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

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MEMORANDUM

TO: Hon. David G. Campbell, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Sandra Segal Ikuta, Chair
Advisory Committee on Bankruptcy Rules

RE: Report of the Advisory Committee on Bankruptcy Rules

DATE: May 21, 2018

I. Introduction

The Advisory Committee on Bankruptcy Rules met in San Diego, California, on April 3, 2018. The draft minutes of that meeting are attached.

At the meeting the Committee considered comments that were submitted in response to the publication in August 2017 of proposed amendments to five rules and one Official Form. After making some changes in response to comments, the Committee gave final approval to four of the published rules. It voted to hold in abeyance the proposed amendments to the other published rule and to the Official Form. It also voted to seek final approval without publication of the reestablishment of two power-of-attorney forms as Official Forms, rather than Director's Forms.

The Committee considered new suggestions for rule amendments and voted to seek the publication of proposed amendments to three rules this summer.

Finally, the Committee approved the distribution of a survey administered by the Federal Judicial Center to seek feedback from relevant constituencies regarding the desirability of restyling the Bankruptcy Rules in a manner similar to the other federal rules.

The action items presented by the Committee are discussed below in Part II, organized as follows:

A. Items for Final Approval

(A1) Rules and Official Forms published for comment in August 2017—
- Rule 4001(c);
- Rule 6007(b);
- Rule 9036; and
- Rule 9037(h).

(A2) Approval without publication—
- Reestablishment of Director's Forms 4011A and 4011B as Official Forms.

B. Items for Publication

- Rule 2002(f), (h), and (k);
- Rule 2004(c); and
- Rule 8012.

Part III of this report consists of three information items regarding (i) the Committee's decision to take no further action on a suggestion to amend Rule 2013; (ii) the Committee's decision to take no further action on a suggestion to amend Rule 9019; and (iii) an update on the Committee's consideration of whether to propose that the Bankruptcy Rules be restyled.

II. Action Items

A. Items for Final Approval

(A1) Rules published for comment in August 2017.

The Committee recommends that the Standing Committee approve and transmit to the Judicial Conference the proposed rule amendments that were published for public comment in August 2017 and are discussed below. Bankruptcy Appendix A includes the rules and forms that are in this group.

Action Item 1. Rule 4001(c) (Obtaining Credit). The proposed amendment to Rule 4001(c) would make that rule inapplicable to chapter 13 cases. Rule 4001(c) details the process for obtaining approval of postpetition credit in a bankruptcy case. It requires a motion, in accordance with Rule 9014 (governing contested matters), that contains specific disclosures and information. A suggestion received by the Committee posited that many of the required disclosures are unnecessary in and unduly burdensome for most chapter 13 cases and that they should be made inapplicable in chapter 13. The Committee reviewed the history of Rule 4001(c), which showed that the provision was designed to address issues particular to chapter 11 cases. Most members agreed that Rule 4001(c) did not readily address issues pertinent to chapter 13 cases.

There were no comments on the proposed amendment. In giving final approval to the amendment at the spring meeting, the Committee added a title to the new paragraph (4), "*Inapplicability in Chapter 13 Case*," and subsequently made stylistic changes in response to the comments of the style consultants.

Action Item 2. Rule 6007(b) (Abandonment or Disposition of Property). The amendments to Rule 6007(b) are designed to specify the parties to be served with a motion to compel the trustee to abandon property under § 554(b), and to make the rule consistent with Rule 6007(a) (dealing with abandonment by the trustee or debtor in possession).

Five comments were submitted on the proposed amendments. Two of them, submitted by Judge Robert Kressel of the U.S. Bankruptcy Court for the District of Minnesota, and by Chief Judge Kathy Surratt-States, writing on behalf of the judges of the Eastern District of Missouri bankruptcy court and the clerk of that court, expressed concern about the last sentence of the proposed amendments, which states that the court order "effects the abandonment." They noted that the court was not abandoning the property but was merely granting a motion to compel the abandonment by the trustee or debtor in possession. In response to the comments, the Committee inserted the words "trustee's and debtor in possession's" immediately before the word "abandonment" in the last sentence of the amendments.

Two comments, submitted by Kelly Black, a bankruptcy attorney from Mesa, Arizona, and by Ryan W. Johnson, Clerk of the Bankruptcy Court for the Northern District of West Virginia, criticized the language of the second sentence in the proposed amendments that requires both service and notice of the motion on all creditors because they believe these requirements to be too burdensome. The Committee noted that there are many local practices with respect to service and notice, and it decided that requiring service on all parties, although occasionally more burdensome, is the only way to ensure all parties get the appropriate notice. Therefore, the Committee declined to make any change in response to those comments.

Comments from Aderant CompuLaw made suggestions relating to the 14-day period for objecting to the motion to compel abandonment. They pointed out the different beginning point for the 14-day period in Rule 6007(a) (notice of the proposed abandonment) and proposed Rule 6007(b) (service of the motion to compel abandonment) and noted that under Rule 9006(a), the period under Rule 6007(b) would be increased by three days, unlike under Rule 6007(a). They therefore suggested that either Rule 6007(a) should be changed to require service, or Rule 9006(a) should be changed to increase the period by three days after mailing. They also suggested that both Rule 6007(a) and Rule 6007(b) should read "within 14 days after" instead of "within 14 days of." The Committee declined to make any change in response to those comments because no amendment is proposed either to Rule 6007(a) or to Rule 9006(a).

The style consultants suggested numerous changes to Rule 6007(b). Because the current amendment is intended to parallel the text of Rule 6007(a) (which is not being amended at this time), the Committee declined to accept the suggestions, but will revisit the issue if the restyling project goes forward.

Action Item 3. Rule 9036 (Notice and Service Generally); Deferral of Action on Rule 2002(g) and Official Form 410. On the Committee's recommendation, the Standing Committee in August 2017 published for public comment proposed amendments to two rules and to one Official Form that were intended to expand the use of electronic noticing and service in the bankruptcy courts. These proposals were made as part of the Committee's ongoing study of noticing issues in bankruptcy cases. The published amendments to Rule 2002(g) (Addressing Notices) were proposed to allow notices to be sent to email addresses designated on filed proofs of claims and proofs of interest. The Committee Note explained that a "creditor's election on the proof of claim, or an equity security holder's election on the proof of interest, to receive notices in a particular case by electronic means supersedes a previous request to receive notices at a specified address in that particular case."

The published amendments to Rule 9036 allowed not only clerks but also parties to provide notices or serve documents (other than those governed by Rule 7004) by means of the court's electronic-filing system on registered users of that system. They also allowed service or noticing on any person by any electronic means consented to in writing by that person. Under the proposed amendment, electronic service would be complete upon filing or sending, but it would not be effective if the filer or sender received notice that the electronic service was not received by the person to be served.

The proposed amendments to these two rules were published along with proposed amendments to Official Form 410 (Proof of Claim), which added a check box for opting into email service and noticing. The form, as proposed for amendment, instructed the creditor to check the box "if you would like to receive all notices and papers by email rather than regular mail."

Four sets of comments were submitted addressing these proposed amendments. They were submitted by Ryan Johnson (Clerk, Bankr. N.D.W. Va.); Chief Judge Kathy Surratt-States (Bankr. E.D. Mo.); Eva Roeber (Chief Deputy Clerk, Bankr. D. Neb.) (on behalf on the Bankruptcy Noticing Working Group); and jointly by the Bankruptcy Judges Advisory Group and the Bankruptcy Clerks Advisory Group ("BJAG/BCAG"). Although the commenters were generally supportive of the effort to authorize greater use of electronic service and noticing, they raised several substantial issues about the published amendments. Those issues fall into three groups: (1) technological feasibility; (2) priorities if there are different email addresses for the same creditor; and (3) miscellaneous wording suggestions.

Based on its careful consideration of the comments and the logistics of implementing the proposed email opt-in procedure, the Committee voted unanimously to hold the amendments to Rule 2002(g) and Official Form 410 in abeyance, but to approve the amendments to Rule 9036 with some minor revisions.

Technological Feasibility—All four sets of comments stated that it is not currently feasible to implement the proposed email opt-in system. They said that without time-consuming software programming and testing, the Bankruptcy Noticing Center ("BNC"), which is responsible for sending court notices by means other than CM/ECF, would not be able to receive the email addresses that opting-in creditors would put on proofs of claim. Instead, this information would have to be manually retrieved and conveyed to BNC by clerk's office personnel, and, as Judge Surratt-States stated, "With no work measurement credit to accompany this workload increase, it is unrealistic to assume that courts will take on these duties without considerable difficulty."

Writing on behalf of the Bankruptcy Noticing Working Group, Ms. Roeber explained the technology problem as follows:

> To effectuate the Committee's proposed amendments, the judiciary will have to undertake a great deal of programming and reconfiguration of the Case Management/Electronic Case Files (CM/ECF) and the Bankruptcy Noticing Center (BNC) systems, especially for the amendments to Rule 2002(g)(1) and the Proof of Claim form. For instance, the BNC and CM/ECF systems must be altered to receive and process email addresses submitted on the proof of claim/interest under Rule 2002(g)(1), handle a greater volume of bounced back emails, and to ensure correct email addresses on case mailing lists, among other changes.

Similarly, the BJAG/BCAG comment said that "[w]hile we are pleased with the Committee's direction in promoting electronic noticing rules enhancements, there is currently no technically feasible way in either the judiciary's Case Management/Electronic Case Filing (CM/ECF) system or the Bankruptcy Noticing Center (BNC) contract to manage creditor email opt-in."

Both Ms. Roeber and BJAG/BCAG stated that the programming and testing that would be required to implement the proposed opt-in rule most likely could not be undertaken for some time. They explained that resources are currently being devoted to implementing the NextGen system for the bankruptcy courts, and in addition the contract with BNC will expire this fiscal year and will be "recompeted." In light of these complications, these commenters asked that the effective date of the proposed amendments to Rule 2002(g) and Official Form 410 be delayed for two years from final approval, that is, until December 1, 2021. Judge Surratt-States also expressed the need for delay in the effective date of those amendments. Ms. Roeber added that the amendments to Rule 9036 could go into effect within the normal timeframe
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In order to gain a better understanding of the challenges of implementing the proposed email opt-in provision, members of the Committee and the reporter consulted with the Committee's clerk representative and Administrative Office ("AO") staff members who work with BNC and the Bankruptcy Noticing Working Group. They agreed that a delay in implementation was needed because the CM/ECF system is not currently programmed to pull an email address from a proof of claim for noticing. It would need to be programmed to do this. It would also need to be programmed to include an electronic address in the zipped file sent with the notice to the BNC.

Priorities—Three of the submitted comments expressed concerns about the possibility that conflicting addresses might be on file for a single creditor and that there needs to be clarity about how the proposed email option fits into existing rules about which of the conflicting addresses should be used. This possibility exists because there are several provisions that allow a creditor to designate an address for notice and service, including § 342(f) of the Bankruptcy Code, § 342(e), Rule 2002(g)(1)(A), Rule 2002(g)(4), and Rule 9036.

BNC currently implements these provisions as follows. Consistent with Code § 342(f) and Rule 2002(g)(4), a creditor can fill out a form designating a preferred mailing address for cases in all bankruptcy courts or in courts that the creditor specifies. If the name on the form matches a name on the court-provided mailing list in a case (usually derived from the debtor's schedules), BNC will substitute the preferred address and send a notice there instead. The form alerts the creditor to the fact that "[n]otices generated by trustees, attorneys, debtors and other entities may continue to be mailed to the address of record filed by the debtor."

Under the authority granted in Rule 9036, BNC also has created the Electronic Bankruptcy Noticing program ("EBN"). To participate, an entity fills out a form requesting notices sent by BNC to be sent by email to a designated email address. The same matching process described above is used to substitute the email address for the mailing address provided by the court. As with the preferred address, EBN just applies to notices sent by BNC. Clerk's offices use email addresses for registered users of the CM/ECF system based on the system's user agreement, which specifies that registering for CM/ECF constitutes consent to receive court notices through the system.

The concern raised by the comments is that it is not clear how an email address on a proof of claim and the checked opt-in box affect the existing priorities and thus it is not clear which email address prevails if there are conflicting ones. Ms. Roeber suggested the following order of priorities: (1) CM/ECF email address for registered users; (2) BNC email address; and (3) proof-of-claim opt-in email address. She proposed stating in the Committee Note to Rule 2002(g) that providing an email address on a proof of claim or other filed request pursuant to Rule 2002(g) does not constitute consent to electronic notice or service under Rule 9036. This statement would be contrary to the proposed Committee Note accompanying the amendments to Rule 2002(g), which states, "A creditor's election on the proof of claim, or an equity securityholder's election on the proof of interest, to receive notices in a particular case by electronic means supersedes a previous request to receive notices at a specified address in that particular case."

Wording Suggestions—In their comments Ms. Roeber and BJAG/BCAG suggested a change in the wording of the opt-in instruction on the proof-of-claim form in order to clarify the scope of the consent being given. Ms. Roeber said that the form should "clarify that an electronic noticing election and email address provided on the form are applicable only in the case in which that form was submitted. It should also be clarified that not all papers in the case will be sent to the claimant by email." She endorsed proposed language submitted by BJAG/BCAG. They suggested that the language accompanying the opt-in box be modified as follows:

> Check this box if you would like to receive all notices and papers <u>that you are entitled to receive in this case</u> by email instead of regular mail. <u>Such notices and papers do not include any complaint or motion required to be served in accordance with Rule 7004.</u>

Mr. Johnson commented that Rule 9036 should make clear that the clerk's office is not responsible for notifying parties that their attempted service by CM/ECF failed.

* * *

The Committee discussed the comments during its spring meeting. Members accepted the views of the commenters and AO personnel that current CM/ECF and BNC software would be unable to implement the email opt-in proposal and that considerable time would be required to do the necessary reprogramming and testing. Some members were concerned, however, about approving the rule and form amendments now but delaying their effective date until 2021. During that more-than-three-year interim, technological advances might result in better means of employing electronic service and noticing than what is currently proposed.

While the commenters sought a delay in implementation, not a rejection of the proposed amendments, the Committee concluded that the comments about determining priorities among conflicting creditor addresses complicated the issue. Parties do not have access to BNC's

database of email addresses, so the proof-of-claim opt-in was proposed in order to facilitate email service by parties on creditors that are not registered users of CM/ECF. Thus, assuming that the email address on the proof of claim would be accessible to parties, unlike the EBN email address, the Committee's intent in proposing the amendments would be not served by having an EBN address prevail over a conflicting proof-of-claim address. Likewise, the decision to opt in to email noticing and service needs to be treated as consent in order to be consistent with § 342(e) and (f) and Rule 9036.

The discussion of possibly conflicting email addresses pointed out to the Committee that this bankruptcy rules issue needs to be considered in coordination with other groups and AO personnel who are working on overlapping electronic noticing issues. Ideally there would be one method for a creditor to designate an email address, with access to the information given to all persons who will be sending notices or serving papers. The Committee on Court Administration and Case Management ("CACM") has created a subcommittee that is looking at BNC issues, and Judge Bernstein is a liaison from our Committee to that group. Whether working through the CACM subcommittee or through consultation with the relevant groups, the Committee concluded that the proposed amendments to Rule 2002(g) and Official Form 410 should be held up for now so that a broader perspective could be gained on how best to facilitate electronic service by parties on other parties that are not registered users of CM/ECF.

The Committee decided that the reasons for holding the amendments to Rule 2002(g) and Official Form 410 in abeyance do not apply to the proposed amendments to Rule 9036. The latter amendments would (1) allow both clerks and parties to serve and give notice by CM/ECF to registered users; (2) allow other means of electronic service and noticing to be used for parties that give their written consent to such service and noticing; and (3) provide that electronic service is complete upon filing or sending unless the sender receives notice that the transmission was not successful. Those changes are consistent with amended Civil Rule 5 (Serving and Filing Pleadings and Other Papers), which Rule 7005 makes applicable in bankruptcy proceedings, and the amendments to Rule 8011 (Filing and Service; Signature), which are on track to go into effect on December 1, 2018. Thus there does not seem to be any reason to hold them up, and the Committee recommends that the Standing Committee approve the amendments to Rule 9036, with the following post-publication changes:

- The last sentence of the rule was changed to refer to "any pleading or other paper [rather than complaint or motion] to be served in accordance with Rule 7004" because some objections, pleadings other than complaints (for insured depository institutions), and chapter 13 plans must be served in that manner.
- The following sentences were added to the Committee Note in response to Mr. Johnson's comment: "The rule does not make the court responsible for notifying a person who filed a paper with the court's electronic-filing system that an attempted transmission by the court's system failed. But a filer who receives notice that the transmission failed is

responsible for making effective service." Identical language appears in the Committee Note to Rule 8011.

- The words "or notice" after "service" were added to the third sentence of the rule to be consistent with the wording of the remainder of the rule.
- Stylistic changes were made in response to the comments of the style consultants.

Action Item 4. Rule 9037(h) (Motion to Redact a Previously Filed Document). The proposed amendment to Rule 9037 would add a new subdivision (h) to address the procedure for redacting personal identifiers in previously filed documents that are not in compliance with Rule 9037(a). The Committee proposed the amendment in response to a suggestion (14-BK-B) submitted by CACM.

Three comments were submitted regarding this amendment. The first, submitted by Charles Ivey IV (BK-2017-0003-0005), suggested that the proposed amendment be expanded further to allow parties to submit a redacted document as an alternative to an existing sealed document that is subject to Rule 8009(f). Rule 8009(f) governs the handling on appeal of documents placed under seal by the bankruptcy court. Without elaborating, Mr. Ivey said that Rule 8009(f) creates many unwanted consequences that significantly prolong and complicate bankruptcy appeals. As an alternative to the designation of sealed documents to be included in the record on appeal, he suggested that proposed Rule 9037(h) also permit a party to request that a redacted version of the sealed document be submitted. If the bankruptcy court granted this motion to substitute the redacted document, he said, the bankruptcy clerk's office would transmit the redacted document as part of the final record on appeal.

The Committee decided that Mr. Ivey's suggestion would expand the amendment to address a situation that it has not considered and that it was not attempting to deal with when it proposed the amendment. It therefore voted unanimously to make no changes to the published amendment in response to this comment.

The second comment was submitted by Ryan Johnson (Clerk, Bankr. N.D.W. Va.) (BK-2017-0003-0006). He said that a party who did not file the previous (unredacted) document but is requesting that a document be restricted from viewing due to the improper disclosure of personal identifying information should be specifically exempted from paying the redaction fee. Furthermore, he said, debtors or any entity whose personal information is wrongfully disclosed should not be required by Rule 9037(h) to file a redacted document, such as a proof of claim and its attachments, on behalf of the party originally filing the document.

Mr. Johnson explained that currently many courts addressing this situation restrict viewing of the offending document at the request of the non-filing party and then enter an order directing the original party to file a motion to redact, pay the fee, and attach the redacted version of the offending document. Mr. Johnson was concerned that these procedures might be contrary to proposed Rule 9037(h). He noted that the language regarding a court's ability to "order

otherwise" is ambiguous because the language appears in subsection (h)(1) and then is repeated in subparagraph (h)(1)(C). He expressed concern that once a motion to redact is filed, it is unclear whether a court can alter the requirements of subparagraphs (h)(1)(A) and (B).

Judicial Conference policy addresses the issue Mr. Johnson raised concerning the assessment of a redaction fee on a debtor or other person whose personal identifiers have been exposed. Section 325.90 of the *Guide to Judiciary Policy*, Vol. 10 (Public Access and Records) provides that "[t]he court may waive the redaction fee in appropriate circumstances. For example, if a debtor files a motion to redact personal identifiers from records that were filed by a creditor in the case, the court may determine it is appropriate to waive the fee for the debtor." Because the judiciary policy already allows a waiver of the redaction fee in appropriate situations, the Committee concluded that there is no need for Rule 9037(h) to address the issue.

The Committee thought that Mr. Johnson had raised a valid point about the ambiguity concerning when the rule allows a bankruptcy court to depart from its requirements. As published, subdivision (h)(1) begins with the language "Unless the court orders otherwise." That language could be read to apply to all of (h)(1) were it not for the inclusion of the same language in subdivision (h)(1)(C), thereby possibly suggesting that similar authority is not granted under (h)(1)(A) and (B). The Committee voted unanimously to revise subdivision (h)(1) to make it one sentence that is prefaced with the clause, "Unless the court orders otherwise," and to delete that language from subdivision (h)(1)(C).

The final comment was submitted by Chief Judge Robert E. Grant (Bankr. N.D. Ind.) (BK-2017-0003-0012). He suggested that there was a gap in proposed Rule 9037(h) as there was nothing in the rule that actually required the filing of a redacted version of the original document as a condition to the restrictions upon public access. Under the rule as published, he said, the only redacted version of the original document is the one attached to the motion itself and that copy, along with the entire motion, is restricted from public view. Accordingly, he stated that it was at least theoretically possible that a motion to redact could be submitted and granted but the redacted document is never filed, with the result being that the original filing, as well as the motion to redact it, would be restricted from public view unless the court took further action.

Judge Grant suggested that the rule be revised so that the restrictions upon public access would not occur until the motion was granted and a redacted or amended version of the original document was actually filed with the court. He explained that most courts readily respond to motions to redact, and the difference in timing between the immediate technological restrictions on public access, contemplated by the proposed rule, and the entry of an order granting or denying the motion to redact should be relatively slight. He further noted that the order granting the motion could state that restrictions upon public access would be put in place upon the filing of a redacted version of the original document which, if submitted along with the motion to redact, could occur immediately.

When the Committee initially considered how best to provide for the redaction of already filed documents, it was aware that bankruptcy courts were using a variety of procedures for handling these requests. Of special importance to the Committee was devising a procedure that would provide maximum protection from public view of unredacted documents. To avoid the possibility that a publicly available motion to redact would highlight the existence in court files of an unredacted document, the proposed rule required immediate restriction on public access of the motion itself and the unredacted original document. Access to those documents would remain restricted if the court granted the motion to redact. Although the rule did not expressly say so, the underlying intent, and arguably the implication, of the rule was that the redacted document, which was filed with the motion, would then be placed on the record as a substitute for the original document that remained protected from public view. The first sentence of the penultimate paragraph of the Committee Note explained: "If the court grants the motion to redact, the redacted document should be placed on the docket, and public access to the motion and the unredacted document should remain restricted."

To eliminate any uncertainty, the Committee decided that the best way to respond to the issue Judge Grant raised was to add before the second sentence of subdivision (h)(2), "If the court grants it, the redacted document must be filed." The Committee, however, did not accept the suggestion that a restriction on access to the motion and unredacted document be delayed until the court grants the motion to redact.

A few stylistic changes were made in response to suggestions from the style consultants, and **t**he Committee Note was revised to reflect the changes made to the rule.

(A2) Conforming changes proposed for approval without publication.

The Committee recommends that the Standing Committee approve and transmit to the Judicial Conference the proposed form amendments that are discussed below. The forms as proposed for amendment are in Bankruptcy Appendix A.

Action Item 5. Official Forms 411A and 411B (Power of Attorney). As part of the Forms Modernization Project, the power-of-attorney forms, previously designated as Official Forms 11A and 11B, were changed to Director's Forms 4011A (General Power of Attorney) and 4011B (Special Power of Attorney), the use of which is optional unless required by local rule. This change took effect on December 1, 2015. Rule 9010(c), however, provides that "[t]he authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose . . . shall be evidenced by a power of attorney *conforming substantially to the appropriate Official Form*" (emphasis added). In order to bring the rule and forms into conformity, the Committee voted unanimously to return the power-of-attorney forms to Official Form status. Because there will be no change in the content of the forms, the Committee seeks approval of this redesignation of the forms without publication. If approved, the new Official Forms will have an effective date of December 1, 2018, and, in keeping with the new numbering system for forms, will be designated Official Forms 411A and 411B.

The Forms Modernization Project group recommended that the power-of-attorney forms be changed to Director's Forms in order to allow greater flexibility in their use, in light of the prospect of amended Rule 9009 increasing restrictions on making modifications to Official Forms. The Committee Note accompanying this amendment explained, "Parties routinely modify the General Power of Attorney form to conform to state law, the needs of the case, or local practice. The exact language of the form is not needed."

The Committee later realized that using Director's Forms for powers of attorney, rather than Official Forms, created a conflict with Rule 9010(c). The Committee concluded that Director's Forms are not needed to allow modifications of the power-of-attorney forms. Rule 9009 allows modifications of Official Forms "as provided in these rules." The relevant rule here—Rule 9010(c)—only requires substantial, not exact, conformity with the appropriate Official Form. Other rules requiring a document that "conforms substantially" to an Official Form have been interpreted by the Committee to permit modifications of those forms, and they are included in the chart of Alterations Permitted by Bankruptcy Rules that was approved at the Committee's fall 2017 meeting and is available on the AO website. Treating Rule 9010(c) as permitting modifications of the power-of-attorney forms would be consistent with the interpretation of Rules 3001(a), 3007, 3016(d), 7010, 8003(a)(3), 8005(a)(1), and 8015(a)(7)(C)(ii).

B. Items for Publication

The Committee recommends that the following rule amendments be published for public comment in August 2018. The rules in this group appear in Bankruptcy Appendix B.

Action Item 6. Rule 2002(f), (h), and (k) (Notices). Rule 2002 specifies the timing and content of numerous notices that must be provided in a bankruptcy case. The Committee seeks publication for public comment of amendments to three of the rule's subdivisions. This package of amendments would (i) require giving notice of the entry of an order confirming a chapter 13 plan, (ii) limit the need to provide notice to creditors that do not file timely proofs of claim in chapter 12 and chapter 13 cases, and (iii) add a cross-reference in response to the relocation of the provision specifying the deadline for objecting to confirmation of a chapter 13 plan.

Rule 2002(f). Rule 2002(f)(7) currently requires the clerk, or someone else designated by the clerk, to give notice to the debtor and all creditors of the "entry of an order confirming a chapter 9, 11, or 12 plan." Noticeably absent from the list is an order confirming a chapter 13 plan. The Committee received a suggestion (12-BK-B) from Matthew T. Loughney (Chair, Bankruptcy Noticing Working Group), that such notice also be given in chapter 13 cases. As he explained, "There is not a rule specifically addressing the notice of entry of an order confirming a chapter 13 plan, and no reason is identified in the Committee note for this omission."

Additional research revealed that in 1988 the Committee's reporter proposed an amendment to Rule 2002(f) that would have made the rule applicable to confirmation of a plan under any chapter, but the Committee, without explanation in the minutes, rejected that amendment. Ascertaining no reason currently for the exclusion of chapter 13 plans and agreeing with Mr. Loughney that "it would be helpful to have a rule that specifically addresses this notice in chapter 13 cases in order that it be made clear who should receive it," the Committee voted unanimously at the spring 2017 meeting to seek publication for public comment of the proposed amendment.

Rule 2002(h). Rule 2002(h) provides an exception to the general noticing requirements set forth in Rule 2002(a). Rule 2002(a) generally requires the clerk (or some other party as directed by the court) to give "the debtor, the trustee, all creditors and indenture trustees" at least 21 days' notice by mail of certain matters in bankruptcy cases. But Rule 2002(h) eliminates that requirement in chapter 7 cases with respect to creditors that fail to file a timely proof of claim. Bankruptcy Judge Scott W. Dales (W.D. Mich.) submitted a suggestion (12-BK-M) that this exception also be made applicable to chapter 13 cases. He noted the time and cost associated with providing extensive notice in chapter 13 cases and lawyers' desire to mitigate these expenses to the extent possible.

In considering the proposed amendment, the Committee concluded that the cost and time savings generated by limiting notices under Rule 2002(h) in both chapter 12 and chapter 13, as well as chapter 7, cases support an amendment. Members pointed out that even creditors that do not file timely proofs of claim will still be required to receive notice of the filing of the case and the date of the meeting of creditors (which notice also includes relevant deadlines); notice of the confirmation hearing; and, if the proposed amendment to Rule 2002(f)(7) is approved, notice of the confirmation order. Because an amendment to Rule 3002 that became effective on December 1, 2017, changes the deadline for filing a proof of claim, the time provisions of Rule 2002(f)(7) would also be amended.

Rule 2002(k). Included in the package of amendments accompanying the chapter 13 plan form was an amendment to Rule 2002 that added a new subdivision (a)(9). The amendment went into effect on December 1, 2017, and it provides that at least 21 days' notice be given to the debtor, trustee, creditors, and indenture trustees of "the time fixed for filing objections to confirmation of a chapter 13 plan." Previously Rule 2002(b) had required that at least 28 days' notice of that deadline for filing objections be given.

In making this change and relocating the provision from subdivision (b) to subdivision (a)(9), the need to amend Rule 2002(k) was overlooked. Subdivision (k) provides for transmitting notices under specified parts of Rule 2002 to the U.S. trustee. Included within this provision is the requirement to provide the U.S. trustee with notices under subdivision (b). Thus, prior to December, the rule required transmitting notice to the U.S. trustee of the deadline for objecting to confirmation of a chapter 13 plan.

Because that deadline is now located in subdivision (a)(9), which is not specified in subdivision (k), the rule no longer requires that notice be transmitted to the U.S. trustee. The Committee voted at the spring meeting to publish an amendment that would cure this oversight by amending the first sentence of Rule 2002(k) to include a reference to subdivision (a)(9).

Action Item 7. Rule 2004(c) (Examination). Rule 2004 provides for the examination of debtors and other entities regarding a broad range of issues relevant to a bankruptcy case. Under subdivision (c) of the rule, the attendance of a witness and the production of documents may be compelled by means of a subpoena. The Business Law Section of the American Bar Association, on behalf of its Committee on Bankruptcy Court Structure and Insolvency Process, submitted a suggestion (17-BK-B) that Rule 2004(c) be amended to specifically impose a proportionality limitation on the scope of the production of documents and electronically stored information ("ESI"). Our Committee discussed the suggestion at the fall 2017 and spring 2018 meetings. By a close vote, the Committee decided not to add a proportionality requirement to the rule, but it decided unanimously to propose amendments to Rule 2004(c) to refer specifically to electronically stored information and to harmonize its subpoena provisions with the current provisions of Civil Rule 45, which is made applicable in bankruptcy cases by Bankruptcy Rule 9016.

The proposal before the Committee at the fall meeting, recommended by the Subcommittee on Business Issues, would have added to Rule 2004(c) a provision similar to the proportionality requirement of Civil Rule 26(b)(1). The following sentence would have been added to the end of the paragraph:

> A request for the production of documents or electronically stored information in connection with an examination under this rule shall be proportional to the needs of the case and of the party seeking production, in light of the following factors, to the extent relevant: the importance of the issues at stake, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving issues, whether the burden or expense of the proposed discovery outweighs its likely benefit, and the purpose for which the request is being made.

Members of the Committee expressed differing views about whether consideration of proportionality is appropriate for Rule 2004 examinations and what factors a bankruptcy court should consider in assessing proportionality. Some members said that the current rule is working and that Rule 2004 examinations are supposed to be broad, so no additional limitation should be imposed. Another member suggested that proportionality should be required for requests for ESI but not for paper documents. Others agreed with the Subcommittee that a proportionality requirement should be imposed both for requests for documents and for ESI. A judge member said that disputes arise concerning the scope of document and ESI requests in connection with Rule 2004 examinations and that it would be helpful to have a standard in the rule that imposes some limit. The Associate Reporter said that it seemed that the main concern expressed by those

supportive of the proposed amendment was that documents and ESI are sometimes sought for an improper purpose, and she suggested that any amendment should focus on that concern.

In a straw poll, the Committee voted 6 to 5 in favor of the concept of adding a proportionality requirement, although specific language was not agreed upon. There seemed to be general support for the other proposed amendments to Rule 2004(c), which would add references to ESI and conform the rule to the amended subpoena rules. The proposal was sent back to the subcommittee for further consideration and a recommendation at the spring meeting.

At the spring meeting, the Subcommittee recommended that Rule 2004(c) be amended to incorporate the concept of proportionality, while giving bankruptcy judges flexibility in interpreting and imposing that requirement. Its proposal was to require that a request for the production of documents or electronically stored information in connection with a Rule 2004 examination be "proportional to the needs of the case and of the party seeking production," but without specifying the factors that should be considered in making that determination. The Subcommittee suggested that such an approach would be consistent with the notion that Rule 2004 examinations are supposed to be broad ranging and relatively unconfined, while still providing a means of reining in requests for documents and ESI when the costs and efforts of complying are disproportionate to the needs of the case.

Again the Committee was closely divided about the proportionality proposal. Those opposing it did not think that the elimination of specific factors improved the amendment, and some members expressed concern that such a provision would lead to more litigation. After a full discussion, the Committee voted 7 to 6 not to proceed with a proportionality amendment.

The Committee unanimously approved seeking publication of amendments to Rule 2004(c) that would add a reference to electronically stored information to the title and first sentence of the subdivision. Doing so acknowledges the form in which information now commonly exists and the type of production that is frequently sought in connection with an examination under Rule 2004. The Committee also unanimously approved publication of the revised subpoena provisions of Rule 2004(c), which eliminate the reference to "the court in which the examination is to be held." This change conforms the rule to the current provisions of Civil Rule 45 and Bankruptcy Rule 9016, under which a subpoena always issues from the court where the action is pending, even for a deposition in another district, and an attorney admitted to practice in the issuing court may issue and sign it.

Action Item 8. Rule 8012 (Corporate Disclosure Statement). Rule 8012 requires a nongovernmental corporate party to a bankruptcy appeal in the district court or bankruptcy appellate panel to file a statement identifying any parent corporation and any publicly held corporation that owns 10% or more of the party's stock (or file a statement that there is no such corporation). It is modeled on FRAP 26.1. The Appellate Rules Committee has proposed amendments to FRAP 26.1 that were published for comment in August 2017, including one that

is specific to bankruptcy appeals. Our Committee now requests that conforming amendments to Rule 8012 be published for public comment this summer.

Prior to publication of the amendments to FRAP 26.1, the Appellate Rules Committee consulted with our Committee about the possible addition of a provision to deal specifically with bankruptcy cases. Although initially considering a broader provision, the Appellate Rules Committee agreed with our recommendation that, insofar as bankruptcy appeals are concerned, an amendment was needed to require only the disclosure of the names of any debtors not revealed by the caption and that the requirements of subdivision (a) should be made to apply to any corporate debtors. At the fall 2017 meeting, our Committee voted to propose similar amendments to Rule 8012, subject to considering any changes made to the Rule 26.1 amendments in response to comments.

At the spring meeting, the Committee considered and approved for publication amendments to Rule 8012 that track the relevant amendments to FRAP 26.1 for which final approval is being sought. These amendments would add a new subdivision (b) to Rule 8012, addressing disclosure about the debtor. This subdivision would require the disclosure of the names of any debtors in the underlying bankruptcy case that are not revealed by the caption of an appeal and, for any corporate debtors in the underlying bankruptcy case, the disclosure of the information required of corporations under subdivision (a) of the rule. Other amendments tracking FRAP 26.1 would add a provision to subdivision (a) requiring disclosure by corporations seeking to intervene in a bankruptcy appeal and would make stylistic changes to what would become subdivision (c), regarding supplemental disclosure statements.

III. Information Items

Information Item 1. Decision to Propose No Amendments to Rule 2013 (Public Record of Compensation Awarded to Trustees, Examiners, and Professionals). The Committee received a suggestion (17-BK-A) from Kevin P. Dempsey, Clerk of the Bankruptcy Court for the Southern District of Indiana, that questioned whether there is a need any longer for Rule 2013. Mr. Dempsey proposed that the Committee consider substantially modifying the rule to eliminate its requirements that the clerk maintain a public record of awarded fees and make an annual summary available to the public and the United States trustee.

Rule 2013(a) requires the clerk to maintain a public record of all fees awarded by the court to (1) trustees; (2) attorneys and other professionals employed by trustees; and (3) examiners. The record must identify each case in which fees were awarded and indicate for each case who received the fees and in what amount. Subdivision (b) requires the clerk annually to prepare a summary of the record by individual or firm name, indicating the total fees each was awarded during the year. The summary must be made available without charge to the public, and a copy of it must be transmitted to the U.S. trustee. The original Committee Note explains that the purpose of the rule is to "prevent what Congress has defined as 'cronyism'" and to

"instill greater public confidence in the system" by ensuring that courts do not disproportionately employ or compensate certain individuals.

Mr. Dempsey said, based on his experience and discussions with other clerks, that compliance with Rule 2013 "is spotty." He suggested that CM/ECF has replaced the need for the type of record that the rule calls for. Information about fee awards is available electronically, and reports can be generated on demand. He said that his office would provide such a report without charge to anyone who asked. To ensure that all courts would follow a similar practice, he proposed that, rather than being abrogated, Rule 2013 be amended to require the clerk to make information about fees awarded to professionals available upon request, perhaps with a limit on the time period covered by the report.

At the fall 2017 meeting, the Committee voted to ask Dr. Molly Johnson of the Federal Judicial Center to survey bankruptcy clerks to determine the degree of compliance with the rule and clerks' views about its usefulness, and also to gather input from the Executive Office for U.S. Trustees and academics. She reported on her research at the spring meeting. Among the findings were the following:

- Most bankruptcy clerks of court (84%) report that they maintain the public record required under Rule 2013, and about 2/3 of them (62.5%) prepare an annual summary. Most who do this (90%) use the "Professional Fees Awarded" report in CM/ECF to generate the summary.

- Most clerks (63%) do not transmit their annual summary to the U.S. trustee, most frequently because they believe the U.S. trustee office can run the report itself or get it from the court's website, or because the U.S. trustee has not requested it.

- About 2/3 (68%) of clerks who generate the Rule 2013 reports believe their reports are generally accurate, while the remainder are uncertain or believe the reports are not entirely accurate.

- A quarter of bankruptcy clerks (25%) responding to the survey said they believe Rule 2013 is no longer necessary and should be abrogated. Almost half (49%) said the rule should be amended to require the clerk of court to make information about fees awarded to professionals available on request, but not require that an annual report be prepared. Only 17% believe the rule should be retained in its current form, while 8% believe it should be amended in some other way.

- Based on a survey of U.S. trustees conducted by Ramona Elliott of the Executive Office for United States Trustees, U.S. trustee offices do have a need for the Rule 2013 reports

and use them primarily in the oversight of chapter 7 trustees. Some offices that do not currently receive the reports expressed an interest in having them. The Executive Office for United States Trustees also believes that, from the public's perspective, the purpose of the rule in ensuring transparency supports retaining the report requirement.

- Academic researchers that were contacted said they do not use the information generated under Rule 2013 in their scholarly research. One professor said he looked into using these records in professional fees research, but found them "virtually useless" for research, in part because fees awarded to professionals serving debtors in possession are not required to be reported and the information about them is "grossly incomplete."

After a full discussion, the Committee voted to take no further action on the suggestion. Members thought that the rule is still serving a useful purpose and that there is not a problem with it that needs addressing. Several thought that clerk education about the rule would be useful, and the Committee's clerk representative said that he would call that need to the attention of the Bankruptcy Clerks Advisory Group.

Information Item 2. Decision to Propose No Amendments to Rule 9019 (Compromise and Arbitration). The Mediation Committee of the American Bankruptcy Institute proposed an amendment to Rule 9019 to require districts to adopt local rules to provide for mediation of any dispute arising in a bankruptcy case. The Committee decided that no uniform federal rule is necessary or appropriate, given the wide adoption of local rules dealing with mediation that are working well.

Information Item 3. Restyling of Bankruptcy Rules. The Committee's Restyling Subcommittee is tasked with recommending to the Committee whether to embark upon a project to restyle the Federal Rules of Bankruptcy Procedure, similar to the restyling projects that produced comprehensive amendments to the Federal Rules of Appellate Procedure in 1998, the Federal Rules of Criminal Procedure in 2002, the Federal Rules of Civil Procedure in 2005, and the Federal Rules of Evidence in 2011.

In order to make that recommendation, the Subcommittee decided that it would be necessary to obtain input from those who would be affected by such a restyling. In preparation for doing so, the Subcommittee undertook two tasks.

First, the Subcommittee asked the style consultants to prepare a restyled version of Part IV of the Federal Rules of Bankruptcy Procedure, so that those asked for their views on the restyling process would have a concrete example of restyled rules to look at. The style consultants produced a draft of a restyled Rule 4001 in January. The reporters and the Subcommittee chair provided comments on the draft, and the style consultants sent a revised version in which they accepted some, but not all, of the comments. Second, the Associate

Reporter and Molly Johnson of the Federal Judicial Center prepared a cover memo and survey to obtain comments on the possibility of restyling the Bankruptcy Rules.

At the spring meeting, the Committee decided to use as an exemplar only one section of the restyled rule, Rule 4001(a), without any footnotes or comments from the style consultants. It also decided to eliminate from the draft any changes that the Committee found unacceptable or questionable. The Committee explained in the cover memo to the survey that the exemplar is not being proposed by the Committee for adoption, nor is the Committee seeking substantive comments on the rule. Additional language was added to emphasize that substance and "sacred words" will prevail over style rules.

The cover memo and survey have been posted on the AO's rules website as an Invitation for Comments, and they have also been sent directly to bankruptcy judges and clerks of court, as well as interested organizations, such as the NCBJ, NACBA, CLLA, NABT, NACTT, ABI, ABA Business Law Section Bankruptcy Committee, American College of Bankruptcy, National Bankruptcy Conference, and AALS Debtor-Creditor Committee. The deadline for making comments is June 15. The Subcommittee will be analyzing the responses and discussing them in preparation for making a recommendation to the Committee at its September meeting.

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APPENDIX A

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Appendix A

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE[1]

Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements

* * * * *

(c) OBTAINING CREDIT.

* * * * *

(4) *Inapplicability in a Chapter 13 Case.* This subdivision (c) does not apply in a chapter 13 case.

* * * * *

[1] New material is underlined in red; matter to be omitted is lined through.

Committee Note

Subdivision (c) of the rule is amended to exclude chapter 13 cases from that subdivision. This amendment does not speak to the underlying substantive issue of whether the Bankruptcy Code requires or permits a chapter 13 debtor not engaged in business to request approval of postpetition credit.

Changes Made After Publication and Comment

· Stylistic changes were made.

Summary of Public Comment

No comments were submitted.

Rule 6007. Abandonment or Disposition of Property

* * * * *

(b) MOTION BY PARTY IN INTEREST. A party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate. Unless otherwise directed by the court, the party filing the motion shall serve the motion and any notice of the motion on the trustee or debtor in possession, the United States trustee, all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code. A party in interest may file and serve an objection within 14 days of service, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other entities as the court may direct. If the court grants the motion, the order effects the trustee's or debtor in

possession's abandonment without further notice, unless otherwise directed by the court.

Committee Note

Subdivision (b) of the rule is amended to specify the parties to be served with the motion and any notice of the motion. The rule also establishes an objection deadline. Both of these changes align subdivision (b) more closely with the procedures set forth in subdivision (a). In addition, the rule clarifies that no further action is necessary to notice or effect the abandonment of property ordered by the court in connection with a motion filed under subdivision (b), unless the court directs otherwise.

Changes Made After Publication and Comment

- The words "trustee's and debtor in possession's" were inserted immediately before the word "abandonment" in the last sentence of subdivision (b).

Summary of Public Comment

Judge Robert Kessel (Bankr. D. Minn.) (BK-2017-0003-0004). The last sentence of the proposed amendment is inconsistent with the provisions of § 554(b) of the Code, which provides for abandonment of property by the trustee, not the court.

Chief Judge Kathy Surratt-States (Bankr. E.D. Mo.) (BK-2017-0003-0009). The Bankruptcy Code does not

allow the court to abandon property – only the trustee. The last sentence should be deleted, and it should be left to local court procedure to ensure that the trustee has abandoned the property related to the motion by a party in interest.

Kelly Black (BK-2017-0003-0003). The merger of the service and notice requirements in the proposed amendments substantially increases the burden on parties seeking to compel abandonment of property. Service of the motion should be limited to the trustee or debtor in possession and parties who have liens or other interests in the property to be abandoned.

Ryan W. Johnson (Clerk, Bankr. N.D. W. Va.) (BK-2017-0003-0006). Service should be limited to the trustee or debtor in possession, and other parties in interest should just receive notice. The rule should not remove the clerk's office as the entity responsible for issuing the notice. It should incorporate the language used in Rule 2002 that "the clerk, or some other person as the court may direct, shall give" the notice. If notice and service of the motion are separated, Official Form B420A will be insufficient to effect proper notice of a motion to compel abandonment, and a new Official Form may be required that specifically identifies the property requested to be abandoned.

Aderant CompuLaw (BK-2017-0003-0013). Although Rule 6007(a) gives any party in interest 14 days after mailing of the notice of proposed abandonment by the trustee to object, Rule 6007(b) gives a party in interest 14 days after service of the motion to compel abandonment to object. Rule 6007(b) allows three additional days to act if service is made by mail, but it does not apply to the mailing of notice. The time to object under (a) and (b) should be the same. Also the language of both Rule 6007(a) and 6007(b) should be amended to change "within 14 days of" to "within 14 days after."

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Rule 9036. Notice and Service Generally~~by Electronic Transmission~~

Whenever these rules require or permit sending a notice or serving a paper by mail, the clerk, or some other person as the court or these rules may direct, may send the notice to—or serve the paper on—a registered user by filing it with the court's electronic-filing system. Or it may be sent to any person by other electronic means that the person consented to in writing. In either of these events, service or notice is complete upon filing or sending but is not effective if the filer or sender receives notice that it did not reach the person to be served. This rule does not apply to any pleading or other paper required to be served in accordance with Rule 7004.~~the clerk or some other person as directed by the court is required to send notice by mail and the entity entitled to receive the notice requests in writing that, instead of notice by mail, all or part of the~~

~~information required to be contained in the notice be sent by a specified type of electronic transmission, the court may direct the clerk or other person to send the information by such electronic transmission. Notice by electronic means is complete on transmission.~~

Committee Note

The rule is amended to permit both notice and service by electronic means. The use and reliability of electronic delivery has increased since the rule was first adopted. The amendments recognize the increased utility of electronic delivery, with appropriate safeguards for parties not filing an appearance in the case through the court's electronic-filing system.

The amended rule permits electronic notice or service on a registered user who has appeared in the case by filing with the court's electronic-filing system. A court may choose to allow registration only with the court's permission. But a party who registers will be subject to service by filing with the court's system unless the court provides otherwise. The rule does not make the court responsible for notifying a person who filed a paper with the court's electronic-filing system that an attempted transmission by the court's system failed. But a filer who receives notice that the transmission failed is responsible for making effective service.

With the consent of the person served, electronic service also may be made by means that do not use the court's system. Consent can be limited to service at a prescribed address or in a specified form, and it may be limited by other conditions.

Changes Made After Publication and Comment

- The words "or some other person as the court or these rules may direct" were inserted in place of "or other party" in the first sentence of the rule.
- The last sentence of the rule was changed to refer to "any pleading or other paper [rather than complaint or motion] to be served in accordance with Rule 7004."
- The following sentences were added to the Committee Note: "The rule does not make the court responsible for notifying a person who filed a paper with the court's electronic-filing system that an attempted transmission by the court's system failed. But a filer who receives notice that the transmission failed is responsible for making effective service."
- The words "or notice" were added after "service" in the third sentence of the rule.
- Stylistic changes were also made.

Summary of Public Comment

Ryan Johnson (Clerk, Bankr. N.D.W. Va.) (BK-2017-0003-0006). Rule 9036 should clarify that the clerk's office is not responsible for notifying parties that their attempted service on particular entities by means of the court's electronic-filing system failed.

Eva Roeber (Chief Deputy Clerk, Bankr. D. Neb.) (BK-2017-0003-0011). Although the proposed changes to Rule 2002(g) and Official Form 410 should be delayed two years to allow sufficient time for the courts to implement the opt-in provision, the amendments to Rule 9036 could go into effect within the normal timeframe.

Rule 9037. Privacy Protection for Filings Made with the Court

* * * * *

(h) MOTION TO REDACT A PREVIOUSLY FILED DOCUMENT.

(1) *Content of the Motion; Service.* Unless the court orders otherwise, if an entity seeks to redact from a previously filed document information that is protected under subdivision (a), the entity must:

(A) file a motion to redact identifying the proposed redactions;

(B) attach to the motion the proposed redacted document;

(C) include in the motion the docket or proof-of-claim number of the previously filed document; and

(D) serve the motion and attachment on the debtor, debtor's attorney, trustee (if any), United States trustee, filer of the unredacted document, and any individual whose personal identifying information is to be redacted.

(2) *Restricting Public Access to the Unredacted Document; Docketing the Redacted Document.* The court must promptly restrict public access to the motion and the unredacted document pending its ruling on the motion. If the court grants it, the court must docket the redacted document. The restrictions on public access to the motion and unredacted document remain in effect until a further court order. If the court denies it, the restrictions must be lifted, unless the court orders otherwise.

Committee Note

Subdivision (h) is new. It prescribes a procedure for the belated redaction of documents that were filed without complying with subdivision (a).

Generally, whenever someone discovers that information entitled to privacy protection under subdivision (a) appears in a document on file with the court—regardless of whether the case in question remains open or has been closed—that entity may file a motion to redact the document. A single motion may relate to more than one unredacted document. The moving party may be, but is not limited to, the original filer of the document. The motion must identify by location on the case docket or claims register each document to be redacted. It should not, however, include the unredacted information itself.

Subsection (h)(1) authorizes the court to alter the prescribed procedure. This might be appropriate, for example, when the movant seeks to redact a large number of documents. In that situation the court by order or local rule might require the movant to file an omnibus motion, initiate a miscellaneous proceeding, or proceed in another manner directed by the court.

Unless the court orders otherwise, the motion must identify the proposed redactions, and the moving party must attach to the motion the proposed redacted document. The attached document must otherwise be identical to the one previously filed. The court, however, may relieve the movant of this requirement in appropriate circumstances, for example when the movant was not the filer of the

unredacted document and does not have access to it. Service of the motion and the attachment must be made on all of the following individuals who are not the moving party: debtor, debtor's attorney, trustee, United States trustee, the filer of the unredacted document, and any individual whose personal identifying information is to be redacted.

Because the filing of the motion to redact may call attention to the existence of the unredacted document as maintained in the court's files or downloaded by third parties, courts should take immediate steps to protect the motion and the document from public access. This restriction may be accomplished electronically, simultaneous with the electronic filing of the motion to redact. For motions filed on paper, restriction should occur at the same time that the motion is docketed so that no one receiving electronic notice of the filing of the motion will be able to access the unredacted document in the court's files.

If the court grants the motion to redact, the court must docket the redacted document, and public access to the motion and the unredacted document should remain restricted. If the court denies the motion, generally the restriction on public access to the motion and the document should be lifted.

This procedure does not affect the availability of any remedies that an individual whose personal identifiers are exposed may have against the entity that filed the unredacted document.

Changes Made After Publication and Comment

- Rule 9037(h)(1) was reorganized into a single sentence.
- The words "unless the court orders otherwise," were deleted from subdivision (h)(1)(C).
- The following sentence was added to subdivision (h)(2): "If the court grants it, the court must docket the redacted document." The title of subdivision (h)(2) was changed to reflect this addition.
- Stylistic changes were also made, and conforming changes were made to the Committee Note.

Summary of Public Comment

Charles Ivey IV (BK-2017-0003-0005). The proposed amendment to Rule 9037 should be expanded to allow parties to submit a redacted document as an alternative to an existing sealed document that is subject to Rule 8009(f).

Ryan Johnson (Clerk, Bankr. N.D.W. Va.) (BK-2017-0003-0006). A party who did not file the previous (unredacted) document but is requesting that a document be restricted from viewing due to the improper disclosure of personal identifying information should be specifically exempted from paying the redaction fee. Debtors or any entity whose personal information is wrongfully disclosed should not be required by Rule 9037(h) to file a redacted document, such as a proof of claim and its attachments, on behalf of the party originally filing the document.

Chief Judge Robert E. Grant (Bankr. N.D. Ind.) (BK-2017-0003-0012). There is a gap in proposed Rule

9037(h). Nothing in the rule actually requires the filing of a redacted version of the original document as a condition to the restrictions upon public access. Under the rule as written, the only redacted version of the original document is the one attached to the motion itself, and that copy, along with the entire motion, is restricted from public view. It is at least theoretically possible that a motion to redact could be submitted and granted, but the redacted filing never made. The restrictions upon public access should not occur until the motion is granted and a redacted or amended version of the original document is actually filed with the court.

Official Form 411A (12/18)

United States Bankruptcy Court

_____ District Of _____

In re _____ Case No. _____
Debtor

Chapter _____

GENERAL POWER OF ATTORNEY

To _____ of * _____ , and

_____ of * _____ .

The undersigned claimant hereby authorizes you, or any one of you, as attorney in fact for the undersigned and with full power of substitution, to vote on any question that may be lawfully submitted to creditors of the debtor in the above-entitled case; [if appropriate] to vote for a trustee of the estate of the debtor and for a committee of creditors; to receive dividends; and in general to perform any act not constituting the practice of law for the undersigned in all matters arising in this case.

Dated: _____

Signed: _____

By: _____

as _____

Address: _____

_____

[*If executed by an individual*] Acknowledged before me on _____ .

[*If executed on behalf of a partnership*] Acknowledged before me on _____ ,
by _____ who says that he [*or* she] is a member of the partnership named above and is authorized to execute this power of attorney in its behalf.

[*If executed on behalf of a corporation*] Acknowledged before me on _____ ,
by _____ who says that he [*or* she] is _____
of the corporation named above and is authorized to execute this power of attorney in its behalf.

_____

_____

[*Official character.*]

* State mailing address.

Committee Note

This form replaces Director's Bankruptcy Form 4011A, which, in turn, was derived from former Official Form 11A in 2015 as part of the Bankruptcy Forms Modernization project.

Parties routinely modify the General Power of Attorney form to conform to state law, the needs of the case, or local practice. Because the exact language of the form is not needed, and Rule 9009, as amended on December 1, 2017, generally restricts alteration of the Official Forms, the form was abrogated as an Official Bankruptcy Form and reissued as a Director's Bankruptcy Form.

Bankruptcy Rule 9010(c), however, requires that "[t]he authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose . . . shall be evidenced by a power of attorney *conforming substantially to the appropriate Official Form*" (emphasis added). The form is therefore reissued as an Official Form. Because only substantial conformity to the Official Form is required by Rule 9010(c), parties will be able to continue modifying the form as needed to conform to state law, the needs of the case, or local practice.

United States Bankruptcy Court

_____ District Of _____

In re _____ Case No. _____
Debtor

Chapter _____

SPECIAL POWER OF ATTORNEY

To _____ of * _____ , and

_____ of * _____ .

The undersigned claimant hereby authorizes you, or any one of you, as attorney in fact for the undersigned [*if desired*: and with full power of substitution,] to attend the meeting of creditors of the debtor or any adjournment thereof, and to vote in my behalf on any question that may be lawfully submitted to creditors at such meeting or adjourned meeting, and for a trustee or trustees of the estate of the debtor.

Dated: _____

Signed: _____

By: _____

as _____

Address: _____

_____

[*If executed by an individual*] Acknowledged before me on _____ .

[*If executed on behalf of a partnership*] Acknowledged before me on _____ ,
by _____ who says that he [*or* she] is a member of the partnership named above and is authorized to execute this power of attorney in its behalf.

[*If executed on behalf of a corporation*] Acknowledged before me on _____ ,
by _____ who says that he [*or* she] is _____
of the corporation named above and is authorized to execute this power of attorney in its behalf.

_____

_____

[*Official character.*]

* State mailing address.

Committee Note

This form replaces Director's Bankruptcy Form 4011B, which, in turn, was derived from former Official Form 11B in 2015 as part of the Bankruptcy Forms Modernization project.

Parties routinely modify the Special Power of Attorney form to conform to state law, the needs of the case, or local practice. Because the exact language of the form is not needed, and Rule 9009, as amended on December 1, 2017, generally restricts alteration of the Official Forms, the form was abrogated as an Official Bankruptcy Form and reissued as a Director's Bankruptcy Form.

Bankruptcy Rule 9010(c), however, requires that "[t]he authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose . . . shall be evidenced by a power of attorney *conforming substantially to the appropriate Official Form*" (emphasis added). The form is therefore reissued as an Official Form. Because only substantial conformity to the Official Form is required by Rule 9010(c), parties will be able to continue modifying the form as needed to conform to state law, the needs of the case, or local practice.

APPENDIX B

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Appendix B

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE[1]

For Publication for Public Comment

Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief Is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee

* * * * *

(f) OTHER NOTICES. Except as provided in subdivision (*l*) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, all creditors, and indenture trustees notice by mail of:

* * * * *

(7) entry of an order confirming a chapter 9, 11, ~~or~~12, or 13 plan;

* * * * *

(h) NOTICES TO CREDITORS WHOSE CLAIMS

[1] New material is underlined in red; matter to be omitted is lined through.

ARE FILED. ~~In a chapter 7 case, after 90 days following the first date set for the meeting of creditors under § 341 of the Code,~~

(1) *Voluntary Case*. In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, after 70 days following the order for relief under that chapter or the date of the order converting the case to chapter 12 or chapter 13, the court may direct that all notices required by subdivision (a) of this rule be mailed only to:

- the debtor,
- the trustee,
- all indenture trustees,
- creditors that hold claims for which proofs of claim have been filed, and
- creditors, if any, that are still permitted to file claims because an extension was granted

under Rule 3002(c)(1) or (c)(2).

(2) *Involuntary Case.* In an involuntary chapter 7 case, after 90 days following the order for relief under that chapter, the court may direct that all notices required by subdivision (a) of this rule be mailed only to:

- the debtor,
- the trustee,
- all indenture trustees,
- creditors that hold claims for which proofs of claim have been filed, and
- creditors, if any, that are still permitted to file claims ~~by reason of~~because an extension was granted ~~pursuant to~~under Rule 3002(c)(1) or (c)(2).

(3) *Insufficient Assets.* In a case where notice of insufficient assets to pay a dividend has been given

to creditors ~~pursuant to~~under subdivision (e) of this rule, after 90 days following the mailing of a notice of the time for filing claims ~~pursuant to~~under Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence.

* * * * *

(k) NOTICES TO UNITED STATES TRUSTEES. Unless the case is a chapter 9 municipality case or unless the United States trustee requests otherwise, the clerk, or some other person as the court may direct, shall transmit to the United States trustee notice of the matters described in subdivisions (a)(2), (a)(3), (a)(4), (a)(8), (a)(9), (b), (f)(1), (f)(2), (f)(4), (f)(6), (f)(7), (f)(8), and (q) of this rule and notice of hearings on all applications for compensation or reimbursement of expenses.

* * * * *

Committee Note

Subdivision (f) is amended to add cases under chapter 13 of the Bankruptcy Code to paragraph (7).

Subdivision (h) is amended to add cases under chapters 12 and 13 of the Bankruptcy Code and to conform the time periods in the subdivision to the respective deadlines for filing proofs of claim under Rule 3002(c).

Subdivision (k) is amended to add a reference to subdivision (a)(9) of this rule. This change corresponds to the relocation of the deadline for objecting to confirmation of a chapter 13 plan from subdivision (b) to subdivision (a)(9). The rule thereby continues to require transmittal of notice of that deadline to the United States trustee.

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Rule 2004. Examination

* * * * *

(c) COMPELLING ATTENDANCE AND PRODUCTION OF DOCUMENTS OR ELECTRONICALLY STORED INFORMATION. The attendance of an entity for examination and for the production of documents or electronically stored information, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court ~~for the district in which the examination is to be held~~where the case is pending if the attorney is admitted to practice in that court ~~or in the court in which the case is pending~~.

* * * * *

Committee Note

Subdivision (c) is amended in two respects. First, the provision now refers expressly to the production of electronically stored information, in addition to the production of documents. This change is an acknowledgment of the form in which information now commonly exists and the type of production that is frequently sought in connection with an examination under Rule 2004.

Second, subdivision (c) is amended to bring its subpoena provision into conformity with the current version of F.R. Civ. P. 45, which Rule 9016 makes applicable in bankruptcy cases. Under Rule 45, a subpoena always issues from the court where the action is pending, even for a deposition in another district, and an attorney admitted to practice in the issuing court may issue and sign it. In light of this procedure, a subpoena for a Rule 2004 examination is now properly issued from the court where the bankruptcy case is pending and by an attorney authorized to practice in that court, even if the examination is to occur in another district.

Rule 8012. ~~Corporate~~ Disclosure Statement

(a) ~~WHO MUST FILE~~NONGOVERNMENTAL CORPORATIONS AND INTERVENORS. Any nongovernmental ~~corporate party~~corporation appearing in the district court or BAP must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. The same requirement applies to a nongovernmental corporation that seeks to intervene.

(b) DISCLOSURE ABOUT THE DEBTOR. The debtor, the trustee, or, if neither is a party, the appellant must file a statement that (1) identifies each debtor not named in the caption and (2) for each debtor in the bankruptcy case that is a corporation, discloses the information required by Rule 8012(a).

~~(b)~~(c) TIME TO FILE; SUPPLEMENTAL FILING.

~~A party must file the~~A Rule 8012 statement must:

(1) be filed with ~~its~~the principal brief or upon filing a motion, response, petition, or answer in the district court or BAP, whichever occurs first, unless a local rule requires earlier filing~~.~~;

(2) ~~Even if the statement has already been filed, the party's principal brief must~~be included ~~include a statement~~before the table of contents in the principal brief~~.~~; and

(3) ~~A party must supplement its statement~~be supplemented whenever the ~~required~~information required by Rule 8012 changes.

Committee Note

The rule is amended to conform to recent amendments to Fed. R. App. P. 26.1(c). Subdivision (a) is amended to encompass nongovernmental corporations that seek to intervene on appeal.

New subdivision (b) requires disclosure of the name of all of the debtors in the bankruptcy case. The names of the debtors are not always included in the caption of

appeals. It also requires, for corporate debtors, disclosure of the same information required to be disclosed under subdivision (a).

Subdivision (c), previously subdivision (b), now applies to all the disclosure requirements in Rule 8012.

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TAB 3C

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ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of April 3, 2018
San Diego, CA

The following members attended the meeting:

Circuit Judge Sandra Segal Ikuta, Chair
District Judge Marica S. Krieger
District Judge Pamela Pepper
Bankruptcy Judge Stuart M. Bernstein
Bankruptcy Judge Dennis Dow
Bankruptcy Judge A. Benjamin Goldgar
Bankruptcy Judge Melvin S. Hoffman
Jeffrey Hartley, Esquire
David A. Hubbert, Esq.
Thomas Moers Mayer, Esquire
Jill Michaux, Esquire
Debra Miller, Chapter 13 Trustee
Professor David Skeel

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
Professor Laura Bartell, associate reporter
District Judge David G. Campbell, Chair of the Committee on Rules of Practice and Procedure (the Standing Committee)
Circuit Judge Susan Graber
Bankruptcy Judge Mary Gorman
Professor Cathie Struve, associate reporter to the Standing Committee
Rebecca Womeldorf, Secretary, Standing Committee and Rules Committee Officer
Ramona D. Elliot, Esq., Deputy Director/General Counsel, Executive Office for U.S. Trustee
Kenneth Gardner, Clerk, U.S. Bankruptcy Court for the District of Colorado
Molly Johnson, Senior Research Associate, Federal Judicial Center
Bridget Healy, Esq., Administrative Office
Scott Myers, Esq., Administrative Office
Nancy Walle, National Association of Chapter 13 Trustees

Discussion Agenda

1. Greetings and introductions

Judge Sandra Ikuta welcomed everyone to San Diego, and congratulated Judge Dennis Dow on his appointment as the next chair of the Committee.

2. Approval of minutes of Washington, D.C., September 26, 2017 meeting

The minutes were approved with one small edit.

3. Oral reports on meetings of other committees:

(A) January 4, 2018 Standing Committee meeting

Professor Elizabeth Gibson provided the report. This Committee had no action items to report at the meeting, but instead provided a report on several information items, including the potential project to restyle the bankruptcy rules. A draft of the Standing Committee minutes was included at Tab 3 of the agenda materials.

(B) November 7, 2017 Meeting of the Advisory Committee on Civil Rules

Judge Benjamin Goldgar provided the report about the Civil Rules Committee meeting. He noted that they are considering amendments to the mandatory disclosure rules and issues regarding third-party litigation funding.

(C) November 9, 2017 Meeting of the Advisory Committee on Appellate Rules

Judge Pamela Pepper provided the report regarding the Appellate Rules Committee meeting. She stated that they are considering an amendment to Rule 26.1, including changes to subsection (c) regarding disclosures in bankruptcy appeals. Also, there is a proposed amendment to Rule 25(d)(1) to match amendments made to the other federal rules. Judge Pepper explained the revised proposed amendment. Finally, she noted that the Appellate Rules Committee will consider possible amendments to Rules 3 and 7.

(D) December 7, 2017 meeting of the Committee on the Administration of the Bankruptcy System

Judge Mary Gorman provided the report for the Bankruptcy Administration Committee. The Bankruptcy Committee continues to work on the issue of unclaimed funds, and one solution may be legislation. If legislation is put forward, the Bankruptcy Rules may be impacted. She detailed a discussion with the Bankruptcy Committee regarding an administrative form used by the Administrative Office to collect case information, and if the form is still necessary.

4. Report by the Subcommittee on Consumer Issues

(A) Consider comments and make recommendation concerning the published amendment to Rule 4001(c) removing chapter 13 post-petition credit matters from the scope of the rule. See memo by Professor Laura Bartell, included in the agenda materials.

Professor Laura Bartell provided the report on the proposed amendment to Rule 4001(c). The group discussed the purpose of the amendment, clarifying that it was not to eliminate the need to file motions for post-petition credit in chapter 13 cases when required by Section 364 of the Bankruptcy Code. The proposed amendment would reduce the requirements for requesting post-petition credit in chapter 13 cases, distinguishing them from chapter 11 cases. A suggestion was made to add a subtitle heading such as "Inapplicability in Chapter 13 Cases" for new subsection (4) to highlight the purpose of the amendment, and to match the remainder of the section. The proposed amendment with the new subheading for subsection (4) was approved by motion and vote.

(B) Consider comments and make recommendations concerning the published amendments to Rule 6007(b) regarding service of a party in interest's motion to compel abandonment. See memo by Professor Bartell, included in the agenda materials.

Professor Bartell explained that five comments were filed regarding the proposed amendment to Rule 6007(b). In response to the comments, the subcommittee suggested adding the words "trustee's and debtor in possession's" immediately before the word "abandonment" in the last sentence of the amendments to make it clear that the abandonment was not by the court itself. No further changes were suggested in response to the comments. The proposed amendment with the added language was approved by motion and vote.

(C) Consider comments and make recommendation concerning the proposed amendment to Rule 9037(h) regarding redaction procedures for documents that contained unredacted protected privacy information before being filed in a case. See memo by Professor Gibson, included in the agenda materials.

Professor Gibson advised that the Committee determined to take up the proposed amendments to Rule 9037 to add a new subdivision (h) in response to a suggestion from the Committee on Court Administration and Case Management. The proposed amendment was published in August 2017. There were several comments filed, and the subcommittee suggested several revisions in response to the comments. A revised version of the proposed rule was included in the agenda materials, although Professor Gibson noted that the revised proposed rule would have to be submitted to the style consultants prior to being finalized. In response to the comments, a change was proposed to revise subdivision (h)(1) to make it one sentence that is prefaced with the clause, "Unless the court orders otherwise," and to delete that language from subdivision (h)(1)(C) to avoid any confusion for courts in interpreting the rule.

One member raised the issue of whether the document to be redacted is still available to CM/ECF users once a motion is filed. Ken Gardner advised that most courts restrict public

access to the document in question once the motion is filed, including for the person filing the motion. Others noted that in some courts the restriction is automatic. Professor Gibson explained that the proposed amendment was revised to strengthen the language regarding restricting access and filing a redacted document. Corresponding changes were made to the Committee Note. Judge Campbell suggested a revised heading to include a reference to redacted document filings.

An issue was discussed regarding the inclusion of the redacted document with a motion. Professor Gibson suggested language requiring the movant to attach a copy of the redacted document with the initial motion, but also require an explanation of the needed redactions in the motion. She advised that one of the filed comments suggested adding language requiring the docketing of the redacted document if the motion is granted. The proposed change would add before the second sentence of subdivision (h)(2), "If the court grants it, the redacted document must be filed." A minor stylistic change was suggested. The proposed amendment to Rule 9037, including the suggested changes, was approved by motion and vote. The Committee Note, revised to reflect the changes, was approved as well.

5. Report by the Subcommittee on Business Issues

(A) Consider comments and make recommendations concerning published amendments to Rules 2002(g) and 9036, and Official Form 410A, to expand the use of electronic noticing. See memo by Professor Gibson in the agenda materials.

Professor Gibson explained that proposed amendments to Rules 2002(g) and 9036, and Form 410, were published for comment in August 2017. The purpose of the amendments was to expand the use of electronic noticing and service in bankruptcy courts. Several comments were filed, including comments that raised concerns about the technical implementation of the proposed amendments. These comments noted that current CM/ECF is not able to retrieve an email address from Form 410. The change, as proposed for amendment, added to the form a check box and instructed the creditor to check the box "if you would like to receive all notices and papers by email rather than regular mail." The proposed amendments to Rule 2002(g) would allow notices to be sent to email addresses designated on filed proofs of claims and proofs of interest.

Those commenting did not object to the concept of adding a checkbox to the form, but they said that the change would require considerable re-programming in CM/ECF and other court software, and that it would take time. They requested that the effective date of the rules be

delayed. Another issue noted was the prioritization of contact email addresses submitted by users through various sources. If, for example, a party is registered for CM/ECF noticing (or Electronic Bankruptcy Noticing if not a registered CM/ECF user), and that party submits a different email address on Form 410, it would be difficult to determine which address should take priority when receiving notices from a court.

Based on these concerns, the subcommittee decided to delay the proposed amendments to Rule 2002(g) and Form 410, and to seek additional input from the Committee on Court Administration and Case Management and the Administrative Office's Noticing Working Group regarding the technical feasibility issues.

The Committee determined to go forward with approval of the proposed amendments to Rule 9036. Those changes are consistent with the amendments to Civil Rule 5 (which Rule 7005 makes applicable in bankruptcy) and the amendments to Rule 8011, which are on track to go into effect on December 1, 2018.

The Committee voted unanimously to hold the amendments to Rule 2002(g) and Official Form 410 in abeyance, but to approve the amendments to Rule 9036, with minor changes made in response to the comments. The changes include two sentences added to the Committee Note for Rule 9036 in response to a comment. The added sentences read: "The rule does not make the court responsible for notifying a person who filed a paper with the court's electronic-filing system that an attempted transmission by the court's system failed. But a filer who receives notice that the transmission failed is responsible for making effective service."

(B) Recommendation concerning suggestion 17-BK-B from the ABA Business Law Section to incorporate "proportionality" language into document requests made under Bankruptcy Rule 2004. See memo by Professor Gibson, included in the agenda materials.

Professor Gibson advised that this suggestion is to amend Rule 2004(c) to specifically impose a proportionality limitation on the scope of the production of documents and electronically stored information ("ESI"). The suggestion was considered at the fall 2017 Committee meeting, with a recommendation that it be reconsidered by the subcommittee and re-presented at the spring meeting. There was support for the proposed amendments to Rule 2004(c) which would add references to ESI and conform the rule to the amended subpoena rules, but differing views on the need for an amendment to address proportionality. Based on the discussion at the fall meeting, the subcommittee revised the proposed amendment, retaining the concept of a proportionality requirement, but not specifying factors to determine proportionality.

One member stated an objection to the revised language, arguing that the purpose of Rule 2004, in contrast to Civil Rule 26, is a general exploration of the case rather than specific issues. Others responded that the reason for including the proportionality language is to prevent unduly burdensome and expensive requests for documents and ESI. A suggestion was made that the language regarding proportionality be moved to a different subsection of Rule 2004, and, if left in subsection (c), that the subsection heading be changed. Others voiced concern is that the amendment would lead to an increase in litigation, questioning whether the subpoena rules would provide the protection the proposed rule amendments are attempting to address. By a 7 to 6 vote, the Committee voted to remove the proportionality language.

The Committee unanimously approved seeking publication of amendments to Rule 2004(c) that would add a reference to electronically stored information to the title and first sentence of the subdivision. This would acknowledge the form in which information now commonly exists. The Committee also unanimously approved publication of the proposed amendments to the subpoena provisions of Rule 2004(c) to eliminate the reference to "the court in which the examination is to be held" to conform the rule to provisions of Civil Rule 45 and Bankruptcy Rule 9016.

(C) Recommendation concerning suggestion 17-BK-D from the ABI Mediation Committee for an amendment to Rule 9019 that would require bankruptcy courts to establish local rules for mediation. See memo by Professor Bartell, included in the agenda materials.

Professor Bartell stated that the subcommittee identified several areas of consideration for the suggestion, the first being whether amendments regarding mediation are needed at all. She advised that the subcommittee is seeking guidance from the Committee prior to going further with the suggestion. Most members noted their support for mediation, but few believed the rule amendments are needed. The Committee generally agreed that the rule amendments are not necessary; if parties want to seek mediation, they will, and local procedures are sufficient. Judge Campbell advised that at this time there isn't an overall effort within the federal rules committees to develop rules regarding mediation.

(D) Recommendation concerning suggestion 17-BK-A from Kevin Dempsey, Clerk (IL-S) to revise and modernize the record keeping requirements of Rule 2013. See memo by Professor Gibson and memo by Molly Johnson summarizing survey of bankruptcy courts, included in the agenda materials.

Professor Gibson explained that the suggestion was to modify Rule 2013 to eliminate its requirements that the clerk maintain a public record of awarded fees and make an annual summary available to the public and the United States trustee. Kevin Dempsey suggested that CM/ECF has replaced the need for the type of record that the rule calls for. He proposed that, rather than being abrogated, Rule 2013 be amended to require the clerk to make information about fees awarded to professionals available upon request.

At the request of the Committee, Molly Johnson completed a survey to determine if the rule is being used by courts. In addition, she gathered information regarding the use of the rule by the Executive Office for U.S. trustees and academics. Dr. Johnson reported on her survey, advising that most bankruptcy clerks responded that they prepare the required annual summary and maintain the public record; however, fewer than half submit the summary to the U.S. trustee's office, for a variety of reasons. Also, she found that very few courts receive requests for the information. From her study, she learned that in most courts, the report is generated through CM/ECF, even though the CM/ECF version of the report doesn't completely comply with Rule 2013. She explained that in some cases, orders are not included in the report based on mistakes in how orders are titled, or in variations in order titles. The suggestion is to keep the rule but not require the annual summary, and the majority of those responding agreed with this suggestion, to make the information available upon request rather than automatically.

Ramona Elliott reported on her survey of the U.S. trustees' offices. She stated that the report is useful for monitoring chapter 7 trustees. Many of the reports are posted on local courts websites, and this may be a possible change to the rule, i.e., to include the report on courts' websites. Ken Gardner spoke with several bankruptcy clerks, and he advised that if the information is properly entered into CM/ECF, the report will be accurate. Finally, Ms. Johnson stated that few academics use the Rule 2013 report.

The Committee discussed the suggestion and survey results, with several members suggesting that the rule be amended to work better with today's court environment. Others noted that an educational effort would be helpful, and that it would be helpful to communicate the information to the Bankruptcy Clerks Advisory Group. After this discussion, the Committee voted to take no further action on the suggestion.

6. Report by the Restyling Subcommittee

Consider process for soliciting feedback on possible restyling of the Federal Rules of Bankruptcy Procedure. See memo by Professor Bartell, along with the proposed survey questions and the example of restyled rule, included in the

agenda materials.

Judge Dow initiated the discussion regarding the proposal to restyle the bankruptcy rules. He explained that the subcommittee determined to seek the input of the bankruptcy community, and in that effort, asked Dr. Johnson to prepare a survey. The survey will be sent to various groups, with a link to the survey available on uscourts.gov as well. Many organizations will be contacted, including the NCBJ, NACBA, CLLA, NABT, NACTT, ABI, ABA Business Law Section Bankruptcy Committee, American College of Bankruptcy, National Bankruptcy Conference, and AALS Debtor-Creditor Committee. The subcommittee sought approval of the process of surveying the bankruptcy community, and said it would report back to the Committee on the results of the survey at the fall meeting. Professor Bartell noted that the sample restyled rule is not something that the subcommittee has approved, but it is merely the rule as restyled by the style consultants. The subcommittee suggested that it be included with the survey to give participants an understanding of the nature of restyling.

The group discussed the survey and whether to include the style consultants' comments along with the sample restyled rule. One member noted that there may be a way to survey the broader question of whether the rules need to be restyled. Professor Gibson responded that she believes the restyled rule example helps. It provides a framework for understanding the nature of restyling. Other members suggested referring survey participants to restyled Civil Rules as examples. Several members agreed with this suggestion to avoid getting into bankruptcy-specific responses. Others stated that including a bankruptcy rule is more reflective of the potential restyling process, and that this will get better responses.

Judge Campbell explained that the point of restyling in general is to make the rules clearer, less cluttered, and more consistent. The other federal rules have been restyled. The Standing Committee will take the advice of this Committee as to whether the project should move forward.

Generally, the group agreed that including restyled Rule 4001 with the survey makes sense, but that the footnotes would be distracting. Instead, a note could be added that the rule example is merely that, and not an approved amended rule. Judge Dow suggested that Rule 4001, as restyled, be reviewed again by the subcommittee, and a version be developed that best reflects the comments made at the meeting, including a decision whether to attach just subsection (a) or the entire rule. In addition, the subcommittee will add introductory language for the survey regarding the inclusion of terms of art and the desire to avoid substantive rule changes. The group agreed with these ideas, and that if these changes are made, the survey can be sent out.

Information Items

7. Items Awaiting Transmission to the Standing Rules Committee

(A) Recommendations for proposed amendments to Rule 2002(f)(7) and (h) for publication. The proposed amendment to subsection (f)(7) was made by the Advisory Committee at its spring 2017 meeting. The proposed amendment to (h) was made by the Advisory Committee at its spring and fall 2017 meetings. The proposed amendments are incorporated into a technical amendment to Rule 2002(k) which is proposed for publication in August 2018.

Professor Gibson explained that the subcommittee recommends publication of three amendments to Rule 2002. The proposed amendments to subsections (f) and (h) were approved at the spring and fall 2017 meetings, respectively. The proposed amendment to Rule 2002(k) is technical, and would add a reference to subsection (a)(9). If approved, the combined proposed amendments to Rule 2002 will be presented to the Standing Committee.

The Committee approved the combined proposed amendments to Rule 2002, recommending that they be published for comment. The amendments would (i) require giving notice of the entry of an order confirming a chapter 13 plan, (ii) limit the need to provide notice to creditors that do not file timely proofs of claim in chapter 12 and chapter 13 cases, and (iii) add a cross-reference in response to the relocation of the provision specifying the deadline for objecting to confirmation of a chapter 13 plan.

(B) Recommendation approved by the Advisory Committee at its fall 2017 meeting to publish an amendment to Rule 8012 that would conform to a proposed Appellate Rule 26.1 amendment.

Professor Gibson explained that the Appellate Rules Committee will consider proposed amended Rule 26.1 at its spring meeting. Bankruptcy Rule 8012 will conform to these amendments. The group discussed the proposed amendments to Appellate Rule 26.1, specifically, the use of the word "cases" versus "proceedings" in subsection (c). Generally, the group agreed with the use of the term "cases." An edit was suggested to the Appellate Rule 26.1's Committee Note to delete the reference to "adversary proceedings."

The Committee approved for publication amendments to Rule 8012 that track the relevant amendments to Appellate Rule 26.1.

8. Report concerning Advisory Committee on Civil Rules consideration of an amendment to Rule 30(b)(6) and implications for bankruptcy. See memo by Professor Bartell, included in the agenda materials.

Professor Bartell reported that Judge Goldgar advised the Civil Rules Committee that the Committee generally supports the proposed changes to Civil Rule 30(b)(6), but that it would not support amendments to Civil Rule 26(f)(2), if they were to go forward.

9. Items Retained for Further Consideration.

The matters listed below are part of the noticing project and will be considered in the future.

(A) Suggestion 14-BK-E (Richard Levin, National Bankruptcy Conference) proposing an amendment to Bankruptcy Rule 3001 to require a corporate creditor to specify address and authorized recipient information and the promulgation of a new rule to create a database for preferred creditor addresses under section 347. In addition, the suggestion discusses the value of requiring electronic noticing and service on large creditors in bankruptcy cases for all purposes (other than process under Bankruptcy Rule 7004).

(B) Comment 12-BK-040 (BCAG). This suggestion was submitted as a comment in response to proposed revisions to Rule 9027. It suggested that the reference to Amail@ in Rule 9027(e)(3) be changed to "transmit." Because the comment did not implicate the part of Rule 9027 being amended, the comment was retained as suggestion for further consideration).

(C) Comments 12-BK-005, 12-BK-008, 12-BK-026, 12-BK-040 were submitted separately by Judge Robert J. Kressel, the National Conference of Bankruptcy Judges, Judge S. Martin Teel, Jr., and the Bankruptcy Clerks Advisory Group. The comments were made response to pending amendments to Rule 8003(c)(1), and have been retained as suggestions for further consideration. They recommend that the obligation to serve a notice of appeal rest with the appellant or be permitted by electronic means.

(D) Suggestion/Comment BK-2014-0001-0062 (Chief Judge Robert E. Nugent, U.S. Bankruptcy Court for the District of Kansas, on behalf of the NCBJ). This suggestion proposes amendments regarding service of entities under Bankruptcy

Rule 7004(b) and, in turn, Bankruptcy Rules 4003(d) and 9014(b)).

(E) Informal Suggestion (David Lander, former committee member), proposing rule in context of electronic noticing that would require particular notice to, or service on, a party when a motion or pleading is adverse to that party, as opposed to that party just receiving the general e-notice of a filing in the case.

10. Coordination Items, see memo of March 1, 2018, by Mr. Myers.

No report was made at the meeting.

11. Future meetings:

The fall 2018 meeting will be in Washington, DC, on September 17, 2018.

12. New business.

13. Adjourn.

Consent Agenda

The Chair and Reporters proposed the following items for study and consideration prior to the Advisory Committee-s meeting. No objections were noted, and all recommendations were approved by acclamation at the meeting.

1. Subcommittee on Consumer Issues

Recommendation for technical amendment to Rule 2002(k) regarding chapter 13 noticing of plan objections to include transmittal of the notice to the United States trustee. See memo by Professor Gibson in the agenda materials

2. Subcommittee on Business Issues

Recommendation of no change regarding suggestion 17-BK-D from A. Lysa Simon to add credit unions to the types of "insured depository institutions" described in 7004(h) as entitled to service of process in a contested matter or

adversary proceeding by certified mail. See memo by Professor Gibson in the agenda materials.

3. Subcommittee on Forms Issues

Recommendation for technical amendments to the general and special power of attorney forms (Forms 4011A and 4011B), changing them to Official Bankruptcy Forms 411A and 411B to conform to the requirements of Rule 9010(c). See memo by Professor Gibson in the agenda materials.