ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of September 17 -18, 1992

Hotel Hilton at Santa Fe
Santa Fe, New Mexico

Agenda

Introductory Items.

1. Approval of Minutes of Meetings of 3/26/92, 2/28/92, 6/20-21/91, and 3/15-16/90. [Materials attached.]

2. Report on June 1992 meeting of Committee on Rules of Practice and Procedure.

Rules.

3. Reconsideration of suggestions for amending Rule 3002 regarding the filing of secured claims and the timeliness of claims. [Materials to be sent later.]

4. Discussion of Henry Sommer's suggestion to improve the notice provisions in the rules.

5. Suggestion to amend Rule 4004(c) to delay the granting of a discharge if: 1) the debtor has failed to comply with the requirement of § 343 of the Code, or 2) the debtor has not completed payment of all installments of the filing fee.

6. Proposal to amend Rule 8002 to conform to proposed changes in Rule 4 and Rule 6 of the Federal Rules of Appellate Procedure. [Materials to be circulated later.]

7. Miscellaneous letters received from bench and bar: [Materials attached.]

   a. Letter of Bankruptcy Judge Donal D. Sullivan concerning case management in chapter 11 cases.;
   b. Letter of Bankruptcy Clerk Bradford L. Bolton concerning time periods;
   c. Letter of Bankruptcy Judge Arthur J. Spector concerning the time for filing a notice of appeal;
   d. Letter of Joseph E. Spaniol, Jr. concerning Rule 2005;
   e. Letter of James W. Pharo of American Express concerning amendments to noticing rules;
   f. Letter of Bankruptcy Judge William V. Altenberger concerning noticing requirements in connection with the dismissal of an involuntary petition;

g. Letter of Bankruptcy Judge Geraldine Mund concerning rules for jury trials;
h. Letter of Elizabeth S. Peterson concerning appointment of a trustee to the Advisory Committee.

Subcommittee Reports.

8. Report of Subcommittee on Local Rules. J. Heavy: wants to/Czar to collect all 96 sets of rules w/ cross references to a standard uniform number.

9. Report of Subcommittee on Technology. ⓐ Comm note may be inconsistent w/ Rule. Rule 5005 ⓑ Can adopt an electronic transmission Rule/or

Forms.

10. Reconsideration of proposed amendments to the following Official Forms: Table of Contents, Form 1, Form 6E (Schedule E), Form 7, Form 9 Title Page, Form 9E(Alt.), Form 9F(Alt.), Form 10, and Form 14. [Materials attached.]

Administration.

11. Date and Place for Next Meeting.
Feb. 18,19 Alabama

Sept Jackson Hole

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DRAFT

Agenda Item 1.
Sept. 17-18, 1992

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Minutes of the Meeting of March 15 - 16, 1990

Orlando, Florida

The Advisory Committee on Bankruptcy Rules met at 9 a.m. in the Delta Court of Flags Hotel in Orlando, Florida. The following members were present:

District Judge Lloyd D. George, Chairman
Circuit Judge Edith Hollan Jones
Circuit Judge Edward Leavy
District Judge Joseph L. McGlynn, Jr.
Bankruptcy Judge James J. Barta
Bankruptcy Judge Paul Mannes
Bankruptcy Judge James W. Meyers
Ralph R. Mabey, Esquire
Bernard Shapiro, Esquire
Professor Lawrence P. King
Professor Alan N. Resnick, Reporter

The following additional persons also attended the meeting:

W. Reece Bader, Esquire, Member of the Committee on Rules of Practice and Procedure and liaison with this Committee
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

Carl R. Stewart, Clerk, U.S. Bankruptcy Court for the Middle District of Florida, attended a portion of the meeting. John E. Logan, Acting Director and Counsel, Executive Office for United States Trustees, U.S. Department of Justice, attended the second day of the meeting.

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 pages and lines are to the Preliminary Draft of Proposed Amendments to the Bankruptcy Rules. The Preliminary Draft was circulated for public comment by the Committee on Rules of Practice and Procedure in August, 1989.

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

Introductory Matters

The Chairman indicated that Committee members Judge Malcolm J. Howard, Joseph G. Patchan, Harry D. Dixon, and Herbert P. Minkel, Jr., were unable to attend the meeting due to schedule conflicts.

Proposed Amendments to the Bankruptcy Rules

The first order of business was the consideration of additional comments on and suggested changes in the proposed amendments to the Bankruptcy Rules. The Committee considered comments and suggested changes submitted by the following:

American Bankruptcy Institute;
American Bar Association, Business Bankruptcy Committee, Rules Subcommittee, Michael L. Temin, Chairman;
Commercial Law League of America;
National Bankruptcy Conference;
National Conference of Bankruptcy Clerks;
United States Department of Justice;
Internal Revenue Service;
Clerks of the United States Bankruptcy Courts in the Seventh Circuit;
Local Rules Advisory Committee of the District of South Carolina;
Chief Bankruptcy Judge Henry L. Hess;
Chief Bankruptcy Judge Robert J. Kressel;
Chief Bankruptcy Judge Michael J. Melloy;
Chief Bankruptcy Judge R.F. Wheless, Jr.;
Bankruptcy Judge Jeremiah E. Berk;
Bankruptcy Judge Judith Klaswick Fitzgerald;
Hon. Clarine Nardi Riddle, Attorney General, State of Connecticut;
Professor Frank R. Kennedy;
Mr. Robert A. Greenfield, Esquire;
Ms. Margaret Sheneman, Esquire; and
Mr. J. Maxwell Tucker, Esquire.

Abstention

The National Bankruptcy Conference suggested that new procedures for abstention from cases pursuant to 11 U.S.C. § 305 be added to the Rules. The Reporter stated that the proposal would require publication for public comment because it does not relate to any of the changes proposed by the Committee in the published Preliminary Draft. After noting the value of consistency in matters, such as abstention, where there is no right of appeal, Mr. Shapiro moved that the suggested procedures be rejected and revisited at a future meeting. The motion to reject and revisit passed on a unanimous vote.

Rule 1001

The Commercial Law League suggested retaining the existing short title, the "Bankruptcy Rules," for simplicity. The short title was changed to the "Federal Rules of Bankruptcy Procedure" in the proposed amendments to conform to the citation form for the Federal Rules of Civil Procedure, Federal Rules of Appellate Procedure, and Federal Rules of Criminal Procedure. It was moved and seconded to reject the suggestion to retain the existing short title. **The motion to reject passed on a unanimous vote.**

Rule 1002

The National Bankruptcy Conference stated that subdivision (a) should require separate petitions for each debtor, except for joint petitions. Many attorneys try to file for individuals and corporations or partnerships in the same petition. The Reporter indicated that the change is unnecessary. Judge Mannes moved to leave the rule as it is. **The motion passed unanimously.**

The National Bankruptcy Conference suggested adding "Unless the United States trustee otherwise requests," at the beginning of the sentence that begins on page 1, line 3 of the Preliminary Draft. The Reporter stated that the United States trustee should get a copy of every petition. Judge Meyers and Mr. Heltzel indicated that the United States trustees in their districts had requested that they not be sent copies of chapter 13 petitions. The Chairman stated that, if the United States trustee does not want copies of chapter 13 petitions, sending the copies is a waste of paper and extra work for the United States trustee's office in sorting and discarding the copies. Professor King moved to reject the suggested change. **The motion failed on a vote of 6-3.** Judge Leavy moved to adopt the suggestion. **The motion passed on a vote of 6-3.**

The National Bankruptcy Conference also suggested that "the clerk shall forthwith transmit" be changed to "the clerk or some other person as designated by the court shall forthwith transmit". The Reporter stated that the clerk, rather than the parties, should transmit petitions and other important documents to the United States trustee for the purpose of reliability. He indicated that the Acting Director of the Executive Office had agreed that the clerk should transmit important documents to the United States trustee. It was moved and seconded to leave the rule as it is. **The motion carried unanimously.**

Rule 1005

The Seventh Circuit bankruptcy clerks suggested that the words "the docket number" on page 3, line 3, be changed to a "place for the docket number to be assigned by the clerk". Mr.

Heltzel noted that the debtor can not include the docket number in the caption until the clerk has assigned the number, which occurs after the debtor has filed the petition. He indicated that this has not caused a problem in the past. Professor King moved to reject the suggested change. **The motion to reject carried unanimously.**

Rule 1007

The National Conference of Bankruptcy Clerks suggested adding "Unless the United States trustee otherwise requests," at the beginning of the sentence which begins on page 10, line 133 of the Preliminary Draft. The Reporter recommended rejection but indicated that might not be consistent with the Committee's addition of the same language to Rule 1002(b). Judge Mannes inquired how the clerk's office separates papers which are to be transmitted to the United States trustee from those which are not to be transmitted. Mr. Heltzel indicated that the papers are separated by chapter of the Bankruptcy Code and that this does not present a problem. Judge Mannes moved to adopt the change suggested by the NCBC. **The motion passed unanimously.**

The National Bankruptcy Conference also suggested that "the clerk shall forthwith transmit" be changed to "the clerk or some other person as designated by the court shall forthwith transmit". Professor King moved to leave the rule as it is. **The motion carried unanimously.**

Rules 1009, 5005

Judge Melloy suggested that the rule require service of a copy of an amendment to a schedule, list, or statement, rather than service of "notice" of the amendment. The Reporter indicated that he assumed that service of a "notice" or a "copy" would mean the same thing in this context. Professor King indicated that it is not necessary to send a copy of the amendment, just the substance of the amendment. Mr. Shapiro indicated that in some cases an amendment of the schedules may be 20 to 30 pages long. Judge Barta stated that it often is just as easy to send a copy of the amendment. Judge Leavy moved to reject the suggested change. **The motion to reject carried unanimously.**

Judge Melloy suggested that the debtor, rather than the clerk, be required to transmit copies of amendments to the United States trustee. The Reporter stated that the clerk should transmit the amendment for purposes of consistency and reliability. Mr. Mabey moved to add "Unless the United States trustee otherwise requests," at the beginning of this subdivision. Judge Barta stated that this would be extra work for the clerk's office and could lead to the application of a different standard in each district. The Chairman indicated that

the change should not pose a problem as long as there is consistency in a particular district. Mr. Heltzel stated that complying with a request by the United States trustee not to receive copies of certain papers would not require a tremendous amount of work in the clerk's office as long as the United States trustee only declines general categories of papers. Professor King stated that a Committee Note should be added to Rule 1002 explaining that the rule is intended to permit the United States trustee to request not to receive only general groups of papers, such as chapter 13 papers.

The Reporter suggested that a new subdivision (b)(3) be added to Rule 5005, rather than adding "Unless the United States trustee otherwise requests," to numerous rules. The subdivision would provide that the clerk shall not be required to transmit any paper to the United States trustee if the United States trustee requests in writing that the paper not be transmitted. The Reporter stated that, although the new subdivision would not require that the clerk transmit these papers, it would not bar their transmittal. Judge Mannes stated that the Reporter's suggestion should be subject to Professor King's proposed Committee Note. The Committee Note to Rule 1002 would refer to Rule 5005. Judge Leavy moved to tentatively adopt the Reporter's suggestion. **The motion carried unanimously.**

The National Bankruptcy Conference suggested deleting proposed Rule 1009(c) and including the United States trustee in Rule 1009(a) as an entity to receive notice of the amendment. This would place the burden of sending notice to the United States trustee on the party filing the amendment. The Reporter recommended rejection for the purpose of reliability and because a party serving the United States trustee would have to file a proof of transmission, which the clerk's office would have to process. Judge Mannes moved to leave the proposed rule as it is. **The motion carried unanimously.**

Rule 1014

The National Bankruptcy Conference suggested modifying Rule 1014(a)(2) to provide on page 16, line 13 that an improperly venued case may be dismissed or transferred to "any district in which it could have been brought." This would conform with 28 U.S.C. § 1406, which provides that a civil action may be transferred to a district "in which it could have been brought." The Reporter recommended rejection, indicating that it is not clear whether § 1406 applies to the transfer of bankruptcy cases because 28 U.S.C. § 1412 permits the transfer of a bankruptcy case to another district "in the interest of justice or for the convenience of the parties." The Reporter stated that he would prefer to leave this difficult issue to the courts and that such a major change would require publication for public comment. Professor King outlined the statutory history of the issue and

indicated that the case law is unsettled. Mr. Shapiro moved to reject the change suggested by the Conference. **The motion carried unanimously.**

Rule 1015

The Seventh Circuit bankruptcy clerks suggested that the following sentence be added to Rule 1015: "A joint petition may be deconsolidated upon motion by one or more of the joint debtors and after payment of the prescribed fee." The Judicial Conference Schedule of Fees for Bankruptcy Courts was amended recently to provide a for deconsolidation of a joint petition, but the rules do not provide for it. The Reporter recommended rejection because the change would require publication for public comment and because a joint petition does not create a consolidated petition. Ms. Channon stated that the Judicial Conference Schedule of Fees for Bankruptcy Courts had been revised and the word "deconsolidated" removed.

Judge Leavy moved that no actual vote be taken on routine motions unless a Committee member requested a vote or objected. **The motion carried without objection.** It was moved and seconded to leave Rule 1015 as it is. **The motion carried without objection.**

Rule 1017

The National Conference of Bankruptcy Clerks suggested that Rule 1017(d) be revised to require that the party filing a "notice of conversion" transmit a copy to the United States trustee (rather than the clerk doing it) unless the United States trustee otherwise requests. As an alternative, the subdivision could be revised to require that the clerk or some other person designated by the court make the transmittal. The Reporter recommended rejection, stating that if a copy is to be transmitted to the United States trustee, the clerk should do it because the "notice of conversion" effectively converts the case. It was moved and seconded to leave the rule as it is. **The motion carried without objection.**

The National Conference of Bankruptcy Clerks suggested that the period in Rule 1017(e)(1) for a § 707(b) motion by the United States trustee be 60 days after the first date set for the § 341 meeting. **The Reporter stated that the suggestion was moot because the Committee voted to make the change at a previous meeting.**

The Seventh Circuit bankruptcy clerks suggested that the 60-day time limit for § 707(b) motions be deleted because it penalizes the United States trustee and the court and rewards dishonest debtors. As an alternative, the 60-day time limit should run from the first date set for the § 341 meeting. The

Reporter recommended rejection. A § 707(b) motion is analogous to denial of discharge and revocation of discharge is available if the debtor conceals substantial abuse by giving false testimony, filing false schedules, etc. Judge Mannes moved to reject the suggested deletion. **The motion to reject carried without objection.**

Rule 1019

The American Bankruptcy Institute suggested that there is an inconsistency between the first and last sentences of proposed Rule 1019(5). The ABI suggested that the last sentence be revised to clarify that it applies only in cases under chapters 12 and 13. The Reporter agreed that clarification is needed but stated that the ABI's suggested change would leave confusion over who should transmit the final reports to the United States trustee. The Reporter recommended that the rule provide that the clerk transmit all schedules to the United States trustee but that the trustee or debtor in possession transmit the final report and account. The Reporter recommended revising the sentence beginning on line 48 of page 25 to read as follows:

> Each debtor in possession or trustee in the superseded case shall: (A) within 15 days following the entry of the order of conversion of a chapter 11 case, file a schedule of unpaid debts incurred after commencement of the superseded case including the name and address of each creditor; and (B) within 30 days following the entry of the order of conversion of a chapter 11, chapter 12, or chapter 13 case, file and transmit to the United States trustee a final report and account.

It was moved and seconded to adopt the Reporter's clarification. **The motion carried without objection.**

The Seventh Circuit bankruptcy clerks made a suggestion similar to that of the ABI. Mr. Shapiro moved to reject the clerks' suggestion. **The motion to reject carried without opposition.**

The National Conference of Bankruptcy Clerks suggested changes in Rule 1019(5) similar to those proposed by the ABI. The clerks also suggested changing Rule 1019(6) to require the court to set a deadline for filing postpetition claims only in asset cases. The clerks recommended deleting the requirement that the court order notice of the bar date for filing postpetition claims because the deadline will be included in the notice of the meeting of creditors.

The Reporter recommended rejecting the clerks' suggested change in Rule 1019(5). The Reporter recommended adding "Unless a notice of insufficient assets to pay a dividend is mailed

pursuant to Rule 2002(e)," to the beginning of the sentence beginning on line 84, page 26. The Reporter also recommended adding the following sentences to the end of the sixth paragraph of the Committee Note:

> The subdivision is amended further to avoid the need to fix a time for filing claims arising under § 365(d) if it is an no asset case upon conversion. If a surplus becomes available for distribution, the court may fix a time for filing such claims pursuant to Rule 3002(c)(4).

The Reporter also recommended that the Committee consider changing "the court shall order that written notice be given" on lines 80-81 to read "the clerk, or some other person as the court may direct, shall give notice . . ." The following sentence would be added to the sixth paragraph of the Committee Note:

> This paragraph is also amended to eliminate the need for a court order to provide notice of the time for filing claims. It is anticipated that this notice will be given together with the notice of the meeting of creditors.

Mr. Mabey moved to adopt the Reporter's suggestions. **The motion carried on a vote of 8-0.**

The Commercial Law League suggested adding the words "including professional fees, and quarterly administrative fees" after the word "debts". The Commercial Law League also suggested setting a single 30-day deadline for Rule 1019(5) and requiring the debtor in possession or trustee, not the clerk, to transmit a copy of the report and schedule to the United States trustee. The Reporter recommended rejecting the three suggestions as unnecessary. Professor King moved to reject the Commercial Law League's suggestions. **The motion to reject carried without objection.**

Rule 2002

The National Conference of Bankruptcy Clerks suggested giving the same 25 days' notice of the time for filing objections and of the confirmation hearing in chapter 12 cases as in chapter 9, 11, and 13 cases. It was moved and seconded to leave the rule as it is. **The motion carried without objection.**

The Seventh Circuit bankruptcy clerks suggested providing notice to the SEC "at Washington, D.C. or at any other place the Commission designates . . ." The Reporter opposed changing Rule 2002(j)(1), which now requires notice at both places, because of opposition to a change in Federal Rule of Civil Procedure 4 to eliminate duplicative service on the United States. Mr. Mabey moved to reject and revisit the suggestion. **The motion to reject and revisit carried without objection.**

The Seventh Circuit bankruptcy clerks suggested providing at Rule 2002(n) that the caption of a notice shall comply with Rule 9004(b) instead of Rule 1005. The clerks indicated that the social security number, employer's tax ID number, and other names used by the debtor, which are included in the Rule 1005 caption, are not needed in routine notices. Creditors have been apprised of this information in the § 341 meeting of creditors notice. The Reporter opposed changing the Rule because some creditors rely on the social security number to identify the debtors. Professor King stressed the importance of the information in the full caption and opposed the proposed change. It was moved to leave the rule as it is. **The motion carried without objection.**

The Seventh Circuit clerks also suggested deleting subdivision (o) of Rule 2002, which requires notice of the order for relief in consumer cases, because the notice of the § 341 meeting of creditors serves this purpose. The Reporter opposed the change in Rule 2002(o) because the section was added by § 321 of the Bankruptcy Amendments and Federal Judgeship Act of 1984. It was moved to reject the suggested deletion. **The motion to reject carried without objection.**

The Commercial Law League suggested that the exclusion of Rule 4001(d) agreements from the 20-day notice requirements of Rule 2002(a)(3) should not apply to any agreement which encompasses either waiver or termination of substantive rights of the estate, such as potential defense or counterclaims against secured parties. The Reporter opposed the suggestion because the parties still must comply with Rule 4001(d). Mr. Shapiro moved to leave the rule as it is. **The motion carried without objection.**

Rule 2003

The National Conference of Bankruptcy Clerks suggested changing Rule 2003(a) so that § 341 meetings of creditors in chapter 12 cases could be held within 40 days after the order for relief, not 35 days. The clerks stated that processing the case and sending out the notice within 15 days of filing is difficult because of the need to interact with the United States trustee's office and the United States trustee's need to obtain a hearing location in a rural area where facilities may not be readily available. The Reporter opposed the suggestion. He noted that the Committee had voted at an earlier meeting to permit § 341 meetings in chapter 12 cases to be held up to 60 days after the order for relief if the meeting is to be held at a place not regularly staffed by the United States trustee or an assistant who may preside at the meeting. It was moved to reject the change suggested by the clerks. **The motion to reject carried without objection.**

The NCBC also opposed the proposed first sentence of Rule 2003(c). **The Reporter stated that the issue is moot because the Committee deleted the proposed sentence at an earlier meeting.** The National Conference of Bankruptcy Clerks and the Seventh Circuit bankruptcy clerks suggested changing "$250" on line 95 of Rule 2003(g) on page 42 of the Preliminary Draft to "$1,500". **The Reporter stated that the suggestions are moot because the Committee has already voted to make the change.**

The Seventh Circuit bankruptcy clerks suggested amending the first sentence of Rule 2003(c) to require that the United States trustee inform the clerk of the names and addresses of creditors who appear at the § 341 meeting. The Reporter recommended rejection. The first sentence has been deleted. The Reporter stated that he did not know why the clerk would want to know the names and addresses of the creditors who appear at the meeting. The Seventh Circuit clerks also recommended increasing the $250 amount in subdivision (g) to $1,500. The Reporter stated that the suggestion is moot in light of the Committee's previous decision to change the amount to $1,500. It was moved to leave the rule as it is. **The motion carried without objection.**

The Commercial Law League suggested that subdivision (b)(1) be amended to authorize the interim trustee to preside at chapter 7 meetings of creditors unless a majority of creditors objects in writing. The Reporter stated that he believed the suggestion violated the statute. He recommended rejection and Professor King so moved. **The motion to reject the proposed change carried without objection.**

Rule 2004

The Commercial Law League suggested amending Rule 2004(a) to provide that a motion for examination shall be heard only if the moving party certifies that, notwithstanding good faith efforts, it was not possible to schedule and conduct the examination by agreement. The Reporter stated that the change would require publication. Judge Mannes moved to leave the rule as it is. **The motion carried without objection.**

Rule 2007

The American Bankruptcy Institute suggested a 60-day limit on raising objections to the appointment of a committee organized prepetition. The ABI stated that this would free the committee from the burden of defending such an attack after it has been organized and is active. The Reporter recommended rejection. The Committee rejected a similar suggestion by the National Association of Credit Management at the February 1, 1990, meeting. Professor King moved to reject the ABI's proposed bar date. **The motion to reject carried without objection.**

Rule 2007.1

The National Bankruptcy Conference suggested that Rule 2007.1 permit any party, not just the United States trustee, to apply for an order approving the appointment of a chapter 11 trustee. The Conference stated that restricting the applications to the United States trustee may lead to delays and is overly restrictive. The Reporter recommended rejection because only the United States trustee can appoint a trustee. Logically, he indicated, the United States trustee should apply for the approval. Professor King moved to leave the rule as it is. **The motion carried without objection.**

Rule 2011

The National Bankruptcy Conference suggested that the United States trustee, not the clerk, should have the duty of notifying the court that a person appointed or elected as a trustee had failed to qualify in a timely manner. The Conference stated that the United States trustee would be the first to know that the trustee had not qualified and should make the notification. The Reporter recommended rejection because § 322 requires that the trustee file a bond with the court, not with the United States trustee. Therefore, he stated, the clerk will be the first to know. Professor King suggested requiring that the clerk monitor the matter and inform the court. The Reporter indicated that the clerk should have an explicit duty to report the trustee's failure to qualify. If the clerk catches the failure early, he stated, this can avoid challenges after the trustee has acted. Mr. Heltzel stated that a report on the trustee's qualification could be prepared automatically on the BANCAP computer system in the future or the matter could be tracked manually by the clerk's office. Professor King moved to reject the change suggested by the Conference. **The motion to reject carried without objection.**

Rule 2012

The American Bankruptcy Institute suggested that the deleted language in Rule 2012(b)(1) be retained because § 325 does not provide that the successor trustee is automatically substituted as a party in any pending action. The Reporter stated that the Committee had assumed that no order of substitution was needed but that he could see how others could disagree. The Reporter recommended restoring only the deleted language on lines 8 and 9 on page 60 of the Preliminary Draft and altering the Committee Note accordingly. Judge Barta stated that the restoration could avoid wasteful disputes over the status of the trustee as a proper party. Mr. Mabey moved to restore the deleted language on lines 8 and 9 and to revise the Committee Note. **The motion carried on a vote of 7-0.**

Rule 2013

The American Bankruptcy Institute suggested that Rule 2013(a) not be deleted because the subdivision provides guidance to the United States trustee and practitioners. The Reporter recommended rejection because the matter is within the United States trustee's discretion and because the second sentence of the Committee Note provides guidance. It was moved to reject the ABI's suggestion. **The motion to reject carried.**

The National Conference of Bankruptcy Clerks recommended eliminating the annual public record summary required by Rule 2013. The clerks stated that the record is burdensome to prepare and rarely if ever consulted. If it must be prepared, they stated, the United States trustee should bear the burden. The Reporter recommended rejection. The court awards fees, he stated, and the clerk should compile the summary of those fees. Deleting the record-keeping requirement would send the wrong message, even if the summaries are never reviewed, the Reporter stated.

Mr. Heltzel stated that he had opposed the requirement in the past but now has a simple computer program to prepare the summary. He indicated that the summary should be retained as a matter of public policy. Ms. Channon stated that the summaries have been used by disgruntled spouses and others such as the Internal Revenue Service. Judge Meyers moved to reject the suggestion but to revisit it in the future. The motion died for lack of a second. Professor King moved to retain the annual summary. **The motion carried without objection.**

Rule 2014

The Commercial Law League stated that the necessity for the employment of counsel on general retainer is usually obvious and need not be spelled out in the application for an order approving the employment. In the rare cases when the court, the United States trustee, or other parties require specific information, appropriate inquiries can be made, the Commercial Law League stated. The Reporter recommended rejection, and Mr. Shapiro so moved. **The motion to reject carried without objection.**

Rule 2015

The National Conference of Bankruptcy Clerks suggested revising proposed Rule 2015(a)(5) to delete the requirement that a statement of the amount of the quarterly fee paid to the United States trustee be filed with the clerk. If the statement was transmitted to the United States trustee, the clerk would not need to handle the additional paper, the clerks stated. The Reporter stated that the filing requirement should not be a significant burden because the statement could be included in

other reports. If the statement is not filed with the clerk, he stated, a separate proof of transmission must be filed pursuant to Rule 5005(b). Mr. Heltzel agreed that there is no requirement that the statement of the quarterly fee be a separate report on a separate piece of paper. The Reporter suggested that the Committee Note indicate that the statement should be included in other reports whenever possible. It was moved to leave the proposed rule as it is and make the change suggested by the Reporter in the Committee Note. **The motion carried without objection.**

The National Conference of Bankruptcy Clerks also suggested that the requirement for post-confirmation reports not be deleted from current Rule 2015(a)(6). The Clerks noted that § 1106(a)(7) only requires post-confirmation reports as are necessary or as the court orders. The NCBC stated that the automatic filing requirement in the current rule is useful because it avoids the need for a court order in each case. The Reporter recommended rejection because the current rule is ignored and § 1106(a)(7) is sufficient.

The clerks also suggested that the requirement for applications for final decrees not be deleted from current Rule 2015(a)(7). The clerks asked how the court would know that the case had been fully administered if nobody is required to apply for a final decree. The Reporter recommended rejection because debtors will move to close the case under Rule 3022. Ms. Channon stated that the Official Form for confirmation orders could include the two requirements deleted from Rule 2015(a)(6) and (a)(7). Judge Barta moved to reject the clerks' suggestions on current Rules 2015(a)(6) and (a)(7). **The motion to reject carried without objection.**

The Commercial Law League suggested that the inventory of the property of the debtor be filed with the United States trustee (but not with the court) unless it is offered as an exhibit during the course of a hearing. Professor King moved to leave the rule as it is. **The motion carried without objection.**

The Commercial Law League suggested that subparagraph (a)(5) not be deleted from Rule 2015. The League stated that it is inconsistent with the policy of § 549 to grant a debtor-in-possession or trustee discretion to dissipate the protection which the Code gives creditors against unauthorized post-petition transfers by not recording notice of the petition in the land records. Professor King moved to reject the suggestion. **The motion to reject carried without objection.**

Rule 2017

The National Conference of Bankruptcy Clerks stated that the provisions of Rule 2017 should be extended to document

preparation services which prepare petitions. The Reporter recommended rejection because the purpose of the rule is to implement § 329, which only deals with attorneys' fees. Furthermore, he stated, the proposed amendment would require publication. Judge Mannes indicated that abuses by document preparation services are a real problem and that merely referring the offenders to a bar association committee on unauthorized practice is not sufficient. Mr. Shapiro stated that some debtors need help but that the document preparation services are charging too much for their assistance. Judge Mannes stated that pushing the "near lawyers" too much would just lead to the dismissal of their "clients'" cases and embroil the judge in chasing the document preparers. Judge Mannes moved to leave the rule as it is. **The motion carried without objection.**

Rule 3001

The National Bankruptcy Conference suggested that Rule 3001(e)(2) should more clearly specify what is intended by the words "publicly traded." The Reporter stated that he was not sure how he would define "publicly traded" or whether a definition is needed. If a definition is needed, he offered the following language for inclusion in the Committee Note:

> Publicly traded notes, bonds, and debentures are excluded from the requirements of subdivision (e)(2), (3), and (4). A debt instrument is "publicly traded" if it is of the kind that is commonly traded for investment or speculation. Temporary suspension of trading of such instruments does not affect the characterization as "publicly traded" for the purposes of this rule.

Professor King stated that it is dangerous to try to define such a phrase such as "publicly traded" for the first time. He moved not to include a definition. **The motion carried without objection.**

The National Bankruptcy Conference suggested amending subdivision (e) to require notice to the creditors' committee of a post-petition transfer of an unsecured claim. The Conference indicated that giving the affected committee notice that a sub rosa plan is being effectuated will cure the potential abuse. The Reporter recommended rejection of the suggestion because the amendments proposed by the Committee were intended to get the Rules out of substantive determinations regarding trading claims. Mr. Shapiro stated that he couldn't imagine a case in which the committee wouldn't know that such trading was going on. He moved to leave the proposed rule as it is. **The motion passed without objection.**

The Conference also suggested amending subdivision (e) to specify the effect of a claim transfer on a vote previously cast

on a plan. The Reporter recommended leaving the determination to the courts under Rule 3018(a), and Mr. Shapiro so moved. **The motion passed without objection.**

The Conference also suggested amending Rule 3001(f) to clarify that in a chapter 11 case a claim scheduled other than as disputed, contingent, or unliquidated is prima facie evidence of the validity and amount of that claim. The Reporter recommended rejection because the change would require publication and because the change appears unnecessary in light of § 1111(a). Mr. Shapiro moved to leave the rule as it is. **The motion passed without objection.**

The National Conference of Bankruptcy Clerks suggested that the transferee, rather than the clerk, be required to give notice to the transferor. The clerks also suggested that no notice be required if the transferee files a copy of the assignment signed by the transferor. The Reporter recommended rejection of both suggested changes in Rule 3001(e). Because the purpose of the notice requirement is to prevent fraud by an alleged transferee, the Reporter stated, the clerk should send the notice even if a "signed" assignment is submitted. It was moved and seconded to reject the suggested change. **The motion to reject carried without objection.**

The Commercial Law League suggested that the Committee Note on the deletion of the requirement for furnishing the details of consideration for the transfer of a claim should state that the Committee does not propose a change in the substantive law regarding trafficking in claims. The Reporter recommended rejection because the amendments are intended to get the Rules out of the issue. It was moved to leave the Committee Note as it is. **There was no objection.**

Rule 3004

The National Bankruptcy Conference stated that the Committee's proposed change in the time the debtor or trustee may file a claim on behalf of a creditor limits the debtor or trustee to filing such a claim after the bar date, instead of after the § 341 meeting of creditors. The Conference stated that debtors often file claims at the § 341 meeting or prior to confirmation. The Reporter indicated that he believes that the current rule and § 501(c) do not permit a debtor or trustee to file a proof of claim prior to the bar date. The Reporter stated that the Conference's suggestion violates § 501(c).

Mr. Shapiro stated that if a debtor or trustee files a proof of claim for a creditor after the § 341 meeting and before the bar date, the proof of claim is probably void. If the creditor fails to file, however, the proof of claim filed by the debtor or trustee is deemed to be valid. The Reporter stated that the

Conference wants the proof of claim filed during the interim to be valid, not springing to life later. Judge Barta stated that many chapter 13 debtors file proofs of claim early, even before the
§ 341 meeting, and that the trustee utilizes these proofs of claim in making his calculations for confirmation. Mr. Shapiro suggested that the matter should be considered in light of actual practices and as part of the Committee's in-depth review of chapter 13. Mr. Shapiro moved to delete the proposed revisions in lines 1-7 of Rule 3004, to delete the first paragraph of the Committee Note, and to revisit the question as part of the Committee's review of chapter 13 matters. **The motion carried on a vote of 8-0.**

Rule 3006

The American Bankruptcy Institute suggested deleting one of the section signs before "705(a)" on line 9 of page 88 of the Preliminary Draft and including § 1114 committees of retired persons in the list of persons to receive notice of the withdrawal of a claim or acceptance or rejection of a plan. The Reporter stated that the suggestions are moot because the first section mark has already been deleted and the Committee has decided that § 1114 committees should not receive notice of these matters. The Reporter recommended rejection and it was so moved. **The motion to reject carried without objection.**

Rule 3009

Judge Berk asked why a final order of distribution is needed. He stated that the requirement is particularly troublesome because the court is essentially removed from the administration of the case but nevertheless must pass on the propriety of the distribution. The court no longer has a staff to review the proposed distributions and the United States trustee's office often is unwilling or unable to make a thorough review of the proposed distributions, the judge indicated. The judge proposed having the United States trustee approve the distribution. The Reporter stated that he favored abrogating the entire rule but that course of action would require publication.

The Reporter stated that the matter could be dealt with as part of Rule 9034. Judge Barta asked if the new case closing procedures being developed by the Administrative Office and the Executive Office for United States trustees been put into effect. Professor King stated that the procedures have not been finalized. Mr. Heltzel stated that many courts had refused to close cases without the United States trustee's certification of the case trustee's work. He stated that the courts get the certification now but have little confidence in it. The Reporter stated that there is nothing in the statute which requires court

approval of the distribution. Mr. Heltzel said it is a function of getting court approval of the trustee's final account.

The Chair requested a joint report by the Administrative Office and the Executive Office on the new case closing procedures forthwith. It was agreed to defer consideration of Judge Berk's comments and Rule 9034 to the next meeting.

Rule 3012

The Rules Advisory Committee of the District of South Carolina suggested that the phrase "after a hearing on notice" in Rule 3012 be changed to "after notice and a hearing." The South Carolina committee stated the change would permit the adoption of a local rule that a hearing is not required unless requested by a party in interest. The Reporter recommended rejection because he believed the two phrases have the same effect under § 102 and because the change would require publication. Mr. Mabey stated that he believed most bankruptcy judges and attorneys believe the two phrases have different meanings. Mr. Shapiro stated that he believed the phrase used in Rule 3012 requires a hearing. It was moved and seconded to reject the suggested change but to revisit the use of the phrase "after a hearing on notice" throughout the Rules. **The motion to reject and revisit was approved without objection.**

Rule 3015

The National Conference of Bankruptcy Clerks suggested that the filing party, rather than the clerk, be required to send copies of a chapter 12 or chapter 13 plan or plan modification to the United States trustee unless the plan is filed with the petition. The clerks also suggested that the United States trustee get plans and plan modifications only on request. The Reporter recommended rejection because the statute requires the United States trustee to monitor plans and the most reliable way to receive a copy of every plan is for the clerk to transmit it. The Reporter indicated that he did not believe the transmittal to be a significant burden for the clerk because copies of plans could be placed in a "drop box" for the United States trustee. He stated that the United States trustee could follow the new procedure approved by the Committee for requesting that notices not be sent. Professor King moved to leave the proposed rule as it is. **The motion was approved without objection.**

Rule 3016

Professor Kennedy questioned whether the Committee's proposed change in the Rule 3016(a) bar date for filing creditor plans conflicts with § 1129(c), which does not include a bar date. The Reporter recommended taking no action. The Reporter stated that the proposed change actually extends the time for a

creditor to file a plan from the conclusion of the hearing on the disclosure statement until the entry of an order approving the statement. The Reporter stated that he believes it is appropriate for the Rules to set deadlines for actions permitted by the Bankruptcy Code.

The American Bar Association and Ms. Sheneman had made the same comment as Professor Kennedy. The ABA stated that § 1129(c) contemplates that more than one plan may be submitted for a vote and suggested that the Rules should permit each court deal with multiple plans on an ad hoc basis. The Reporter recommended no action. He stated that the Rule merely prevents another plan from being submitted without leave of court after entry of an order approving the disclosure statement on a plan already submitted.

Ms. Sheneman suggested that if the language in question is to be retained, it should be expanded to limit the filing of debtor plans. Professor King stated that setting a bar date for debtor plans would violate § 1121(a), which provides that the debtor may file a plan "at any time".

The United States did not object to the substance of the rule but indicated that there is a serious ambiguity which could be interpreted to permit the court to limit the right of a creditor to file a competing plan at any time prior to the approval of the disclosure statement. The Reporter stated that he does not believe that the ambiguity exists but offered an addition to the Committee Note or alternative language for the rule to clarify the matter. Judge Mannes moved to revise the Committee Note. There was no second. Judge Leavy moved to reject the changes suggested by Professor Kennedy, the ABA, and Ms. Sheneman. **The motion to reject was approved unanimously.**

The American Bankruptcy Institute suggested adding the following language to the end of Rule 3016(a): "for cause shown and on notice as the court may direct." The ABI stated that the additional language would provide guidance for the courts and put the burden on the party which waits until a disclosure statement has been approved to file a plan. Judge Jones stated that this is implicit in the rule. Mr. Mabey moved to reject the suggested addition. **The motion to reject was approved without objection.**

Mr. Tucker suggested that Rule 3016(a) be deleted so as to allow for competition between competing plans. If the rule is not abrogated, he stated, the rule should be amended to require that the court consider the size and complexity of the case, and the views of the parties and the United States trustee in fixing the time within which a party may file a plan. The Reporter recommended rejection. He disagreed with the need to abrogate the rule, stated that the proposed substitute language would give increased discretion to the court, and stated that either change

would require publication. **The Committee agreed to reject Mr. Tucker's suggestions in light of its approval of Judge Leavy's motion to reject the other suggestions.**

The National Bankruptcy Conference suggested that the rule require that exclusivity be terminated for all parties, if it is terminated. The Reporter recommended rejection because the Rule does not deal with terminating exclusivity. **The Committee agreed to reject the Conference's suggestion.**

The Conference also suggested that the rule should make it clear that when competing plans are disseminated and creditors have indicated that they prefer one plan, the court can still confirm a plan other than the one preferred by the creditors, so long as the other requirements of confirmation are met. The Reporter recommended rejection. He stated that this is a substantive question concerning the interpretation of § 1129(c). **The Committee agreed to reject the suggested change.**

The Commercial Law League stated that the objective of the proposed amendment is laudable but that the change appears to expand the debtor's exclusive filing period without the showing of cause required by the Code. The Reporter stated that he did not understand the comment, which was submitted late. **The Committee agreed no action was required on the comment.**

Rule 3017

Ms. Sheneman suggested that the Committee delete the proposed language in Rule 3017(d) which permits the court to order that the disclosure statement not be sent to unimpaired classes. Ms. Sheneman stated that this could be dangerous in the extreme and violate due process if the often complex issue of impairment were not fully briefed and argued at the time the court restricts distribution of the disclosure statement. The Reporter recommended that the Committee reconsider the issues in light of the possibility that classification as unimpaired might be disputed. The Committee previously had rejected Ms. Sheneman's suggestion but had directed the Reporter to prepare a revision of Rule 3017(d) to make it clear that all creditors get notice of the confirmation hearing.

The Reporter indicated that with the current language the court could order that an "unimpaired" class not get notice of its designation as unimpaired. He proposed deleting subsection (d)(4); redesignating subsection (d)(5) as (d)(4); and inserting the following language after "In addition," on line 42 on page 96 of the Preliminary Draft: "notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders pursuant to Rule 2002(b), and".

The Securities and Exchange Commission stated that it is troubled by the proposed language in Rule 3017(d), which it believes is in conflict with the requirement in § 1125(c) that a disclosure statement be distributed to every holder of a claim or interest. Even if they get notice of the confirmation hearing, the SEC stated, their unfamiliarity with the disclosure statement would limit their effectiveness. The SEC suggested that members of unimpaired classes be given notice of that designation and an opportunity to receive a copy of the statement.

The Reporter recommended rejection of the suggestion that members of unimpaired classes be given notice of a motion to excuse mailing the disclosure statement to them. He stated that mailing notice of first the motion and subsequently the confirmation hearing to members of the unimpaired classes would defeat the purpose of restricting notice. Instead, in addition to his proposed changes in lines 38, 39, and 42, the Reporter recommended consideration of inserting the following language in line 48 on page 96 of the Preliminary Draft:

> "If the court orders that the disclosure statement and the plan or a summary of the plan shall not be mailed with respect to any unimpaired class, notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and the disclosure statement may be obtained upon request and at the expense of the proponent of the plan, shall be mailed to members of the unimpaired class together with the notice of the time fixed for filing objections and the hearing on confirmation."

Professor King stated that § 1125(c) requires that a copy of the plan and the disclosure statement be mailed to everybody. Mr. Mabey stated that he had always read § 1125(b) to mean that copies of the disclosure statement only have to mailed to the parties who can vote. Judge Jones stated that the member of an unimpaired class can still object to confirmation.

Professor King suggested interlining the word "to" between the words "objections" and "and" in the final sentence of the Reporter's suggested addition to line 48 on page 96 of the Preliminary Draft. Judge Leavy moved to adopt the Reporter's suggested addition to line 48 with Professor King's interlineation. **The Committee approved the addition unanimously.** Mr. Shapiro moved to adopt the Reporter's suggested changes on lines 38, 39, and 42 on page 96. **The Committee approved the changes unanimously.**

Ms. Riddle objected to allowing the court to order that unimpaired classes not receive the disclosure statement. The attorney general of Connecticut stated that her state's tax claims are frequently classified as "unimpaired" even though

§ 1123(a)(1) excludes tax priority claims from classification. She stated that it would be difficult or impossible to appear at a hearing on a motion to excuse notice and that requesting a copy of the disclosure statement would often take too long.

The Reporter recommended discussion of Ms. Riddle's comments. He suggested either excluding the holders of claims entitled to priority under § 507(a)(7) or adding the following language to the second paragraph of the Committee Note on page 97 of the Preliminary Draft:

> "This amendment is not intended to give the court discretion to dispense with the mailing of the plan and disclosure statement to governmental units holding claims entitled to priority under § 507(a)(7)."

The Reporter stated that adding the exclusion to the rule itself would be silly and that he preferred adding the one-sentence clarification to the Committee Note. Mr. Shapiro moved to make the addition to the Committee Note. The Reporter suggested adding the following language to the clarification: ", who are not members of a class pursuant to § 1123". Mr. Shapiro stated that some people argue that § 1123 merely says that § 507(a)(7) claims do not have to be classified, not that they can not be classified. Judge Leavy suggested the following language as a substitute amendment: "because they may not be classified. See § 1123(a)(1)". Mr. Shapiro accepted the amendment. **The Committee approved the Reporter's addition to the Committee Note, as amended, by a 6-0 vote.**

The American Bankruptcy Institute suggested inserting the words "for cause shown" on line 30 of page 95 of the Preliminary Draft. The Reporter agreed with the ABI. Mr. Mabey stated that the phrase "unless the court orders otherwise" appears frequently in the Rules and asked whether the Committee wanted to imply that cause is not required in the other instances. Judge Jones moved to reject the ABI's suggestion. **The Committee approved the motion to reject without objection.**

The ABI also suggested adding a requirement that the debtor furnish a copy of the papers to unimpaired creditors on request. The Reporter stated that the ABI's suggestion was similar to his. It was moved to leave the proposed rule as it is. **The motion was approved without objection.**

The National Bankruptcy Conference suggested that Rule 3017(c) be revised to allow small chapter 11 cases to be heard on a "fast track." The change would permit consolidating the hearings on the disclosure statement and confirmation. The Reporter recommended rejection. He stated that the change would require publication and questioned how the two hearings could be consolidated without violating creditors' right to vote on the

plan. It was moved to reject. Judge Mannes asked that the suggestion be rejected and revisited. **The Committee agreed to reject and revisit the suggested change.**

Rule 3018

The American Bankruptcy Institute opposed deleting the language "and within the time fixed for acceptance or rejection of a plan" in subdivision (a) on lines 17-18 on page 98 of the Preliminary Draft. The ABI indicated that, as the rule is revised, one could conclude that a vote could be changed or withdrawn after confirmation. It was moved to leave the proposed rule as it is. **The motion passed without objection.**

The National Bankruptcy Conference stated that subdivision (a) is too restrictive in requiring that the date of the order approving the disclosure statement be the "record date" for identifying equity security holders and creditors of record who are entitled to accept or reject a plan. The Conference stated that the court should be given the flexibility to set another record date. The Reporter recommended rejection. He stated that he not aware of any problems with the current rule and that the change may require publication. It was moved to leave the rule as it is. **The motion passed without objection.**

Rule 4001

The American Bar Association made the same suggestion as Mr. Justice regarding subdivision (a)(2). **No further action was required in light of the Committee's action on Mr. Justice's comment.**

The ABA stated that the title of subdivision (d) refers to obtaining credit but the subdivision does not deal with that matter. The ABA also suggested that the entire section be deleted and motions with respect to cash collateral and obtaining credit be dealt with the same fashion whether consensual or adversarial. The Reporter stated that the section does deal with obtaining credit when a lien is given, as is often the case.

The ABA recommended that the final hearings on the use of cash collateral or obtaining credit be held no sooner than 45 days after the motion. The ABA made substantially the same suggestions earlier and the Committee rejected them at its meeting in September, 1988. The Reporter recommended rejection because the ABA gave no new reasons in support of the suggestion and because the changes would require publication. Mr. Shapiro moved to reject the ABA suggestions in regard to Rule 4001. **The motion to reject carried without objection.**

Ms. Sheneman suggested that the Rules require that any motion under subdivisions (a) or (d) be served on any entity

claiming an interest in the property. She stated that the change would parallel the notice requirements in subdivision (b) and satisfy due process concerns. The Reporter stated that the change would require publication. He asked whether the Committee wanted to put the burden of doing a title search on the moving party. Mr. Shapiro stated that attorneys generally try to give notice to any entity with an interest in the property but wondered whether due diligence is required. Professor King stated that if notice is required by due process, saying so in the rule does not change anything. Judge Mannes moved to reject and revisit the suggested change. **The motion carried without objection.**

The American Bankruptcy Institute stated that Rule 4001(a)(1) is inconsistent with § 363(e) because it provides that Rule 9014 (which contemplates a hearing) governs motions to prohibit the use, sale, or lease of collateral. Section 363(e) states that the court may provide relief "with or without a hearing." The Reporter stated that he initially had the came concern about the phrase in § 363(e) but became convinced that including such motions in Rule 4001(a) is not inconsistent because of the availability of ex parte relief under Rule 4001(a)(2). Professor King moved to leave the proposed rule as it is. **The motion carried without objection.**

The ABI suggested that the word "for" should be added after the word "move" on line 38, page 106 of the Preliminary Draft. The Reporter stated that the present language has existed since the rule was originally drafted. It was moved to reject the suggested change. **The motion to reject carried without objection.**

The ABI suggested that a provision be added to sections (a)(1), (b)(1), (c)(1), and (d)(1) to require notice to § 1114 committees of retired persons. The Reporter recommended rejection. He stated that the Committee considered the matter before and decided that § 1114 committees do not require notice of Rule 4001 motions because it is not necessary for the performance of their functions. It was moved to leave the proposed rule as it is. **The motion carried without objection.**

The ABI suggested that the phrase "the relief proposed by the movant in" be inserted following "the court determines that" on line 129 on page 110 in the Preliminary Draft. The Reporter recommended rejection. He stated that the change is not necessary in light of the Committee Note. Also, the Reporter stated, if the court orders a response to the motion and the response is served on the parties, the response should be considered by the court in applying Rule 4001(d)(4). It was moved and seconded to reject the suggested insertion. **The motion to reject carried without objection.**

Judge Fitzgerald stated that the order of the items in the caption of Rule 4001(d)(1) does not comport with the order in the body of the subsection. The Reporter recommended rejection and stated that the order of the items was not intended to be the same. It was moved to reject the suggested change. **The motion to reject carried without objection.**

The National Bankruptcy Conference stated that subdivision (a)(1) creates an implication that the trustee, debtor, and debtor's counsel do not receive notice of a motion for relief from the stay. The Conference stated that the implication may mislead an inexperienced practitioner into not serving those persons. The Conference suggested specifying that they be served. The Reporter stated that the suggested change is unnecessary because Rule 9013 applies, which requires service on the trustee and debtor. Judge Barta moved to reject the suggested addition. **The motion to reject carried without objection.**

Rule 4004

The Commercial Law League suggested that Rule 4004 be amended to provide that an extension of time for filing an objection to discharge applies to all parties, not just to the movant. The League stated that the contrary construction of the rule, which is supported by the existing Committee Note, is inconsistent with the policy of the Code and the proposed amendment to Rule 7041. Mr. Shapiro stated that he thought an extension applied only to the movant. It was moved to leave the rule as it is. **The motion carried without objection.**

Rule 4007

The Commercial Law League suggested that the time for filing dischargeability complaints in an individual chapter 11 case should be the earliest of the confirmation of a plan, the entry of an order converting the case to chapter 7, or a date ordered by the court for cause after notice and a hearing. The Reporter stated that the suggestion would require publication and indicated that the matter may have been considered by the Committee a year ago. Professor King moved to reject the suggested change. **The motion carried without objection.**

Rule 5003

The Seventh Circuit bankruptcy clerks suggested that Rule 5003(d) be amended to provide that the clerk shall make a search on request and payment of the prescribed fee. The Reporter recommended rejection. He questioned whether the change is needed and stated that it would require publication. It was moved to reject the amendment. **The motion to reject carried without objection.**

Rule 5005

The National Conference of Bankruptcy Clerks suggested deletion of the two sentences at lines 21-31 of Rule 5005 on pages 123-124 of the Preliminary Draft regarding errors in filing papers. This would avoid any obligation on anyone to transmit an erroneously delivered document to the correct office. Because the clerk's office and the United States trustee's office may not be in the same location, the clerks stated that it is difficult to ascertain whether a copy of a document was erroneously delivered. The clerks also expressed fear that attorneys might use the clerk's office as the filing place for all documents which have to go to the United States trustee. Mr. Mabey stated that he had more faith in the bar than this. Professor King moved to leave the rule as it is. **The motion carried without objection.**

The Seventh Circuit bankruptcy clerks suggested that Rule 5005(a) be amended to provide that a filing with the judge is effective as of the date of the filing only if the clerk promptly receives any prescribed fee for the filing. Otherwise, the filing would be effective when the clerk receives payment. The Reporter recommended rejection. He stated that there are adequate remedies for failing to pay the filing fee, such as dismissal, and that the change would require publication. It was moved to reject the amendment. **The motion to reject was approved without objection.**

The Seventh Circuit clerks suggested that language be added to clarify whether filing by facsimile machines is allowed or prohibited. If allowed, the clerks stated, the authority to accept facsimile filings should be permissive and subject to restrictions by local rule or court order. The Reporter recommended rejection because the various bodies of federal rules should be uniform on filing by facsimile. He stated that the Standing Committee on Rules is considering the matter and will provide guidance to the advisory committees. It was moved to leave the rule as it is. **The motion was approved without objection.**

Rule 5008

Rule 5008 was abrogated by the Committee at an earlier meeting. The Reporter recommended consideration of the following language as a replacement for the Committee Note published in the Preliminary Draft: "This rule is abrogated in view of the amendments to § 345(b) of the Code and the role of the United States trustee in approving bonds and supervising trustees." It was moved to approve the Reporter's substitute text. **The motion carried without objection.**

The American Bankruptcy Institute suggested that subdivision (i) not be abrogated. The ABI suggested that subdivision (i) be revised so as to make the combining of funds from different estates subject to approval by the United States trustee. The Reporter recommended rejection because the matter is one within the supervisory role of the United States trustee. It was moved to reject the ABI's suggestion. **The motion to reject carried without objection.**

Rule 5010

The Seventh Circuit Clerks suggested that the phrase "the United States trustee shall appoint a trustee unless the court determines that a trustee is not necessary" on lines 3-5 of Rule 5010 on page 131 of the Preliminary Draft should be changed to:

> "a trustee shall not be appointed by the United States trustee unless the court determines that a trustee is necessary".

The clerks stated that most cases are reopened to accord relief to the debtor which does not require a trustee. Rather than making a negative finding in the majority of the cases, the clerks indicated, it makes more sense for the court to make a positive finding in the minority of cases when a trustee is needed. The Reporter stated that the suggested language appears to be consistent with the Code and to make good sense. The Reporter proposed the following language for addition to the Committee Note if the suggestion is adopted:

> "In most reopened cases, a trustee is not needed because there are no assets to be administered. Therefore, in the interest of judicial economy, this rule is amended so that a motion will not be necessary unless the United States trustee or a party in interest seeks the appointment of a trustee in the reopened case."

Professor King moved the adoption of the suggested amendment and addition to the Committee Note. **The motion carried unanimously.**

Rule 5011

Judge Fitzgerald stated that the proposed changes in the abstention procedures under Rule 5011(b) are not consistent with the existing procedures regarding contempt matters under Rules 9020(c) and 9033. Judge Fitzgerald stated that the two procedures should be the same and that the ruling by the bankruptcy judge should become final in the absence of an appeal or objection. The Reporter recommended rejection. He stated that the change would require publication and that the two procedures are not inconsistent (because Rule 5011 incorporates

the procedures of Rule 9033). It was moved to reject Judge Fitzgerald's suggestion. **The motion carried without objection.**

Judge Kressel previously wrote to the Committee suggesting significant revisions to Rules 5011(b) (abstention) and 9027(e) (remand) so that the bankruptcy judge may enter final orders on these matters. The Committee had discussed these suggestions at length and rejected them. Judge Kressel proposed three alternatives including abrogating the two rules; abrogating the two rules and providing that the bankruptcy judge's ruling can be appealed to the district court; and adopting a review process similar to that in Rule 9020(c).

The Reporter recommended rejection. He stated that the changes would require publication and a statutory change, and that the Committee had already considered and rejected Judge Kressel's views. The Reporter indicated that he agreed with the Federal Courts Study Committee that Congress should amend 28 U.S.C. §§ 1334 and 1452 and 11 U.S.C. § 305 to make it clear that they bar appeals only to the court of appeals, not to the district court. It was moved to reject Judge Kressel's suggestion. **The motion carried without objection.**

Rule 6003

The American Bankruptcy Institute suggested not abrogating the first sentence of Rule 6003 as it provides guidance that is otherwise lacking in the Rules. The Reporter recommended rejection because the method of disbursement should be left to the United States trustee for regulation. It was moved to reject the ABI's suggestion. **The motion carried without objection.**

Rule 6004

The National Conference of Bankruptcy Clerks suggested that Rule 6004(f)(1) be further amended to state that the party conducting the sale is the one to transmit a copy of the statement to the United States trustee. The Reporter agreed that a clarification is needed. He recommended that ", transmit a copy thereof to the United States trustee," be inserted following "file the statement" on page 137, line 45 of the Preliminary Draft and that "and transmit a copy thereof to the United States trustee" be inserted at the end of the sentence on line 48. If these changes are made, the underlined language on lines 42-43 may be deleted. Mr. Shapiro moved to adopt the changes proposed by the Reporter. **The motion was approved without objection.**

Rule 6007

The American Bankruptcy Institute suggested that a provision be added to Rule 6007(a) providing for notice to § 1114 committees of retired persons. The Reporter recommended

rejection. He stated that the Committee had decided earlier that § 1114 committees do not receive notice of the proposed abandonment or disposition of property. It was moved to leave the rule as it is. **The motion carried without objection.**

Rule 7012

Judge Wheless suggested that bankruptcy judges have the authority to enter default judgments in non-core proceedings. Because Rule 7012(b) requires the consent of the parties before a bankruptcy judge may enter a judgment in a non-core matter, a bankruptcy judge cannot enter a default judgment in a non-core matter. In contrast, the clerk can enter a default under Civil Rule 55(b)(1). The Reporter recommended rejection. He stated that are limitations in Civil Rule 55(b)(2) on what defaults the clerk can enter and that there are serious Constitutional questions about consent by silence to a bankruptcy judge's entry of a judgment. Judge McGlynn stressed the difference between the entry of a default and the entry of a default judgment. Judge Leavy moved to reject Judge Wheless' suggestion. **The motion carried without objection.**

Rule 7019

The National Bankruptcy Conference suggested that Rule 7019 be amended to conform with 28 U.S.C. § 1406 and limit transfers to districts of proper venue. It was the Conference's position that § 1412 was intended to apply only to properly venued proceedings and cases. The Reporter recommended rejection and stated that the change would require publication. The Reporter stated that he would rather leave the issue to judicial development. The Committee previously rejected a similar suggestion by the Conference to amend Rule 1014. Professor King moved to leave the rule as it is. **The motion carried without objection.**

Rule 7062

The National Bankruptcy Conference suggested that the words "in contested matters" be deleted from line 9 of Rule 7062 on page 158 in the Preliminary Draft. Alternatively, the Conference stated, the rule could be clarified to state that an uncontested motion is a "contested matter." The Conference stated that it appears unwise to allow parties who have not filed an objection to a particular motion to nevertheless retain a right to appeal from the resulting order or judgment.

The Reporter recommended rejection. He stated that the language in question was added because all of the exceptions listed are obtained in contested matters. The Reporter stated that a "contested matter" under Rule 9014 is still a "contested matter" even if it is not contested. Professor King stated that

if the phrase is redundant and it causes a problem, it should be deleted. It was moved to delete the words "in contested matters" from line 9 on page 158. **The motion passed unanimously.**

Mr. Greenfield suggested modification of Rule 7062 as follows: (1) the 10-day stay should remain applicable with respect to enforcement of money judgments and should not apply with respect to the matters currently excepted under Rule 7062 and Civil Rule 62(a); (2) if any order, judgment, or decree is not contested in the bankruptcy court or, if contested, the objection is withdrawn prior to the entry of the order, the stay should not be in effect; (3) unless otherwise ordered by the court, with respect to any other order, judgment, or decree, the stay would remain in effect only two business days after entry. The Reporter recommended rejection or rejection and revisiting because the changes go well beyond the proposed amendments. The Reporter stated that the second suggestion is inconsistent with the civil rule. Mr. Shapiro stated that the changes would gut Civil Rule 62 in bankruptcy cases. Professor King moved to leave the rule as it is. **The motion carried without objection.**

Rule 7087

The National Bankruptcy Conference suggested that Rule 7087 be modified to conform to 28 U.S.C. § 1406 in that it should provide that a proceeding may be transferred only to a district which would have proper venue. Also there is no reference to dismissal of an improperly venued proceeding. The Reporter disagreed with the suggestion, which was unrelated to any proposed rule changes, and recommended rejection. The Reporter stated that the rule complies with 28 U.S.C. § 1412 dealing with transfers of proceedings in the interest of justice or for the convenience of the parties. Professor King stated that rejection would be consistent with the Committee's earlier vote on Rules 1014 and 7019. Professor King moved to reject the suggested change. **The motion to reject carried without objection.**

Rule 8002

The Commercial Law League suggested that Rule 8002(a) should be clarified to specifically include the gap period between the time an order is signed and the time it is entered on the docket. It was moved to leave the rule as it is. **The motion carried without objection.**

The League suggested that Rule 8002(b) should be modified to provide that the notice of an appeal filed during the pendency of a motion which tolls the time for appeal would be treated as if filed immediately after disposition of the motion. The League stated that the existing provisions of Rule 8002(b) are inconsistent with the proposed change in Rule 8002(a). The Reporter stated that he did not see any inconsistency.

Judge Leavy stated that the rule contains the same "trap" for the unwary as Federal Rule of Appellate Procedure 4, i.e., a notice of appeal filed before disposition of certain motions is ineffective, even if the notice is filed before the motion. He indicated that the provision avoids confusion over just what is before the appellate court, especially if the judgment is changed. The Reporter stated that the "trap" is a good "trap" -- even though it sometimes works an injustice -- because it discourages blanket appeals. Professor King moved to leave the proposed rule as it is. **The motion carried without objection.**

Judge McGlynn and the Chairman expressed concern about the use of the word "announcement" in Rule 8002(a). Professor King stated that Rule 8002(a) should track the language of Federal Rule of Appellate Procedure 4(a). **The Chairman directed the Reporter to review the matter.**

Rule 8004

The National Conference of Bankruptcy Clerks suggested that the appellant (instead of the clerk) be required to transmit a copy of the notice of appeal to the United States trustee and that the language "Unless the United States trustee otherwise requests," be added at the beginning of the new sentence on line 8 of Rule 8004 on page 162 of the Preliminary Draft. The Reporter recommended rejection of the first suggestion because of the reliability of transmission by the clerk's office. He recommended rejection of the second suggestion on the basis of the Committee's decision to add a new subdivision (b)(3) to Rule 5005, which would relieve the clerk of any obligation to transmit a document to the United States trustee if the United States trustee does not wish to receive it. It was moved to leave the rule as it is. **The motion carried without objection.**

Rule 8006

The National Conference of Bankruptcy Clerks suggested four changes in Rule 8006.

The first change was to follow the "excerpts of the record" concept set out in Rule 8009(b) regarding bankruptcy appellate panels. The rule provides for copies of pertinent documents to be attached to the briefs. The Reporter stated that Rule 8009(b) does not excuse the preparation and transmittal of the entire record of appeal under Rule 8007(b), but allows the appendix approach to avoid the necessity of multiple copies of the entire record for all three BAP judges. Judge Meyers indicated that the BAP only requests specific papers.

The second change suggested by the NCBC was that, if the Committee retains the present approach, someone other than the

clerk's office prepare the documents for the record on appeal. The clerks suggested that the appellate courts could decide to what extent, if any, documents not designated by a party would be considered. The Reporter stated that the rule lists items to be included in the record, and that appellate courts should not have to designate the items to be included.

The present rule requires the attorney to designate the record within 10 days, while briefs are not due for 15 days. The NCBC stated that attorneys routinely designate the entire case file rather than risk neglecting to designate a critical document. The Reporter stated that the two time periods deal with different, unrelated matters. The 10 days runs from the filing of the notice of appeal and the 15 days runs from the entry of the appeal on the docket of the appellate court.

The clerks' fourth suggestion dealt with the added language on lines 20-21 of page 166 of the Preliminary Draft. The amendment proposed by the Committee is an invitation for attorneys to use the clerk's office to make copies, rather than using their own staffs. The proposed amendment provides that if a party fails to provide copies of the items designated as the record on appeal, the clerk will make the copies at the expense of the party. The NCBC stated that it is unlikely that the clerk will be paid because the most likely reason that the copies were not provided is that the appellant has no further interest in pursuing the appeal.

The Reporter stated that the proposed procedure is appropriate so long as the party pays for the copies. Mr. Heltzel stated that the clerk often can not collect for the copies of the record on appeal. Judge Jones stated that in no other appellate system does a party prepare the official record on appeal, one of the core functions of the clerk. Judge Meyers stated that the BAP often receives unsigned copies of documents from the attorney's file as the record on appeal. Mr. Heltzel stated that the quality of the record on appeal must take precedence over labor saving in the clerk's office.

Judge Leavy moved to reject all four of the clerks' suggestions. **The motion to reject carried.** The Reporter stated that the rules now require that the complete record go up to the appellate court in all cases and that the three members of the BAP panel get three copies of the appendices, which consist of important documents.

Rule 8007

The National Bankruptcy Conference stated that Rules 8007 and 8006 appear to provide for the transmission of the entire record on appeal while some bankruptcy judges order the transmission of only a partial record. The Conference said this

causes problems regarding the interpretation of Rule 8009(a), which provides for filing the appellant's brief 15 days after entry of the appeal on the docket of the appellate court. The Conference stated that, if a partial record has been ordered, the appellant's brief may be due before some of the documents which the appellant deems relevant to its appeal are before the appellate court, necessitating motions for extensions of time. The Conference also indicated that there is no procedure in the rules to deal with disputes over the content of the record or to toll the time for filing briefs until such disputes are resolved.

The Reporter recommended rejection. The suggestions are not related to any of the amendments proposed by the Committee and would require publication. Rule 8007(a) provides that the clerk shall transmit the record "when the record is complete for purposes of appeal." The Reporter questioned whether disputes over the content of the record are really a problem. He indicated that he assumed that a party could raise such a dispute by a motion to supplement or to strike, and could move to extend the time to file briefs if necessary. Judge Jones stated that the district court gets these motions all of the time. It was moved and seconded to leave the rule as it is. **The motion carried without objection.**

The Commercial Law League questioned the advisability of amending Rules 8006 and 8007 to change the present procedure of transmitting the original record on appeal. The League stated that preparing copies of the documents to be transmitted is an unnecessary expense. If there are courts in which transmitting the original papers has created a difficulty, the League stated that appropriate action can be taken under Rule 8019. The Reporter recommended rejection because the bankruptcy case has to continue below while the appeal is taken. It was moved to leave the proposed rule as it is. **The motion carried without objection.**

Rule 8016

The National Conference of Bankruptcy Clerks suggested amending Rule 8016(b) to add "unless the United States trustee otherwise requests" on line 11 of page 178 of the Preliminary Draft. The NCBC also suggested eliminating the last line of subdivision (b) in light of the Committee's proposed amendment to Rule 8007(b).

The Reporter recommended rejection of both suggestions. The first suggestion is unnecessary in light of the Committee's decision to amend Rule 5005 so as to relieve the clerk of any obligation to transmit a document to the United States trustee if the United States trustee does not wish to receive it. The last line of section (b) is necessary because any original documents sent to the appellate court as part of the record on appeal

should be returned to the trial court. It was moved to reject the clerks' suggestions. **The motion carried without objection.**

Rule 9001

The Commercial Law League indicated that the term "designee" is somewhat ambiguous in Rule 9001(11). The League also asked if there are any limits to the United States trustee's authority to designate, the formal requirements of the designation, and whether the designation must be for specific purposes or may be for all situations where the rules refer to the United States trustee. The Reporter recommended rejection on the basis of the Committee's earlier discussion. It was moved to leave the rule as it is. **The motion carried without objection.**

Rule 9003

The Committee had changed Rule 9003 earlier to add examiners. The Reporter recommended adoption of the following Committee Note:

> "Subdivision (a) is amended to extend to examiners the prohibition on ex parte meetings and communications with the court."

Judge Jones moved to adopt the Committee Note. **The motion carried without objection.**

The American Bankruptcy Institute suggested deleting "and assistants" following "United States trustee" on line 7 of Rule 9003(b) on page 183 of the Preliminary Draft. The ABI stated that the language is redundant in view of Rule 9001(11) which includes assistants within the definition of "United States trustee." The Reporter agreed and recommended deleting "and assistants". Judge Mannes disagreed and moved to reject the suggestion. **The motion to reject carried without objection.**

Rule 9006

At the February 1, 1990, meeting, the Committee had voted to add "1017(e)" to Rule 9006(b)(3). The Reporter recommended adoption of the following Committee Note:

> "Subdivision (b)(3) is amended to limit the enlargement of time regarding dismissal of a chapter 7 case for substantial abuse in accordance with Rule 1017(e)."

Professor King moved to adopt the Committee Note. **The motion carried without objection.**

The Commercial Law League suggested deleting the reference to "any applicable statute" from line 4 of page 184 of the

Preliminary Draft in light of decisions such as In re Butcher, 829 F.2d. 596 (6th Cir. 1987). It was moved to reject the suggestion in light of the effect on other federal rules. **The motion to reject carried without objection.**

The League also suggested amending the rule to permit later filing under Rules 1007(a), 1017(b)(3), and 2003(a)(1) and (d) in cases of excusable neglect. The Reporter stated that the amendment would require publication. Professor King moved to reject the suggestion. Mr. Mabey stated that the issue should be revisited. The motion was amended to reject and revisit the suggestion. **The amended motion carried without objection.**

Rule 9011

Judge Wheless suggested that the word "proceeding" be added after the word "case" on line 2 of page 190 in the Preliminary Draft to make it clear that sanctions can be imposed in adversary proceedings. The Reporter recommended either rejection of the suggestion or the deletion of the words "in a case under the Code" in line 2 of page 190 of the Preliminary Draft. In many rules, the Reporter stated, the word "case" is used to include proceedings within the case.

Judge Wheless also suggested bringing oral representations within the rule. The Reporter recommended rejection. He stated that Rule 9011 is intended to incorporate Federal Rule of Civil Procedure Rule 11, which does not include oral representations. In any event, the change would require publication. It was moved to leave the rule as it is. **The motion carried without objection.**

The Commercial Law League suggested changing the word "shall" on line 21 of page 191 of the Preliminary Draft to "may." The Commercial Law League stated that experience has demonstrated the desirability of affording greater flexibility to the courts in cases of relatively harmless non-compliance. The Reporter recommended rejection. It was moved to leave the rule as it is. **The motion carried without objection.**

Rule 9014

The National Bankruptcy Conference suggested that Rule 9014 be changed to clarify that the automatic 10-day stay under Rule 7062 "is not waivable as to a confirmation order." The Reporter recommended rejection. The Reporter stated that he assumed that, by "not waivable", the Conference meant that the court may not "otherwise direct", see page 193, lines 7-9 of the Preliminary Draft. The Reporter indicated that he thought the court should have the power to alter the application of Rule 7062 regarding a confirmation order in a particular case. The Reporter also indicated that the change might require publication. Mr. Shapiro

stated that the parties have to have 10 days to object to a confirmation order to avoid a rush to object before the objection is moot. Judge Leavy moved to reject the suggestion. **The motion to reject carried without objection.**

The Commercial Law League suggested that Rule 9014 be amended to provide specifically that a contested motion may be served on counsel who has already appeared generally in a bankruptcy case for a party from whom relief is sought. The League stated that many bankruptcy judges require service on the party rather than counsel, which is embarrassing to client and counsel and tends to increase the likelihood of default through untimely response. The Reporter recommended rejection and stated that the motion should be served on the party. It was moved to leave the rule as it is. **The motion carried without objection.**

Rule 9015

In view of the Granfinanciera decision, the Commercial Law League stated that it is essential that former Rule 9015 or a similar rule be reinstated. The League stated that the rule or the committee note should indicate that the Committee does not intend to express an opinion on the right of bankruptcy judges to conduct jury trials but merely seeks to prescribe the procedures to be followed in those cases where the right to a jury trial exists. The League indicated that it doubts that the gap can be filled by local rules. The Reporter recommended that the suggestion be rejected and revisited, and it was so moved. **The motion to reject and revisit carried without objection.**

Rule 9021

The Commercial Law League suggested that the separate document requirement for judgments be eliminated because it is unworkable and is seldom observed. As a result of the rule, the League stated, two courts of appeals have suggested that there is an interminable period during which appeals or motions under rules 9023 and 9024 may be initiated. Judge Jones stated that the Court of Appeals for the Fifth Circuit had ruled that the separate document can not be eliminated. The Chairman indicated that the Ninth Circuit had made a similar ruling. It was moved to leave the rule as it is. **The motion carried without objection.**

Rule 9022

Because the United States trustee is not involved in every matter which results in a judgment or order, the National Conference of Bankruptcy Clerks suggested adding the words "or unless the United States trustee otherwise requests" before the comma on line 5 on page 197 and at the end of line 14 on page 198

of the Preliminary Draft. **The Reporter stated that the Committee had dealt with the issue in its discussion and vote on Rule 5005.**

The NCBC suggested that the phrase "the clerk shall forthwith transmit" on line 6 of page 197 and on line 15 on page 198 of the Preliminary Draft should be changed to "the clerk or some other person as designated by the court." The Reporter recommended rejection. For reliability purposes, he stated, a judgment or order entered by a district judge should be transmitted by the clerk, who has to transmit it to the parties, anyway. It was moved to reject the suggestion. **The motion to reject carried without objection.**

Rule 9027

Judge Kressel suggested amending both Rule 5011 (abstention) and Rule 9027 (removal and remand) to permit bankruptcy judges to enter final orders on these matters. The Reporter stated that the Committee had voted to reject the suggested change in Rule 5011 and he recommended rejection of the change in Rule 9027. **The Committee agreed to reject the suggestion.**

The Commercial Law League suggested that the rule be amended to require that a notice of removal contain only copies of the initial pleading and responses in the first instance. Further documents could be submitted later as they are needed. The League stated that the current requirement that a notice of removal include copies of all pleadings and process can be extremely burdensome. The Reporter recommended rejection. He stated that the bankruptcy court should have copies of all process and pleadings. **It was so moved, and the motion passed without objection.**

Rule 9033

The National Bankruptcy Conference suggested that subdivision (a) be amended to require that a proposed order be submitted to the district court along with the proposed findings of fact and conclusions of law. The Reporter recommended rejection. He stated that the statute does not require a proposed order and that any change in Rule 9033 would require publication. It was moved to leave the rule as it is. **The motion carried without objection.**

The National Bankruptcy Conference suggested that subdivision (b) be amended to provide that the 10-day period for objections run from the entry on the docket of a notice of submission or transmission to the district court, instead of the current provision that the 10-day period begins when the party is served with the proposed findings of fact and conclusions of law. The Reporter recommended rejection. He stated that the suggested change would have the effect of shortening the time for

objections, which is already short enough. It was moved to leave the rule as it is. **The motion carried without objection.**

The meeting was adjourned until 8:30 a.m., Friday, March 16, at which time the meeting was reconvened.

Rule 3016

Judge Jones had stated that a judge could consider the Committee Note to Rule 3016 and the use of the word "prohibit," and conclude that the rule conflicts with § 1129(c). Judge Jones moved to revise the Committee Note to say just what was changed, i.e., moving the bar date from the conclusion of the hearing to the entry of an order. **The Committee directed the Reporter to draft a revision.** The Reporter proposed the following draft:

> Subdivision (a) is amended to enlarge the time for filing competing plans. A party in interest may not file a plan without leave of court only if an order approving a disclosure statement relating to another plan has been entered and a decision on the confirmation of the plan has not been entered. This subdivision does not prohibit a debtor from filing a plan.

The revised Committee Note was approved without objection.

Rule 5005

The Reporter read the following draft of a proposed new subsection (b)(3) and recommended its approval:

> (3) Nothing in these rules shall require the clerk to transmit any paper to the United States trustee if the United States trustee requests in writing that the paper not be transmitted.

The Reporter read the following draft addition to the Committee Note to accompany the proposed new subdivision (b)(3):

> Subdivision (b)(3) is designed to relieve the clerk of any obligation under these rules to transmit a document to the United States trustee if the United States trustee does not wish to receive it.

The Chairman stated that the clerk can separate out only large groups of papers and that the United States trustee may get some papers which the trustee requested not to receive. Mr. Logan stated that this would pose no problem because the United States trustee will throw out the unwanted papers. Mr. Logan indicated that the United States trustees understand the practical problems faced by the clerks in sorting large volumes of papers. Judge Barta moved to approve the proposed new

subdivision (b)(3) and the proposed addition to the Committee Note. **The motion carried without objection.**

Rule 1002

The Reporter read the following proposed addition to the Committee Note:

> Notwithstanding subdivision (b), the clerk is not required to transmit a copy of the petition to the United States trustee if the United States trustee requests that it not be transmitted. See Rule 5005.

The Committee discussed adding a cross-reference to every Committee Note which referred to the clerk sending copies to the United States trustee. The Reporter stated that the provisions affect only the clerk and the United States trustee, both of whom should know about the rule. Mr. Mabey stated that there should not be a Committee Note to Rule 1002 unless there is a cross-reference in the other rules. It was moved to delete the proposed addition to the Committee Note to Rule 1002. **The motion to delete failed for lack of a second and the movant withdrew it.**

As a substitute motion, Mr. Mabey moved that the following sentence be added to the Committee Note in place of the bare cross reference to Rule 5005:

> Many rules require the clerk to transmit a certain document to the United States trustee, but Rule 5005(b)(3) relieves the clerk of that duty under this or any other rule if the United States trustee requests that such document not be transmitted.

The substitute motion carried without objection.

Rule 3002

The United States suggested changing the bar date for filing proofs of claim in chapter 12 cases. The United States stated that it is virtually impossible for government creditors to file proofs of claims within the time set by Rule 3002(c) for chapter 12 cases. In the Preliminary Draft, the deadline was set at five days after the first date set for the § 341 meeting of creditors. The Committee voted at its February 1, 1990, meeting to change the deadline date from five days to eight. Because 20 days' notice is required for the § 341 meeting, the proposed revision of Rule 3002(c) gives creditors only 28 days to prepare and file proofs of claim in chapter 12 cases. Because an extension can be requested, the government stated the exception could be far more common than the rule. The Internal Revenue Service and the American Bankruptcy Institute expressed similar concerns about the proposed change.

The government proposed that the rule permit filing of claims up to 60 days after the petition, unless the debtor or the trustee affirmatively requests shortening the time on 10 days' notice to creditors. In no event should the time be shortened to less than five days after the § 341 meeting.

The Reporter opposed the specific changes proposed by the government but indicated that the problem is worthy of discussion. He stated that he sympathized with the problems faced by government creditors but that the early filing date was proposed to have the bar date prior to confirmation so that the confirmation standards under § 1225 may be considered at the hearing.

The Reporter indicated that the Committee had a number of alternatives, including leaving the rule as it is, allowing a later bar date if the plan is not filed with the petition, and permitting claims to be filed after the confirmation hearing. The Reporter noted that claims can be filed after confirmation in chapter 13. He indicated that many bankruptcy courts deal with the situation by requiring an amended plan if post-confirmation claims make the confirmed plan unworkable.

Professor King noted that the interim chapter 12 rules permitted claims to be filed up to 90 days after the first date set for the § 341 meeting, as is the case in chapter 13. He stated that no change in the existing 90-day deadline in chapter 12 may be best in light of Committee's planned full review of chapter 13, which could include consideration of the claims bar date for both chapters; and the short time between the August 1, 1991, effective date for the proposed amendments and the termination of chapter 12 on October 1, 1993. Judges Barta, Mannes, and Meyers indicated that they opposed the early bar date.

The Reporter stated that if a 90-day bar date for chapter 12 claims is included in Rule 3002(c), Rules 3004 and 3005 should be amended to treat chapter 12 the same as other chapters. The change also would require the deletion of the first paragraph of the Committee Note on Rule 3002 and the addition of a sentence to refer to the inclusion of chapter 12. Professor King moved to adopt the 90-day bar date for chapter 12 cases and the remainder of the package proposed by the Reporter. **The motion carried without objection.**

The American Bankruptcy Institute suggested adding the words "Except as provided in Rule 3005," to the beginning of Rules 3002(c) and 3003(c)(3) for clarity. The Reporter stated that the phrase was stylistically inconsistent and unnecessary. Judge Jones moved to leave the rule as it is. **The motion carried without objection.**

The Seventh Circuit clerks suggested adding a new subparagraph (c)(7) to provide:

> "If a creditor is added by amendment to the schedules in a chapter 13 case, the added creditor may file a claim within 30 days after notice of the amendment or within 90 days after the first date set for the meeting of creditors called pursuant to § 341 of the Code, whichever is later."

The clerks stated that the change is needed because Rule 9006(b)(3) does not allow the bar date to be extended once it has expired and because § 523(a)(3) (the nondischargeability of unscheduled debts) does not apply in chapter 13 cases. The Reporter recommended rejection and revisiting as part of the Committee's review of chapter 13 matters. He stated that the change would require publication, anyway. Professor King moved that the suggestion be rejected and revisited. **The motion to reject and revisit carried without objection.**

Judge Hess also opposed the proposed time limit for filing proofs of claims in chapter 12 cases. **The Reporter stated that the judge's suggestions were moot in light of the Committee's vote to change Rules 3002, 3004, and 3005.**

Rule 3015

The United States stated that the rule should be changed to eliminate the provision for mailing plan summaries in lieu of the actual plans, at least in chapter 12 cases. The government indicated that although a summary may be sufficient in consumer chapter 13 cases, such a summary will rarely suffice in the complex world of agricultural financing. Mr. Logan stated that the government immediately asks the clerk for a copy of the plan in each of these chapter 12 cases.

Judge Mannes stated that summaries are permitted in order to accommodate central mailing operations. Mr. Heltzel stated that the use of a plan summary permits the court to notice the § 341 meeting and the summary of the plan on a single piece of paper. Mr. Logan stated chapter 12 plans are short but that the summary does not include the treatment of government claims generally.

Judge Leavy moved to leave the rule as it is. **The motion carried on a vote of 4-2.**

Rule 3022

The United States stated that the phrase "fully administered" should be clarified in the rule. The government suggested that the six factors set out in the first paragraph of the Committee Note be moved to the end of the rule itself and

that the word "whether" be eliminated from each factor. The government suggested that the rule should provide that the estate shall be deemed to have been "fully administered" if the all six factors are present. The government also suggested that the following be added to the Committee Note:

> "Normally, the United States trustee's role ends upon confirmation of the plan; however, the United States trustee could have post confirmation involvement if matters pertaining to the duties of the United States trustee under 28 U.S.C. § 586 remain unresolved at confirmation."

The Reporter recommended rejection. The Committee voted earlier to move the six factors to the Committee Note. The Committee also decided that the six factors should be exemplary but not binding. The Reporter also stated that neither the Committee Note nor the rule should get into the role of the United States trustee, which is a matter of statutory construction. Mr. Mabey stated that placing the six factors in the rule itself would give the erroneous impression that all six factors must be met before a case is "fully administered."

Mr. Logan stated that the proposed Committee Note reflected the general practice of the United States trustee program unless the court instructs the debtor to send post-confirmation reports to the United States trustee and requests that the United States trustee review the reports. The Chairman stated that it was hard for the Committee to make a precise statement when on balance there is some question. Mr. Logan stated that the matter was being discussed by the Administrative Office and the United States trustees and that there may be more to the matter than the United States trustees' initial conclusion that, as a matter of resource allocation, they have no further role after confirmation.

Professor King moved to leave the rule as it is. **The motion carried without objection.**

The American Bankruptcy Institute opposed the deletion of the language on lines 3 to 5 of page 103 of the Preliminary Draft, which stated that the final decree closing the case shall discharge any trustee and may include provisions by way of an injunction. The Reporter recommended rejection. He stated that the language is unnecessary because the rule is being changed to make it clear that the rule applies only in chapter 11 cases. It was moved to leave the proposed rule as it is. **The motion carried without objection.**

Judge Fitzgerald stated that the term "fully administered" in § 350 of the Code indicates an intent to have the plan payments completed before entry of a final decree. She indicated that this is inconsistent with the statement in the Committee

Note that entry of a final decree should not be delayed solely because the plan payments have not been completed. The Reporter recommended rejection. He stated that he disagreed with Judge Fitzgerald's reading of the statute. Professor King moved to reject the suggestion. **The motion to reject carried without objection.**

Judge Fitzgerald also suggested that the substance of current Rules 2015(a)(6) and (7) should be included in some form in Rule 3022 because it is helpful for plan proponents to file requests for final decrees and status reports. The Reporter stated that the Committee was of the view that these parts of Rule 2015 are virtually ignored today. The court may order any reports it desires pursuant to § 1106(a)(7). It was moved to reject the suggested addition to Rule 3022. **The motion carried without objection.**

The National Conference of Bankruptcy Clerks stated it is unclear whether a written motion is required prior to the entry of a final decree by the court "on its own motion". The clerks suggested that a written motion not be required because of the additional work and delay.

The Reporter suggested use of the phrase "on its own initiative", which Mr. Heltzel endorsed. Professor King stated that the language in the rule should be consistent with other usages in the Bankruptcy Code and Rules, such as § 707(b) and Rule 1017(e). Judge Mannes asked how trustees get discharged. The Reporter stated that they are discharged pursuant to Rule 5009, except in chapter 11 cases. Judges Mannes asked how the bond company knows that a chapter 11 trustee has been discharged. Professor King stated that the information is in the final decree.

Judge Barta endorsed closing chapter 11 cases on the court's own motion but expressed concern about the lack of notice to creditors. Judge Jones suggested incorporating the language from the last sentence of Rule 5009(a) into Rule 3022 to provide notice of the court's motion to close the case. The Reporter indicated that the language would have to be modified for chapter 11. Judge Leavy moved to leave Rule 3022 as it was set out in the Preliminary Draft. He stated that the case law handles the matter of when a chapter 11 trustee is discharged now and can continue to do so. **Judge Leavy's motion carried unanimously.**

Rule 5002

The United States suggested changing the definition of "United States trustee" in the Committee Note on page 121 of the Preliminary Draft to limit it to the United States trustee or an assistant United States trustee. **Mr. Logan withdrew the suggestion.**

The United States also disagreed with the rule to the extent that when a relative of the judge or the United States trustee is not approved for employment, the person's partner or a member of the person's firm is disqualified as well. Mr. Logan stated that the proposed rule does not consider the effect of a "Chinese wall" around the ineligible person. He said the focus should be on the firm as well as the ineligible person, who can take himself or herself out of the case. According to Mr. Logan, the focus of the court's consideration should be on hiring the firm, not on automatically disqualifying it.

The Reporter stated that the Committee Note already refers to the court's consideration of "the relationship and the particular circumstances of the case," including whether the United States trustee disqualifies himself or herself, whether the related person handles the case, and whether a Chinese wall is built around the related person. Professor King stated that the question is not a conflicts situation, but a matter of compensation or benefit. He indicated that any associate or partner, including the related person, benefits when a law firm is appointed. The Chairman stated that the current draft is much more realistic than the present rule.

Mr. Shapiro asked whether it is more likely for a law firm to be disqualified from representing the debtor or a committee, or for the United States trustee to withdraw from the case. Mr. Logan stated that Department of Justice's Standards for Ethical Conduct require that the United States trustee recuse himself or herself, even if the trustee's relative at the law firm is not a bankruptcy attorney and would have no role in the case. Judge Leavy moved to leave the rule as it is. **The motion carried without objection.**

The United States suggested that the Committee Note refer to the American Bar Association's Model Code of Ethics and the Department of Justice's Standards for Ethical Conduct. **Mr. Logan withdrew the suggestion.**

The Seventh Circuit clerks suggested extending subdivision (a) to prohibit the employment of a relative of the United States trustee. The clerks stated that a lay person who does not understand the distinction between bankruptcy judges and United States trustees, it would appear that the rule perpetuates the potential for abuse sought to be eliminated by the United States trustee program. The Reporter recommended rejecting the suggestion, which was discussed at length after the hearing in Washington. Judge Leavy moved to reject the suggestion. **The motion to reject carried without objection.**

Rule 5009

The United States suggested that the certification by the United States trustee apply only to asset cases. The United States suggested inserting "in an asset case" after "United States trustee" on line 14 of page 129 of the Preliminary Draft, and "or in a no asset case indicating that the United States trustee has reviewed and approves the trustee's report of no distribution" after "account" on line 16. The Reporter recommended rejection because the Bankruptcy Code requires a final report and final account in every chapter 7 case.

Mr. Logan stated that the term "certification" means different things in asset and no asset cases. He stated that the United States was asking that the rule acknowledge the difference. The Reporter stated that the proposed rule does not deal with the content of the certification, but merely requires certification that the United States trustee has reviewed the final report and final account, and that the estate has been fully administered.

Professor King inquired about the status of the joint memorandum agreement on case closings which was being prepared by representatives of the Executive Office and the Administrative Office. Mr. Logan indicated that a clear, final draft should be prepared for circulation within the next month. Professor King stated that it makes sense to consider the rule in light of the agreement.

Judge Leavy moved that further consideration of Rule 5009 be deferred and designated as the number one item on the agenda for the Committee's next meeting. He stated that the Committee would consider the matter whether or not it receives the memorandum. The Chairman stated that it would be to Mr. Logan's advantage to get a final draft of the memorandum to the Committee by the next meeting. Mr. Logan stated that he would try to get a draft of the memorandum to the Reporter and Ms. Channon by the next Thursday. **The motion to defer passed without objection.**

Rule 7004

The Reporter inquired whether he should read the proposed revision of Rule 7004, which deals with the incorporation of certain provisions of Federal Rule of Civil Procedure 4, or mail the proposed revision to committee members before the next meeting. **It was agreed that the Reporter should mail the revision so that committee members could review it with the civil rule.** Judge Mannes stated that the Committee Note should include the provisions of the civil rule which are incorporated. **The Committee agreed.** The Reporter suggested that a similar provision be added to the end of the Committee Note for Rule 1010. **The Committee agreed.**

Effective Date

In a memorandum dated August 10, 1989, the general counsel of the Administrative Office expressed his opinion that the Supreme Court can delay the effective date of amendments to the Bankruptcy Rules under the provisions of 28 U.S.C. § 2075. Under the current statutory scheme, the effective dates for the Bankruptcy Rules are different from the effective dates for the other procedural rules. Because of the difference, the Reporter stated, a civil rule incorporated into the Bankruptcy Rules can be changed between the effective dates for changes in the two sets of rules. He stated that he did not want such a change in a civil rule to result in the proposed changes in the Bankruptcy Rules being returned to the Committee for further consideration.

Ms. Channon stated that the date in section 2075 is the earliest date the changes can be effective, not a date certain. The Chairman stated that the Standing Committee could suggest that the Supreme Court delay the effective date. The Reporter stated that he was not sure that he agreed with the general counsel's interpretation of section 2075 and that needed changes in the Bankruptcy Rules should not be delayed just to have the same effective date. Professor King agreed with the Reporter. Judge Jones noted that changes in the Bankruptcy Rules have always been effective on August 1.

Mr. Mabey stated that the lead time for the changes in the Bankruptcy Rules is already very long and moved that the Committee abide by the statutory date. **The motion carried without objection.**

Amended Minutes

Professor King moved that the amended minutes of the February 1, 1990, meeting be approved. **The motion carried on a unanimous vote.**

Adjournment and Future Meetings

The next meeting of the committee will be held April 19 - 20, 1990, in Nashville, Tennessee. The comments on the preliminary draft of proposed Official Bankruptcy Forms are due by April 2, 1990. The Reporter recommended devoting the Nashville meeting to considering the comments on the proposed forms. The following meeting will be held in St. Louis. The Reporter suggested using the St. Louis meeting to tidy up the proposed amendments to the rules and forms and for a style committee meeting.

The Chairman inquired about moving the St. Louis meeting to an earlier date or combining the two meetings. The Reporter stated that the Committee had received 24 comments on the draft proposed forms and that most comments usually come in the last week before the deadline. The Reporter suggested waiting until the Nashville meeting to decide whether a second meeting is needed. **The Committee agreed.**

The Chairman adjourned the meeting at 9:40 a.m., March 16, 1990.

Respectfully submitted,

James H. Wannamaker, III
Attorney
Division of Bankruptcy

DRAFT

Agenda Item 1.
Sept. 17-18, 1992

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Minutes of the Meeting of June 20 - 21, 1991

Boston, Massachusetts

The Advisory Committee on Bankruptcy Rules met at 9:10 a.m. on June 20, 1991, in the John W. McCormack Post Office and Courthouse in Boston, Massachusetts. 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
Ralph R. Mabey, Esquire
Herbert P. Minkel, Jr., Esquire
Joseph Patchan, Esquire
Bernard Shapiro, Esquire
Professor Lawrence P. King
Professor Alan N. Resnick, Reporter

The following additional persons also attended the meeting:

District Judge Robert E. Keeton, Chairman, Committee on Rules of Practice and Procedure
District Judge Thomas S. Ellis, III, Member of the Committee on Rules of Practice and Procedure and liaison with this Committee
Francis F. Szczebak, Chief, Bankruptcy Division, Administrative Office of the U.S. Courts
John E. Logan, Director, Executive Office for United States Trustees, U.S. Department of Justice
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

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 Chapter 13 Report are to the Report of the Chapter 13 Subcommittee dated April 24, 1991.

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

Thursday, June 20, 1991

Technology Subcommittee Report

Judge Barta presented the report from the Technology Subcommittee and a proposal for a new rule concerning notice other than by mail. Judge Barta stated that, as a result of delays in preparation of the Request for Proposals for the National Print Center and expanding noticing requirements stemming from increasing filings, some courts may be compelled to consider alternatives to the traditional method of providing notice by mail.

Because the Subcommittee has identified at least 42 bankruptcy rules which contain references to "notice by mail" or similar language, the Subcommittee did not recommend changing each rule. The Subcommittee recommended the following language for proposed rule 9036:

> Whenever the clerk or some other person as directed by the court is required to send notice by mail and the entity entitled to receive the notice requests that, instead of notice by mail, all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission in a manner not consistent with any regulation of the Judicial Conference of the United States, the court may direct the clerk or other person to send the information by such electronic transmission. Notice by electronic transmission is complete when the sender obtains electronic confirmation that the transmission has been received. Notice by electronic transmission is complete, and the sender shall have fully complied with the requirement to send notice when the sender obtains electronic confirmation that the transmission has been received.

Mr. Heltzel estimated that his court spends $60,000 a year to send notices to large, institutional creditors such as Sears, the Internal Revenue Service, General Motors Acceptance Corporation, and credit card companies. He indicated that it costs about $2.5 million a year nationally to send notices to large, institutional creditors. Mr. Heltzel stated that under the proposed rule creditors would initiate the process, creditors would forego the "boiler plate" language in notices (in order to reduce the time and cost of transmission), and that the court could reject applications for electronic noticing.

Mr. Shapiro moved that the Committee approve the proposal in principle and that the Reporter take any suggested changes and prepare a revised draft by the end of the day.

The Reporter suggested deleting the penultimate sentence of the proposed rule as redundant. Mr. Minkel stated that the request for electronic notice should be in writing because the cases involving large, institutional creditors include millions of dollars in assets and liabilities. He asked whether Sears could request written notice in a handful of cases while getting electronic notice in the others. Mr. Heltzel indicated that the request could be handled by simply adding Sears to the mailing list in the case, as is done with any request for notice in a case. Mr. Minkel cautioned that it is hard to get special notice in some districts.

Judge Ellis suggested a pilot program in a small area, such as one representative district. Judge Jones indicated that the proposed rule would give the courts flexibility without precluding a pilot program or tests. Mr. Heltzel indicated that his court is testing the concept by sending the Internal Revenue Service both electronic notices and paper ones.

Mr. Patchan indicated that he was concerned that an Official Form would be cropped as part of the electronic noticing. Mr. Heltzel stated that institutional creditors don't need the same information in every case and that including the full text of the forms would increase the transmission time and cost 100 fold. Judge Keeton stated that the system could be set up to generate the boiler plate language in the recipient's computer.

Mr. Dixon asked what would happen if a creditor on the electronic system claims not to have received a notice. Mr. Heltzel stated the technology exists to capture detailed information on what the creditor received. Professor King expressed concern that questions about the notice could endanger the debtor's discharge or a cramdown. He stated that the Committee shouldn't move too fast.

The motion was revised to direct the Reporter to redraft the proposed rule and submit the draft Friday morning. **The motion carried by a vote of 10-2.**

Chapter 13 Report

Mr. Mabey presented a report by the Chapter 13 Subcommittee, which included a number of proposed amendments to the Bankruptcy Rules. He proposed that the Committee not act on the suggestions contained in Part II of the report. **There was no objection to this proposal.**

Rule 2003(a)

The Subcommittee recommended that Rule 2003(a) be amended to extend by ten days the time for holding the meeting of creditors

in chapter 13 cases in order to permit more flexibility in scheduling the meeting. Mr. Mabey explained that some of the districts with a large number of chapter 13 filings prefer to schedule the meeting of creditors and consensual confirmation hearings on the same day. He stated that this is difficult to do in compliance with the current rules because the debtor has 15 days to file a plan and creditors must be given 25 days' notice of the confirmation hearing, along with a copy of the plan or a summary of it.

Professor King expressed concern that the proposal would create a third time period for meetings of creditors: one in chapter 7 and chapter 11 cases, one in chapter 12 cases, and one in chapter 13 cases. He moved to create uniform 50-day periods in chapters 7, 11, and 13. Mr. Mabey noted that extending the time for the meeting would also extend the time for filing claims and objections to discharge. The Reporter stated that uniformity would not necessarily justify the delay in chapter 7 cases, which are more numerous than chapter 13 cases. **Professor King's motion was rejected by a vote of 4-6.**

A motion to adopt the Subcommittee's draft amendment to Rule 2003(a) carried on a vote of 7-1.

The Reporter asked whether the bracketed language in the Subcommittee's proposed Committee Note would be viewed as endorsing the practice of holding the meeting of creditors and confirmation hearing on the same day. Judge Mannes moved to delete the bracketed language. **The vote was 8-3 for the motion.**

Rule 3002

The Subcommittee recommended that Rule 3002 be amended to clarify that secured creditors must file proofs of claims before the bar date in order to have "allowed claims" and to provide that a creditor may file a late claim in a chapter 13 case if the delay was the result of excusable neglect.

At the Committee's meeting in January, 1991, the Reporter had been asked to prepare a memorandum on whether requiring a secured creditor to file a proof of claim would conflict with the Bankruptcy Code. He concluded that it would be inconsistent with the Code to require a secured creditor to file in order to retain its lien, but that it is not inconsistent with the Code to require a secured creditor to do so as a condition to the "allowance" of the claim.

Professor King stated that the 1983 rules included this provision but that it was dropped as the result of criticism that the Code does not require that secured claims be filed. He indicated that he was not sure that it was worth stirring up the

dispute again because the lien survives the bankruptcy regardless of whether the claim is filed.

Professor King moved to disapprove the proposed amendment to Rule 3002(a). He withdrew the motion at the suggestion of Judge Howard, who stated that the proposed amendment would clarify that a secured creditor has to file a proof of claim. The Reporter stated that the current rule contributes to the misimpression that only unsecured creditors have to file in order to have allowed claims.

Mr. Mabey moved to adopt the draft amendment to Rule 3002(a) and the motion carried by a vote of 9-2.

Mr. Mabey moved to adopt the Subcommittee's proposed amendment to Rule 3002(c), which would allow the court to extend the time for filing a proof of claim for a creditor whose delay was due to excusable neglect. Mabey stated that the Bankruptcy Code provides for late claims in chapter 7 and should do the same in chapter 13.

Judge Meyers asked what effect the change would have in a case in which the chapter 13 trustee had begun distributions to creditors. Mr. Mabey said the amendment would merely permit an extension. The court could consider the status of distributions in ruling on an extension. Professor King stated that the amendment would change the whole body of law on the hard and fast time for filing claims. **The Committee voted 8-1 for the motion.**

Rules 3004, 3005

The Subcommittee recommended amending Rule 3004 to allow a secured creditor to file, after the bar date, a superseding claim replacing one filed by the debtor or trustee. The Subcommittee also recommended amending Rule 3005 to give a secured creditor an opportunity to file, after the bar date, a superseding claim replacing one filed by a codebtor.

The Reporter stated that the draft does not affect the court's discretion to allow a creditor to amend a proof of claim filed by the debtor. Judge Jones indicated that the proposed change is not limited to chapter 13 cases. She requested that consideration of the proposal be deferred until Friday to allow more time for its consideration. **The Committee agreed.**

After the lunch recess, Mr. Mabey withdrew the proposed changes to Rule 3004 and 3005 in light of the ruling by the Court of Appeals for the Fifth Circuit in United States v. Kolstad, 928 F.2d. 171 (5th Cir. 1991). In that case, the Internal Revenue Service (the IRS) moved to amend a proof of claim filed by the debtor on behalf of the IRS, which failed to file a timely proof of claim. The court of appeals held that the bankruptcy court

had discretion to authorize the IRS to amend the proof of claim filed by the debtor for federal income taxes. **There was no objection to the withdrawal.**

Rule 3015

The Subcommittee recommended amending Rule 3015 to deal with plan confirmation and modification in chapter 12 and chapter 13. The Subcommittee proposed adding a new subsection 3015(h) which would require that the order of confirmation and notice of the entry thereof be mailed to the debtor, the trustee, the creditors, and any other entity designated by the court. The Reporter stated that the amendment to Rule 2002(f) which will be effective on August 1, 1991, requires notice of the confirmation of a chapter 12 plan.

The Committee considered a letter from Terence H. Dunn, clerk of the U.S. Bankruptcy Court for the District of Oregon. Mr. Dunn estimated that with 217,468 chapter 13 petitions filed in 1990 and filings climbing steadily, the new subsection would require the docketing of almost a quarter million notices each year nationally and the mailing of 3,000,000 copies of these notices.

Mr. Mabey stated that the Subcommittee believed that creditors are entitled to know whether the plan was confirmed. Judge Jones stated chapter 13 runs on such a massive scale that it should be kept as simple and self-executing as possible. The Chairman asked what was the problem and why should estate funds be expended to send notices to people who do not care.

Judge Howard asked why there should not be a requirement for notice of the confirmation, which he indicated that some computer companies may already provide. Mr. Patchan stated that creditors assume that the plan will be confirmed. If they receive a notice of the conversion or dismissal of the case, he added, they know that the court did not confirm the plan.

Mr. Mabey moved the adoption of the proposed new Rule 3015(h). **The motion failed on a vote of 3-7. The Reporter stated that the proposed cross-reference to the new subsection in Rule 2002(f) would be deleted as a matter of course.**

It was noted that the proposed 25-day notice of a modification conflicts with the 20-day notice set out in Rule 2002(a)(6). At Mr. Minkel's suggestion, Mr. Mabey agreed to change the notice period to 20 days. Judge Meyers proposed combining the last two sentences of subsection 3015(b). The Reporter stated that he preferred two short sentences and the Subcommittee declined to accept the change. **The matter was referred to the Style Committee.**

Mr. Mabey explained that the proposed new subsection 3015(f) would require that the acceptance of a plan by a secured creditor or the agreement by a priority creditor to receive treatment other than a full payment be in writing. He stated that the proposed change would standardize practice around the country.

The Committee considered a letter from Henry J. Sommer of Community Legal Services, Inc., in Philadelphia. Mr. Sommer questioned the need for the change and stated that many courts deem secured creditors to have accepted plans if they do not object. Mr. Shapiro characterized deemed acceptance as "acceptance by ambush." Mr. Mabey stated the question is really one of procedure: how the creditor's acceptance is to be signified.

Mr. Mabey stated that the Subcommittee received testimony that it is difficult for creditors to determine how plan modifications are made in different districts. As a result, the Subcommittee drafted the proposed new subsection 3015(i) to govern the submission and service of the plan modifications after confirmation. Mr. Mabey proposed the following interlineation after the word "modification" in line 8 of the Subcommittee's proposed draft of the new subsection, which is set out at page 19 of the Chapter 13 Report: ", unless the court orders otherwise with respect to creditors who are not affected by the proposed modification".

The discussion of Rule 3015 continued after lunch. Mr. Mabey moved the adoption of the proposed changes in Rule 3015, excluding the proposed subsection 3015(h), which the Committee had rejected earlier, and including the interlineation in proposed subsection 3015(i), which would become subsection 3015(h).

The Reporter stated that the chapter 13 debtor's attorney now has three choices in dealing with a secured creditor: proving the creditor's acceptance of the plan, cramming down the creditor, or deeming the creditor to have accepted the plan and relying on res judicata if the creditor subsequently challenges the confirmed plan. The Reporter indicated that the change in the proposed new subsection 3015(f) might bar the practice of dispensing with the confirmation hearing unless an objection is filed because a hearing would be required on every case in which a secured creditor does not file a written acceptance.

The Chairman stated that some creditors may be willing to live with a plan but not to sign a written acceptance or appear at a hearing. The proposed amendment, he indicated, would give these creditors the ability to make the court do a lot of additional work in considering cramdowns. Mr. Mabey said these cramdowns would not be chapter 11 cramdowns, just determinations

of whether the plans provide for the secured creditors to retain their liens and receive the allowed value of their claims.

The Committee rejected Mr. Mabey's motion to approve the proposed changes in Rule 3015 by a vote of 5-6.

Mr. Mabey then moved to delete certain language in proposed subsection 3015(f) as set out in lines 9 - 12 on page 18 of the Chapter 13 Report and then approve the remaining changes in Rule 3015. The deletion would eliminate the requirement for a written acceptance or agreement. It was suggested that the caption for subsection 3015(f) be changed to: "Effect of Plan Modification on Acceptance of Plan by a Secured Creditor or Agreement to Treatment of Priority Claim". **Mr. Mabey accepted the suggested change, which was referred to the Style Committee. The Committee approved the remaining changes in Rule 3015 after the deletion of subsection 3015(h) and the language in lines 9 - 12 on page 18 by a vote of 9 - 1.**

Judge Keeton expressed concern about the use of the word "deemed" in Rule 3015 and possible questions about its meaning. After a brief discussion of possible alternatives, the chairman inquired whether anyone desired to reconsider approval of the revisions in the rule. **There was no such motion.**

The Committee returned to a brief discussion of the proposed new subsections 3015(f) and 3015(h). Judge Jones stated that she believed that the proposed subsection 3015(f) was redundant and moved for reconsideration of its approval. **The motion carried by a vote of 6-5.**

Rules 3018, 3019, 3020

The Reporter outlined the proposed changes in Rules 3018, 3019, and 3020, which would eliminate the references to chapter 13 in the three rules. Chapter 13 and chapter 12 will be the subjects of Rule 3015, as amended. It was moved to accept the proposed changes set out on pages 21 - 23 of the Chapter 13 Report. **The motion carried.**

Rule 1017(d)

The Reporter presented the proposed amendment of Rule 1017(d). The revision would clarify that the date of the filing of a notice of conversion of a chapter 12 or chapter 13 case is treated as the date of the entry of the order of conversion for the purpose of applying Rule 1019. **It was moved and voted to accept the proposed change.**

Recommendations of No Action

The Chapter 13 Subcommittee recommended that the Committee take no action on a number of proposals considered by the subcommittee. **There being no objection to the recommendation, the Committee did not act.**

Future Meetings

The Committee had previously discussed meeting September 26 - 27, 1991, in Asheville, North Carolina. Judge Jones asked whether the Committee had enough business to justify a two-day meeting. The Reporter suggested scheduling public hearings on the proposed amendments approved for publication to coincide with the next committee meeting. **The Committee agreed to cancel the meeting in Asheville.**

Ms. Channon stated that if the Committee does not meet in September, the public hearings need to be scheduled now. **The Committee agreed to a tentative schedule of public hearings in Raleigh, North Carolina, on January 24, 1992, and in Pasadena, California, on February 28, 1992, with a meeting following each hearing. The Committee agreed to meet to consider the comments and testimony and prepare a final draft of the amendments in Point Clear, Alabama, on March 26 - 27, 1992.**

Miscellaneous Matters

The Reporter presented a number of miscellaneous amendments and proposed Committee Notes. The Reporter proposed Committee Notes to accompany the changes in Rules 2002(j), 3009, and 6007 approved at the January, 1991, meeting. **The Committee Notes were approved unanimously.** The Reporter proposed revising the heading of subdivision (a) of Rule 6007 as follows: "(a) NOTICE OF PROPOSED ABANDONMENT OR DISPOSITION; OBJECTIONS; HEARING." **The Committee agreed.**

The Reporter recommended amending Rules 1010 and 1013 to delete the references to the official forms because the official forms for the summons and the order for relief were abrogated in 1991. **The recommendations were approved unanimously.**

The Reporter proposed amending Rule 2005 to conform to § 321 of the Judicial Improvements Act of 1990, which changed the title of "United States magistrate" to "United States magistrate judge." **The proposal was approved without objection.**

Time Limits

At the request of the Committee, the Reporter presented a list of time limits contained in the Bankruptcy Rules. The purpose of the list was to assist the Committee in discussing the suggestion that all time limits be either seven days or a multiple of seven days. Professor King moved to table the report. **The motion failed on a vote of 8-2.**

Mr. Minkel indicated that the bar had spent 10 to 20 years learning the current time limits and would be extremely upset if they were changed. He stated that most notice periods in the bankruptcy rules are unique to bankruptcy. Judge Howard stated that the change would be good only if the bankruptcy, civil, criminal, and appellate rules were all changed.

Judge Keeton stated that, even if the Committee did not make global changes in the notice periods, it should consider using seven-day notice periods in all future changes in the time periods. Mr. Patchan moved that the sense of the Committee be recorded in favor of establishing a pattern of time periods in multiples of seven days in conjunction with the other advisory committees. **The motion passed on a vote of 8-2. The Reporter was directed to communicate the sense of the Committee to the other advisory committees.**

Local Rules

On behalf of the Technology Subcommittee, Judge Barta reported that the American Bankruptcy Institute no longer anticipates preparing model local bankruptcy rules. He stated that the ABI has recruited a group of 24 attorneys who will help assemble a data base of local rules from around the country. Mr. Shapiro stated that the task is so difficult that the ABI does not expect to complete the data base for another year.

Judge Barta stated that the volume of filings in the bankruptcy courts and the cost of handling filings by facsimile means that facsimile filing may not work in the bankruptcy courts. He also indicated that facsimile filing is the first step to electronic filing, which will be more economical and reliable. Judge Barta stated that the sense of the Committee, which is opposed to permitting facsimile filings at present, should be communicated to Judge W. Earl Britt and the Committee on Automation and Technology. **There was no objection to this recommendation.**

Alternative Dispute Resolution

Judge Meyers presented the report of the Alternative Dispute Resolution Subcommittee. He stated that it was the sense of the subcommittee that Rule 9019 goes as far as it can now in light of the Biden bill and experiments being conducted in settlement techniques and alternative dispute resolution.

Judge Meyers indicated that the Case Management Subcommittee of the Bankruptcy Committee had inquired why Rule 9031 bars the use of special masters in bankruptcy cases. Mr. Shapiro stated that special masters could be appointed under the Bankruptcy Act and were used to bypass the entire bankruptcy system. Under the Bankruptcy Code, the practice was prohibited in order to avoid diluting the powers of the bankruptcy judges.

Mr. Patchan stated that a practice has grown up of appointing examiners with special powers to serve the same purpose as a special master. He added that Rule 9031 was also intended to avoid the referral of bankruptcy appeals to magistrates. The Reporter stated that, if masters could be used in bankruptcy cases, examiners would go back to their original function.

Judge Howard stated that settlement masters are used with tremendous success in his district. The court uses magistrate judges because of the restrictions on paying outsiders. The Chairman indicated that the status and responsibilities of bankruptcy judges are different now and that the matter could be revisited. He encouraged the Subcommittee to propose a revised rule. The sense of the Committee was that the Subcommittee should continue to study the matter.

Official Forms

Mr. Patchan reported that the Congressional print of the Official Forms contained a number of pages which were out of order. He also stated that Congress had passed additional priorities since Schedule E was revised. Ms. Channon stated that revising the Official Form would require approval by this Committee, the Committee on Rules of Practice and Procedure, and the Judicial Conference.

Memorandum of Understanding

Mr. Logan stated that the Memorandum of Understanding between the Executive Office for United States Trustees and the Judiciary concerning case closing and post-confirmation chapter 11 monitoring has been mailed to all bankruptcy judges and clerks. The memorandum, which is scheduled to be considered by

the Committee on the Administration of the Bankruptcy System next week, outlines the responsibilities of the United States trustees and the bankruptcy clerks in case closing and post-confirmation chapter 11 monitoring.

Mr. Logan stated that his office will issue the memorandum as an unofficial directive by August 1 and take formal action after the Judicial Conference has acted on the matter. He added that the United States trustee program has requested 200 additional personnel in order to fully implement the memorandum.

Report of the Committee on Rules of Practice and Procedure

The Reporter presented for information the report prepared by the Committee on Rules of Practice and Procedure for the March 1991 meeting of the Judicial Conference.

Suggestions for Discussion

Judge Keeton, the chairman of the Committee on Rules of Practice and Procedure, discussed the need for re-examining how the litigation system functions and, in particular, the rules relating to the conduct of trials. Judge Keeton stated that years of concern by the bar, the bench, and the public had resulted in changes in pretrial procedures. Now, he indicated, it is time to consider similar changes to make the trial process shorter, and more efficient and focused. The issue has been referred to each of the advisory committees for their consideration.

In order to prompt and focus discussion on the issue, Judge Keeton presented several draft rules and proposals intended to free trials from incentives for delaying tactics and divisiveness. The judge stated that permitting a witness to testify by affidavit in a non-jury trial, provided that the witness is available for cross-examination, is one way to reduce the time needed for non-jury trials. Judge Keeton and the committee members discussed the application of this procedure in the bankruptcy courts, which would require the modification of Civil Rule 43 to fully implement.

Judge Keeton also discussed his concern about the accessibility of the output of the advisory rules committees to the bench and the bar. Because a consistent style of drafting will make the rules easier to interpret, the judge stated that, when the advisory committees are trying to say the same thing, they should say it in the same way. Because much of the research on the rules is by means of computer searches, he stated, it would be useful to eventually assign certain numbers to general rules, civil rules, criminal rules, appellate rules, and

bankruptcy rules. Using separate number sequences for each of the rules would make electronic searches easier and more efficient.

Finality for Purposes of Appeal

The Reporter discussed the 1990 amendment to 28 U.S.C. § 2072, the Rules Enabling Act, which authorized the prescribing of rules that define when a court's ruling is final for purposes of appeal. The matter was referred by the Committee on Rules of Practice and Procedure.

The Reporter indicated that the amendment did not refer to bankruptcy appeals pursuant to 28 U.S.C. § 158 and that 28 U.S.C. § 2075, which authorizes the bankruptcy rules, was not amended. Several committee members questioned whether § 2072 gives the Committee authority to define finality. **The sense of the Committee was to wait and see how the other advisory committees attempt to define finality.**

Adjournment

Professor King moved that the Committee request permission to publish for comment by the bench and bar the approximately 15 amendments tentatively approved at the last two meetings. The Chairman stated that it is customary for the Style Committee to make another review of the proposed amendments before the Committee votes on their publication. Professor King acquiesced. **The Chairman directed the Style Committee to review the proposed amendments before the Committee reassembled Friday morning. The Chairman designated Professor King, Judge Barta, and Mr. Mabey to serve on the Style Committee and requested that Ms. Channon assist them. The Committee adjourned until 9 a.m., Friday.**

Friday, June 21, 1991

Rule 3015

The Committee reconvened at 9:03 a.m. Friday. The Reporter stated that § 1323(c) provides that the holder of a secured claim that has accepted or rejected the plan is deemed to have accepted or rejected, as the case may be, the plan as modified. Therefore, he indicated, the proposed new subsection 3015(f) is not needed and the Chapter 13 Subcommittee has agreed to delete the subsection. **It was so moved and approved by a unanimous vote.**

Style Committee Report

The Reporter presented the Style Committee's Report and recommended changes in the amendments approved earlier by the Committee. The Style Committee made no changes in the proposed amendments to Rules 1010, 1013, 1017, 2002(j), 2003(a), 2005(b), 3009, 3018, 5005(a), 6002(b), 6006(c), 6007, and 9019(a).

The Style Committee recommended changing the word "applies" to "apply" in the Committee Note to subdivision 3002(a). The Style Committee recommended deleting the final two sentences of the Committee Note to subdivision 3002(c) because the two sentences state the law.

The Style Committee recommended renumbering the subdivisions of Rule 3015 and the Committee Note to incorporate the changes made by the full committee earlier. The Style Committee proposed deleting the word "thereof" from proposed subdivision 3015(g), as renumbered, which is set out at line 10 of page 19 of the Chapter 13 Report. In addition, the Style Committee recommended revising the Committee Note to proposed subdivision 3015(f) to reflect the changes made by the full committee earlier. The proposed revision reads as follows: "Subdivision (f) is added to expand the scope of the rule to govern objections to confirmation and confirmation orders in chapter 12 and chapter 13 cases. These matters are now governed in Rule 3020."

The Style Committee suggested revising the final sentence of the Committee Note to Rule 3019 so that it reads: "Modification of plans after confirmation in chapter 12 and chapter 13 cases are governed by Rule 3015." The Style Committee proposed substituting the verb "are" for "will be" in the final sentence of the Committee Note to Rule 3020.

The Style Committee recommended inserting the words "in writing" after the word "requests" in the third line of proposed Rule 9036. The Style Committee also proposed deleting the phrase "in a manner not inconsistent with any regulation of the Judicial Conference of the United States" from lines 5 - 7. The Style Committee recommended deleting the penultimate sentence and inserting a comma after the word "notice" in the next to last line.

In addition, the Style Committee recommended deleting the fourth paragraph of the Committee Note to proposed Rule 9036 and revising the final paragraph to read: "Electronic transmission pursuant to this rule completes the notice requirements. The creditor or interested party is not thereafter entitled to receive the relevant notice by mail."

Mr. Mabey moved to accept the report by the Style Committee. **The motion was seconded and approved unanimously.**

Professor King moved that the proposed amendments which were tentatively approved at the last two meetings be forwarded to the Standing Committee on Rules of Practice and Procedure with a request that the proposed amendments be published for comment by the bench and bar. The motion carried without objection. Professor King moved that the committee adjourn. The motion carried without objection. The meeting was adjourned at 9:22 a.m., on June 21, 1991.

Respectfully submitted,

James H. Wannamaker, III
Attorney
Division of Bankruptcy

DRAFT

Agenda Item 1.
Sept. 17-18, 1992

Advisory Committee on Bankruptcy Rules

Meeting of February 28, 1992
Pasadena, California

Minutes

The Advisory Committee held a public hearing on the Preliminary Draft of Amendments to the Bankruptcy Rules in the Pasadena courthouse of the United States Court of Appeals for the Ninth Circuit. Immediately following the hearing, the Committee met in the courthouse to consider written and oral comments received on the Preliminary Draft and to transact other business. Present at the meeting were:

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

District Judge Thomas S. Ellis, III, liaison to the Advisory Committee from the Committee on Rules of Practice and Procedure (Standing Committee), also attended the meeting, as did the following additional persons: Richard G. Heltzel, Clerk, United States Bankruptcy Court for the Eastern District of California; John E. Logan, Esquire, Director, Executive Office for United States Trustees; Gordon Bermant, Director of Planning and Technology, Federal Judicial Center; Peter G. McCabe, Assistant Director, Administrative Office of the United States Courts; and Patricia S. Channon, Deputy Assistant Chief, Division of Bankruptcy, Administrative Office of the United States Courts.

Four members of the Committee were absent: District Judge Harold L. Murphy, District Judge Malcolm J. Howard, Harry D. Dixon, Esquire, and Bernard Shapiro, Esquire.

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.

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

Rule 5005(a). The proposed amendment to this rule, which would prohibit the clerk from rejecting papers not in proper form, was the subject of much of the oral testimony heard by the Committee and also generated the greatest number of written comments. Of the written comments, the Reporter noted, only two were in favor. All of the other comments were against the change, as was the oral testimony. Most of the negative comments were from clerks and all focussed on the burden to the clerk and the judge of having to process defective papers.

Two of the written comments pointed out a perceived ambiguity in the rule as drafted, which could cause people to think that the words "or other paper presented for that purpose" on line 12 of the draft amendment means that the rule would apply only to a petition or other paper intended to be a petition. The Committee's actual intent is for the rule to cover all papers tendered to the clerk for filing. The Reporter recommended that the Committee approve an alteration in the wording of the rule to remove the ambiguity. **A motion to adopt the altered wording suggested by the Reporter to remove the ambiguity carried, with none opposed.** After this vote the proposed amendment to Rule 5005(a) reads: "The clerk shall not refuse to accept for filing any petition or other paper presented for the purpose of filing solely because it is not presented in proper form as required by these rules or any local rules or practices."

Ralph Mabey commented that the draft Committee Note to the rule states that the Committee's policy is that it is not the proper role of the clerk to refuse to file papers that do not conform to "certain" requirements of form. Mr. Mabey said this language gives the impression that while the clerk may not refuse papers that fail to meet "certain" requirements, it would be permissible to refuse papers that don't meet other requirements. As the intent of the Committee is to ban all refusals by the clerk, he said, he suggested deleting the work "certain" from the note. The Reporter said he believed he had taken the language from the Committee Note to the civil rule, but would check. Judge Ellis suggested checking whether the word is in the civil rule's note for a reason before deleting it from the bankruptcy rule. Judge Leavy suggested deleting the word unless the Reporter discovers there is a reason for its presence.

The Committee then discussed the testimony that had been presented in the morning by judges and clerk's office personnel from the Bankruptcy Court for the Central District of California. In connection with testimony opposing the proposed amendment to Rule 5005(a), the judges had described problems they are encountering with what they call "unlawful detainer" filings, in which persons file bankruptcy cases solely to avoid eviction, or so-called "petition mills" file cases for them. Judge Jones said

she had previously supported the proposed amendment, but has become concerned that the bankruptcy process is being used "to completely disrupt landlord-tenant relations" and that the practical problems of the clerks should not be dismissed lightly in a system that is expected to handle a million cases a year. Henry Sommer said it seemed to him that the petition mills are a fraud on tenants too, a massive consumer fraud that should be dealt with by direct action, not by permitting rejection of papers by the clerk. The Committee discussed the dismissal procedures in the Bankruptcy Code and Rules and the due process provisions included in them. Judge Leavy and Judge Jones engaged in a dialogue concerning the public admission by two judges that they do not follow the national rules and whether having a rule that creates requirements (e.g., Rule 1005) and another rule that says papers are to be accepted regardless of whether they meet those requirements (Rule 5005 as amended) creates an internal conflict within the rules themselves. Judge Leavy said he is concerned because "the statute allows itself to be used a certain way," but the judges of the Central District "are protecting us from people who do that." Judge McGlynn said bankruptcy courts could justify a more restrictive rule on what papers will be accepted because in bankruptcy court simply filing a paper triggers an injunction without any order of a judge. Several members suggested that the Committee lacks empirical information on the extent of the problem of defective pleadings and should defer final decision on this amendment. Judge Barta described a deficiency notice procedure used successfully in his court, and Judge Meyers said it would help the system to have a list of specific papers that should not be rejected because time considerations give importance to their being accepted. **A motion to consider at the March 1992 meeting an expanded Committee Note or further amendment to the rule that would describe acceptable procedures for handling defective papers, such as Judge Barta's deficiency notice, passed by a vote of 4 to 3.**

Rule 2003. After discussing the comments received, both oral and written, and having concluded that successful chapter 13 scheduling practices vary widely, the **Committee voted to adopt the proposed amendment, with none opposed.**

Rule 9036. Several members supported the written comment that suggested that the court ought not to be authorized to require a debtor that is being directed to give notice to give or pay for the giving of notice electronically without that debtor's consent to the requirement. Others, however, said that a statutory provision, 28 U.S.C. § 156(c), seems to give the court this authority already, and Richard Heltzel said that electronic noticing generally costs less than mail anyway. **A motion to adopt the proposed new rule carried, with none opposed.**

Rule 3002(a). Herbert Minkel said that with the revival of the concept of summary jurisdiction and the consequence that filing a proof of claim now can be held to mean consent to summary jurisdiction, he has come to believe that the amendment could jeopardize a secured creditor. Professor King also strongly opposed the amendment. Ralph Mabey and Henry Sommer supported it, on the basis that the present rule is confusing. The Reporter noted that Rule 3021 states that distribution under the plan is for allowed claims only -- that is, claims for which the creditor has filed a proof of claim. **A motion not to change the present rule failed by a vote of 4 to 5. A motion to adopt the proposed amendment carried by a vote of 5 to 4.** The Reporter stated that this amendment will have to be reported to the Supreme Court as controversial. **Judge Leavy asked Professor King to provide the dissenting report on this rule.** There was some concern among the members about the comment of the Department of Justice which said there shouldn't be a requirement if there can be no sanction for failing to perform. The U.S. waives its sovereign immunity by filing a claim and, therefore, may choose not to do so. Yet the U.S. can't be penalized because it is the sovereign.

Rule 3002(c)(7). The Reporter noted that the comments received had been evenly split. Four correspondents said they have flexibility to deal with late claims now, want to keep it, and oppose the amendment because they perceive the amendment as restricting their flexibility. The other four said there is a strict rule now and they oppose the amendment because it would give too much flexibility. The Reporter said a recent case from the Sixth Circuit already had approved a very liberal interpretation of excusable neglect, much more liberal than the example given in the proposed Committee Note of a creditor who had no notice of the case. Ralph Mabey said he preferred restricting the rule itself to unscheduled creditors as suggested at the bottom of page 13 of the Reporter's Memorandum of February 11, 1992. **A motion to table action on this rule until the March meeting when the Reporter could present a draft of the more restrictive language carried, with none opposed.**

Rule 3009. The Reporter summarized the comments received, in which trustees opposed the amendment as exposing them to greater liability and from a bankruptcy judge who is concerned about lack of notice to creditors in cases in which less than $1500 in net proceeds is realized. The Reporter stated that he personally is aware of at least two bankruptcy judges who support the amendment, although neither of them wrote a letter to that effect. After discussion, **a motion to adopt the amendment carried, with none opposed.**

Rule 3015. Bankruptcy Judge Ralph Kelley had commented that there appeared to be a technical error in the amendments separating rules

dealing with confirmation in chapter 12 and chapter 13 cases from rules dealing with confirmation in chapter 9 and chapter 11 cases. In drafting the amendments, the Committee did not carry over subsection (b)(2) of Rule 3020 with the other parts of Rule 3020 that were carried over. The Reporter said subsection (b)(2) was left out deliberately, because the bankruptcy judges on the chapter 13 subcommittee thought that including it would create an inference that the court does have to take evidence on the other elements for confirmation. Professor King said he thinks Judge Kelley is right, that Rule 3020(b)(2) should be in Rule 3015. He said the provision was drafted originally because the two elements mentioned in it -- that the plan has been proposed in good faith and not be any means forbidden by law -- are difficult to prove. Accordingly, the court ought to be able to confirm without taking evidence if there is no objection based on either element. **A motion to bring Rule 3020(b)(2) into the amendments to Rule 3015 carried by a vote of 7 to 1.** The sense of the Committee was that this further amendment is technical and does not require public comment.

Concerning other aspects of the proposed amendments, commentators wrote that there should always be a modification hearing regardless of whether there is an objection, that notice of a motion for post-confirmation modification by a creditor should go to the debtor as well as the debtor's attorney, and that the debtor should not have to give notice to all creditors (including those "not affected"). **A motion to approve Rule 3015 with the addition of Judge Kelley's suggestion approved earlier carried by a vote of 9 to 0.** Henry Sommer said he would like to see more specificity in the rule on the contents of a motion for modification and a requirement of clear notice to debtors of both what is proposed and the consequences to the debtor of failing to respond when a motion to modify is filed by a creditor. Judge Leavy said this idea is not shut out for the March 1992 meeting. Professor King noted that the title of the rule says "Confirmation," but the text only mentions objections to confirmation. He suggested that the Reporter might consider amending the title to conform to the text.

Rule 3018. The only change being proposed is the amending of the title to reflect the fact that the rule will now apply only in cases under chapters 9 and 11. **A motion to adopt the amendment carried by a vote of 9 to 0.**

Rules 6002, 6006, 6007, and 9019. These amendments simply make it clear that no hearing is required in the absence of objection. A letter from Robert F. Mitsch suggested that affirmative findings by the court ought to be required on some matters, but the Committee declined to consider further amending its proposals. **A motion to adopt the amendments as drafted carried by a vote of 9 to 0.**

Rule 9019. Mr. Mitsch, in his written comments, also suggested that this rule be amended to include reaffirmation agreements. A motion to decline to consider this suggestion carried by a vote of 9 to 0.

Rules 1010, 1013, and 1017. The amendments to these rules are technical and drew no comments. A motion to adopt these amendments carried by acclamation.

Other Matters

Professor King stated that a substitute bill for S. 1985, a bankruptcy bill introduced in November 1991 by Senators Heflin and Grassley, is soon to be marked up. The substitute bill contains a provision that would amend Rule 7004 to require that service on a corporation or partnership be by certified or registered mail. He said the rule has provided for service by first class mail since 1976. That was a change, he said, from the original rule promulgated in 1973, which had specified certified or registered mail. The reason for the 1976 change, Professor King said, was that the Committee had learned that first class mail was more reliable in achieving service, because many persons would refuse to sign for the registered or certified envelopes. He asked whether the Committee should do anything. Judge Ellis said the Committee should make its opposition known to Judge Keeton, chairman of the Standing Committee, so that he could address the issue with the Senate Judiciary Committee. Peter McCabe said that the normal position of the Judicial Conference is that there is a rules process and the rules should not be amended legislatively. Judge Leavy asked Professor King to draft something to send to the Standing Committee, and he agreed to do so. A motion to respond to the bill in this manner carried by a vote of 9 to 0.

The Reporter stated that he had received a letter from Professor Tom Baker, who is chairman of the long range planning subcommittee of the Standing Committee. Professor Baker requested information about long range planning activities of the Advisory Committee. The Reporter asked the members to provide him with input to be used in responding to Professor Baker.

The Reporter announced also that the Standing Committee had appointed a style committee chaired by Professor Charles Alan Wright, and that this style committee would be reviewing the Advisory Committee's work. Professor Resnick said he had received a memo on this subject which he would circulate to the members.

Judge Leavy announced that Gordon Bermant will no longer be working with the Committee on research. Mr. Bermant is the new Director of Planning and Technology for the Federal Judicial

Center, and a new research liaison will attend the March 1992 meeting. Mr. Bermant said that he would look forward to working with the Advisory Committee in the areas of planning and technology.

Respectfully submitted,

Patricia S. Channon

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Date

DRAFT DRAFT

Agenda Item 1.
Sept. 17-18, 1992

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Minutes of the Meeting of March 26, 1992

Washington, D.C.

The Advisory Committee on Bankruptcy Rules met at 9:00 a.m. on March 26, 1992, in the sixth floor conference room of the Lafayette Building in Washington, D.C. The following members were present:

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

The following persons also attended the meeting:

District Judge Robert E. Keeton, Chairman, Committee on Rules of Practice and Procedure
John E. Logan, Director, Executive Office for United States Trustees, U.S. Department of Justice
Joseph F. Spaniol, Jr., Secretary, Committee on Rules of Practice and Procedure
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
John K. Rabiej, Special Assistant, Office of Judges Programs, Administrative Office of the U.S. Courts
James B. Eaglin, Assistant Director, Research Division, Federal Judicial Center
Elizabeth C. Wiggins, Research Division, Federal Judicial Center

Two committee members were unable to attend: District Judge Joseph L. McGlynn, Jr., and District Judge Harold L. Murphy. District Judge Thomas S. Ellis, III, a member of the Committee on Rules of Practice and Procedure and liaison with this Committee, also was unable to attend.

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 Preliminary Draft are to the Preliminary Draft of Proposed Amendments to the Federal Rules of Bankruptcy Procedure, which was published for public comment in August 1991. References to the Standing Committee are to the Committee on Rules of Practice and Procedure.

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

Notice of a Motion to Modify

Mr. Sommer discussed his concern that a chapter 13 debtor against whom a motion to modify a plan has been filed should be given clear notice that the debtor's failure to respond would or could result in the motion being granted. Judge Mannes stated that advising the debtor that failing to respond would result in the modification of the plan implied that the judge has no role in the modification.

Mr. Sommer stated that pro se debtors, or debtors who have been abandoned by their attorneys, face similar pitfalls when they fail to understand the consequences of failing to respond to motions for relief from the automatic stay or to dismiss or convert the case. The Reporter indicated that Mr. Sommer was concerned that pro se debtors and parties may receive a number of notices which they do not understand. He stated that the debtor needs to be told the consequences of not acting in a general fashion and in plain language. The Reporter indicated that the notice requirement should be in the rule, not in a Committee Note.

Professor King moved that the matter be deferred for further study and discussion at a future meeting. **The motion carried without dissent. The Chair directed Mr. Sommer and the Reporter to discuss drafting an amendment to require such a notice.**

The Reporter asked whether the letters from Judge Lee M. Jackwig, dated March 23, 1992, and Jeffrey A. Apperson, dated March 17, 1992, and the memorandum dated March 24, 1992, from Terence H. Dunn should be considered as part of the record of public comment on the Preliminary Draft. **The consensus was that the letters and memorandum should not be considered as part of the record because they were received more than a month after the deadline for receipt of written comments, which was February 15, 1992.**

Rule 5005(a)

Mr. Sommer stated that when an attorney files a writing which the clerk believes to be defective the attorney should have a right to either file the paper in a new form or to tell the judge why the original paper is in the proper form. He indicated that the Committee Note should state that the clerk should inform the person presenting the paper that the clerk believes the paper is defective, not that "the paper is not in proper form". Mr. Sommer stated that, although most of the papers which now are rejected by the clerks are defective, the clerks should not make that decision.

Judge Jones indicated that she had talked to the clerk of the district court and the deputy in charge of the bankruptcy clerk's office in Houston, who told her that they handled defective papers in a manner similar to that outlined in the proposed Committee Note. She withdrew her opposition to the amendment. Mr. Minkel stated that he believed the amendment would not prohibit bankruptcy judges from delegating authority to reject papers offered for filing. Other committee members indicated that they were not sure such delegation would be possible.

Professor King moved to approve the proposed amendment to Rule 5005(a) as set out in the Reporter's memorandum of March 9, 1992. Mr. Minkel seconded the motion. Judge Meyers stated that clerks refuse defective papers because the clerks are implementing rules and enforcing policies. He indicated that accepting defective papers would undermine the rules and the policies. Professor King stated that the rule can be enforced as amended and represents a good policy. Judge Jones stated that any problems which arise from accepting defective papers could be solved by striking them.

Mr. Heltzel asked whether, under the proposed amendment, he should stamp "Order for Relief" on an unsigned petition if it was submitted for filing. The Reporter stated that the paper should be stamped "Filed" because relief is ordered by the statute, not by the clerk. The Chair stated that all the proposed rule says is that the clerk has to accept the paper for filing, which is no more than delivering physical custody of the paper. Professor King indicated that the real importance of the file stamp is to indicate the specific date and time the paper is submitted.

Judge Jones moved to strike the Reporter's suggested change in the Committee Note. The Chair suggested that the Committee vote first on Professor King's motion to adopt the proposed amendment to the rule. Judge Jones withdrew her motion. She suggested substituting the phrase "any paper" in the amendment for the phrase "any petition or other paper presented for the

purpose of filing". The Reporter stated that the phrase had been included for clarity after receiving a comment that there was some ambiguity in the previous phrasing. Judge Jones withdrew her suggestion.

Professor King's motion was approved by a vote of 8-2. The Reporter indicated that the Chief Justice had requested briefings on proposed amendments which are controversial. The Reporter asked whether he should distinguish between matters which spark controversy in the public comments and those which are controversial within this Committee. **The Chair indicated that the Reporter should state that the proposed amendment has generated controversy and what the concerns are.**

Mr. Sommer recommended changing the proposed Committee Note to clarify that the papers at issue are ones which the clerk believes are defective and to indicate that the filer should be given notice that the filer must, within a specified period, either correct the allegedly defective paper or show why it need not be corrected. The Reporter asked whether the second paragraph of the Committee Note should be deleted, leaving it up to the courts to decide how to handle allegedly defective papers. Mr. Dixon moved to strike the second paragraph of the Committee Note. **Judge Meyers seconded the motion, which passed on a unanimous vote.**

Judge Meyers asked why the phrase "judicial officer" was used in the Committee Note. The Reporter stated that the phrase came from the Committee Note to Fed. R. Civ. P. 5, upon which the proposed amendment was based. Judge Mannes moved to substitute the word "judge". **The motion passed without dissent.**

Rule 3015

At its last meeting, the Committee approved the proposed amendments to Rule 3015 published in the Preliminary Draft. The Committee also voted to add to proposed Rule 3015(f) the second sentence of Rule 3020(b) and directed the Reporter to prepare a Committee Note. In addition, Professor King suggested that the Reporter consider whether the title of Rule 3015 should be changed to reflect more accurately the contents of the rule as amended.

The Reporter presented drafts of the amendment to Rule 3015(f), the Committee Note, and amendments to the titles of both Rule 3015 and subsection 3015(f), as set out in his memorandum of March 9, 1992. Professor King moved to approve the three amendments and the proposed Committee Note. **The motion was approved by a vote of 9-0.**

Rule 3002

At its last meeting, the Committee approved an amendment to Rule 3002(a) which provided that, with certain exceptions, both secured and unsecured creditors must file timely proofs of claim in order to have allowed claims. Given the closeness of the 5-4 vote; Professor King's view that the amendment is inconsistent with the Bankruptcy Code; questions about the interplay between the amendment and various sections of the Code, including sections 722 and 726; and the debtor's right to file a claim for a creditor who does not file in a timely manner; the Reporter suggested that the amendment be withdrawn for further study. The Reporter stated that the problems might be resolved in a future amendment by unlinking the allowance of a claim and its timeliness.

The Reporter suggested that the Committee also might withdraw the amendment to Rule 3002(c)(7). He stated that the amendment, which was tabled at the last meeting, would no longer be needed if the amendment to Rule 3002(a) is withdrawn. The original amendment authorized the court to extend the filing period for a chapter 13 creditor who has not filed a timely claim due to excusable neglect. At its last meeting, the Committee had voted to restrict the scope of the amendment to unscheduled creditors who did not have notice of the case in time to file a timely proof of claim.

Judge Howard moved to reconsider and withdraw the amendment to Rule 3002(a). The Chair stated that a motion to reconsider a previous vote by the Committee should be made by a member who voted with the majority. Mr. Sommer stated that he voted with the majority and moved to withdraw the amendments to both Rule 3002(a) and Rule 3002(c)(7). Mr. Mabey stated that the issues raised by the Reporter are substantial but do not argue for leaving the current rule as it is. The Reporter stated that he intended to come back to the Committee with a memorandum and possible changes in the rule. He indicated that any new amendment would be published for public comment and, if approved by the Committee, included in a future package of amendments.

The motion to reconsider and withdraw both amendments passed on a vote of 7-3.

Rule 9029

The Reporter discussed his memorandum of February 6, 1992, which concerned two requests by the Standing Committee. The Standing Committee requested that this Committee propose an amendment to Rule 9029 which would require the uniform numbering of local rules and prohibit local rules which merely repeat

provisions of the national rules. Similar changes were requested in the civil, criminal, and appellate rules.

Judge Keeton indicated that the purpose of uniform numbering is to make local rules easier to use. Professor King and Judge Meyers inquired whether the Standing Committee had asked if uniform numbers are a good idea or had asked for draft language to implement such a requirement regardless of whether this Committee feels it is advisable. The Reporter stated that the request was for draft language, which would be considered at the Standing Committee's meeting in June, 1992. In response to questions about whether any draft amendment would be published for comment by the bar and public, Judge Keeton stated that the Standing Committee could approve a technical amendment without public comment. Mr. Spaniol indicated that he believed the Standing Committee would consider the response to its request and then decide whether public comment is needed.

The draft amendment prepared by the Reporter, which was attached as Exhibit B to his memorandum of February 6, 1992, provided: "Local rules made by a district court or by bankruptcy judges pursuant to this rule shall be numbered or identified in conformity with any uniform system prescribed by the Judicial Conference of the United States." The Reporter stated that the amendment would not be effective until the Conference adopts a uniform numbering scheme for local rules.

The Reporter stated that the Bankruptcy Division is developing an alphabetical list of topics for local rules, followed by the districts which have a rule on a topic and the numbers of those local rules. The Chair stated that any dispute over whether a national numbering system or a local one is better could be avoided by adopting a hybrid system in which a local rule could have both a uniform national number and a local number.

The draft amendment also provided that local rules must be "consistent with, but not duplicative of," the national bankruptcy rules. The draft Committee Note stated that local rules which merely duplicate or restate the national rules may give rise to conflicting interpretations arising from minor inconsistencies between the wording of the national and local rules. In addition, significant local practices may be overlooked when included in local rules which are unnecessarily long.

Mr. Shapiro moved to accept the Reporter's draft amendment and Committee Note. **The motion passed on a vote of 8-0.**

Rule 8018

In response to the Standing Committee's request for uniform numbering and the prohibition of duplicative local rules, the Reporter suggested a similar amendment to Rule 8018. The proposed amendment and Committee Note were attached as Exhibit C to the Reporter's memorandum of February 6, 1992. Professor King moved to adopt the amendment and Committee Note. **The motion carried unanimously.**

Proposed Rule 9037

The Standing Committee also has requested proposed amendments providing that the Judicial Conference shall have the power to correct typographical and clerical errors and other purely verbal or formal matters in the rules. In response to the request, the Reporter presented the draft of a proposed new Rule 9037 and Committee Note. The draft was attached to the memorandum of February 6, 1992, as Exhibit E.

Although the Advisory Committee on Civil Rules is considering adding such a provision to its existing rule on forms, Fed. R. Civ. P. 84, the Reporter indicated that he believed the matter should be the subject of a new, separate rule. The proposed rule states: "The Judicial Conference of the United States may amend these rules to conform to statutory changes in terminology and to correct errors in grammar, spelling, cross-references, and other similar technical matters of form and style." Judge Keeton stated that the civil, criminal, appellate, and bankruptcy rules should all have the same provisions for expedited approval of technical amendments.

The Reporter questioned whether it is desirable to provide that the Conference may amend rules to conform to statutory changes unless the statutory changes relate merely to terminology. This is particularly so, he stated, in area of the law, such a bankruptcy, which is closely tied to the statute. Accordingly, the Reporter suggested striking the words "conform to statutory changes in terminology and to" from the second line of his draft. Professor King and Mr. Minkel questioned the use of the word "terminology" as overly broad. The Reporter indicated that he used the word in order to restrict the delegation of power.

Several committee members asked whether the amendment would allow the Conference to amend the rules without publishing the draft proposals for public comment or without consulting the advisory committees. Judge Keeton stated that the Judicial Conference does not act on bankruptcy rules without first having the advice of this Committee. He stated that both the Conference and the rules committees would continue to be bound by their

internal rules on the rule-making process. Judge Leavy stated that the change just permits the Conference to act without going to the Congress. The rest of the process, including the role of this Committee, remains the same. As for publication, Judge Leavy stated that, generally, if publication is required, the amendment is probably not a technical one as contemplated by the amendment.

Professor King moved to strike the words "to conform to statutory changes in terminology and" from the second line of the proposed rule and then to adopt the proposed rule. Judge Mannes seconded the motion. Mr. Minkel suggested substituting another phrase which would accomplish the same purpose. The Reporter indicated that the remaining portion of his draft would cover every conceivable technical change. Mr. Minkel suggested deleting the word "similar" from the last line of the draft in order to cover all technical matters.

Judge Keeton suggested changing the phrase "conform to statutory changes in terminology" to "make them consistent in form and style with statutory changes". Professor King declined the suggested amendment to his motion. Judge Barta stressed the importance of public notice of proposed changes in the rules. He moved to amend Professor King's motion by deleting the word "grammar" from the third line of the proposed rule. **The vote on Judge Barta's motion was a 4-4 tie, which the Chair broke by voting "no".** Judge Howard moved to amend Professor King's motion to include Judge Keeton's language. The Reporter stated that he understood the motion to be for the approval of the specific language, not of the concept of the simplified approval process. **The motion passed by a 6-3 vote.** It was moved to adopt the Reporter's original draft with Judge Keeton's substitute language. **The motion carried on a 8-1 vote.**

Judge Keeton asked why the proposed rule did not refer to Committee Notes. Professor King stated that the Judicial Conference, the Supreme Court, and the Congress do not promulgate Committee Notes, which are drafted by the advisory committees as aids to understanding changes in the rules. Judge Leavy suggested an amendment to provide that the Judicial Conference may not change Committee Notes. Judge Howard stated that this Committee is an appendage of the Conference.

Professor King moved that this Committee resolve that its vote with respect to Rule 9037 was on the understanding that the purpose of the rule was to make it unnecessary to follow the regular process of submitting changes for public comment and submitting rules to the Supreme Court and to the Congress when they come within the purview of this rule but it is not the purpose to have such rules or notes prepared or drafted by anyone other than the appropriate advisory committee.

Mr. Mabey indicated that he believed that the resolution is unnecessary and that adopting such a resolution might create a negative inference as to other matters approved by the Committee today, i.e., that the Judicial Conference could act on those matters without reference to this Committee. Judge Leavy asked for an objection from anyone who believed that the motion did not reflect reasons for the committee's decision. There was no opposition to the motion on the basis of its accuracy. **Professor King's motion passed by a 6-2 vote.**

The Reporter questioned whether the proposed rule is a wise change. Judge Barta stated that it goes too far. Judge Howard requested a second vote on proposed Rule 9037, as amended. **By a vote of 6-2, the rule was approved a second time.** Judge Howard asked for Judge Leavy's views on the matter. Judge Leavy described the motion as a bit of legislative history which explained why this Committee deviated from the draft under consideration by the Civil Rules Committee. Judge Mannes and Professor King suggested substituting the words "change in Rule 2005" for the words "various changes in the rules" in lines 7 and 8 of the Committee Note. **The Committee agreed and approved the Committee Note with the suggested change.**

Rule 1001

In his memorandum of January 23, 1992, the Reporter had discussed a number of proposed changes in the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure that may have an impact on the Bankruptcy Rules or bankruptcy practice. The proposed amendments have been published for public comment and may be approved by the Standing Committee in June of this year.

The Reporter proposed an amendment to Bankruptcy Rule 1001 to conform to the insertion of the words "and administered" to the second sentence of Civil Rule 1. According to the proposed Committee Note, the purpose of the addition is "to recognize the affirmative duty of the court to exercise the authority conferred by these rules to ensure that cases and proceedings are resolved not only fairly, but also without undue cost or delay." The Reporter stated that the same change should be made in the bankruptcy rule to avoid any possibility of a negative inference.

The Reporter indicated that the change possibly could be made without publication as a "conforming" amendment. Professor King disagreed, particularly in light of the proposed Committee Note. The Reporter agreed that the amendment was more than a stylistic change. Professor King moved to table the proposed amendment as a matter for future consideration and publication. He stated that it would be more appropriate to consider the

matter after the civil rule has been amended. **The motion failed on a vote of 4-6.**

Judge Mannes moved to reject the proposed amendment. Judge Jones stated that delay is the biggest problem in bankruptcy and asked why Judge Mannes opposed the amendment. He indicated that the amendment does nothing more than the current language which provides that the rules shall be "construed to secure the just, speedy, and inexpensive determination of every case and proceeding." Judge Leavy expressed concern about requiring the bankruptcy judge to "administer" cases. **Judge Mannes withdrew his motion and the proposed amendment died for lack of a motion.**

Rule 9002

The Reporter indicated that several changes are being proposed in Civil Rule 16, which is incorporated by Bankruptcy Rule 7016. One change would be to substitute the words "district judge" for "judge" in Rule 16. As a result, the Reporter stated, Bankruptcy Rule 9002 should be amended to conform to the use of the term "district judge" in Rule 16. The proposed amendment would state that "district judge" means bankruptcy judge if the case or proceeding is pending before a bankruptcy judge. Professor King moved to approve the proposed amendment.

The Chair inquired whether the motion was conditioned on approval of the amendment to Rule 16. Professor King said the motion was not so conditioned. Because the term "district judge" is not used anywhere else in the rules, he indicated, there would be no harm in including its definition even if Rule 16 is not amended. **The motion carried on a vote of 8-0. The Committee Note was approved by consensus, subject to the deletion of the final sentence if Rule 16 is not amended.**

Rule 9011

The Reporter briefly discussed the possibility of substantial amendments to Civil Rule 11, upon which Bankruptcy Rule 9011 is based. The reporter did not recommend any action at this time with regard to the proposed amendments to Rule 11.

Discovery Rules

The Reporter indicated that the proposed amendments to the Civil Rules relating to discovery have drawn the greatest amount of public comment of any of the proposed changes to the Civil Rules. These rules are made applicable to adversary proceedings by Bankruptcy Rules 7016, 7026, 7029 - 7034, 7036, and 7037, and, except for Rule 16, to contested matters pursuant to Rule 9014.

Because the proposed amendments have drawn so much public comment and because they may be revised by either the Advisory Committee on Civil Rules or the Standing Committee, the Reporter suggested taking no action on the proposals at this time.

Rule 7056

The proposed amendments include a complete revision of Civil Rule 56, which is made applicable in bankruptcy proceedings by Bankruptcy Rules 7056 and 9014. The Reporter stated that he saw no reason why the changes should not be applicable in bankruptcy. He recommended no action.

Rule 9029

There are three proposed amendments to Civil Rule 83, which is similar to Bankruptcy Rule 9029. The first permits the adoption of experimental local rules which are inconsistent with the national rules if approved by the Judicial Conference and if limited to a period of five years or less. Another proposed new subdivision provides for "standing orders" by individual judges regulating practice. The third new provision states that local rules and standing orders "shall be enforced in a manner that protects all parties against forfeiture of substantial rights as a result of negligent failure to comply with a requirement of form imposed by such a local rule or order." The Reporter doubted that such changes could be made to Rule 9029 without publication for public comment. He suggested taking no action at this time.

Appellate Rules

The Reporter discussed the proposed amendment to Appellate Rule 4(a)(4), which deals with the effects of certain post trial motions on appeals to the court of appeals. Rule 4(a)(4) does not apply to appeals from the district court or bankruptcy appellate panel in bankruptcy cases, which are governed by Appellate Rule 6(a)(2)(i). The Reporter discussed whether this Committee should recommend that a similar change should be made in Rule 6(a)(2)(i) and offered a possible draft of such an amendment. Judge Jones indicated that the existing language of Rule 6(a)(2)(i) accomplishes the same purpose as the proposed amendment of Rule 4(a)(4).

Mr. Sommer recommended that this Committee request the Appellate Rules Committee to make it clear that the same standards apply to post trial motions under both Rule 4(a)(4) and 6(a)(2)(i), either by an amendment to Rule 6(a)(2)(i) or by a

Committee Note. Judge Barta moved to instruct the Reporter to convey Mr. Sommer's suggestions. **The motion passed unanimously.**

The Reporter indicated that Bankruptcy Rule 8015, which governs motions for rehearing in the district court or bankruptcy appellate panel, is similar to Rule 6(a)(2)(i) in that it is silent on whether a new notice of appeal must be filed after a motion for rehearing. Because an amendment to Rule 8015 would require publication, the Reporter stated that consideration of the matter could be deferred until the next package of amendments is prepared for publication.

The Reporter stated that Bankruptcy Rule 8002 is similar to Rule 4(a)(4) and also should be amended if that rule is changed. The Reporter indicated that this Committee could either defer the matter until the status of the proposed amendment to Rule 4(a)(4) is resolved or approve an amendment to Rule 8002 for publication while the amendment to the appellate rule is under consideration. Professor King suggested deferring the matter. **The Committee agreed.**

The Reporter stated that amendments have been proposed to Appellate Rules 4(c) and 25 to reflect the Supreme Court's decision in Houston v. Lack, 487 U.S. 266. He indicated that similar amendments may be needed in Bankruptcy Rules 8002 and 8008. The Reporter suggested deferring the matter while the amendments to the appellate rules are under consideration. **The Committee agreed.**

An amendment has been proposed to Appellate Rule 3(c) as a result of the Supreme Court's decision in Torres v. Oakland Scavenger Co., 487 U.S. 312. The Reporter suggested that there is no need to amend the Bankruptcy Rules in response to the Torres decision. He indicated that the fate of the proposed amendment is unclear and that Bankruptcy Rule 8001(a) does not contain the same language as that now contained in Rule 3(c).

Overlapping Numbers

The Standing Committee has resolved that duplicate numbers should be eliminated in the various bodies of federal rules. The only duplications in the Bankruptcy Rules are with Evidence Rules 1001 through 1008. The Committee agreed that these numbers should be allocated to the Bankruptcy Rules. Professor King moved to request that the Advisory Committee on Evidence Rules agree to leave these numbers for bankruptcy use. Mr. Shapiro seconded the motion. It was agreed that, because there is no such Advisory Committee on Evidence Rules, the motion should be directed to the Style Committee. **The amended motion passed without dissent.**

ABA Resolution

In August 1991, the House of Delegates of the American Bar Association adopted Resolution 119A and an accompanying report dealing with the employment of attorneys and attorney's fees. Mr. Minkel stated that it is significant and unusual for the House of Delegates to consider a bankruptcy matter. The Reporter indicated that the resolution and report include several aspects: deleting the "disinterested" requirement in 11 U.S.C. § 327(a), amending Rule 2014 to be more specific in setting forth the facts which must be disclosed, protecting an attorney's right to compensation despite termination of employment if there was good faith compliance with the disclosure requirement, providing for interim employment followed by continued employment after notice and a hearing, requiring supplemental disclosures, and adopting a new Official Form for Attorney Disclosure.

The Reporter stated that amending § 327(a) is beyond the scope of the rules. He indicated that the courts have interpreted the disclosure requirements of Rule 2014 very broadly and have required attorneys to disclose any connections with the debtor which may be relevant. He stated that if the court approves the employment of an attorney but subsequently determines that the attorney was not disinterested, the courts have used § 328(c) to deny any compensation or reimbursement to the attorney. The Reporter indicated that he had read dozens of these disqualification cases and that they are generally limited to egregious facts and situations in which a reasonable person would have made a more full disclosure originally.

According to the Reporter, the proposed amendment to Rule 2014 raises a number of questions, including whether such a detailed list is needed; if so, what should be on the list; and whether a safe harbor is desirable for attorneys who make a good faith disclosure. He added that the amendment may not be needed if Congress deletes the requirement that the attorney be disinterested. The Reporter indicated that the "safe harbor" proposal appears worthwhile but that § 328(c) may bar this Committee from creating such a "safe harbor" through the Rules. He added that § 328(c) also may conflict with creating a bar date for objecting to the employment of an attorney, which was part of the ABA proposal.

Professor King moved to disapprove all of the ABA's proposals and suggestions. He indicated that the effect of the proposal would be to require less disclosure, allow attorneys to be paid even if they don't disclose, permit attorneys to work and be paid even without providing an opportunity for objections by other parties and without prior court approval, and provide a bar date for objecting to the employment of counsel. He indicated

that the concept of the proposal is wrong in light of the public concern about attorney fees in bankruptcy.

Mr. Mabey disagreed and stated that he believes the proposal would provide for fuller disclosure and more notice. Mr. Dixon stated that there is a problem with the disclosure requirement in Rule 2014 and attorneys should be given some comfort by describing how to comply with the rule. He indicated that this Committee, at least, should study the matter further and consider an alternative to the ABA proposal.

Mr. Minkel stated that he agrees that this is a significant problem and that the ABA proposal would provide for fuller disclosure. He indicated that the disclosure requirements set out in the proposed amendment to Rule 2014 would require revision because they are so detailed that they would make it virtually impossible for many large law firms to reach the "safe harbor." The Reporter stated that the proposed amendment could be interpreted even more broadly than the current rule because it requires the attorney to disclose "any other interest, direct or indirect, with the debtor, creditors, United States Trustee or any employee of that office, or any other parties in interest".

Mr. Mabey stated that the current procedure for approving the employment of counsel is a real problem. He indicated that there are problems with either seeking immediate court approval on notice to the U.S. trustee alone or seeking approval on 15-day notice to all parties. If the attorney gives limited notice, a party may move to have the attorney disqualified later. Mr. Mabey indicated that a 15-day notice is unsatisfactory because the attorney cannot work until the employment is approved after the notice period. Mr. Mabey stated that the procedures for employment are rudimentary and vary widely from district to district, despite the development of a national bankruptcy practice. Mr. Shapiro stated that a bankruptcy judge would usually give an attorney a safe harbor for 15 days if the attorney said that time was needed to make a full disclosure.

The Committee approved Professor King's motion by a vote of 8-1. Judge Leavy indicated that the written response to the ABA should indicate that the Committee's action is not necessarily an attitude of hostility to some resolution of what the ABA sees as a problem. He indicated that the solution may have to come by legislation but there may be room for something to be done by way of procedures, as suggested by Mr. Mabey. **The Chair directed Mr. Minkel and the Reporter to draft a response.** The Chair noted that the procedures for conduct of business by this Committee provide that, to the extent feasible, the Secretary of the Standing Committee, in consultation with the Chair of this Committee, shall advise a person making a recommendation or suggestion of the action taken thereon.

Delegation of Orders

Judge Meyers reported that, in addition to a case management manual, the Case Management Subcommittee of the Bankruptcy Committee is working on a project dealing with the delegation of orders to the clerks. He indicated that Bankruptcy Judge David S. Kennedy, the chair of the subcommittee, has asked whether this Committee has any advice or thoughts about the delegation of orders.

Mr. Shapiro stated that the National Bankruptcy Conference's Committee on Administration had considered what kinds of orders are purely administrative and which ones are judicial. He indicated that the attorneys on the committee had an overwhelming, visceral reaction that clerks don't sign orders; judges sign orders. Several committee members indicated that the clerks in their districts sign orders extending time, orders closing no-asset cases, or orders granting permission to pay the filing fee in installments. Judge Meyers said that these clerks have been delegated authority to sign orders in certain specified circumstances, not just to use a signature stamp. Judge Keeton stated that it is better to have orders signed by the clerk than to have the clerk use the judge's signature stamp. Judge Leavy stated that the process is more honest if anything with the judge's name on it is done by the judge.

Judge Leavy noted that the civil rules authorize the clerk to sign the judgments of the district court. He indicated that it might be more straightforward to define what can be done by a clerk and that it may be possible to do so by rule. Professor King stated that this Committee had considered the possibility of clerks signing orders shortly after the enactment of the Bankruptcy Code and rejected the idea. He indicated that he believed that the Article III judges on the Committee led the opposition to the concept.

Judge Meyers suggested waiting until Judge Kennedy's subcommittee has made a list of orders which may be delegated and then reviewing the list and considering a possible rule. **The Committee agreed.**

Official Forms

Patricia Channon reported that the transition to the new Official Bankruptcy Forms went relatively smoothly but that some changes may be necessary in response to legislative action and comments on the new forms.

Form 1. Ms. Channon stated that two clerks have reported frequent problems with debtors, especially pro se ones,

completing the statistical boxes incorrectly because they did not understand that the asset and liability ranges are in thousands of dollars. Ms. Channon indicated that using the full numbers would look very cluttered and might not help. Judge Howard moved to take no action. **The motion passed by a vote of 6-1.**

Ms. Channon stated that several deputy clerks have noted that the penultimate box on page 2 of the Voluntary Petition varies from the language of § 322 of Pub. L. No. 98-343. Although the statute does not have such a limitation, the form states that only chapter 7 debtors need complete the box. She stated that the deviation is a reasonable one in that debtors who file under other chapters obviously choose not to file under chapter 7. Judge Howard moved to take no action. **The motion passed without dissent.**

Form 5. Ms. Channon recommended that the Committee amend the Involuntary Petition to require that the petitioning creditors and their attorneys date their signatures. Mr. Shapiro moved to approve the change. Judge Howard suggested that the change would be an administrative one which the Judicial Conference could approve without public notice. Ms. Channon agreed that public comment is not needed although the change must be approved by the Judicial Conference. **The motion was approved by a vote of 7-0.**

Form 6. Pub. L. No. 101-647, the Crime Control Act of 1990, added a new subsection (a)(8) to § 507 of the Code. Ms. Channon stated that the new, eighth priority should be included in Schedule E and offered a draft of the amendment. Judge Howard moved to make the change. Mr. Sommer asked if the language in the schedule could be more general. Ms. Channon stated that the statute lists these priority claims and that she would be reluctant to make it more broad. Professor King suggested adding a reference to section 507(a)(8) to the amendment. **The Committee agreed. The motion passed on a vote of 8-0.**

Form 7. Some practitioners have expressed confusion about whether this Committee intended for a debtor who is not "in business" to complete Questions 16-21 in the Statement of Financial Affairs. Ms. Channon suggested rearranging the order of the sentences in the second paragraph of the instructions for the form would clear up any ambiguity on the point. The second sentence would be moved behind the third and fourth sentences in order to make it clearer that only debtors who are "in business" must complete Questions 16-21. It was so moved. **The motion carried by a vote of 9-0.**

The addition of administrative proceedings to the matters to be disclosed in response to Question 4.a. of Form 7 was approved at the January, 1991, meeting. Ms. Channon included the change in her presentation as a matter of information.

Form 9. The title page of the Official Forms and the cover page to Form 9 identify this form as "Notice of Filing under the Bankruptcy Code, . . ." rather than as "Notice of Commencement of Case under Bankruptcy Code, . . .", the language used in the component forms themselves. Ms. Channon indicated that the title of the form should match the language used on the forms which make up Form 9. Professor King moved to adopt Ms. Channon's suggestion. **The motion passed by a vote of 8-0.**

In addition, the citation to Rule 9001(a) in Forms 9B, 9D, 9F, and 9H is incorrect. Ms. Channon stated that the "(a)" should be deleted. It was so moved. **The motion was approved by an unanimous vote.**

Ms. Channon also indicated that the words "Objecting to Discharge of the Debtor or" should be deleted from the block labeled "DISCHARGE OF DEBTS" on Form 9H, the form which is used for a chapter 12 case involving a corporation or partnership. She stated that there do not appear to be any provisions in the Code or the Rules for bringing such an action against a corporate or partnership debtor in chapter 12. It was moved to delete the words as recommended by Ms. Channon. **The motion passed on a vote of 8-0.**

Several courts have local rules fixing a bar date for filing claims in a chapter 11 case. Because the Official Forms do not accommodate this very well and the number of courts which routinely impose bar dates is growing, Ms. Channon prepared proposed alternative chapter 11 forms. The draft forms have a box labeled "FILING CLAIMS". If the court has sets a bar date, that date can be inserted in the box. If no deadline has been set, the phrase "If the court sets a deadline for filing claims, you will be notified." is inserted. It was moved to approve Ms. Channon's recommended changes as alternative forms. **The motion passed on an 8-0 vote.**

Form 10. Several courts have asked that the Proof of Claim require creditors to state the chapter under which the case is proceeding. Ms. Channon offered alternative versions of such a change. Judge Barta moved to approve the version of the change with a blank for stating the chapter. **The motion passed by a unanimous vote.**

Ms. Channon stated that the new, eighth priority needs to be added to the section for priority claims. It was noted that one of the double section marks in the line for other priority claims should be deleted. It was suggested that the Phrase "Circle one" be used in place of "Describe briefly". It was moved to make the three changes. **The motion passed on a vote of 8-0.**

Ms. Channon stated that one court is encountering difficulties with creditors who update the amount of their claims by including post-petition amounts. She suggested adding the words "at time case filed" to the last sentence of the first paragraph of Section 4 and the word "prepetition" to the line which starts "Amount of arrearage and other charges included". Professor King suggested using the phrase "at time case filed" in both sentences and deleting the word "prepetition" from Section 5. Ms. Channon agreed to his changes. Professor King moved to approve his suggested amendments. **The motion passed unanimously.**

Form 14. One court has requested that the Ballot for Accepting or Rejecting Plan be amended to include the class to which the claim belongs. Ms. Channon indicated that the information would be useful to any entity which receives and tabulates the ballots. Mr. Mabey suggested that any creditor who is in two classes should file a separate ballot for each class. Ms. Channon suggested inserting the phrase "which classifies this claim under class _____" at two places in the final sentence of the form. **The recommendation was approved by a 8-0 vote.** Professor King suggested changing the reference to "this claim or interest". **The Committee agreed by consensus.**

Miscellaneous Recommendations. Ms. Channon stated that she has received a number of suggested changes from Bankruptcy Judge Lisa H. Fenning in Los Angeles. These included requiring the inclusion of the debtor's consent to verification of the debtor's Social Security number, the name of the attorney or other preparer who assisted the debtor to complete the schedules, and a pro se debtor's telephone number. Judge Howard moved not to accept the suggestion for verifying the Social Security number. **The motion passed on a 5-3 vote.**

Ms. Channon stated that 40 percent or more of the petitions in Los Angeles are filed by pro se debtors, many of them with the help of a paralegal, an attorney not of record in the case, or some other undisclosed preparer. Professor King stated that legislation proposed by Senator Howard M. Metzenbaum of Ohio would go even further, requiring all preparers to sign the forms. If Judge Fenning's suggestion was approved, he indicated, passage of the legislation would require that the form be changed twice within a short time. Mr. Sommer stated that the debtor could be required to identify preparers by means of a local rule. It was moved to reject the suggestion to require the debtor to disclose the name of the preparer. **The motion passed on a vote of 6-3.**

Judge Jones stated that requiring pro se debtors to include their telephone numbers would be useful, especially when the clerk's office needs to contact the debtor to correct a deficient case paper such as an incomplete petition. **Professor King moved to approve the amendment.** The Reporter stated that he had received a verbal suggestion that the debtor be required to

disclose the debtor's occupation. It was noted that Schedule I, Current Income of Individual Debtor(s), already requires disclosure of the debtor's occupation. **The Committee agreed by consensus that there was no need to act on the verbal suggestion.**

Subpoena for Rule 2004 Examination

Ms. Channon stated that Judge Barta had suggested changing the phrase "taking of a deposition" in the Subpoena for Rule 2004 Examination to "taking of an examination". Ms. Channon indicated that amending the Director's Form would avoid any suggestion that the form undermines the rule or implies that an order is not needed for such an examination. It was suggested that the phrase "and testify at an examination under Rule 2004, Fed.R.Bankr.P., at the place, date, and time specified below" be substituted for the phrase "pursuant to a court order issued under Rule 2004, Fed.R.Bankr.P., at the place, date, and time specified below to testify at the taking of a deposition in the above case". Mr. Shapiro moved to approve the change. **The motion carried on a vote of 7-0.**

Ms. Channon indicated that she would present additional changes in the Director's Forms at the September meeting.

Style Subcommittee

The Reporter stated that he had received a number of recommendations from the Style Subcommittee of the Standing Committee. Judge Leavy suggested that the matter be referred to the Style Subcommittee of this Committee. It was moved and seconded to delegate authority to the Style Subcommittee to respond to the recommendations. **The motion was approved unanimously.** The subcommittee, which consists of Judge Barta, Professor Resnick, Professor King, and Mr. Minkel, initially agreed to meet in New York on April 3, 1992, to consider the recommendations. **When it became apparent that this Committee would complete its meeting in one day, however, the Style Subcommittee decided to meet on Friday, March 27, 1992.**

Approval of Minutes

Professor King suggested that consideration of the draft minutes of the meetings of February 28, 1992; June 20 - 21, 1991, and March 15 - 16, 1990, be deferred until the next meeting. **The Committee agreed.**

Date and Place of Next Meeting

The Chair suggested that the next meeting be held near Jackson Hole, Wyoming, in late September. Thursday and Friday, September 17 and 18, were chosen as the meeting dates. The meeting may begin at noon in order to accommodate committee members from the East Coast who have commitments on the day before. Thursday and Friday of the proceeding week were selected as alternative dates. The Jackson Lake Lodge was suggested as a meeting place. **The Committee agreed.**

It was moved that the committee adjourn. **The motion carried without objection. The meeting was adjourned at 5:48 p.m. on March 26, 1992.**

Respectfully submitted,

James H. Wannamaker, III
Attorney
Division of Bankruptcy

L. RALPH MECHAM
DIRECTOR

JAMES E. MACKLIN, JR.
DEPUTY DIRECTOR

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

JOHN K. RABIEJ
CHIEF, RULES COMMITTEE
SUPPORT OFFICE

August 27, 1992

MEMORANDUM TO THE CHAIRMAN, MEMBERS, AND LIAISON MEMBER OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

SUBJECT: September 17-18, 1992, Meeting in Santa Fe

At the request of Professor Alan Resnick, I am forwarding herewith materials relating to Bankruptcy Rule 3002. The following materials relate to Item 3 on the agenda for the meeting:

1. Professor Resnick's memorandum, dated August 25, 1992.

2. Professor Resnick's memorandum, dated June 10, 1991.

3. Two page document labeled "From Summary of Public Comment."

4. Two pages from Justice Department memorandum, dated February 24, 1992.

5. Letter from Judge Grant to Mr. Spaniol, dated January 15, 1992.

6. Copy of section 726 of the Bankruptcy Code.

I suggest that you insert these materials in the notebook previously sent to you.

Judy Krivit

Judith W. Krivit
Staff Assistant
Rules Committee Support Office

6 Attachments

cc: Honorable Robert E. Keeton
Mr. John E. Logan
Mr. Richard G. Heltzel
Mr. William B. Eldridge

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ALAN N. RESNICK, REPORTER

RE: BANKRUPTCY RULE 3002

DATE: AUGUST 25, 1992

Background

In 1991, the Subcommittee on Chapter 13 recommended to the Advisory Committee on Bankruptcy Rules that Rule 3002 be amended to (1) require a secured creditor to file a proof of claim for the claim to be allowed, and (2) give the court discretion to permit a late proof of claim to be filed in a chapter 13 case based on excusable neglect. More particularly, the following amendments to Rule 3002(a) and (c) were suggested by the Chapter 13 Subcommittee:

Rule 3002. Filing Proof of Claim or Interest

(a) Necessity for Filing. ~~An unsecured~~ A creditor or an equity security holder must file a proof of claim or interest in accordance with this rule for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004 and 3005.

* * * *

(c) TIME FOR FILING. In a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt adjustment case, a proof of claim shall be filed within 90 days after the first date set for the meeting of creditors called pursuant to § 341(a) of the Code, except as follows:

Doesn't effect ch. 11

* * * *

(7) In a chapter 13 individual's debt adjustment case, on motion by a creditor who has not filed a proof of claim within the time herein above prescribed, the court for cause shown may extend the time for filing a proof of claim by the creditor where the failure to file a timely proof was the result of excusable neglect.

* * * * * *

COMMITTEE NOTE

Subdivision (a) is amended to include secured creditors. A secured claim may not be allowed unless a proof of claim is filed. The amendment also clarifies that the time limits for filing proofs of claim set forth in subdivision (c) apply to both secured and unsecured claims. Notwithstanding this amendment, however, a lien is not void merely because the secured claim is not an allowed secured claim due only to the failure to file a proof of claim. See § 506(d) of the Code.

Subdivision (c) is amended to provide that in a chapter 13 case the court may extend the time for filing a proof of claim for a creditor who has failed to file a timely proof due to excusable neglect. This revision is designed to give the court discretion to treat as timely filed an otherwise late proof of claim that is filed by a creditor who has not been listed or scheduled and who had no knowledge of the case in time to file a timely proof of claim.

Before voting on the suggested changes, the Advisory Committee asked the Reporter for a memorandum on the question of whether it would be inconsistent with the Bankruptcy Code for the Rules to require a secured creditor to file a proof of claim for the claim to be allowed. I concluded in my memorandum of June 10, 1991, that such a filing requirement would not be inconsistent with the Code. For your convenience, I enclose a copy of my June 10, 1991 memorandum. After considering my memorandum, the Advisory Committee voted to recommend to the Standing Committee that the suggested amendment be published for public comment.

At the meeting on February 28, 1992, following the public comment period, the Advisory Committee again considered the proposed amendments to Rule 3002(a) (filing of secured claims)

and voted by a 5-4 margin to go forward with it. For your information and convenience, I am enclosing a summary of the public comment that was received from the bench and bar regarding the proposed amendment to Rule 3002(a). I am also enclosing copies of letters that we received from the Justice Department and from Judge Grant expressing opposition to the proposed amendment.

The Committee also voted at the February meeting to table the proposed amendment to Rule 3002(c) (allowing late filing of claims based on excusable neglect) and asked the Reporter to draft new language to limit the amendment to unscheduled creditors.

After the February meeting, I became less confident in the wisdom of the proposed changes to Rule 3002. Although I still believe that requiring secured creditors to file proofs of claims as a condition to the allowance of their claims is consistent with the Code for the reasons stated in my June 10 memorandum, I have shared other concerns raised by several members of the Committee regarding the effect of the amendment on redemption rights under § 722 and the interplay with § 726. I also became concerned that other problems relating to the Rule were not being addressed, such as the effect of missing the bar date for secured claims on a trustee's right to recover expenses incurred in preserving the collateral from property "securing an allowed secured claim" under § 506(c). In addition, concerns on the part of Committee members regarding the propriety of requiring a

Distribution

redemption
- 2004 amended in 1967 to set 30 day limit for debtor to file.

Prob: 30 day bar. Arose debtors won't catch this.
⇒ 90 day secured OK if before 30 days Debtor bar.

Goal: encourage early filing so can wrap up at 341 hrg.
(Admin)
- Leavy: "deemed" filed? Like ch. 11.
- Mikel: Grandmarcore: forces consent to buy ct by secured?
- Somers: deemed = OK problem for secured

secured claim to be filed continued to be expressed.

In view of these concerns and the closeness of the vote (5-4) at the February meeting, I recommended at the meeting on March 26, 1992, that the Advisory Committee withdraw the proposed amendments to Rule 3002(a) and (c) for further study. The Advisory Committee voted (7 to 3) to withdraw the amendments, with the understanding that the Reporter will reconsider the proposed changes and report back to the Committee with further suggestions.

The purpose of this memorandum is to assist the Committee in revisiting Rule 3002, to set forth my thoughts on this subject, and to serve as a focus for the discussion. I realize that the complexity of these issues probably will require further thought and discussion after the meeting in Santa Fe.

Discussion

Upon further consideration of Rule 3002 and certain sections of the Code, I raise the following questions for consideration by the Committee at the September 1992 meeting:

(1) Should Rule 3002(a) be amended to require the filing of a proof of claim for a secured claim to be allowed? As discussed in my memorandum, I think that the present rule is inconsistent with §§ 501, 502(b), and 506(d), as well as existing case law that has held that, despite Rule 3002(a), a secured claim must be filed to be allowed.

-Mannes: came from ch.13 subcomm. Is where D is trying to save home. Cts look to 3021 for distrib.
-Trustees don't pay unless on file in ch.13 cases.
Dixon: goal to help D[ebtor] in ch.13. They don't understand. want to prevent secured coming in later to lift stay

King: (1) Stat uses word "allowed". This is the prob. Intent: amt of allowance under 506(a) → 722. Not whether allowed means "valid". → Look to stat change to clarify.

(2) In 1980(?), 3002 applied to both secured, unsecured. -comments: invalid as inconsistent with stat (506(d))

(3) Morron(?): leave 3002 alone, wait & study 3004, study 3021. but see 1321.

I am undecided on whether a bar date should apply to secured creditors. It could be argued that a bar date is needed because § 501 permits a trustee, debtor, or codebtor to file a claim on behalf of a creditor only if the creditor does not file a timely claim. Therefore, a bar date may be needed to trigger the debtor's right to file a proof of claim on behalf of the secured creditor, which may be important in a chapter 13 case. On the other hand, Rule 3004 itself could be construed to provide the "timeliness" requirement in that it provides that the debtor or trustee may file a claim on behalf of a creditor only after the § 341 meeting. Therefore, a claim not filed by the § 341 meeting is not "timely" within the meaning of § 501(c). Accordingly, a bar date for secured creditors in Rule 3002 may not be needed to trigger the right of a debtor to file the claim.

See p. 3.

(2) Should Rule 3004 be amended to delete the bar date for debtors and trustees to file secured claims?

At the March 1992 meeting, the Committee discussed a potential problem that would exist if (a) the Rules create a bar date for filing a secured claim, (b) a secured creditor misses the bar date in a chapter 7 case, (c) the debtor misses the 30-day bar date in Rule 3004, and (d) the debtor wants to redeem the collateral. Since the only way to redeem is to pay the amount of the "allowed" secured claim, the debtor may not be able to redeem if the claim could no longer become allowed because of the bar date. However, I think that this problem could be solved by

amending 3004 to remove a bar date for the debtor or trustee who wants to file a proof of claim on behalf of a secured creditor. The 30-day bar date for filing a proof of claim under Rule 3004 was added in 1987 to clarify that the trustee or debtor may file a claim after the bar date for creditors set forth in Rule 3002.

Requiring secured creditors to file proofs of claim, even if there is a bar date, should have little or no impact on chapter 7 cases. If a secured creditor misses a bar date, the claim may not be allowed, but the lien continues in accordance with § 506(d). If the trustee abandons the collateral, or if the property is sold subject to the lien, the secured creditor may still pursue its rights against the property. If the trustee sells the property "free and clear" of the lien under § 363(f), the lienor is entitled to adequate protection of its interest. See § 363(e). If the debtor wants to redeem the collateral under § 722, the debtor may file a secured claim on behalf of the creditor for the purpose of determining the allowed amount of the claim. If, pursuant to § 506(c), the trustee wants to recover from collateral expenses of preserving or selling it, the trustee may file the claim under Rule 3004 for the purpose of having the secured claim allowed.

In chapter 12 and chapter 13 cases, the consequences of the amendment are also not that significant. If a plan does not provide for the secured claim, the debtor wishes to treat the secured creditor "outside the plan", and the secured creditor does not want to participate in the case, a proof of claim need

not be filed by anyone and the lien will remain valid. However, the suggested change to Rule 3002 will clarify that the creditor may not object to confirmation of the plan under §1325(a)(5) based on the plan's failure to provide payments to the secured creditor.

In sum, I do not think that the suggested changes will have a significant effect on cases, which raises the question: "Are we fixing something that is not broken?" The reason to make these changes is to make the Rules consistent with the Code and those cases that have held that a secured creditor must file a proof of claim to have an allowed claim.

(3) Should Rule 3002(a) be amended to permit a late filed claim to be allowed to the extent that the creditor with a tardily filed claim is entitled to payment under § 726 of the Code?

I think that Rule 3002 is inconsistent with § 726(a)(2)(C) and (a)(3), and perhaps (a)(4) and (a)(5). For your convenience, I enclose a copy of § 726.

Rule 3002(a) requires that an unsecured claim be filed "in accordance with this rule" to be "allowed." Rule 3002(c) sets forth the time for filing a proof of claim in a case under chapter 7, 12 or 13. Therefore, a plain reading of Rule 3002 indicates that an unsecured claim that is not filed within the time limit may not be allowed. In addition, Rule 3009 provides that, in a chapter 7 case, "Dividend checks shall be made payable and mailed to each creditor whose claim has been allowed. . . ."

Rule 3021, applicable in chapter 12 and 13 cases, similarly provides that "distribution shall be made to creditors whose claims have been allowed." When read together, these rules lead to the conclusion that an unsecured creditor who misses a bar date may not receive any distribution in a chapter 7, chapter 12, or chapter 13 case.

In contrast, § 726 of the Code recognizes that a "tardily filed" claim may be "allowed," at least in certain circumstances. In particular, § 726(a)(2)(C) recognizes that a creditor without notice or knowledge of the case in time to file a timely claim (for the sake of brevity, I will refer to such a creditor as an "unscheduled creditor") may have an "allowed" claim that is "tardily filed," and that the creditor may share in a chapter 7 estate equally with timely filed claims. How can a tardily filed claim be an allowed claim? Apparently, Congress intended that "timeliness" is not a requirement for "allowance." Otherwise, § 726(a)(2)(C) would not make sense because it would be impossible for the tardily filed claim to ever be "allowed."

Similarly, § 726(a)(3) provides that, after other allowed claims are paid in full, there shall be a distribution "in payment of any allowed unsecured claim proof of which is tardily filed . . . ." [emphasis added]. Apparently, Rule 3002(c)(6), which gives the court the discretion to extend the bar date if there is a surplus after all other allowed claims have been paid, was designed to implement § 726(a)(3). However, I question whether it is consistent with § 726(a)(3) for the court to have

to approve the filing of the proof of claim. Why doesn't a creditor have an absolute right to file a tardy claim against a surplus under § 726(a)(3)?

Section 726(a)(4) raises other questions regarding the right of a creditor with a claim for punitive damages to receive a distribution from a chapter 7 surplus if the bar date is missed. Here the statute may be ambiguous, but it appears to me that a claim, whether or not filed in time, may receive a distribution under § 726(a)(4). Notice that § 726(a)(2) and (3) distinguish between timely filed and tardily filed claims, but § 726(a)(4) provides for "payment of <u>any</u> allowed claim" for a fine, penalty, etc. This conclusion is consistent with Rule 3002(c)(6) which appears to give the court the discretion to permit any creditor to file a late claim, including a punitive damage claim, against a chapter 7 surplus.

An illustration of the inconsistency between the Rule 3002 and § 726 may be helpful. Suppose that a debtor files a chapter 7 petition and has unsecured debts of $10,000 and non-exempt unencumbered assets worth $ 9,000. The unsecured claims include an $8,000 timely filed claim and a $2,000 claim filed after the bar date. How will the estate be distributed under the Rules? A literal reading of Rule 3002 leads to the conclusion that, after the $8,000 timely claim is paid, the tardily filed claim may be paid the remaining $1,000 only if the court exercises its discretion (the court "may") to grant a motion to extend the time to file a claim under Rule 3002(c)(6). Under the Rules, it would

not make any difference whether the claim was properly scheduled or whether the creditor had notice of the case prior to the bar date. In any event, under Rule 3002(c)(6) the tardily filed claim, whether or not scheduled, would not receive more than the $1,000 surplus (a recovery of 50%).

A different result would occur under § 726 of the Code. If the tardily filed claim was unscheduled, under § 726(a)(2)(C) the creditor would have the right to receive payment on a pro rata basis with the $8,000 timely claim, thus giving the tardy creditor a 90% recovery. If the tardily filed claim was properly scheduled, the creditor would receive the $1,000 surplus (50% recovery) under § 726(a)(3). In any event, the debtor would not receive any surplus under the Code and the tardy creditor would not have to make any motion to extend the bar date.

I am not suggesting that this has created any real problems in the administration of estates. However, if Rule 3002 is going to be amended, the Committee may wish to correct this inconsistency.

If this amendment is made, I do not think that it will be necessary to amend the rule further to give the court discretion to permit an unscheduled creditor to file a late proof of claim in a chapter 13 case, as was recommended by the Advisory Committee at the February 1992 meeting. Under § 1325(a)(4) of the Code, a plan may not be confirmed unless the holder of an allowed unsecured claim will receive in value at least as much as the creditor would receive if the estate were liquidated under

chapter 7. If an unscheduled unsecured creditor did not have notice or knowledge of a chapter 13 case in time to file a timely proof of claim, but tardily files a proof of claim so that the creditor would have had the right to share in a chapter 7 estate under § 726(a)(2)(C), the creditor would have the right to object to confirmation of the chapter 13 plan if it does not provide for "liquidation value" treatment of the claim.

Possible Amendments to be Considered for Discussion.

I think that the following amendments to Rule 3002 and 3004 take into consideration the concerns mentioned above, and I offer them for the sake of our discussion at the next meeting.

Rule 3002. Filing Proof of Claim or Interest

(a) Necessity for Filing. ~~An unsecured~~ A creditor or an equity security holder must file a proof of claim or interest in accordance with this rule for the claim or interest to be allowed, except as ~~provided in Rules 1019(3), 3003, 3004 and 3005.~~ follows:

(1) A claim or interest may be allowed if a proof of claim or interest is timely filed pursuant to Rules 1019(4), 3003, 3004, and 3005.

(2) An unsecured claim, proof of which is tardily filed, may be allowed for the purpose of distribution pursuant to § 726(a)(2)(C), §726(a)(3), §726(a)(4), and §726(a)(5) of the Code.

[(3) A tardily filed secured claim may be allowed]

* * * *

(c) TIME FOR FILING. In a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt adjustment case, a proof of claim shall be filed within 90 days after the first date set for the meeting of creditors called pursuant to § 341(a) of the Code, except as follows:

* * * *

~~(6) In a chapter 7 liquidation case, if a surplus remains after all claims allowed have been paid in~~

~~full, the court may grant an extension of time for the filing of claims against the surplus not filed within the time hereinabove prescribed.~~

COMMITTEE NOTE

Subdivision (a) is amended to include secured creditors. A secured claim may not be allowed unless a proof of claim is filed. Notwithstanding this amendment, however, a lien is not void merely because the secured claim is not an allowed secured claim due only to the failure to file a proof of claim. See § 506(d) of the Code.

Section 726(a) of the Code recognizes that, in certain circumstances, a creditor may have an allowed claim despite the fact that it is tardily filed. For example, under § 726(a)(2)(C), an unsecured creditor with an allowed claim who did not have notice or actual knowledge of the case in time to file a timely claim, and who tardily files a proof of claim, may receive a distribution in a chapter 7 case equal to the distributions paid to unsecured creditors with timely filed claims. Subdivision (a) of this rule is amended to recognize the rights of creditors whose claims are tardily filed to have allowed claims to the extent that they are entitled to receive distributions pursuant to §§ 726(a)(2)(C), (a)(3), (a)(4), or (a)(5).

Subdivision (c) is amended to delete paragraph (6). The addition of subdivision (a)(2) renders subdivision (c)(6) unnecessary.

Rule 3004. Filing of Claims by Debtor or Trustee

If a creditor fails to file a proof of claim on or before the first date set for the meeting of creditors called pursuant to § 341(a) of the Code, the debtor or trustee may do so in the name of the creditor~~.~~ If the claim is unsecured, a proof of claim may not be filed pursuant to this rule more than ~~within~~ 30 days after expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable. If the claim is secured, a proof of claim may be filed pursuant to this rule at any time after the meeting of creditors called pursuant to § 341(a) and before the case is closed. The clerk shall forthwith mail notice of the filing to the creditor, the debtor and the trustee. A proof of claim filed by a creditor pursuant to Rule 3002 or Rule 3003(c), shall supersede the proof filed by the debtor or trustee.

COMMITTEE NOTE

This rule is amended to permit the debtor or trustee to file a proof of claim on behalf of a secured creditor at any time during the case.

For example, if a chapter 7 trustee incurs expenses in preserving collateral 60 days after the bar date for filing claims under Rule 3002, and the expenses benefit a secured creditor, the trustee may file a proof of claim on behalf of the secured creditor so that the secured claim may be allowed for the purpose of recovering expenses from the property under § 506(c) of the Code.

This amendment also protects the debtor's right to redeem collateral under § 722 of the Code by paying the amount of the allowed secured claim. The secured claim may be allowed despite the creditor's failure to file a timely proof of claim and the debtor's failure to file a proof of claim on behalf of the creditor within 30 days after the bar date.

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ALAN N. RESNICK, REPORTER

RE: PROPOSED AMENDMENT TO RULE 3002(a)

DATE: JUNE 10, 1991

At the meeting of the Advisory Committee in January, 1991, the Committee tentatively approved the following amendment to Rule 3002(a):

> (a) NECESSITY FOR FILING. ~~An unsecured~~ A creditor or an equity security holder must file a proof of claim or interest in accordance with this rule for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004 and 3005.

The purpose of the amendment is to provide (or clarify) that a secured creditor must file a proof of claim for the claim to be "allowed," and that the time period for filing a proof of claim in Rule 3002(c) is applicable to secured creditors.

I was asked to prepare a memorandum on whether requiring a secured creditor to file a proof of claim conflicts with the Bankruptcy Code. My conclusion is that it would be inconsistent with the Code to require a secured creditor to file a proof of claim in order to maintain its lien, but that it is not inconsistent with the Code to require the filing of a proof of claim as a condition to the "allowance" of a secured claim. Since the only effect of the proposed amendment to Rule 3002(a) is to make the filing of a proof of claim a condition to the allowance of the claim, I believe that the proposed amendment does not conflict with the Code.

I. REQUIRING A SECURED CREDITOR TO FILE A PROOF OF CLAIM IN ORDER TO KEEP ITS LIEN WOULD VIOLATE THE BANKRUPTCY CODE

Section 506(d) of the Code, as amended in 1984, provides as follows:

> (d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void unless -
>
> (1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or
>
> (2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of claim of such claim under section 501 of this title.

Accordingly, under §506(d)(2), the secured creditor's lien remains valid notwithstanding the fact that a proof of claim had not been filed. The legislative history to the 1984 amendments confirms that the change was intended "to make clear that the failure of the secured creditor to file a proof of claim is not a basis for avoiding the lien of the secured creditor." S.Rep. No. 65, 98th Cong., 1st Sess. 798 (1983). This conclusion is also supported by judicial authority. See, e.g., Matter of Tarnow, 749 F.2d 464 (7th Cir. 1984). Therefore, it would be inappropriate for the Bankruptcy Rules to require the filing of a proof of claim as a condition to keeping the lien.

It should be emphasized, however, that the proposed amendment to Rule 3002(a) does not invalidate the lien if the secured creditor fails to file the proof of claim. All that the Rule does is to require the filing of a proof of claim as a condition to the "allowance" of the claim.

II. REQUIRING A SECURED CREDITOR TO FILE A CLAIM IN ORDER TO HAVE THE CLAIM "ALLOWED" IS NOT IN CONFLICT WITH THE BANKRUPTCY CODE.

Section 501 of the Code makes it clear that a "creditor" (which includes secured creditor) may file a proof of claim, and § 502(a) provides that a "claim" (which would include a secured claim), "proof of which is filed under section 501," is deemed allowed. Therefore, under the Code a secured creditor may file a proof of claim and, if one is filed, the claim may be allowed. Other sections of the Code also confirm that Congress recognized the difference between a secured claim that is allowed and one that is not allowed. For example, § 1325(a)(5) provides for certain treatment as a requirement for confirmation of a chapter 13 plan "with respect to an allowed secured claim provided for by the plan. . . " See also, e.g., §§ 1111(b)(1)(A), 1111(b)(2) for other Code sections that refer to the concept of an allowed secured claim.

Although the filing of a proof of claim is never mandatory, a literal application of sections 501 and 502 leads to the conclusion that the only way that a secured claim (or any other claim) may be "allowed" is by the filing of a proof of claim (except for the "deemed filed" concept in § 1111(a)). It is consistent with these Code provisions for the Rules to provide that a creditor (including a secured creditor) in a chapter 7, 12, or 13 case may have an allowed claim only if a proof of claim is filed.

There is also judicial authority for the position that a

secured creditor must file a proof of claim in order to have an allowed claim. See, e.g., In re Rogers, 57 BR 170, 172 n.1 (Bankr. E.D. Tenn. 1986) ("To the extent Rule 3002(a) appears to say that allowance of a secured claim. . . does not require the filing of a proof of claim, it is inconsistent with the statutes and is ineffective."); In re Johnson, 95 BR 197 (Bankr. D. Colo. 1989) (secured creditor is subject to 90-day bar date for filing a proof of claim and must have an allowed claim in order to receive a distribution under a confirmed plan).

The Bankruptcy Code also recognizes that there is a difference between the allowance of a secured claim and the continuation of the secured creditor's lien. Otherwise, section 506(d)(2) would not make sense. In essence, that section says that the lien is not void solely because the claim is not allowed because the creditor failed to file a proof of claim.

Therefore, the plain language of the Code and the judicial authority lead to the conclusions that (1) a secured creditor must file a proof of claim in order to have an "allowed" claim (§§ 501, 502), and (2) there is a difference between the Code's treatment of an allowed secured claim and one that is not allowed (§§ 1111(b), 1325(a)(5), etc.), and (3) the validity of the lien will continue despite the fact that the claim is not allowed due to the failure to file a proof of claim (§ 506(d)). These conclusion are not inconsistent with each other. Also, the proposed amendment to Rule 3002(a) does not conflict with any of these conclusions.

III. THE PROPOSED AMENDMENT TO RULE 3002(a) DOES NOT ADDRESS OR AFFECT SUBSTANTIVE LAW ISSUES REGARDING THE RIGHTS OF A SECURED CREDITOR WHO DOES NOT FILE A PROOF OF CLAIM.

I do not mean to suggest that the above analysis is helpful, or even makes sense, when attempting to determine the rights of a secured creditor who has a valid lien, but not an allowed claim due to the failure to file a proof of claim, in a chapter 13 case.

There appears to be confusion regarding the effect of confirmation of a plan on the rights of a secured creditor who did not file a proof of claim. See generally, Lundin, CHAPTER 13 BANKRUPTCY, Vol. 2, §§ 6.10-6.12, 7.24 (1990) ("The effects of confirmation on creditors' prepetition liens could not be more confusing."). For example, suppose that a chapter 13 plan provides that a particular secured creditor is to receive a small distribution (less than the value of the collateral), but the secured creditor decides not to file a proof of claim or to object to confirmation. Does confirmation of the plan bind the secured creditor? May the secured creditor rely on § 506(d) to preserve the lien and permit foreclosure when the full amount of the debt is not paid? Does § 1327(c), which provides that the debtor's property vests in the debtor upon confirmation "free and clear of any claim or interest of any creditor provided for by the plan," deprive the secured creditor of its lien regardless of § 506(d)?

There is case law dealing with the question of whether a confirmed plan binds a secured creditor who does not have an

allowed claim due to the failure to file a proof of claim. For example, the Court of Appeals in In re Thomas, 883 F.2d 991 (11th Cir. 1989) (Chief District Judge Malcolm J. Howard sitting by designation), held that a secured creditor's lien was not invalidated by a confirmed plan that provided for payment in full of "allowed secured claims" despite the fact that the creditor did not file a proof of claim. In essence, the court recognized the creditor's right to have the lien "ride through" the bankruptcy case without filing a proof of claim and, subsequent to confirmation, move for relief from the stay to foreclose on its lien. See also In re Harris, 64 BR 717 (Bankr. D. Conn. 1986) (lien of creditor who did not file proof of claim was not invalidated by confirmed plan and could be enforced after obtaining relief from the stay). Compare L.King, 5 COLLIER ON BANKRUPTCY, ¶ 1327.01 ("[A] secured creditor may be provided for in a plan, even if it does not file a claim. Therefore, a secured creditor ignores a chapter 13 case at its peril. Because all parties are entitled to rely on the res judicata effect of a chapter 13 confirmation order, a confirmed chapter 13 plan is binding on all creditors.").

In any event, I think that these issues that focus on the post-confirmation rights of a secured creditor who does not file a proof of claim, and therefore has the lien ride through under § 506(d), are substantive law questions requiring the interpretation of the Bankruptcy Code. I believe that the Rules should not take a position on them. It is my opinion that the

proposed amendment to Rule 3002(a) does not address or affect the substantive issues regarding the rights of such a secured creditor, but only clarifies that the secured creditor must file a proof of claim if it wants to give its claim the status of being an "allowed" secured claim.

IV. REQUIRING A SECURED CREDITOR TO FILE A PROOF OF CLAIM IN CHAPTER 7, 12, AND 13 CASES AS A CONDITION TO THE ALLOWANCE OF THE SECURED CLAIM IS CONSISTENT WITH THE BANKRUPTCY RULE APPLICABLE TO CHAPTER 11 CASES.

The proposed amendment to Bankruptcy Rule 3002(a) would make it consistent with Rule 3003(c) which applies in chapter 11 cases. Rule 3003(c)(2) provides:

> (2) WHO MUST FILE. Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purpose of voting and distribution.

This rule refers to "any" creditor and, accordingly, it applies to secured as well as unsecured creditors. Apparently, Rule 3003(c)(2) is consistent with Code § 1126(a) which provides that only "the holder of a claim or interest allowed under section 502 of this title may accept or reject a plan." Therefore, although a secured creditor may refrain from filing a proof of claim and have the lien continue pursuant to § 506(d), the Code and Rules recognize that the failure to file the claim in a chapter 11 case could nonetheless have an adverse impact on the secured creditor's right to participate in the case.

The proposed amendment to Rule 3002(a), which makes the filing of a proof of claim a condition to having an allowed secured claim in a chapter 7, 12 or 13 case, appears to be consistent with Rule 3003(c)(2), which makes the filing of a proof of claim a condition to voting and distribution in chapter 11 case (unless the claim is deemed filed under § 1111(a)).

From Summary of Public Comment

Rule 3002. Filing Proof of Claim or Interest

Subdivision (a):

1. Judge Lundin. Expresses the view that the proposed amendment to Rule 3002(a) is a "step in the right direction."

2. Judge Grant. Opposes the proposed amendment. An asset subject to a creditor's lien could be administered for the benefit of creditors by being sold by the trustee for an amount exceeding the balance owed to the secured creditor. Judge Grant says that under the proposed amendment, if the secured creditor does not file a timely proof of claim, a distribution of the proceeds could not be paid to it despite the fact that the lien would attach to the sale proceeds to the extent of the debt. He suggests that this may be overcome in a chapter 7 case by an abandonment of the proceeds to the secured creditor, but this would render the proposed amendment a nullity since it would be the equivalent of permitting a late filed claim.

Judge Grant says that the problem is more dramatic in chapter 11, 12 and 13 cases because secured creditors who do not file timely claims will be barred from participating in a distribution under a confirmed plan, even if the plan provides for payments to the secured creditor. This can cause the "anomalous situation of having a plan which is specifically premised upon making specific payments to a certain secured creditor, and yet, cannot be successfully implemented because of the lack of a timely claim." The proposed amendment "would also seem to potentially give secured creditors the opportunity to opt out of bankruptcy proceedings through the conscious decision not to file a claim."

3. Mr. Stone. Welcomes the change as "long overdue," but is concerned that it may not be consistent with sections 501(b) and (c) of the Code. He also asks whether this applies to proofs of interest, and whether a secured creditor must file a proof of claim regardless of how it is scheduled. He also suggests further changes that go beyond the scope of this amendment, such as requiring multiple copies of proofs of claim to be filed and additional information to go to creditors.

4. Judge Fenning. Supports the change and says that it should assist in the administration of chapter 13 cases.

5. Justice Dept. Opposed to the change. There is no mechanism that exists to force a secured creditor to file a proof of claim, or to punish a secured creditor who does not file. Thus, the requirement is unenforceable. Cites § 501 and 506(d) of the Code. Also, if some sanction were contemplated, it would unfairly discriminate against governmental units because waiver

of sovereign immunity under § 106(a) and (b) is based on the filing of a proof of claim. Also, secured creditors unschooled in bankruptcy may think that the lien is lost because of the failure to file a proof of claim.

6. Judge Bufford. Testified in favor of the proposed amendment so that secured creditors will be required to file proofs of claim.

Subdivision (c)(7)i

1. Judge Spector. Questions why the proposed change is limited to chapter 13. Suggests that it be applicable in chapter 12 also, and perhaps in chapter 11 and "certain types of chapter 7 cases." By limiting this rule to chapter 13 cases, "you would presumably sound a deathknell to any possible argument that good cause is grounds for such relief in the other chapters."

Second, he observes that the Committee Note seems to equate excusable neglect with due process concerns. He states that it is his understanding that due process already "mandates allowance of that [unscheduled] claim," or at least an extension of time to file a proof of claim. "If that is already the law what purpose is served by writing a rule that goes no further than that?" In conclusion, he suggests that the Committee may want to abandon or broaden the proposed addition to the rule.

2. Judge Hess. Judge Hess sent in three letters commenting on Rule 3002(c)(7). He opposes the proposed amendment. It is interesting that Judge Hess (in contrast to Judge Spector, but consistent with several court decisions) is of the view that the current state of the law is that late filed claims may not be allowed, although such claims are not discharged if not scheduled in time to give the creditor sufficient notice.

Judge Hess opposes the proposed amendment for the following reasons:

(1) If the purpose is to permit unlisted creditors to file late claims, the proposed amendment is too broad in that it would also allow courts to permit late filed claims by listed creditors based on "excusable neglect." Why should the listed creditor in chapter 13 be given greater rights than the listed creditor in a chapter 7 case?

(2) The time for filing claims "has always been a matter for Congress to determine" and has been in the nature of a statute of limitations. "Some reason ought to be given before a rule is adopted that overrules years and years of case law about which any prior controversy has been long

U.S. Department of Justice

JCKohn

Telephone: 514-7450

Washington, D.C. 20530

February 24, 1992

MEMORANDUM

TO: Professor Alan N. Resnick
Reporter
Advisory Committee on Bankruptcy Rules

FROM: Christopher Kohn
Director
Commercial Litigation Branch

RE: Comments on Proposed Amendments to Bankruptcy Rules

I recognize that the attached comments are submitted after the February 15, 1992 deadline for which I am most sorry. The lateness, frankly, is due to a calendaring error on my part, an error which thankfully I do not recall committing in my prior 16 years with the Department. I hope you will accept my personal apology.

I understand that John Logan spoke with Pat Channon who indicated that these comments still could be submitted. At her suggestion, I am faxing this copy to you.

Thank you.

cc: Ms. Patricia S. Channon
John E. Logan, Esq.

> Similarly, the confirmation standards of sections 1325(a)(4), 1325(a)(5), and 1325(b) all may require the court's knowledge of the amounts of allowed secured or unsecured claims in the case.

5 L. King, Collier on Bankruptcy ¶ 1324.02[2] (15th ed. 1991 rev.).[1]

While it is beyond the scope of these comments to urge that the confirmation hearing be postponed until after the bar date, we do consider the proposed amendment as a step in the wrong direction and urge its rejection.

Rule 3002(a)

The proposed amendment to Rule 3002(a) would require that secured creditors timely file proofs of claim in order to have their claims allowed. The Bankruptcy Code does not impose such a requirement, 11 U.S.C. § 501, nor do the current bankruptcy rules. Failure to file a timely claim does not void a lien under § 506(d) of the Bankruptcy Code, nor is the in rem liability dischargeable under § 524 of the Bankruptcy Code. Although it might be helpful to know the full amount of all secured claims early in the case, since such claims must be paid in full to the extent of the value of the collateral, no mechanism exists either for forcing a secured creditor to file a claim, or for punishing a secured creditor who fails to file a claim. Thus, this requirement would be unenforceable. If some sanction were contemplated, it would unfairly discriminate against governmental units whose waiver of sovereign immunity under sections 106(a) and (b) of the Code is determined by the act of filing a claim. Finally, a secured creditor who fails to file a timely claim, and who is unschooled in bankruptcy law, may mistakenly be led to believe that he no longer has a valid lien, or that his lien is dischargeable. For these reasons, we believe the proposal should be rejected.

Rule 3002(c)(7)

The proposed amendment to Rule 3002(c) would allow a creditor in a chapter 13 case to file its proof of claim after the filing period expires, if the creditor shows its failure timely to file its claim was the "result of excusable neglect." The comment to the proposed amendment states that this change is designed to protect the creditor whose debt was not listed or scheduled and who had no knowledge of the case in time to file a

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[1] These problems will be exacerbated if the proposed Rule 3015(f) -- which requires the filing and service of objections to confirmation prior to confirmation -- is adopted.

United States Bankruptcy Court
Northern District of Indiana
Fort Wayne, Indiana 46802

Robert E. Grant
Judge

January 15, 1992

Joseph F. Spaniol, Jr.
Secretary of the Committee on
Rules of Practice and Procedure
Administrative Office of the U.S. Courts
Washington, D.C. 20544

Re: Bankruptcy Rules

Dear Mr. Spaniol:

The purpose of this letter is to comment with regard to recently proposed amendments to the Federal Rules of Bankruptcy Procedure. In particular, I am concerned about *proposed* changes to Bankruptcy Rule 3002(a) and 3002(c).

Rule 3002(a) currently requires only unsecured creditors to file timely proofs of claims; secured creditors need not do so. The proposed amendment to Rule 3002(a) eliminates this distinction and would require both secured and unsecured creditors to file a proof of claim. Thus, as the committee note recognizes, under the amended rule a secured claim may not be allowed unless a proof of claim is filed. Without an allowed claim, a creditor is not entitled to share in any distribution of the assets of the bankruptcy estate. Despite the proposed requirement for secured creditors to file a proof of claim, in accordance with 11 U.S.C. §506(d), the committee note also recognizes that the creditor's lien is not voided merely because of its failure to file a proof of claim.

I fear that the proposed amendment to Bankruptcy Rule 3002(a) will unnecessarily complicate the administration of a bankruptcy estate; especially when one recognizes the requirement that only timely claims can be allowed. The proposed amendment will potentially create a situation in which an asset subject to a creditor's lien could be administered for the benefit of creditors, by being sold by a bankruptcy trustee for an amount in excess of the amount due the secured creditor. If the secured creditor does not file a claim, it may not properly receive a distribution of the sale proceeds. Nonetheless, its lien upon those proceeds will continue unabated. A Chapter 7 trustee would thus be prevented from distributing those proceeds to unsecured creditors because of the creditors' liens, yet would also potentially be prohibited from distributing them to the secured creditor because it had not filed a timely proof of claim. It seems that we are running the risk of creating a pool of assets representing the sale proceeds of encumbered property which could not be distributed to anyone due to the absence of a timely proof of claim from the lien holder. In a Chapter 7 case this result could, perhaps, be avoided through the abandonment of the encumbered proceeds. This would, however, seem to achieve precisely the same

result that would follow from allowing an untimely proof of claim and, therefore, render the proposed requirement of a timely proof of claim from secured creditors a nullity.

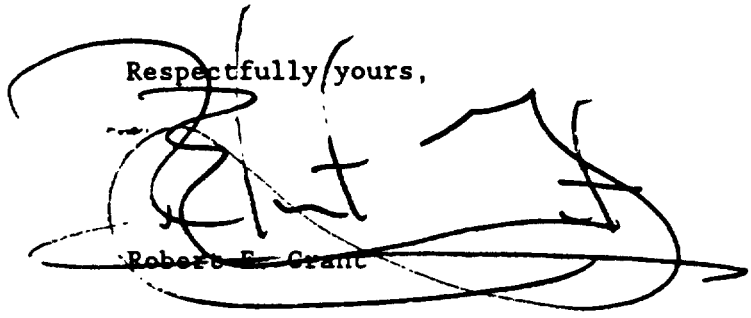
The potential consequences of a secured creditor's failure to file a timely proof of claim may be even more dramatic in cases under Chapter 11, 12, or 13 of the Bankruptcy Code than in the situation which might arise under Chapter 7. Again the premise of the proposed amendment to Rule 3002(a) seems to be that a secured creditor must file a timely proof of claim in order for its claim to be allowed and, therefore, enable it to participate in a distribution from the bankruptcy estate. I can easily envision a scenario, which the courts are often confronted with now, in which a lien holder will not file a proof of claim, either by chance or by design. Despite the lack of a claim, it is the debtor's desire to retain the encumbered property and pay the secured creditor in accordance with the requirements of the Bankruptcy Code and the plan which is placed before the court specifically attempts to do so. If such a plan is confirmed, without a timely proof of claim, we are confronted with the anomalous situation of having a plan which is specifically premised upon making specific payments to a certain secured creditor, and yet, cannot be successfully implemented because of the lack of a timely claim. As a result, the funds which the plan specifically earmarks for the creditor cannot be properly distributed and the creditor's lien will not be satisfied. Nonetheless, the creditor's lien will continue notwithstanding the fact that there was a debtor, with a confirmed plan, who stood ready, willing, and able to properly satisfy that claim. I am concerned that creditors in such a situation may ultimately seek to enforce the lien against the encumbered property because it was prohibited from receiving distribution of the funds the plan allocated to it, solely due to the fact that it failed to file a timely proof of claim. Such a result may work to completely undermine the entire purpose for which the proceedings had originally been commenced, benefiting neither the debtor nor the secured creditor. It would also seem to potentially give secured creditors the opportunity to opt out of bankruptcy proceedings through the conscious decision not to file a claim.

I realize that some of the fears expressed above are minimized by Bankruptcy Rule 3004, which gives both the debtor and the trustee the opportunity to file a claim on behalf of a creditor should the creditor itself fail to do so. Nonetheless, I believe the experience in this and other districts indicates that this ability is rarely exercised.

The proposed amendment to Bankruptcy Rule 3002(c) adds a paragraph 7 by which a creditor who has not filed a timely proof of claim in a case under Chapter 13 may obtain an extension of the claims bar date, if its failure to file was the result of excusable neglect. The committee's note to the proposed amendment indicates that it was designed to give the unscheduled creditor of a Chapter 13 debtor the opportunity to participate in a distribution from the bankruptcy estate. The goal is laudable and would seem to be entirely consistent with 11 U.S.C. §726(a)(2)(C), which addresses the same scenario in a Chapter 7 case. My concern is that the scope of the proposed rule - "excusable neglect" - is much broader than the scope of its accompanying commentary. If the purpose of the amendment is to permit the unscheduled creditor, who has no knowledge of the case, the opportunity to obtain a belated extension of the claims bar date, the text of the rule should be limited to that situation. If, on the other hand,

the purpose of the rule is to enable any creditor who, as a result of excusable neglect, fails to file a timely proof of claim the opportunity to obtain an extension of the bar date, the commentary should not be restricted to the unscheduled creditor situation. Given the great disparity of opinion as to what constitutes excusable neglect, if the rule continues to use that term it would be most helpful if the committee could provide additional examples of what it has in mind in the commentary to Rule 3002(c), in order to assist both the bench and the bar in resolving the various disparate motions which will undoubtedly be brought if the rule is adopted with its current wording.

Respectfully yours,



Robert E. Grant

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SECTION 725 (11 U.S.C. § 725)

§ 725. Disposition of certain property. After the commencement of a case under this chapter, but before final distribution of property of the estate under section 726 of this title, the trustee, after notice and a hearing, shall dispose of any property in which an entity other than the estate has an interest, such as a lien, and that has not been disposed of under another section of this title.

SECTION 726 (11 U.S.C. § 726)

§ 726. Distribution of property of the estate.

(a) Except as provided in section 510 of this title, property of the estate shall be distributed—

(1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title;

(2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is—

(A) timely filed under section 501(a) of this title;

(B) timely filed under section 501(b) or 501(c) of this title; or

(C) tardily filed under section 501(a) of this title, if—

(i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501(a) of this title; and

(ii) proof of such claim is filed in time to permit payment of such claim;

(3) third, in payment of any allowed unsecured claim proof of which is tardily filed under section 501(a) of this title, other than a claim of the kind specified in paragraph (2)(C) of this subsection;

(4) fourth, in payment of any allowed claim, whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of a trustee, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim;

(5) fifth, in payment of interest at the legal rate from the date of the filing of the petition, on any claim paid under paragraph (1), (2), (3), or (4) of this subsection; and

(6) sixth, to the debtor.

(b) Payment on claims of a kind specified in paragraph (1), (2), (3), (4), (5), (6) or (7) of section 507(a) of this title, or in paragraph (2), (3), (4), or (5) of subsection (a) of this section, shall be made pro rata among claims of the kind specified in each such particular paragraph, except that in a case that has been converted to this chapter under section 1112[,] [*sic*] 1208, or 1307 of this title, a claim allowed under section 503(b) of this title incurred under this chapter after such conversion has priority over a claim allowed under section 503(b) of this title incurred under any other chapter of this title or under this chapter

before such conversion and over any expenses of a custodian superseded under section 543 of this title.

(c) Notwithstanding subsections (a) and (b) of this section, if there is property of the kind specified in section 541(a)(2) of this title, or proceeds of such property, in the estate, such property or proceeds shall be segregated from other property of the estate, and such property or proceeds and other property of the estate shall be distributed as follows:

(1) Claims allowed under section 503 of this title shall be paid either from property of the kind specified in section 541(a)(2) of this title, or from other property of the estate, as the interest of justice requires.

(2) Allowed claims, other than claims allowed under section 503 of this title, shall be paid in the order specified in subsection (a) of this section, and, with respect to claims of a kind specified in a particular paragraph of section 507(a) of this title or subsection (a) of this section, in the following order and manner:

(A) First, community claims against the debtor or the debtor's spouse shall be paid from property of the kind specified in section 541(a)(2) of this title, except to the extent that such property is solely liable for debts of the debtor.

(B) Second, to the extent that community claims against the debtor are not paid under subparagraph (A) of this paragraph, such community claims shall be paid from property of the kind specified in section 541 (a)(2) of this title that is solely liable for debts of the debtor.

(C) Third, to the extent that all claims against the debtor including community claims against the debtor are not paid under subparagraph (A) or (B) of this paragraph such claims shall be paid from property of the estate other than property of the kind specified in section 541(a)(2) of this title.

(D) Fourth, to the extent that community claims against the debtor or the debtor's spouse are not paid under subparagraph (A), (B), or (C) of this paragraph, such claims shall be paid from all remaining property of the estate.

SECTION 727 (11 U.S.C. § 727)

§ 727. Discharge.

(a) The court shall grant the debtor a discharge, unless—

(1) the debtor is not an individual;

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

(3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

August 31, 1992

To The Advisory Committee on Bankruptcy Rules:

I enclose a memorandum dated August 31, 1992, on Bankruptcy Rule 8002. This memorandum relates to item 6 on the agenda for the September 17-18, 1992 meeting of the Advisory Committee. I suggest that you insert this memorandum in the notebook of materials previously sent to you.

I look forward to seeing you in Santa Fe.

Sincerely,

Alan N. Resnick
Reporter

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ALAN N. RESNICK, REPORTER

RE: BANKRUPTCY RULE 8002

DATE: AUGUST 31, 1992

Background

Rule 4(a)(4) of the Federal Rules of Appellate Procedure governs the effects of certain post-trial motions regarding appeals to the court of appeals. In particular, if a party in a district court litigation files a motion for a new trial after entry of a judgment, the present version of FRAP 4(a)(4) provides that a notice of appeal filed before the disposition of that motion is of no effect. If a party, relying on a timely notice of a appeal filed before the other party files a motion for a new trial, fails to file another notice of appeal after the disposition of the motion for a new trial, that party loses the right to appeal.

The Advisory Committee on Appellate Rules has recommended that FRAP 4(a)(4) be amended so that a previously filed notice of appeal will be held in abeyance pending disposition of a motion for a new trial. This will avoid the necessity of having to file a second notice of appeal. This is a significant change that is designed to eliminate this "trap for unsuspecting litigants" (quoting the Committee Note to the proposed amendment).

The proposed amendments to FRAP 4(a)(4) also adds to the list of post-trial motions that extend the time to file a notice

of appeal a motion under F.R.Civ.P. 60 that is served within 10 days after entry of a judgment. The purpose of this amendment is to eliminate the difficulty of determining whether a post-trial motion made within 10 days after entry of a judgment is a Rule 59(e) motion, which tolls the time for filing an appeal, or a Rule 60 motion, which does not toll the time for appeal.

The proposed amendments to FRAP Rule 4(a)(4) was published for public comment last year and, in June 1992, the Standing Committee approved it for presentation to the Judicial Conference in September. A copy of FRAP 4(a)(4), showing the proposed amendments, is attached as Exhibit A.

FRAP 4(a)(4) does not apply to appeals from the district court or the bankruptcy appellate panel to the court of appeals in bankruptcy cases and proceedings pursuant to 28 USC § 158(d). FRAP 6(b)(i) expressly makes FRAP Rule 4(a)(4) inapplicable in bankruptcy cases. The reason for making Rule 4(a)(4) inapplicable to bankruptcy matters is that, in bankruptcy matters, the court of appeals is not hearing an appeal from the trial court, but is hearing it from a lower appellate court. The kinds of post-trial motions listed in FRAP 4(a)(4) do not apply to the district court or BAP acting as appellate courts.

However, FRAP 6(b)(2)(i) is similar to FRAP 4(a)(4) in that it governs the effect of a motion for rehearing on the time to appeal to the court of appeals from the district court or the BAP in a bankruptcy proceeding. The present version of FRAP 6(b)(2)(i) is silent on the effects of a post-judgement motion on

a previously filed notice of appeal.

At the meeting held on March 26, 1992, I brought to the attention of the Advisory Committee on Bankruptcy Rules the proposed amendment to FRAP 4(a)(4) and the fact that a similar amendment was not being made to FRAP 6(b)(2)(i). The Committee instructed me to communicate with the Appellate Rules Committee our recommendation that they consider amending FRAP 6(b)(2)(i) to conform to the proposed amendment to FRAP 4(a)(4). I did so and the Appellate Rules Committee recommended to the Standing Committee that FRAP 6(b)(2)(i) also be amended. The Standing Committee approved the amendment without the need for publication in view of the fact that the purpose of it is to conform to the proposed amendment to FRAP 4(a)(4). A copy of the proposed amendment to FRAP 6(b)(2)(i) is attached as Exhibit B.

Recommendation to Amend Bankruptcy Rule 8002(b) to Conform to the Proposed Amendments to FRAP 4(a)(4) and FRAP 6(b)(2)(i).

Bankruptcy Rule 8002 governs appeals to the district court or the bankruptcy appellate panel from orders of the bankruptcy court. Rule 8002(b), which governs the effect of a post-judgment motion on the time for filing a notice of appeal, includes the following statement: "A notice of appeal filed before the disposition of any of the above motions shall have no effect; a new notice of appeal must be filed." Clearly, this language is consistent with the present version of FRAP 4(a)(4), but is inconsistent with the proposed amendments to FRAP 4(a)(4) and

6(b)(2)(i).

The list of motions that extends the time to file an appeal under Rule 8002 is similar to the list in FRAP 4(a)(4) in that it does not include a motion "For Relief from Judgment or Order" under F.R.Civ.P 60 (which is incorporated into the Bankruptcy Rules under Rule 9024). As mentioned above, the proposed amendments to FRAP 4(a)(4) add Rule 60 motions to the list if filed within 10 days after entry of the judgment.

I now recommend that the Advisory Committee consider the following amendments to Bankruptcy Rule 8002 that will, among other things, conform to the proposed amendments to FRAP 4(a)(4) and 6(b)(2)(i).

Rule 8002. Time For Filing Notice of Appeal.

* * * *

(b) Effect of Motion on Time to Appeal. If any party files a timely motion ~~is filed by any party~~: (1) under Rule 7052(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (2) under Rule 9023 to alter or amend the judgment; or (3) under Rule 9023 for a new trial, or if within 10 days after the entry of the judgment a motion is filed by any party under Rule 9024, the time for appeal for all parties ~~shall~~ runs from the entry of the order ~~denying a new trial or granting or denying any other such motion~~ disposing of the motion. ~~A notice of appeal filed before the disposition of any of the above motions~~

served?
Jones: std conform; use served.
Resnick: Bcy practice is filed, so can execute on plan

disposing of the last of all such motions.

~~shall have no effect; a new notice of appeal must be filed. No additional fees shall be required for such filing.~~ A notice of appeal filed after announcement or entry of the judgment, order or decree, but before disposition of any of the above motions, is ineffective to appeal from the judgment, order or decree, or part thereof, specified in the notice of appeal, until the date of the entry of the order disposing of the last such motion outstanding. Appellate review of an order disposing of any of the above motions requires the party, in compliance with Rule 8001(a), to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment, order, or decree shall file an amended notice of appeal within the time prescribed by subdivision (a) of this rule, measured from the entry of the order disposing of the motion. No additional fees will be required for filing the amended notice.

* * * *

COMMITTEE NOTE

These amendments are intended to conform to the 1993 amendments to F.R.App.P. 4(a)(4) and 6(b)(2)(i).

This rule as amended provides that a notice of appeal filed before the disposition of a specified post-judgment motion will become effective upon disposition of the motion. A notice of appeal filed before the filing of one of the specified motions or after the filing of a motion but before disposition of the motion is, in effect, suspended until the motion is disposed of, whereupon, the previously filed notice effectively places jurisdiction in the district court or bankruptcy appellate panel.

Because a notice of appeal will ripen into an effective appeal upon disposition of the post-judgment motion, in some instances there will be an appeal from a judgment that has

been altered substantially because the motion was granted in whole or in part. Many such appeals will be dismissed for want of prosecution when the appellant fails to meet the briefing schedule. But, the appellee may also move to strike the appeal. When responding to such a motion, the appellant would have an opportunity to state that, even though some relief sought in a post-judgment motion was granted, the appellant still plans to pursue the appeal. Because the appellant's response would provide the appellee with sufficient notice of the appellant's intentions, the rule does not require an additional notice of appeal in that situation.

The amendment provides that a notice of appeal filed before the disposition of a post-judgement tolling motion is sufficient to bring the judgment, orders, or decree specified in the original notice of appeal to the district court or bankruptcy appellate panel. If the judgment is altered upon disposition of a post-judgement motion, however, and if a party wishes to appeal from the disposition of the motion, the party must amend the notice to so indicate. When a party files an amended notice, no additional fees are required because the notice is an amendment of the original and not a new notice of appeal.

This rule is also amended to include, among motions that extend the time for filing a notice of appeal, a motion under Rule 9024 that is served within 10 days after entry of judgment. The addition of this motion also conforms to the 1993 amendment to F.R.App.R. 4(a)(4).

If a Civil Rule or Appellate Rule is being amended, and it is appropriate to amend the Bankruptcy Rules to conform to the proposed changes to the other body of rules, it has been the practice of the Advisory Committee to wait to see whether the proposed amendment to the Civil or Appellate Rule is finally adopted by the Supreme Court before suggesting any conforming amendments to the Bankruptcy Rules. However, I believe that this is one situation where the Advisory Committee should try to avoid unnecessary delay in conforming the Bankruptcy Rules because of the procedural trap that would be created by having in effect (1)

an appellate rule that says that a post-judgment motion in the district court merely suspends a filed notice of appeal, and (2) a bankruptcy rule that says that a post-judgement motion in bankruptcy court renders a filed notice of appeal void. Perhaps the proposed amendments to Rule 8002 can be brought to the Standing Committee in December 1992 with a request for publication so that the Committee can present it to the Standing Committee in June 1993 for approval, which means that it may become effective in August 1994.

EXHIBIT A

of appeals, in accordance with 28 U.S.C. § 636(c)(4). ~~Appeals to the court of appeals pursuant to~~ An appeal under 28 U.S.C. § 636(c)(3) ~~shall~~ must be taken in identical fashion as an appeal~~s~~ from any other judgment~~s~~ of the district court.

COMMITTEE NOTE

The amendment conforms the rule to the change in title from "magistrate" to "magistrate judge" made by the Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089, 5117 (1990). Additional style changes are made; no substantive changes are intended.

Rule 4. Appeal as of Right - When Taken

(a) *Appeal~~s~~ in a Civil Case~~s~~.-*

(1) Except as provided in paragraph (a)(4) of this Rule, ~~I~~in a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by

Rule 3 ~~shall~~ must be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days after such entry. If a notice of appeal is mistakenly filed in the court of appeals, the clerk of the court of appeals shall note thereon the date ~~on which it was~~ when the clerk received the notice and ~~transmit~~ send it to the clerk of the district court and ~~it shall be deemed~~ the notice will be treated as filed in the district court on the date so noted.

(2) ~~Except as provided in (a)(4) of this Rule 4, a~~ A notice of appeal filed after the ~~announcement of~~ court announces a decision or order but before the entry of

the judgment or order ~~shall be~~ is treated as filed ~~after such entry and on the day thereof~~ on the date of and after the entry.

(3) If ~~a timely notice of appeal is filed by a~~ one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date ~~on which~~ when the first notice ~~of appeal~~ was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period last expires.

(4) If any party makes a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion under the Federal Rules of Civil Procedure: ~~is filed in the district court by any party:~~

~~(i)~~ (A) for judgment under Rule 50(b);

~~(ii)~~ (B) ~~under Rule 52(b)~~ to amend or make additional findings of fact under Rule 52(b), whether or not ~~an alteration of~~ granting the motion would alter the judgment; ~~would be required if the motion is granted;~~

~~(iii)~~ (C) ~~under Rule 59~~ to alter or amend the judgment under Rule 59; ~~or~~

~~(iv)~~ (D) for attorney's fees under Rule 54 if a district court under Rule 58 extends the time for appeal;

(E) ~~under Rule 59~~ for a new trial under Rule 59; or

(F) for relief under Rule 60 if the motion is served within 10 days after the entry of judgment.

~~, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying~~

~~any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above.~~ A notice of appeal filed after announcement or entry of the judgment but before disposition of any of the above motions is ineffective to appeal from the judgment or order, or part thereof, specified in the notice of appeal, until the date of the entry of the order disposing of the last such motion outstanding. Appellate review of an order disposing of any of the above motions requires the party, in compliance with Appellate Rule 3(c), to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of

the judgment shall file an amended notice of appeal within the time prescribed by this Rule 4 measured from the entry of the order disposing of the last such motion outstanding. No additional fees ~~shall~~ will be required for ~~such~~ filing an amended notice.

* * * * *

(b) *Appeals in a Criminal Cases.*- In a criminal case, a defendant shall file the notice of appeal ~~by a defendant shall be filed~~ in the district court within 10 days after the entry either of ~~(i)~~ the judgment or order appealed from, or ~~(ii)~~ of a notice of appeal by the Government. A notice of appeal filed after the announcement of a decision, sentence, or order--but before entry of the judgment or order--~~shall be~~ is treated as filed ~~after such entry and on the day thereof~~ on the

the 14-day period provided in paragraph (a)(3) of this Rule 4 for another party to file a notice of appeal runs from the date when the district court receives the first notice of appeal. In a criminal case in which a defendant files a notice of appeal in the manner provided in this subdivision (c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's receipt of the defendant's notice of appeal.

COMMITTEE NOTE

Note to Paragraph (a)(1). The amendment is intended to alert readers to the fact that paragraph (a)(4) extends the time for filing an appeal when certain posttrial motions are filed. The Committee hopes that awareness of the provisions of paragraph (a)(4) will prevent the filing of a notice of appeal when a posttrial tolling motion is pending.

Note to Paragraph (a)(2). The amendment treats a notice of appeal filed after the announcement of a decision or order, but before its formal entry, as if the notice had

been filed after entry. The amendment deletes the language that made paragraph (a)(2) inapplicable to a notice of appeal filed after announcement of the disposition of a posttrial motion enumerated in paragraph (a)(4) but before the entry of the order, see Acosta v. Louisiana Dep't of Health & Human Resources, 478 U.S. 251 (1986) (per curiam); Alerte v. McGinnis, 898 F.2d 69 (7th Cir. 1990). Because the amendment of paragraph (a)(4) recognizes all notices of appeal filed after announcement or entry of judgment-- even those that are filed while the posttrial motions enumerated in paragraph (a)(4) are pending-- the amendment of this paragraph is consistent with the amendment of paragraph (a)(4).

Note to Paragraph (a)(3). The amendment is technical in nature; no substantive change is intended.

Note to Paragraph (a)(4). The 1979 amendment of this paragraph created a trap for an unsuspecting litigant who files a notice of appeal before a posttrial motion, or while a posttrial motion is pending. The 1979 amendment requires a party to file a new notice of appeal after the motion's disposition. Unless a new notice is filed, the court of appeals lacks jurisdiction to hear the appeal. Griggs v. Provident Consumer Discount Co., 459 U.S. 56 (1982). Many litigants, especially pro se litigants, fail to file the second notice of appeal, and several courts have expressed dissatisfaction with the rule. See, e.g., Averhart v. Arrendondo, 773 F.2d 919 (7th Cir. 1985); Harcon Barge Co. v. D & G Boat Rentals, Inc., 746 F.2d 278 (5th Cir. 1984), *cert. denied*,

479 U.S. 930 (1986).

The amendment provides that a notice of appeal filed before the disposition of a specified posttrial motion will become effective upon disposition of the motion. A notice filed before the filing of one of the specified motions or after the filing of a motion but before disposition of the motion is, in effect, suspended until the motion is disposed of, whereupon, the previously filed notice effectively places jurisdiction in the court of appeals.

Because a notice of appeal will ripen into an effective appeal upon disposition of a posttrial motion, in some instances there will be an appeal from a judgment that has been altered substantially because the motion was granted in whole or in part. Many such appeals will be dismissed for want of prosecution when the appellant fails to meet the briefing schedule. But, the appellee may also move to strike the appeal. When responding to such a motion, the appellant would have an opportunity to state that, even though some relief sought in a posttrial motion was granted, the appellant still plans to pursue the appeal. Because the appellant's response would provide the appellee with sufficient notice of the appellant's intentions, the Committee does not believe that an additional notice of appeal is needed.

The amendment provides that a notice of appeal filed before the disposition of a posttrial tolling motion is sufficient to bring the underlying case, as well as any

orders specified in the original notice, to the court of appeals. If the judgment is altered upon disposition of a posttrial motion, however, and if a party wishes to appeal from the disposition of the motion, the party must amend the notice to so indicate. When a party files an amended notice, no additional fees are required because the notice is an amendment of the original and not a new notice of appeal.

Paragraph (a)(4) is also amended to include, among motions that extend the time for filing a notice of appeal, a Rule 60 motion that is served within 10 days after entry of judgment. This eliminates the difficulty of determining whether a posttrial motion made within 10 days after entry of a judgment is a Rule 59(e) motion, which tolls the time for filing an appeal, or a Rule 60 motion, which historically has not tolled the time. The amendment comports with the practice in several circuits of treating all motions to alter or amend judgments that are made within 10 days after entry of judgment as Rule 59(e) motions for purposes of Rule 4(a)(4). See, e.g., Finch v. City of Vernon, 845 F.2d 256 (11th Cir. 1988); Rados v. Celotex Corp., 809 F.2d 170 (2d Cir. 1986); Skagerberg v. Oklahoma, 797 F.2d 881 (10th Cir. 1986). To conform to a recent Supreme Court decision, however--Budinich v. Becton Dickinson and Co., 486 U.S. 196 (1988)--the amendment excludes motions for attorney's fees from the class of motions that extend the filing time unless a district court, acting under Rule 58, enters an order extending the time for appeal. This amendment is to be read in conjunction with the amendment of Fed. R.

Civ. P. 58.

Note to subdivision (b). The amendment grammatically restructures the portion of this subdivision that lists the types of motions that toll the time for filing an appeal. This restructuring is intended to make the rule easier to read. No substantive change is intended other than to add a motion for judgment of acquittal under Criminal Rule 29 to the list of tolling motions. Such a motion is the equivalent of a Fed. R. Civ. P. 50(b) motion for judgment notwithstanding the verdict, which tolls the running of time for an appeal in a civil case.

The proposed amendment also eliminates an ambiguity from the third sentence of this subdivision. Prior to this amendment, the third sentence provided that if one of the specified motions was filed, the time for filing an appeal would run from the entry of an order denying the motion. That sentence, like the parallel provision in Rule 4(a)(4), was intended to toll the running of time for appeal if one of the posttrial motions is timely filed. In a criminal case, however, the time for filing the motions runs not from entry of judgment (as it does in civil cases), but from the verdict or finding of guilt. Thus, in a criminal case, a posttrial motion may be disposed of more than 10 days before sentence is imposed, i.e. before the entry of judgment. United States v. Hashagen, 816 F.2d 899, 902 n.5 (3d Cir. 1987). To make it clear that a notice of appeal need not be filed before entry of judgment, the amendment states that an appeal may be taken within 10 days after the entry of an order disposing of the

EXHIBIT B

filed. Within 14 days after service of the petition, a party may file an answer in opposition or a cross petition.

* * * * *

COMMITTEE NOTE

The amendment conforms the rule to the change in title from "magistrate" to "magistrate judge" made by the Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089, 5117 (1990).

* * * * *

Rule 6. ~~Appeals in bankruptcy cases from final judgments and orders of district courts or of bankruptcy appellate panels~~ Appeal in a Bankruptcy Case from a Final Judgment, Order, or Decree of a District Court or of a Bankruptcy Appellate Panel

* * * * *

(b) Appeal from a judgment, order or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction in a bankruptcy case. --

* * * * *

(2) Additional rules. In addition to the rules made applicable by subsection (b)(1) of this rule, the following rules shall apply to an appeal to a court of appeals pursuant to 28 U.S.C. § 158(d) from a final judgment, order or decree of a district court or of a bankruptcy appellate panel exercising appellate jurisdiction pursuant to 28 U.S.C. § 158(a) or (b):

(i) Effect of a Motion for Rehearing on the Time for Appeal. If any party files a timely motion for rehearing under Bankruptcy Rule 8015 ~~is filed~~ in the district court or the bankruptcy appellate panel, the time for appeal to the court of appeals for all parties ~~shall~~ runs from the entry of the order ~~denying the rehearing or the entry of the~~

~~subsequent judgment~~ disposing of the motion. A notice of appeal filed after announcement or entry of the district court's or bankruptcy appellate panel's judgment, order, or decree, but before disposition of the motion for rehearing, is ineffective until the date of the entry of the order disposing of the motion for rehearing. Appellate review of the order disposing of the motion requires the party, in compliance with Appellate Rules 3(c) and 6(b)(1)(ii), to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment, order, or decree shall file an amended notice of appeal within the time prescribed by Rule

4, excluding 4(a)(4) and 4(b), measured from the entry of the order disposing of the motion. No additional fees will be required for filing the amended notice.

* * * * *

COMMITTEE NOTE

Note to Subparagraph (b)(2)(i). The amendment accompanies concurrent changes to Rule 4(a)(4). Although Rule 6 never included language such as that being changed in Rule 4(a)(4), language that made a notice of appeal void if it was filed before, or during the pendency of, certain posttrial motions, courts have found that a notice of appeal is premature if it is filed before the court disposes of a motion for rehearing. See, e.g., In re X-Cel, Inc., 823 F.2d 192 (7th Cir. 1987); In re Shah, 859 F.2d 1463 (10th Cir. 1988). The Committee wants to achieve the same result here as in Rule 4, the elimination of a procedural trap.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON
1001 S.W. 5TH AVENUE #900
PORTLAND, OREGON 97204

DONAL D. SULLIVAN
BANKRUPTCY JUDGE

503 326 4175
FTS 423 4175

February 6, 1992

Agenda Item 7.a.
Sept. 17-18, 1992

The Honorable Edward Leavy
U. S. Circuit Judge
555 S.W. Yamhill, Suite 216
Portland, Oregon 97204

Re: Case Management in Chapter 11

Dear Judge Leavy:

The subject of case management in chapter 11 is an area that your committee on rules may wish to consider. The recently-enacted Biden Bill, 11 U.S.C. § 471-482, and pending proposals to establish a new Bankruptcy Commission, are examples of Congressional pressure to mandate case management. In spite of this, there is much disagreement among bankruptcy judges and the bankruptcy bar over the issue of whether involvement of a bankruptcy judge in case management violates the unarticulated principles of the 1978 Bankruptcy Code which was designed to lift the bankruptcy judge out of administration. As a consequence, the Bankruptcy Court is far behind the District Court in developing effective case management techniques for chapter 11.

I personally feel that something must be done to make chapter 11 cheaper, better, or faster, and that there are tools in existence, mostly drawn from District Court practice, which could accomplish these purposes without new legislation. One way to accomplish this would be to make applicable, by either Rule or Conference Resolution, the guidelines in 28 U.S.C. § 473(a) of the Biden Bill governing litigation, management, and cost and delay reduction. Another more modest proposal, and the one I favor, would be to amend the Federal Bankruptcy Rules to expressly make applicable to chapter 11, Rule 16 of the Federal Rules of Civil Procedure. I am enclosing a copy of a form order initiating a Rule 16 management conference to give you some idea of what I perceive to be the scope of a management conference in chapter 11.

At the present time, a judge's authority to impose case management techniques in chapter 11 is derived from 11 U.S.C. § 105, a general statute, and from inherent authority to manage the docket. Bankr. R. 7016 and 9014 which refer to the Federal Rules do not clearly fit the parent chapter 11 case and are only arguably applicable. After some mixed success with case management in chapter 11, I am convinced that it would be very helpful to have an express rule which adopts Fed. R. Civ. P. 16 in regard to the parent case.

Thank you for the opportunity to discuss this matter.

Very truly yours,

DONAL D. SULLIVAN
Bankruptcy Judge

DDS:lbd
Enclosure

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In Re:	)	Bankruptcy Case No.
	)	
	)	
	)	ORDER SETTING SCHEDULING AND
Debtor.	)	CASE MANAGEMENT CONFERENCE

Pursuant to 11 U.S.C. §105(a), Fed. R. of Civ. P. 16, Bankr. R. 7016 and 9014, the Court directs the attorneys for the parties identified on Exhibit 1, and any unrepresented parties identified on Exhibit 1, to appear for a conference on _____ at _____ __.m. in Courtroom 3, U. S. Bankruptcy Court, 1001 S.W. Fifth Avenue, Ninth Floor, Portland, Oregon. The purpose of the conference is to expedite the chapter 11 case by establishing early and continuing control, to discourage wasteful litigation activities, and to facilitate settlement of disputed matters.

At the conference, the Court may consider and take action with respect to the formulation and simplification of issues in the chapter 11 proceeding, the advisability of

referring matters to an examiner or trustee, the possibility of settlement of issues or the use of extrajudicial procedures to resolve disputes, the need for adopting special procedures for managing potentially difficult or protracted adversary proceedings or contested matters that may involve complex issues, multiple parties, difficult legal questions or unusual proof problems, and such other matters as may aid in the progress of the chapter 11 case.

At the conference, at least one of the attorneys for each party, or a representative of each party unrepresented by an attorney, should have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

Typically, matters to be discussed at the conference include the following:

(1) Motions to appoint a trustee.

(2) Motions to dismiss or convert.

(3) Motions for relief from stay.

(4) Adequate protection.

(5) Operation of the debtor's business.

(6) Preview of the chapter 11 plan (liquidation or workout; funding; timing of filing disclosure statement and plan, including requests to shorten or extend the exclusive period for filing a disclosure statement and plan; estimated administrative expenses, etc.).

(7) Designation as chapter 11A fast track case.

(8) Feasibility.

(9) Anticipated budgets for professionals employed by debtor, committees, oversecured creditors, and others who may expect to be paid from the estate.

(10) The contents of a further scheduling and case management order to follow as a result of the conference.

At least 24 hours before the conference, the debtor-in-possession shall deliver to the Court and the U. S. Trustee a completed Reorganization Profile which is attached hereto. The debtor should also bring enough copies to the conference to distribute to the other parties identified on Exhibit 1.

Secured creditors and lien creditors shall bring to the conference documents establishing the existence and perfection of their security interests and liens, amounts owed including principal, interest and arrearages, in a quantity sufficient to distribute to the debtor, unsecured creditors' committee and the U. S. Trustee.

Secured creditors, lien creditors and others contemplating filing motions for relief from stay are advised that many of the issues typically addressed in such motions are likely to be dealt with at the scheduling and case management conference. Secured creditors may prefer to refrain from filing such motions until after the conference, because their attorney fees may be determined to be unreasonable or because they may be impressed with the

/ / / /

opponent's costs incurred in defense of a motion not well founded in law or fact.

DATED this _____ day of _____, 1991.

_____
DONAL D. SULLIVAN
Bankruptcy Judge

cc: Parties Listed on Exhibit 1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO
U S CUSTOM HOUSE
721 NINETEENTH STREET FIRST FLOOR
DENVER COLORADO 80202-2508

RADFORD L BOLTON
CLERK

(303) 844 4045
FTS 564 4045

June 4, 1992

Agenda Item 7.b.
Sept. 17-18, 1992

Mr. Joseph Spaniol
Rules Office
Administrative Office of the
United States Courts
Washington, D.C. 20544

Re: Time Computation Rules

Dear Mr. Spaniol:

Pursuant to a conversation you had today with a deputy clerk in our office, I am submitting our information in writing per your request. We have become aware of an inconsistency between Rule 6 of the Federal Rules of Civil Procedure and Rule 9006 of the Federal Rules of Bankruptcy Procedure regarding the computation of time. It makes it somewhat confusing for people who have to deal with both the bankruptcy court and the district court.

Rule 6 of the Federal Rules of Civil Procedure reads: "[W]hen the period of time prescribed or allowed is less that 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation." However, Rule 9006 of the Federal Rules of Bankruptcy Procedure reads: "[W]hen the period of time prescribed or allowed is less that 8 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation."

We appreciate your offer to bring this discrepancy to the attention of the affected persons within the Rules Office in order that the issue is properly addressed and a solution arrived at.

Sincerely,

Bradford L. Bolton, Clerk

dc

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

ARTHUR J. SPECTOR
UNITED STATES BANKRUPTCY JUDGE

Northern Division at Bay City

311 Federal Building
1000 Washington Avenue
P.O Box X-911
Bay City, Michigan 48707
(517) 892-8521

Southern Division at Flint

Room 113
Federal Building
600 Church Street
Flint, Michigan 48502
(313) 766-5044

June 3, 1992

Agenda Item 7.c.
Sept. 17-18, 1992

Edward Leavy
Chairman
Advisory Committee on Bankruptcy Rules
216 Pioneer Courthouse
555 S.W. Yamhill Street
Portland, OR 97204

Dear Mr. Leavy:

I recently had cause to review the provisions of F.R.Bankr.P. 8002. I believe the rule can lead to unjust results. Rule 8002(a) provides that the notice of appeal must be filed "within 10 days of the date of the entry of the judgment, order, or decree appealed from." In my experience, the aggrieved party frequently will not receive notice of the entry of the order in time to protect itself by appeal.

This occurred recently in my court. On February 26, 1992, I entered a judgment on a decision which was rendered some time previously. Copies of the judgment were mailed to counsel by my secretary on February 27, 1992. The attorney for the unsuccessful defendant did not receive a copy of the judgment until March 6. As that attorney was a member of a lawfirm from another judicial district, it is doubtful that he could have timely perfected the appeal even had he been in the office on the day that the judgment arrived there (which he was not).[1] In this case, obviously, it was

---

[1]Pursuant to F.R.Bankr.P. 8008(a), a document (other than a brief) is deemed filed upon receipt by the clerk. Therefore, merely putting a notice of appeal in the mail within the 10-day period is not effective to perfect an appeal. The Rules anticipate a routine 3-day delay by regular mail. See F.R.Bankr.P. 9006(f). Adding three days to the otherwise applicable expiration date of the 10-day period, March 7, 1992, means the last date by which the defendant could have timely appealed was March 10, 1992. A notice of appeal mailed to the Clerk on the very date a copy of the judgment was received, March 6, 1992, might have arrived at the

the delay by the Postal Service which caused the unfair result. The rule makes no allowance for this.

Neither party could cite to me, nor could I find on my own, any opinion holding that "excusable neglect" had been established for purposes of Rule 8002(c). Although it has been stated that "failure of the mails" might be a proper ground for finding excusable neglect, In re Soter, 31 B.R. 986, 989 n. 6 (D. Vt. 1983), that case did not so hold. And even if that proposition is accepted, the delay in my case would more accurately be attributed to lethargic mail services, rather than true "failure" of the postal system.

Even more egregious would be the situation where, for example, my secretary does not mail copies of the judgment to the parties until several days have passed. According to the rule, the potential appellant would be without a remedy. (However, if the Postal Service had delayed service for another two days, or if my secretary had failed to timely post the letters, I believe due process would have trumped the rule, and the appeal should be allowed, even though filed after the 10 days had passed.) In my opinion, it is the rule that causes the mischief. I appreciate the need for expeditious processing and resolution of bankruptcy cases. However, the interest in finality must be balanced with the concern for assuring that an aggrieved party has an adequate opportunity to perfect an appeal. I suggest amending the rule to provide that the 10-day period runs not from the entry of the order, but from earlier of the date a copy of the order is mailed by the clerk or the successful party.

Sincerely,

Arthur J. Spector
U.S. Bankruptcy Judge

AJS/pey

cc: Prof. Alan N. Resnick, Reporter
Advisory Committee on Bankruptcy Rules

Clerk's office on time, but if the return mail was as slow as the original delivery, it would not. Moreover, it is unrealistic to require that an appeal to be posted on the very day the notice of judgment is received. If it was mailed the next business day, Monday, March 9, it undoubtedly would not have arrived in time. Thus, "heroic" efforts would have been required.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

ROBERT E KEETON
CHAIRMAN

JOSEPH F SPANIOL JR
SECRETARY

CHAIRMEN OF ADVISORY COMMITTEES
KENNETH F RIPPLE
APPELLATE RULES

SAM C POINTER, JR
CIVIL RULES

WILLIAM TERRELL HODGES
CRIMINAL RULES

EDWARD LEAVY
BANKRUPTCY RULES

Agenda Item 7.d.
Sept. 17-18, 1992

April 3, 1992

CCFY

Honorable Edward Leavy
United States Court of Appeals
216 Pioneer Courthouse
555 S.W. Yamhill Street
Portland, Oregon 97204-1396

Dear Judge Leavy:

In leafing through the Federal Rules of Criminal Procedure, I noticed that Rule 40 was amended in 1979 to abolish "the present distinction between arrest in a nearby district and arrest in a distant district." Yet, Bankruptcy Rule 2005 still retains this distinction.

May I suggest that at the appropriate time the Advisory Committee on Bankruptcy Rules consider whether Rule 2005 should be amended?

Joseph F. Spaniol, Jr.
Secretary

cc: Honorable Robert E. Keeton
Professor Alan N. Resnick

AMERICAN EXPRESS TRAVEL RELATED SERVICES
An American Express company.

American Express
Travel Related Services Company, Inc.
General Counsel's Office
American Express Tower
World Financial Center
New York, NY 10285-4900

February 14, 1992

Agenda 7.e.
Sept. 17-18, 1992

Mr. Edward Leavy,
Chairman, Advisory Committee
on Bankruptcy Rules
The Committee on Rules of Practice
and Procedure of the Judicial
Conference of the United States
Administrative Office of the United States Courts
Washington, D.C. 20544

Re: Proposed Amendments to Bankruptcy Rules

Dear Mr. Leavy:

Pursuant to your invitation to the bar to comment on the Preliminary Draft of the Proposed Amendments to the Federal Rules of Bankruptcy Procedure ("Preliminary Draft") we submit the following comments on behalf of American Express Travel Related Services Company, Inc. ("American Express").

American Express is involved with thousands of bankruptcy cases every year. Both individuals who hold cards issued by American Express ("Cardmembers") and businesses that accept our cards have increasingly turned to the Bankruptcy Code for protection. Accordingly, American Express has a considerable body of experience to draw on in developing its views on both the Bankruptcy Code and the Bankruptcy Rules.

In addition to the changes suggested by the Advisory Committee, we submit the following additional changes to the Bankruptcy Rules for your consideration.

1. We continue to have serious problems receiving adequate notice of adversary proceedings filed against American Express in Cardmember and merchant bankruptcies. Bankruptcy Rule 7004(d)(3) permits what is essentially "sewer service" of a summons and complaint on a corporation. Under this rule,

mailing to any address of a corporation (including a remote location) is deemed good service merely if the envelope is addressed to the attention of "an officer or a managing or general agent." Unfortunately this type of service can result in many default judgments being entered against corporations solely due to the time required to route the notice to the office responsible for handling such matters. It is illogical and unfair to permit bankruptcy lawsuits to be served on corporate defendants in a manner which can effectively preclude the corporate defendant from having adequate notice of the existence of the lawsuit. Moreover, unscrupulous debtors and debtors' attorneys can purposefully choose an obscure address of a corporate defendant in hopes that the papers will be misdirected internally, even when they are well aware of a more suitable address.

All corporations either have registered or appointed agents for service of process in each state, or, if they have not designated an agent, an agent is designated under the law of the various states. Accordingly, it is not at all difficult or burdensome for a plaintiff in an adversary proceeding to serve the designated agent since the name of the agent is a matter of public knowledge. Requiring such service in order to commence an adversary proceeding will be no more costly for debtors and will afford corporate defendants the due process they deserve.

> Proposed Change: Delete the words "officer, a managing or general agent, or to any other" from Bankruptcy Rule 7004(b)(3).

2. In addition to eliminating service of adversary proceedings by mailing to remote corporate addresses, we propose adding a provision to the Bankruptcy Rules permitting large corporations to notify the clerk's office of each local bankruptcy court of an address (or addresses) to be used to effectuate service. Each clerk's office would maintain a list of creditors who have elected to specify an address, and debtors and debtors' counsel would be strongly encouraged to serve papers by mailing to the specified addresses. We understand such a program is currently in effect in the clerk's office of the Bankruptcy Court for the District of Utah.

3. Many of the notices we receive informing us that a bankruptcy proceeding has commenced do not contain a card or merchant account number, and in many cases, do not include identifying information matching the information in our records. This makes it unnecessarily difficult for creditors like American Express, which has millions of accounts, to identify the debtor correctly, which can lead to, amongst other things, unintentionally dunning a debtor in violation of the "automatic stay."

We propose to amend Bankruptcy Rule 2002 to require that the §342 notice to creditors contain an account number. With this information, we would be immediately able to identify the correct person as the debtor and process the bankruptcy without having to call the various courts and debtors' attorneys for clarification.

This §342 notice is often sent out using a mailing "matrix", a list of creditor names and addresses usually furnished by the debtor. Accordingly, any requirement to include account numbers in the notice must also provide that the account number may not be shown in a manner that would expose it to public view (i.e., not part of the address label or visible through a window envelope). The appearance of account numbers on the outside of envelopes addressed to American Express is an invitation to fraudulent uses of account numbers.

Proposed Change:

Bankruptcy Rule 2002 should be amended by adding the following sentence at the end of subsection (n):

"Such notice shall include sufficient information concerning the debtor's debt(s) to the creditor to whom it is addressed to enable such creditor to identify such debts, including the debtor's account number(s); provided, however, that such identifying information shall not appear on any mailing label or be visible through any window envelope or otherwise be exposed to public view."

I hope the foregoing comments are useful to the Advisory Committee. We appreciate the opportunity to comment on the proposed changes in the Preliminary Draft, as well as the chance to point out areas of concern for American Express. Please feel free to call me with any questions or comments at (212) 640-4897.

James W. Pharo
Attorney

cc: Valerie Morse
Annel L. Segal
Julie S. Schechter

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF ILLINOIS
156 FEDERAL BUILDING
PEORIA, ILLINOIS 61602-1003

CHAMBERS OF
WILLIAM V. ALTENBERGER
JUDGE

TELEPHONE
(309) 671-7078

Agenda Item 7.f.
Sept. 17-18, 1992

November 14, 1991

Joseph F. Spaniol, Jr. Esq.
Secretary, Committee on Rules of
Practice and Procedure
Administrative Office of the U. S. Courts
Washington, D.C. 20544

Dear Mr. Spaniol:

I am writing to you to comment on problems I have encountered associated with the notice and hearing requirements for the voluntary dismissal of an involuntary bankruptcy petition.

Section 303(j) of the Bankruptcy Code provides as follows:

> Only after notice to all creditors and a hearing may the court dismiss a petition filed under this section -
> (1) on the motion of a petitioner;
> (2) on consent of all petitioners and the debtor; or
> (3) for want of prosecution.

The legislative history to Section 303 reads as follows:

> Under subsection (j), the court may dismiss the petition by consent only after giving notice to all creditors. The purpose of the subsection is to prevent collusive settlements among the debtor and the petitioning creditors while other creditors, that wish to see relief ordered with respect to the debtor but that did not participate in the case, are left without sufficient protection.

Collier's comments to Section 303 read as follows:

> Bankruptcy Rule 1017 complements section 303(j). Subdivision (a) provides that (except as provided in sections 707(b) and 1307 under which the debtor has the absolute right to have a chapter 13 case dismissed) a petition shall not be dismissed on motion of a petitioner or for want

of prosecution or other cause, or by consent, before a hearing on notice as provided in Rule 2002 (a) (not less than 20 days notice by mail to the debtor, creditors, and indenture trustees). If a list of creditors and their addresses was not previously filed, the debtor must file such list within the time fixed by the court, and upon his failure to do so, the court may order preparation and filing of the list by the debtor or other entity. The Advisory Committee on Bankruptcy Rules has recommended adoption of an interim local rule making Bankruptcy Rule 1017(a) applicable in chapter 12 cases. Subdivision (b) deals with dismissal for nonpayment of any installment of the filing fee ordered pursuant to Rule 1006(b).

Bankruptcy Rule 1017(a) provides as follows:

> Voluntary Dismissal; Dismissal For Want of Prosecution. Except as provided in Sections 707 (b) and 1307(b) of the Code, a petition shall not be dismissed on motion of the petitioner or for want of prosecution or other cause or by consent of the parties prior to a hearing on notice to all creditors as provided in Rule 2002(a). For such notice, the debtor shall file a list of all creditors with their addresses within the time fixed by the court unless the list was previously filed. If the debtor fails to file the list, the court may order the preparing and filing by the debtor or other entity.

The Advisory Committee Note reads as follows:

> Subdivision (a) of this rule is derived from former Bankruptcy Rule 120(a). While the rule applies to voluntary and involuntary cases, the "consent of the parties" referred to is that of petitioning creditors and the debtor in an involuntary case. The last sentence recognizes that the court should not be confined to petitioning creditors in its choice of parties on whom to call for assistance in preparing the list of creditors when the debtor fails to do so. This subdivision implements Sections 303(j), 707, 1112 and 1307 of the Code by specifying the manner of and persons to whom notice shall be given and requiring the court to hold a hearing on the issue of dismissal.

While the requirement for notice to all creditors and a hearing based upon the idea that the debtor or other entity will supply the list of creditors for notice purposes may be workable in a situation where the debtor has an active

management and good books and records, it has been my experience that it is not a workable requirement when dealing with small and loosely run companies that do not have these characteristics. For example, I have encountered situations where an involuntary petition has been filed against a company and its management has walked away from the company and can't be found, and its records either cannot be found or are in such poor condition that a list of creditors cannot be developed. In other situations even when management is active and books and records are available, the cost of developing a list of creditors was so high the debtor could not afford to pay it and no one else was willing to pay to develop the list of creditors. In all these situations, even though everyone wanted a dismissal, it was either impossible or very impractical in the cost context to give notice to creditors before dismissing the involuntary.

I recognize that in some situations the petitioning creditors could be forced to pay for the development of a creditor list. However, it has also been my experience that in situations where the petitioning creditors find that there are no assets, they do not want to throw good money after bad by paying for development of a creditor list just to dismiss the involuntary.

I also recognize that this is not strictly a problem arising out of the rules, as Section 303 itself requires notice and hearing, and that the reason for the requirement is to prevent collusion in the dismissal of an involuntary case.

Perhaps an answer would be to require the parties seeking dismissal to file an affidavit that would establish there was no collusion in the dismissal, and to have the U. S. Trustee participate in the dismissal process.

Thank you for your consideration.

Very truly yours,

William V. Altenberger
U. S. Bankruptcy Judge

WVA/eew

P.S. After dictating this letter, another problem in the area has come to mind. I have experienced a number of situations where a secured creditor in a Chapter 13 case does not object to the terms of a plan. The plan is then confirmed, and thereafter the secured creditors file a claim which is inconsistent with the terms of the plan. This is a question which courts disagree. I normally hold that the creditor is bound by the terms of the confirmed plan if he has not objected.

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
926-B UNITED STATES COURT HOUSE
312 NORTH SPRING STREET
LOS ANGELES CALIFORNIA 90012

GERALDINE MUND
JUDGE

Agenda Item 7.g.
Sept. 17-18, 1992

September 30, 1991

Judge Edward Leavy
Chairman, Advisory Committee on Bankruptcy Rules
c/o Committee on Rules on Practice and Procedure
of the Judicial Conference of the United States
Washington, D.C. 20544

Dear Judge Leavy:

I recently had a case that was removed from the California Superior Court to the Bankruptcy Court in which there was a complaint and a cross-complaint between a creditor, the debtor, and the principals of the debtor. The action was such that a jury trial would be permitted, if timely demand was made.

In reviewing the question of jury trial, it came to my attention that the bankruptcy rules do not incorporate F.R.C.P. Rule 81(c) which determines the time and methodology by which a party to a removed action must file a demand for trial by jury. In fact, there is no time stated in the bankruptcy rules to demand a trial by jury on a removed action.

I would appreciate it if your committee could review this matter and consider an amendment to the bankruptcy rules which would specify the time and manner by which a demand for jury must be made by a party to a removed action.

Thank you for your consideration.

Very truly yours,

GERALDINE MUND
United States Bankruptcy Judge

GM:yg

Agenda Item 7.h.
Sept. 17-18, 1992

ELISABETH S PETERSEN
ATTORNEY AT LAW
3326 CHAPEL HILL BLVD
DUKE FOREST PLACE SUITE B NO
PO BOX 51506
DURHAM NORTH CAROLINA 27717
TELEPHONE
919 493 8111

July 8, 1992

MR. JAMES MACKLIN
DEPUTY DIRECTOR
ADMINISTRATIVE OFFICE OF COURTS
WASHINGTON, DC

Dear Mr. Macklin:

This letter is written to you in your capacity as Secretary to the Bankruptcy Rules Committee. I recently discussed with Frank Sczcebak the need for the Bankruptcy Rules Committee to have a greater understanding of the administration of bankruptcy estates, and that I believed this could be best facilitated if a trustee were on the Rules Committee. Frank suggested to me that I write to - - about this concern.

I am a member of the Board of Directors of the National Association of Bankruptcy Trustees and on several occasions in the last few years our representatives have contacted the Rules Committee concerning proposals which we felt were burdensome, or deleterious to the position of the trustee and case administration. We have thought it would be useful for a trustee to serve on the Rules Committee and at this time I would request that a such a proposal be given consideration. I understand from Frank that appointments to the Rules Committee are being considered now, and this is the appropriate time to make this request.

I would be happy to provide any further information or assistance, if I can in the future. I hope that my suggestion can be considered.

Very truly yours,

Elisabeth S. Petersen

Elisabeth S. Petersen

ESP/lm

Agenda Item 10.
Sept. 17-18, 1992

AMENDMENTS TO BE PUBLISHED FOR COMMENT

Hand-marked copies indicating proposed amendments

OFFICIAL BANKRUPTCY FORMS

1 Voluntary Petition

2 Declaration under Penalty of Perjury on Behalf of a Corporation or Partnership

3 Application and Order to Pay Filing Fee in Installments

4 List of Creditors Holding 20 Largest Unsecured Claims

5. Involuntary Petition

6 Schedules

7 Statement of Financial Affairs

8 Chapter 7 Individual Debtor's Statement of Intention

9. Notice of ~~Filing~~ Commencement of Case under the Bankruptcy Code, Meeting of Creditors, and Fixing of Dates

10 Proof of Claim

11A General Power of Attorney

11B. Special Power of Attorney

12 Order and Notice for Hearing on Disclosure Statement

13. Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof

14. Ballot for Accepting or Rejecting Plan

15. Order Confirming Plan

16A. Caption

16B. Caption (Short Title)

16C. Caption of Adversary Proceeding

17. Notice of Appeal to a District Court or Bankruptcy Appellate Panel from a Judgment or Other Final Order of a Bankruptcy Court.

18. Discharge of Debtor

Official Forms

[*NOTE: These official forms should be observed and used with such alterations as may be appropriate to suit the circumstances. See Rule 9009.*]

COMMITTEE NOTE

The list of Official Bankruptcy Forms has been amended to conform the title of Form 9 to the headings used on Forms 9A - 9I.

FORM B VOLUNTARY PETITION

United States Bankruptcy Court

District of _____

VOLUNTARY PETITION

IN RE (Name of debtor – If individual enter Last First Middle)	NAME OF JOINT DEBTOR (Spouse) (Last First Middle)
ALL OTHER NAMES used by the debtor in the last 6 years (Include married maiden and trade names.)	ALL OTHER NAMES used by the joint debtor in the last 6 years (Include married maiden and trade names.)
SOC SEC./TAX I.D. NO. (If more than one state all.)	SOC SEC./TAX I.D. NO. (If more than one state all.)
STREET ADDRESS OF DEBTOR (No. and street city state and zip code)	STREET ADDRESS OF JOINT DEBTOR (No. and street city state and zip code)
COUNTY OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS	COUNTY OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS
MAILING ADDRESS OF DEBTOR (If different from street address)	MAILING ADDRESS OF JOINT DEBTOR (If different from street address)
LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR (If different from addresses listed above)	VENUE (Check one box) ☐ Debtor has been domiciled or has had a residence principal place of business or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. ☐ There is a bankruptcy case concerning debtor's affiliate general partner, or partnership pending in this District.

INFORMATION REGARDING DEBTOR (Check applicable boxes)

OF DEBTOR
- ☐ Individual
- ☐ Joint (Husband & Wife)
- ☐ Partnership
- ☐ Other _____

- ☐ Corporation Publicly Held
- ☐ Corporation Not Publicly Held
- ☐ Municipality

NATURE OF DEBT
- ☐ Non-Business/Consumer
- ☐ Business – Complete A & B below

A. TYPE OF BUSINESS (Check one box)
- ☐ Farming
- ☐ Professional
- ☐ Retail/Wholesale
- ☐ Railroad
- ☐ Transportation
- ☐ Manufacturing/Mining
- ☐ Stockbroker
- ☐ Commodity Broker
- ☐ Construction
- ☐ Real Estate
- ☐ Other Business

B. BRIEFLY DESCRIBE NATURE OF BUSINESS

CHAPTER OR SECTION OF BANKRUPTCY CODE UNDER WHICH THE PETITION IS FILED (Check one box)
- ☐ Chapter 7
- ☐ Chapter 9
- ☐ Chapter 11
- ☐ Chapter 12
- ☐ Chapter 13
- ☐ Sec. 304 – Case Ancillary to Foreign Proceeding

FILING FEE (Check one box)
- ☐ Filing fee attached
- ☐ Filing fee to be paid in installments. (Applicable to individuals only.) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b); see Official Form No. 3

NAME AND ADDRESS OF LAW FIRM OR ATTORNEY

Telephone No.

NAME(S) OF ATTORNEY(S) DESIGNATED TO REPRESENT THE DEBTOR (Print or Type Names)

☐ Debtor is not represented by an attorney Telephone No. of Debtor not Represented by an attorney: ( )

STATISTICAL/ADMINISTRATIVE INFORMATION (28 U.S.C. § 604) (Estimates only) (Check applicable boxes)

THIS SPACE FOR COURT USE ONLY

adopted, 3 dcss

- ☐ Debtor estimates that funds will be available for distribution to unsecured creditors.
- ☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

ESTIMATED NUMBER OF CREDITORS

1-15	16-49	50-99	100-199	200-999	1000-over
☐	☐	☐	☐	☐	☐

ESTIMATED ASSETS (In thousands of dollars)

Under 50	50-99	100-499	500-999	1000-9999	10,000-99,000	100,000-over
☐	☐	☐	☐	☐	☐	☐

ESTIMATED LIABILITIES (In thousands of dollars)

Under 50	50-99	100-499	500-999	1000-9999	10,000-99,000	100,000-over
☐	☐	☐	☐	☐	☐	☐

NO. OF EMPLOYEES – CH. 11 & 12 ONLY

0	1-19	20-99	100-999	1000-over
☐	☐	☐	☐	☐

EST. NO. OF EQUITY SECURITY HOLDERS – CH. 11 & 12 ONLY

0	1-19	20-99	100-499	500-Over
☐	☐	☐	☐	☐

Name of Debtor _____

Case No _____ (Court use only)

FILING OF PLAN

For Chapter 9, 11, 12 and 13 cases only Check appropriate box

☐ A copy of debtor's proposed plan dated _____ is attached

☐ Debtor intends to file a plan within the time allowed by statute rule or order of the court

PRIOR BANKRUPTCY CASE FILED WITHIN LAST 6 YEARS (If more than one, attach additional sheet)

Location Where Filed	Case Number	Date Filed

PENDING BANKRUPTCY CASE FILED BY ANY SPOUSE, PARTNER, OR AFFILIATE OF THIS DEBTOR (If more than one attach additional sheet)

Name of Debtor	Case Number	Date
Relationship	**District**	**Judge**

REQUEST FOR RELIEF

Debtor requests relief in accordance with the chapter of title 11 United States Code, specified in this petition

SIGNATURES

ATTORNEY

X _____ _____

Signature Date

INDIVIDUAL/JOINT DEBTOR(S)

I declare under penalty of perjury that the information provided in this petition is true and correct.

X _____

Signature of Debtor

_____

Date

X _____

Signature of Joint Debtor

_____

Date

CORPORATE OR PARTNERSHIP DEBTOR

I declare under penalty of perjury that the information provided in this petition is true and correct, and that the filing of this petition on behalf of the debtor has been authorized

X _____

Signature of Authorized Individual

_____

Print or Type Name of Authorized Individual

_____

Title of Individual Authorized by Debtor to File this Petition

_____

Date

EXHIBIT "A" (To be completed if debtor is a corporation requesting relief under chapter 11.)

☐ Exhibit "A" is attached and made a part of this petition

TO BE COMPLETED BY INDIVIDUAL CHAPTER 7 DEBTOR WITH PRIMARILY CONSUMER DEBTS (See P.L. 98-353 § 322)

I am aware that I may proceed under chapter 7, 11, or 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7 of such title

If I am represented by an attorney, exhibit 'B' has been completed

X _____ _____

Signature of Debtor Date

X _____ _____

Signature of Joint Debtor Date

EXHIBIT "B" (To be completed by attorney for individual chapter 7 debtor(s) with primarily consumer debts.)

I, the attorney for the debtor(s) named in the foregoing petition, declare that I have informed the debtor(s) that (he, she, or they) may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter

X _____ _____

Signature of Attorney Date

COMMITTEE NOTE

The form has been amended to require a debtor not represented by an attorney to provide a telephone number so that court personnel can contact the debtor concerning matters in the case.

In re _____, Debtor

Case No _____ (If known)

SCHEDULE E—CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name and mailing address, including zip code, and account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H—Codebtors If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community "

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed " (You may need to place an "X" in more than one of these three columns)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule Repeat this total also on the Summary of Schedules

☐ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief 11 U.S.C. § 507(a)(2).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees, up to a maximum of $2000 per employee, earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(3).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to a maximum of $2000 per farmer or fisherman, against the debtor, as provided in 11 U.S.C § 507(a)(5).

☐ **Deposits by individuals**

Claims of individuals up to a maximum of $900 for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(6).

Don't spell out. I dissent.

☐ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(7).

☐ Commitments to Maintain the Capital of an Insured Depository Institution

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, 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).

_____ continuation sheets attached

Form 6

COMMITTEE NOTE

Schedule 6E (Creditors Holding Unsecured Priority Claims) has been changed to conform to the statutory amendment that added subsection (a)(8) to § 507 of the Bankruptcy Code. Pub. L. No. 101-647 (Crime Control Act of 1990). The Code amendment created a new priority for claims based on certain commitments to maintain the capital of an insured depository institution.

FORM 7. STATEMENT OF FINANCIAL AFFAIRS

UNITED STATES BANKRUPTCY COURT
_____ District of _____

In Re _____ Case No _____
(Name) (If Known)
Debtor

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs.

voted unov to delete. Rest remains as is.

Questions 1 - 15 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 16 - 21. ~~Each question must be answered.~~ If the answer to any question is "None," or the question is not applicable, mark the box labeled "None." If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within the two years immediately preceding the filing of the this bankruptcy case, any of the following: an officer, director, managing executive, or person in control of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any person in control of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101(30).

---

1. Income from employment or operation of business

None ☐ State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT SOURCE (if more than one)

2. Income other than from employment or operation of business

None ☐ State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the two years immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE

3. Payments to creditors

None ☐ a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than $600 to any creditor, made within 90 days immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING

None ☐ b. List all payments made within one year immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING

As amended, 2 dtcs

4. Suits, executions, garnishments and attachments and administrative proceedings

None ☐ a. List all suits and administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION

THERE ARE NO CHANGES TO THE

REMAINING 8 PAGES OF THIS FORM

COMMITTEE NOTE

the third sentence has been deleted

The form has been amended in two ways. In the second paragraph of the instructions, ~~sentences have been transposed~~ to clarify that only a debtor that is or has been in business as defined in the form should answer Questions 16 - 21. In addition, administrative proceedings have been added to the types of legal actions to be disclosed in Question 4.a.

Rewrite adopted w/ 1 diss

Form B9
6/x

Form 9. NOTICE OF ~~FILING~~ COMMENCEMENT OF CASE. UNDER THE BANKRUPTCY CODE, MEETING OF CREDITORS, AND FIXING OF DATES

9A.....Chapter 7, Individual/Joint, No-Asset Case

9B.....Chapter 7, Corporation/Partnership, No-Asset Case

9C.....Chapter 7, Individual/Joint, Asset Case

9D.....Chapter 7, Corporation/Partnership, Asset

9E.....Chapter 11, Individual/Joint Case

9F.....Chapter 11, Corporation/Partnership Case

9G .....Chapter 12, Individual/Joint Case

9H.....Chapter 12, Corporation/Partnership Case

9I.....Chapter 13, Individual/Joint Case

← 9E (Alt.) .. Chaptee 11, Individual/Joint Ca

9F (Alt.) ... Chaptee 11, Corpoeation/Paetnership Case

adopted 2 dtcs.

FORM B9E(Alt.) United States Bankruptcy Court ——— District of ——— Case Number:	NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, MEETING OF CREDITORS, AND FIXING OF DATES (Individual or Joint Debtor Case)	
In re (Name of Debtor)	Address of Debtor Date Filed (or Converted)	Soc. Sec./Tax ID Nos.
Addressee:	Address of the Clerk of the Bankruptcy Court	
Name and Address of Attorney for Debtor Telephone Number	Name and Address of Trustee Telephone Number	

This is a converted case originally filed under chapter __ on _____

FILING CLAIMS

DATE, TIME, AND LOCATION OF MEETING OF CREDITORS

DISCHARGE OF DEBTS

_____ is the Deadline to File a Complaint Objecting to the Discharge of the Debtor or to Determine Dischargeability of Certain Types of Debts.

COMMENCEMENT OF CASE. A petition for reorganization under chapter 11 of the Bankruptcy Code has been filed in this court by or against the person or persons named above as the debtor, and an order for relief has been entered. You will not receive notice of all documents filed in this case. All documents filed with the court, including lists of the debtor's property, debts, and property claimed as exempt are available for inspection at the office of the clerk of the bankruptcy court.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS. A creditor is anyone to whom the debtor owes money or property. Under the Bankruptcy Code, the debtor is granted certain protection against creditors. Common examples of prohibited actions by creditors are [illegible]acting the debtor to demand repayment, taking action against the debtor to collect money owed to creditors or to take [illegible]erty of the debtor, and starting or continuing foreclosure actions, repossessions, or wage deductions. If unauthorized [illegible]one are taken by a creditor against a debtor, the court may penalize that creditor. A creditor who is considering taking action against the debtor or the property of the debtor should review § 362 of the Bankruptcy Code and may wish to seek legal advice. The staff of the clerk of the bankruptcy court is not permitted to give legal advice.

MEETING OF CREDITORS. The debtor (both husband and wife in a joint case) is required to appear at the meeting of creditors on the date and at the place set forth above for the purpose of being examined under oath. Attendance by creditors at the meeting is welcomed, but not required. At the meeting, the creditors may examine the debtor and transact such other business as may properly come before the meeting. The meeting may be continued or adjourned from time to time by notice at the meeting, without further written notice to the creditors.

EXEMPT PROPERTY. Under state and federal law, the debtor is permitted to keep certain money or property as exempt. If a creditor believes that an exemption of money or property is not authorized by law, the creditor may file an objection. An objection must be filed not later than 30 days after the conclusion of the meeting of creditors.

DISCHARGE OF DEBTS. The debtor may seek a discharge of debts. A discharge means that certain debts are made unenforceable against the debtor personally. Creditors whose claims against the debtor are discharged may never take action against the debtor to collect the discharged debts. If a creditor believes that the debtor should not receive a discharge under § 1141(d)(3)(C) of the Bankruptcy Code, timely action must be taken in the bankruptcy court in accordance with Bankruptcy Rule 4004(a). If a creditor believes that a debt owed to the creditor is not dischargeable under § 523(a)(2), (4), or (6) of the Bankruptcy Code, timely action must be taken in the bankruptcy court by the deadline set forth above in the box labeled "Discharge of Debts." Creditors considering taking such action may wish to seek legal advice.

PROOF OF CLAIM. Schedules of creditors have been or will be filed pursuant to Bankruptcy Rule 1007. Any creditor holding a scheduled claim which is not listed as disputed, contingent, or unliquidated as to amount may, but is not required to, file a proof of claim in this case. Creditors whose claims are not scheduled or whose claims are listed as disputed, contingent, or unliquidated as to amount and who desire to participate in the case or share in any distribution must file their proofs of claim. A creditor who desires to rely on the schedules of creditors has the responsibility for determining that the claim is listed accurately. The place to file a proof of claim, either in person or by mail, is the office of the clerk of the bankruptcy court. Proof of claim forms are available in the clerk's office of any bankruptcy court.

PURPOSE OF CHAPTER 11 FILING. Chapter 11 of the Bankruptcy Code enables a debtor to reorganize pursuant to a plan. A plan is not effective unless approved by the court at a confirmation hearing. Creditors will be given notice concerning any plan, or in the event the case is dismissed or converted to another chapter of the Bankruptcy Code. The debtor will remain in possession of its property and will continue to operate any business unless a trustee is appointed.

[illegible] the Court: _____ _____
Clerk of the Bankruptcy Court — Date

adopted, 2 diss

FORM B9F(AH.) United States Bankruptcy Court District of Case Number:	NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, MEETING OF CREDITORS, AND FIXING OF DATES (Corporation/Partnership Case)
In re (Name of Debtor)	Address of Debtor Date Filed OR Converted Soc. Sec./Tax ID Nos.
Addressee:	Address of the Clerk of the Bankruptcy Court
[ ] Corporation [ ] Partnership	
Name and Address of Attorney for Debtor Telephone Number	Name and Address of Trustee Telephone Number
This is a converted case originally filed under chapter __ on _____	

FILING CLAIMS

DATE, TIME, AND LOCATION OF MEETING OF CREDITORS

COMMENCEMENT OF CASE. A petition for reorganization under chapter 11 of the Bankruptcy Code has been filed in this court by or against the debtor named above, and an order for relief has been entered. You will not receive notice of all documents filed in this case. All documents filed with the court, including lists of the debtor's property and debts, are available for inspection at the office of the clerk of the bankruptcy court.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS. A creditor is anyone to whom the debtor owes money or property. Under the Bankruptcy Code, the debtor is granted certain protection against creditors. Common examples of prohibited actions by creditors are con- t ; the debtor to demand repayment, taking action against the debtor to collect money owed to creditors or to take property o debtor, and starting or continuing foreclosure actions or repossessions. If unauthorized actions are taken by a creditor aga..st a debtor, the court may penalize that creditor. A creditor who is considering taking action against the debtor or the property of the debtor should review § 362 of the Bankruptcy Code and may wish to seek legal advice. If the debtor is a partnership, remedies otherwise available against general partners are not necessarily affected by the filing of this partnership case. The staff of the clerk of the bankruptcy court is not permitted to give legal advice.

MEETING OF CREDITORS. The debtor's representative, as specified in Bankruptcy Rule 9001 (5), is required to appear at the meeting of creditors on the date and at the place set forth above for the purpose of being examined under oath. Attendance by creditors at the meeting is welcomed, but not required. At the meeting, the creditors may examine the debtor and transact such other business as may properly come before the meeting. The meeting may be continued or adjourned from time to time by notice at the meeting, without further written notice to the creditors.

close space

PROOF OF CLAIM. Schedules of creditors have been or will be filed pursuant to Bankruptcy Rule 1007. Any creditor holding a scheduled claim which is not listed as disputed, contingent, or unliquidated as to amount may, but is not required to, file a proof of claim in this case. Creditors whose claims are not scheduled or whose claims are listed as disputed, contingent, or unliquidated as to amount and who desire to participate in the case or share in any distribution must file their proofs of claim. A creditor who desires to rely on the schedule of creditors has the responsibility for determining that the claim is listed accurately. The place to file a proof of claim, either in person or by mail, is the office of the clerk of the bankruptcy court. Proof of claim forms are available in the clerk's office of any bankruptcy court.

PURPOSE OF CHAPTER 11 FILING. Chapter 11 of the Bankruptcy Code enables a debtor to reorganize pursuant to a plan. A plan is not effective unless approved by the court at a confirmation hearing. Creditors will be given notice concerning any plan, or in the event the case is dismissed or converted to another chapter of the Bankruptcy Code. The debtor will remain in possession of its property and will continue to operate any business unless a trustee is appointed.

For the Court: _____ Clerk of the Bankruptcy Court _____ Date

Form 9

COMMITTEE NOTE

The title of Form 9 has been amended to conform to the headings used on Forms 9A - 9I. Alternate versions of Form 9E and Form 9F have been added for use by those courts that, prior to the time that the notice is mailed to creditors, fix the time for filing claims in a chapter 11 case. when a cred receives this alt form in a case, the box labeled - - -

FORM B10
(6/92)

FORM 10. PROOF OF CLAIM

United States Bankruptcy Court _____ District of _____	PROOF OF CLAIM	CHAPTER OF BANKRUPTCY CODE UNDER WHICH CASE IS PROCEEDING: Chapter ____
In re (Name of Debtor)	Case Number	rejected w/ one diss

NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case A "request" for payment of an administrative expense may be filed pursuant to 11 U S C.§ 503

Name of Creditor *(The person or other entity to whom the debtor owes money or property)*	☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars ☐ Check box if you have never received any notices from the bankruptcy court in this case ☐ Check box if this address differs from the address on the envelope sent to you by the court
Name and Address Where Notices Should be Sent Telephone No	THIS SPACE IS FOR COURT USE ONLY
ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR	Check here if this claim ☐ replaces ☐ amends a previously filed claim, dated __ _____

1. BASIS FOR CLAIM

- ☐ Goods sold
- ☐ Services performed
- ☐ Money loaned
- ☐ Personal injury/wrongful death
- ☐ Taxes
- ☐ Other (Describe briefly)

- ☐ Retiree benefits as defined in 11 U.S.C § 1114(a)
- ☐ Wages, salaries, and compensations (Fill out below)
  Your social security number _____
  Unpaid compensation for services performed
  from _____ (date) to _____ (date)

2. DATE DEBT WAS INCURRED

3. IF COURT JUDGMENT, DATE OBTAINED

4. CLASSIFICATION OF CLAIM. Under the Bankruptcy Code all claims are classified as one or more of the following (1) Unsecured nonpriority, (2) Unsecured Priority, (3) Secured It is possible for part of a claim to be in one category and part in another.
CHECK THE APPROPRIATE BOX OR BOXES that best describe your claim and STATE THE AMOUNT OF THE CLAIM AT TIME CASE FILED.

☐ SECURED CLAIM $ _____
Attach evidence of perfection of security interest
Brief Description of Collateral:
☐ Real Estate ☐ Motor Vehicle ☐ Other (Describe briefly)

Amount of arrearage and other charges at time case filed included in secured claim above, if any $ _____

☐ UNSECURED NONPRIORITY CLAIM $ _____
A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim.

☐ UNSECURED PRIORITY CLAIM $ _____
Specify the priority of the claim.
- ☐ Wages, salaries, or commissions (up to $ 2000), earned not more than 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier) - 11 U.S C. § 507(a)(3)
- ☐ Contributions to an employee benefit plan - U.S.C. § 507(a)(4)
- ☐ Up to $ 900 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6)
- ☐ Taxes or penalties of governmental units - 11 U.S.C. § 507(a)(7)
- ☐ Other - 11 U.S.C. §§ ~~507(a)(2), (a)(5)~~ , (a)(6) ~~(Describe briefly)~~ (circle applicable §)

5. TOTAL AMOUNT OF CLAIM AT TIME CASE FILED: $ _____ (Unsecured) $ _____ (Secured) $ _____ (Priority) $ _____ (Total)

☐ Check this box if claim includes ~~prepetition~~ charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges

6. CREDITS AND SETOFFS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.

7. SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary.

8. TIME-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

Date	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)

THIS SPACE IS FOR COURT USE ONLY

Other- Specify applicable ¶ of § 50 xa) ____.

Rest adopted unan

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both 18 U.S.C. §§ 152 and 3571.

Form 10

COMMITTEE NOTE

~~This form has been amended to request that the creditor state the chapter of the Code under which the case is proceeding. Providing this information will facilitate sorting and docketing of the claim by the clerk.~~ The form ~~also~~ has been amended to include the priority afforded in § 507(a)(8) of the Code that was added by Pub. L. No. 101-647 (Crime Control Act of 1990). 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.

WE DISS

Form B14

Form 14. BALLOT FOR ACCEPTING OR REJECTING PLAN

[Caption as in Form 16A]

BALLOT FOR ACCEPTING OR REJECTING PLAN

Filed By _____
on *[date]* _____ .

The plan referred to in this ballot can be confirmed by the court and thereby made binding on you if it is accepted by the holders of two-thirds in amount and more than one-half in number of claims in each class and the holders of two-thirds in amount of equity security interests in each class voting on the plan. In the event the requisite acceptances are not obtained, the court may nevertheless confirm the plan if the court finds that the plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of § 1129(b) of the Code. To have your vote count you must complete and return this ballot

[If holder of general claim] The undersigned, a creditor of the above-named debtor in the unpaid principal amount of $ _____ ,

[If bondholder, debenture holder, or other debt security holder] The undersigned, the holder of *[state unpaid principal amount]* $ _____ of *[describe security]* _____
of the above-named debtor, with a stated maturity date of _____,
[if applicable] registered in the name of _____,
[if applicable] bearing serial number(s) _____,

[If equity security holder] The undersigned, the holder of *[state number]* _____ shares of *[describe type]* _____ stock of the above named debtor, represented by Certificate(s) No. _____, [or held in my/our brokerage Account No _____ at *[name of broker-dealer]* _____],

[Check One Box]

[ ] Accepts

[ ] Rejects

the plan for the reorganization of the above-named debtor proposed by *[name of proponent]* _____, which classifies this claim ~~under~~ in Class ——, or interest

and *[if more than one plan is to be voted on]*

[ ] Accepts

[ ] Rejects

the plan for the reorganization of the above-named debtor proposed by *[name of proponent]* _____, which classifies this claim ~~under~~ in Class ——. or interest

defeated only 3 in favor

[If more than one plan is accepted, the following may but need not be completed.] The undersigned prefers the plans accepted in the following order.

[Identify plans]

1. _____.

2. _____.

Dated: _____

Print or type name: _____

Signed: _____

[If appropriate] By: _____

as: _____

Address: _____

Return this ballot on or before _____ to: _____
(date) (name)

Address: _____

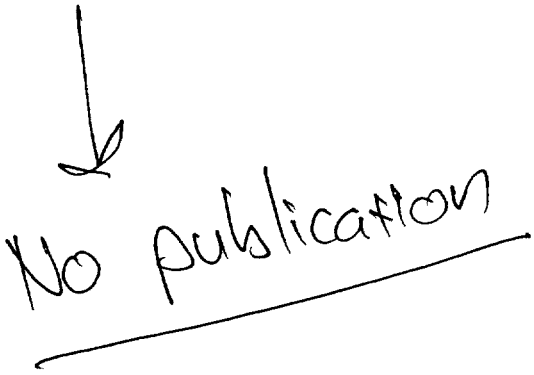
_____

COMMITTEE NOTE

The form has been amended to provide for the specification of the class in which the claim or interest is classified under the plan.

AMENDMENTS TO BE PUBLISHED FOR COMMENT

Forms printed as amended



6/92

OFFICIAL BANKRUPTCY FORMS

1 Voluntary Petition

2 Declaration under Penalty of Perjury on Behalf of a Corporation or Partnership

3 Application and Order to Pay Filing Fee in Installments

4 List of Creditors Holding 20 Largest Unsecured Claims

5. Involuntary Petition

6 Schedules

7 Statement of Financial Affairs

8 Chapter 7 Individual Debtor's Statement of Intention

9 Notice of Commencement of Case under the Bankruptcy Code, Meeting of Creditors, and Fixing of Dates

10 Proof of Claim

11A General Power of Attorney

11B Special Power of Attorney

12 Order and Notice of Hearing on Disclosure Statement

13 Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof

14 Ballot for accepting or Rejecting Plan

15 Order Confirming Plan

16A Caption

16B. Caption (Short Title)

16C Caption of Adversary Proceeding

17. Notice of Appeal to a District Court or Bankruptcy appelate Panel from a Judgment or Other Final Order of a Bankruptcy Court

18. Discharge

Official Forms

[NOTE: These official forms should be observed and used with such alterations as may be appropriate to suit the circumstances. See Rule 9009.]

COMMITTEE NOTE

The list of Official Bankruptcy Forms has been amended to conform the title of Form 9 to the headings used on Forms 9A - 9I.

B1
(Rev. 9/92)

FORM 1. VOLUNTARY PETITION

United States Bankruptcy Court

District of _____

VOLUNTARY PETITION

IN RE (Name of debtor—If individual enter Last, First, Middle)	NAME OF JOINT DEBTOR (Spouse) (Last, First, Middle)
ALL OTHER NAMES used by the debtor in the last 6 years (Include married, maiden, and trade names.)	ALL OTHER NAMES used by the joint debtor in the last 6 years (Include married, maiden, and trade names.)
SOC. SEC./TAX I.D. NO. (If more than one, state all.)	SOC. SEC./TAX I.D. NO. (If more than one, state all.)
STREET ADDRESS OF DEBTOR (No. and street, city, state, and zip code)	STREET ADDRESS OF JOINT DEBTOR (No. and street, city, state, and zip code)
COUNTY OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS	COUNTY OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS
MAILING ADDRESS OF DEBTOR (If different from street address)	MAILING ADDRESS OF JOINT DEBTOR (If different from street address)
LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR (If different from addresses listed above)	**VENUE (Check one box)** ☐ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. ☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

INFORMATION REGARDING DEBTOR (Check applicable boxes)

TYPE OF DEBTOR
- ☐ Individual
- ☐ Joint (Husband & Wife)
- ☐ Partnership
- ☐ Other _____
- ☐ Corporation Publicly Held
- ☐ Corporation Not Publicly Held
- ☐ Municipality

NATURE OF DEBT
- ☐ Non-Business/Consumer
- ☐ Business—Complete A & B below

A. TYPE OF BUSINESS (Check one box)
- ☐ Farming
- ☐ Professional
- ☐ Retail/Wholesale
- ☐ Railroad
- ☐ Transportation
- ☐ Manufacturing/Mining
- ☐ Stockbroker
- ☐ Commodity Broker
- ☐ Construction
- ☐ Real Estate
- ☐ Other Business

B. BRIEFLY DESCRIBE NATURE OF BUSINESS

CHAPTER OR SECTION OF BANKRUPTCY CODE UNDER WHICH THE PETITION IS FILED (Check one box)
- ☐ Chapter 7
- ☐ Chapter 9
- ☐ Chapter 11
- ☐ Chapter 12
- ☐ Chapter 13
- ☐ Sec. 304—Case Ancillary to Foreign Proceeding

FILING FEE (Check one box)
- ☐ Filing fee attached
- ☐ Filing fee to be paid in installments (Applicable to individuals only.) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b), see Official Form No. 3

NAME AND ADDRESS OF LAW FIRM OR ATTORNEY

Telephone No.

NAME(S) OF ATTORNEY(S) DESIGNATED TO REPRESENT THE DEBTOR (Print or Type Names)

☐ Debtor is not represented by an attorney. Telephone No. of Debtor not represented by an attorney: ( )

STATISTICAL/ADMINISTRATIVE INFORMATION (28 U.S.C. § 604) (Estimates only) (Check applicable boxes)

☐ Debtor estimates that funds will be available for distribution to unsecured creditors.

☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

THIS SPACE FOR COURT USE ONLY

ESTIMATED NUMBER OF CREDITORS

1-15	16-49	50-99	100-199	200-999	1000-over
☐	☐	☐	☐	☐	☐

ESTIMATED ASSETS (in thousands of dollars)

Under 50	50-99	100-499	500-999	1000-9999	10,000-99,000	100,000-over
☐	☐	☐	☐	☐	☐	☐

ESTIMATED LIABILITIES (in thousands of dollars)

Under 50	50-99	100-499	500-999	1000-9999	10,000-99,000	100,000-over
☐	☐	☐	☐	☐	☐	☐

EST. NO. OF EMPLOYEES—CH. 11 & 12 ONLY

0	1-19	20-99	100-999	1000-over
☐	☐	☐	☐	☐

EST. NO. OF EQUITY SECURITY HOLDERS—CH. 11 & 12 ONLY

0	1-19	20-99	100-499	500-Over
☐	☐	☐	☐	☐

Name of Debtor _____

Case No _____
(Court use only)

FILING OF PLAN

For Chapter 9, 11, 12 and 13 cases only Check appropriate box

☐ A copy of debtor's proposed plan dated _____ is attached

☐ Debtor intends to file a plan within the time allowed by statute, rule, or order of the court

PRIOR BANKRUPTCY CASE FILED WITHIN LAST 6 YEARS (If more than one, attach additional sheet)

Location Where Filed	Case Number	Date Filed

PENDING BANKRUPTCY CASE FILED BY ANY SPOUSE, PARTNER, OR AFFILIATE OF THIS DEBTOR (If more than one attach additional sheet)

Name of Debtor	Case Number	Date
Relationship	**District**	**Judge**

REQUEST FOR RELIEF

Debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition

SIGNATURES

ATTORNEY

X _____ _____
Signature Date

INDIVIDUAL/JOINT DEBTOR(S)

I declare under penalty of perjury that the information provided in this petition is true and correct.

X _____
Signature of Debtor

_____
Date

X _____
Signature of Joint Debtor

_____
Date

CORPORATE OR PARTNERSHIP DEBTOR

I declare under penalty of perjury that the information provided in this petition is true and correct, and that the filing of this petition on behalf of the debtor has been authorized

X _____
Signature of Authorized Individual

_____
Print or Type Name of Authorized Individual

_____
Title of Individual Authorized by Debtor to File this Petition

_____
Date

EXHIBIT "A" (To be completed if debtor is a corporation requesting relief under chapter 11.)

☐ Exhibit "A" is attached and made a part of this petition

TO BE COMPLETED BY INDIVIDUAL CHAPTER 7 DEBTOR WITH PRIMARILY CONSUMER DEBTS (See P.L. 98-353 § 322)

I am aware that I may proceed under chapter 7, 11, or 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7 of such title

If I am represented by an attorney, exhibit 'B' has been completed

X _____ _____
Signature of Debtor Date

X _____ _____
Signature of Joint Debtor Date

EXHIBIT "B" (To be completed by attorney for individual chapter 7 debtor(s) with primarily consumer debts.)

I, the attorney for the debtor(s) named in the foregoing petition, declare that I have informed the debtor(s) that (he, she, or they) may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter

X _____ _____
Signature of Attorney Date

COMMITTEE NOTE

The form has been amended to require a debtor not represented by an attorney to provide a telephone number so that court personnel can contact the debtor concerning matters in the case.

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(Rev. 5/85)

In re _____, Debtor

Case No. _____ (If known)

SCHEDULE E—CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name and mailing address, including zip code, and account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H—Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Repeat this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(2).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees, up to a maximum of $2000 per employee, earned within 90 days immediately preceding the filing of the original petition, or the cessation of business, whichever occured first, to the extent provided in 11 U.S.C. § 507(a)(3).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to a maximum of $2000 per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(5).

☐ **Deposits by individuals**

Claims of individuals up to a maximum of $900 for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(6).

☐ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. §507(a)(7).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, 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).

_____ continuation sheets attached

COMMITTEE NOTE

Schedule 6E (Creditors Holding Unsecured Priority Claims) has been changed to conform to the statutory amendment that added subsection (a)(8) to § 507 of the Bankruptcy Code. Pub. L. No. 101-647 (Crime Control Act of 1990). The Code amendment created a new priority for claims based on certain commitments to maintain the capital of an insured depository institution.

B7
(Rev. 5/92)

FORM 7. STATEMENT OF FINANCIAL AFFAIRS

UNITED STATES BANKRUPTCY COURT

_____ DISTRICT OF _____

In re _____, (Name) Debtor

Case No. _____ (If known)

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs

Questions 1-15 are to be completed by all debtors. **Each question must be answered. If the answer to any question is "None," or the question is not applicable, mark the box labeled "None."** Debtors that are or have been in business, as defined below, also must complete Questions 16-21 If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question

DEFINITIONS

"In business" A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within the two years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or person in control of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any person in control of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. §101(30).

---

1. Income from employment or operation of business

None ☐ State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT SOURCE (if more than one)

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(Rev. 5/92)

2. Income other than from employment or operation of business

None ☐ State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE

---

3. Payments to creditors

None ☐ a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than $600 to any creditor, made within **90 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING

None ☐ b. List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING

---

4. Suits and administrative proceedings, executions, garnishments and attachments

None ☐ a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT AND LOCATION	STATUS OR DISPOSITION

None ☐ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY

---

5. Repossessions, foreclosures and returns

None ☐ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY

---

6. Assignments and receiverships

None ☐ a. Describe any assignment of property for the benefit of creditors made within 120 days immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT

None ☐ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY

7. Gifts

None ☐ List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than $200 in value per individual family member and charitable contributions aggregating less than $100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT

---

8. Losses

None ☐ List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case.** (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS

---

9. **Payments related to debt counseling or bankruptcy**

None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY

10. Other transfers

None ☐ a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED

---

11. Closed financial accounts

None ☐ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE AND NUMBER OF ACCOUNT AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING

12. Safe deposit boxes

None ☐ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY

13. Setoffs

None ☐ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within 90 days preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF

---

14. **Property held for another person**

None ☐ List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY

---

15. **Prior address of debtor**

None ☐ If the debtor has moved within the **two years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within the two years immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or otherwise self-employed.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within the two years immediately preceding the commencement of this case.)*

16. Nature, location and name of business

None ☐ a. If the debtor is an individual, list the names and addresses of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was a self-employed professional within the two years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the two years immediately preceding the commencement of this case.

b. If the debtor is a partnership, list the names and addresses of all businesses in which the debtor was a partner or owned 5 percent or more of the voting securities, within the two years immediately preceding the commencement of this case.

c. If the debtor is a corporation, list the names and addresses of all businesses in which the debtor was a partner or owned 5 percent or more of the voting securities within the two years immediately preceding the commencement of this case.

NAME	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES OF OPERATION

---

17. Books, records and financial statements

None ☐ a. List all bookkeepers and accountants who within the six years immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED

None ☐ b. List all firms or individuals who within the two years immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED

None ☐ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain

NAME	ADDRESS

None ☐ d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the two years immediately preceding the commencement of this case by the debtor.

NAME AND ADDRESS	DATE ISSUED

---

18. Inventories

None ☐ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY	INVENTORY SUPERVISOR	DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)

None ☐ b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY	NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS

---

19. Current Partners, Officers, Directors and Shareholders

None ☐ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST

None ☐ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP

---

20. Former partners, officers, directors and shareholders

None ☐ a. If the debtor is a partnership, list each member who withdrew from the partnership within one year immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL

None ☐ b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within one year immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION

---

21. Withdrawals from a partnership or distributions by a corporation

None ☐ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during one year immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY

• • • • • •

[If completed by an individual or individual and spouse]

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date _____ Signature _____
of Debtor

Date _____ Signature _____
of Joint Debtor
(if any)

* * * * * *

[If completed on behalf of a partnership or corporation]

I, declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date _____ Signature _____

_____
Print Name and Title

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

____ continuation sheets attached

Penalty for making a false statement: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. § 152 and 3571

COMMITTEE NOTE

The form has been amended in two ways. In the second paragraph of the instructions, sentences have been transposed to clarify that only a debtor that is or has been in business as defined in the form should answer Questions 16 - 21. In addition, administrative proceedings have been added to the types of legal actions to be disclosed in Question 4.a.

Form 9. NOTICE OF COMMENCEMENT OF CASE UNDER THE BANKRUPTCY CODE, MEETING OF CREDITORS, AND FIXING OF DATES

9A.....Chapter 7, Individual/Joint, No-Asset Case

9B.....Chapter 7, Corporation/Partnership, No-Asset Case

9C.....Chapter 7, Individual/Joint, Asset Case

9D.....Chapter 7, Corporation/Partnership, Asset Case

9E.....Chapter 11, Individual/Joint Case

9E (Alt.)..Chapter 11, Individual/Joint Case

9F.....Chapter 11, Corporation/Partnership Case

9F (Alt.)..Chapter 11, Corporation/Partnership Case

9G.....Chapter 12, Individual/Joint Case

9H.....Chapter 12, Corporation/Partnership Case

9I.....Chapter 13, Individual/Joint Case

Form B9A (Rev. 5/92)

United States Bankruptcy Court

Case No.(s)

_____ District of _____

NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, MEETING OF CREDITORS, AND FIXING OF DATES
(Individual or Joint Debtor Case)

In re (Name of Debtor)	Address of Debtor	Soc. Sec./Tax Id. Nos.
	Date Filed (or Converted)	
Addressee	Address of the Clerk of the Bankruptcy Court	
Name and Address of Attorney for Debtor	Name and Address of Trustee	
Telephone Number	Telephone Number	

This is a converted case originally filed under chapter _____ on _____

FILING CLAIMS

DATE, TIME, AND LOCATION OF MEETING OF CREDITORS

DISCHARGE OF DEBTS

_____ is the Deadline to File a Complaint to Determine Dischargeability of Certain Types of Debts

COMMENCEMENT OF CASE. A petition for reorganization under chapter 11 of the Bankruptcy Code has been filed in this court by or against the person or persons named above as the debtor, and an order for relief has been entered. You will not receive notice of all documents filed in this case. All documents filed with the court, including lists of the debtor's property, debts, and property claimed as exempt are available for inspection at the office of the clerk of the bankruptcy court.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS. A creditor is anyone to whom the debtor owes money or property. Under the Bankruptcy Code, the debtor is granted certain protection against creditors. Common examples of prohibited actions by creditors are contacting the debtor to demand repayment, taking action against the debtor to collect money owed to creditors or to take property of the debtor, and starting or continuing foreclosure actions, repossessions, or wage deductions. If unauthorized actions are taken by a creditor against a debtor, the court may penalize that creditor. A creditor who is considering taking action against the debtor or the property of the debtor should review § 362 of the Bankruptcy Code and may wish to seek legal advice. The staff of the clerk of the bankruptcy court is not permitted to give legal advice.

MEETING OF CREDITORS. The debtor (both husband and wife in a joint case) is required to appear at the meeting of creditors on the date and at the place set forth above for the purpose of being examined under oath. Attendance by creditors at the meeting is welcomed, but not required. At the meeting, the creditors may examine the debtor and transact such other business as may properly come before the meeting. The meeting may be continued or adjourned from time to time by notice at the meeting, without further written notice to creditors.

EXEMPT PROPERTY. Under state and federal law, the debtor is permitted to keep certain money or property as exempt. If a creditor believes that an exemption of money or property is not authorized by law, the creditor may file an objection. An objection must be filed not later than 30 days after the conclusion of the meeting of creditors.

DISCHARGE OF DEBTS. The debtor may seek a discharge of debts. A discharge means that certain debts are made unenforceable against the debtor personally. Creditors whose claims against the debtor are discharged may never take action against the debtor to collect the discharged debts. If a creditor believes that the debtor should not receive a discharge under § 1141(d)(3)(C) of the Bankruptcy Code, timely action must be taken in the bankruptcy court in accordance with Bankruptcy Rule 4004(a). If a creditor believes that a debt owed to the creditor is not dischargeable under § 523(a)(2), (4), or (6) of the Bankruptcy Code, timely action must be taken in the bankruptcy court by the deadline set forth above in the box labeled "Discharge of Debts." Creditors considering taking such action may wish to seek legal advice.

PROOF OF CLAIM. Schedules of creditors have been or will be filed pursuant to Bankruptcy Rule 1007. Any creditor holding a scheduled claim which is not listed as disputed, contingent, or unliquidated as to amount may, but is not required to, file a proof of claim in this case. Creditors whose claims are not scheduled or whose claims are listed as disputed, contingent, or unliquidated as to amount and who desire to participate in the case or share in any distribution must file their proofs of claim. A creditor who desires to rely on the schedules of creditors has the responsibility for determining that the claim is listed accurately. The place to file a proof of claim, either in person or by mail, is the office of the clerk of the bankruptcy court. Proof of claim forms are available in the clerk's office of any bankruptcy court.

PURPOSE OF CHAPTER 11 FILING. Chapter 11 of the Bankruptcy Code enables a debtor to reorganize pursuant to a plan. A plan is not effective unless approved by the court at a confirmation hearing. Creditors will be given notice concerning any plan, or in the event the case is dismissed or converted to another chapter of the Bankruptcy Code. The debtor will remain in possession of its property and will continue to operate any business unless a trustee is appointed.

For the Court _____ _____

Clerk of the Bankruptcy Court — Date

FORM B-- (Al-)
(Rev. 5/82)

United States Bankruptcy Court

Case Number

_____ District of _____

NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, MEETING OF CREDITORS, AND FIXING OF DATES
(Corporation/Partnership Case)

In re (Name of Debtor)	Address of Debtor Date Filed or Converted	Soc. Sec./Tax Id. Nos.
Addressee	Address of the Clerk of the Bankruptcy Court	

☐ Corporation ☐ Partnership

Name and Address of Attorney for Debtor Telephone Number	Name and Address of Trustee Telephone Number

This is a converted case originally filed under chapter _____ on _____

FILING CLAIMS

DATE, TIME, AND LOCATION OF MEETING OF CREDITORS

COMMENCEMENT OF CASE A petition for reorganization under chapter 11 of the Bankruptcy Code has been filed in this court by or against the debtor named above, and an order for relief has been entered. You will not receive notice of all documents filed in this case. All documents filed with the court, including lists of the debtor's property and debts, are available for inspection at the office of the clerk of the bankruptcy court.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS A creditor is anyone to whom the debtor owes money or property. Under the Bankruptcy Code, the debtor is granted certain protection against creditors. Common examples of prohibited actions by creditors are contacting the debtor to demand repayment, taking action against the debtor to collect money owed to creditors or to take property of the debtor, and starting or continuing foreclosure actions, or repossessions. If unauthorized actions are taken by a creditor against a debtor, the court may penalize that creditor. A creditor who is considering taking action against the debtor or the property of the debtor should review § 362 of the Bankruptcy Code and may wish to seek legal advice. If the debtor is a partnership, remedies otherwise available against general partners are not necessarily affected by the filing of this partnership case. The staff of the clerk of the bankruptcy court is not permitted to give legal advice.

MEETING OF CREDITORS The debtor's representative, as specified in Bankruptcy Rule 9001(5) is required to appear at the meeting of creditors on the date and at the place set forth above for the purpose of being examined under oath. Attendance by creditors at the meeting is welcomed, but not required. At the meeting, the creditors may examine the debtor and transact such other business as may properly come before the meeting. The meeting may be continued or adjourned from time to time by notice at the meeting, without further written notice to creditors.

PROOF OF CLAIM. Schedules of creditors have been or will be filed pursuant to Bankruptcy Rule 1007. Any creditor holding a scheduled claim which is not listed as disputed, contingent, or unliquidated as to amount may, but is not required to, file a proof of claim in this case. Creditors whose claims are not scheduled or whose claims are listed as disputed, contingent, or unliquidated as to amount and who desire to participate in the case or share in any distribution must file their proofs of claim. A creditor who desires to rely on the schedule of creditors has the responsibility for determining that the claim is listed accurately. The place to file a proof of claim, either in person or by mail, is the office of the clerk of the bankruptcy court. Proof of claim forms are available in the clerk's office of any bankruptcy court.

PURPOSE OF CHAPTER 11 FILING. Chapter 11 of the Bankruptcy Code enables a debtor to reorganize pursuant to a plan. A plan is not effective unless approved by the court at a confirmation hearing. Creditors will be given notice concerning any plan, or in the event the case is dismissed or converted to another chapter of the Bankruptcy Code. The debtor will remain in possession of its property and will continue to operate any business unless a trustee is appointed.

For the Court _____ _____
Clerk of the Bankruptcy Court Date

Form 9

COMMITTEE NOTE

The title of Form 9 has been amended to conform to the headings used on Forms 9A - 9I. Alternate versions of Form 9E and Form 9F have been added for use by those courts that, prior to the time that the notice is mailed to creditors, fix the time for filing claims in a chapter 11 case.

Exhibit A (Rev. 9/92)

United States Bankruptcy Court

_____ District of _____

PROOF OF CLAIM

In re (Name of Debtor)

Case Number

NOTE This form should not be used to make a claim for an administrative expense arising after the commencement of the case A "request" for payment of an administrative expense may be filed pursuant to 11 U S C § 503

Name of Creditor
(The person or other entity to whom the debtor owes money or property)

Name and Address Where Notices Should be Sent

Telephone No

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars

☐ Check box if you have never received any notices from the bankruptcy court in this case

☐ Check box if the address differs from the address on the envelope sent to you by the court

THIS SPACE IS FOR COURT USE ONLY

CHAPTER OF BANKRUPTCY CODE UNDER WHICH CASE IS PROCEEDING: Chapter _____

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:

Check here if this claim ☐ replaces ☐ amends a previously filed claim, dated _____

1 BASIS FOR CLAIM

- ☐ Goods sold
- ☐ Services performed
- ☐ Money loaned
- ☐ Personal injury/wrongful death
- ☐ Taxes
- ☐ Other (Describe briefly)

- ☐ Retiree benefits as defined in 11 U S C § 1114(a)
- ☐ Wages, salaries, and compensations (Fill out below)

Your social security number _____

Unpaid compensations for services performed from _____ (date) to _____ (date)

2 DATE DEBT WAS INCURRED

3 IF COURT JUDGMENT, DATE OBTAINED

4 CLASSIFICATION OF CLAIM Under the Bankruptcy Code all claims are classified as one or more of the following (1) Unsecured nonpriority, (2) Unsecured Priority, (3) Secured It is possible for part of a claim to be in one category and part in another CHECK THE APPROPRIATE BOX OR BOXES that best describe your claim and STATE THE AMOUNT OF THE CLAIM AT TIME CASE FILED

☐ SECURED CLAIM $ _____

Attach evidence of perfection of security interest

Brief Description of Collateral

☐ Real Estate ☐ Motor Vehicle ☐ Other (Describe briefly)

Amount of arrearage and other charges at time case filed included in secured claim above, if any $ _____

☐ UNSECURED NONPRIORITY CLAIM $ _____

A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim.

☐ UNSECURED PRIORITY CLAIM $ _____

Specify the priority of the claim

- ☐ Wages, salaries, or commissions (up to $2000), earned not more than 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier—11 U.S C § 507(a)(3)
- ☐ Contributions to an employee benefit plan—U.S.C. § 507(a)(4)
- ☐ Up to $900 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use—11 U.S C § 507(a)(6)
- ☐ Taxes or penalties of governmental units—11 U.S.C. § 507(a)(7)
- ☐ Other—11 U.S.C. § 507(a)(2), (a)(5), (a)(8)—(Circle applicable §)

5 TOTAL AMOUNT OF CLAIM AT TIME CASE FILED $ _____ (Unsecured) $ _____ (Secured) $ _____ (Priority) $ _____ (Total)

☐ Check this box if claim includes charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges.

6 CREDITS AND SETOFFS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor

7 SUPPORTING DOCUMENTS: *Attach copies of supporting documents*, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests If the documents are not available, explain If the documents are voluminous, attach a summary.

8 TIME-STAMPED COPY. To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

THIS SPACE IS FOR COURT USE ONLY

Date	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S C. §§ 152 and 3571.

COMMITTEE NOTE

This form has been amended to request that the creditor state the chapter of the Code under which the case is proceeding. Providing this information will facilitate sorting and docketing of the claim by the clerk. The form also has been amended to include the priority afforded in § 507(a)(8) of the Code that was added by Pub. L. No. 101-647 (Crime Control Act of 1990). 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.

Form 14. BALLOT FOR ACCEPTING OR REJECTING PLAN

[Caption as in Form 16A]

BALLOT FOR ACCEPTING OR REJECTING PLAN

Filed By _____
on *[date]* _____.

The plan referred to in this ballot can be confirmed by the court and thereby made binding on you if it is accepted by the holders of two-thirds in amount and more than one-half in number of claims in each class and the holders of two-thirds in amount of equity security interests in each class voting on the plan. In the event the requisite acceptances are not obtained, the court may nevertheless confirm the plan if the court finds that the plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of § 1129(b) of the Code. To have your vote count you must complete and return this ballot.

[If holder of general claim] The undersigned, a creditor of the above-named debtor in the unpaid principal amount of $ _____,

[If bondholder, debenture holder, or other debt security holder] The undersigned, the holder of *[state unpaid principal amount]* $ _____ of *[describe security]* _____ of the above-named debtor, with a stated maturity date of _____, *[if applicable]* registered in the name of _____, *[if applicable]* bearing serial number(s) _____,

[If equity security holder] The undersigned, the holder of *[state number]* _____ shares of *[describe type]* _____ stock of the above named debtor, represented by Certificate(s) No. _____, [*or* held in my/our brokerage Account No. _____ at *[name of broker-dealer]* _____],

[Check One Box]

[ ] Accepts

[ ] Rejects

the plan for the reorganization of the above-named debtor proposed by *[name of proponent]* _____, which classifies this claim or interest under Class _____,

and *[if more than one plan is to be voted on]*

[ ] Accepts

[ ] Rejects

the plan for the reorganization of the above-named debtor proposed by *[name of proponent]* _____, which classifies this claim or interest under Class _____.

[If more than one plan is accepted, the following may but need not be completed.] The undersigned prefers the plans accepted in the following order.

[Identify plans]

1. _____ .

2. _____ .

Dated: _____

Print or type name: _____

Signed: _____

[If appropriate] By: _____

as: _____

Address: _____

Return this ballot on or before _____ (date) to: _____ (name)

Address: _____

_____

COMMITTEE NOTE

The form has been amended to provide for the specification of the class in which the claim or interest is classified under the plan.