEAL	8002-1
~~TIME FOR FILING APPENDIX TO BRIEF - APPEAL~~	~~x8009-2~~
TIME FOR FILING BRIEFS - APPEAL	~~8009-1~~ 8018-1
TRANSMISSION OF RECORD - APPEAL	~~8007-2~~ 8010-2

TAB 9A(1)

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON TECHNOLOGY AND CROSS BORDER INSOLVENCY

SUBJECT: PROPOSALS REGARDING ELECTRONIC FILING AND SERVICE

DATE: MARCH 25, 2015

In 2013 the Standing Committee created a CM/ECF Subcommittee, composed of members and reporters of each of the advisory committees, to consider whether the five sets of federal rules should be amended to incorporate more fully the use of electronic filing, service, transmission, and storage of documents in the federal courts. The proposed elimination of the three-day rule for electronic service—discussed elsewhere on this agenda—is one product of its deliberations. At its January 2015 meeting, the Standing Committee decided that the CM/ECF Subcommittee was no longer needed and that its work could be carried on by the individual advisory committees in consultation with each other, led by the Civil Rules Committee.

The Civil Rules Committee will be considering several rules amendments at its spring meeting that relate to (1) electronic filing of documents, (2) electronic service of documents after the summons and complaint, and (3) use of a notice of electronic filing in place of a certificate of service. During its March 2 conference call, this Subcommittee discussed the proposed civil rule amendments and how they would affect the Bankruptcy Rules and existing practices in bankruptcy cases. The Subcommittee also considered a template for a rule drafted by the reporter for the CM/ECF Subcommittee, Professor Dan Capra, that would equate electronically stored information with written documents and would provide that actions requiring the filing and sending of documents could be accomplished electronically. **Based on its deliberations,**

the Subcommittee recommends that the Committee propose for publication an amendment to Rule 5005(a) that would conform to the proposed amendment to Civil Rule 5(d) and that the Committee not pursue the development of a bankruptcy rule based on the CM/ECF template.[1]

Electronic Filing

The Civil Rules Committee will consider amending Rule 5(d)(3) as follows:[2]

Rule 5. Serving and Filing Pleadings and Other Papers

* * * * *

(d) Filing.

* * * * *

(3) *Electronic Filing~~,~~ and Signing~~, or Verification~~.* ~~A court may, by local rule, allow papers to be filed~~ All filings must be made~~, signed, or verified~~ by electronic means that are consistent with any technical standards ~~or standards of form~~ established by the Judicial Conference of the United States. ~~A local rule may require electronic filing only if reasonable exceptions are allowed.~~ But paper filing must be allowed for good cause, and may be required or allowed for other reasons by local rule. The act of electronic filing constitutes the signature of the person who makes the filing. A paper filed electronically ~~in accordance with a local rule~~ is a written paper for purposes of these rules.

[1] At the time the agenda book was being prepared, the other advisory committees were starting to have their spring meetings. The Reporter will update the Committee at the Pasadena meeting of any actions taken by the other committees on these proposed rules.

[2] This is one of two alternatives that will be presented to the Civil Rules Committee, but is the one that the reporter, Professor Ed Cooper, indicates has gained the most support.

COMMITTEE NOTE

Electronic filing has matured. Most districts have adopted local rules that require electronic filing, and allow reasonable exceptions as required by the former rule. The time has come to seize the advantages of electronic filing by making it mandatory in all districts. But exceptions continue to be available. Paper filing must be allowed for good cause. And a local rule may allow or require paper filing for other reasons. Many courts now have local rules that provide for paper filing by pro se litigants, and may carry those rules forward.

The act of electronic filing by an authorized user of the court's system counts as the filer's signature. Under current technology, the filer must log in and present a password. Those acts satisfy the purposes of requiring a signature without need for an additional electronic substitute for a physical signature. But the rule does not make it improper to include an additional "signature" by any of the various electronic means that may indicate an intent to sign.

The amended rule applies directly to the filer's signature. It does not address others' signatures. Many filings include papers signed by someone other than the filer. Examples include affidavits and declarations and, when filed, discovery materials. Provision for these signatures may be made by local rule, but if the Judicial Conference adopts standards that govern the means or form of electronic signing, they may displace local rules.

[The former provision for verification by electronic means is omitted. Verification is not often required by these rules. The special policies that justify a verification requirement suggest that it is better to defer electronic verification pending further experience. Local rules may address verification by electronic means.**]**

Bankruptcy Rule 7005 makes Civil Rule 5 applicable in adversary proceedings. Therefore an amendment to Rule 5(d)(3) would automatically apply in adversary proceedings unless Rule 7005 were amended to provide otherwise. But the topic of electronic filing is also addressed in Bankruptcy Rule 5005(a)(2). It largely tracks the language of current Civil Rule 5(d)(3). In order to make Rule 5005(a)(2) consistent with Rule 7005's incorporation of an amended Civil Rule 5(d)(3), Rule 5005(a) would need to be similarly amended. That could be accomplished as follows:

Rule 5005. Filing and Transmittal of Papers

(a) FILING.

* * * * *

(2) *Filing and Signing by Electronic Means*. ~~A court may by local rule permit or require documents to be filed, signed, or verified~~ All filings shall be made by electronic means that are consistent with any technical standards~~, if any, that~~ established by the Judicial Conference of the United States ~~establishes~~. ~~A local rule may require filing by electronic means only if reasonable exceptions are allowed.~~ But paper filing shall be allowed for good cause, and may be required or allowed for other reasons by local rule. The act of electronic filing constitutes the signature of the person who makes the filing. A document filed by electronic means ~~in compliance with a local rule~~ constitutes a written paper for the purpose of applying these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107 of the Code.

COMMITTEE NOTE

Subdivision (a)(2) is amended to conform to Rule 5(d)(3) F.R. Civ. P, which Rule 7005 makes applicable in adversary proceedings. This amendment is based on recognition that electronic filing has matured. Most [All?] districts have adopted local rules that require electronic filing and allow reasonable exceptions as required by the former rule. The time has come to seize the advantages of electronic filing by making it mandatory in all districts. But exceptions continue to be available. Paper filing must be allowed for good cause. And a local rule may allow or require paper filing for other reasons. Many courts now have local rules that provide for paper filing by pro se litigants, and they may carry those rules forward.

The act of electronic filing by an authorized user of the court's system counts as the filer's signature. Under current technology, the filer must log in and present a password. Those acts satisfy the purposes of requiring a signature without need for an additional electronic substitute for a physical signature. But

the rule does not make it improper to include an additional "signature" by any of the various electronic means that may indicate an intent to sign.

The amended rule applies directly [only?] to the filer's signature. It does not address others' signatures. Many filings include papers signed by someone other than the filer. Examples include petitions, schedules, affidavits and declarations and, when filed, discovery materials. Provision for these signatures may be made by local rule, but if the Judicial Conference adopts standards that govern the means or form of electronic signing, they may displace local rules.

[The former provision for verification by electronic means is omitted. Verification is not often required by these rules. The special policies that justify a verification requirement suggest that it is better to defer electronic verification pending further experience. Local rules may address verification by electronic means.**]**

The Subcommittee concluded that adoption of the proposed amendments to Civil Rule 5(d)(3) and Bankruptcy Rule 5005(a)(2) would have little practical impact on bankruptcy cases and proceedings since electronic filing is generally required by local rule. The proposed amendment would generally require electronic filing by national rule. To the extent that local rules currently allow reasonable exceptions—for example, for pro se filers—those exceptions could continue because local exceptions are permitted. The amended rule would contain a new sentence providing that the act of electronic filing constitutes the signature of the filer, but that provision also conforms to existing practice. When this Committee's proposed (and later withdrawn) electronic signature amendment was published, a similar provision was included, and it drew no negative comments. All of the criticism related to the provisions regarding the electronic signature of a non-filing party.

The Subcommittee therefore recommends that if the Civil Rules Committee proposes an amendment to Rule 5(d)(3), the Advisory Committee should propose the parallel amendment to Rule 5005(a)(2), to be published simultaneously with the civil rule amendment.[3]

[3] With respect to bankruptcy appeals, Rule 8001(c) [Method of Transmitting Documents]—which went into effect on December 1, 2014—provides that a "document must be sent electronically under these Part

Electronic Service

The Civil Rules Committee will also consider whether to amend Rule 5(b)(2)(E) to eliminate the consent requirement for the use of electronic service of documents filed after the original complaint. As noted above, Rule 7005 adopts Civil Rule 5 for adversary proceedings, so any amendment to Rule 5(b)(2)(E) would become applicable in adversary proceedings unless the bankruptcy rule were amended to deviate from the civil rule. Similarly, Rule 9014(b), which governs contested matters, requires service according to Civil Rule 5(b) for any paper filed after the motion, so any amendment to Rule 5(b) would automatically apply under this rule.

The proposed amendment to Rule 5(b)(2)(E) does not mandate the use of electronic service by the serving party; alternative methods of service would remain in subparagraphs (A), (B), (C), (D) and (F). The amendment being considered would instead eliminate the requirement that the party being served consent in writing to the receipt of electronic service and would replace that requirement with "good cause" and local rule exemptions:

Rule 5. Serving and Filing Pleadings and Other Papers

* * * * *

(b) Service: How Made.

* * * * *

(2) *Service in General.* A paper is served <u>on the person to be served</u> under this rule by:

* * * * *

VIII rules, unless it is being sent by or to an individual who is not represented by counsel or the court's governing rules permit or require mailing or other means of delivery." That general requirement for electronic transmission is applicable to filing under Rule 8011(a)(2), which requires "transmission" to the district court or BAP clerk. The Appellate Rules Committee is starting to consider possible amendments to Fed. R. App. P. 25 [Filing and Service] to accommodate electronic methods of transmission. The Advisory Committee will probably want to stay abreast of those developments in order to assess whether any conforming amendments to the Part VIII rules should be proposed.

(E) sending it by electronic means ~~if the person consented in writing~~, unless the person shows good cause to be exempted from such service or is exempted by local rule. ~~— in which event~~ Electronic service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

* * * * *

COMMITTEE NOTE

Provision for electronic service was first made when electronic communication was not as widespread or as fully reliable as it is now. Consent of the person served to receive service by electronic means was required as a safeguard. Those concerns have substantially diminished. The amendment makes electronic service the standard. But it also recognizes that electronic service is not always effective. Some litigants lack access to suitable electronic devices. Exceptions are available on showing good cause in a particular case. And local rules may establish other exceptions **[**that reflect local experience**]**. Because registration for CM/ECF is generally deemed to constitute consent to electronic service, the elimination of a consent requirement for electronic service should have little impact on existing practice.

Because the proposed civil amendment would apply automatically to the Bankruptcy Rules, the Subcommittee makes no recommendation regarding Civil Rule 5(b)(2). Members of the Subcommittee, however, agreed that the proposed amendment should have little impact on existing bankruptcy practice.[4]

Notice of Electronic Filing

Along with the change to Rule 5(b)(2)(E), the Civil Rules Committee will also discuss the possibility of amending Rule 5(d)(1) regarding certificates of service. The Committee on Court Administration and Case Management has suggested to the Standing Committee that the

[4] Bankruptcy Rule 8011(c)(1), which governs the method of service in bankruptcy cases on appeal to the district court or BAP, provides that "[s]ervice must be made electronically, unless it is being made by or on an individual who is not represented by counsel or the court's governing rules permit or require service by mail or other means of delivery." The rule then specifies methods of service by or on an unrepresented party.

various advisory committees consider rule amendments that would allow a notice of electronic filing to be used in place of a certificate of service.

The proposed amendment to Rule 5(d)(1) provides as follows:

Rule 5. Serving and Filing Pleadings and Other Papers

* * * * *

(d) Filing.

(1) *Required Filings; Certificate of Service*. Any paper after the complaint that is required to be served ~~— together with a certificate of service —~~ must be filed within a reasonable time after service; a certificate of service also must be filed, but a notice of electronic filing constitutes a certificate of service on any party served through the court's transmission facilities [unless the serving party learns that it did not reach the party to be served].

COMMITTEE NOTE

The amendment provides that a notice of electronic filing generated by the court's CM/ECF system is a certificate of service on any party served through the court's transmission facilities. But if the serving party learns that the paper did not reach the party to be served, there is no service under Rule 5(b)(2)(E) and there is no certificate of the (nonexistent) service.

[When service is not made through the court's transmission facilities, a certificate of service must be filed and should specify the date as well as the manner of service.**]**

Rule 5(d)(1) addresses the certificate of service only. It does not address electronic service or a failure of electronic service.

As with electronic service, this amendment, if approved, would become applicable in adversary proceedings pursuant to Rule 7005. Rule 9014, however, does not incorporate Rule 5(d). The Subcommittee makes no recommendation regarding this proposed amendment. No

member raised any concerns about the prospect of the amended rule applying in adversary proceedings in bankruptcy.[5]

The Template for Equating Electronic Documents and Actions with Traditional Ones

At the fall meeting, the Committee briefly discussed and referred to this Subcommittee for further consideration the CM/ECF template for bringing electronic documents and actions into the terms of the federal rules. The template proposed for consideration by the various advisory committees provides as follows:

> **Rule ___. Information in Electronic Form and Action by Electronic Means**
>
> **(a) Information in Electronic Form:** In these rules, [unless otherwise provided] a reference to information in written form includes electronically stored information.
>
> **(b) Action by Electronic Means:** In these rules, [unless otherwise provided] any action that can or must be completed by filing or sending paper may also be accomplished by electronic means [that are consistent with any technical standards established by the Judicial Conference of the United States].

The Civil Rules Committee has decided not to pursue such a rule now, and the Appellate Rules Committee is considering at most only subsection (a). Sharing in the general lack of enthusiasm for this project, the Subcommittee recommends that the Advisory Committee not take any action on such a rule now. Rule 5005(a)(2) already states that "[a] document filed by

[5] Rule 8011(d), applicable in bankruptcy appeals, requires either an acknowledgment of service or a proof of service to be filed and does not refer to a notice of electronic filing. But Rule 8004(a)(3), which addresses appeals by leave, recognizes that electronic service may eliminate the need for certificates of service. It states that a certificate of service must be filed with a notice of appeal and motion for leave to appeal "unless [those documents are] **Error! Main Document Only.**served electronically using the court's transmission equipment." The Committee may in the future want to consider whether Rule 8011(d) should be amended along the lines of Civil Rule 5(d)(1).

electronic means [in compliance with a local rule][6] constitutes a written paper for the purposes of applying these rules, the Federal Rules of Civil Procedure made applicable by these rules, and §107 of the Code." Although that rule is narrower in scope than subsection (a) of the template, as it applies only to filed documents, the Subcommittee thought that it addresses many of the issues that the use of electronic documents may present under the Bankruptcy Rules. Members of the Subcommittee also believed that courts are generally applying the rules appropriately to documents transmitted and actions taken by electronic means. Should the Committee separately decide to undertake a project to review the notice provisions throughout the Bankruptcy Rules, it could consider as part of that assessment whether to propose a general rule that allows electronic transmission to satisfy requirements for notice by mail, physical delivery, and the like.

[6] Under the proposed amendment previously discussed in this memorandum, the language in brackets would be deleted.

TAB 9A(2)

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ELIZABETH GIBSON, REPORTER

SUBJECT: SUPPLEMENTAL MATERIALS ON REQUIRED ELECTRONIC FILING

DATE: APRIL 1, 2015

After the memorandum discussing the proposed Civil Rules amendments was prepared, the Criminal Rules Committee held its spring meeting. That committee also considered the proposal for amending Civil Rule 5(d)(3), because Criminal Rule 49(d) requires filing "in a manner provided for in a civil action." Members of the Criminal Rules Committee expressed concern that the proposed Civil Rule amendment would require electronic filing but would not include an exception for *pro se* filers. They asked the reporters to convey their concerns to the Civil Rules Committee reporter and to request that the Civil Rules Committee consider including a *pro se* exception in the proposed amendment.

The materials that follow in the agenda book are (1) a memorandum from the Criminal Rules Committee reporters that explains the concerns of that committee's members about the absence of an exception for *pro se* filers, and (2) a supplemental memorandum prepared by Reporter Ed Cooper for the Civil Rules Committee that sets out a revision of the Rule 5(d)(3) amendment that responds to the Criminal Rules Committee's request. It would except persons proceeding without an attorney from the mandatory electronic-filing requirement, and it would provide that such persons may file electronically only if permitted by a local rule or court order. The Civil Rules Committee will consider the revised proposal at its meeting on April 9-10.

Attachment 1

TO: **Civil Rules Committee**
FROM: **Sara Beale and Nancy King, Reporters for the Criminal Rules Committee**
RE: **E-filing rules for pro se litigants**
DATE: **March 26, 2015**

At its spring meeting last week, the Criminal Rules Committee discussed the e-filing proposal that was on the agenda for the spring meeting of the Civil Rules Committee, and whether a parallel change to the Criminal Rules would be desirable.

The Committee asked the reporters to relate its concerns about the proposed change to Professor Cooper, and to request that the Civil Rules Committee consider revising the proposed amendment to eliminate any requirement that pro se filers must e-file (absent a local rule or showing of good cause). Alternatively, if the Civil Rules Committee recommends a mandatory e-filing rule that would encompass pro se litigants, the Criminal Rules Committee would like time to prepare a proposal for amendments to the Criminal Rules and to the 2254 and 2255 Rules that could be published at the same time.

Following an informal telephone conference, Professor Cooper suggested that a memorandum summarizing the concerns of the Criminal Rules Committee would assist the Civil Rules Committee in its consideration of the e-filing rule at its upcoming meeting. We have prepared this informal Reporters' Memo for that purpose, based on our memories of the discussion last week. Please note that although this memorandum has been reviewed by Judge Raggi and the chairs of the relevant subcommittee, it has not been approved by the Criminal Rules Committee.

The Relevance of the Civil Rule to the Criminal Rules Committee

Criminal Rule 49(d) provides that a paper must be "filed in a manner provided for in a civil action." Thus any change to Civil Rule 5(d) on e-filing would apply automatically in criminal cases when the civil rule amendment takes effect. In addition, any change to filing requirements in the Civil Rules will likely affect cases filed under Sections 2254 and 2255, for which the Criminal Rules Committee traditionally has taken responsibility. Rule 12 of the Rules Governing Section 2254 Cases provides that "The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules." Rule 12 of the Rules Governing Section 2255 Proceedings states: "The Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules."

Why Has the Criminal Rules Committee Requested a Carve-Out for Pro Se filers?

The Criminal Rules Committee's concerns can be grouped into three somewhat overlapping categories: (1) doubts about whether the CM/ECF system itself is ready for the challenges that pro se filing access will raise (including but not limited to pro se filers accused of

crime or in custody); (2) constitutional concerns about creating barriers to paper filing for pro se filers accused of crime or in custody; and (3) the concern that most districts will have to change their local rules to accommodate any new rule mandating e-filing for all pro se filers absent a showing of good cause or a local rule exemption.

(1) *Challenges of extending CM/ECF filing to pro se litigants*

The Criminal Rules Committee was concerned that courts lack experience allowing pro se litigants access to CM/ECF, a system designed for use by attorneys, who are bound by rules of professional conduct and who have received a legal education. Members were concerned that use of CM/ECF by pro se litigants was still in its experimental stages, and doubted whether it had been tested sufficiently to have addressed the following:

- Lack of training or resources for training for pro se filers, and the inability or unwillingness of pro se litigants to obtain or comply with training
- Increased burden on clerk staff to answer questions of pro se filers, particularly those who, unlike attorneys, are not routine filers.
- Mistaken filings – filers without legal training selecting the wrong title for a filing (lawyers already do this, requiring quality control protocols by clerk staff), filing things multiple times, or failing to attach required documents or attaching the wrong thing.
- Pro se filers may view corrective changes of their filing choices by clerk staff as inappropriate or malicious (not an issue if filer does not make those choices and instead papers are scanned in by staff, because then staff is naming the document, etc.)
- PACER and automatic real-time case notification subscription services that would disseminate to the public confidential or inappropriate information included in filings immediately upon filing, before clerk's office staff can screen (if filed Friday eve may be days before staff can review), and once filed may require an order of court to seal or eliminate.
- Burdens or confusion for parties who must respond to mistaken or uncorrected filings
- Misappropriation of login and password information – by accident or intentional. Anyone can use a filer's login/pw, the system provides no way to identify whether access was by the person to whom it was issued or by someone else.
- Absence of control on abuse and mistakes that is provided by legal training and rules of professional responsibility – risk of multiple filings, filings in multiple cases (under the versions of CM/ECF now in place, a person who has the credentials to file in his own case may, without limitation, file in other cases in which he is not a litigant), denial of service attacks, introduction of malware or viruses into CM/ECF and PACER systems.

Additional concerns were raised about pro se criminal, 2254 or 2255 filers using CM/ECF, a practice that appears not to have been tested anywhere. Although members discussed the efforts of one district that had started a limited program allowing electronic filing by pro se 1983 plaintiffs in custody in some corrections facilities, the Committee members were not aware of a single district that has allowed electronic filing by a pro se criminal defendant in a criminal case, a pro se petitioner in a 2254 case, or a pro se applicant in a 2255 case. In addition

to all of the general concerns listed above for pro se filers, special concerns for these cases include:

- The possibility that a filing (in the filer's case or other cases once the filer has access to the system and can file anything in any case) might reveal confidential information about victims, witnesses, and cooperating defendants, and become immediately accessible.

- The inability of parties who are in custody to file electronically or receive electronic confirmations. Many federal criminal defendants, and all state habeas petitioners, are housed in state jails and prisons unlikely to give prisoners access to the means to e-file or receive electronic confirmations. Even if some do have email access at one time, they often move from facility to facility, and in and out of custody. Committee members from various districts stated that the majority of incarcerated pro se filers in their districts would not have the ability to file electronically.

- The inability to file case-initiating documents without credit card information.

- The impact of e-filing rules on victims, law enforcement agents, and other third parties (e.g. asset owners) that file documents in criminal cases, individuals who may face similar (or different) challenges.

(2) *Constitutional concerns*

Second, in addition to the implementation concerns listed above, the Criminal Rules Committee believed that a carve-out for pro se filers would be advisable given the constitutional obligation to provide court access to prisoners and those accused of crime. The proposed amendment to the civil rule would effectively require pro se criminal defendants and pro se litigants in custody to e-file, unless they first demonstrated good cause to allow paper filing, or could point to a local rule, adopted prior to the effective date of the mandatory e-filing amendment, that permitted or required them to paper file. Members anticipated that no court would require a showing of good cause by those in custody or accused in order to avoid e-filing requirements, because of constitutional concerns. As noted in the next paragraph, members were not persuaded that existing local rules presently provide the express exemption from e-filing that pro se defendants and prisoners would need.

(3) *Reliance on local rules to exempt pro se filers, particularly those accused or in custody.*

The Criminal Committee's understanding was that most districts have not already passed local rules expressly requiring criminal and prisoner pro se litigants to use paper filing. (They haven't needed to - the current rules make paper filing the presumptive method unless local rule says otherwise.) The Criminal Rules Committee feared that adoption of the civil rule proposal would compel most districts to pass new local rules, prior to the effective date of the civil rule change, in order to continue their current practice. The Committee recognized that local rules could be adjusted to exempt from e-filing pro se criminal defendants and petitioners in habeas and 2255 cases, but there was a strong consensus that a national rule should not be adopted that

would require a revision of the local rules in the vast majority of districts. (A report on local e-filing rules for civil cases that was prepared for the Rules Office in 2013 suggests that even in *civil* cases - the report did not address local rules affecting the criminal, habeas, and 2255 cases the Committee was most concerned about -- very few districts would choose to permit pro-se prisoner e-filing. For example, of the 85 districts that had adopted local rules mandating e-filing in civil cases, all but one exempted all pro se litigants, and 59 districts explicitly barred pro se prisoners from e-filing in civil cases.)

The Criminal Committee's Request

For these reasons, the Criminal Rules Committee unanimously concluded that any presumptive e-filing rule should carve out pro se filers, at least those who are criminal defendants or in custody.

In the event the Civil Rules Committee decides that a presumptive e-filing rule that does not exempt pro se filers is appropriate for the Civil Rules, the Criminal Rules Committee wanted us to convey its hope that the Civil Rules Committee would coordinate the timing of such a change with the Criminal Rules Committee. Coordination might include a delay in publishing the proposed Civil Rule so that any proposed adjustments to the Criminal, habeas, and 2255 Rules could be drafted, and published at the same time as an amendment to the Civil Rule.

Attachment 2

CIVIL RULES APRIL 2015 AGENDA SUPPLEMENT

Rule 5(d)(3): e-Filing

This memorandum supplements the materials on e-filing that appear at pages 212-215 of the agenda book for the Committee meeting on April 9-10, 2015.

The alternative sketch of Civil Rule 5(d)(3) that appears here was worked out in collaboration with representatives of the Criminal Rules Committee — the Committee Chair, Judge Raggi, Judges Feinerman and Lawson, and Reporters Beale and King. Professor Capra carried forward as Reporter Emeritus for the recently disbanded all-Committees Subcommittee on matters electronic.

Judge Oliver and Clerk Briggs represented the Civil Rules Committee in the conference call. Judge Campbell joins them in recommending that the Committee recommend publication of the revised Rule 5(d)(3) and Committee Note set out below.

First, a bit of background to explain the purposes of this alternative. Present Rule 5(d)(3) authorizes local rules that allow electronic filing, and provides that "[a] local rule may require electronic filing only if reasonable exceptions are allowed." Many local rules address e-filing by pro se litigants. A recent count by the Administrative Office found that 36 districts permit nonprisoner pro se litigants to request permission to e-file, while 48 districts do not permit nonprisoner pro se litigants to e-file. 59 districts explicitly bar pro se prisoners from e-filing. The Northern District of Texas requires pro se litigants to conventionally file the complaint, but permits e-filing of later papers. Two districts allow pro se prisoners to e-file through a special program. (Less formal programs also are experimenting with e-filing by pro se prisoners.)

Past discussions of the proposal to make e-filing mandatory, with exceptions, devoted substantial attention to pro se litigants. The potential difficulties that will be encountered by pro se litigants, and that in turn will be visited on courts and other parties, were recognized. But two related considerations counseled against including an explicit exception for pro se litigants in rule text. The fundamental belief was that e-filing can be as useful for a pro se litigant as for other litigants, substantially reducing costs and expediting the filing process. A subsidiary belief was that an explicit rule provision might need to be revisited soon in response to rapid advances in the availability of electronic means for filing and in the sophistication needed to engage in e-filing. The drafts in the agenda book leave the burden of providing exceptions or exclusions on the local rules process: "But paper filing must be allowed for good cause, and may be *required* or allowed for other reasons by local rule."

The Criminal Rules Committee discussed these issues and studied the Civil Rules drafts at its March meeting. Acting on a

thorough report by a subcommittee, and on advice of their district clerk liaison, they were concerned that serious problems would frequently result from e-filing by criminal defendants and by incarcerated persons seeking relief under the Rules Governing § 2254 and § 2255 proceedings. The Appendix to this memorandum is a memorandum prepared by Professors Beale and King outlining those problems. They fear that these problems are so serious and will occur often enough that a national rule allowing exclusions or exemptions only according to local rules will impose a substantial burden on local rulemaking in all districts.

It well may be that problems with e-filing by pro se litigants will arise more frequently, and be more severe, in criminal prosecutions and in proceedings for post-judgment relief than in civil actions. These litigants often experience severe disadvantages, among them lack of ready (or even any) access to electronic systems while incarcerated. It may be particularly difficult to provide them the training needed to navigate the CM/ECF system. That prospect could be relied on to support adoption of different provisions in the Criminal Rules and the Civil Rules. Although uniformity among all sets of rules is desirable when addressing common topics, differences in context often justify differences in rule text.

The considerations that underlie the alternative Civil Rules proposals in the agenda book, however, are not compelling. The burden placed on local rules can be reversed, without great cost and indeed with potential benefit. Instead of requiring e-filing by pro se litigants absent excuse or exclusion by local rule, the national rule can exclude pro se litigants from e-filing unless authorized by local rule. That approach is reflected in the alternative draft set out here. It can be supported by noting that it will build directly on present local rules, which take different approaches. Courts that now allow e-filing by pro se litigants in some circumstances may come to broaden the practice if experience shows that will work. Those that now exclude it may come to allow it, moving in response to experience in other districts and to local circumstances. The national rule might come to be revised eventually as e-filing by pro se litigants becomes a general practice, but it may be urged that revision is not likely to be needed in the next few — or even several — years.

The revised approach can be adopted with either of the alternative approaches to e-signatures reflected in the agenda book. This version works with the "constitutes the signature" approach:

(3) *Electronic Filing and Signing.*

(A) All filings, except those made by a person

proceeding without an attorney,[1] must be made[2] by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States. But paper filing must be allowed for good cause, and may be required or allowed for other reasons by local rule.

(B) A person proceeding without an attorney may file by electronic means only if permitted by local rule or by court order.

(C) The act of electronic filing constitutes the signature of the person who makes the filing. A paper filed electronically is a written paper for purposes of these rules.

Over-and Underline Version

(3) *Electronic Filing~~,~~ and Signing~~, or Verification~~. ~~A court may, by local rule, allow papers to be filed~~*

(A) All filings, except those made by a person proceeding without an attorney, must be made~~, signed, or verified~~ by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States. But paper filing must be allowed for good cause, and may be required or allowed for other reasons by local rule. ~~A local rule may require electronic filing only if reasonable exceptions are allowed.~~

(B) A person proceeding without an attorney may file by electronic means only if permitted by local rule or by court order.

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[1] Different ways of referring to pro se litigants are possible. One obvious alternative, using fewer words, would be "except those made by a person proceeding pro se." Or "a person not represented by an attorney." A more positive approach might be "All filings made by an attorney must * * *." One reason for "a person proceeding without an attorney," as shown in text, is that it seems to speak to a situation addressed in one circuit rule: an attorney who appears pro se as a party. The attorney appearing on his own behalf may not be admitted to practice in the district court, or indeed may not be admitted to practice anywhere. At least some participants believe it is better to treat this attorney as any other pro se party.

[2] "and signed" could be included here if that approach seems the better approach to the e-signature question.

(C) The act of electronic filing constitutes the signature of the person who makes the filing. A paper filed electronically ~~in compliance with a local rule~~ is a written paper for purposes of these rules.

COMMITTEE NOTE

Electronic filing has matured. Most districts have adopted local rules that require electronic filing, and allow reasonable exceptions as required by the former rule. The time has come to seize the advantages of electronic filing by making it mandatory in all districts, except for filings made by a person proceeding without an attorney. But exceptions continue to be available. Paper filing must be allowed for good cause. And a local rule may allow or require paper filing for other reasons.

Filings by a person proceeding without an attorney are treated separately. It is not yet possible to rely on an assumption that pro se litigants are generally able to seize the advantages of electronic filing. Encounters with the court's system may prove overwhelming to some. Attempts to work within the system may generate substantial burdens on a pro se party, on other parties, and on the court. Rather than mandate electronic filing, filing by pro se litigants is left for governing by local rules. Efficiently handled electronic filing works to the advantage of all parties and the court. Many courts now allow electronic filing by pro se litigants with the court's permission. Such approaches may expand with growing experience in these and other courts, along with the growing availability of the systems required for electronic filing and increasing familiarity of most people with electronic communication.

The act of electronic filing by an authorized user of the court's system counts as the filer's signature. Under current technology, the filer must log in and present a password. Those acts satisfy the purposes of requiring a signature without need for an additional electronic substitute for a physical signature. But the rule does not make it improper to include an additional "signature" by any of the various electronic means that may indicate an intent to sign.[3]

The amended rule applies directly to the filer's signature. It does not address others' signatures. Many filings include papers

[3] Civil Rule 11(a) provides that every pleading, written motion, and other paper must be signed. Rule 5(d)(3) already provides that a paper filed electronically in accordance with a local rule is a written paper for purposes of the Civil Rules. It seems useful to carry this provision forward in this place, not Rule 11, omitting only the reference to local rules.

signed by someone other than the filer. Examples include affidavits and declarations and, when filed, discovery materials. Provision for these signatures may be made by local rule, but if the Judicial Conference adopts standards that govern the means or form of electronic signing, they may displace local rules.

[The former provision for verification by electronic means is omitted. Verification is not often required by these rules. The special policies that justify a verification requirement suggest that it is better to defer electronic verification pending further experience. {Local rules may address verification by electronic means.**}]**

Rule 6(d) (3 added days) Committee Note

A suggestion by the Department of Justice to add language to the Committee Note for Rule 6(d) is quoted at page 191 in the agenda book. The agenda materials note that other advisory committees have shown interest in adding something along these lines to their Committee Notes.

Uniformity on this point is desirable. Without suggesting that the Committee Note should be expanded, a shorter statement may suffice. Something like this:

> The ease of making electronic service outside ordinary business hours may at times lead to a practical reduction in the time available to respond. [alternative 1: It is expected that courts will allow appropriate extensions when warranted.] [alternative 2: Eliminating the automatic addition of 3 days does not limit the court's authority to grant an extension in appropriate circumstances.]

Language like this not only reduces the number of words but also — particularly in alternative 2 — is less directive.

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TAB 9B

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON TECHNOLOGY AND CROSS BORDER INSOLVENCY

SUBJECT: COMMENTS ON PUBLISHED RULES AND FORM FOR CHAPTER 15 CASES

DATE: MARCH 25, 2015

On the recommendation of the Advisory Committee, the Standing Committee in August 2014 published proposed amendments to Rules 1010, 1011, 2002, and proposed new Rule 1012 and new Form 401, all relating to chapter 15 cases. Two comments were submitted in response. The Pennsylvania Bar Association commented on Rules 1010 and 1012, and Anne Small on behalf of the Office of General Counsel of the SEC commented on the proposed new chapter 15 petition, Official Form 401. The Subcommittee reviewed these comments during its conference call on March 2, and **it recommends that the Committee approve the form and rules as published.**

The Published Amendments and Proposed New Rule and Form

Rules 1010, 1011, 1012, 2002

These amendments to the Bankruptcy Rules are intended to improve procedures for international bankruptcy cases. Under chapter 15 of the Bankruptcy Code, a representative of a foreign debtor may petition a United States court to recognize a foreign proceeding in a cross-border insolvency case. If the recognition petition is granted, certain provisions of the Bankruptcy Code will apply to assist the foreign representative in administering the debtor's assets or in pursuing other relief. Shortly after chapter 15 was added to the Bankruptcy Code in 2005, the Bankruptcy Rules were amended to insert new provisions governing cross-border

cases. Among the new provisions were changes to Rules 1010 and 1011, which previously governed only involuntary bankruptcy cases, and Rule 2002, which governs notice. The currently proposed amendments to the Bankruptcy Rules would make three changes: (i) remove the chapter 15-related provisions from Rules 1010 and 1011; (ii) create a new Rule 1012 to govern responses to a chapter 15 petition; and (iii) augment Rule 2002 to clarify the procedures for giving notice in cross-border proceedings.

Official Form 401

The proposed Official Form is a new form for chapter 15 petitions. The creation of the form arose from the ongoing work of the Forms Modernization Project. While drafting a new voluntary petition form for non-individual debtors, the FMP received comments suggesting that a separate chapter 15 petition form should be drafted. In particular, the U.S. Trustee Program recommended the creation of a separate form to allow the deletion of information on the voluntary petition form that is relevant only to chapter 15 cases.

The Comments

1. Pennsylvania Bar Association (comment 0091) – After noting that the chapter 15 proposals will have little impact on bankruptcy practice in Pennsylvania, the Bar Association stated that proposed Rule 1010 and 1012 "seem appropriate." It went on, however, to suggest that Rule 1012 (Responsive Pleading in Cross-Border Cases) contain a cross-reference to Rule 1004.2 (Petition in Chapter 15 Cases). The latter rule prescribes a procedure for challenging the designation in a chapter 15 petition of the debtor's center of main interests. The Bar Association explained that "Rule 1004.2(b) sets forth those parties that should be served in connection with challenges to a debtor's designation in a petition." It suggested that "[o]bjections and responses to a petition set forth in proposed Bankruptcy Rule 1012(b) should be served in the same

manner, and therefore including a cross-reference to Bankruptcy Rule 1004.2(b) will eliminate any confusion or uncertainty with respect to who should be served with the objections contemplated by Bankruptcy Rule 1012."

2. Anne Small, SEC (comment 0115) – The SEC's Office of General Counsel commented that the creation of a separate chapter 15 petition has resulted in the omission of a requirement that the petitioner file what is now Attachment A to the all-purpose petition (Official Form 1). This attachment requires the reporting of information regarding the debtor's SEC file number, total assets and liabilities, the numbers and types of outstanding securities, a brief description of the debtor's business, as well as the names of any individuals who own five percent or more of the debtor's voting securities. Ms. Small wrote that because this information is valuable to investors and the SEC, a similar attachment should be required for chapter 15 petitions when the debtor is a reporting company.

The Subcommittee's Recommendation

Based on its discussion of the two comments, the Subcommittee concluded that no responsive changes are needed to the published rules and form. With respect to the Pennsylvania Bar Association's comment, the Subcommittee noted that proposed new Rule 1012 merely serves as the new location of provisions governing a response to a chapter 15 petition that were previously included in Rule 1011. Neither the existing rule nor the proposed rule specifies who must be served with a responsive pleading. The Subcommittee concluded that the comment should be treated as a new suggestion that the notice provisions of Rule 1004.2(b) be made applicable to all objections and responses to a chapter 15 petition rather than just to challenges to the designation of the debtor's center of main interests. If the Committee agrees, the Subcommittee could consider that suggestion and make a recommendation at a future meeting.

The Subcommittee concluded that the SEC's comment is based on a misunderstanding about the current requirement. According to current Form 1, only reporting companies that are requesting relief under chapter 11 are required to file Attachment A. The creation of a separate chapter 15 petition has therefore not caused any change in the requirement. Should a foreign representative following recognition file a chapter 11 petition, the attachment would have to be filed if the debtor is a reporting company.