ADVISORY COMMITTEE ON BANKRUPTCY RULES

Minutes of the Meeting of July 7 - 8, 1988

The Advisory Committee on Bankruptcy Rules met at River House, The Breckinridge Public Affairs Center of Bowdoin College, York, Maine, on July 7 and 8, 1988. The following members were present:

District Judge Lloyd D. George, Chairman
Circuit Judge Edith Hollan Jones
Circuit Judge Edward Leavy
District Judge Franklin T. Dupree, Jr.
District Judge James L. McGlynn, Jr.
Bankruptcy Judge James J. Barta
Bankruptcy Judge Paul Mannes
Joseph G. Patchan, Esquire
Harry D. Dixon, Jr., Esquire
Herbert P. Minkel, Esquire
Bernard Shapiro, Esquire
Professor Lawrence P. King
Professor Alan N. Resnick, Reporter

W. Reece Bader, Esquire, a member of the Committee on Rules of Practice and Procedure who serves as its liaison with the Advisory Committee on Bankruptcy Rules, also attended the meeting.

Peter G. McCabe, Assistant Director for Program Management, and Patricia S. Channon, Staff Attorney, attended the meeting from the Administrative Office. Richard G. Heltzel, Clerk of the Bankruptcy Court for the Eastern District of California, and Gordon Bermant, Research Division, Federal Judicial Center, also attended. Two representatives of the Executive Office for United States Trustees attended: Thomas J. Stanton, Director, and Barbara G. O'Connor, Senior Counsel.

The following summary of matters discussed at the meeting should be read in conjunction with the Reporter's memorandum of June 14, 1988, concerning time computation rules, the Reporter's draft revisions to the rules dated March 15, 1988, related memoranda of the Reporter and the Executive Office for United States Trustees, and various other memoranda and correspondence, all of which is on file in the office of the Secretary to the Committee on Rules of Practice and Procedure.

Votes and other action by the Advisory Committee and assignments by the Chairman appear in **bold**.

Approval of Minutes of May 1988 Meeting

The Advisory Committee approved the minutes of the May 1988 meeting as submitted by Patricia Channon.

Rule 9006 - Time Computation

The Reporter reviewed the events since the Advisory Committee voted in January 1988 to recommend to the standing Committee on Rules an expedited change back to seven (7) days of the period of time from which intervening weekends and holidays may be excluded in computing the time. The standing Committee had requested that all of the Advisory Committees consider the issue and make a combined report at the July 18, 1988, meeting of the standing Committee. Professor Resnick will make the report, which will be based upon his memorandum to the Advisory Committee dated June 14, 1988.

Professor Resnick summarized the memorandum and his recommendation that all of the rules dealing with computation of time be amended uniformly to provide that weekends and holidays shall be excluded when the period is less than eight (8) days. Eight days was selected rather than seven, he said, because the Criminal Rules prescribe seven-day periods for several important defense motions and its Advisory Committee believes that five working days should be guaranteed for these.

Professor Resnick said that the Reporters for all of the Advisory Committees supported the recommendation that eight (8) days be adopted uniformly in all of the bodies of rules as the breakpoint at which weekends and holidays would be included in computing the time periods. He said that he had circulated his memorandum to the members of the Civil and Appellate Advisory Committees, neither of which would be meeting again prior to the meeting of the standing Committee, so that any member who

objected could do so in writing. Professor Resnick said he hoped that the standing Committee would approve the recommendation based on an absence of objection by the Civil and Appellate Advisory Committees.

The Chairman noted that the only other rule which might need to be amended if a change to "less than eight (8) days" were adopted is Rule 8006, which affords an appellee seven (7) days in which to designate additional items to be included in the record and, in the event of cross appeal, additional issues. The rule also prescribes a seven (7) day period for a cross appellee to designate further items to be included in the record.

The Advisory Committee voted unanimously to seek immediate approval of changing the time period from which weekends and holidays may be excluded from the computation to "less than eight (8) days."

Judge Leavy expressed concern about the spread of litigation over the counting of days. He said the number of days should be certain and supported a concept of uniform, weekly time periods in all of the federal rules, i.e. 7, 14, 21, and 28 days. Jerry Patchan observed that Rule 9006 refers to time periods prescribed in statutes as well as to rules and orders and suggested that the rule should be examined more deeply. **Mr. Patchan will prepare a memorandum for the Advisory Committee on this subject.**

A motion that the concept of Judge Leavy's suggestion be presented to the standing Committee as a long term project for all of the Advisory Committees also passed unanimously.[1]

Local Rules Oversight - Report on Project Funding

Barney Shapiro reported for the subcommittee to investigate sources of funding for a bankruptcy local rules project similar to that being conducted on district court local rules for the standing Committee. Mr. Shapiro said he had corresponded with the chairs of the Financial Lawyers Conference in Los Angeles and the Southeastern Bankruptcy Law Institute and had received responses stating that the matter would be presented at the next meeting of each Board of Governors. **The subcommittee will report on the action taken by these organizations at the next meeting.**

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[1]The standing Committee met on July 18, 1988, and voted to accept the recommendation that the time period from which intermediate weekends and holidays may be excluded be changed to "less that eight (8) days" in Bankruptcy Rule 9006(a) and in the equivalent civil, criminal, and appellate rules. The standing Committee also unanimously approved publishing these proposed changes immediately so that the comment period can be concluded and the changes transmitted to the Judicial Conference by March 1989. Assuming that the comments indicate that the bar supports the change, the standing Committee hopes that the Supreme Court would act expeditiously on the proposal so that the change could become effective August 1, 1989.

Professor Resnick also raised with the standing Committee Judge Leavy's concerns about the overall lack of certainty which the exclusion of weekends and holidays imparts to the time periods prescribed in the rules. The discussion indicated that the standing Committee also recognizes this as a pervasive problem. At the suggestion of Professor Charles Alan Wright, the standing Committee also approved publishing for public comment a proposal to delete from Rule 9006(a) the entire sentence on excluding intervening Saturdays, Sundays and holidays, with a statement that the Committee is considering deleting the similar sentences in the counterpart civil, criminal and appellate rules. The statement further would give notice that, in conjunction with the proposed deletion, all of the time periods prescribed in the various bodies of rules would be examined for their continuing appropriateness and possible adjustment.

The Advisory Committee then resumed its consideration of the Reporter's draft proposals for integrating provisions covering the United States trustee system into Parts I through IX of the Bankruptcy Rules.[2]

RULE 2007.1

Harry Dixon said he had received a memorandum regarding the broad reading being given to the phrase "connections with" in Dallas, TX. He suggested that the phrase should be restricted to connections in the case; no motion to effect this amendment was made, however. Herb Minkel asked what "consult" means in the context of the proposed rule or whether, alternatively, this word is defined in the United States trustees' guidebook. Tom Stanton said the term is defined there.

The Advisory Committee discussed at length a suggestion that the rule also require disclosure of an appointee's connections with the judge who must approve the appointment. The Reporter noted that Rule 5002 prohibits a judge from approving the appointment of any individual to whom the judge is or was so connected as to render the appointment improper. Those supporting the suggestion claimed that disclosure would give interested parties an opportunity to objects and assist the United States trustee to avoid making appointments which the judge could not approve. Others argued that, since the judge already knows of all connections with the judge, disclosure is superfluous and, further, that there is a critical distinction between selecting or appointing an individual and merely approving an appointment made by another.

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[2]At the May 1988 meeting, the Advisory Committee had completed consideration of United States trustee-related amendments to Rules 1001 through 2007.

The Advisory Committee approved, with one opposed, the Reporter's draft as amended to delete the final sentence of subdivision (a), which is unnecessary due to the prior approval of the Reporter's proposal concerning Rule 9022.

Harry Dixon said he would circulate to the members the memorandum sent to him suggesting that the rule should limit the "connections" which must be disclosed.

RULE 2008

A motion to adopt the Reporter's proposed revisions passed unanimously.

RULE 2009

Professor King suggested that subdivisions (c) and (d) could be combined, but that the matter appeared to be one of **style** rather than substance. Judge Mannes noted that the words "appointment of" appeared to be needed in subdivision (c)(2) immediately after the first word ("If") of the subdivision and that this also appeared to be a matter for the **style committee.**

A motion to adopt the reporter's draft passed unanimously.

RULE 2010

The Reporter's draft proposes to abrogate subsection (b) of the rule, the provision in the current rule which states that a certified copy of the order approving the trustee's bond shall constitute conclusive evidence of the trustee's qualification.

With the United States trustee now the approving official for the trustee's bond, the courts no longer enter such orders.

Trustees, however, still may need documentary evidence of their authority to sell property of the estate, to show to title companies, etc. In order to qualify in a case, a trustee must not only accept the appointment but must also, under § 322(a) of the Code, file a performance bond with the court within five (5) days after being appointed.

Tom Stanton said that chapter 7 trustees do not have problems qualifying, as they are members of panels which are covered by large blanket bonds. A chapter 11 trustee, however, must obtain a separate bond. The five (5) day period prescribed by the statute appears to be too short. Many chapter 11 trustees are business people, unfamiliar with the Bankruptcy Code, who fail to perfect their appointment within the required time, and thus are not serving legally. **The consensus of the Advisory Committee was that the question of this time period should be studied with a view toward recommending a statutory change to Congress.**

The question of how to provide certification of the trustee's qualification was deferred until the Advisory Committee

considers substantive changes not directly related to the United States trustee program.[3]

A motion to approve the Reporter's draft, after amendment to change subsection "(c)" to subsection "(b)," passed unanimously.

RULE 2012

Judge Mannes pointed out that subsection (b)(1) of the rule is redundant with § 325 of the Code and proposed the deletion of (b)(1).

A motion to delete subsection (b)(1) but otherwise adopt the Reporter's draft passed by unanimous vote.

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[3] At the request of the Advisory Committee, Harry Dixon restated the problem as follows:

> Today, title companies and others who rely upon the trustee's authority to sell or take some other action generally do so on the basis of an order of the court that not only appoints the trustee but also indicates that the trustee has been qualified or, as you suggested, the 'incumbency' sort of thing. We no longer have orders of the court by these rules for approving trustees' bonds in these cases and there is now concern as to how in a very simple method this problem is going to be solved going forward. [Rule] 2010(b) deletes the provision permitting evidence of qualification. There needs to be some sort of substitute but not necessarily in [Rule] 2010. And that's the problem. We're saying let's defer that. Let Alan [Resnick] take a look at it. Tom [Stanton] has some ideas on it; the clerks' offices definitely have some ideas. Let's see if we can't come up with a solution beyond [Rule] 2010.

The consensus of the Advisory Committee was that a certification by the United States trustee probably would be appropriate, subject to a working out of the mechanics, as § 322(a) requires that the bond be filed with the court rather than with the United States trustee's office.

2013(a). The members debated whether this rule continues to be either necessary or appropriate when the court no longer has a role in appointing trustees and is limited to approving appointments made by United States trustees in chapter 11 cases, a relatively rare occurrence. Patricia Channon noted that subdivision (a) also covers approval of the employment of auctioneers and appraisers, an event not limited to chapter 11 cases.

Judge Jones stated that the rule is difficult to comply with if the court's records [made pursuant to subdivisions (b) and (c) of the rule] are not complete and current, especially in multi-judge courts. Harry Dixon said that this subdivision states a principle which now really is up to the United States trustee to observe in making trustee appointments, a view shared by several other members. Those members would favor replacing subdivision (a) with an administrative directive from the Executive Office for United States trustees, issued with full publicity.

Judge Leavy moved that the Reporter's proposal be adopted as drafted. Professor King offered an amendment to delete the reference to chapter 11 cases as being redundant. Judge Leavy subsequently withdrew his motion, and Barney Shapiro moved that subdivision (a) be eliminated, which motion was seconded by Judge Mannes.

The motion to eliminate subdivision (a) carried, with six (6) votes in favor and four (4) opposed.

Jerry Patchan expressed concern about this deletion because its purpose was to correct abusive "cronyism" in the bankruptcy courts, a condition about which Congress made explicit and disapproving statements in connection with the enactment of the Bankruptcy Code in 1978. He made a motion that the Committee Note should reflect the sense of subdivision (a). The Reporter

opposed the motion. He said he believes a Committee Note should explain a rule, not be a rule.

The vote on the motion to include the sense of deleted subdivision (a) in the Committee Note was tied, with four (4) votes in favor and four (4) against. The Chairman then voted against, and the motion failed.

The Reporter said his normal practice when a rule is deleted is to provide a Committee Note explaining the reason, but that he did not know what to say about the deletion of (a). He said he did not want to create a negative inference that "cronyism" is no longer a concern. The consensus was that the Note should say the Advisory Committee expects the United States trustee will be sensitive to the policy considerations involved and will monitor trustee appointments to prevent "cronyism." **The Reporter will prepare a draft for the Advisory Committee to consider.**

Judge Jones suggested also that a new Rule 2013.1 could be drafted to cover court approvals of the employment of auctioneers and appraisers and of examiners and trustees in chapter 11 cases.

2013(b) and (c). A motion was made to eliminate subdivisions (b) and (c). Judge Jones said she "violently" opposed the motion. She said that retention of the requirement of a public record of fees paid in bankruptcy cases is essential to maintaining a public perception of integrity in the courts. Tom Stanton also supported the retention of these rules as a good check on the United States trustees.

The relative utility of the Rule 2013(b) and (c) records versus the burden to the clerk of preparing the summary required by subdivision (c) also was raised. Peter McCabe said the burden would be eliminated by automation, that the capability exists now, but that progress toward achieving automation had been hampered severely by cuts in appropriations for the Judiciary.

All participants recognized that both the burden and the value of fee information lies in the compiled summary.

The motion to eliminate subdivisions (b) and (c) failed by a vote of six (6) to five (5).

A motion to approve subdivisions (b) and (c) as drafted by the Reporter carried by a vote of six (6) to five (5).

RULE 2014

Harry Dixon suggested that the connections which must be disclosed under this rule be limited to "material" connections. Mr. Dixon also moved that "the court" be added to the list of entities concerning which the applicant for employment must disclose all connections.

This motion failed by a vote of seven (7) to (2). A motion to adopt the Reporter's draft carried unanimously.

RULE 2015

2015(a). **By unanimous vote, the Advisory Committee approved the Reporter's draft subject to adding to the Committee Note a statement that the requirement of subsection (6) may be satisfied by including the information prescribed therein in other reports filed by the trustee or debtor in possession.**

2015(b). No changes were proposed.

2015(c). **The Reporter's draft amendment was approved unanimously.**

2015(d). Although the Reporter's proposed new subdivision (d) is derived from Rule X-1007(d) of the current Part X rules, Judge Leavy inquired whether the Advisory Committee should delete everything that tells a case trustee what a trustee's duty is to the United States trustee, on the basis that such matters are outside the purview of rules of court. Professor King moved that proposed subdivision (d) not be added to the rules. He said the provision seemed appropriate when the United States trustee was an experimental program, a new institution with which parties and practitioners were unfamiliar. He said it does not seem necessary now. If a party fails to cooperate with the United States trustee's requirements, the United States trustee can take the matter before the judge. Likewise, a party or practitioner who believes the United States trustee's demands to be unreasonable can take the United States trustee to ccurt. Tom Stanton stated he had no objection so long as Professor King's explanation for the failure to carry over Rule X-1007(d) appears in the Committee Note.

The motion not to add proposed subdivision (d) to the rule carried unanimously.

RULE 2016

A motion to adopt the Reporter's proposals concerning this rule passed unanimously.

RULE 2017

The Advisory Committee discussed whether to add the United States trustee specifically as a party that may bring the motion provided for in the rule. Harry Dixon said the rules should be neutral and should not decide substantive issues. Professor King suggested that the role of the United States trustee could be

handled best by referring to § 307 of the Code in the Committee Note. The Reporter said that he would add to the Note a sentence worded approximately as follows: "Pursuant to § 307, the United States trustee may raise and appear and be heard on these issues."

A motion to adopt the Reporter's draft and to add the proposed sentence to the Committee Note carried by unanimous vote.

(PROPOSED) RULE 2020

Professor King suggested that simpler language would be preferable and proposed a one-sentence substitute for the Reporter's draft as follows:

> A proceeding to contest any action taken by the United States trustee or a failure to take action is governed by Rule 9014.

A motion to adopt Professor King's substitute carried unanimously.

RULES 3002 THROUGH 3005

The Reporter noted that he will need to reexamine these rules as some of the rules that have been deleted are referred to therein.

RULE 3015

The Reporter's draft was adopted by unanimous vote.

RULE 3017

3017(a). The Reporter amended his recommendation on this rule to delete the second "or mailed" from the proposed new sentence and to change "mailed" in the prior line to "served or mailed." As amended the proposed new sentence would read:

> In a chapter 11 reorganization case, every notice, plan, disclosure statement, and objection required to be served or mailed pursuant to this subdivision shall be transmitted to the United States trustee within the time provided herein.

A motion to adopt the Reporter's draft as amended passed unanimously.

3017(d). **The Advisory Committee adopted the Reporter's proposed draft by unanimous vote.**

RULE 3020

The Advisory Committee unanimously adopted the Reporter's draft.

RULE 4002

Professor King moved that proposed subsection (5) be deleted because proposed Rule 2015(d) was not adopted.

The motion to delete proposed subsection (5) carried by unanimous vote.

Tom Stanton requested an explanation of this action in the Committee Note. Rule X-1007, however, contains no requirement that the debtor cooperate with and furnish information to the

United States trustee. Rule X-1007 requires cooperation only from trustees and debtors in possession. The consensus, accordingly, was that there is no need.

RULE 4004

A motion to adopt the Reporter's proposed draft passed unanimously.

The Reporter mentioned the Advisory Committee's earlier action on Rule 1019 during which a proposal was made to make uniform in Rules 1019, 4004 and 4007 the language concerning the time for filing objections to the discharge, etc. **The consensus was that consideration of this question should be deferred until the work of incorporating the United States trustee is complete.**

RULE 5002

The Reporter stated that the changes he is proposing for this rule are primarily technical, reflecting the fact that the court no longer makes the appointments but merely approves appointments made by the United States trustee. At present, the rule forbids appointment of relatives of or persons with "connections" to the judge. The question left unresolved by the Reporter's draft is whether to extend the prohibition against approving the appointment of relatives or persons with "connections" to relatives and persons with "connections" to the United States trustee.

The Reporter summarized the position of the Executive Office for United States Trustees on this issue as follows: 1) the Department of Justice has regulations prohibiting appointment of relatives, and 2) the matter properly should be left to internal guidance by the Trustees' office.

The Reporter noted that the only pertinent regulation in the Bankruptcy Code is the affirmative statement that an appointee must be disinterested (in the case). Thus the United States trustee's brother could be eligible for appointment under the provisions of the Bankruptcy Code, as long as that brother were disinterested in the case to which he was being appointed. Disclosure of the relationship, of course, would be required as a result of the Advisory Committee's earlier actions on Rules 2007.1 and 2014.

The Advisory Committee approved unanimously a motion to accept the Reporter's draft with the following additions: 1) in subdivision (a), after the words "the bankruptcy judge," insert the words "or the United States trustee making or" [approving the appointment or employment]; and 2) in subdivision (b), after the word "judge" in the next-to-last line, insert the words "or the United States trustee."

RULE 5005

5005(a). See, action taken on subdivision (b), below.

5005(b). The Reporter said that in drafting his recommendations for expanding this rule to provide for delivery of documents to the United States trustee, he had chosen to use the word "file" rather than "serve" in order to avoid the technical requirements of service on the United States. These technical requirements would frustrate the policy of flexibility in this area on which both the Judiciary and the United States trustee program previously have agreed; the technical service requirements would not be satisfied, for example, by the placing of documents in a United States trustee's drop box in the clerk's office.

The Reporter noted that he also had provided for "filing" with the United States trustee at two points later in the rules: proposed Rule 7005.1 and 9013. He added that the concept of "filing" something with the United States trustee appeared to be sanctioned by the statute. [See, e.g. 11 U.S.C. § 704(8).] He said distinction also should be made between this general "filing" of documents for informational and monitoring purposes and what should be done when the United States trustee is an actual party in interest, e.g. when a motion is made under the proposed new Rule 2020. In the latter circumstance full service, with all appropriate formalities, pursuant to Rule 7004(a) is required.

The Reporter also proposed to amend subdivision (b)(1) of the draft to substitute the words "mailed or delivered" for the words "filed in" in the third line and to substitute "to" for "at" in the fourth line. These changes would further the policy of flexibility.

In response to a question from Barney Shapiro, Professor Resnick said that inclusion of the United States trustee on the "service lists" utilized by attorneys filing pleadings in cases, and which results in all named entities receiving a copy would satisfy the "filing" requirement of this proposed rule as amended to permit a document to be "mailed or delivered." The customary copy with attached certificate of service would satisfy the "proof of such filing" requirement in proposed subdivision (b)(2).

Harry Dixon questioned the use of the word "filing" as carrying a connotation that the materials comprise a record that should then be maintained; yet there is no maintenance required of the United States trustee. He suggested that the concept of "transmittal," developed earlier in the rules should be employed here as well. Jerry Patchan said that to him "filed" means something that bears the clerk's stamp. Richard Heltzel said

that using the terms "file" and "transmit" interchangeably offered the potential for confusing the public and causing a lot of erroneous "filing," especially by pro se debtors.

A motion to approve the Reporter's amended draft of subdivision (b) as further amended to substitute the words "transmit" or "transmitted" for the words "file" or "filed," carried by unanimous vote.

The Advisory Committee further directed the Reporter to change "file" (with the United States trustee) to "transmit" in the earlier rules in which the term "file" appears, the matter of which word ultimately would be chosen having been deferred during the Committee's previous discussions.

The Advisory Committee also approved the following changes to conform the rule to the amendments made above to subsections (b)(1) and (b)(2):

1) Title of the rule is to be changed to "Filing or Transmittal of Papers";

2) Title of subdivision (b) is to be changed to "Transmittal to the United States Trustee.";

3) The addition to subdivision (a) which appears in the Reporter's draft is to be deleted, as subdivision (b) no longer conflicts with (a);

4) In subsection (b)(2), the words "other than the clerk" are to be inserted after the words "The entity";

5) Subsection (b)(3) is to be deleted pursuant to the deletion earlier of proposed Rule 2015(d);

6) The Committee Note is to be revised to state that a normal certificate of service is all that is required by subsection (b)(2), that no separate affidavit is necessary.

[See, discussion of proposed Rule 9014.1 for further action taken concerning the Committee Note to this rule.]

5005(c). There was discussion concerning the importance of the original delivery date of an erroneously delivered document intended for the United States trustee, with the Reporter stating that the date could be important at least as to some documents.

A motion to adopt the proposed rule as drafted by the Reporter carried unanimously.

RULE 5008

The Reporter introduced the discussion by noting that under the X-rules this rule does not apply in United States trustee-districts, and recalling the comments made at the January 1988 meeting suggesting that the rule could be abrogated, as the United States trustee now approves any bond under § 345(b). The Reporter also observed, however, that § 345(b) does not appear to give the United States trustee authority to approve a deposit of securities in lieu of a bond and that the rule may have some continuing utility in the absence of Congressional action to correct § 345(b). Section § 345(b) does not require the court to give prior approval of a deposit of securities either; that function is provided for only in Rule 5008.

A motion to adopt the Reporter's draft carried with two (2) opposed.

A further motion to delete Rule 5008(i), (which permits the court to authorize case trustees to combine funds of more than one estate for deposit - a function which properly now belongs to the United States trustee), carried with one (1) vote opposed.

The Advisory Committee requested that Congressional action be sought amending § 345(b) to clarify the present ambiguity with respect to the role of the United States trustee in approving a deposit of securities in lieu of a bond.

The Reporter proposed an amendment to the draft version of subdivision (c) of the rule which, after further amendment by the members, would read as follows:

> (c) PAYMENT OF FEE. In a chapter 7 liquidation case, the trustee shall be paid the fee provided in § 330(b) promptly after 1) the United States trustee files with the clerk a statement certifying that the United States trustee has reviewed the trustee's final report and account and has determined that the trustee's services have been fully rendered, or 2) the court closes the case, which ever first occurs.

The Reporter also would add the following sentence to the Committee Note:

> This subdivision recognizes that a trustee's duties could be fully performed and that the § 330(b) fee should be paid although pending litigation involving parties other than the trustee or other matters may prevent the closing of the case.

The Reporter stated that he would retain the phrase "files with...the United States trustee" in subdivision (a) because it tracks the statutory language requiring the report [§ 704(9)].

A motion to adopt the Reporter's draft as amended carried by unanimous vote.

Jerry Patchan queried the Reporter about whether Rule 3022, concerning the final decree, is misplaced and might better be incorporated into Rule 5009. Professor Resnick said he also had raised similar questions about Rule 3022 in his March 15, 1988 memorandum. He said he did not include any recommendation in this draft because the subject does not concern the United States trustee. **The Reporter intends to return to Rule 3022 at a future meeting.**

RULE 5010

The Reporter amended his draft proposal to delete the final sentence, which is unnecessary based the earlier decision to adopt Rule 9022.

A motion to adopt the Reporter's amended draft carried unanimously.

RULE 6002

In light of the Advisory Committee's earlier action on Rule 5005, the Reporter amended the proposed draft to require a custodian to "file with the clerk and transmit to the United States trustee a report and account with respect to the property...."

A motion to adopt the Reporter's amended draft carried by unanimous vote.

RULE 6003

Upon motion, the Advisory Committee voted unanimously to delete this rule as unnecessary, the subject matter being more appropriate for internal regulation by the Department of Justice.

RULE 6004

Upon motion, the Advisory Committee voted unanimously to adopt the Reporter's draft subject to subdivision (f) being amended to provide for the report of sale to be "transmitted to" rather than "filed with" the United States trustee.

A motion to adopt the Reporter's draft carried by unanimous vote.

RULE 6007

Judge Jones raised the question of the massive quantities of paper which the United States trustee would be receiving under the rules being proposed, the discussion of which, she observed, had been deferred several times during the Advisory Committee's deliberations. She said she favored more restraint in requiring that copies be furnished to the United States trustee who has the right to request anything in a case. [See, Pub.L.No. 99-554 § 304(b).]

Tom Stanton said that many items received by a United States trustee probably would be read and discarded, but that it would be impossible to determine in advance which might be important to retain. Barbara O'Connor agreed that the paper burden would be great, but that it appeared to be both wiser and fairer to place the burden of deciding what to discard on the United States trustee rather than requiring the parties or the clerk to ascertain what the United States trustee may want in a particular case.

Richard Heltzel said that he, as a clerk, would have no objection to rules providing for certain exclusions, but that clerks would have difficulty working under any system which would permit the United States trustee to elect to receive or not receive documents on a case-by-case basis.

Herb Minkel objected to the exclusion of notices of abandonment. He said that he saw no practical way to write a rule requiring that the United States trustee receive the notice if

the asset is a hazardous waste dump but not if the asset is routine personalty of an individual debtor. Mr. Minkel added that one of the more frequently abandoned assets is a cause of action which the trustee does not pursue. Once such a claim is abandoned to the debtor, the debtor is free to go forward and to retain any funds recovered. The United States trustee, he said, is "the last line of defense" against such abuses.

Professor King said he agreed with Judge Jones philosophically but that, regarding notices of abandonment and disposition of property, Rule 2002 requires that these be sent to all creditors and other parties in interest; the United States trustee should not be only entity that does not receive the notice.

A motion to adopt the Reporter's draft carried with two (2) votes opposed.

RULE 7004

[See, discussion of proposed Rule 9014.1 for action taken concerning this rule.]

(PROPOSED) RULE 7005.1

The consensus was that the United States trustee does not need and should not receive a copy of every pleading in every adversary proceeding as prescribed in this proposed rule. Tom Stanton suggested that the rule require transmission of the complaint only, absent an affirmative request in any specific adversary for further documents.

Pursuant to previously adopted amendment to Rule 9022, however, the United States trustee will receive a copy of every

order or judgment and can monitor routine adversaries involving trustees and debtors in possession thereby.

A motion to delete this proposed rule carried by unanimous vote.

The Reporter noted that it now would be necessary to delete from Rule 1018 the reference therein to Rule 7005.1.

A motion to make this deletion in Rule 1018 carried unanimously.

RULE 7024

The Reporter withdrew his draft recommendation.

RULE 7041

A motion to adopt the Reporter's draft recommendation carried by unanimous vote.

PART VII (APPEALS)

The Reporter had recommended no changes to these rules. The Executive Office for United States Trustees, however, had requested changes to three rules, which the Reporter presented orally for consideration by the Advisory Committee.

RULE 8004

The United States trustee wants a copy of every notice of appeal in order to monitor the progress of the case.

A motion to add a sentence to the rule directing the clerk to transmit a copy of every notice of appeal to the United States trustee and provide an appropriate Committee Note carried by unanimous vote.

RULE 8016(b)

The United States trustee wants to receive notice of the entry of orders and judgments in appeals to district courts and bankruptcy appellate panels.

A motion to add the United States trustee as an entity to receive such notice carried by unanimous vote.

RULE 8017(b)

The United States trustee also requested inclusion as an entity to receive notice under this rule. The Advisory Committee determined, however, that the notice here is of the motion for stay, not the order. The Reporter said he believed the amendment to Rule 8016(b) would provide the United States trustee with the necessary information.

Upon motion, the Advisory Committee voted unanimously to leave Rule 8017(b) unchanged.

At the suggestion of Jerry Patchan, the Reporter will add a sentence to the Committee Note to Rule 8016(b) indicating that the rule applies also to an order granting or denying a stay pending appeal.

RULE 9003

Herb Minkel said he had a problem with the proposed Committee Note. He wanted either a stronger statement that the United States trustee may not engage the judge in ex parte discussions about specific cases or, alternatively, deletion of the second sentence of the proposed Note.

A motion to delete the second sentence of the Note but otherwise adopt the Reporter's draft carried unanimously.

RULE 9012

A motion to adopt the Reporter's draft carried by unanimous vote.

RULE 9013

A motion to delete the Reporter's proposed addition to this rule carried by unanimous vote.

Tom Stanton said that the United States trustee wants to receive at least the items listed in the current Rule X-1008. The Reporter observed that proposed new Rule 2002(k) lists the notices which the United States trustee is to receive and provides for more notices than does Rule X-1008. The Reporter suggested drafting a new rule in Part IX directing that the United States trustee receive copies of pleadings, etc. with respect to which the United States trustee receives notice under Rule 2002(k) and adding also an equivalent of subsection (a)(6) of Rule X-1008, pursuant to which the United States trustee can request additional materials in a case.

The Reporter will draft a separate Part IX Rule to provide the specific items the United States is to receive, which also will incorporate the "catchall" from Rule X-1008(a)(6).

RULE 9014

The Advisory Committee determined that, after the action take on Rule 9013, there was no need to amend this rule.

RULE 9014.1

The Reporter explained that this proposed rule would be applicable only when the United States trustee is serving as the case trustee, and suggested that the Advisory Committee might want to change the requirement of first class mail to "mail or delivery." Jerry Patchan suggested that, instead of creating a new rule, these provisions should form a new subsection (b)(10) in Rule 7004 (which Rule 9014 incorporates by reference). Rule 7004(b)(5) would then be amended to add "except as prescribed in subsection (10)," in order to avoid the requirements for service on the United States which otherwise would be applicable.

A motion to so amend Rule 7004 rather than propose a new rule carried by unanimous vote.

In light of the above action, Professor King suggested that the requirement of first class mail or personal service should be restored.

A motion to that effect carried unanimously.

Harry Dixon requested that the Note to Rule 5005, (which rule defines the concept of "transmittal"), be amended to say

that "delivery" includes delivery by courier, which the Reporter agreed to do.

RULE 9019

A motion to adopt the Reporter's draft carried unanimously.

RULE 9020

The Reporter observed that the United States trustee had suggested amending Rule 9020(b) to allow the United States trustee to apply for a contempt order.

The Advisory Committee voted to leave the rule unchanged.

RULE 9022

The Advisory Committee had approved the Reporter's proposal for revising this rule at the May 1988 meeting.

RULE 9027

The Advisory Committee voted unanimously to delete the Reporter's proposed amendment, leaving the rule unchanged.

Suggestions from the Subcommittee on Bankruptcy Rules of the Business Bankruptcy Committee, Section of Corporation, Banking and Business Law, American Bar Association

The suggestion to amend Rule 1005 to require the inclusion of the chapter in the caption was deferred until the Advisory Committee takes up consideration of the Official Forms.

The Reporter said he agreed with the suggestion concerning Rule 2002(a)(3), as agreements governed by Rule 4001(d) now may be subject to two conflicting notice provisions. A motion was made to adopt a draft amendment to Rule 2002(a)(3) contained in the Reporter's memorandum of April 25, 1988, but later was withdrawn without a vote **in favor of considering an amendment to Rule 2002(a)(3) in conjunction with a full discussion of Rule 4001 and the ABA's proposals concerning it.**

The Advisory Committee **determined that the suggestion concerning Rule 2007 was moot** in light of the Advisory Committee's action on the rule at the May 1988 meeting.

Concerning Rule 4001, Jerry Patchan recalled that the ABA had sent a report on this rule in 1986, too late for consideration in connection with the 1987 revisions, but which he recalled as containing valuable comments. **Peter McCabe said he would search for this material in the files of the standing Rules Committee and circulate it to the Advisory Committee in time for the next meeting. Discussion of Rule 4001 was deferred until the next meeting** when the members will have had an opportunity to review all of materials and prepare themselves on the subject.

The Advisory Committee, upon motion, voted unanimously to disapprove the ABA proposal concerning Rule 9014.

Provision for Bankruptcy Administrators

At the January 1988 meeting the Advisory Committee had asked the Reporter to study how best to provide for the six districts served by bankruptcy administrators rather than United States trustees. Initially, the best solution had seemed to be to draft a new Part X, as there are substantial differences between the statutory authority afforded United States trustees and that given to bankruptcy administrators. Professor Resnick said he had been working on the matter and now questioned whether it would be worthwhile to draft a new Part X, which would not become effective until August, 1991, to serve a program which is due to sunset 14 months later, on October 1, 1992. The consensus was that, even though the program could be extended by Congress, a **Part IX rule which would say merely that the Bankruptcy Rules** apply to the extent not inconsistent would suffice, and could be supplemented with local rules as needed.

Future Meetings

The next meeting of the Advisory Committee will be held:

September 23 - 24, 1988, in Lake Tahoe

The Advisory Committee agreed to two further meeting times:

November 4 - 5, 1988, in St. Louis

January 19 - 20, 1989, in New Orleans[4]

Respectfully submitted,

Patricia S. Channon

Patricia S. Channon

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[4] The standing Rules Committee, which met July 18, 1988, scheduled its winter meeting also for January 19-20, 1989, in San Francisco. Judge Joseph F. Weis, Jr., chairman of the standing Committee, observing the coincidence of the meeting dates, invited the Advisory Committee to move its January 1989 meeting to San Francisco. Chairman George agreed to this change and has moved the site of the November 1988 meeting to New Orleans, subject to approval by the members.