ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of April 2–3, 2013
New York, New York

The following members attended the meeting:

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

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
Professor Troy A. McKenzie, assistant reporter
Judge Jeffrey S. Sutton, Chair of the Committee on Rules of Practice and Procedure (Standing Committee)
Roy T. Englert, Jr., Esq., liaison from the Standing Committee
Bankruptcy Judge Erithe A. Smith, liaison from the Committee on Bankruptcy Administration
Jonathan Rose, secretary of the Standing Committee and Chief, Rules Committee Support Office
Patricia S. Ketchum, advisor to the Advisory Committee
Ramona D. Elliott, Deputy Director /General Counsel, Executive Office for U.S. Trustees (EOUST) (by telephone)
Lisa Tracy, Associate General Counsel, EOUST (by telephone)
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
Peter G. McCabe, Assistant Director, Office of Judges Programs, Administrative Office of the U.S. Courts (Administrative Office)
Benjamin Robinson, Deputy Rules Officer
James H. Wannamaker, Administrative Office
Scott Myers, Administrative Office
Bridget Healy, Administrative Office
Molly Johnson, Federal Judicial Center
Michael T. Bates, Senior Company Counsel, Wells Fargo
Eric Donowho, Chief Administrative Officer, Barrett, Daffin, Frappier, Turner & Engel, LLP

Marcy J. Ford, Executive Vice President and Managing Partner Bankruptcy Department, Trott & Trott, PC
Craig Goldblatt, WilmerHale LLP
Raymond J. Obuchowski, on behalf of the National Association of Bankruptcy Trustees
Anita M. Warner, Vice President, Assistant General Counsel, Chase
Daniel A. West, Shareholder/Managing Attorney, South & Associates

The following summary of matters discussed at the meeting is written in the order of the meeting agenda unless otherwise specified, not necessarily in the order actually discussed. It should be read in conjunction with the agenda materials and other written materials referred to, all of which are on file in the office of the Secretary of the Standing Committee.

An electronic copy of the agenda materials, other than materials distributed at the meeting after the agenda materials were published, is available at http://www.uscourts.gov/RulesAndPolicies/rules/archives/agenda-books/committee-rules-bankruptcy-procedure.aspx. Votes and other action taken by the Advisory Committee and assignments by the Chair appear in **bold**.

Introductory Items

1. Greetings; welcome to new member Jill Michaux, Esq., and new liaison representatives Roy T. Englert, Jr., Esq., and Judge Erithe A. Smith; and recognition of the service of former committee member Jerry Patchan.

The Chair welcomed the Advisory Committee's newest member, Jill Michaux, Esq., and its new liaisons from the Standing Rules Committee, Roy Englert, and from the Committee on Bankruptcy Administration, Judge Erithe Smith.

At the Chair's request, Ms. Ketchum and Mr. McCabe recognized the service of former member Jerry Patchan, who recently passed away. Ms. Ketchum noted that it was ironic to honor Mr. Patchan at this time in light of the many comments the Advisory Committee received in response to publication of the first set forms produced as part of the Forms Modernization Project. Mr. Patchan, she said, was the first chair of the Advisory Committee's Forms Subcommittee and he presided over the last major overhaul of bankruptcy forms in the late 1980s. Mr. Patchan was a former bankruptcy judge, became a private attorney and joined the Advisory Committee, and later was director of the Executive Office for United States trustees.

2. Approval of minutes of Portland meeting of September 20–21, 2012.

The draft minutes were approved with minor edits.

3. Oral reports on meetings of other committees:

(A) January 2013 meeting of the Advisory Committee on Rules of Practice and Procedure.

The Chair said that the Standing Committee was asked to comment on the modernized bankruptcy forms for individuals at its January meeting, and that there was general approval of the new forms. There were some concerns, however, about the Advisory Committee's attempt to

incorporate the Supreme Court's holding in *Schwab v. Reilly*, 130 S. Ct. 2652 (2010), into the exemption schedule. The Chair said that the Joint Consumer Forms Subcommittee has amended the exemption schedule to address the Standing Committee's concerns, and that the revised form would be considered at Agenda Item 7(A).

The Chair said the Standing Committee asked the Advisory Committee to move forward in its consideration of a rule for electronic signatures and that the proposal of the Subcommittee on Technology and Cross Border Insolvency on that issue would be considered at Agenda Item 10.

(B) January 2013 meeting of the Advisory Committee on the Administration of the Bankruptcy System.

Judge Smith reported on the most recent meeting of the Advisory Committee on the Administration of the Bankruptcy System, which she said focused largely on budget matters.

(C) November 2012 meeting of the Advisory Committee on Civil Rules, including the Civil Rules Committee's approval of an amendment of Civil Rule 6(d) for future publication.

Judge Harris said there was one matter before the Committee on Civil Rules that has near term bankruptcy rules implications. The Civil Rules Committee voted to approve a proposed amendment to Rule 6(d), he said, that would clarify that only the party being served (not the party serving) by certain means described in the rule could add 3 days to a time period. Judge Harris moved for the Advisory Committee to recommend publication of the same change to Bankruptcy Rule 9006(f), which incorporates the language from Rule 6(d), so that counting under the two rules remains the same. **The Advisory Committee recommended the following amendment Rule 9006(f) for publication**: Replace the word "service" with "being served."

Mr. McCabe added that a pending change to the Rule 45 on track to take effect December 1, 2013, which is incorporated into Bankruptcy Rule 9016, would require changes to the bankruptcy subpoena forms. **The Chair asked the Forms Subcommittee to consider needed changes this summer, and to report back at the fall meeting**.

(D) October 2012 meeting of the Advisory Committee on Evidence.

Judge Wizmur reported on the work of the Advisory Committee on Evidence.

(E) September 2012 meeting of the Advisory Committee on Appellate Rules.

Judge Jordon reported on the work of the Advisory Committee on Appellate Rules.

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

Judge Perris reported on the progress of Next Generation of CM/ECF at Agenda Item 7.

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues.

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

Judge Harris said that in light of the amount of material currently being considered by the Advisory Committee, the Subcommittee decided to table this issue for now. He added that, although the Subcommittee did not fully discuss the suggestion, some members expressed concern that requiring an initial installment payment at the time of filing might encourage eligible debtors in chapter 7 to file an application to waive the filing fee instead an application to pay in installments.

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

Judge Harris said that in light of the amount of material currently being considered by the Advisory Committee, the Subcommittee decided to table this issue for now. He added that the Subcommittee will attempt to ascertain and review current practice to determine how many courts already require notice of confirmation of the debtor's chapter 13 plan and who does the notice (i.e., court, debtor or trustee).

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

Professor Gibson gave the report. She said that the Subcommittee had concluded that the proposed amendment should not be pursued for two reasons. First, the issue that provoked Judge Teel's suggestion does not appear to have caused much confusion in the courts. There is agreement that a trustee may proceed by motion to seek a turnover from the debtor of property of the estate or proceeds of the property and, when the debtor no longer possesses either, the turnover of an equivalent amount of money. The only disagreement concerns whether the trustee must proceed by way of an adversary proceeding to recover a money judgment for the value of non-cash property of the estate when neither the property nor its proceeds remain in the debtor's possession at the time of the turnover action. There is little case law on the question. The one decision that created the issue, *Price*, was an unpublished decision in 2006, that has not been cited for its procedural ruling in any other opinions.

Second, the Subcommittee concluded that a basis exists for limiting the Rule 7001(1) exception to "a proceeding to compel the debtor to deliver property to the trustee." A proceeding to recover a judgment against the debtor for the *value* of property that the debtor no longer possesses results in a money judgment that is enforceable by execution and levy on any of the debtor's non-exempt property. The Subcommittee concluded that there is a reasonable basis for treating such an action like most other proceedings to recover money or property—with the greater formalities required for an adversary proceeding. No member objected to the Subcommittee's recommendation. No further action will be taken.

(D) Oral report concerning Comment 11-BK-12 by Judge Frank regarding the negative notice procedure for objections to claims in the proposed amendment to Rule 3007 that was published (and withdrawn).

Judge Harris said that in light of the amount of material currently being considered by the Advisory Committee, the Subcommittee decided to table this issue for now. He added that in preliminary discussions, members on the Subcommittee were concerned about changing the burden of proof in a negative notice process, and whether negative notice would be sufficient if service was made only on the name and address on the filed proof of claim.

5. Report by the Chapter 13 Plan Form Working Group.

Recommendation by the Subcommittees on Consumer Issues and Forms concerning adopting a national chapter 13 plan form and amending Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009 in connection with adopting a plan form.

The Chair, Judge Perris and Professor McKenzie presented the recommendation of the Joint Subcommittee on Consumer Issues and Forms for publication of a national chapter 13 plan form and related rule amendments. Judge Perris said that the original suggestions for a national form for chapter 13 plans came from a bankruptcy judge and a group of state attorneys general. Bankruptcy judges were polled and most responded that a national form would be a good idea, and many recommended that the national form be based upon the local version currently in effect in their districts.

A central goal of the plan form is to improve procedures in chapter 13 practice. That goal has taken on heightened importance with the Supreme Court's decision in *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367 (2010), which held that an order confirming a procedurally improper chapter 13 plan is nevertheless *res judicata*, and which emphasized the duty of bankruptcy judges to review chapter 13 plans for compliance with the law.

At its September 2012 meeting in Portland, Oregon, the Advisory Committee discussed drafts of the plan form and rule amendments prepared by the Advisory Committee's Chapter 13 Plan Form Working Group (Working Group). The Advisory Committee also approved a recommendation to hold a mini-conference on the draft plan and rules. That mini-conference, held in January 2013, brought together participants from a broad cross-section of groups interested in the chapter 13 process. The participants included chapter 13 trustees, bankruptcy judges, a court clerk, and representatives of creditors and consumer debtors. The Working Group incorporated the input received during the mini-conference, and the joint Subcommittees on Consumer Issues and Forms (Joint Subcommittee) provided additional input on the draft plan and rules.

Professor McKenzie said that the plan form contains three features that will be highlighted at the beginning of the document. First, it permits the debtor to limit the amount of a secured claim under § 506(a) of the Code, subject to a creditor's objection to confirmation. Second, the plan permits the debtor to request the avoidance of certain liens impairing exemptions under Code § 522(f). Third, the plan includes a space in which the debtor may propose nonstandard provisions—that is, provisions not included in, or contrary to, the plan form. None of these features will be effective unless the debtor indicates, in the first part of the

document, that the plan contains that feature. One member suggested that a requirement to both complete the relevant section and then indicate that section had been completed at the beginning of the plan creates the possibility of inconsistencies, but other members pointed out that highlighting these three issues at the beginning of the plan provides heightened notice to the affected party, and that the plan is clear about what needs to be completed to make a provision effective.

The Joint Subcommittee concluded that effective implementation of the plan form will require conforming amendments to Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009. The amendments fall into three categories.

First, there are amendments that would affect the filing, processing, and treatment of claims. Rule 3002(a) would be amended to require a secured creditor to file a proof of claim in order to have an allowed claim. Rule 3002(c) changes the deadline for filing proofs of claim in chapter 13 cases to 60 days after the petition date so that the confirmation hearing date established by § 1324(b) of the Code could be set after all non-governmental proofs of claim are filed. The sixty-day period is extended to allow the filing of documentation required under Rule 3001(c)(1) and (d) for certain mortgage claims.

Several interrelated rule amendments would provide for circumstances when the plan will control over a contrary proof of claim. Amendments to Rules 3012 and 3015 provide that the plan may make a binding determination of the amount of a secured claim subject to ultimate resolution at the confirmation hearing. Amended Rule 3007, in turn, provides an exception to the need to file a claim objection if claim allowance is resolved under Rule 3012. Similarly, amended Rule 4003(d) makes clear that a plan may provide for avoidance of liens under 11 U.S.C. § 522(f). And amended Rule 7001 makes clear that an adversary proceeding is not necessary to determine the validity, priority, or extent of a lien resolved through a plan. Relatedly, if a lien encumbering property of the estate has been satisfied, amended Rule 5009(d) provides that the debtor may request an order documenting that the lien has been satisfied.

Second, several proposed rule amendments concern service and notice in chapter 13 cases. Amendments to Rule 3015 are intended to ensure that creditors receive a copy of the plan before confirmation and that any objections to confirmation are filed and served seven days before the confirmation hearing. Similarly, Rule 2002 would be amended to clarify the notice period before a confirmation hearing (28 days) and the deadline for filing objections to confirmation (21 days).

Some of the amendments require enhanced service. Rule 3012 would be amended to provide that a request to determine the amount of a secured claim under a plan must be served in accordance with Rule 7004's requirements for adversary proceedings. Similar service requirements are included in amended Rule 4003(d), which concerns a plan proposing lien avoidance under Code § 522(f). If a debtor requests an order declaring a lien satisfied under amended Rule 5009(d), service in accordance with Rule 7004 is also required.

Third, the Advisory Committee is proposing amendments to the Bankruptcy Rules that would limit deviations from the Official Form chapter 13 plan.

Rule 3015(c) would be amended to require the use of the Official Form plan and to make clear that provisions deviating from the Official Form are not effective unless they are placed in the part of the Official Form for nonstandard provisions (and identified accordingly).

The Advisory Committee considered alternative proposed revisions to Rule 9009, which were set out beginning at page 147 of the Agenda Book. Both versions would prohibit alterations of an Official Form, except when the Bankruptcy Rules or an Official Form itself would permit modification, and except for Official Form orders, which could be modified by a court in individual cases unless a Bankruptcy Rule or the Official Form itself provided otherwise. Both versions of proposed Rule 9009 also provide for alterations to forms with respect to fonts, and for the addition or deletion of spaces, as the case may be, when responding to an item.

The two versions of the proposed Rule 9009 differed, however, on whether a court could permissively adopt a localized version of a national form—to, for example, add a certificate of service to a form that must be served. The first version of the rule, on page 147 of the Agenda Book, would not allow such localization. Instead, the local court could adopt a supplemental form to handle the local requirement. The alternate variation, on page 149 of the Agenda Book, would permit localization, but would not allow courts to require that filers use the local version of an Official Form. **The Advisory Committee voted 7–5 to recommend publishing the first version of Rule 9009, as set out at page 147 of the Agenda Book, subject to review by the Style Subcommittee. The Advisory Committee voted unanimously to recommend publication of the proposed plan form and accompanying rule amendments.**

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

(A) Status report on mortgage rules and forms amendments discussed at the mini-conference in Portland, including requiring a detailed loan history and amending Rule 9009 to specify the extent to which Official Forms may be modified.

The Reporter gave a status report on the mortgage forms mini-conference. She said that several issues were raised at the meeting, including the possible need to adopt a national form detailing the loan payment history. There are still questions, she said, about the time frame the loan history should cover, and servicers were concerned about local courts modifying any a national loan history form if one is adopted. Proposed revisions to Rule 9009, however, which are to be published this fall in connection with the national chapter 13 plan discussed at Agenda Item 5, would limit the types of modifications that can be made to official bankruptcy forms. Accordingly, the Joint Subcommittee decided to wait until after the Rule 9009 comment period ends before considering further changes to the mortgage rules and forms. No recommendation is being made at this time.

(B) Recommendation concerning Suggestion 11-BK-N by David S. Yen for a rule and form for applications to waive fees other than filing fees, under 28 U.S.C. § 1930(f)(2) and (f)(3).

Judge Harris gave the report. He said that the Joint Subcommittee had been asked at the September 2012 meeting to consider a Director's Form for fee waivers under 28 U.S.C. § 1930(f)(2) and (f)(3). He said the Joint Subcommittee concluded that there is not a pressing need for a special form to request fee waivers under 28 U.S.C. § 1930(f)(2). There is already an official form that a chapter 7 debtor may use to request a waiver of the filing fee under 28 U.S.C. § 1930(f)(1). The information on that form would generally be relevant, or could be updated, if the chapter 7 debtor seeks a waiver of other fees under Section 1930(f)(2) later in the case.

Judge Harris said that 28 U.S.C. § 1930(f)(3) refers to fee waivers "in accordance with Judicial Conference policy." The current Judicial Conference policy on fee waivers is limited to chapter 7 debtors. In 2005 the Judicial Conference adopted Interim Procedures Regarding Chapter 7 Fee Waiver Provisions. The procedures primarily address fee waivers under § 1930(f)(1), but they also state that "[o]ther fees scheduled by the Judicial Conference under 28 U.S.C. §§ 1930(b) and (c) may be waived in the discretion of the bankruptcy court or district court for individual debtors whose filing fee has been waived." The interim procedures do not contain any reference to waiver of fees for creditors or for debtors who are not entitled to a fee waiver under § 1930(f)(1).

Judge Harris said that the Judicial Conference's Committee on the Administration of the Bankruptcy System is currently considering a revision of the interim fee waiver procedures. The most recent draft of the revision does not address fee waivers under § 1930(f)(3). In light of the ongoing revisions of the fee waiver guidelines and the current absence of any Judicial Conference policy for waivers under § 1930(f)(3), the Joint Subcommittee recommends that the Advisory Committee refrain from acting further on a Director's Form for fee waivers under § 1930(f)(3) until a Judicial Conference policy on this type of waiver is issued.

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

(A) Report on the status of the Forms Modernization Project and recommendation concerning publication of the remaining new individual-debtor forms developed by the project, including revision of the exemption schedule as a result of the Supreme Court's holding in *Schwab v. Reilly*, 130 S. Ct. 2652 (2010).

Forms Modernization Project and the Next Generation of CM/ECF

Judge Perris gave an overview of the Forms Modernization Project (FMP) and how the FMP's work has been coordinated with development of the next generation of case management and electronic case filing software (Next Gen).

The FMP is a working group of the Advisory Committee and consists of current and former members of the Forms Subcommittee, advisors from other Judicial Conference groups such as the Bankruptcy Judges Advisory Group and the Bankruptcy Clerks Advisory Group, advisors from the Federal Judicial Center, the Executive Office for United States Trustees, and a Bankruptcy Administrator. The FMP began its work modernizing the official bankruptcy forms in 2008. The dual goals of the FMP are to improve the language and format of official bankruptcy forms and to improve the interface between the forms and available technology, including the enhanced technology that will become available through the judiciary's Next Gen program.

From a forms perspective, the major change in Next Gen will be the ability to store all information on forms as data so that authorized users can produce customized reports containing the information they want from the forms, displayed in whatever format they choose. Judge Perris said that the initial release of Next Gen, which would include report generating tools for internal court users, is planned for 2014.

As an initial matter, the FMP separated case opening forms for individual and non-individual debtors. Drafting of the individual forms is complete, and a subset of those forms (3A, 3B, 6I, 6J, 22A-1, 22A-2, 22B, 22C-1 and 22C-2), were published for public comment in August

2012. The comments and recommendations for those nine forms are discussed at Agenda Items 7(B) and 7(C) below.

Judge Perris said there were several reasons the Advisory Committee published only a subset of individual-debtor forms in 2012, including the need for further refinements on some forms. A more important concern, however, was that it was unclear in 2012 whether Next Gen would be in place when the new forms were projected to go into effect on December 1, 2013. Putting all of the new forms into effect before the Next Gen report writing functions are available to the courts would likely increase the difficulty of transitioning to the new forms. On the other hand, having a small subset in place when Next Gen goes into effect will allow for fuller testing of the new forms before other modernized forms are approved.

Judge Perris said that the remaining individual-debtor forms were presented to the Advisory Committee at its fall 2012 meeting and to the Standing Rules Committee at its winter 2012 meeting with a request for preliminary comments prior to publication. She said that those forms, set out in the Supplement to the Agenda Book beginning at page 91, have been revised to reflect the preliminary comments from the Advisory Committee and Standing Committee and also reflect formatting changes that were made as a result of general comments about the nine FMP forms that were published last August. The most significant formatting change since the Advisory Committee and Standing Committee last saw the forms that will be recommended for publication this year, she said, was a reduction in the use of shading and long black bars to separate the parts and sections on the new forms.

Judge Perris said that the non-individual forms are on track to be published for comment in August 2014. The FMP has completed initial drafts of most of the non-individual forms, she said, and has begun prepublication testing with groups of law clerks, law students, lawyers and judges.

Judge Perris said three issues needed to be resolved prior to a motion for publication of the remaining individual FMP forms in August 2013: (1) a revision of the proposal to modify the exemption schedule to account for the Supreme Court's decision in *Schwab v. Reilly*, 130 S. Ct. 2652 (2010); (2) a request to change the lettering of the new schedules (discussed at Agenda Item 7(D) below); and (3) a recommendation for a delayed effective date of the renumbered individual forms.

Schwab v. Reilly and the Individual Debtor's Exemption Schedule

The Chair spoke about the proposed *Schwab* changes to the exemption schedule. He said that some members of the Standing Committee had been concerned that the proposal recommended by the Advisory Committee was unclear. As submitted to the Standing Committee, the exemption schedule had a blank line in the value column and an instruction at the top of the form that an exemption amount could be put in on the line, or the debtor could write on the line "full fair market value." The Chair said that as a result of the Standing Committee's concerns, the Joint Subcommittee recommended revising the exemption schedule to include two checkboxes: one checkbox that would allow the debtor to specify a dollar amount for the exemption, and a second checkbox that would allow the debtor to exempt "100% fair market value *up to the applicable statutory limit.*" The italicized language, he said, addressed a concern previously raised by case trustees that if a checkbox simply allowed the debtor to exempt "100% of full market value," debtors would routinely check the box without considering whether the exemption had a dollar limit specified by statute. By limiting the checkbox

exemption to 100% of full market value up to any applicable statutory limit, the Chair said, a debtor would be easily able to follow *Schwalb* without prompting unnecessary objections from case trustees. **After a short discussion, the Advisory Committee recommended the revised exemption schedule for publication.**

Motion for delayed effective date of the remaining individual forms

Judge Perris explained that, depending on the Advisory Committee's decisions at Agenda Items 7(B) and 7(C), the forms published last fall (3A, 3B, 6I, 6J, 22A-1, 22A-2, 22B, 22C-1 and 22C-2) are on track to go into effect December 1, 2013, and December 1, 2014. She said that there is no problem with the proposed effective dates for those forms because they are projected to replace existing versions that are used exclusively by individuals. Most of the forms to be published this August, however, are individual debtor versions of forms that are currently used by all debtors. Official Form 1, the current voluntary petition, for example, will be replaced by two FMP versions: one version for individual debtors, Official Form 101, and another version for non-individual debtors, Official Form 201. Only the individual debtor version of the voluntary petition is complete and ready to be published this year.

Like the petition, there will be different versions of the schedules and the statement of financial affairs for individuals and non-individuals. The need for different versions of case opening forms for individuals and non-individuals required the FMP to develop a new numbering system for all the bankruptcy forms that both organizes the bankruptcy forms in a logical way and has some relationship to current form numbers. The basic numbering protocol for the new forms is:

1XX – Forms for Individuals Filing for Bankruptcy

2XX – Forms for Non-individual Filing for Bankruptcy

3XX – Orders and Court Notices

4XX – Additional Official Forms

XXXX - Director's Forms

The new numbering system will make it difficult, Judge Perris said, to introduce renumbered forms piecemeal. She explained that the normal effective date for the renumbered individual debtor forms to be published this August would be December 1, 2014. The Subcommittee recommended delaying the effective date until at least December 1, 2015, so that they can go into effect at the same time as the non-individual versions of the forms—which are about a year behind in development.

Judge Perris said that there are two reasons to synchronize the effective date of the individual and non-individual forms. First, as explained above, many of the individual debtor forms being published this August are revisions of forms that currently apply in all bankruptcy cases, individual and non-individual. To avoid overlap and confusion, the non-individual forms should not go into effect until the current forms have been replaced for all cases. Second, the forms that will be published this August implement the new forms-numbering scheme described above. Delaying the effective date of the non-individual forms will allow there to be a uniform numbering scheme for all of the bankruptcy forms. The delay will also permit the bulk of the

modernized forms to go into effect after the first release of the Next Gen is fully operational, thus making it easier for court personnel to take advantage of the improved technology and interface.

In the meantime, courts will be able to work with a smaller subset of the new forms (3A, 3B, 6I and 6J scheduled to take effect December 1, 2013, and the means test forms scheduled to take effect December 1, 2014), allowing time to adjust to the new format and technology features.

A motion to publish the remaining individual forms, with a proposed effective date no earlier than December 1, 2015, passed without opposition.

NOTE: The remaining individual debtor forms to be published are set out beginning at page 91 of the Supplement to the Agenda Book. As set out in the Supplement, they are Official Forms 101, 101A, 101B, 104, 105, 107, 112, 119, 121, 318, 423, 427, and the debtor's schedules – 106A, 106B, 106, C, 106D, 106E, 106F, 106Dec, and 106Sum. As revised at Agenda Item 7(D), however, the schedules to be published will be labeled 106A/B, 106C, 106D, 106E/F, 106G, 106Dec, and 106Sum. A form number conversion chart for the individual-debtor forms is attached to these minutes.

(B) Recommendation concerning comments received on the published amendments to Official Forms 3A, 3B, 6I, and 6J.

Judge Perris highlighted the more significant comments for proposed Official Forms 3A, 3B, 6I, and 6J. She added that the comments were more fully discussed in the agenda materials.

Judge Perris said that Official Forms 3A (Application for Individuals to Pay the Filing Fee in Installments), 3B (Application to Have the Chapter 7 Filing Fee Waived), 6I (Schedule I: Your Income), and 6J (Schedule J: Your Expenses) were selected for the initial implementation stage of the FMP because they make no significant change in substantive content and simply replace existing forms that apply only in individual-debtor cases. The restyled forms all involve the debtors' income and expenses, and they are employed by a range of users: the courts, U.S. trustees, and case trustees, for varied purposes.

In response to the publication of these forms—and of Official Forms 22A-1, 22A-2, 22B, 22C-1, and 22C-2, discussed at Agenda Item 7(C) below—29 sets of comments were submitted, and one letter was informally submitted. Judge Perris said that the comments on the overall project and the published forms in general fell primarily into the following categories:

- support for the new forms;
- dislike of the new forms and a preference for maintaining the current forms;
- concern that the forms contain too much shading, too much white space, and too many pages, all of which will increase printing, mailing, and electronic transmission costs;
- concern that the forms will encourage *pro se* filings, to the detriment of the debtors and the courts; and
- the need for a clear statement about the extent to which software-generated forms can deviate from the graphic and formatting styles of the proposed forms, including the omission of instructions that are provided in the format of checkboxes and the omission or collapsing of inapplicable sections.

Judge Perris first discussed the most fundamental question—whether the project should proceed notwithstanding the preference of some commenters for the current forms. **After reviewing the reasons for the project and the guiding principles behind the redesign, the Advisory Committee unanimously concluded that the project should proceed.**

In response to the numerous comments about shading, **the Advisory Committee voted to accept the FMP's recommendation that shading should largely be eliminated**. The Advisory Committee also agreed with the FMP's proposed redesign of the forms, which retains the black banner for the "part" designation but uses a different format for the title of each part. Shading was largely eliminated from the balance of each of the forms. Members commented that these changes will reduce toner usage and increase the ease with which forms are printed and reproduced.

Judge Perris said that the increase in the length of the forms is a function of several factors. First, in an effort to increase accuracy and ease of use, and to create a form whose answers can populate a usable database of answers, more specific questions are asked, and the debtor is often prompted to provide an answer by selecting from a list of choices. Second, rather than providing a dense set of instructions at the beginning of a form and then blank spaces for the answers, many instructions are integrated throughout the form where the debtor is likely to need them. Third, more space is provided to answer some of the questions. Finally, examples are often included to help the debtor understand what information is being requested.

Judge Perris added that evaluating the length of the new forms before they are completed with debtor information is misleading because proposed revisions to Rule 9009, which is part of the chapter 13 plan form and rules package presented at this meeting for publication, will allow the filer to "collapse" question answers that do not require all the white space provided on the forms. In discussing this issue, members agreed that new design is likely to provide more accurate, usable information.

Judge Perris said that proposed Rule 9009 also provides guidance regarding the extent to which software-generated forms may deviate from the official forms.

Judge Perris said that whether the use of plain English and a more user-friendly design will encourage more *pro se* filings has been the subject of discussion since the beginning of the project. She said that FMP believes that the preparation of comprehensive instructions that explain the impact and complexity of a bankruptcy case and provide extensive warnings about the significance of filing for bankruptcy will discourage, not encourage, *pro se* filings. In addition, the FMP believes that it is important that forms be understandable by all debtors, including those who are represented, because debtors are required to sign the forms under penalty of perjury. The comments did not change those views.

Comments on Official Form 3A. Two sets of comments addressed this form specifically. Both suggested adding an option to the form allowing for payment of a chapter 13 filing fee through the debtor's plan. Districts differ on whether they permit this practice, and the current form does not expressly provide this option. Because the practice is not universal and the bankruptcy system has historically been able to accommodate the practice where it is allowed, the Subcommittee recommends that the form should remain silent regarding that option. The Advisory Committee agreed with the Subcommittee.

Line 2 of the published form stated that a debtor may ask the court to extend the deadline for payment of the final fee installment and that the debtor must explain why an extension is needed. One comment noted that no space was provided on the form for the explanation. Judge Perris said that the FMP contemplated that such an extension would require a separate application at a later time, and in order to avoid any confusion, recommended moving the statement about the possibility of an extension from the form to the separate form instructions. Judge Perris said that the change is consistent with the form currently in effect, which merely informs the debtor of the possibility of obtaining an extension "for cause shown" and does not ask the debtor to provide reasons for the extension as part of the application. **The Advisory Committee agreed with the proposed change.**

One comment suggested deleting the instruction in the signature box not to pay "anyone else in connection with your bankruptcy case" until the entire filing fee is paid because it would prohibit a debtor from making payments to a chapter 13 trustee before all of the installment payments are made. A member noted that current Official Form 3A includes the statement, "Until the filing fee is paid in full, I will not make any additional payment or transfer any additional property to an attorney or any other person *for services* in connection with this case" (emphasis added). **The Advisory Committee agreed with the FMP that the comment should be addressed by reinserting "for services" in the statement.**

Comments on Official Form 3B. Five comments were submitted regarding this form. Several of them stated that certain information asked for on the proposed form should be omitted because of its irrelevance to the waiver decision. The following information was suggested for deletion:

- line 3, non-cash government assistance;
- lines 12–16, various assets that the debtor owns;
- line 19, payment for bankruptcy services by someone else; and
- line 20, prior bankruptcy filings by the debtor or the debtor's spouse.

The current version of the form asks for the second and third items of information listed above, and the Advisory Committee decided to continue requesting that information. The current form also asks for prior bankruptcy filings by the debtor, but not by the debtor's spouse unless the spouse is also filing. Upon consideration of the comments, the FMP recommended deleting the request for information about prior filings of a non-filing spouse. **The Advisory Committee agreed with the FMP.**

Judge Perris said that the decision about how to respond to the first item, non-cash government assistance, was more complicated. The amount of non-cash government assistance may be relevant to determining whether a debtor is able to pay the filing fee in installments, since it may reduce the debtor's other expenses, but it is not specifically asked for on current Official Form 3B. Instead, the current form simply asks for the total combined monthly income as computed on Schedule I. Restyled Schedule I as published asked debtors to include the value of "[o]ther government assistance." Immediately preceding that question, it asked for "unemployment compensation" and "Social Security," which might have suggested to some debtors that "other government assistance" referred only to other forms of cash assistance. At the same time, non-cash governmental assistance should not be counted in determining whether the debtor meets an income threshold for waiver eligibility. The interim procedures of the Judicial

Conference regarding chapter 7 fee waivers direct that "Non-cash governmental assistance (such as food stamps or housing subsidies) is not included [in income]."

Judge Perris said that, as a result of the comments, the FMP recommends rephrasing the requests for information about governmental assistance on both Official Form 3B and Schedule I to harmonize the two forms. In completing Official Form 3B, the debtor is permitted to use the income calculated on Schedule I. As revised, however, the income on Schedule I includes non-cash governmental assistance in income to the extent that the debtor knows the value of such assistance. Accordingly, on Official Form 3B it was necessary to have the debtor first report the amount of income including the value of non-cash assistance, and then deduct the value of such assistance to determine the amount of income for purposes of the fee waiver application. In addition, the FMP recommended revising both forms to clarify that the debtor only needs to include the value of non-cash governmental assistance to the extent known. **The Advisory Committee approved the changes recommended by the FMP.**

Comments on Official Form 6I. Judge Perris said that 14 comments specifically addressed this form. Several of them raised questions about when income information must be provided about non-filing spouses. In order to clarify the requirement, the FMP added the following instruction at the beginning of the form: "If you are married, not filing jointly, and your spouse is living with you, include information about your spouse. If you are separated and your spouse is not filing with you, do not include information about your spouse." The form specifically asks for information about both spouses when they file jointly. **The Advisory Committee agreed with the FMP.**

In addition to the changes needed to coordinate Schedule I with Official Form 3A (discussed above) the FMP recommended two changes to the form's list of payroll deductions. As revised in the agenda materials, Schedule I was amended to ask separately about mandatory and voluntary contributions to retirement plans. And a new specific payroll deduction for "domestic support obligations" was added in response to a comment that these deductions are sufficiently common to justify a specific listing. **The Advisory Committee approved the changes.**

Comments on Official Form 6J. Fifteen comments specifically addressed Schedule J. Judge Perris said that the part of the proposed form drawing the most comment was the inclusion in part 2 of column B ("For Chapter 13 Only – What your expenses will be if your current plan is confirmed"). Many commenters were uncertain about the purpose of that column and doubted whether debtors would provide useful information. The FMP recommended two changes in response to those comments. First, column B was eliminated. Second, in order to permit districts that currently allow debtors to use Schedules I and J to update their income and expense information, a new checkbox was added to both forms where a debtor can indicate that the information on the form is a "supplement as of the following post-petition date:_____." **The Advisory Committee approved the changes recommended by the FMP.**

One commenter questioned the reason for the question, "Does anyone else live in your household?" Judge Perris said that the FMP concluded that the question was too broad, and recommended the following changes to Part 1 of Schedule J. First, questions 1 and 2 on the published form were combined into a single question asking about all of the debtor's dependents, regardless of whether the dependents live with the debtor. Second, question 3 was revised to make its financial purpose clear. In the published version of the form, question 3 asked, "Does anyone else live in your household?" This was amended to read "Do your expenses include

expenses of people other than yourself and your dependents?" The question has been converted to a simple "yes/no" format. If the debtor's Schedule J reveals that it includes expenses for people other than the debtor and the debtor's dependents, interested parties may investigate further if warranted. **The Advisory Committee approved the changes.**

Several comments questioned the inclusion of student loan payments as an expense deduction in Schedule J. They argued that explicitly listing this deduction represented a policy decision that student loans can continue to be paid during a chapter 13 case without constituting unfair discrimination against other unsecured claims that are not being paid in full. Another comment contrasted the treatment of student loans with other nondischargeable debts that are not treated as deductions. In response, the category of student loans as a distinct line item was eliminated. Now debtors who are paying student loans as an expense may list those payments as an "other" installment payment on line 17 of the form. **The Advisory Committee approved the changes.**

Just as with Schedule I, some comments questioned the treatment of non-filing spouses on Schedule J. To eliminate the confusion, the FMP added the following instructions: "If you are married and are filing individually, include your non-filing spouse's expenses unless you are separated. If you are filing jointly and Debtor 1 and Debtor 2 keep separate households, fill out a separate *Schedule J* for each debtor. Check the box at the top of page 1 of the form for Debtor 2 to show that a separate form is being filed." New question 1 affirmatively asks if debtor 2 lives in a separate household. If so, that debtor is directed to file a separate Schedule J. **The Advisory Committee approved the changes.**

After approving the changes listed above, the Advisory Committee recommended that Official Forms 3A, 3B, 6I and 6J become effective on December 1, 2013.

(C) Recommendation concerning comments received on the published amendments to Official Forms 22A-1, 22A-2, 22B, 22C-1, and 22C-2.

The Chair discussed Official Forms 22A-1, 22A-2, 22B, 22C-1, and 22C-2, the restyled means test forms for individual debtors under chapter 7, 11, and 13, that were published for comment in August 2012. Eighteen sets of comments on the means test forms were officially submitted, and one person informally provided the Advisory Committee with a detailed review of the forms. The Chair said that the comments ranged from suggestions and critiques regarding wording, style, and formatting of the forms to ones raising questions about interpretations of the Bankruptcy Code and case law. The FMP and the Forms Subcommittee carefully considered all of the comments. The Subcommittee determined that several of the comments were well taken, and recommended the following changes to the forms in response.

Creation of a separate form for chapter 7 means test exemption and harmonizing the line numbers across the means test forms.

The Chair explained that 11 U.S.C. § 707(b)(2)(D) exempts—either permanently or for a specified period—a small percentage of chapter 7 debtors from being subject to the means test. In the current chapter 7 means test form (Official Form 22A) and the revised form that was published last summer (proposed Official Form 22A-1), information about eligibility for an exemption is asked for at the beginning of the form. Because of the complexity of the qualifying

requirements, this portion of the form occupies multiple line numbers and the entire first page of the form.

The Chair said that one comment suggested that because of their limited applicability, the questions that pertain to exemptions based on certain types of military service should be moved to the separate form. The Subcommittee agreed with the proposal and recommended that a separate supplement to Official Form 22A-1 be created, listing all exemption questions, to be used only when applicable. The Chair explained that the proposal would serve two purposes: It would unclutter Official Form 22A-1 by removing questions that are only occasionally applicable, and it would allow the Advisory Committee to address another criticism by adopting uniform line numbering in the three means test forms dealing with income (22A-1, 22B, and 22C-1). Currently, the exemption questions, applicable only in chapter 7 cases, cause a misalignment of line numbers covering similar topics across the forms. **The Advisory Committee agreed with the Subcommittee's recommendation.**

New instruction about a domestic support obligation paid by one joint debtor or non-filing spouse to the other debtor.

The Chair said that a comment suggested that in any case where the income of both spouses is set out, there should not be a separate income item for the payment of a domestic support obligation from one spouse to the other. He said that the Subcommittee recommends adding an instruction to the relevant questions in order to prevent double reporting of the same income. **The Advisory Committee agreed.**

Changes to implement the *Hamilton v. Lanning* decision.

In *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010), the Supreme Court held that the calculation of a chapter 13 debtor's projected disposable income under § 1325(b) requires consideration of changes to income or expenses reported elsewhere on Official Form 22C that, at the time of plan confirmation, had occurred or were virtually certain to occur. As published last summer, the Chair explained, proposed Official Form 22C-2 included a section that asked the debtor to report any income or expense listed on the form that "has changed or is virtually certain to change during the 12 months after the date you filed your bankruptcy petition."

The Chair said that two comments stated that the 12-month limitation should be eliminated because the *Lanning* decision does not support such a limitation. **The Advisory Committee agreed that the 12-month limitation should be eliminated from Official Form 22C-2. After the meeting, the *Lanning* instruction was revised to direct the debtor to indicate if reported income or expenses "have changed or are virtually certain to change after the date that you filed your bankruptcy petition and during the time your case will be open."**

The Chair said that another issue raised by the comments was whether Official Forms 22C-1 and 22C-2 should introduce an adjustment for changes in income, under the *Lanning* decision, for determining the applicable commitment period under 11 U.S.C. § 1325(b)(4). He said that at least one decision has accepted the argument that a change in the debtor's income from the calculation of current monthly income should similarly allow a change in the applicable commitment period. *In re Ducret,* 2011 WL 2621329 (Bankr. S.D. Fla. 2011). However, this decision was reversed on appeal, in a decision finding that the definition of § 101(10A) is

controlling, and that the *Lanning* decision is inapposite. *In re Ducret*, 2012 WL 4468376 at *4 (S.D. Fla. 2012).

One member was in favor of an explicit adjustment. Another member said that the applicable commitment period could vary from the result stated in the form if the debtor's "current monthly income were calculated under § 101(10A)(A)(ii) of the Code rather than under § 101(10A)(A)(i), the method applicable where the debtor has timely filed the required income statement. **After a discussion, the Advisory Committee voted to add to the direction on the form for specifying the three-year commitment, "Unless otherwise ordered by the court . . .".**

The Chair said that another issue presented by the comments was whether the means test forms should continue to reject the holding in *Drummand v. Wiegand (In re Wiegand),* 386 B.R. 238 (9th Cir. BAP 2008), that gross business and rental receipts are to be counted as "current monthly income" under § 101(10A).

The Chair said that the Advisory Committee rejected the logic of *Wiegand* when the means test forms were developed and had revisited the issue several times since then without changing the forms. *Wiegand*, he pointed out, is limited to chapter 13 cases, and is based on language in § 1325(b) that, before the means test was introduced in the 2005 Code amendments, allowed the deduction of business expenses from the income that a debtor could be required to pay into a chapter 13 plan. However, there is no indication that Congress considered this provision when it included the definition of current monthly income as part of the means test, which it made applicable to both chapter 7 and chapter 13 cases. Among other things, the Chair said, counting gross business receipts as "current monthly income" creates unreasonable distinctions between similarly situated debtors, giving a sole proprietor current monthly income based on the business's gross receipts, while giving the sole owner of an LLC or Chapter S corporation only the net profits of the business. Moreover, the Census Bureau's median state income, to which the debtor's current monthly income is compared, itself includes only net business income. And finally, the chapter 7 means test includes no deduction for business expenses, which would result in nearly all chapter 7 debtors operating a business having a presumption of abuse.

Since *Wiegand* was decided, the Chair said, three courts other than those in the Ninth Circuit have adopted the Ninth Circuit BAP's decision, and two courts have rejected it. One member suggested creating a supplement to deal with *Wiegand* but another member pointed out the case has been in effect in the Ninth Circuit for five years now, and bankruptcy practice appears to have adapted in that circuit without a change to the forms. After further discussion, only one member was in favor of adding a line to Official Form 22C-1 to report gross income for a debtor that operates a business.

The Chair said that another legal issue raised by the comments was whether Official Forms 22A-2, and 22C-2 should allow the use of the *Johnson v. Zimmer* formula for determining the number of persons used in calculating National and Local IRS expense allowances. The current forms, the Chair said, incorporate the rule from the IRS Collection Financial Standards providing that the number of persons used to calculate IRS expense allowances should be the number that would be allowed as exemptions on the debtor's federal income tax return, plus the number of any additional dependents that the debtor supports. *Johnson v. Zimmer*, 686 F.3d 224 (4th Cir. 2012), the Chair said, uses a different, fractional economic unit approach. The Chair noted that there have been no reported decisions to date that follow the *Johnson v. Zimmer*

approach. After a discussion, no member favored changes to the forms to account for *Johnson v. Zimmer*.

After the meeting, by email vote, the Advisory Committee approved for republication revised versions of Official Forms 22A-1, 22A-2, 22B, 22C-1, and 22C-2, and new Official Form 22A-1Supp with the changes recommended in bold above.

(D) Alternative proposal by Judge Harris and Ms. Michaux to reletter proposed new Forms 106A, 106B, 106C, 106D, 106E, 106F, 106G, and 106H.

Committee members Judge Harris and Ms. Michaux presented an alternative to the relettering scheme proposed by the Advisory Committee for the new FMP schedules. Mr. Myers explained that early in its revision process, the FMP concluded that the existing order of schedules—listing property, then exemptions, and then debts was illogical, because a debtor first needs to know whether there is equity available in an asset before applying an exemption to that asset. The more logical approach, the FMP concluded, would be to list property, then claims—which allows the debtor to calculate equity, and then list exemptions. This reordering, however, plus the FMP's decision to combine related schedules (personal and secured property schedules are combined into a single two-part property, and priority and non-priority claims are combined into a single two-part claims schedule), meant that the proposed new lettering scheme would not track the existing lettering scheme.

Judge Harris and Ms. Michaux suggested an alternative: representing the newly combined schedules by both letters of the schedules they were derived from (i.e., the FMP property schedule for individuals would be lettered 106A/B to show to it is derived from exiting Schedules 6A and 6B, and the claims schedule for individuals would be lettered 106E/F to show it was derived from existing schedules 6E and 6F). Under this proposal, the remaining schedules would retain their existing letter designations. Judge Harris and Ms. Michaux argued that their proposal would make the transition to the new forms much less disruptive since existing letter designations have become highly ingrained over the past 30 years.

After discussing the alternatives, the Advisory Committee voted 7 to 5 in favor of the alternative proposal for renumbering.

(E) Report on automatic dollar adjustments to Official Forms 1, 6C, 6E, 7, 10, 22A, and 22C and Director's Procedural Forms 200 and 283 on April 1, 2013, to conform to the dollar adjustments in the Bankruptcy Code, as provided in Section 104(a) of the Code.

Mr. Myers explained that under Section 104(a) of the Bankruptcy Code, certain dollar amounts stated in Bankruptcy Code sections are automatically updated to reflect changes in the consumer price index over the prior three years. The most recent adjustment, he said, which occurred on April 1, 2013, required adjustments to dollar amounts listed in the seven official bankruptcy forms and two director's forms listed above. None of the changes require action by the Advisory Committee, Mr. Myers said, and the revised forms have already been posted on the courts' public website.

8. Report by the Subcommittee on Business Issues.

Recommendation concerning comments received on published amendments to Rules 7008, 7012, 7016, 9027, and 9033 which were proposed in response to the Supreme Court's decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011).

Judge Wizmur gave the report. She explained that currently the Bankruptcy Rules follow the division between core and non-core proceedings set forth in 28 U.S.C. § 157. With respect to proceedings that are core under the statute, she said, the rules contemplate that the bankruptcy judge may enter a final judgment. If a proceeding is non-core, on the other hand, the rules and statute contemplate that the bankruptcy judge will issue a report and recommendation to the district court, unless all parties consent to entry of a final judgment by the bankruptcy judge.

Stern held that a bankruptcy judge did not have authority under Article III of the Constitution to enter final judgment in a proceeding that was listed as core under 28 U.S.C. § 157(b)(2). Accordingly, reference in the rules to core and non-core no longer clarify whether the bankruptcy court has authority to enter a final judgment. As a result of *Stern*, the Advisory Committee proposed to amend the Bankruptcy Rules in three respects. First, the terms core and non-core would be removed from Rules 7008, 7012, 9027, and 9033 to avoid possible confusion in light of *Stern*. Second, in all bankruptcy proceedings (including removed actions), the parties would need to state whether they do or do not consent to entry of final orders or judgment by the bankruptcy judge. Third, Rule 7016, which governs pretrial procedures, would be amended to direct bankruptcy courts to decide the proper treatment of proceedings.

The Advisory Committee received eight comments on all or part of these proposed amendments. In the main, the comments expressed support for the amendments but raised five issues:

(1) whether to retain the terms "core" and "non-core";

(2) whether references to the "bankruptcy court" in the published amendments should revert to the "bankruptcy judge," the term that is currently used;

(3) whether to provide procedures for treating as proposed findings and conclusions a bankruptcy judge's decision entered as a final order or judgment when that decision is later determined to be beyond the bankruptcy judge's final adjudicatory power;

(4) whether to require a statement as to consent when a litigant proceeds by motion before filing a formal pleading; and

(5) whether to provide that a litigant may consent to final adjudication by a bankruptcy judge with respect to part, but not the whole, of a proceeding.

After reviewing the comments, the Advisory Committee voted unanimously to recommend final approval of the published amendments. With respect to the first three issues raised by the comments, these points were thoroughly considered before publication of the amendments. The Advisory Committee did not find that the comments raised new concerns that would justify revisiting those issues. Issues (4) and (5), on the other hand, were not considered previously. The Advisory Committee nevertheless concluded that the comments raising those issues, although presenting possible suggestions for future rulemaking, did not require alteration of the published amendments. Similarly, the Advisory Committee concluded that a comment by the Bankruptcy Clerks Advisory Group regarding the requirement of service of notice by mail

under current Rules 9027 and 9033 might be considered for future rulemaking but was beyond the scope of the *Stern*-related amendments.

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

(A) Recommendation concerning comments received on published amendments to Rules 8001–8028, the proposed revision of the bankruptcy appellate rules, and to Rules 9023 and 9024, amended to refer to the procedure in proposed new Rule 8008 governing indicative rulings.

The Reporter first addressed the proposed revisions to Rules 9023 and 9024 to incorporate a cross-reference to Rule 8008 regarding indicative rulings. The National Bankruptcy Conference suggested adding the cross reference to committee notes for Rules 9023 and 9024, instead of in the rules themselves, but committee notes are historical and can only be added when rules are updated, **so the Advisory Committee recommended Rules 9023 and 9024 for final approval as published.**

The Reporter explained that published revisions to Rules 8001–8028 (Part VIII of the Bankruptcy Rules) are the products of a comprehensive revision of the rules governing bankruptcy appeals to district courts, bankruptcy appellate panels, and, with respect to some procedures, courts of appeals. They result from a multi-year project to bring the bankruptcy appellate rules into closer alignment with the Federal Rules of Appellate Procedure (FRAP); to incorporate a presumption favoring the electronic transmission, filing, and service of court documents; and to adopt a clearer style. Existing rules were reorganized and renumbered, some rules were combined, and provisions of other rules were moved to new locations. Much of the language of the existing rules was restyled.

She said that 14 sets of comments were submitted in response to the publication of these rules. Many of the comments were lengthy and detailed and demonstrated the commenters' careful review of the published rules and provided suggestions on issues of style, organization, and substance. The Reporter said that in considering the comments, the Subcommittee was guided by the goal of maintaining close adherence to the FRAP, except where those rules are incompatible with bankruptcy appeals. It also recommended postponing for future consideration a number of suggestions that would change existing practice or raise policy issues requiring careful consideration.

In general, the Reporter said, the comments displayed a positive response to the proposed revision of the Part VIII rules. She discussed the more significant comments, as set forth below, and noted that a more complete listing of comments and changes recommended by the Subcommittee was included in the agenda materials.

General Comments. Two bankruptcy judges and the National Conference of Bankruptcy Judges praised the revision of the Part VIII rules, stating that it would lead to improved quality of bankruptcy appellate practice, reduce confusion, and yield a more efficient and effective bankruptcy appellate practice.

Rule 8002. Two comments expressed concern about the inclusion of an inmate mailbox rule, which deems a notice of appeal by an inmate timely filed if it is deposited in the institution's internal mail system on or before the last day for filing. The commenters stated that this rule could delay for several days the determination that a bankruptcy court order or judgment

has become final. The Subcommittee continued to support the inclusion of this provision in order to mirror FRAP 4(c). It believed that, given the rarity of inmate appeals in bankruptcy cases, the impact of the provision on finality will be limited. **A motion to change the title of 8002(b)(3) to "Appealing the Ruling on the Motion" was approved.**

Rule 8003. Several comments pointed out that the provision in subdivision (d) directing the clerk of the appellate court to docket an appeal "under the title of the bankruptcy court action" was unclear since "action" might refer to the overall bankruptcy case or to an adversary proceeding within the case. The Subcommittee agreed that this was an instance in which the FRAP language needs to be modified for the bankruptcy context. **The Advisory Committee voted to change the wording in Rule 8003(d)(2) and the parallel provision in Rule 8004(c)(2) to "under the title of the bankruptcy case and the title of any adversary proceeding."**

Rule 8004. The clerk of a bankruptcy appellate panel ("BAP") commented on the provision of subdivision (c)(3) that directed the dismissal of an appeal if leave to appeal is denied. She stated that appellants sometimes file a motion for leave to appeal when leave is not required and in that situation, although the motion is denied, dismissal is not appropriate. **The Advisory Committee voted to delete the sentence in question, which is not contained in either the current bankruptcy rule or the FRAP rule from which the proposed rule is derived.**

One comment pointed out an inconsistency between proposed Rule 8003 and Rule 8004. Rule 8003(c) requires the bankruptcy clerk to serve the notice of appeal, whereas Rule 8004(a) places that duty on the appellant (along with the motion for leave to appeal). This difference is a carryover from existing practice. **The Advisory Committee decided to consider in the future whether the service requirement should be the same in both rules.**

Rule 8005. Several comments questioned whether an election to have an appeal heard by the district court, rather than the BAP, must still be made by a statement in a separate document. Subdivision (a) of the proposed rule refers to an official form that did not exist at the time the rule was published, and some comments also expressed confusion about that reference. At Agenda Item 9(B) below, the Advisory Committee recommended publication an amendment to the notice of appeal form, Official Form 17A, that will include a section for making an election under this rule. That form, which if approved will take effect on the same date as the rule, will clarify that the separate-document rule no longer applies. The Subcommittee also recommended updating the committee note to indicate that a statement electing to have the appeal heard by the district court "must be made using the appropriate Official Form." One member noted, however, that the Official Form would be created by attorneys using word processors, not simply downloaded off the public website and filled out, and suggested retaining the committee note as published on this point to say "the statement must *conform substantially* to the appropriate Official Form." **The motion to retain "conform substantially" was approved.**

Two comments addressed the procedure that should apply when an appellee elects to have the district court hear an appeal that was initially sent to the BAP. The Subcommittee agreed with one of the comments that the BAP clerk should notify the bankruptcy clerk if an appeal is transferred to the district court, and it voted to add a sentence to that effect in subdivision (b) as set forth in the agenda materials. **The Advisory Committee approved the addition.**

Rule 8006. Two comments stated that the proposed rule does not give the bankruptcy court sufficient time to certify a direct appeal to the court of appeals. Under subdivision (b), a matter is deemed to remain pending in the bankruptcy court for purposes of this rule for 30 days after the effective date of the first notice of appeal. The Subcommittee decided that this time limit strikes an appropriate balance between giving the bankruptcy court time to decide whether to certify a direct appeal and letting the district court or BAP know at a reasonably early time that a certification for direct appeal will not be coming from the bankruptcy court. However, the Subcommittee did add cross-references to Rule 8002 and FRAP 6(c), and deleted a cross-reference to 9014. **The Advisory Committee approved the changes.**

Rule 8007. Two comments questioned the provision of the published rule that appeared to permit a party to seek a stay pending appeal in an appellate court before a notice of appeal has been filed. The comments took the position that, until a notice of appeal is filed, the appellate court lacks jurisdiction to rule on a stay motion. The Subcommittee agreed and recommended deleting "or where it will be taken" from 8007(b)(2) to eliminate a possible reading of the rule that would permit the filing a motion for a stay in the appellate court prior to the filing of a notice of appeal. **The Advisory Committee approved the change.**

Rule 8009. Two bankruptcy judges and the Bankruptcy Clerks Advisory Group submitted comments stating that the practice of having the parties designate the record on appeal is now outdated and that the 8th Circuit BAP's rule regarding the record should be adopted. Under that rule the record before the bankruptcy court is the record on appeal, and parties refer by number to the appropriate bankruptcy court docket entries in their appellate briefs. BAP judges are able to review the entire bankruptcy court record electronically. The Subcommittee recommended that the rule should remain as published but that this issue should be taken up for consideration in the future. **The Advisory Committee agreed to consider the issue in the future.**

Several comments objected to two FRAP provisions that were included in this rule: subdivision (c) that permits a statement of the evidence when a transcript is unavailable, and subdivision (d) that permits an agreed statement as the record on appeal. As to both, the Subcommittee and the Advisory Committee favored remaining consistent with the parallel FRAP provisions.

The Advisory Committee approved the addition of language clarifying the designation of the bankruptcy record should be filed with the bankruptcy clerk.

Rule 8010. Three comments noted that, while subdivision (b)(1) directs the bankruptcy clerk to transmit the record to the appellate clerk when it is complete, it does not specify what the clerk should do if the record is never completed. **The Advisory Committee voted to add this issue to the list of matters for future consideration.**

Rule 8013. One comment suggested that district courts be allowed to require a notice of motion in bankruptcy appeals if they otherwise follow that practice in their court. Another comment made a similar suggestion concerning proposed orders. **The Advisory Committee agreed with these comments and added "Unless the court orders otherwise" to subdivision (a)(2)(D)(ii).**

Another comment questioned why a rule allowing intervention on appeal is necessary and whether a party moving to intervene would have standing. The Subcommittee concluded that it is not always clear who is a party to a contested matter, so someone affected by an order being

appealed may want to intervene to participate in the appeal. Likewise, a United States trustee may need this authority to participate in some appeals.

Rule 8016. Two comments raised questions about subdivision (f), which addressed the consequences of failing to file a brief on time. It was unclear why the provision was located in the rule governing cross-appeals, and it seemed to be inconsistent with a provision in Rule 8018. **The Advisory Committee thought that the comments were well taken, and it voted to delete the subdivision.**

Rule 8017. The States' Association of Bankruptcy Attorneys commented that all governmental units, not just the United States and states, should be permitted to file an amicus brief without consent or leave of court. The Advisory Committee made no change, adhering to the decision to make the bankruptcy rule consistent with FRAP 29.

Rule 8018. A bankruptcy judge commented that the authorization in subdivision (f) for dismissal of an appeal or cross-appeal should require notice and an opportunity to show cause why the appeal should not be dismissed. **The Advisory Committee voted to reword the provision to clarify that dismissal can occur only upon motion of a party or on the court's own motion, after which the appellant would have an opportunity to respond.**

Rule 8019. One comment stated that there should not be a presumption in favor of oral argument and that the grounds for not allowing it should not be limited. The Advisory Committee made no change to the proposed rule, which is consistent with current Rule 8012 and FRAP 34(a)(2).

Another comment asserted that there is an inconsistency between subdivision (b), which requires a unanimous vote of a BAP panel to dispense with oral argument, and subdivision (g), which allows a BAP panel by majority vote to require oral argument when the parties agree to submit the case on the briefs. The Advisory Committee concluded that these provisions are consistent with FRAP 34(a)(2) and (f) and with the presumption in favor of oral argument.

Rule 8021. The States' Association of Bankruptcy Attorneys commented that subdivision (b), which permits the assessment of costs for or against the United States, its agencies, and officers only if authorized by law, should apply to all governmental units. The Advisory Committee made no change to this provision, which is consistent with FRAP 39(b).

Rule 8023. The National Conference of Bankruptcy Judges (NCBJ) suggested two issues for future consideration by the Advisory Committee relating to this rule, which governs voluntary dismissals of appeals. (1) In the bankruptcy court, Rule 7041 requires a plaintiff seeking to dismiss an adversary proceeding objecting to the debtor's discharge to provide notice to certain parties and obtain a court order containing appropriate terms and conditions. The NCBJ suggests the need for similar safeguards when that type of proceeding is voluntarily dismissed on appeal. (2) Under Rule 9019 a trustee is required to obtain court approval of any compromise or settlement. The NCBJ stated that it is not clear how Rule 9019 relates to this rule. **The Advisory Committee added these issues to its list of matters for future consideration.**

Rule 8024. The NCBJ commented that the rule carries forward a problem in current Rule 8016: It does not provide for the issuance of a mandate by the appellate court and thus does not make clear when jurisdiction revests in the bankruptcy court after the conclusion of an appeal. While the existing rule does not appear to be disrupting bankruptcy administration unduly, the

comment suggested that the Advisory Committee consider this issue in the future. **The Advisory Committee agreed to do so.**

The Advisory Committee unanimously recommended the revised Part VIII Rules for final approval with the post-publication changes set forth in the agenda materials and as further revised at the meeting.

(B) Recommendation by Judge Perris and Professor Gibson concerning revising and renumbering Official Form 17A, Notice of Appeal, to include an election by the appellant to have an appeal heard by the district court; adopting new Official Form 17B, Statement of Election by Appellee(s); and adopting new Official Form 17C, Certificate of Compliance with Rule 8015(a)(7)(B) or 8016(d)(2).

Judge Perris discussed the proposed forms.

Proposed Official Form 17A would include in the Notice of Appeal a section for the appellant's optional statement of election to have the appeal heard by the district court rather than by the bankruptcy appellate panel. It would only be applicable in districts for which appeals to a bankruptcy appellate panel have been authorized. Inclusion of the statement in the notice of appeal would ensure compliance with the statutory requirement that an appellant make its election to have the district court hear its appeal "at the time of filing the appeal." 28 U.S.C. § 158(c)(1)(A).

New Official Form 17B—the Optional Appellee Statement of Election to Proceed in the District Court—would be the form that an appellee would file if it wanted the appeal to be heard by the district court and the appellant or another appellee had not made that election. To comply with § 158(c)(1)(B), the appellee would have to file the form within 30 days after service of the notice of appeal.

New Official Form 17C—Certificate of Compliance with Rule 8015(a)(7)(B) or 8016(d)(2)—would provide a means for a party to certify compliance with the provisions of the bankruptcy appellate rules that prescribe limitations on brief length based on number of words or lines of text (the "type-volume limitation"). It is based on Appellate Form 6, which implements the parallel provisions of FRAP 32(a)(7)(B).

The Advisory Committee voted to recommend that the appellate forms be published this August so that they will be on track to go into effect on December 1, 2014, the same anticipated effective date for the revised Part VIII rules.

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

Recommendation concerning adopting a bankruptcy rule establishing standards for electronic signatures.

Mr. Baxter gave the report. A request for a national rule governing electronic signature came to the Advisory Committee from the Forms Modernization Project and from the Court Administration and Case Management Committee (CACM). He referred members to the Reporter's memo of March 13, 2013, at page 321 of the Agenda Book for further background.

The need for a national rule governing electronic signatures, which would change the practice currently existing in many districts, was prompted by several concerns: the lack of uniformity of retention periods required by local rules, the burden placed on lawyers and courts to retain a large volume of paper, and potential conflicts of interest imposed on lawyers who are required to retain documents that could be used as evidence against their clients. At its fall 2012 meeting, the Advisory Committee referred the matter to the Subcommittee.

The Subcommittee, Mr. Baxter said, considered various options and ultimately recommended for publication an amendment to Rule 5005 that would prescribe the circumstances under which electronic signatures may be treated in the same manner as handwritten signatures without the need for anyone to retain paper documents with original signatures. The amended rule would supersede any conflicting local rules.

A new subdivision (a)(3) would be added to Rule 5005 to address the effect of signatures in documents that are electronically filed. One provision would apply to persons who are registered users of a court's electronic filing system and would adopt as the national rule the practice that currently exists in virtually all districts: the user name and password of an individual who is registered to use the CM/ECF system would be treated as that person's signature for all documents that are electronically filed. That signature could then be treated the same as a handwritten signature for purposes of the Bankruptcy Rules and for any other purpose for which a signature is required in court proceedings.

The other proposed provision would apply to the signatures of debtors or other persons who are not registered to file electronically. When a document (such as a petition or a declaration) is signed by someone who is not a registered user of CM/ECF, it could be filed electronically along with a scanned image of the signature page bearing the individual's actual signature. The document would then be stored electronically by the court, and neither the court nor the filing attorney would be required to retain a paper copy. Moreover, a scanned signature page, filed electronically in accordance with the proposed new rule, could be treated the same as a handwritten signature for purposes of the Bankruptcy Rules and for any other purpose for which a signature is required in court proceedings.

The Advisory Committee discussed the Subcommittee's recommendation, and reviewed the proposed new language to Rule 5005. Mr. Kohn said that he spoke with several lawyers from the Department of Justice and that there was concern about verification of the scanned signature. Some prosecutors, he said, would prefer that the actual signature be maintained by someone, or that some other authentication system be built in—for example notarization, or authentication by the case trustee at the 341 meeting of creditors. He suggested that the Advisory Committee defer for now, and perhaps work on the rule with the Advisory Committee on Evidence.

Judge Wedoff said that at the Standing Committee's January 2013 meeting, he explained that the Subcommittee was considering a rule change that would allow the scanned image of the signature of a debtor to be treated as a valid signature without the need for retention of the original hand-signed document by the court or the attorney. He said that there were no objections to continued consideration of a bankruptcy rule along these lines. He said he thought publication would be an opportunity for comments from those concerned about not retaining hand-signed documents.

Dr. Molly Johnson said that in conducting research on the current use of scanned signature, she received feedback from U.S. trustees, chapter 7 case trustees, and the Executive

Office for United States Attorneys (EOUSA). She said that feedback was consistent with Mr. Kohn's comments and that there was a preference for handwritten signatures affixed to original documents, but that there was also a recognition that scanned images of signatures might work. Ms. Johnson said that due to a limited response time, the EOUSA was unable to provide written feedback considering possible alternatives being considered, but its representative indicated that they were very interested in the proposal, and that they would present formal comments if a rule is published.

After additional discussion, the Advisory Committee voted unanimously to recommend publication of the proposed amendments to Rule 5005 in August 2013.

11. Recommendations concerning comments received on published amendments to Rules 1014(b), 7004(e), 7008(b), and 7054.

Bankruptcy Rule 1014(b).

Professor Gibson reviewed the comments on the proposed amendment to Rule 1014(b). That rule, she explained, governs the procedure for determining where cases will proceed if petitions are filed in different districts by, against, or regarding the same debtor or related debtors. As revised, the rule would address uncertainty about what events trigger the stay in a subsequently filed petition by requiring an order from the first court. It would also permit a judicial determination—not just a party's assertion—that the rule applied and that a stay of other proceedings was needed.

Professor Gibson said four sets of comments were submitted. The comments raised issues about (1) whether the first court has authority to enjoin parties to cases in other courts; (2) whether the first court has the exclusive authority to determine the venue of the related cases; (3) who may seek a venue determination in the first court; and (4) whether the proposed rule would reduce inter-court cooperation. Some of the comments also suggested wording changes. For reasons discussed in Professor Gibson's March 22, 2013 memo at page 471 of the Supplemental Materials, she recommended that the amendment go into effect as published, with the following exception: at line 16 of the proposed rule (on page 477 of the Supplemental materials) replace the word "these" with "the affected cases." **The proposed revision was approved, and a recommendation for final approval passed without objection.**

Bankruptcy Rule 7004(e).

Professor McKenzie said that the Advisory Committee there were four comments on the amendment to Rule 7004(e). The proposed amendment would shorten the time during which a summons is valid from 14 days to 7 days after it is issued. The change is intended to ensure that the defendant has sufficient time to respond to a complaint in bankruptcy litigation. Although Rule 7012(a) gives a defendant (other than a United States officer or agency) 30 days to answer a complaint, the time period is measured from the date the summons is issued, not when it is served. Accordingly, a lengthy delay between issuance and service of the summons may unduly shorten the defendant's time to respond in a bankruptcy proceeding.

Professor McKenzie said that each of the four comments raise the same issue—that a 7-day window to serve a summons may be too short in some circumstances. The Business Subcommittee considered this possibility when it suggested the amendment. At that time, it concluded that a 7-day window would be sufficient in the vast majority of cases, and that the

infrequent situations where a longer period is needed could be best handled through a request for an enlargement of time under Rule 9006. Professor McKenzie said that the comments did not change that view.

After discussing the comments, the Advisory Committee recommended final approval of Rule 7004(e) as published. It also approved the concept of adding a sentence to the committee note that highlights the opportunity to seek an extension of time under Rule 9006 in appropriate circumstances.

Bankruptcy Rules 7008(b) and 7054.

The Reporter reviewed the comments on Bankruptcy Rules 7054 and 7008. She said that the proposed amendments to those rules would change the procedure for seeking attorney's fees in bankruptcy proceedings. Rule 7054 would be amended to include much of the substance of Civil Rule 54(d)(2). Rule 7008(b), which currently addresses attorney's fees, would be deleted. By bringing the bankruptcy rules into closer alignment with the civil rules, the amendments would eliminate a potential trap for an attorney, particularly one familiar with the civil rules, who might overlook the Rule 7008(b) requirement to plead a request for attorney's fees as a claim in the complaint, answer, or other pleading. As under the civil rules, the procedure for seeking an award of attorney's fees would be governed exclusively by Rule 7054, unless the governing substantive law requires the fees to be proved at trial as an element of damages.

Professor Gibson said that there were two comments on the proposal. Comment 12-BK-044 supported the changes. Comment 12-BK-010, submitted by the State's Association of Bankruptcy Attorneys ("SABA"), did not address the proposed changes. Instead, the SABA comment addressed the sentence in Rule 7054(b)(1) that permits the award of costs against the United States, its officers and agencies only to the extent permitted by law. SABA suggested that the provision be broadened to apply to all governmental units.

After a short discussion, the Advisory Committee decided not to take up the SABA suggestion, and **voted to recommend final approval of the proposed attorney fee changes to Rules 7008 and 7054 as published.**

12. Oral report by the Subcommittee on Attorney Conduct and Health Care.

Judge Jonker said that there was no business before the Subcommittee since the last Advisory Committee meeting.

Discussion Items

13. Oral report on Suggestion 13-BK-A by David W. Ostrander to include the debtor's age on the Statement of Financial Affairs or the Schedules of Assets and Liabilities.

Assigned to the Forms Subcommittee.

14. Oral report on Suggestion 13-BK-B by Judges Eric L. Frank and Bruce I. Fox to amend Official Form 1, the Voluntary Petition, to include checkboxes for the documents Section 1116(1) of the Bankruptcy Code requires small business debtors to file.

Assigned to the Forms Subcommittee.

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

Assigned to the Consumer Subcommittee.

16. Oral report on Suggestion 13-BK-C by the American Bankruptcy Institute's Task Force on National Ethics Standards to amend Rule 2014 to specify the relevant connections that must be described in the verified statement accompanying an application to employ professionals.

Assigned to the Subcommittee on Attorney Conduct and Health Care.

17. Oral report on Judge William G. Young's suggestion to abolish Bankruptcy Appellate Panels (BAPs) and to assign bankruptcy appeals from courts with high caseloads to courts with low caseloads.

The Chair explained that this issue, which would likely require changes to the Bankruptcy Code and Rules if implemented, is being considered by the Advisory Committee on the Administration of the Bankruptcy System.

Information Items

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

Mr. Wannamaker reviewed bankruptcy-related legislation currently pending in Congress.

19. Oral update on opinions interpreting Section 109(h) of the Bankruptcy Code.

The Reporter said that there are now three cases that have addressed the 2010 technical update to 11 U.S.C. § 109(h) that appear to allow an individual to take the required credit counseling course *after* the petition is filed, so long as the course is taken on the same day. She said each of three courts reviewing the new language, however, have concluded that the course must be taken *before* the case if filed. **The Advisory Committee agreed that further reports would be unnecessary unless a split of authority among courts develops.**

20. *Bull Pen.*

> Amendment to Official Form 23 to implement the proposed amendment to Rule 1007(b)(7) which would authorize providers of financial management course providers to file notification of the debtor's completion of the course, approved at September 2010 meeting.

The Advisory Committee recommended that Official Form 23 be removed from the bull pen and go into effect December 1, 2013, along with the related amendment to Rule 1007(b)(7) that is scheduled to take effect December 1, 2013.

21. Rules Docket.

Mr. Wannamaker asked members to review the Rules Tracking Docket and to email him with any needed changes.

22. Future meetings: Fall 2013 meeting, September 24–25, in Minneapolis. Possible locations for the spring 2014 meeting.

The Chair suggested Austin, Texas, for the spring 2014 meeting.

23. New business.

No new business.

24. Adjourn.

Respectfully submitted,

Scott Myers

Conversion Chart for Modernized Bankruptcy Forms for Individual Debtors

Current Schedule Number	Current schedule name	FMP schedule name	FMP label (agenda book)	FMP label (revised)	Proposed effective date
		Voluntary Petition for Individuals Filing for Bankruptcy *(incorporates former exhibits)*	**101**	same	12/15
1	Voluntary Petition – including Exhibits A, C and D	Initial Statement About an Eviction Judgment Against You *(formally part of petition).*	**101A**	same	12/15
		Statement About Payment of an Eviction Judgment Against You *(formally part of petition).*	**101B**	same	12/15
3A	Application and Order to Pay Filing Fee in Installments	Application for Individuals to Pay the Filing Fee in Installments	**103A (pub as 3A in 2012)**	same	**12/13 as 3A**; 12/15 as 103A
3B	Application for Waiver of Chapter 7 Filing Fee	Application to Have the Chapter 7 Filing Fee Waived	**103B (pub as 3B in 2012)**	same	**12//13 as 3B**; 12/15 as 103B
4	List of Creditors Holding 20 Largest Unsecured Claims	For Individual Chapter 11 Cases: The List of Creditors Who Have the 20 Largest Unsecured Claims Against You Who Are Not Insiders *(individuals)*	**104**	same	12/15
5	Involuntary Petition	Involuntary Petition Against an Individual	**105**	same	12/15
6A	Real Property	Property (*combines real and personal property, individuals)*	106A	**106A/B**	12/15
6B	Personal Property				
6C	Property Claimed as Exempt	The Property You Claim as Exempt (*individuals)*	106D	**106C**	12/15
6D	Creditors Holding Secured Claims	Creditors Who Hold Claims Secured By Property (*against individuals*)	106B	**106D**	12/15
6E	Creditors Holding Unsecured Priority Claims	Creditors Who Have Unsecured Claims *(against individuals, combines priority and non-priority)*	106C	**106E/F**	12/15
6F	Creditors Holding Unsecured Nonpriority Claims				
6G	Executory Contracts and Unexpired Leases	Executory Contracts and Unexpired Leases (*individuals)*	106E	**106G**	12/15
6H	Codebtors	Your Codebtors (*individuals)*	106F	**106H**	12/15
6I	Executory Contracts and Unexpired Leases	Your Income (*individuals)*	106G (pub as 6I in 2012)	**106I**	**12/13 as 6I**; 12/1/15 as 106I
6J	Current Income of Individual Debtor(s)	Your Expenses (*individuals)*	106H (pub as 6J in 2012)	**106J**	**12/13 as 6J**; 12/1/15 as 106J
7	Statement of Financial Affairs	Statement of Financial Affairs for Individuals Filing for Bankruptcy	**107**	same	12/1/15
22A	Statement of Current Monthly Income and Means Test Calculation (Chapter 7)	Chapter 7 Statement of Your Current Monthly Income and Means Test Calculation *(published as 22A-1)*	**108-1**	same	**12/14 as 22A-1**; 12/15 as 108-1
		Chapter 7 means test exclusion attachment (*published as 22A-1Supp*)	**108-1Supp**	same	**12/14 as 22A-1Supp**; 12/15 as 108-1Supp
		Chapter 7 Means Test Calculation *(published as 22A-2)*	**108-2**	same	**12/14 as 22A-2**; 12/15 as 108-2

Current Schedule Number	Current schedule name	FMP schedule name	FMP label (agenda book)	FMP label (revised)	Proposed effective date
22B	Statement of Current Monthly Income (Chapter 11)	Chapter 11 Statement of Your Current Monthly Income *(published as 22B)*	**109**	same	**12/14 as 22B**; 12/15 as 109
22C	Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Chapter 13)	Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period *(published as 22C-1)*	**110-1**	same	**12/14 as 22C-1**; 12/15 as 110-1
		Chapter 13 Calculation of Your Disposable Income *(published as 22C-2)*	**110-2**	same	**12/14 as 22C-2**; 12/15 as 110-2
8	Chapter 7 Individual Debtor's Statement of Intention	Statement of Intention for Individuals Filing Under Chapter 7	**112**	same	12/1/15
19	Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer	Bankruptcy Petition Preparer's Notice, Declaration and Signature	**119**	same	12/1/15
21	Statement of Social Security Number	Your Statement About Your Social Security Numbers	**121**	same	12/1/15
18	Discharge of Debtor	Order of Discharge	**318**	same	12/1/15
23	Debtor's Certification of Completion of Instructional Course Concerning Financial Management	Certification About a Financial Management Course	**423**	same	12/1/15
27	Reaffirmation Agreement Cover Sheet	Cover Sheet for Reaffirmation Agreement	**427**	same	12/1/15