ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of April 22 - 23, 2014
Austin, Texas

The following members attended the meeting:

Bankruptcy Judge Eugene R. Wedoff, Chair
Circuit Judge Sandra Segal Ikuta
Circuit Judge Adalberto Jordan
District Judge Jean Hamilton
District Judge Robert James Jonker
District Judge Amul R. Thapar
Bankruptcy Judge Arthur I. Harris
Bankruptcy Judge Elizabeth L. Perris
Bankruptcy Judge Judith H. Wizmur
Professor Edward R. Morrison (by phone)
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
Circuit Judge Jeffrey S. Sutton, Chair of the Committee on Rules of Practice and Procedure (Standing Committee)
Roy T. Englert, Jr., Esq., liaison from the Standing Committee
Jonathan Rose, Secretary, Standing Committee, and Rules Committee Officer
Ramona D. Elliott, Deputy Director /General Counsel, Executive Office for U.S. Trustees (EOUST)
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
Benjamin Robinson, Deputy Rules Committee Officer and Counsel to the Rules Committees (by phone)
Scott Myers, Administrative Office
Bridget Healy, Administrative Office
Molly Johnson, Federal Judicial Center
Professor Nancy B. Rapoport, William S. Boyd School of Law, UNLV
Michael T. Bates, Senior Company Counsel, Wells Fargo
Margaret Burks, President, National Association of Chapter 13 Trustees
Jon M. Waage, Chapter 13 Trustee, Middle District of Florida

Raymond J. Obuchowski, National Association of Bankruptcy Trustees
Debra L. Miller, Chapter 13 Trustee, Northern District of Indiana
Patricia Ketchum, consultant to the Committee
Michael McCormick, McCalla Raymer LLC, Atlanta, GA
Daniel West, South & Assoc., St. Louis, MO
Anita Warner, Chase Mortgage Banking
Steve Turner, Barrett, Daffin, Frappier, Turner and Engel, Austin, TX

The following summary of matters discussed at the meeting of the Advisory Committee on Bankruptcy Rules (the Committee) was 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. An electronic copy of the agenda materials is available at http://www.uscourts.gov/RulesAndPolicies/rules/archives/agenda-books/committee-rules-bankruptcy-procedure.aspx.

Introductory Items

1. Greetings and expression of appreciation for Judge Judith H. Wizmur and Christopher Kohn.

The Chair welcomed the group and the participants introduced themselves. The Chair advised that Judge Wizmur and Christopher Kohn will be retiring. He recounted their work for the Committee, adding that Mr. Kohn served over 20 years on the Committee and that Judge Wizmur is retiring before the end of her term on the Committee. He stated that Judge Wizmur not only served as a bankruptcy judge in the District of New Jersey but that she was also very involved with her community, including her former law school, Rutgers School of Law. The Chair specifically noted Mr. Kohn's work in communicating with the many sections of the Department of Justice and his insightful and useful comments. He thanked them both for their commitment to the Committee. The Chair introduced Judge Sandra Ikuta as the next Chair of the Committee.

2. Approval of minutes of Minneapolis meeting of September 24 - 25, 2013.

The draft minutes from the meeting of September 24-25, 2013, were approved. The minutes were included at Tab 1 of the main agenda materials.

3. Oral reports on meetings of other committees:

(A) January 2014 meeting of the Committee on Rules of Practice and Procedure, including decision to table proposed amendments to Rules 7008, 7012, 7016, 9027, and 9033 (*Stern*-related rules).

The Chair reported on the actions taken at the January 2014 meeting of the Committee on Rules of Practice and Procedure (the Standing Committee), stating that the Advisory Committee presented a number of explanatory bankruptcy items. He also explained that the *Stern*-related rules were withdrawn before being presented to the Supreme Court despite approval by the Standing Committee and Judicial Conference. This decision was based on the Court's grant of certiorari last summer in *Executive Benefits Insurance Agency v. Arkison* (Docket No. 12-1200), which was heard by the Court in January. Depending on how the case is decided, the rules may come before the Committee again.

The Chair continued that an issue discussed by the Standing Committee was the elimination of the 3-day extension rule for electronic service and whether this should be eliminated for other types of service. The draft minutes of the January 3 - 4, 2013, Standing Committee meeting were included at Tab 2 of the main agenda materials.

(B) Intercommittee - CM/ECF Subcommittee.

The Chair explained that the issues of the elimination of the 3-day service extension and electronic signatures would be discussed by the Committee later in the meeting.

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

Judge Erithe Smith could not attend the meeting so the report was presented by the Chair. He stated that there were several issues discussed at the Bankruptcy Committee meeting, including the waiver of reopening fees for individual chapter 11 cases, the fee associated with reopening a case to redact privacy-related information, and fee increases. The Chair advised that the issues of fees associated with reopening a case to redact information and fee increases would be discussed by the Committee later in the meeting.

(D) November 2013 meeting of the Advisory Committee on Civil Rules and hearings on rules published for comment.

Judge Arthur Harris stated that the Advisory Committee on Civil Rules (Civil Rules Committee) had meetings in November 2013 and April 2014, as well as several public hearings. At the April meeting in Portland, OR, the first half of the meeting was a symposium dedicated to Judge Mark R. Kravitz, and there were a number of presentations in his honor. The second half of the meeting was to discuss the published rules regarding discovery, as well as the statement of purpose in Civil Rule 1. There were over 2,300 comments received, and many people testified at the hearings. The Civil Rules Committee determined to make few changes from the proposals that were published in 2013. The major change was to withdraw amendments that would tighten presumptive numerical limits on some forms of discovery. The Chair advised that the Advisory Committee on Bankruptcy Rules is holding open the possibility of amending Rule 1001 to be

consistent with the proposed amendment of Civil Rule 1.

Judge Harris continued that the Civil Rules Committee approved the elimination of the civil forms as a result of several Supreme Court decisions. The forms will be retained for historic reference but will no longer be used in practice. The Chair noted that the differences between bankruptcy and civil forms were discussed at the Standing Committee meeting, and that the Standing Committee was aware that bankruptcy is a forms-driven practice. Judge Harris concluded his discussion of the Civil Rules Committee meeting by explaining that the Civil Rules Committee decided to narrow Rule 37(e) regarding penalties associated with electronically preserved records.

(E) October 2013 meeting (rescheduled to April 2014) of the Advisory Committee on Evidence.

Judge Harris reported that there was a meeting of the Advisory Committee on Evidence earlier this month preceded by a symposium on the use of technology in courts. The symposium materials will be published in the Fordham Law Review.

(F) October 2013 meeting of the Advisory Committee on Appellate Rules.

Judge Adalberto Jordan advised that the fall meeting of the Advisory Committee on Appellate Rules was canceled.

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

Judge Elizabeth Perris stated that she would provide the report as part of her Forms Modernization Project (FMP) report later in the Committee meeting.

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues.

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

Judge Harris discussed the subcommittee's recommendation regarding the suggestion to create additional forms for fee waivers for parties other than chapter 7 debtors. A memo dated March 10, 2014 was included in Tab 3A of the main agenda materials. He stated that the revised fee waiver guidelines were approved but not yet issued by the Judicial Conference, so the issue was premature. The revised guidelines do not provide guidance on fee waiver for parties other than chapter 7 debtors. The issue will be placed in the dugout for later consideration.

The Chair explained the Committee's use of baseball terminology to describe certain actions. The "bullpen" is an action that the Committee determined should go forward but at a later time, whereas the "dugout" is something that should be considered by the Committee, but other events must conclude before the issue can be considered.

(B) Recommendation concerning Suggestion 13-BK-G by Gary Streeting that Rule 1015(b) be changed to use the word "spouse" instead of "husband" and "wife."

Judge Harris discussed the next suggestion considered by the subcommittee, that Rule 1015(b) be amended to change the reference from "husband and wife" to "spouse." A memo dated March 24, 2014, was included at Tab 3B of the main agenda materials. Judge Harris explained that there are two such references in Rule 1015(b). The subcommittee recommended that the references be changed; however, there was a disagreement over the timing of the language change. Judge Harris explained that the first reference in Rule 1015(b) was to joint administration and that this language deviates from the language used in the relevant provision of the Bankruptcy Code. The second reference in Rule 1015(b) follows language in the Bankruptcy Code regarding exemptions and could involve state law. The subcommittee discussed the issue and decided that it was something for the Committee to determine.

Judge Harris stated that there are several options with regard to the timing of the change in language: first, the change could be made immediately to comply with Supreme Court precedent; second, leave the language as "husband and wife" and permit courts to interpret this as "spouse"; third, consider the possibility that the Supreme Court will make a change to the law in the near future; or fourth, add language to the Committee Note to explain that the gender neutral term was adopted to permit the recognition of same-sex marriages but that it was not a statement on the law.

A motion was made to change the reference from "husband and wife" to "spouse" in both instances in the rule. A grammar suggestion was made and will be considered by the Style Subcommittee. The motion was approved unanimously.

Next, members discussed the impact of the Supreme Court's ruling in *United States v. Windsor*, 570 U.S. 12 (2013), with several members noting that the ruling dealt with federal rights and the second change to Rule 1015 about exemptions may implicate state rights. Several members noted that the right to choose state exemptions was a federal right, while others voiced concern about changing the rules in a way that did not match the language in the Code.

Judge Harris suggested that the Committee Note option be used only if the change to Rule 1015 was made immediately. He pointed out that the issue may be more clearly established in a year, and it may make sense maintain it in the bullpen. A motion was made to approve the delay in the implementation of the language change. The motion passed 7-4. The Chair clarified that any change to the Committee Note will be held until the language is put into effect.

(C) 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 advised the group that this issue has been under consideration for some time, and that at the Committee's request, the Federal Judicial Center (FJC) was completing a research study on installment payments. More time is needed to complete the study, and Molly Johnson (of the FJC) should be able to report on the conclusion of the study in the fall 2014. Ms. Johnson provided some detail regarding the FJC study, noting that over 30 percent of bankruptcy courts require some minimum payment with applications to pay in installments.

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

Judge Harris explained that Rule 2002(h) currently applies in chapter 7 cases and permits a court to limit notice to certain parties. The suggestion was to apply a similar provision for chapter 13 cases. It has been suggested that the Committee review all noticing requirements in the rules to consider any needed changes, and the subcommittee proposed that this issue be given consideration as part of that review project which will take place over the next few years. The Committee agreed to place this item in the dugout.

5. Report by the Chapter 13 Plan Form Working Group, and, with respect to Rule 9009, the Forms Subcommittee.

(A) Recommendation regarding proposed chapter 13 plan form (Official Form 113), and proposed amendments to Bankruptcy Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009.

The Assistant Reporter led the discussion, referring to the memo dated April 2, 2014, at Tab 4A and the proposed Official Form 113 in the appendix. A revised Committee Note was circulated via email prior to the meeting. He stated that the plan form received a large number of comments, including many comments objecting to the idea of a national form. The Working Group deliberated on whether to abandon the plan form or propose it as an optional Director's Form, but concluded that the plan form should go forward as an Official Form to provide for greater uniformity in chapter 13 practice. The Working Group proposed a number of significant changes to the published plan form in response to the comments.

The Assistant Reporter summarized the options available to the Committee with regard to the next step for the plan form and related rule amendments: (1) approve the recommendation of

the Working Group to republish the form and seek final approval of the rules now in the hope that both the rules and form would go into effect in 2015; (2) end work on the form as an Official Form and instead approve it as a Director's Form but go forward with the rule amendments; (3) approve the form as a Director's Form but do not go forward with the rule amendments; or (4) go forward with the republication of the form as an Official Form and delay consideration of the final approval of the rule amendments, with a view to revisiting the adoption of both the rules and the form, and the issue of effective dates, in the spring of 2015 after additional public comments are received.

He provided some background to the development of the plan form. The Committee received suggestions to create a national plan form, and following the Supreme Court's decision in *United Student Aid Funds, Inc. v. Espinosa,* 130 S. Ct. 1367 (2010), a working group was formed to consider the issue. The Working Group initially surveyed chapter 13 practice and surveyed bankruptcy judges regarding the content of any local forms and any needed rule amendments. A mini-conference held by the Working Group was attended by many judges, practitioners, representatives of large and small creditors, and representatives of debtors and trustees. The draft plan form was revised substantially based on the meeting, and after further revisions by the Working Group, it was published in August 2013.

The Assistant Reporter reviewed the comments submitted on the plan form. The biggest concern was the impact on the freedom of debtors to propose chapter 13 plans and on the authority of bankruptcy judges to adjudicate and administer chapter 13 cases. For example, many comments were submitted regarding the plan form option (through checkboxes) for a debtor to make ongoing payments directly to secured creditors rather than through the "conduit" of a chapter 13 trustee. The comments from districts that require conduit payments expressed concern that the plan form would disrupt long-standing district practice. The Working Group considered these comments but affirmed its view that the form neither restricted a debtor's ability to propose a plan nor mandated that a court accept an option chosen by a debtor that is not permissible in that district. To clarify this point, an explicit warning was added to the revised form that the presence of an option on the form did not indicate that the option was appropriate for the debtor or permissible in the debtor's district.

Another set of concerns was the length and complexity of the form, the increased cost to debtors in the form of attorneys' fees to complete the form and the increased amount of time for courts to review the form. Again the Working Group considered these comments, but concluded that the length of the form was less of an issue given that parts of the form did not need to be reproduced if the debtor did not include information in a particular section. The Working Group decided to include a partially collapsed form showing the length of a typical plan form as part of the package of materials for republication. As for increased complexity, the Working Group considered that Debra Miller stated in her comment and testimony that the Northern District of Indiana adopted the draft plan form a year ago and that she has not seen confusion or increased litigation as a result.

Commenters voiced concern about whether it was advisable to limit local practices and nationalize the chapter 13 process as local practices were both valuable and inevitable. The Working Group debated these concerns, but continued to see value in encouraging more uniform chapter 13 procedures in that it will allow for the development of lower cost software programs and for better continuing legal education for chapter 13 attorneys. Also, more uniformity would encourage clarification of questions of law in chapter 13 cases, because judicial opinions would not relate solely to the specific local form used in a particular court. The plan form would not be incompatible with local variations; those types of variations could be set forth in the form rather than eliminated. The form is not intended to provide substantive rules regulating what may or may not be proposed in chapter 13 plans; rather it simply provides for the orderly presentation of information in those plans.

A final type of concern was the impact of the plan form on the overall chapter 13 practice and a perceived attempt by the Committee to nationalize the consumer bankruptcy bar. The bankruptcy judges in some districts opposed the plan form on this basis. The objections raised in these comments were considered seriously by the Working Group, but the Assistant Reporter noted that this was a small percentage of the total number of bankruptcy judges and that several comments pointedly disagreed with these comments. Other areas of practice within bankruptcy (chapter 7, for example) use national forms extensively and the bar has not been transformed in the manner discussed in these comments. However, in response to this type of concern, the Working Group revised the warning language on the first page of the plan to advise debtors that inclusion of certain language within the plan was not an indication that the option would be accepted in every court, as referenced above.

Following the description of the comments on the concept of a plan form, members discussed the appropriate next step. Two members voiced initial objection to republishing a national form although they supported the proposed rule amendments, while others argued that it was essential to adopt the form in connection with the proposed amendments.

The Assistant Reporter advised that one of the reasons for republication was to test whether the changes are more palatable to those objecting. The Working Group believed that republication of the revised form would give the Advisory Committee a sense of whether it has addressed the main concerns expressed in the public comments. Much of the opposition to the entire project may rest on opposition to particular aspects of the published plan form that have now been clarified or altered. Several members asked about the harm of the rule amendments going forward without the plan form, and other members explained that the rules substantially revise the rights of secured creditors, but that these revised rights were balanced by the plan form that provided consistent notice of any impact on creditors' rights.

A member asked two questions: (1) what issue the plan form would resolve, and (2) if the form permits variations in local practices, why is the plan form objectionable. The Chair

responded to the first question by explaining that bankruptcy was a form based-practice and that national forms streamline the process making it more efficient. Comfort with local practice was given as the answer to the second question.

Many members stated that republishing the plan form and holding back on the rule amendments makes the most sense, permitting the Committee to make a decision about the rule amendments once a final decision is made regarding the plan form. The Chair suggested that the Committee hold off on submitting the rule amendments for final approval until a final decision is made on the plan form or recommend that the rules be republished in August 2014. The Chair of the Standing Committee expressed his support for republishing both the rule amendments and the plan form.

A motion was made to republish the plan form and rule amendments with an intended effective date for both of December 2016. The motion passed unanimously. A second motion was proposed that the plan form and rule amendments be published with an invitation for public comment on whether they should be adopted only as a package. The motion carried but not on a unanimous vote. Two members dissented.

The Assistant Reporter next described some of the specific changes to the plan form, noting that a number of other smaller changes were made throughout the form, including the addition of the warning language discussed previously. First, the revised plan form provides for greater flexibility as to the manner in which a debtor funds a chapter 13 plan, including more options for the use of any tax refund. Second, Part 7 of the form, which sets forth the order of distribution of payments to creditors, was altered to be blank with the exception of the provision of payment of the trustee's fee. The revised Committee Note explains that the debtor may choose to leave the order of distribution to the trustee's direction. Third, the signature box in Part 10 was changed to provide that signatures by represented debtors are optional. The published version of the form required only debtors' attorneys and pro se debtors to sign the form. A motion was made to republish the version of the form included in the agenda materials, and the group voted in favor of republishing that version of the plan form.

Next, the Assistant Reporter discussed the related rule amendments. The comments received in response to the amendments to Rule 3002 focused mostly on the proposed amendments to Rule 3002(c). The published amendments included two changes: (1) to alter Rule 3002(a) to state that the holder of a secured claim must file a proof of claim in order to have an allowed claim and (2) to alter Rule 3002(c) to shorten the bar date to 60 days after the petition is filed with an additional 60 days to allow holders of mortgage claims to file the required supplemental documents. Many of the comments suggested that the additional time for mortgage creditors gave them unwarranted preferential treatment. The Working Group discussed these comments but determined that the proposal for an additional amount of time for mortgage holders was to permit the collection of supporting documents for mortgage claims that are required by the Bankruptcy Rules. The Working Group did not anticipate that these

documents would be a source of controversy in very many cases. There were comments submitted regarding the proposed amendments to Rule 3002(a) as well. In particular, a number of comments took issue with the inclusion of language stating that a secured creditor's lien is not void due only to the failure to file a proof of claim. The Working Group did not recommend any alteration of that language, which was taken directly from § 506(d) of the Bankruptcy Code. A comment was received from the IRS regarding security interests obtained through setoff. The IRS suggested that language be added to the rule in order to make explicit reference to setoff, but the Working Group decided to adhere to the language in the Code without further elaboration.

The Working Group recommended two changes to the language of Rule 3002(c). The first was a wording change to ensure consistency of terminology throughout the rule with respect to calculating the bar date and the second was a clarification that the exceptions to Rule 3002(c) apply to all cases included in the subdivision. A motion to approve these changes passed unanimously.

The members discussed whether a question should be appended to the republished rule regarding whether the rule will apply to a security interest that arose based upon setoff or whether it was appropriate for the Committee to determine the issue at the meeting. The Committee agreed to add language to the Committee Note to the effect that the rule change does not effect any change in current law regarding security interests and setoffs. A motion was made to add that language to the Committee Note, and the motion was approved unanimously.

The Assistant Reporter stated that the published version of Rule 3007(a) was not changed in response to public comments. Several comments were submitted but the majority of the comments were stylistic. The Reporter noted that one section of Rule 3007(a), which was published in 2011 and approved at the fall 2013 meeting, was unrelated to the chapter 13 form. This section related to service of objections to claims and should be effective regardless of any decision on the plan form.

The Assistant Reporter explained that the published version of Rule 3012 was changed to clarify the treatment of governmental unit claims. After discussion, the Committee approved a change to Rule 3012(c) to clarify that a request to determine the amount of a claim of a governmental unit may be made only by motion or in a claim objection after a proof of claim is filed. A change to Rule 3012(b) was approved at the fall 2013 Committee meeting to require service in the manner provided in Rule 7004 for determinations of secured claims through plans but not for other types of claim objections.

The published version of Rule 3015(c) was revised to account for the possibility that an Official Form for a chapter 13 plan may not be adopted or may, at some point, no longer be an Official Form. The Working Group proposed language to the effect that if an Official Form is adopted it must be used. The reporters suggested changing the language to "if there is an Official Form plan for a plan filed in a chapter 13 case, that form must be used." A motion was

made to amend the language as suggested and the motion was approved unanimously. The Working Group proposed a revision to amended Rule 3015(f) to add "date set for any" prior to "confirmation hearing" based on comments received that confirmation hearings are not routinely held in each court. The additional language would make clear the date for filing an objection to confirmation even if a court later cancels the hearing if no objection is received. The language in amended Rule 3015(g) was revised to read "in accordance with Rule 3012" rather than "under Rule 3012" based on a comment from the IRS.

The Assistant Reporter continued that amended Rule 4003 was revised to make clear who must be served in a lien avoidance proceeding under § 522(f), as several commenters noted that the published language made it seem as if every party had to be served. A member suggested a grammatical change to be made prior to republication.

The Assistant Reporter continued, explaining that several commenters raised concerns about the amendment to Rule 5009(d), which would permit a debtor to request "an order determining that the lien on" property of the estate "had been satisfied." The final sentence of the published amendment provided that an "order entered under this subdivision is effective as a release of the lien." The concern of commenters was whether the terms "release" and "satisfied" were used appropriately as well as whether a bankruptcy court has the authority to enter this type of order. After discussion, the Committee decided to substitute the phrase "an order declaring that the secured claim has been satisfied and the lien has been released under the terms of a confirmed plan" for the first sentence of the rule and to remove the final sentence. A motion to accept these changes was approved unanimously. A second motion to add language requiring an adversary proceeding before issuance of the order was not approved.

The group next discussed Rule 7001. A member suggested that the language of the amended rule could be misinterpreted regarding proceedings under Rule 3012. After some discussion, the group determined to substitute "but not a proceeding under Rule 3012 or Rule 4003(d)" in amended Rule 7001(2). A motion to approve this language carried unanimously.

A motion was made to recommend the proposed amended rules for republication and the motion was approved unanimously.

(B) Joint recommendation from the Chapter 13 Working Group and the Forms Subcommittee regarding proposed amendments to Rule 9009.

The Assistant Reporter led the discussion regarding the amendments to Rule 9009, referring to his memo, dated April 2, 2014, included at Tab 4B of the main agenda materials. He stated that the comments filed suggested that revised Rule 9009 was too restrictive, including a comment from a bankruptcy software vendor with examples of variations that could occur with computer generated forms even if the language was the same. The Working Group and the Forms Subcommittee discussed these comments and determined that less restrictive language

was needed because a "pixel by pixel" reproduction of forms was not necessary. The group discussed the appropriate wording for the rule, and considered several suggestions, deciding on permitting "minor changes not affecting wording or the order of presenting information" on a form. Also, the five specified exceptions to the general rule were pared down to three and are given as examples of permissible "minor changes" to forms. A motion to approve the amended wording and to submit the rule for republication was approved unanimously.

6. Report by the Mortgage Claim Form Working Group.

(A) Recommendation concerning amending the Mortgage Proof of Claim Attachment to require inclusion of a loan history.

The Reporter addressed this item, referring to a memo dated March 20, 2014 and included at Tab 5 of the main agenda materials, and to the draft Official Form 410A, included in the appendix. The Reporter explained that the current version of this form is used in cases involving individual debtors by creditors with a security interest in the debtor's principal residence. It requires a statement of the principal and interest due as of the petition date, a statement of the prepetition fees, expenses and charges that remain unpaid, and a statement of the amount necessary to cure any default as of the petition date. The Working Group recommended publication of a revised form, Form 410A, that would replace the existing form with one that requires a mortgage claimant to provide a loan payment history in certain situations, as well as calculations of the total claim amount on the proof of claim and the amount of any arrearage.

The Reporter explained the history of the form. Several forms and rule changes regarding mortgages went into effect in December 2011. When the Committee initially considered the concept of this form, it discussed whether to require loan history, but there was concern that it was burdensome on both creditors and debtors to review all of the data regarding loan history as part of the form. When the 2011 forms were put out for publication, the Committee received a number of comments requesting the development of a loan history form. The main point of the comments was that debtors often made mortgage payments believing that the entire payment went to principal but that the payment may have been applied to interest, late fees, or other charges. The Committee determined to proceed with the 2011 forms and later analyze the experience with the forms to determine if a loan history was required.

The Reporter continued that in the fall of 2012 a mini-conference was held in Portland, OR, and the issues pertaining to the 2011 mortgage forms were discussed among a diverse set of participants, including judges, clerks, trustees, attorneys, and mortgage company representatives. There was agreement that a loan history was needed, but that it should be automated and uniform nationwide. The mini-conference also suggested that the form should reflect how the total claim amount was calculated. A mortgage form working group, consisting of members of the Committee, an invited bankruptcy judge, a chapter 13 trustee, and an attorney for a mortgage servicer and lender, was formed to consider the suggestions made at the mini-conference.

The Reporter stated that the proposed new form would replace the existing form, and she noted that a sample completed form was included in the appendix. The form includes the current monthly mortgage payment, a loan history (to be completed only if the mortgage is not completely current) that indicates how payments were applied, and a supplemental continuation page. The continuation page was sent separately to Committee members by email, but reflects the same information as is contained on the loan history section of Form 410A included in the materials.

The Chair thanked the Working Group. A member asked about the feasibility of all lenders, including smaller lenders, completing the form with automation, a goal of the working group. One of the Working Group members responded that the goal was to ensure that the program can be completed on the three main platforms used by servicers, including smaller banks, and that the Working Group believes that this can be achieved by the effective date of 2015.

A motion to make a small change to the heading of the additional page was approved unanimously. A second motion was made to amend the instructions to add that the amounts listed in Parts II and III of the form should be consistent with the proof of claim, and that an instruction be added to Part IV that there is no need to amend the filing if the amount changes after the date of the petition filing. This motion was also approved unanimously.

Finally a motion was to recommend publication of the form for comment in August 2014, along with its instructions and the sample form was passed unanimously.

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

(A) Report concerning recommended revisions to the Committee Note describing proposed amendments to Rule 3002.1 that the Advisory Committee had recommended for publication this fall. Report addressing other issues regarding the ambiguity or uncertainty of Rule 3002.1.

Judge Harris reported on this issue. A memo dated March 17, 2014 on this topic was included at Tab 6A of the main agenda materials. At the fall 2013 meeting, the Committee approved for publication amendments to Rule 3002.1 to clarify that the requirements of the rule apply whenever a chapter 13 plan provides for continuing payments on the mortgage while the bankruptcy case is pending. That proposed amendment removes the reference to § 1322(b)(5) in subdivision (a) of Rule 3002.1 and makes the rule applicable if the plan provides for either the trustee or debtor to make contractual installment payments. The subcommittee recommended a further amendment to Rule 3002.1 to provide that the notice requirements of the rule cease to apply when an order terminating or annulling the automatic stay becomes effective with respect to the residence securing the claim unless the court orders otherwise, and a motion to approve

this recommendation was passed unanimously. At the direction of the Committee, the subcommittee proposed additional language for the Committee Note to encourage courts to be open to requests to continue the reporting requirements after stay relief is granted. A motion was made to adopt this language in the Committee Note, and the motion also passed unanimously.

Judge Harris continued by noting that there are other issues regarding home equity lines of credit (HELOCs) and a few other issues that will not be included for publication but are still under consideration. He suggests that they be placed in the dugout, and this suggestion was accepted. See Item 14, below.

(B) Recommendation concerning Suggestion 13-BK-K by Mike Bates, Senior Company Counsel, Wells Fargo, to amend line 3 of the Reaffirmation Agreement Coversheet to allow for the disclosure of the simple interest rate on the amount to be reaffirmed, as an alternative to disclosing the annual percentage rate (APR).

The Assistant Reporter led the discussion regarding amending the reaffirmation agreement cover sheet (Official Form 427). A memo on the topic dated March 26, 2014, was included at Tab 6B of the main agenda materials, and the form was included in the appendix. The Assistant Reporter explained that the current cover sheet form does not provide an option to disclose only the simple interest rate, which is permitted on the Director's Form used in connection with reaffirmation agreements. He provided the background from the Bankruptcy Code and explained that § 524(k)(3)(E) requires disclosure of the "Annual Percentage Rate," a defined term that means the annual percentage rate calculated under the Truth in Lending Act or, if that rate is not readily available or not applicable, the simple interest rate. A fair reading of the cover sheet form did not make it clear that in some circumstances either type of interest rate could be disclosed, and the form did not readily permit the entry of "N/A" to indicate that the annual percentage rate is not available or not applicable. The subcommittees discussed whether there is a reason for the discrepancy between the cover sheet form and the Director's Form and determined that it was not necessary to require disclosure of the annual percentage rate on the cover sheet form. The subcommittees recommended adding to the cover sheet form a reference to the Bankruptcy Code provision that authorizes the disclosure of the simple interest rate in some circumstances and adding an explanation regarding the change to the Committee Note.

The Chair explained the difference between Official Forms and Director's Forms; the Official Forms—issued by the Judicial Conference—are generally required to be used in the format in which they were adopted, but Director's Forms—issued by the Director of the AO—may be changed more readily. The Chair stated that the revised form can go into effect in 2015 without republication because it was published as part of the August 2013 publication package and because the change is merely a clarification. A motion was made to approve the change, and the motion was approved unanimously.

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

(A) Report on the status of the Forms Modernization Project; review of comments and recommendation concerning the republished means-test forms, the modernized individual debtor forms; review and recommendation of the remaining modernized forms to be published including the case opening forms for non-individual debtors.

Judge Perris reported on the work of the FMP and referenced a memo on this work dated March 26, 2014, at Tab 7A of the main agenda materials. She provided some background to the FMP, stating that the group generally met two times a year but more recently had completed its work by phone, due to budget and time considerations. The goals of the project are to make the forms easier to understand and to take advantage of technology. An early decision was made to separate the individual from the non-individual forms because individuals need simpler language and there are more forms relevant only to individuals. The FMP used a form consultant to complete the modernization. The FMP forms have an appearance quite different from the current forms.

Other goals were to make the instructions more helpful by putting them where people completing the forms would look for them and to amend the forms to recognize that the different living arrangements that need to be accommodated. The technology aspect was also important, permitting authorized users to get the information as data in order to take advantage of more advanced technology available to courts through the Next Generation of CM/ECF (Next Gen) project. Judge Perris explained that Next Gen lags behind the development of the forms for many reasons, including funding and resources, so some of the technological benefits will not be seen immediately.

Next, Judge Perris provided an update on Next Gen. There are going to be several releases of Next Gen, and the first release will contain several improvements, including the judges' review packet and single-sign on. The implementation of Release 1 will require all courts to be on central servers. Under the current time proposal, the program will be tested by monitored live operation courts in late 2014 and will be available to all courts in early 2015. The delayed release of Next Gen may impact the effective dates of the modernized forms. The individual forms have already been delayed until December 2015 in order to match the effective dates of the non-individual forms, but there may be a further delay based on the delays in Next Gen. There is a possibility that the bulk of the modernized forms will need to have an effective date of December 2016.

Judge Perris stated that there are several groups of forms to be approved by the Committee. The first are two subsets of forms for which final approval is requested, with effective dates of either December 2014 or December 2015. The forms with a requested effective date of December 2014 are Official Forms 17A, 17B, 17C, 22A-1, 22A-1Supp, 22A-2, 22B, 22C-1, and 22C-2. There were no comments on Forms 17A, 17B and 17C, and the

effective date of December 2014 is to match the presumptive effective date of the revised Part VIII bankruptcy rules. The means test forms (Forms 22A-1 through 22C-2) were republished after the Committee made revisions to them in response to comments received after publication in 2012. The comments received on the republished means test forms were relatively modest and the changes proposed in response do not require republication. Judge Perris explained the reasoning behind the revised means test forms, noting that there were several changes made as a result of the most recent publication including moving URLs from the forms to the instructions, revising the instruction to contact the clerks' office to make clear that their personnel cannot provide legal advice, and revising the instructions regarding denying chapter 7 relief.

Judge Perris moved that Official Forms 17A, 17B, 17C, 22A-1, 22A-1Supp, 22A-2, 22B, 22C-1, and 22C-2 be submitted for final approval by the Standing Committee for an effective date of December 1, 2014. A suggestion was made for a small change to the language in the box on the top of forms 22A-2 and 22C-2. A motion was made to approve the suggestion and the motion was approved unanimously. A further suggestion was made to revise the warning language to state that the Bankruptcy Code and Rules prevail over any conflicting statement in the instructions. A motion was made to add this language, but the motion failed on a 6-7 vote. The Committee voted on the original motion to submit the forms for final approval, and the motion was approved unanimously.

Judge Perris continued with a discussion of the remaining published modernized forms, stating that the comments received were generally helpful, and that some changes were made in response to the comments. The remaining forms include proposed new Official Forms 101, 101A, 101B, 104, 105, 106Sum, 106A/B, 106C, 106D, 106E/F, 106G, 106H, 106Dec, 107, 112, 119, 121, 318, 423, and 427, as well as the Committee Notes and Instructions. The forms are set out in the appendix at pages 61 through 169. Some of the overall comments were very similar to those received on the forms published in 2012. They included the general objections to the idea of modernizing forms, a topic already discussed and rejected by this Committee and the Standing Committee. Another repeated issue was that the new forms will encourage pro se filings. Judge Perris noted that there are clear warnings in the instructions that bankruptcy is complex and that an attorney is advisable. A related comment was that the instructions provide legal advice, and revisions were made to emphasize that the instructions are not meant as legal advice. A final repeated comment expressed concern about the length of the forms. Judge Perris pointed out, however, that form length can be reduced if questions are not applicable or additional space to answer is not needed.

Judge Perris then discussed specific comments on the forms. Responsive changes to the petition (Form 101) and the eviction forms (Forms 101A and 101B) included the addition of instructional language for small business debtors, revisions to the statement of the penalty of perjury in Form 101, and clarifications in Forms 101A and 101B. Similarly, changes were made to the schedules (Forms 106A through 106Dec) in response to comments, including removing the dollar minimum for listing assets, revising the mileage question for vehicles, revising the

instruction to list creditors in alphabetical order, and adding a warning about making a false statement to Form 106Dec. The statement of financial affairs (Form 107) was modified in response to comments, and the instructions were revised. Minor changes to Forms 112, 119, 121, 318, 423, and 427 were made in response to comments.

Judge Perris moved to submit Official Forms 101, 101A, 101B, 104, 105, 106Sum, 106A/B, 106C, 106D, 106E/F, 106G, 106H, 106Dec, 107, 112, 119, 121, 318, 423, and 427, as well as the Committee Notes, to the Standing Committee for final approval for an effective date of December 1, 2015, or a later date if required by technological considerations. The motion was approved unanimously.

The final set of forms included proposed new Official Forms 106J, 106J-2, 201, 202, 204, 205, 206Sum, 206A/B, 206D, 206E/F, 206G, 206H, B207, 309A, 309B, 309C, 309D, 309E, 309F, 309G, 309H, 309I, 314, 410, 410S1, 410S2, 11A, 11B, 312, 313, 315, 416A, 416B, 416D and 424, as well as the Committee Notes and the Instructions for Non-Individual Debtors. Judge Perris advised that the non-individual forms were reviewed by the Committee at its fall 2013 meeting, and changes suggested at that meeting were made, along with a few additional changes to achieve consistency with the forms for individual debtors. Also included in the last group of forms were the creditor notices (Official Forms 309A – 309I); the caption forms (Official Forms 416A, B and D); the order and notices related to plans and disclosure statements (Official Forms 312-315); the power of attorney forms (Official Forms 11A and B), which will be abrogated; the proof of claim forms (Official Forms 410, 410S1, and 410S2); and the certification for direct appeal by all parties (Official Form 424). The chapter 15 petition form (Official Form 401) and mortgage form (Official Form 410A) were discussed and approved separately at the meeting.

Judge Perris explained a small revision needed for the non-individual petition form (Official Form 201): the addition of an instruction regarding small business debtors that had previously been added to the individual version of the petition form (Official Form 101). A motion to make the change was approved unanimously.

A motion was made to request approval to publish Official Forms 106J, 106J-2, 201, 202, 204, 205, 206Sum, 206A/B, 206D, 206E/F, 206G, 206H, B207, 309A, 309B, 309C, 309D, 309E, 309F, 309G, 309H, 309I, 314, 410, 410S1, 410S2, 11A, 11B, 312, 313, 315, 416A, 416B, 416D, 423, 424, the Committee Notes and the Instructions for Non-Individual Debtors. The motion was approved unanimously.

A motion was made to request that the Administrative Office increase the font sized used for the debtor name and case number on the creditor notice forms (Official Forms 309A – 309I). The preferred font size is 12 point to make the print easier for users to read. The motion passed unanimously.

(B) Oral report regarding the Advisory Committee's decision at the fall 2103 meeting to recommend Suggestion 13-BK-B by Judges Eric L. Frank and Bruce I. Fox to amend the Voluntary Petition to include checkboxes for the documents small business debtors are required to file under § 1116(1) of the Bankruptcy Code.

Judge Perris explained that an instruction was added to the voluntary petition forms (Official Forms 101 and 201) in response to this suggestion.

(C) Recommendation regarding proposed Official Form 106J-2 to be used in joint debtor cases where Debtor 1 and Debtor 2 maintain separate households

Scott Myers presented the topic, noting that a memo was included at Tab 7C of the main agenda materials, and that proposed Official Forms 106J and 106J-2 were included in the appendix. He explained that in calculating of the net income of jointly filing debtors who maintain separate households, there was a problem in obtaining the debtors' combined expenses. The changes made to Form 106J and the creation of Form 106J-2 were to accommodate this issue, and the instructions were changed as well. A motion to approve the publication of these two forms was approved unanimously.

(D) Recommendation to abrogate Official Forms 11A and 11B and reissue them as director's procedural forms.

Bridget Healy explained that the FMP recommended abrogating Official Forms 11A and 11B (the general power of attorney and special power of attorney forms) to permit parties to alter these forms to conform with state law, local practice, or the needs of the case. She advised that a memo on the topic was at Tab 7D of the main agenda materials and the proposed abrogated Forms 11A and 11B were included in the appendix. The request to publish these forms was approved as part of the overall approval of the request to publish forms included as part of the FMP discussion.

(E) Oral Report regarding effect of June 1, 2014 Fee Changes on Official Forms.

Mr. Myers reported on this issue, referring to a March 27, 2014 email from bankruptcy forms vendor included in the main agenda materials. He explained because the Judicial Conference approved Official Forms 3A and 3B as well as the fee increase, a decision was made that the fee amounts could be changed on the forms without formal amendment. To eliminate this problem in the future, a motion was made to remove the fee amount information from these forms as of December 1, 2014 and the motion was approved unanimously. This change will be submitted to the Standing Committee with a request that it be approved without publication.

9. Report by the Subcommittee on Business Issues.

(A) Recommendation concerning: (1) amendment to Rule 9006(f) published for comment in 2013; (2) recommendation by the inter-committee CM/ECF Subcommittee and endorsed by the Standing Rules Committee at its January 2014 meeting, to eliminate the three-day extension to time periods in cases of electronic service from Civ. Rule 6(d), Bankruptcy Rule 9006(f), Crim. Rule 45(c), and Appellate Rule 26(c); and (3) suggestion by member Edward Morrison to extend the elimination of the three-day rule to all modes of service by eliminating Rule 9006(f).

Judge Wizmur stated that the Standing Committee's CM/ECF Subcommittee endorsed eliminating the three-day extension rule for electronic service, and a memo on the topic dated March 15, 2014, was included in the materials at Tab 8A. The Business Subcommittee recommended amending Rule 9006(f) to match the change to Civil Rule 6(d), Appellate Rule 26(c) and Criminal Rule 45(c). The subcommittee also discussed extending the elimination of the three-day rule to other forms of service, but decided against this course of action to maintain uniformity in how time is computed under the various federal rules. A motion to recommend publication of the amendment of Rule 9006(f) to eliminate the three-day extension to time periods for electronic service was unanimously approved.

Judge Wizmur continued with a second amendment to Rule 9006(f) that was published in 2013. The amendment changed "after service" to "after being served" in the rule to match an amendment to Civil Rule 6(d) also published in 2013. No comments were submitted regarding the amendment. A motion was made to approve the amendment, and it passed unanimously. Judge Wizmur stated that the subcommittee's recommendation assumed that the Standing Committee will hold the amendment in abeyance pending the other amendment to Rule 9006(f) that will be published in August 2014 to allow both amendments to go to the Judicial Conference at the same time. In this case, the likely effective date for both amendments would be December 2016. The Committee agreed with this course of action.

(B) Recommendation concerning suggestion 13-BK-H by Dan Dooley, regarding Rule 2016 for special fee procedures.

Judge Wizmur stated that the Business Subcommittee considered a suggestion to change the procedure for reviewing professional fees in chapter 11 cases, citing the memo dated March 24, 2014, at Tab 8B of the main agenda materials. The suggestion included requiring attorneys to submit weekly reports regarding the work completed and amount billed to provide more visibility of attorneys' fees and to permit courts to have greater control of fees in chapter 11 cases. The subcommittee had practical concerns about the suggestion and determined not to pursue it.

(A) Recommendation concerning suggestion 12-BK-I by Judge Stuart Bernstein, that Forms 9F and 9F(Alt.) and § 1141(d)(6)(a), be amended to deal with complaints

to deny discharge for a debt "of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit."

Judge Wizmur discussed another issue considered by the Business Subcommittee regarding a potential inconsistency on Forms 9F and 9F(Alt), and referred to the memo of March 14, 2014, at Tab 8C. She detailed the potential inconsistency cited in the suggestion in comparing the language in § 1141(d)(6)(A) regarding exceptions from discharge and the language used in the forms. The suggestion argued that the language in the forms was overly broad in listing the deadline for dischargeability actions. In discussion, the subcommittee noted that there are several interpretations of the language in § 1141 and that the language in the form may or may not be correct. Because of this, the subcommittee recommended deferring any decision on this issue pending additional developments in case law. Judge Wizmur advised that the case that led to the suggestion was appealed and a decision was rendered after the memo was drafted. The district court agreed that the form language was too broad, but disagreed with the reasoning of the bankruptcy court regarding its interpretation of the language of § 1141, determining that there was no time limitation for either type of claim listed. The recommendation to place the issue in the dugout was accepted by the Committee.

(B) Recommendation concerning suggestion by member Edward Morrison to remove from Rule 2002(f)(7) the requirement to notice a confirmation order in a small business chapter 11 case.

The final issue considered by the Business Subcommittee was a suggestion to remove the requirement to provide notice of confirmation orders in small business cases as required by Rule 2002(f)(7). A memo on this issue, dated March 24, 2014, was included at Tab 8D of the main agenda materials. The subcommittee considered the issue and determined, based on a review of noticing practices in courts across the country, that this requirement does not cause problems and that not providing notice may cause greater problems. For this reason, the suggestion was rejected, but the Subcommittee determined that this rule should be included as part of the overall review of noticing practices.

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

(A) Suggestion based on *Peterson v. Somers Dublin Ltd.*, 729 F.3d 741, 745-46 (7th Cir. 2013) to consider whether the appellate rules should provide a deadline to certify a bankruptcy decision for direct appeal to the court of appeal.

Judge Jordan discussed an issue raised in *Peterson v. Somers Dublin Ltd.*, 729 F.3d 741, 745-46 (7th Cir. 2013) of whether the appellate rules should provide a deadline to certify a bankruptcy decision for direct appeal to the court of appeal. A memo dated March 10, 2014, was included at Tab 9A of the main agenda materials. The subcommittee recommended that no action be taken.

(B) Comment 12-BK-008 by the National Conference of Bankruptcy Judges that the appellate rules include a provision, similar to FRAP 41, for issuance of a mandate by the district court or bankruptcy appellate panel.

Judge Jordan continued with the second recommendation considered by the subcommittee that the appellate rules be amended to include a provision, similar to FRAP 41, for issuance of a mandate by the district court or bankruptcy appellate panel. A memo dated March 13, 2014, was included at Tab 9B of the main agenda materials. The Subcommittee concluded that the current procedure is not causing problems, and recommended no action on this issue.

(C) Comment 12-BK-008 by the National Conference of Bankruptcy Judges for further changes to proposed Rule 8023.

The Reporter discussed the third recommendation considered by the subcommittee concerning further changes to proposed Rule 8023, scheduled to go into effect December 1, 2014. A memo dated March 11, 2014, was included at Tab 9C of the main agenda materials. The subcommittee determined that it may be helpful at some point in the future to add a reference to Rule 9019 as a reminder to practitioners of the need to obtain court approval of certain settlements of appeals, and recommends adding this amendment to the bullpen. A motion was made to approve the suggestion to add the language regarding Rule 9019 and to place the suggestion in the bullpen. The motion was approved. Judge Jordan reported on the subcommittee's decision not to recommend an amendment to Rule 8023 to require court permission to dismiss an appeal of an action objecting to discharge.

Judge Jordan concluded the discussion by providing a report on: (1) whether the record before the bankruptcy court should be the record on appeal – made available electronically – with parties referring by number to the appropriate bankruptcy court docket entries in their appellate briefs; and (2) whether an amendment should be adopted to deal with an incomplete record due to failure of the parties to designate the record on appeal. He reported that the subcommittee determined to wait to take any action on this issue, given that not all courts are at the same point in terms of technology and that anything adopted now may become obsolete in the near future. If the Committee waits a few years, a better decision could be made on the issue. Judge Sutton suggested adding this issue to the agenda of Standing Committee's CM/ECF Subcommittee, and the Committee agreed.

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

(A) Review of comments and recommendation concerning Rule 5005(a) electronic signature amendment

Mr. Baxter presented the issue, referring to the memo dated March 16, 2014 at Tab 10A of the main agenda materials. He explained the reasoning behind the amendment to Rule 5005(a) and stated that the rule was published with alternative provisions suggested by the Standing Committee's CM/ECF Subcommittee for ensuring the integrity of a scanned signature. Nineteen comments were submitted on the proposed amendment, and most of the commenters preferred alternative 1 in the proposal. The comments expressed no enthusiasm for the amendment, and there were seven comments opposed to the adoption of the amendment, including a comment from the Deputy Attorney General. Mr. Baxter advised that, in light of the comments, the Subcommittee on Technology and Cross Border Insolvency recommended proceeding no further with the published amendment.

(B) Recommendation concerning proposed Chapter 15 petition.

Mr. Baxter continued with a presentation regarding the new chapter 15 petition (Official Form 401). A memo on the subject dated March 25, 2014, was included at Tab 10B of the main agenda materials, and the proposed Official Form 401 was included in the appendix. The draft petition was presented to the Committee at the fall 2013 meeting. The draft petition, among other things, reflects the rule amendments set out below. Since the fall meeting, the subcommittee obtained input from outside reviewers with expertise in chapter 15 cases, made revisions to the form, and now recommended approval of the form for publication. The changes made since the fall 2013 meeting were outlined in the memo. A motion was made to approve publication of Official Form 401, and the motion was approved unanimously.

(C) Recommendation concerning Suggestion 13-BK-F, by Judge Barry Schermer to amend portions of the Bankruptcy Rules that apply to chapter 15 proceedings.

Mr. Baxter next discussed the related rule amendment recommendations, citing a memo dated March 25, 2014 at Tab 10C of the main agenda materials. The subcommittee recommended amendments for Rules 1010, 1011 and 2002, and a new Rule 1012.

Mr. Baxter explained that the amendments are needed to avoid inconsistencies and inefficiencies in the current rules governing chapter 15 cases. The proposed amendments are: (1) to remove the chapter 15-related provisions from Rules 1010 and 1011; (2) to create a new Rule 1012 to govern responses to a chapter 15 petition; and (3) to augment Rule 2002 to clarify the procedures for giving notice in a cross-border proceeding. The subcommittee's proposal would remove the chapter 15-related provisions from Rules 1010 and 1011 because the chapter 15 provisions were inappropriately included in those rules. Current 1010 requires a clerk to issue a summons for service when a petition for recognition of a foreign non-main proceeding is filed, but not when a petition for a foreign main proceeding is filed. However current Rule 1011, which governs responses to a petition for recognition in a foreign proceeding, appears to contemplate that service of a summons will occur in all cases. The amendments to Rules 1010 and 1011 would eliminate the requirement of issuing a summons after the filing of a petition for

recognition and procedures for objections and other responses to a petition would be governed by a new Rule 1012. The amendment to Rule 2002(q) is proposed because the rule currently requires service of at least 21 days' notice of a hearing on a recognition petition but the rule does not explicitly address when the court should set the hearing. The result may be an unnecessary delay between the petition's filing and the recognition hearing date contrary to the Bankruptcy Code's requirement of prompt adjudication of the petition. Current Rule 2002(q) does not address a request for provisional relief in advance of a recognition hearing, a common chapter 15 practice. The amendments to Rule 2002(q) would require a prompt hearing on a petition for recognition, indicate the contents of the hearing notice, and permit the court to combine a hearing on provisional relief with the recognition hearing.

The Chair noted that the proposed chapter 15 petition would be effective prior to the effective date of the amended rules. Mr. Baxter explained that practitioners would be able to use the form even if the rules are not yet in effect. A motion was made to approve publication of the amended rules, and the motion passed unanimously.

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

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

Judge Robert Jonker reported on this issue to the Committee. He stated that the standard in Rule 2014 is broad and requires a retention application to disclosure "all connections" that the professional has with the debtor and various other parties. The suggestion from the ABI would refine and limit the rule to require instead the disclosure of "relevant connections." Because this proposal is similar to an amendment that was considered and approved by the Committee in the past but was eventually withdrawn, the subcommittee undertook to research the background of that earlier proposal. The subcommittee determined that a reform of Rule 2014 is worthy of further consideration, and that the principal question is the choice of the best model for drafting an amended rule. The subcommittee saw value in the comprehensive proposal from the ABI but wanted to evaluate whether there may be a simpler improvement to the rule. The subcommittee will continue to consider the issue. The Chair stated that the discussion makes it clear that the issue should continue to be considered.

(B) Suggestion 13-BK-J by attorney Neil Enmark regarding time for filing the statement required by Rule 2016(b).

Judge Jonker stated that the subcommittee decided that it needed time to determine if there is evidence of abuse in attorneys' filing (or failing to file) Rule 2016(b) statements before it makes a decision whether to go forward on the suggestion.

Discussion Items

13. Suggestion 14-BK-B by the Committee on Court Administration and Case Management to amend various rules to address redaction of private information in documents filed in closed cases.

The Chair stated that a letter dated February 5, 2014, from Judge Julie A. Robinson to Judge Jeffrey S. Sutton on this topic was distributed separately. The issue involves parties seeking to reopen cases in order to redact private information in filings made in cases that have been closed. Courts have treated these cases differently in terms of procedure and fees. Some courts do not require reopening of the case to complete the redaction and do not charge a fee, some require reopening and full payment of the reopening fee, and still other courts require reopening but charge a reduced fee. Another issue is the type of notice that must be provided regarding the redactions. The Chair assigned the issue to the Subcommittee on Consumer Issues.

14. Suggestion 14-BK-A by Mike Bates to amend Rule 3002.1 to address notice of payment changes for home equity loans and lines of credit.

The Chair reported that the current rule appears to require special notices from the servicer every month that there is a change in the interest rate. The suggestion would eliminate this requirement, particularly given that notice is given outside of bankruptcy regarding interest rate changes. He assigned the issue to the Joint Subcommittee on Consumer Issues and Forms.

15. Oral report concerning Suggestion by member David Lander for a rule change requiring particularized notices of motions that affect less than all creditors in large cases.

The Chair assigned this suggestion to the Subcommittee on Business Issues.

Information Items

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

Mr. Baxter advised the Committee on proposed legislation regarding patents that contains provisions impacting bankruptcy cases. He explained that there is currently a provision in the Bankruptcy Code regarding intellectual property licensing agreements that includes a carve-out for trademark agreements. The proposed legislation would extend the protection in the Code to trademark licenses, requiring the holder of the license to maintain the standards of the license even after rejection of the agreement.

The Chair stated that there is no likelihood of any other bankruptcy-related legislation passing during this term of Congress. He noted that there has been no movement regarding

temporary bankruptcy judgeships despite the fact that many of temporary judgeships will be expiring in a few years.

17. Update on opinions interpreting section 109(h) of the Bankruptcy Code.

The Reporter explained that there are conflicting cases concerning whether a debtor must obtain debt counseling prior to filing a bankruptcy case or if it is sufficient to obtain the counseling on the same day but after the time of filing the petition. The recent conflicting cases are both in the Bankruptcy Court in the Northern District of Illinois.

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

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

(B) Proposed revisions to Rule 8006(b) in response to Comment 12-BK-033 (approved at the fall 2013 Committee meeting);

(C) Suggestion 13-BK-G by Gary Streeting that Rule 1015(b) be changed to use the word "spouse" instead of "husband" and "wife," with a corresponding change in the Committee Note, to be considered by the Subcommittee on Consumer Issues.

(D) Proposal to amend Rule 8023 to add a reference to Rule 9019 as a reminder to practitioners of the need to obtain court approval of certain settlements of appeals.

19. *Dugout:* Suggestions and issues deferred for future consideration:

(A) Recommendation for conforming change to Rule 1001 to track proposed changes to Fed. R. Civ. Pro 1. Placed in dugout at fall 2013 Committee meeting pending final approval of proposed Fed. R. Civ. Pro. 1.

(B) Suggestion 11-BK-N by David S. Yen for fee waiver forms addressing fees other than the chapter 7 filing fee, to be considered by the Subcommittee on Consumer Issues after issuance of revised fee waiver guidelines by the Judicial Conference.

(C) Suggestion 12-BK-M by Judge Scott Dales to amend Rule 2001(h) to mitigate the cost of giving notice to creditors who have not filed proof of claim. The suggestion was placed in dugout at fall 2013 Committee meeting pending comments on Chapter 13 Plan Form and related rules amendments. (See Agenda Item 4(D) above).

(D) 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, to be considered by the Subcommittee on Consumer Issues following a report from Molly Johnson.

(E) Joint Consumer and Forms Subcommittees to consider additional amendments to Rule 3002.1 to deal with home equity lines of credit and other issues.

(F) Comments 12-BK–005, 12-BK-015, 12-BK040 regarding designation of the record in bankruptcy appeals. These were placed in dugout at fall 2013 Committee meeting pending possible consideration by the Standing Committee's CM/ECF Subcommittee. (See Agenda Item 10(D) above).

20. The Rules docket was provided at Tab 12 of the main agenda materials.

21. The fall 2014 meeting will be held on September 29-30, 2014 in Charleston, South Carolina.

Judge Ikuta stated that the likely location for the spring 2015 meeting is Pasadena, California.

22. New business – none.

23. The meeting was adjourned at 10:00 am (CT).

Respectfully submitted,

Bridget Healy