ADVISORY COMMITTEE ON BANKRUPTCY RULES

Minutes of the Meeting of September 17 - 18, 1992

Santa Fe, New Mexico

The Advisory Committee on Bankruptcy Rules met at 9:00 a.m. on September 17, 1992, in a conference room of the Hilton Hotel in Santa Fe, New Mexico. The following members were present:

Circuit Judge Edward Leavy, Chairman
Circuit Judge Edith Hollan Jones
District Judge Malcolm J. Howard
District Judge Joseph L. McGlynn, Jr.
Bankruptcy Judge James J. Barta
Bankruptcy Judge Paul Mannes
Bankruptcy Judge James W. Meyers
Harry D. Dixon, Esquire
Professor Lawrence P. King
Ralph R. Mabey, Esquire
Herbert P. Minkel, Jr., Esquire
Bernard Shapiro, Esquire
Henry J. Sommer, Esquire
Professor Alan N. Resnick, Reporter

One committee member was unable to attend: District Judge Harold L. Murphy.

The following persons also attended all or a part of the meeting:

Circuit Judge Paul J. Kelly, Jr., of the Tenth Circuit
District Judge Thomas S. Ellis, III, member, Committee on Rules of Practice and Procedure, and liaison with this Committee
Bankruptcy Judge Stewart Rose of the District of New Mexico
John E. Logan, Director, Executive Office for United States Trustees, U.S. Department of Justice
Peter G. McCabe, Assistant Director for Judges Programs, Administrative Office of the U.S. Courts
Patricia S. Channon, Attorney, Bankruptcy Division, Administrative Office of the U.S. Courts
Richard G. Heltzel, Clerk, U.S. Bankruptcy Court for the Eastern District of California
James H. Wannamaker, Attorney, Bankruptcy Division, Administrative Office of the U.S. Courts
Elizabeth C. Wiggins, Research Division, Federal Judicial Center
Paul Zingg, Office of Judges Programs, Administrative Office of the U.S. Courts
Judith W. Krivit, Rules Committee Support Office, Administrative Office of the U.S. Courts

The following summary of matters discussed at the meeting should be read in conjunction with the various memoranda and other written materials referred to, all of which are on file in the office of the Secretary to the Committee on Rules of Practice and Procedure. References to the Standing Committee are to the Committee on Rules of Practice and Procedure. References to the Bankruptcy Rules are to the Federal Rules of Bankruptcy Procedure. References to the Civil Rules are to the Federal Rules of Civil Procedure. References to the Appellate Rules are to the Federal Rules of Appellate Procedure. References to the Criminal Rules are to the Federal Rules of Criminal Procedure. References to the Evidence Rules are to the Federal Rules of Evidence.

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

Minutes

Professor King moved that the proposed minutes of the meetings of March 26, 1992, February 28, 1992, June 20 - 21, 1991, and March 15 - 16, 1990, be approved, subject to the correction of any typographical errors and subject to the revision of page 18 of the March 26, 1992, minutes to reflect the unanimous approval of Judge Jones' motion referred to in the final paragraph on that page. **The motion carried.**

Standing Committee

The Reporter stated that the Standing Committee had approved the proposed amendments submitted with the Chairman's memorandum of May 8, 1992. The only change made by the Standing Committee was to delete the reference to Civil Rule 16(b) in the Committee Note to the proposed amendment to Rule 9002. As revised, the Committee Note refers to "amendments to the Federal Rules of Civil Procedure."

The Reporter stated that it was unclear whether this Committee intended for the amendments to the Official Forms approved at the March 26, 1992, meeting to be published for comment by the bench and bar. After discussions with the Chairman and several members of the Committee, the Reporter had proposed splitting the amendments into two packages: a package of technical amendments which would not be published and a package of substantive amendments which would be published for comment. Some committee members expressed an interest in reconsidering some of the substantive changes.

The Standing Committee approved the package of technical amendments and submitted them for consideration by the Judicial

Conference at its meeting in September, 1992. The Reporter said he had been informed that publication of the substantive amendments would be difficult until after the Administrative Office move scheduled for October 2 - 5, 1992. As a result of the concerns expressed about some of the substantive changes and the delay in publication, those amendments have been placed on the agenda for reconsideration at this meeting.

The Reporter stated that Judge George C. Pratt is the chair of a new subcommittee of the Standing Committee. The new subcommittee is called the Subcommittee on Substantive and Numerical Integration of the Federal Rules.

During this Committee's discussion of a proposed amendment to Appellate Rule 4(a)(4) at its last meeting, it had been suggested that a similar change be made to Appellate Rule 6(a)(2)(i), which governs bankruptcy appeals from the district court or the bankruptcy appellate panel. The Reporter stated that the Advisory Committee on Appellate Rules accepted the suggestion and the Standing Committee approved the proposed amendment.

The Reporter indicated that the proposed amendment to Civil Rule 83(b) had been revised after publication to include experimental local rules inconsistent with the Bankruptcy Rules as well as ones inconsistent with the Civil Rules. Experimental local district rules would require the approval of the Judicial Conference. Mr. Shapiro asked how the experimental rules would be considered. The Reporter stated that he anticipated that the request would go from the district court to the Standing Committee, which would refer it to this Committee for its recommendation. Judge Ellis stated that the proposal comes from the Biden Bill. The approval process, he stated, has been designed to prevent misusing experimental local rules to create local fiefdoms.

Judge Mannes asked Judge Ellis about the Standing Committee's recommendation that the Chief Justice reactivate the Advisory Committee on the Federal Rules of Evidence with some overlapping membership with the advisory committees on civil and criminal procedure. Judge Ellis stated that the Standing Committee voted for a systematic revision of the evidence rules by a separate committee which has liaison members from the advisory committees. He indicated that the lack of a reference to this Committee was an oversight. Mr. McCabe stated that the Standing Committee's recommendation is on the Judicial Conference's discussion calendar.

The Reporter recalled that this Committee had proposed amendments to Rules 8018 and 9029 in response to a request by the Standing Committee that each of the advisory committees propose amendments to provide for uniform numbering systems for local

rules and to prohibit local rules which merely repeat national rules. According to the Reporter, the Standing Committee has received the proposed amendments and has asked that the reporters for the four advisory committees attempt to develop uniform language before the Standing Committee's December meeting.

Style Committee

Judge Barta reported that the Style Subcommittee of this Committee met on March 27, 1992, to consider, on behalf of the Committee, suggested changes in the proposed amendments to the Bankruptcy Rules published in August, 1991. The changes were suggested by the Style Subcommittee of the Standing Committee. Judge Barta's subcommittee reviewed the changes line by line, agreed to several, and suggested that the others appeared to be substantive. The subcommittee also reviewed and responded to a second set of suggested stylistic changes.

Judge Barta stated that most of these changes also were substantive. The Reporter stated that Standing Committee accepted the recommendations of Judge Barta's subcommittee. Judge Barta thanked the Style Subcommittee for its thought-provoking suggestions and Professor King, Professor Resnick, Mr. Minkel, Ms. Channon, and Joseph F. Spaniol for their work in reviewing the suggested changes.

Filing Secured Claims

The Reporter recalled the Committee's consideration of proposed amendments to Rule 3002 at several recent meetings, beginning with the amendments proposed by the Chapter 13 Subcommittee. The Committee voted at its March, 1992, meeting to withdraw the proposed amendments to Rules 3002(a) and 3002(c) for further study. The Reporter reviewed his memoranda dated August 25, 1992, and June 10, 1991, in which he discussed whether the present rule, which does not require secured claims to be filed, is inconsistent with sections 501, 502, and 506(d) of the Code. Although the Reporter concluded that such a requirement would not be inconsistent with the Code, requiring secured claims to be filed could cause other problems. The imposition of a filing requirement and a bar date could result in a windfall for the debtor, who can redeem under section 722 for the allowed amount of the claim. (If a bar date were prescribed and no proof of claim were filed, the claim could not be allowed in any amount.) Furthermore, the Reporter stated that section 726 of the Code, unlike Rule 3002, does not equate the timeliness of a claim with its allowance.

The chairman asked why a secured creditor should not be deemed to have filed a claim for the amount of the scheduled

debt. The Reporter responded that, although the Code deems scheduled claims to be filed in chapter 11 cases, there are doubts about whether it would be consistent with the Code, especially section 502, to extend the concept to chapter 12 or chapter 13 cases. Judge Mannes and Mr. Sommer stated that, based on Rule 3021, most chapter 13 trustees only pay those creditors who have filed claims. Deeming secured claims to be filed would give secured creditors more of an incentive to come into the case. Mr. Minkel stated that forcing a creditor to file a proof of claim would also force the creditor to subject itself to the court's jurisdiction under the Granfinanciera decision.

Professor King suggested amending Rule 3021 rather than Rule 3002. He stated that the problem with Rule 3002 really is the use of the word "allowed" in sections 506(b) and 722, and that changing Rule 3002 could lead some courts to rule that the lien of a non-filing secured creditor would not ride through the bankruptcy case, despite the provisions of section 506(d). Mr. Mabey and the Reporter stated that the addition of section 506(d) to the Code in 1984 should make it clear that the lien survives.

The Reporter suggested that the Committee had three alternatives (1) doing nothing, (2) amending Rule 3021 to permit the trustee to make distributions to secured creditors who don't file claims or amending Rule 3004 to delete the bar date for the trustee or debtor to file a claim on behalf of a secured creditor, or (3) amending Rule 3002 to delete the word "unsecured" and make it consistent with the Code and the case law. Mr. Mabey stated that there are two problems: (1) the practical problem that chapter 13 trustees can not pay secured creditors who do not file and (2) the legal problem that the present Rule 3002 does not appear to be consistent with the Code.

Professor King moved not to make any amendment to Rules 3002 and 3004 and to direct the Reporter to consider a change to Rule 3021 to take care of distributions to secured creditors in chapter 13 if that can be done consistent with the Code. Mr. Shapiro seconded the motion. Mr. Dixon said the problems with amending Rule 3002 arise when the change is applied to cases under chapters 7 and 11. He suggested amending the rule, but limiting it to chapter 13 cases. Mr. Mabey stated that amending Rule 3021 to solve the problem with chapter 13 distributions would conceptually offend the Code in the minds of judges who believe that the Code requires secured claims to be filed in order to be allowed. Judge Mannes stated that removing the bar date from Rule 3004 could cause a problem if a secured claim is filed close to the end of payments under a chapter 13 plan.

The motion carried with four dissenting votes.

Excusable Neglect

When the proposed amendment to Rule 3002(c)(6) was withdrawn at the Committee's meeting in March, 1992, the Reporter was directed to study the matter further. The Reporter stated that the amendment, which would authorize the court to extend the filing period for a chapter 13 creditor who has not filed a timely claim due to excusable neglect, was not needed in light of the provisions of section 726(a)(2), (a)(3), and, possibly, (a)(4) and (a)(5). He indicated that both the proposed rule and present rule 3002(c)(6) conflicted with a creditor's right to file a tardy claim under certain circumstances by giving the court discretion to approve the late filing.

As a point of order, Judge Howard questioned why the Committee was continuing to discuss Rule 3002 when Professor King's motion, which passed, provided that the Committee would not amend Rule 3002. The Chair stated that the motion was proposed and passed in the context of the discussion of subsection 3002(a). Professor King moved that Rule 3002 not be changed. Judge Howard stated that the motion was out of order and unnecessary in light of the identical, earlier motion. Professor King withdrew the motion.

Citing the conflict described by the Reporter between Rule 3002(c) and section 726, Mr. Mabey dissented from concluding the discussion. The Reporter stated that the mischief with the rule is the misconception that once the bar date has passed, unsecured creditors can not file claims in chapter 7 and chapter 13 cases. There being no motion, the Chair moved to the next agenda item.

Bankruptcy Notices

In continuing the discussion of adequate notice which he began at the March meeting, Mr. Sommer stated that many chapter 13 debtors are effectively pro se after confirmation of their plans. He added that an even larger group of creditors are pro se. These pro se parties may lose valuable property rights because they do not have adequate information and do not understand what is happening in a case.

Mr. Sommer stated that he is preparing a list of matters which are particularly important to pro se debtors and creditors, including motions to dismiss or convert a case, objections to claims, relief from stay motions, motions to modify a chapter 13 plan, motions for a chapter 13 hardship discharge, and dischargeability complaints. He described the "plain language" notices used in some state courts and indicated that the new bankruptcy notices could be either generic notice of the need to respond or refer to the specific type of relief sought. Notices

that are easier to understand also would reduce the number of calls to the clerk's office.

Mr. Heltzel stated that the present notices contain the bare minimum of information. More informative notices would be a major improvement, he stated, but many of the additional statements would require multiple pages, creating practical difficulties with mailing. The new Notice Print Center would go a long way to resolving the problem. Judge Meyers suggested that the Committee consider reviewing the Director's Forms with an eye to the adequacy of the notices.

Judge Jones stated that the content of many forms of notice should be prescribed by local rules. Judge Meyers stated that it would be much easier to revise the Director's Forms, or create new ones, than it would be for each district to review its local rules. Mr. Shapiro stated that new national forms might be useful for objections to discharge and similar situations. Professor King indicated that Rule 9013 might need to be strengthened. **The Chair asked Mr. Sommer to make a list of situations in which more adequate notice could be provided by rule or form.** He agreed to do so with the Reporter's assistance.

Rule 4004(c)

The Reporter stated that it has been suggested that Rule 4004(c) be amended to delay granting the discharge if the debtor fails to appear at the meeting of creditors or has not paid the filing fee in full. Professor King stated that there is an existing remedy built into the rules -- extending the time for objecting to the discharge -- but that this puts the onus on the trustee or some other party to move for an extension. Judge Barta stated that he hears a docket of discharge motions each month for debtors who have failed to appear for their meetings of creditors on two separate occasions.

Judge Jones stated that the question should be deferred until the Committee has a memo to consider. Mr. Shapiro moved to defer the matter for the time being and to ask the Reporter to prepare a memo for a future meeting. **The motion carried unanimously.**

Rule 8002

The Reporter discussed the proposed changes in Appellate Rules 4(a)(4) and 6(b)(2)(i) which would provide that a notice of appeal filed before the disposition of a motion for a new trial or rehearing will be held in abeyance pending disposition of the motion. This will avoid the necessity of having to file a second notice of appeal, which the Committee Note to the proposed

amendment to Rule 4(a)(4) describes as a "trap for unsuspecting litigants." The Reporter recommended that a similar amendment be made to Bankruptcy Rule 8002(b).

The Reporter stated that this Committee generally does not consider amendments to conform the Bankruptcy Rules to changes in other bodies of federal rules until those changes have been adopted by the Supreme Court. This amendment merits expedited consideration, however, because the changes to the Appellate Rules are almost certain to be approved and the resulting difference between the two sets of rules would create a procedural trap.

Professor King noted that the proposed amendments to the Appellate Rules would be effective in December, 1993, and that, with publication, the earliest the amendment to Rule 8002(b) could be effective is August, 1994. He stated that the Committee had time to reverse itself if the appellate amendments are not adopted.

Professor King moved the adoption of the Reporter's proposed amendment to conform Rule 8002 to the amendments to Appellate Rules 4(a)(4) and 6(b)(2)(i). Professor Resnick distributed copies of a memorandum by Judge Robert E. Keeton, the chair of the Standing Committee, suggesting that the revision of Rule 8002 more closely track the drafting style of Rule 4. The Reporter suggested that this be left to the Style Subcommittee. Judge Mannes criticized the last two sentences of the proposed amendment to Rule 8002. The Reporter stated that they tracked the language of the proposed amendment to Rule 4(a)(4).

Mr. Sommer asked why the proposed amendment to Rule 8002 did not include the proposed amendment to Rule 4(a)(2). The Reporter stated that the amendment to Rule 4(a)(2) tracks the existing language of Rule 8002(a). Mr. Sommer asked why the proposed amendment to Rule 8002 did not include a provision for a motion for attorney's fees under Civil Rule 54. The Reporter stated that Bankruptcy Rule 7054 did not incorporate that provision of Civil Rule 54. Mr. Sommer stated that the provision for attorney's fees should be incorporated in the Bankruptcy Rules.

Judge Jones stated that the amendment to Rule 8002 should more closely track Rule 4(a)(4) to avoid differences between the two rules and confusion. Judge Jones seconded Professor King's motion and proposed an amendment to the motion to provide that the proposed amendment to Rule 8002(b) be conformed to Rule 4(a)(4). **The amended motion carried unanimously.** The Reporter stated that he would prepare a revised draft, submit it to the Style Subcommittee for review, and then transmit it to the Standing Committee. The Reporter indicated that his new draft would follow Rule 4 as much as possible and the reasons for any

differences would be set out in the Committee Note. The Committee agreed by consensus.

The Reporter recommended asking the Standing Committee at its December meeting to approve the proposed amendment to Rule 8002 for expedited publication. If the request is granted, this Committee could consider the comments by mail or at a meeting in the spring. There was no objection to the recommendation.

Local Rules Subcommittee

Mr. Shapiro reported on the meeting of the Local Rules Subcommittee held on September 16, 1992. He discussed Judge Keeton's letter on the uniform numbering of local rules and predicted that there will be increasing pressure to adopt uniform numbering. Mr. Shapiro mentioned several numbering systems, including ones where the bankruptcy local rules are numbered to correspond with the local district rules or to correspond to the national Bankruptcy Rules. He stated that the Bankruptcy Division had reviewed all of the local bankruptcy rules in the country and produced an alphabetical index of the topics of those rules.

Mr. Shapiro distributed copies of a proposed uniform national numbering system for local district rules which was based on the Civil Rules. He stated that the Bankruptcy Division had agreed to prepare a similar numbering system based on the Bankruptcy Rules for use with local bankruptcy rules. Mr. Shapiro stated that the courts could continue to use local numbers as long as uniform national numbers and an index also are available. Judge Leavy predicted that if someone in Washington reviewed all of the local bankruptcy rules, assigned them to uniform national numbers, and published an index of those rules and numbers, within five years, most of the citations and references by counsel would be to those uniform numbers.

Technology Subcommittee

Presenting the report from the Subcommittee on Technology, Judge Barta stated that several questions have arisen recently about facsimile filing. He stated that the proposed amendment to Rule 5005, which is scheduled to take effect on August 1, 1993, is not intended to require the clerk to accept facsimile filings and that the Committee Note states so.

Mr. McCabe stated that the Court Administration Committee is scheduled to consider guidelines on facsimile filing at its December meeting. The guidelines, which cover technical matters such as the quality of paper and types of machines to be used, will supersede the existing guidelines adopted by the Judicial

Conference. Judge Barta stated that facsimile filing would not work well in the bankruptcy courts due to the nature of bankruptcy filings. Mr. Minkel stated that facsimile filing would be a boon for attorneys whose offices are a long way from the bankruptcy court as well as in isolated areas of the country. Mr. Heltzel stated that facsimile filing is an interim step to fully electronic filing. Judge Barta indicated that he believed that there is no need at this time to make a further change in Rule 5005 for the purpose of encouraging facsimile filing.

Judge Barta stated that the subcommittee had attempted to draft an universal agreement form and protocol for use with creditor applications to receive notices electronically. Because it proved to be difficult to devise a form which could be used by any creditor in any district, the subcommittee proposed, as an alternative, to draft guidelines for testing in several pilot districts prior to August 1, 1993, the effective date of new Rule 9036. Judge Barta asked if there were any opposition to the proposed pilot program. None was expressed. The Chair asked whether there was opposition to the new rule among the clerks. Mr. Heltzel stated that there was some opposition in courts where the automation equipment is limited. He predicted that the new form of noticing would save money for both the courts and the creditors who receive notices electronically.

Judge Barta discussed the use of bar coding in processing proofs of claim and the possibility of scanning claims and supporting documents when they are filed. In the future, when the court receives filings by electronic transfer from the attorneys, he indicated that there may not be a need for the clerk to keep paper copies of the filings as well as the electronic documents.

The subcommittee recommended that the chair of the subcommittee be directed to confer with the Reporter to consider drafting a new rule or amendment that would (1) authorize clerks to accept documents filed by electronic means, (2) allow clerks to destroy pieces of paper after the papers are imaged and made part of the clerk's database, and (3) suggest that digitalized information stored in the computer carry the same legal effect as a piece of paper filed and stored somewhere. Judge Barta stated that Rule 3001(f), which deals with the evidentiary effect of an executed and filed proof of claim, is a precedent for the proposed rule. Judge Barta moved that the chair of the Technology Subcommittee meet with the Reporter with a view toward drafting a new rule to be considered by the full committee to authorize filing by electronic means, to allow the clerk to destroy a piece of paper if the image is stored electronically, and to make the electronically stored record the official record. Judge Mannes seconded the motion, which carried unanimously.

The Chair stated that he feels strongly that the Committee ought to pursue the matter. He described a demonstration in which a piece of paper was imaged as quickly as you could check out a can of beans at the grocery store. The Chair stated that until the courts make the electronic record the official record the courts just will be spinning their wheels. At 3 p.m., the meeting was adjourned until 8:30 a.m. Friday.

United States Trustee Report

Mr. Logan discussed the United States Trustee Program's efforts to assume responsibility for reviewing case trustees' final reports and accounts, and proposed distributions in chapter 7 cases, as set out in the amendment to Rule 5009 and the Memorandum of Understanding.

He stated that United States trustees are devoting greater scrutiny to chapter 7 cases because of their wariness about a number of things. These concerns include the pendency of 34,000 chapter 7 cases filed in 1988 or before, the significant group of trustees who don't move their cases and file periodic reports in a timely fashion, and the trustees who can not account for all of their estate funds. Mr. Logan stated that 32 such potential embezzlements are being investigated.

According to Mr. Logan, the United States trustees have instituted a program to evaluate panel trustees annually in order to determine whether they should continue receiving cases. Mr. Logan stated that the new program, which includes enumerating the standards for the evaluations, has caused a significant amount of tension with the trustees. As part of the program, legislation was introduced in July to permit the United States trustee to remove trustees.

Official Forms

Ms. Channon stated that when the Reporter was preparing the package of amendments to the Official Forms approved at the March meeting for submission to the Standing Committee, he realized that this Committee had specified that publication for comment was unnecessary with respect only to one of the forms to be amended. He had consulted with several committee members by telephone and, with Ms. Channon's assistance, prepared one set of technical amendments, which he submitted to the Standing Committee for consideration without publication. He brought the rest of the amendments back to this Committee for further consideration, including whether they should be published. Ms. Channon presented the proposed amendments for reconsideration.

Table of Contents. There is a mismatch between the Table of Contents and actual titles of the forms which comprise Official Form 9. Ms. Channon recommended substituting the phrase "Commencement of Case" for the word "Filing" in the Table of Contents and the cover sheet for Official Form 9.

Form 1. Ms. Channon proposed adopting a request from a bankruptcy judge that debtors not represented by counsel be required to disclose their telephone numbers on the voluntary petition, Official Form No. 1. The reporter opposed making the change, saying that it could prompt harassing calls to debtors, especially those embroiled in domestic relations disputes.

Judge Mannes stated that the phone number would be especially useful when a debtor makes a groundless filing on the eve of foreclosure. The secured creditor could seek ex parte relief from the stay but would have to give telephonic notice, which it could not do without the phone number. Mr. Sommer suggested that the clerk maintain a confidential list of phone numbers. Mr. Heltzel indicated that this would be burdensome and stated that court papers are public records absent a court order.

Judge Howard moved to adopt the proposed amendment. Judge Barta moved to amend the motion. He proposed substituting the phrase "Telephone Number at which Debtor Can Be Reached if not Represented by Attorney" for the proposed amendment. **Judge Barta's amendment failed by a vote of 4-6. The main motion carried with three dissenting votes.**

Schedule E. Ms. Channon stated that the Crime Control Act of 1990, Pub. L. No. 101-647, had added an eighth priority to section 507 of the Code. She recommended adding the following language to Schedule E:

> [ ] Commitments to Maintain the Capitol of an Insured Depository Institution
>
> Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Treasury, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(8).

The Reporter stated that a member of the Standing Committee had suggested spelling out the names of the FDIC and RTC. Mr. Shapiro and Ms. Channon stated that the two institutions are well known by their initials. Judge Mannes moved to adopt the

proposed amendment with the initials. **The motion carried with one dissenting vote.**

Form 7. Ms. Channon stated that some attorneys are not sure whether all debtors must answer all questions in Form 7 or just debtors that are or have been in business. She recommended either transposing the sentences in the second paragraph as indicated or striking the second sentence. Judge Mannes moved to strike the sentence "Each question must be answered." and to leave the rest of the second paragraph as it is. **The motion carried by a vote of 8-0.**

In January, 1990, the Committee approved a change in question 4.a to include administrative proceedings. Ms. Channon stated that the amendment was held in abeyance for submission to the Standing Committee as part of a package of changes in the Official Forms. Several committee members indicated that the question is so broad that it may cover parole revocations, drivers license suspensions, food stamp applications, and the like. Ms. Channon stated that the question was intended to cover equal employment opportunity (EEO) proceedings and similar administrative proceedings which may have a significant impact on the estate. Mr. Minkel indicated that the amended question would impose a considerable additional burden on business debtors, who may have numerous pending EEO claims. Judge Jones moved to approve the proposed amendment as it was presented. It was suggested that the column heading "Court and Location" be amended to read "Court or Agency and Location." Judge Jones agreed to the amendment. **The amended motion carried with two dissenting votes.**

The Reporter proposed revising the proposed Committee Note by deleting the words "sentences have been transposed" and substituting the phrase "the third sentence has been deleted". Mr. Mabey moved the adoption of the Reporter's revision of the Committee Note. **The motion carried with one dissenting vote.**

Alternative Forms 9E and 9F. Ms. Channon presented the proposed alternative versions of Official Forms 9E and 9F, which were designed for use in the courts which routinely set bar dates for filing claims in chapter 11 cases. She indicated that the space provided for the inclusion of the last day to file claims also could be used to state that the court will set a deadline later. Mr. Sommer and Judge Barta indicated that, rather than simply "Filing Claims", the space should be labeled "Deadline for Filing Claims". Ms. Channon stated that the purpose of the space could be explained in the Committee Note. Judge Howard moved to accept the form as presented. **The motion carried with two dissenting votes.**

On a motion by Judge McGlynn, the committee unanimously approved rewriting the proposed Committee Note so that the final two sentences will read as follows:

> When a creditor receives this alternate form in a case, the box labeled "Filing Claims" will contain information about the bar date as follows "Deadline for Filing a Claim: _____ (Date)". If no deadline is set in a particular case, either the court will use Form 9E or Form 9F, as appropriate, or the alternate form will be used with the following sentence appearing in the box labeled "Filing Claims": "When the court sets a deadline for filing claims, creditors will be notified."

Ms. Channon presented a revised cover sheet for Form 9 which included the conforming change in the title referring to "Commencement of Case" and the inclusion of the two new alternative forms. Mr. Shapiro moved to adopt the revised cover sheet. **The motion carried unanimously.**

Form 10. Ms. Channon presented several proposed changes in Form 10. She proposed revising the final line of the section on priority claims to read as follows: "[ ] Other - 11 U.S.C. § 507(a)(2),(a)(5),(a)(8) (Circle applicable §)". In order to avoid revising the form every time Congress adds a priority, Mr. Sommer suggested substituting "[ ] Other - Specify section number". Ms. Channon stated that this might encourage creditors to claim priority status even though there is no basis for it in the law. Professor King suggested the phrase "[ ] Other - Specify applicable paragraph of section 507(a) _____".

The second proposed change requests the creditor to state "Chapter of Bankruptcy Code under which Case is Proceeding: Chapter _____". Ms. Channon stated that the information would speed claims processing in clerks' offices which are organized by chapter, unless the court already incorporates the chapter in the case number. Mr. Mabey indicated that it seems unreasonable to require a creditor to tell the clerk under what chapter the case is pending. Several committee members suggested that, if the chapter number is important to the court, the court should include it in the case number. Ms. Channon stated that the use of bar codes for proofs of claim may make the necessity for the information obsolete in a short time. Professor King moved to make no change. Judge Meyers suggested that the Committee Note state that a court could require the information at its option. **The motion carried on a vote of 6-1.**

Ms. Channon presented several changes in questions 4 and 5 intended to make it clear that creditors are to include only the prepetition amounts of their claims. She recommended inserting the phrase "at time case filed" at two points and striking the

word "prepetition" in question 5. Judge Mannes moved the adoption of all of the proposed changes in Form 10, including Professor King's suggested language for other priorities under § 507(a), except for requiring creditors to specify the chapter under which the case is proceeding. Professor King suggested correcting the spelling of "acknowledgement" in question 8. The Reporter indicated that this could be done by the Style Subcommittee. **The motion carried unanimously.**

The Reporter proposed the following revised Committee Note:

> This form has been amended to include the priority afforded in § 507(a)(8) of the Code that was added by Pub. L. No. 101-647 (the Crime Control Act of 1990) and to avoid the necessity for further amendments in the event that other priorities are added to § 507 in the future. In addition, sections 4 and 5 of the form have been amended to clarify that only prepetition arrearages and charges are to be included in the amount of the claim.

Judge Howard moved to approve the revised Committee Note. **The motion carried with one dissenting vote.**

Form 14. Ms. Channon proposed adding the phrase ", which classifies this claim or interest under class _____" to the last two sentences on the form. Mr. Shapiro suggested changing "under" to "in" and Ms. Channon agreed. He asked if the plan proponent would complete this blank. Ms. Channon stated that she hoped the proponent would do so. Mr. Mabey moved to adopt the proposed changes, including the use of the word "in".

The Reporter indicated that the proposed revision implies that the creditor is to complete the blank, which could be difficult and burdensome for creditors not represented by counsel. Because it is an Official Form, he stated, many attorneys may send out the form without completing the blank. The Reporter asked what would be the effect of a creditor's misclassifying its claim. Professor King stated that the classification is only a matter of information and would not affect the validity of the vote. **The motion to adopt failed by a vote of 3-7.**

Judge Jones suggested putting the burden on the proponents to propose special ballot forms in those cases which have competing plans. She moved to delete the reference to competing plans. Professor King stated that the provision had been in the form for a long time. He opposed deleting it on the spur of the moment without having a memorandum prepared by the Reporter. The Reporter recommended retaining the provision for creditors to express their preference between competing plans in light of Code

§ 1129(c). Judge Jones withdrew her motion. **The chair asked the Reporter to look into the matter.**

Form 4. The Reporter stated that recent amendments to 11 U.S.C. § 101 required revision of the reference to the definition of "insider" in Official Form 4. He recommended striking "§ 101(30)" and substituting "§ 101" to avoid the need for revising the form every time § 101 is amended. Professor King moved to make the change. **The motion was approved unanimously.**

Publication. Judge Howard moved that none of the amendments to the Official Forms be published for comment by the bench and bar. **The motion carried on a vote of 8-3.**

Miscellaneous Letters

Responding to the letter of February 14, 1992, from the American Express Company, Judge Jones suggested that the Committee consider in the future requiring debtors to disclose their account numbers. Mr. Sommer stated that schedules already include the account number. Ms. Channon indicated that the request for the number to be included in the § 341 notice but not be including in the mailing label or exposed to public view may be impracticable. Ms. Channon suggested that the matter be referred to the Technology Subcommittee for followup. **The Chair did so.**

Bankruptcy Judge Geraldine Mund wrote to the Committee concerning the time and methodology by which a party must request a jury trial in a proceeding removed to the bankruptcy court. In response, Judge Howard inquired whether the Supreme Court is likely to revisit the issue of jury trials in the bankruptcy courts. Professor King stated that the Court had declined to hear two bankruptcy jury trial cases. The Reporter indicated that the Committee should defer considering the matter until the Supreme Court provides more guidance on whether jury trials can be held in the bankruptcy court. Professor King stated that the Committee Note to the abrogation of Rule 9015 expressed the same policy.

Joseph Spaniol, secretary of the Standing Committee, informed this Committee that Rule 2005 continues to make a distinction between arrest in a nearby district and arrest in a distant district although the distinction has been removed from Criminal Rule 40. Mr. Spaniol suggested that this Committee consider whether Rule 2005 should be amended. The Reporter indicated that the current bankruptcy rule need not be amended because it is working fine and because the former criminal rule embodied a different concept. It was moved to thank Mr. Spaniol

for the letter but to make no change in the rule. The motion carried unanimously.

Tributes

The Chair recognized the following members of the Committee whose terms expire this year and thanked them for their service:

Judge Jones
Judge Howard
Professor King
Mr. Shapiro
Mr. Dixon

Judge Ellis complimented the Committee for what he described as the unique rigor with which it approaches the issues which it considers and the good work it does.

Date and Place of Next Meeting

The Chair suggested that the next meeting be held at Point Clear, Alabama, or some other place in the Southeast on February 18 - 19, 1993. The Summer meeting would be held in Jackson Hole, Wyoming, in September, 1993. There was no objection.

There being no further business, the meeting was adjourned at 10:44 a.m. on September 18, 1992.

Respectfully submitted,

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Attorney
Division of Bankruptcy