ADVISORY COMMITTEE ON BANKRUPTCY RULES

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Williamsburg, Virginia
September 11-12, 1997

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of September 11 - 12, 1997
Williamsburg, Virginia

Agenda

Introductory Items

1. Welcome and introduction of guests.

2. Approval of minutes of March 1997 meeting.

3. Report on June 1997 meeting of the Committee on Rules of Practice and Procedure. (Materials: 1) Report of the Committee on Rules of Practice and Procedure to the Judicial Conference; 2) Draft minutes of the meeting; 3) "Study of Recent Bankruptcy Cases (1990-1996) Involving Rules of Attorney Conduct," Memorandum of Prof. Daniel R. Coquillette to the Committee on Rules of Practice and Procedure dated May 10, 1997.)

4. Report on June 1997 meeting of the Committee on the Administration of the Bankruptcy System.

5. Report on recent meetings of the Advisory Committee on Civil Rules.

Action Items

6. Select dates and location for September 1998 meeting.

7. Litigation Subcommittee. Package of proposed amendments to Rules 9013 and 9014, with related proposed amendments to additional rules. (Materials: Reporter's Memorandum dated 8/8/97, with Exhibits A - E.)

8. Subcommittee on Notice to Governmental Units. Proposed amendments to Rules 1007, 2002, and 5003, and to Official Form 7, the Statement of Financial Affairs. (Materials: Reporter's Memorandum dated 8/11/97.)

9. Proposed amendments to Rule 9020 concerning contempt orders issued by a bankruptcy judge. (Materials: Reporter's Memorandum dated 8/9/97; letter of Chief Bankruptcy Judge A. Thomas Small dated 2/14/97; 1983 version of Rule 9020; and decision in In re Terrebonne Fuel and Lube, Inc., 108 F.3d 609 (5th Cir. 1997).

10. Proposed amendments to Rule 4003(b) and 1017(e)(1) concerning a request for enlargement of the time to file an objection to a debtor's list of property claimed as exempt. (Materials: Reporter's Memorandum dated 8/6/97; letter of Chief Bankruptcy Judge Steven W. Rhodes dated 6/4/97; decision in In re Laurain, No.96-5093, slip op. (6th Cir. May 15, 1997), 1997 FED App. 0155 (6th Cir.) (Electronic citation).

11. Proposed amendment to Rule 2002(a)(6) to adjust dollar amount. (Materials: Reporter's Memorandum dated 8/7/97.)

12. Proposed amendment to Rule 2002(g) concerning the address to be used for a creditor in a chapter 7 case when a notice of no dividend has been given, but it later appears that there may be assets to distribute and a new notice is sent to creditors with a deadline for filing a proof of claim. (Materials: Reporter's Memorandum dated 8/6/97.)

13. Proposed amendment to Rule 9022 to permit a court to direct a party to give notice of the entry on the docket of a judgment or order. (Materials: Letter of Richard G. Heltzel, clerk, U.S. Bankruptcy Court for the Eastern District of California, dated 7/14/97.)

Subcommittee and Liaison Reports

14. Subcommittee on Rule 2014 Disclosure Requirements. (Materials to be provided later.)

15. Subcommittee on Rule 2004 Examinations. (Materials to be provided later.)

16. Subcommittee on Forms. (Materials: Official Forms 1, 3, 6F, 8, 9A-I, 10, 14, 17, 18, 20A, and 20B as approved by the Committee on Rules of Practice and Procedure and forwarded to the Judicial Conference.)

17. Subcommittee on Style. (Oral report.)

18. Subcommittee on Technology. (Oral Report and Field Trip.)

Field Trip

19. Reserve Friday (9/12), 10 am to noon for a field trip. There will be a tour/demonstration of the electronic courtroom equipment at Courtroom 21 at the William & Mary Law School. (Short walk from the meeting room.) In addition, there will be a demonstration of the Internet-based electronic filing system now operating in the U.S. Bankruptcy Court for the Southern District of New York.

Information Items

20. Briefing on status of National Bankruptcy Review Commission report (due to Congress 10/20/97). (May be moved up, depending on Commissioners' schedules.)

21. Status List.

Next Meeting

22. The next meeting of the Committee will be March 26 - 27, 1998, at the Winrock International Conference Center in Morrilton, Arkansas.

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Chair:

Honorable Adrian G. Duplantier
United States District Judge
United States Courthouse
500 Camp Street
New Orleans, Louisiana 70130

Area Code 504
589-7535

FAX-504-589-4479

Members:

Honorable Eduardo C. Robreno
United States District Judge
3810 United States Courthouse
Philadelphia, Pennsylvania 19106

Area Code 215
597-4073

FAX-215-580-2362

Honorable Robert W. Gettleman
United States District Judge
Everett McKinley Dirksen Building
219 South Dearborn Street
Chicago, Illinois 60604

Area Code 312
435-5543

FAX-312-554-8531

Honorable Bernice B. Donald
United States District Judge
United States District Court
167 N. Main Street, Suite 341
Memphis, Tennessee 38103

Area Code 901
495-1302

FAX-901-495-1303

Honorable Robert J. Kressel
United States Bankruptcy Judge
United States Courthouse, Suite 8W
300 South Fourth Street
Minneapolis, Minnesota 55415

Area Code 612
664-5250

FAX-612-664-5305

Honorable Donald E. Cordova
United States Bankruptcy Judge
United States Bankruptcy Court
U.S. Custom House
721 19th Street
Denver, Colorado 80202-2508

Area Code 303
844-2525

FAX-303-844-0292

ADVISORY COMMITTEE ON BANKRUPTCY RULES (CONTD.)

Honorable A. Jay Cristol Chief Judge, United States Bankruptcy Court 51 S.W. First Avenue Chambers, Room 1412 Miami, Florida 33130	Area Code 305 536-4121 FAX-305-536-7499
Honorable A. Thomas Small Chief Judge, United States Bankruptcy Court Post Office Drawer 2747 Raleigh, North Carolina 27602	Area Code 919 856-4603 FAX-919-856-4693
Professor Charles J. Tabb University of Illinois College of Law 504 East Pennsylvania Avenue Champaign, Illinois 61820	Area Code 217 333-2877 FAX-217-244-1478
Henry J. Sommer, Esquire 7118 McCallum Street Philadelphia, Pennsylvania 19119-2935	Area Code 215 242-8639 FAX-215-242-2075
Kenneth N. Klee, Esquire Stutman, Treister & Glatt 3699 Wilshire Boulevard, 9th Floor Los Angeles, California 90010	Area Code 213 251-5165 FAX-213-251-5288
Gerald K. Smith, Esquire Lewis and Roca 40 North Central Avenue Phoenix, Arizona 85004-4429	Area Code 602 262-5348 FAX-602-262-5747
Leonard M. Rosen, Esquire Wachtell, Lipton, Rosen & Katz 51 West 52 Street New York, New York 10019	Area Code 212 403-1250 FAX-212-403-2000
Neal Batson, Esquire Alston & Bird One Atlantic Center 1201 West Peachtree Street Atlanta, Georgia 30309-3424	Area Code 404 881-7267 FAX-404-881-7777

ADVISORY COMMITTEE ON BANKRUPTCY RULES (CONTD.)

Director, Commercial Litigation Branch,
Civil Division, U.S. Dept. of Justice (ex officio)
J. Christopher Kohn, Esquire
P.O. Box 875, Ben Franklin Station
Washington, D.C. 20044-0875

Area Code 202
514-7450

FAX-202-514-9163

Reporter:

Professor Alan N. Resnick
Hofstra University School of Law
121 Hofstra University
Hempstead, New York 11549-1210

Area Code 516
463-5872

FAX-516-481-8509

Liaison Member:

Alan W. Perry, Esquire
Forman, Perry, Watkins & Krutz
188 East Capitol Street, Suite 1200
P.O. Box 22608
Jackson, Mississippi 39225-2608

Area Code 601
960-8600

FAX-601-960-8613

Bankruptcy Clerk:

Richard G. Heltzel
Clerk, United States Bankruptcy Court
8038 United States Courthouse
650 Capitol Mall
Sacramento, California 95814

Area Code 916
498-5578

FAX-916-498-5563

Representative from Executive Office for United States Trustees:

Jerry Patchan, Esquire
Director, Executive Office for
United States Trustees
901 E Street, NW, Room 700
Washington, D.C. 20530

Area Code 202
307-1391

FAX-202-307-0672

Secretary:

Peter G. McCabe
Secretary, Committee on Rules of
Practice and Procedure
Washington, D.C. 20544

Area Code 202
273-1820

FAX-202-273-1826

SUBCOMMITTEES
ADVISORY COMMITTEE ON BANKRUPTCY RULES

Subcommittee on Alternative Dispute Resolution
Professor Charles J. Tabb, chair
Judge Robert W. Gettleman
Judge Bernice B. Donald
R. Neal Batson, Esquire
Leonard M. Rosen, Esquire

Subcommittee on Forms
Henry J. Sommer, Esquire, Chair
Judge Robert J. Kressel
Professor Charles J. Tabb
R. Neal Batson, Esquire
Leonard M. Rosen, Esquire

Subcommittee on Government Noticing
Judge A. Thomas Small, Chair
Judge A. Jay Cristol
J. Christopher Kohn, Esquire
Henry J. Sommer, Esquire
Professor Charles J. Tabb
Richard G. Heltzel, Bankruptcy Clerk

Subcommittee on Litigation
Kenneth N. Klee, Esquire, Chair
Judge Robert J. Kressel
Judge A. Thomas Small
R. Neal Batson, Esquire
Gerald K. Smith, Esquire
Henry J. Sommer, Esquire

Subcommittee on Local Rules
[Vacant], Chair
Judge Eduardo C. Robreno
Judge Donald E. Cordova
Judge A. Jay Cristol
Gerald K. Smith, Esquire
J. Christopher Kohn, Esquire

Subcommittee on Rule 2004 Examinations
Judge Donald E. Cordova, Chair
Judge Eduardo C. Robreno
Judge Robert J. Kressel
Professor Charles J. Tabb
R. Neal Batson, Esquire
J. Christopher Kohn, Esquire

Subcommittee on Rule 2014 Disclosure Requirements
Gerald K. Smith, Esquire, Chair
Judge Robert W. Gettleman
Judge Donald E. Cordova
Judge Robert J. Kressel
Kenneth N. Klee, Esquire
Leonard M. Rosen, Esquire

Subcommittee on Style
Leonard M. Rosen, Esquire, Chair
Judge Donald E. Cordova

Subcommittee on Technology
Judge A. Jay Cristol, Chair
Judge Bernice B. Donald
Kenneth N. Klee, Esquire
Henry J. Sommer, Esquire

JUDICIAL CONFERENCE RULES COMMITTEES

Chairs

Honorable Alicemarie H. Stotler
United States District Judge
751 West Santa Ana Boulevard
Santa Ana, California 92701
Area Code 714-836-2055
FAX 714-836-2062

Honorable James K. Logan
United States Circuit Judge
100 East Park, Suite 204
P.O. Box 790
Olathe, Kansas 66061
Area Code 913-782-9293
FAX 913-782-9855

Honorable Adrian G. Duplantier
United States District Judge
United States Courthouse
500 Camp Street
New Orleans, Louisiana 70130
Area Code 504-589-7535
FAX 504-589-4479

Honorable Paul V. Niemeyer
United States Circuit Judge
United States Courthouse
101 West Lombard Street
Baltimore, Maryland 21201
Area Code 410-962-4210
FAX 410-962-2277

Honorable D. Lowell Jensen
United States District Judge
United States Courthouse
1301 Clay Street, 4th Floor
Oakland, California 94612
Area Code 510-637-3550
FAX 510-637-3555

Reporters

Prof. Daniel R. Coquillette
Boston College Law School
885 Centre Street
Newton Centre, MA 02159
Area Code 617-552-8650,4393
FAX-617-576-1933

Professor Carol Ann Mooney
Vice President and
Associate Provost
University of Notre Dame
202 Main Building
Notre Dame, Indiana 46556
Area Code 219-631-4590
FAX-219-631-6897

Professor Alan N. Resnick
Hofstra University
School of Law
121 Hofstra University
Hempstead, NY 11549-1210
Area Code 516-463-5872
FAX-516-481-8509

Professor Edward H. Cooper
University of Michigan
Law School
312 Hutchins Hall
Ann Arbor, MI 48109-1215
Area Code 313-764-4347
FAX 313-763-9375

Prof. David A. Schlueter
St. Mary's University
School of Law
One Camino Santa Maria
San Antonio, Texas 78228-8602
Area Code 210-431-2212
FAX 210-436-3717

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Item 1-2

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of March 13 - 14, 1997

Charleston, South Carolina

Minutes

The following members were present at the meeting:

District Judge Adrian G. Duplantier, Chairman
District Judge Eduardo C. Robreno
District Judge Bernice B. Donald
District Judge Robert W. Gettleman
Bankruptcy Judge Robert J. Kressel
Bankruptcy Judge Donald E. Cordova
Bankruptcy Judge A. Jay Cristol
Bankruptcy Judge A. Thomas Small
Kenneth N. Klee, Esquire
Gerald K. Smith, Esquire
Henry J. Sommer, Esquire
Professor Charles J. Tabb
R. Neal Batson, Esquire
Leonard M. Rosen, Esquire
J. Christopher Kohn, Esquire, United States Department of Justice
Professor Alan N. Resnick, Reporter

District Judge Alicemarie H. Stotler, Chair of the Committee on Rules of Practice and Procedure ("Standing Committee"), and Professor Daniel R. Coquillette, Reporter to the Standing Committee, also attended. Alan W. Perry, Esquire, liaison to this Committee from the Standing Committee, was unable to attend due to illness. Brady C. Williamson, Esquire, the chairman of the National Bankruptcy Review Commission, had planned to attend but was unable to do so because of bad weather at his home in Madison, Wisconsin. Bankruptcy Judge George R. Hodges, a member of the Committee on the Administration of the Bankruptcy System, attended the meeting as a representative of that committee.

The following additional persons attended the meeting: Joseph G. Patchan, Director, Executive Office for United States Trustees; Richard G. Heltzel, Clerk, United States Bankruptcy Court for the Eastern District of California; Patricia S. Channon and James H. Wannamaker, III, Bankruptcy Judges Division, Administrative Office of the United States Courts ("Administrative Office"); Mark D. Shapiro, Rules Committee Support Office, Administrative Office; and Elizabeth C. Wiggins and Robert Niemic, Federal Judicial Center ("FJC"). Brenda K. Argoe, Clerk, United States Bankruptcy Court for the District of South Carolina, attended part 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 Peter G. McCabe, Assistant Director of the Administrative Office and Secretary of the Standing Committee. Votes and other action taken by the Advisory Committee and assignments by the Chairman appear in **bold**.

Introductory Items

The Chairman introduced the guests in attendance and the newly-appointed members and welcomed them to the meeting. **The Committee approved a resolution of commendation and appreciation for the work of its former chairman, Bankruptcy Judge Paul Mannes.**

Mr. Klee suggested that the last paragraph on page 22 of the minutes of the September 1996 meeting be revised to reflect that the amendments discussed there should conform to the language used in the drafts. **The Committee approved the minutes, as revised, on Judge Kressel's motion.**

The Committee discussed the extent to which the minutes should go beyond recording the Committee's formal actions and attempt to capture the Committee's deliberative process. The Reporter and several members indicated that the practice of including highlights from the Committee's discussions has been extremely useful.

The Chairman reported that the next meeting is scheduled for September 11 - 12, 1997, at the Williamsburg Lodge in Williamsburg, Virginia. The chairman suggested that the Spring 1998 meeting be held at the Winrock International Conference Center in Arkansas on March 26 - 27, 1998. **The Committee agreed.** Mr. Heltzel offered to look into the possibility of holding the Fall 1998 meeting at the Ahwahnee Lodge hotel in Yosemite National Park in September or early October. Because of the difficulty in getting rooms at the hotel, he suggested that a "back-

up" site also be selected. **The Committee accepted his suggestions.** The Chairman and Ms. Channon will make preliminary inquiries with Mr. Heltzel's assistance.

The Chairman announced the appointment of the following circuit liaisons:

First Circuit	Mr. Klee
Second Circuit	Mr. Rosen
Third Circuit	Judge Robreno
Fourth Circuit	Judge Small
Fifth Circuit	Judge Duplantier
Sixth Circuit	Judge Donald
Seventh Circuit	Judge Gettleman
Eighth Circuit	Judge Kressel
Ninth Circuit	Mr. Smith
Tenth Circuit	Judge Cordova
Eleventh Circuit	Judge Cristol
D.C. Circuit	Mr. Sommer
Federal Circuit	Professor Tabb

The Chairman explained the duties of the liaisons and stated that they should contact the members of the Judicial Conference of the United States from their circuits as necessary to inform them about important or controversial matters.

The Chairman and Professor Resnick reported on the January 1997 meeting of the Standing Committee. Although no action items from this Committee were before the Standing Committee, the Chairman and the Reporter informed the Standing Committee of the status of this Committee's proposed amendments to the Official Bankruptcy Forms ("Official Forms"), the Litigation Subcommittee's work on revising Rules 9013 and 9014, proposed amendments to Rules 2004 and 2014, and proposed amendments to 14 other rules which the Committee approved in substance earlier.

The Reporter stated that Circuit Judge Frank H. Easterbrook has been appointed chairman of the Standing Committee's new Subcommittee on Technology. The Chairman named Judge

Cristol and Mr. Heltzel to serve as this Committee's liaisons to the new subcommittee. The Reporter stated that District Judge Morey L. Sear, the former chairman of this Committee, has been appointed to the Standing Committee.

Action Items

Amendments to Official Bankruptcy Forms. Mr. Sommer, the chairman of the Forms Subcommittee, stated that the subcommittee met in Washington on February 28, 1997, to consider the comments received in response to the publication of the proposed amendments to the Official Forms. Mr. Sommer presented the Reporter's summary of the comments and the Subcommittee's recommendation on each comment and copies of the published amendments marked with additional changes recommended by the Subcommittee. The Committee agreed to consider the proposed amendments and comments utilizing the "consent calendar" format recommended by the Reporter in his memorandum of March 3, 1997.

Form 1, Voluntary Petition. Ms. Channon presented the Subcommittee's additional changes on Form 1 as reformatted by Frederick D. Rogovy, Esquire, of New Hope Software, Inc. Mr. Klee suggested changing the phrase "check any applicable box" in the "Type of Debtor" section on page 1 to "check all boxes that apply", which he stated would be less ambiguous. **The Committee agreed to make the change there and anywhere else on the amended forms where more than one box could be checked. The Committee agreed to correct the citation to 11 U.S.C. § 110 at the bottom of Page 2.** The Committee discussed how to make citations to the Bankruptcy Code on the forms easier for lay people to understand. **The Committee declined to change the citations.**

The Reporter and Ms. Wiggins discussed the proposal by Professor Karen Gross to divide the lowest statistical categories for number of creditors, estimated assets, and estimated liabilities in order to capture information on very small, individual debtor cases. The professor indicated that those cases might be managed differently or administered outside of the bankruptcy system.

The Reporter stated that every few years social scientists and other researchers ask the Committee to add boxes to collect data that would be useful in their research, but that the Committee has always declined because that is not the function of the form. Ms. Channon said the information on estimated assets and liabilities is used by the Administrative Office to determine the appropriate number of judgeships for each district.

The Administrative Office is conducting a Study on Future Bankruptcy Data Needs. Ms. Channon said Frank Szczebak, the chief of the Bankruptcy Judges Division, has suggested that the question of whether to collect data on very small cases be left to the review of data collection. Ms. Channon said the last time the form was revised the number of boxes and the labels to be used on them were left to the discretion of the Administrative Office. Changing the boxes would require revising the commercial software used to prepare the form, the software used by the clerks to enter case opening data, and the software used by the Administrative Office to compile statistics. The Chairman suggested referring the matter to the Administrative Office. **The Committee agreed to refer the matter.**

Mr. Klee suggested inserting the word "Bankruptcy" in the third line of Exhibit A. The Reporter suggested enclosing the phrase "Including debts listed in 2.c., below" in parentheses, moving it to the right of "Total debts", and making the letter "I" lower case. **The Committee accepted the suggestions.**

Form 3, Application and Order to pay Filing Fee in Installments. Mr. Sommer said it is not entirely clear whether Rule 1006 prohibits petition preparers from being paid prior to the payment of the filing fee. As a result, the last sentence of the Certification and Signature of Non-Attorney Bankruptcy Petition Preparer was drafted to prohibit only future payments before the filing fee is paid. The Reporter said he was concerned that, if the other interpretation of the rule prevailed, petition preparers might collect fees from debtors without telling them that the payments would disqualify them from paying the filing fees in installments. **The Committee declined to change the proposed form.**

Form 8, Individual Debtor's Statement of Intention. Mr. Sommer said the revised form was drafted in an effort to avoid taking a position on interpreting the statute. Judge Donald noted that the word "petitioner" in the certification should be "petition." Mr. Klee stated that the statutory references in section 2.b. should include the phrase "11 U.S.C." **The Committee accepted the corrections.** Professor Tabb suggested changing the phrase "Check any applicable statement." to "Check all statements that apply." The Reporter stated that the change might be substantive. **The Committee declined to make the change.** Judge Small asked whether a fourth statement should be added for debtors who don't intend to claim the property as exempt, redeem it, or reaffirm the debt. Mr. Sommer said doing so would adopt a particular interpretation of the statute. **The Committee declined to make the change.**

Form 9, Notice of Bankruptcy Case, Meeting of Creditors, & Deadlines. Judge Kressel suggested adding the chapter number to the top line of each notice. **The Committee agreed.** The Committee discussed the suggestion by Andrea E. Celli, Esquire, the chapter 13 trustee in Albany, New York, to revise the title to refer to the "Meeting of Creditors and Examination of Debtor." Mr. Sommer said "Meeting of Creditors" is a statutory term and adequate. **The Committee declined to make the change.** Judge Small said several chapter 13 trustees had suggested adding a statement to Form 9I that the chapter 13 trustee does not give legal advice. Mr. Sommer said the change would discourage calls to the trustees, who have a statutory duty to advise, other than on legal matters, and to assist the debtor.

The Committee considered the comments by the Bankruptcy Noticing Users Group and others that the revised meeting of creditors notice would significantly increase the cost of bankruptcy noticing and concluded that the increased costs are outweighed by the benefits of the proposed amendments. The increased cost of mailing a second sheet of paper will be incurred only in asset cases in which the proof of claim form is mailed with the notice. These are predominately chapter 13 cases in which the court could delegate noticing to the standing trustee.

Judge Cristol stated that several clerks had expressed concern about the additional cost of increasing the meeting of creditors notice to two pages in order to include "Explanations," which paraphrase the law, on the back of the form. Mr. Sommer said the form had included explanations for years, and that several clerks had asked for better instructions and information for the parties in plain English. He stated that making this information more complete and easily understandable would result in savings by reducing the number of calls to the clerk's office. Mr. Sommer noted that the Judiciary imposes a $30 administrative fee that must be paid by a debtor commencing a chapter 7 or chapter 13 case. The fee is intended to cover the cost of noticing and is more than sufficient to cover the cost increases resulting from the proposed amendments to the forms. Mr. Heltzel stated that the matter is a policy one which should not be decided on a monetary basis. He said his personal belief is that the change is worth the extra cost.

The Reporter stated that the chapter 11 forms had been revised to incorporate a new description of the discharge. He said the description in Forms 9F and 9F Alt. includes the phrase "except as provided in the plan," which should be added to the description in Forms 9E and 9E Alt. **The Committee agreed to include the phrase.**

Mr. Patchan stated that the chapter 11 forms try to explain the nature of chapter 11 and suggested that the chapter 7 forms should refer to it as the liquidation chapter. Mr. Sommer said the Subcommittee considered the idea but believed it would be misleading in no asset cases in which there is no liquidation. Mr. Klee noted the extra period and misalignment of "p.m.." on Form 9B. **The Committee agreed to correct the two typographical errors**. Mr. Klee stated that page 1 of Form 9I should refer to the "chapter 13 trustee," not the "bankruptcy trustee" to avoid any confusion with a chapter 7 trustee. Judge Kressel said the Bankruptcy Code refers to the "trustee." **The Committee declined to make the change.**

Marcy J.K. Tiffany, the U.S. trustee in the Central District of California, suggested adding the following to the notice: "BANKRUPTCY FRAUD OR ABUSE: Any Questions or

information relating to bankruptcy fraud or abuse may be addressed to the United States Trustee at (insert address of relevant region)." Mr. Patchan stated that he was reluctant to recommend the change because of the possibility of unintended consequences. He added that criminal referrals can go directly to the U.S. attorney. **The Committee declined to add the statement.**

Form 10, Proof of Claim. Mr. Sommer said the Subcommittee originally planned only to prepare instructions for the back of the form. As the project progressed, the Subcommittee also made changes to the front of the form. Judge Stotler asked if the changes to the proposed amendment since its publication for comment were based on the comments received or were suggested by members of the Committee. Mr. Sommer said most of the changes were from the comments. The Reporter said the Committee received nine letters on the form and, as a result, the Subcommittee completely rewrote several boxes on the form.

After the Committee discussed setoffs, the Subcommittee proposed revising Box 5, Secured Claim, by adding the phrase "(including a right of setoff)" and the definition of a secured claim on the back of the form by adding "(has a right of setoff)". The Subcommittee also recommended adding the sentence "If all or part of your claim is secured or entitled to priority, also complete Item 5. or 6., below." to box 4. **The Committee agreed to the changes.**

Form 14, Ballot for Accepting or Rejecting a Plan. The Committee did not make any changes to the proposed amendments.

Form 17, Notice of Appeal Under 28 U.S.C. § 158(a) or (b) from a Judgment, Order, or Decree of a Bankruptcy Court. Judge Kressel stated that the form tells the appellant how to elect to have the appeal heard by the district court. He said the form should not give advice to one party but not the other. In response, the Subcommittee prepared alternative drafts of a sentence to be added to the final paragraph. **The Committee chose the following language:** "Any other party may elect, within the time provided in 28 U.S.C. § 158(c), to have the appeal heard by the district court." Mr. Klee stated that the title of the form and second line of the text should refer to

the "bankruptcy judge," not the "bankruptcy court," in order to be consistent with the statute. The Reporter said the change would be consistent with Rule 8001. **The Committee agreed to make the change.**

Form 18, Discharge of Debtor. Judge Cristol said printing the explanation of the discharge on the back of the form will increase mailing costs. The Committee discussed whether the phrase "or will decide" should be set off by commas in subdivision "g" on the back of the form. **The Committee decided not to use commas in the subdivision.**

Form 20A, Notice of Motion or Objection; Form 20B, Notice of Objection to Claim. Judge Kressel suggested deleting the phrase "The Committee anticipates that" from the beginning of the second paragraph of the Committee Note. **The Committee agreed to delete the phrase.** Mr. Heltzel said that the notices should state that "Responses must be filed as formal legal pleadings." Mr. Sommer said he was not sure that the Bankruptcy Rules have such a requirement. Mr. Klee said the two forms are inconsistent in the use of the words "lawyer" and "attorney." Mr. Sommer suggested using the word "attorney" throughout the two forms. **The Committee accepted Mr. Sommer's suggestion.** Judge Cristol stated that the notices should state that the original response, not a copy, should be filed with the court. In order to do that, the Subcommittee redrafted three paragraphs of each form. **The Committee approved the revised draft.**

The Committee approved the forms package, as revised, without objection and directed that it be submitted to the Standing Committee for approval at its June meeting.

Effective Date. Ms. Channon reported that she had surveyed private vendors and judicial personnel about the time needed to update their computer software in order to implement the proposed changes in the Official Forms. She said representatives of the private vendors, NIBS, BANCAP, and the Administrative Office's Statistics Division indicated that they could make the changes within 90 days. The only dissenter was the project manager for the Bankruptcy Noticing

Center (BNC). Because the BNC contractor customizes notices for each court, the project manager said that, although some or most courts could be ready by January 1, 1998, March 1, 1998, would be a more realistic implementation date.

The Subcommittee recommended an effective date of January 1, 1998, if the amended Official Bankruptcy Forms are approved by the Judicial Conference at its September meeting. The Committee discussed the desirability of an overlap period during which both the old and new forms could be used. The Chairman suggested that the Committee recommend that the amended forms be effective for all purposes on March 1, 1998, and that they could be used on a permissive basis as soon as they are approved by the Judicial Conference. **The Committee accepted his proposal.**

Litigation Subcommittee. Mr. Klee stated that the Litigation Subcommittee began its work as a result of the FJC's survey of the bench and bar concerning the Bankruptcy Rules. He said the survey found that the rules generally function well but that changes were needed in a few areas, including litigation. He said the Part VII rules work well in adversary proceedings, but that the application of the rules is very fuzzy in contested matters. Mr. Klee said the litigation world may be divided into three parts: adversary proceedings governed by the Part VII rules; administrative proceedings under Rule 9014; and administrative motions, which the Subcommittee proposes calling "applications," under Rule 9013. Additionally, motions within adversary proceedings and motions within motions are a separate matter.

Rule 7001. The Litigation Subcommittee recommended one change in the Part VII rules -- amending Rule 7001(7) to permit injunctive relief in a plan or order confirming a plan. Mr. Klee said it is a common practice to include an injunction in a chapter 11 plan or confirmation order despite the requirement in Rule 7001 that equitable relief be obtained by filing an adversary proceeding.

Mr. Sommer said the Committee Note should state that the amendment is not intended to broaden the substantive law. **The Committee agreed to include a statement in the Committee Note that the amendment is limited to circumstances in which an injunction is permitted by substantive law.** The Reporter stated that a party could be "blind-sided" if an injunction were included in the confirmation order without adequate notice in the plan. Mr. Rosen moved to approve the proposed amendment after inserting the word "for" after "provided," deleting the bracketed language "or an order confirming a plan," and revising the Committee Note. **The motion carried without dissent.**

Rule 1007. The Litigation Subcommittee recommended that requests to extend the time to file schedules and statements be left to local discretion rather than being subject to either Rule 9013 or Rule 9014, as revised. The Committee discussed whether to require notice to the trustee and the U.S. trustee. The Reporter said current practice permits extensions to be granted informally, often in open court without notice. Mr. Sommer said requiring notice would avoid the waste of time when the U.S. trustee files a motion to dismiss for failure to file schedules and statements which is moot because the court has extended the time. Other committee members said the U.S. trustee is unlikely to file the motion to dismiss on the first day after the original deadline. **A motion to approve the proposed amendment carried without dissent.** The Reporter stated that the proposed amendment to Rule 7001 could go to the Standing Committee for consideration at its June meeting but that the proposed amendment to Rule 1007 is dependent on the revision of Rule 9013 and should be submitted along with that amendment. **The Committee agreed.**

Mr. Patchan asked that approval of the proposed amendment to Rule 1007 be reconsidered. He suggested that an extension without notice or a hearing be limited to the initial extension or to a limited time. He cited recent testimony concerning "dead on arrival" chapter 11 cases in which delay is the debtor's chief goal. Judge Robreno stated that the testimony was directed to extension of the exclusivity period. **A motion to reconsider failed on a 4-4 vote.**

Rule 1006. The Litigation Subcommittee recommended that requests to pay the filing fee in installments also be excepted from the requirements of Rules 9013 and 9014, as revised. Mr. Sommer stated that the rule should not require a hearing on approval of the request, although that is done in some courts. In her comments on the proposed amendment of Form 3, Chief Bankruptcy Judge Geraldine Mund had suggested that Rule 1006 be amended to bar the debtor from paying a bankruptcy petition preparer, and then requesting to pay the filing fee in installments. The Reporter stated that changes to Rule 1006 should be considered along with the revision of Rules 9013 and 9014. **The Committee agreed to defer the matter.**

Rule 9013. Mr. Klee said the Litigation Subcommittee recommended amending Rule 9013 to provide a routine, perfunctory process for obtaining court approval, without advance notice, of certain types of orders which are likely to be nonsubstantive and noncontroversial. A request for such an order would be called an "application." Mr. Klee briefly reviewed the 14 matters set out in Rule 9013(a).

Judge Robreno asked if a party that receives notice of the entry of a Rule 9013 order could contest the order. The Reporter stated that the amendment was intended to provide for "quasi ex parte" orders that could be entered immediately and challenged later. The judge asked whether this point should be addressed in the Committee Note. The Reporter said that, when he drafted the Committee Note, he was reluctant to include more than a general statement that the entry of such an order does not preclude a party from seeking appropriate relief. The Chairman stated that the note should state that the order could be challenged after the fact. **The Reporter agreed to draft such a statement.** Judge Cordova asked about the meaning of the word "notice" as used in lines 46 and 54. The Reporter said it meant that a copy of the application, the papers filed with it, and the proposed order must be served. **The Committee agreed to substitute "service" for "notice" in the two lines.**

Judge Cordova asked why the Subcommittee called a request for an order under Rule 9013 an "application." Mr. Klee said the term "ex parte" carries bad connotations in bankruptcy

and calling the requests "motions" could lead to confusion with motions filed within an application, contested matter, or adversary proceeding. Judge Kressel said he liked bringing back the term "application" because it has connotations for attorneys and implies a simplified process. Judge Robreno asked if the term "application" is used in the Bankruptcy Rules in other contexts. The Reporter stated that certain rules provide for an application, such as an application for compensation, an application to pay the filing fee in installments, and an application for service on an insured depository institution by first class mail.

Judge Robreno asked whether the list of applications in Rule 9013 is exclusive. Mr. Klee stated that the rule only covers the applications listed. The Reporter said the proposed amendment to Rule 9014 would cover all other requests for an order except motions in an adversary proceeding and the specific "carve outs" in Rules 9013 and 9014. Professor Tabb expressed concern that the "default" rule is Rule 9014, which is more complicated than Rule 9013. He said Rule 9013 might eventually include as many as 62 exceptions to Rule 9014. The Reporter said he had tried to list all of the matters to be governed by Rule 9014 and had gotten to almost 100 matters before he quit. Mr. Klee said the Subcommittee decided to err on the side of more notice and a more formal process by making Rule 9014 the "default" rule.

Mr. Sommer said the more uniform procedure set out in Rule 9013 is a good idea and that Rule 9014 is probably the best that could be done in devising a national, uniform motion practice for other types of proceedings. It would be better, however, he said, to leave these proceedings to local rules. Mr. Smith said he thought Rule 9014 is a great start to giving some sense of uniformity to bankruptcy practice nationally in place of the 4,000 pages of local bankruptcy rules printed by one publisher. Judge Robreno asked if it would be possible to approve the proposed amendment to Rule 9013 and allow other proceedings to be governed by the existing rules. The Reporter said deleting existing Rule 9013 would leave no provision for the motions it governs. Mr. Klee said the Committee could keep existing Rules 9013 and 9014 and do a new rule for applications. Judge Donald said the Committee should try for a national rule before falling back on local rules. Mr. Klee asked for a show of hands on the general approach of adversary

proceedings for lawsuits, Rule 9013 for applications or ex parte motions, and Rule 9014 for more elaborate motion proceedings, with certain "carve outs." **By a vote of 9-4, the Committee favored this approach.**

Mr. Klee reviewed the subdivisions of Rule 9013(a). There were no objections to subdivisions (a)(1), (a)(2), (a)(5), (a)(9), (a)(10), (a)(12), and (a)(14). Mr. Klee said subdivision (a)(3) includes only conversions under 11 U.S.C. §§ 706(a) and 1112(a) because they are not automatic, as are conversions under 11 U.S.C. §§ 1208(a) and 1307(a). The Committee discussed whether dismissals by the debtor under 11 U.S.C. §§ 1208(b) and 1307(b) should be moved to Rule 9014. The Reporter said the draft tries to avoid taking a position on whether a debtor in chapter 12 or chapter 13 has an absolute right to dismiss. **The Committee voted 8-4 to leave the provision in Rule 9013.** Judge Cristol stated, with respect to subdivision (a)(6), that the statute requires that notice of a Rule 7004(h)(2) motion for service by first class mail must be served by certified mail. **The Committee agreed to delete subdivision (a)(6).** The Committee discussed whether court approval of the election of a chapter 11 trustee should be governed by Rule 9013(a)(7), with parties disputing the election having to seek relief after entry of the order. It was stated that disputed elections are likely to be extremely unusual. **The Committee agreed to leave the provision in Rule 9013.**

Professor Tabb asked the basis for selecting the eight types of matters excluded from subdivision (a)(8). Mr. Klee said they could be high profile, controversial matters. The Reporter said the subdivision does not mirror Rule 9006(b)(3) because the two provisions are based on different concepts. The Reporter agreed to draft a separate provision for setting the time to file claims under Rule 3003(c). **The Committee agreed to add a provision to Rule 9013(a) for limiting notice under Rule 2002(i).** Subdivision (a)(11) depends on the revision of Rule 2004. Mr. Heltzel asked whether subdivision (a)(13) would require notice of the routine, sua sponte closing of a chapter 7 or chapter 13 case. The Chairman said the provision was not intended to apply unless a party files a request for closing or the entry of a final decree. **The Committee agreed to delete subdivision (a)(13).**

The Committee agreed to delete the phrase "under § 105(d)" from line 37 and refer subdivision (b) to the Style Subcommittee. The Committee agreed to change the word "served" to "made" on line 54. Mr. Sommer moved to delete the provision for electronic service in lines 55 - 59. Mr. Heltzel said he generally favored the concept of electronic service, but that it should be done across the board. Mr. Klee said providing for electronic service in Rules 9013 and 9014 would be across the board. **The motion failed on a vote of 6-7.** There were no further comments on subdivisions (a), (b), (c), and (d).

Mr. Heltzel said that Rule 9013(e) would create a whole new category of work for the clerk of court in serving Rule 9013 orders. Mr. Klee said service of the order is important because the predicate for the proposed rule is that parties can seek relief from a Rule 9013 order after its entry. The Reporter suggested revising Rule 9013(e) to require service by the applicant and to delete the reference to Rule 9022. **A motion to do so carried with three dissenting votes.** Judge Cristol moved to approve the Subcommittee's proposed amendments to Rule 9013, as revised. **The motion carried without objection.**

Rule 9014. The Reporter said the draft of Rule 9014 provides for "administrative motions" because so many other rules refer to "motions." Judge Robreno said the draft rule is an attempt to micromanage thousands of cases in dozens of jurisdictions. He suggested setting out general principles in a national rule and letting local rules supply the specifics. Judge Cristol said the 25-day notice of the preliminary hearing required by Rule 9014(c) would be unrealistic in many circumstances. Professor Tabb said the best thing about the proposed rule is its uniformity. The Reporter stated that, viewed as motion practice, Rule 9014 looks like a national rule micromanaging local practice. Viewed as administrative proceedings, a category of litigation closer to adversary proceedings and civil litigation in the district court, however, he said, Rule 9014 does no more micromanaging than the adversary proceeding rules or the Civil Rules. For instance, a $1 million objection to claim is an administrative proceeding under Rule 9014.

Mr. Kohn said the 10-day period for discovery in subdivision (i)(C) provides an unrealistic time for discovery on a disputed $1 million claim. Instead, he said, the rule should provide a 30-day period for discovery which could be shortened. The Chairman said the rule was drafted for routine matters and that the attorneys in a $1 million case could ask for more time. Several Committee members questioned the determination required by subdivision (j)(1) of whether there is a genuine issue as to any material fact and, if not, whether any party is entitled to relief as a matter of law. Mr. Rosen questioned whether the status conference should be held earlier to avoid wasted effort. Judge Kressel said so many of these matters go by default or stipulation that preparation for an early status conference would outweigh any savings.

Several Committee members said they liked the basic idea of the proposed rule but questioned whether the two-step process in subdivision (h) could be simplified by making the initial hearing an evidentiary one. Mr. Smith moved to permit the court to order an evidentiary hearing on its motion or on the motion of a party with notice to the parties. **The motion carried with three dissenting votes.** The Reporter is to draft the new language. Judge Cordova questioned the title of the rule, "Administrative Proceedings." The Reporter said the rule would create a new class of litigation which is a hybrid between motion practice and a civil action. **The Committee agreed to retain the title.** Professor Tabb moved to strike subdivision (b)(1) and insert "be in writing and" at the end of line 22. **The motion carried. The Committee also agreed to strike the references to oral motions in subdivisions (b)(3), (b)(4), (b)(5), and (c)(1).**

The Committee discussed the provision for relief from procedural requirements in subdivision (o). The Chairman said the court is restricted to waiving the requirements in a particular case, rather than opting out of the rule across the board. **With one dissenting vote, the Committee agreed to retain the provision.** Mr. Heltzel said the court files should not be cluttered with proposed orders. Judge Kressel said requiring the movant to prepare a proposed order makes the movant focus on exactly what relief is wanted. The Chairman said it also lets

the respondent know what will happen if there is no response. **The Committee declined to change the provision.**

The Committee discussed whether there should be an exception to the list of supporting documents in subdivision (b)(5) for consent motions. The Reporter said the list of possible respondents in subdivision (c)(1) is long enough that the movant is unlikely to have consents from all of them before filing. Judge Cordova moved to delete line 39. Judge Kressel said requiring a memorandum of law forces the movant to inform himself. The Reporter said line 27 requires that the movant state with particularity the grounds for the relief sought. **The motion to delete carried on a vote of 9-2. The Committee also agreed to delete the requirement for a memorandum of law in line 111.**

Judge Cristol moved to strike subdivision (c)(1)(B). Several Committee members expressed concern that the provision would require a burdensome title search. **The motion carried with one dissenting vote.** Professor Tabb asked whether the Reporter would review other rules to identify provisions which are redundant or inconsistent. The Reporter stated that he plans to review all of the rules. **The Committee agreed to substitute "any" for "the" at the end of line 82.** The Committee discussed whether the 25-day notice period in subdivision (c)(1) should be folded into other rules. The Reporter stated that, unlike Rule 9013 notices, Rule 2002 notices are notices to all parties.

Mr. Smith asked whether obtaining expedited relief concerning a truckload of fresh fish would come under reduced notice in subdivision (f) or relief from procedural requirements in subdivision (o)? The Reporter said it would normally fall under subdivision (f), but that (o) could be used if needed. Mr. Sommer said the fish might require interim relief under subdivision (g), and that it might be better to incorporate the standard for granting a temporary restraining order instead of using the proposed language. In response to a question about the two-day notice period for motions to reduce time, Mr. Batson said it was included in subdivision (f) in order to prevent one of the parties from being "blind-sided."

After considering other business Friday morning, the Committee resumed its discussion of the reduction of time under Rule 9014(f). The Reporter said the requirement for a separate motion and two days notice of the hearing were included to counter fears of attorney abuse in the reduction of time. Mr. Smith said the subdivision represents micromanaging. He moved to strike the rest of the subdivision after the word "Rule" on line 138. The Reporter said the entire subdivision could be deleted, leaving the reduction of time in administrative proceedings to be governed by Rule 9006(c). Mr. Smith agreed to the change. **The motion carried without dissent.**

Judge Gettleman moved to strike the existing language of subdivision (e) and substitute a provision that an affidavit shall conform to the requirements of Rule 56, Fed. R. Civ. P. **The motion carried with one dissent.** Mr. Sommer moved to strike the phrase "in a pretrial order" in line 194. **The Committee agreed to the change.** Mr. Sommer said the 10-day discovery period in subdivision (I)(1)(C) may not be necessary because the first hearing isn't an evidentiary hearing if discovery is ongoing. Judge Gettleman suggested requiring automatic disclosures but not a Rule 26(f), Fed. R. Civ. P. meeting. The Chairman said some of this is covered by the attachments required at the time of filing. Mr. Sommer said the subcommittee believes truncated discovery is sufficient because the vast majority of these expedited matters are settled.

Judge Cristol moved to include the bracketed language on lines 222 - 227. The Reporter suggested striking the words "appear and" on line 226 so that the courts could conduct these conferences by telephone. Mr. Heltzel said his court has a local rule which states that the word "appear" includes appearing by telephone. Judge Kressel suggested leaving the matter to the courts. **The Committee approved Judge Cristol's motion.** Professor Tabb suggested that subdivision (j)(2) incorporate the provisions of Rule 16(c), Fed. R. Civ. P. rather than listing what may be done at a status conference. The Reporter said the list was included in order to avoid incorporating the provision for referring matters to a magistrate judge. **The Reporter agreed to review whether other exclusions are needed and whether there could be a cross-reference to Rule 16(c).**

The Reporter said there is a special provision in subdivision (j)(3) for relief from the automatic stay because the court must hold at least a preliminary hearing within 30 days. Judge Kressel suggested deleting motions for relief from the automatic stay from subdivision (j)(3) to avoid hiding local procedures. Judge Small favored including stay motions in the subdivision and telling the parties that the court will take testimony at the first hearing. In response to a question by Judge Cristol about the continuation of the stay conditioned on payments by the debtor, the Reporter said the rule does not provide for conditional relief because the statute requires a finding on whether the debtor has a reasonable likelihood of prevailing at the final hearing, not on whether the debtor can pay.

Professor Tabb moved to include the bracketed references to stay motions, to delete the word "shall" in line 244, and to include the word "may" in line 244. **The Committee approved the motion.** It was moved to delete the word "trial" in lines 206, 242, and 243 and to substitute the word "hearing" in lines 242 and 243 as more appropriate for an administrative proceeding. **The Committee approved the motion.** Mr. Sommer moved to delete line 242 and the first three words of line 243. **The Committee approved the motion.**

Judge Robreno asked about the provision in subdivision (k) that Rule 43(e), Fed. R. Civ. P., which permits testimony by affidavit in motion proceedings, does not apply in administrative proceedings under proposed Rule 9014. The Reporter said Rule 43(e) applies only to motions and that administrative proceedings should be decided on the trial rule, which requires witnesses to testify in open court, not the motion rule. Mr. Sommer said the exclusion may be overly broad because it could apply to motions within administrative proceedings. The Reporter suggested limiting the exclusion to evidentiary hearings. **The Committee deferred the matter to the Reporter, who is to draft limiting language.** Professor Tabb stated that Rule 9022 requires service of notice of the entry of an order while subdivision (l) requires service of a copy of the order. **The Committee agreed that subdivision (l) should track the language of Rule 9022.** Mr. Heltzel suggested providing that the notice may be served by such other person as the court

may direct. **The Committee accepted the Reporter's suggestion to defer the matter to a future meeting.**

The Reporter stated that subdivision (m) is redundant of Rule 9034 but instructive. Judge Kressel moved to strike subdivision (m) and the related portion of the Committee Note. **The motion carried with two dissents.** Mr. Patchan stated that some of these proceedings are quite significant and that the Committee Note should refer to the requirement in Rule 9034 for transmission to the U.S. trustee. **The Committee agreed to include the reference in the Committee Note.** Professor Tabb and Mr. Sommer asked the Reporter to review the application of particular Part VII rules to administrative proceedings in subdivision (n). Mr. Kohn stated that the reference to the necessity for expeditious relief in line 267 was too narrow. **The Committee agreed to delete line 267.**

Judge Donald moved to approve the proposed amendments to Rule 9014, as revised, in principle, and to refer the draft to the Reporter for further refinement. In light of the sentiment for going forward and the great deal of work by the Subcommittee, Judge Robreno stated that it gave him great pause to stand on the other side. As an alternative, he suggested striking subdivision (b) and providing that no relief shall be granted under the rule unless the party against whom relief is sought has received notice, had an opportunity to take discovery and present evidence, and has been afforded an opportunity to cross-examine witnesses. Several Committee members said they favored publishing the proposed amendment for comment but questioned whether national uniformity in motion practice is better than existing local rules. **The motion to approve the proposed amendments carried without dissent.**

Style Subcommittee. The Reporter presented the report of the Style Subcommittee which reviewed proposed amendments to 14 rules approved at the September 1995, March 1996, and September 1996 meetings, subject to review by the Subcommittee. The Subcommittee recommended a number of "global changes" including the use of the word "under" instead of "pursuant to," the phrase "no later than" instead of "not later than," the words "after" and "before"

in place of "following" and "prior to." In addition, the phrase "of the Code" is used only the first time a Bankruptcy Code section appears in a rule. The Style Subcommittee revised each new 10-day stay provision with respect to certain court orders so that it stays the relevant court order, rather than the particular conduct of a party.

The Reporter suggested striking the phrase "a contested matter" on page 7 so that the Committee Note would apply regardless of how Rule 9014 is titled. **The Committee agreed to make the change.** Judge Kressel said substituting the word "is" for "shall be" on line 2 of Rule 3020, line 7 of Rule 4001, line 4 of Rule 6004, and line 4 of Rule 6006 would make the meaning clearer. **The Committee agreed to make the change.** Mr. Sommer asked why the proposed amendment to Rule 1017(b)(1) refers only to dismissals of chapter 7 and chapter 13 cases. **The Committee agreed to strike the phrase "under § 707(a)(2) or § 1307(c)(2)" on lines 18 - 19. The Committee approved the proposed stylistic changes, as revised.** The Reporter said the proposed amendments will be presented to the Standing Committee at its June 1997 meeting with a request for publication.

Service of Process in a Foreign Country. The Reporter stated that amendments to Civil Rule 4 and Bankruptcy Rule 7004 in recent years had inadvertently extended to service in a foreign country, by cross references, the requirement for service of a summons in an adversary proceeding within 10 days of its issuance. The Reporter proposed amending Rule 7004(e) to provide that the 10-day limit does not apply if the summons is served in a foreign country. **The Committee approved the proposed amendment and agreed to include it in the package of amendments to be presented to the Standing Committee in June 1997.**

Adjustment of Dollar Amounts. Mr. Sommer stated that it might be desirable to provide for the automatic adjustment of the dollar amounts in the Bankruptcy Rules for inflation. In particular, he said, the $500 figure in Rule 2002(a)(6) should be increased to $1,000 because attorney fees are almost always higher than $500. The Committee discussed whether the $500 threshold applies to a single fee application, the aggregate of all fee applications in a particular

case by a professional, or all of the fee applications in the case on for hearing at the same time. **The Committee agreed to defer the matter to the September meeting.**

Notice to Governmental Agencies. At its meeting in March 1995, the Committee considered proposals submitted by Mr. Kohn relating to problems that the federal government has been experiencing with notices in bankruptcy cases, and also discussed proposed amendments to Rule 6007 designed to give the Environmental Protection Agency notice of a contemplated abandonment of property. Although the Committee expressed concerns, it did not adopt any of the proposals at the March 1995 meeting. Instead, the chairman, Judge Paul Mannes, asked Mr. Kohn to prepare a revised proposal for the Committee to consider. In response, at the March 1997 meeting, Mr. Kohn submitted six proposals, and the Reporter drafted an alternative suggestion for amending Rules 1007, 2002, and 5003. In addition, David B. Foltz, Jr., a Houston attorney, proposed a new Official Bankruptcy Form entitled "Environmental Statement" and several rules amendments on disclosure and notice to governmental units relating to environmental matters.

Mr. Kohn said his first proposal is intended to address two problems: identifying the specific government agency with a claim and, if the agency has identified a specific address for notices, using that address for mailing notices. He said his proposal, which included amendments to Rules 1007, 2002, and 5003, would benefit both the government and the debtor by avoiding disruptive last-minute claims or no government claim at all. The Reporter stated that the proposal had been expanded from the federal government to all governments, state federal, and foreign, since the 1995 meeting. Mr. Kohn said he saw no problem with extending the use of the registry to be maintained by the clerk under the proposed amendment of Rule 5003 to large, institutional creditors.

The Committee discussed whether the debtor's failure to use a governmental agency's address in the registry would make the debt nondischargeable. The Reporter stated that the debtor is already responsible for giving the government reasonable notice, but that it might be

easier for the government to argue that the debt should be nondischargeable if the debtor failed to use the address in the registry.

Mr. Sommer said he was most concerned about pro se debtors who owe taxes. He said the schedules should be revised to include an instruction to use the addresses filed in the clerk's office for government claims. The Reporter said such a change could be coordinated with the rules amendments. Judge Kressel stated that the Reporter's draft amendment to Rule 2002(g) would require the clerk to use the registry address even if the debtor uses the wrong address in the matrix. Mr. Heltzel said its impracticable for the clerk to review the list of creditors in every case and check state, federal, and local governmental agency addresses against the addresses in the registry. Mr. Kohn said he believed page 4 of his proposal imposed the duty to use the registry only on the debtor. The Reporter said he could revise his draft to make the use of the registry address mandatory only for the debtor and only if known to the debtor.

The Committee discussed whether computer screening could be used to correct the addresses for governmental agencies. Mr. Heltzel said his office uses a screening process for electronic notice to the Internal Revenue Service. He stated that the process is practicable for a few creditors with a limited number of possible addresses but that his office couldn't screen dozens of addresses for hundreds of state, federal, and local agencies and possible spellings of their names. He said his district covers 38 counties and that the debtor could have claims by governmental agencies in other states, too.

Professor Tabb stated that he was concerned that private creditors would insist on the same treatment as the government. The Committee discussed whether the public interest in collecting government revenue and the debtor's personal, contractual relationship with nongovernmental creditors are sufficient grounds for distinguishing between notice to governmental and nongovernmental entities.

The Chairman suggested referring the matter to a subcommittee chaired by Judge Small and including Judge Cristol, Mr. Kohn, Mr. Sommer, Mr. Heltzel, and Professor Tabb. Several Committee members said the subcommittee should explore notice to both governmental and private entities. Mr. Smith stated that the subcommittee should address the substantive issue of the debtor's discharge. The Reporter said the proposal might be modified to require the debtor to identify governmental agency creditors, to direct the establishment of a registry to be maintained by the clerk, and to state that the debtor should use the addresses in the registry. If the debtor doesn't use the registry, he said, the adequacy of the notice would depend on the common law. **The Committee agreed to refer the matter to the subcommittee, which is to report back at the September meeting.**

Rule 2004. The Reporter stated an FJC study disclosed that the bankruptcy bench is divided between judges who consider Rule 2004 motions ex parte and those who consider such motions on notice. The matter has been discussed at previous Committee meetings and was referred to the Rule 2004 Subcommittee, which recommended requiring notice and a hearing before a Rule 2004 motion is granted.

Judge Cordova said the proposed amendment gives the subject of the examination two opportunities to object: once before entry of the order and once after the entry. Mr. Kohn suggested the hybrid approach utilized in the Northern District of Iowa in which a Rule 2004 order can be entered ex parte if the parties agree in advance on the scope of the examination. Mr. Batson said the parties are unlikely to come to such an agreement in New York or Atlanta. Judge Small said the orders could be entered on an ex parte basis if there is sufficient time to object before the examination. He said it is pointless to go through the advance notice process when there will be no objections to 99 percent of the motions. Judge Kressel said he opposes ex parte orders generally, even if they tend to be noncontroversial.

Judge Robreno said Rule 2004 examinations are intended to be fishing expeditions and that vesting a party with that type of power without a hearing raises questions. Judge Cristol said

advance notice would require thousands of additional docket entries in his district. Mr. Patchan said there have been abuses of the Rule 2004 process in some places, including attempts to use the examinations in adversary proceedings. Mr. Heltzel said he has heard more and more allegations of credit card companies using abusive tactics to harass pro se debtors. The Committee discussed whether there should be special protections for pro se debtors or for third parties ordered to undergo an examination.

The Committee agreed to send the matter back to the Rule 2004 Subcommittee. The Committee also agreed not go forward with the separate amendment to Rule 2004(c) approved in 1995 so that the two amendments could be submitted to the Standing Committee with a request for publication at the same time.

Rule 2014. The Reporter said the proposed revision of Rule 2014 was prepared in response to concerns about the disclosure requirements for employing professionals and because the current rule may have become unworkable as both bankruptcy cases and law firms have gotten bigger. He said the draft attempts to clarify the disclosure requirements and to add procedures for the motion practice. The Reporter stated that the draft subdivision (b)(3) is taken from the Bankruptcy Code's definition of "disinterestedness" but, in some circumstances, may require less disclosure than the current Rule 2014. Judge Cordova stated that any rule must comply with the statute. Mr. Smith said the rule could go beyond the statute.

Mr. Smith said the rule should require that the attorney disclose anything that affects the quality of representation requested. The Reporter noted that the Committee has been asked in the past for a "safe harbor" for disclosure. Instead, he said, the proposed amendment provides for interim employment orders. Professor Tabb asked what standard would be applied in considering interim employment motions. The Reporter said the proposed rule does not specify the standard but that the judge would have the information in the motion for permanent employment and the professional's verified statement.

Judge Stotler asked why the rule referred to employment by a trustee or committee while the Committee Note referred to employment by a trustee, debtor in possession, or committee. The Reporter stated that throughout the Bankruptcy Rules the word "trustee" includes debtors in possession as well as trustees. The Chairman suggested that the time for filing a supplemental statement under subdivision (f) be shortened to five days. Judge Cordova suggested referring the proposed amendment back to the Rule 2014 Subcommittee with general approval of the procedural aspects of the draft. **The Committee agreed to the referral.**

Subcommittee and Liaison Reports

Alternative Dispute Resolution Subcommittee. Professor Tabb said the Alternative Dispute Resolution (ADR) Subcommittee recommended requesting that the FJC conduct a national survey of the use of ADR in bankruptcy cases. He said the survey could identify good ideas in local rules for new national rules and any particular problems such as, perhaps, ex parte contacts or breaches of confidentiality that should be addressed by the rules. Mr. Niemic said the survey would include all bankruptcy judges, a sample of attorneys, and attorney mediators in the courts which have ADR programs.

Mr. Niemic said 24 bankruptcy courts have formal ADR procedures established by local rules, general orders, or other means and that all of these courts have mediation programs. Nine of the 24 courts also utilize other ADR procedures. He also discussed ADR initiatives by groups within the American Bar Association and the American Bankruptcy Institute. **The Committee agreed to request that the FJC proceed with the survey.**

Subcommittee on Technology. Judge Cristol said proposed technical standards for electronic filing have been circulated for comment. He said February 14, 1997, was the deadline for comments but that he has not yet seen the comments. Ms. Channon said she had hoped to have copies of the executive summary of a draft report on the Electronic Case Files (ECF)

Project for the Committee, but that they were not available in time for the meeting. She said she would make sure that any interested member of the Committee would receive a copy.

Mr. Sommer suggested that the Technology Subcommittee consider electronic service before the Committee's next meeting. The Reporter asked if there was any reason for this Committee's Technology Subcommittee to refrain from studying electronic service and the ECF paper because the Standing Committee's Subcommittee on Technology is considering the same matters. Judge Stotler said she encouraged every member of the Committee to consider the paper because the more people considering these issues the better. **The Committee agreed that the Technology Subcommittee should study electronic service.**

Subcommittee on Local Rules. The Chairman said he intends to leave the chair and membership of the subcommittee vacant. Ms. Channon said she receives about three calls a week about uniform local rule numbers, and that the renumbering appears to be progressing well.

Subcommittee on Forms. Ms. Channon said the revised Bankruptcy Forms Manual will include, for the first time, the Official Bankruptcy Forms and instructions for their use. The manual also will include Director's Forms and updated instructions from the 1988 version of the publication. She said Committee members are welcome to read the draft manual and comment on it. Professor Tabb expressed the Committee's gratitude to Mr. Sommer and Ms. Channon for their yeoman's work on revising the Official Forms.

Subcommittee on Rule 2014 Disclosure Requirements. Mr. Smith stated that he hoped that this Committee will try to draft rules on the conduct of attorneys in bankruptcy cases or at least begin to focus on the issues. He said the threshold issue is whether the Committee has authority to propose rules on matters such as when an attorney is qualified to represent the debtor, trustee, creditors' committee, or equity security holders' committee; when an attorney can represent multiple parties in bankruptcy; and how to apply state rules that would disqualify an attorney.

The Chairman asked whether any of the advisory committees has ever undertaken to write what amounts to a code of conduct for attorneys. Professor Coquillette said there have been some national rules and a number of local rules. He stated that it is appropriate for this Committee to undertake such a project. Mr. Sommer asked what the Standing Committee is doing in this area. Professor Coquillette said it may draft a model local rule or pick narrow areas and promulgate national rules. He said it would be helpful to have a model bankruptcy rule to consider and to have this Committee's thoughts on whether a rule for the district courts should be extended to the bankruptcy and appellate courts. **The Chairman asked the Subcommittee to expand its work to include consideration of Mr. Smith's suggestions.**

Professor Coquillette requested that the chairman establish a mechanism for the Standing Committee's Subcommittee on Attorney Conduct to communicate with this Committee. **The Chairman appointed Mr. Smith as a liaison.**

Liaison to Advisory Committee on Civil Rules. The Chairman stated that he will serve as this Committee's liaison with the Advisory Committee on Civil Rules in the future, but that Judge Robreno will represent this Committee at the Civil Committee's next meeting.

Respectfully submitted,

James H. Wannamaker, III
Bankruptcy Judges Division

Item 3

Agenda F-18 (Summary)
Rules
September 1997

SUMMARY OF THE

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

The Committee on Rules of Practice and Procedure recommends that the Judicial Conference:

1. Approve the proposed amendments to Appellate Rules 1-48 and to Form 4 and transmit them to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law ..... pp. 2-9

2. Approve the proposed revisions to Official Bankruptcy Forms 1, 3, 6F, 8, 9A-9I, 10, 14, 17, 18, and new Forms 20A and 20B ..... pp. 9-12

3. Promulgate the proposed revisions to the Official Bankruptcy Forms to take effect immediately, but permit the superseded forms to also be used until March 1, 1998 ..... pp. 12

4. Approve the proposed new Civil Rule 23(f) and transmit it to the Supreme Court for its consideration with the recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law ..... pp. 16-20

5. Approve the proposed amendments to Criminal Rules 5.1, 26.2, 31, 33, 35, and 43 and transmit them to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law ..... pp. 21-23

6. Approve the proposed amendment to Evidence Rule 615 and transmit it to the Supreme Court for its consideration with the recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law ..... pp. 26-27

The remainder of the report is submitted for the record, and includes the following items for the information of the Conference:

REPORT OF THE JUDICIAL CONFERENCE

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES:

The Committee on Rules of Practice and Procedure met on June 19-20, 1997. All the members attended the meeting, except Alan C. Sundberg. Acting Deputy Attorney General Seth P. Waxman attended on June 19. The Department of Justice was represented on June 20 by Ian H. Gershengorn and Roger A. Pauley.

Representing the advisory committees were: Judge James K. Logan, chair, and Professor Carol Ann Mooney, reporter, of the Advisory Committee on Appellate Rules; Judge Adrian G. Duplantier, chair, and Professor Alan N. Resnick, reporter, of the Advisory Committee on Bankruptcy Rules; Judge Paul V. Niemeyer, chair, and Professor Edward H. Cooper, reporter, of the Advisory Committee on Civil Rules; Judge D. Lowell Jensen, chair, and Professor David A. Schlueter, reporter, of the Advisory Committee on Criminal Rules; and Professor Daniel J. Capra, reporter, of the Advisory Committee on Evidence Rules. Judge Fern M. Smith, chair of the Evidence Rules Committee, was unable to be present.

Participating in the meeting were Peter G. McCabe, the Committee's Secretary; Professor Daniel R. Coquillette, the Committee's reporter; John K. Rabiej, Chief, and Mark D. Shapiro,

attorney, of the Administrative Office's Rules Committee Support Office; Patricia S. Channon of the Bankruptcy Judges Division; James B. Eaglin of the Federal Judicial Center; Professor Mary P. Squiers, Director of the Local Rules Project; and Bryan A. Garner and Joseph F. Spaniol, consultants to the Committee.

AMENDMENTS TO THE FEDERAL RULES OF APPELLATE PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Appellate Rules completed its style revision project to clarify and simplify the language of the appellate rules. It submitted revisions of all forty-eight Rules of Appellate Procedure and a revision of Form 4 (no changes were made in Forms 1, 2, 3, and 5), together with Committee Notes explaining their purpose and intent. The comprehensive style revision was published for public comment in April 1996 with an extended comment period expiring December 31, 1996. Public hearings were scheduled but canceled, because no witness requested to testify.

The style revision has taken up most of the advisory committee's work during the past four years. The style changes were designed to be nonsubstantive, except with respect to those rules outlined below, which were under study when the style project commenced. A few additional substantive changes have been made necessary by legislative enactments or other recent developments. Almost all comments received from the bench, bar, and law professors teaching procedure and legal writing were quite favorable to the restyled rules. Only one negative comment was received—that to the effect "why change a system that has worked?"

The advisory committee recommended, and the Standing Rules Committee agreed, that the submission to the Judicial Conference and its recommendation for submission to the Supreme Court, if the changes are approved, should be in a different format from the usual

submission. Instead of striking through language being eliminated and underlining proposed new language, the changes made by the restylization project can best be perceived by a side-by-side comparison of the existing rule (in the left-hand column) with the proposed rule (in the right-hand column). Commentary on changes that could be considered more than stylistic—generally resolving inherent ambiguities—are discussed in the Committee Notes. A major component of the restylization has been to reformat the rules with appropriate indentations. Your Committee concurs with the recommendation of the advisory committee that the physical layout of the rules should be an integral part of any official version—and of any published version that is intended to reflect the official version.

In connection with the restylization project, the advisory committee and the Standing Rules Committee bring to the attention of the Judicial Conference two changes in the restyled rules—the use of "en banc" instead of "in banc" and the use of "must" in place of "shall." Although 28 U.S.C. § 46 has used "in banc" since 1948, a later law, Act of Oct. 20, 1978, Pub. L. No. 95-486, 92 Stat. 1633, used "en banc" when authorizing a court of appeals having more than fifteen active judges to perform its "en banc" functions with some subset of the court's members. Also the Supreme Court uses "en banc" in its own rules. *See* S. Ct. R. 13.3. The "en banc" spelling is overwhelmingly favored by courts, as demonstrated by a computer search conducted in 1996 that found that more than 40,000 circuit cases have used the term "en banc" and just under 5,000 cases (11%) have used the term "in banc." When the search was confined to cases decided after 1990, the pattern remained the same—12,600 cases using "en banc" compared to 1,600 (11%) using "in banc." The advisory committee decided to follow the most commonly used "en banc" spelling. This is a matter of choice, of course, but both committees recommend the more prevalent use to the Judicial Conference.

The advisory committee adopted the use of "must" to mean "is required to" instead of using the traditional "shall." This is in accord with Bryan A. Garner, *Guidelines for Drafting and Editing Court Rules* § 4.2 at 29 (1996). The advisory committee is aware that the Supreme Court changed the word "must" to "shall" in some of the amendments of individual rules previously submitted to the Court. In doing so, the Supreme Court indicated a desire not to have inconsistent usages in the rules, and concluded "that terminology changes in the Federal Rules be implemented in a thoroughgoing, rather than piecemeal, way." The instant submission is a comprehensive revision of all the appellate rules. Because of the potentially different constructions of "shall," *see* Garner, *A Dictionary of Modern Legal Usage* 939-42 (2d ed. 1995), the advisory committee eliminated all uses of "shall" in favor of "must" when "is required to" is meant. Both the advisory committee and the Standing Rules Committee recognized room for differences of opinion and do not want the restylization work rejected due to the use of this word.

Included in this submission are some rules that have substantive amendments, all of which have been published for public comment at least once except the proposed abrogation of Rule 3.1 and the proposed amendments to Rule 22. Both of the latter changes are responsive to recent legislation. The changes to Rules 26.1, 29, 35, and 41 were approved for circulation to the bench and bar for comment in September 1995. They were resubmitted for public comment in April 1996 as a part of the comprehensive style revision. After considering suggestions received during these two comment periods, they were approved with minor changes along with the restylized version of the rules. Revised Rules 27, 28, and 32 were approved for circulation for public comment in April 1996 along with the restylized rules—with special notations to the bench and bar that these three rules underwent substantive changes. Rules 5, 5.1 (the latter of which is proposed to be abrogated), and Form 4 were sent out for comment separately, after the

restylization package. Rules 5 and 5.1 were revised because of recent legislative changes and a proposed new Fed. R. Civ. P. 23(f); Form 4 was revised because of recent legislative changes and a request by the Supreme Court Clerk for a more comprehensive form. The substantive changes are summarized below, rule-by-rule in numerical order.

Rule 3.1 (Appeal from a Judgment of a Magistrate Judge in a Civil Case) would be abrogated under the proposed revision because it is no longer needed. The primary purpose for the existence of Rule 3.1 was to govern an appeal to the court of appeals following an appeal to the district court from a magistrate judge's decision. The Federal Courts Improvement Act of 1996, Pub. L. 104-317, repealed paragraphs (4) and (5) of 28 U.S.C. § 636(c) and eliminated the option to appeal to the district court. An appeal from a judgment by a magistrate judge now lies directly to the court of appeals.

The proposed consolidation of Rule 5 (Appeal by Permission Under 28 U.S.C. § 1292(b)) and Rule 5.1 (Appeal by Permission Under 28 U.S.C. § 636(c)(5)) would govern all discretionary appeals from a district or magistrate judge order, judgment, or decree. In 1992, Congress added subsection (e) to 28 U.S.C. § 1292 giving the Supreme Court power to prescribe rules that "provide for an appeal of an interlocutory decision to the Court of Appeals that is not otherwise provided for" in § 1292. The advisory committee believed the amendment of Rule 5 was desirable because of the possibility of new statutes or rules authorizing discretionary interlocutory appeals, and the desirability of having one rule that governs all such appeals. One possible new application appears contemporaneously in the proposed new Fed. R. Civ. P. 23(f) to allow the interlocutory appeal of a class certification order. Present Rule 5.1 applies only to appeals by leave from a district court's judgment entered after an appeal to the district court from

a magistrate judge's decision. The Federal Courts Improvement Act of 1996 abolished all appeals by permission that were covered by this rule, making Rule 5.1 obsolete.

The proposed amendments to Rule 22 (Habeas Corpus and Section 2255 Proceedings) conform to recent legislation. First, the rule is made applicable to 28 U.S.C. § 2255 proceedings. This brings the rule into conformity with 28 U.S.C. § 2253 as amended by the Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132. Second, the amended rule states that a certificate of appealability may be issued by a "circuit justice or a circuit or district judge." Amended § 2253 requires a certificate of appealability issued by a "circuit justice or judge" in order to bring an appeal from denial of an application for the writ. The proposed amendment removes the ambiguity created by the statute and is consistent with the decisions in all circuits that have addressed the issue.

The proposed amendment of Rule 26.1 (Corporate Disclosure Statement) would eliminate the requirement that corporate subsidiaries and affiliates be listed in a corporate disclosure statement. Instead, the rule requires that a corporate party disclose all of its parent corporations and any publicly held company owning ten percent or more of its stock. The changes eliminate the ambiguity inherent in the word "affiliates" and identify all of those entities which might possibly result in a judge's recusal. The revised rule was submitted to the Committee on Codes of Conduct, which found it to be satisfactory in its revised form.

The proposed amendment of Rule 27 (Motions) would treat comprehensively, for the first time, motion practice in the courts of appeals. The rule is entirely rewritten to provide that any legal argument necessary to support a motion must be contained in the motion itself, not in a separate brief. It expands the time for responding to a motion from seven to ten days and permits a reply to a response—without prohibiting the court from shortening the time requirements or

deciding a motion before receiving a reply. It establishes length limitations for motions and responses, and states that a motion will be decided without oral argument unless the court orders otherwise.

The proposed amendment of Rule 28 (Briefs) is necessary to conform it to the proposed amendments to Rule 32. Page limitations for a brief are deleted from Rule 28(g), because they are treated in Rule 32.

Rule 29 (Brief of an Amicus Curiae) would be amended to establish limitations on the length of an amicus curiae brief. It adds the District of Columbia to those governments that may file without consent of the parties or leave of court. The amended rule generally makes the form and timing requirements more specific, and states that the amicus curiae may participate in oral argument only with the court's permission.

Rule 32 (Form of Briefs, Appendices, and Other Papers) would be rewritten comprehensively with a principal aim of curbing cheating on the traditional fifty-page limitation on the length of a principal brief. New computer software programs make it possible to use type styles and sizes, proportional spacing, and sometimes footnotes, to create briefs that comply with a limitation stated in a number of pages, but that contain up to 40% more material than a normal brief and are difficult for judges to read. The rule was amended in several significant ways. A brief may be on "light" paper, not just "white," making it acceptable to file a brief on recycled paper. Provisions for pamphlet-sized briefs and carbon copies have been deleted because of their very infrequent use. The amended rule permits use of either monospaced or proportional typeface. It establishes length limitations of 14,000 words or 1,300 lines of monospaced typeface (which equates roughly to the traditional fifty pages) and requires a certificate of compliance unless the brief utilizes the "safe harbor" limits of thirty pages for a principal brief and fifteen

pages for a reply brief. Requirements are included for double spacing and margins; type faces are to be fourteen-point or larger type if proportionally spaced and limited to 10½ characters per inch if monospaced. Treatment of the appendix is in its own subdivision. A brief that complies with the national rule must be accepted by every court; local rules may not impose form requirements that are not in the national rule. Local rules may, however, move in the other direction; they can authorize noncompliance with certain of the national norms. Thus, for example, a particular court may choose to accept pamphlet briefs or briefs with smaller typeface than those set forth in the national rules.

Rule 35 (En Banc Determination) would be amended to treat a request for rehearing en banc like a petition for panel rehearing, so that a request for rehearing en banc will suspend the finality of the district court's judgment and extend the period for filing a petition for a writ of certiorari. Therefore, a "request" for rehearing en banc is changed to a "petition" for rehearing en banc. The amendments also require each petition for en banc consideration to begin with a statement demonstrating that the cause meets the criteria for en banc consideration. An intercircuit conflict is cited as an example of a proceeding that might involve a question of "exceptional importance"—one of the traditional criteria for granting an en banc hearing.

Rule 41 (Mandate; Contents; Issuance and Effective Date; Stay) would be amended to provide that filing of a petition for rehearing en banc or a motion for stay of mandate pending petition to the Supreme Court for a writ of certiorari both delay the issuance of the mandate until disposition of the petition or motion. The amended rule also makes it clear that a mandate is effective when issued. The presumptive period of a stay of mandate pending petition for a writ of certiorari is extended to ninety days, to accord with the Supreme Court's time period.

Form 4 (Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis) would be substantially revised. The Clerk of the Supreme Court asked the advisory committee to devise a new, more comprehensive form of affidavit in support of an application to proceed in forma pauperis. A single form is used by both the Supreme Court and the courts of appeals. In addition, the Prison Litigation Reform Act of 1996 prescribed new requirements governing in forma pauperis proceedings by prisoners, including requiring submission of an affidavit that includes a statement of all assets the prisoner possesses. Form 4 was amended to require a great deal more information than specified in the current form, including all the information required by the recent enactment.

The Standing Rules Committee concurred with the advisory committee's recommendations. The proposed amendments to the Federal Rules of Appellate Procedure, as recommended by your Committee, are in Appendix A with an excerpt from the advisory committee report.

Recommendation: That the Judicial Conference approve the proposed amendments to Appellate Rules 1-48 and to Form 4 and transmit them to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

Official Bankruptcy Forms Submitted for Approval

The Advisory Committee on Bankruptcy Rules submitted proposed revisions to Official Bankruptcy Forms 1, 3, 6F, 8, 9A-9I, 10, 14, 17, 18, and new Forms 20A and 20B. The proposed revisions mainly clarify or simplify existing forms. Several of the most heavily used forms were redesigned by a graphics expert, and instructions contained in forms often used by petitioners in bankruptcy or creditors were rewritten using plain English.

Official Form 1 (Voluntary Petition) would be amended to simplify the form and make it easier to complete. In particular, the amendments reduce the amount of information requested, add new statistical ranges for reporting assets and liabilities, and delete the request for information regarding the filing of a plan.

Official Form 3 (Application and Order to Pay Filing Fee in Installments) would be amended to include an acknowledgment by the debtor that the case may be dismissed if the debtor fails to pay a filing fee installment. It would also clarify that a debtor is not disqualified under Rule 1006 from paying the fee in installments solely because the debtor paid a bankruptcy petition preparer.

Official Form 6 (Schedule F) would be amended by adding to the schedule (which lists creditors holding an unsecured nonpriority claim) a reference to community liability for claims.

Official Form 8 (Chapter 7 Individual Debtor's Statement of Intention) would be amended to make it more consistent with the language of the Bankruptcy Code. Language would also be deleted from the present form that may imply that a debtor is limited to options contained on the form.

Official Form 9 (Notice of Commencement of Case Under the Bankruptcy Code, Meeting of Creditors and Fixing of Dates) includes eleven alternatives. Each form is designed for a particular type of debtor (individual, partnership, or corporation), the particular chapter of the Bankruptcy Code in which the case is pending, and the nature of the estate (asset or no asset). The forms are used in virtually all bankruptcy cases.

Form 9 and its Alternatives would be expanded to two pages to make them easier to read, and the explanatory material is rewritten in plain English. Several clerks of court expressed concern that the existing forms' instructions were difficult to understand, which resulted in many

questions from the public that consumed considerable staff resources. The advisory committee agreed that the existing instructions were inadequate. At the same time, it recognized that there would be added printing expense incurred in expanding the instructions. The advisory committee believed that better instructions were essential, and the savings realized from the expected reduction in calls to the clerks' offices asking for assistance probably would offset some of the added printing expenses. In addition, the advisory committee noted that the $30 administrative fee assessed against a debtor filing a chapter 7 or chapter 13 bankruptcy case was intended to pay for the cost of noticing. The fee would easily cover the added expense in expanding the form to two pages. On balance, the advisory committee concluded that the benefits to the public substantially outweighed the added expense.

Official Form 10 (Proof of Claim) would be amended to provide instructions and definitions for completing the form. The form also is reformatted to eliminate redundancies in the information request. Creditors are advised not to submit original documents in support of the claim.

Official Form 14 (Ballot for Accepting or Rejecting the Plan) would be amended to simplify its format and make it easier to complete.

Official Form 17 (Notice of Appeal from a Judgment, Order, or Decree of a Bankruptcy Court) would be amended to direct the appellant to provide the addresses and telephone numbers of the attorneys for all parties to the judgment, order, or decree appealed from, as required by Bankruptcy Rule 8001(a). It also informs other parties—in addition to the appellant—that they may elect to have the appeal heard by the district court, rather than by a bankruptcy appellate panel.

Official Form 18 (Discharge of Debtor) would be amended to simplify the form and clarify the effects of a discharge. A comprehensive explanation, in plain English, is added to the back of the form to assist both debtors and creditors to understand bankruptcy discharge.

Official Form 20A (Notice of Motion or Objection) and Form 20B (Notice of Objection to Claim) would be added to provide uniform, simplified explanations on how to respond to motions and/or objections that are frequently filed in a bankruptcy case.

The proposed revisions and additions to the Official Bankruptcy Forms, as recommended by your Committee, are in Appendix B together with an excerpt from the advisory committee's report.

> **Recommendation:** That the Judicial Conference approve the proposed revisions to Official Bankruptcy Forms 1, 3, 6F, 8, 9A-9I, 10, 14, 17, 18, and new Forms 20A and 20B.

Most debtors and creditors participating in bankruptcy rely on the private sector for copies of the Official Forms. There is usually a significant lag time between the promulgation of a form revision and the date when the private sector publishes the revised new forms. In addition, some of the amended forms are notices and orders generated by the courts' automated systems and the Bankruptcy Noticing Center. Court staff and the Noticing Center will need adequate time to implement the revisions to the forms. The advisory committee recommended that a reasonable transition of about five months be authorized during which continued use of superseded forms would be permitted.

> **Recommendation:** That the Judicial Conference promulgate the proposed revisions to the Official Bankruptcy Forms to take effect immediately, but permit the superseded forms to also be used until March 1, 1998.

Rules Approved for Publication and Comment

The Advisory Committee on Bankruptcy Rules submitted to your Committee proposed amendments to Bankruptcy Rules 1017, 1019, 2002, 2003, 3020, 3021, 4001, 4004, 4007, 6004, 6006, 7001, 7004, 7062, 9006, and 9014 and recommended that they be published for public comment.

The proposed amendments to Rule 1017 (Dismissal or Conversion of Case; Suspension) would specify the parties who are entitled to a notice of a United States trustee's motion to dismiss a voluntary chapter 7 or chapter 13 case based on the debtor's failure to file a list of creditors, schedules, or statement of financial affairs. Instead of sending a notice of a hearing in a chapter 7 case to all creditors, as presently required, the notice would only be sent to the debtor, the trustee, and any other person or entity specified by the court.

The proposed amendments to Rule 1019 (Conversion of Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to Chapter 7 Liquidation Case) would: (1) clarify that a motion for an extension of time to file a statement of intention regarding collateral must be filed or made orally before the time specified in the rule expires; (2) provide that the holder of a postpetition, preconversion administrative expense claim is required to file within a specified time period a request for payment under § 503(a) of the Code, rather than a proof of claim under § 501 of the Code or Rules 3001(a)-(d) and 3002; and (3) conform the rule to the 1994 amendments to § 502(b)(9) of the Code and to the 1996 amendments to Rule 3002(c)(1) regarding the 180-day period for filing a claim by a governmental unit.

Rule 2002(a)(4) (Notices to Creditors, Equity Security Holders, United States, and United States Trustee) would be amended to delete the requirement that notice of a hearing on dismissal

of a chapter 7 case based on the debtor's failure to file required lists, schedules, or statements must be sent to all creditors. The amendment conforms with the proposed amendment to Rule 1017, which requires that the notice be sent only to certain parties.

The proposed amendments to Rule 2003 (Meeting of Creditors or Equity Security Holders) would require the United States to mail a copy of the report of a disputed election for a chapter 7 trustee to any party in interest that has requested a copy of it. The amendment gives a party in interest ten days from the filing of the report—rather than from the date of the meeting of creditors—to file a motion to resolve the dispute.

The proposed amendments to Rule 3020(e) (Deposit; Confirmation of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case) would automatically stay for ten days an order confirming a chapter 9 or chapter 11 plan so that parties will have sufficient time to request a stay pending appeal.

Rule 3021 (Distribution under Plan) would be amended to conform to the amendments to Rule 3020 regarding the 10-day stay of an order confirming a plan in a chapter 9 or chapter 11 case.

A new subdivision (a)(3) would be added to Rule 4001 (Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements) that would automatically stay for ten days an order granting relief from an automatic stay so that parties will have sufficient time to request a stay pending appeal.

The proposed amendments to Rule 4004(a) (Grant or Denial of Discharge) would clarify that the deadline for filing a complaint objecting to discharge under § 727(a) of the Code is 60 days after the first date set for the meeting of creditors, whether or not the meeting is actually held on that date. Rule 4004(b) is amended to clarify that a motion for an extension of time for

filing a complaint objecting to a discharge must be filed before the time specified in the rule has expired.

Rule 4007 (Determination of Dischargeability of a Debt) would be amended to clarify that the deadline for filing a complaint to determine dischargeability of a debt under § 523(c) of the Code is 60 days after the first date set for the meeting of creditors, whether or not the meeting is actually held on that date. The rule is also amended to clarify that a motion for an extension of time for filing a complaint must be filed before the time specified in the rule has expired.

Rule 6004(g) (Use, Sale, or Lease of Property) is added to automatically stay for ten days an order authorizing the use, sale, or lease of property, other than cash collateral, so that parties will have sufficient time to request a stay pending appeal.

A new subdivision (d) would be added to Rule 6006 (Assumption, Rejection and Assignment of Executory Contracts and Unexpired Leases) that would automatically stay for ten days an order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) of the Code so that a party will have sufficient time to request a stay pending appeal.

The proposed amendments to Rule 7001 (Scope of Rules of Part VII) would recognize that an adversary proceeding is not necessary to obtain injunctive relief when the relief is provided for in a chapter 9, chapter 11, chapter 12, or chapter 13 plan.

The proposed amendments to Rule 7004(e) (Process; Service of Summons, Complaint) would provide that the 10-day time limit for service of a summons does not apply if the summons is served in a foreign country.

The proposed amendments to Rule 7062 (Stay of Proceedings to Enforce a Judgment) would delete the references to the additional exceptions to Rule 62(a) of the Federal Rules of Civil Procedure. The deletion of these exceptions, which are orders in a contested matter rather

than in an adversary proceeding, is consistent with amendments to Rule 9014 that render Rule 7062 inapplicable to a contested matter.

Rule 9006(c)(2) (Time) would be amended to prohibit the reduction of time fixed under Rule 1019(6) for filing a request for payment of an administrative expense incurred after the commencement of a case and before conversion of the case under chapter 7.

Rule 9014 (Contested Matters) would be amended to delete the reference to Rule 7062 from the list of Part VII rules that automatically apply in a contested matter.

The Committee voted to circulate the proposed amendments to the bench and bar for comment.

AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Civil Rules submitted proposed amendments to Rule 23(c)(1) and Rule 23(f) on class actions, together with Committee Notes explaining their purpose and intent. The proposed amendments were part of a larger package of proposed revisions to Rule 23 circulated to the bench and bar for comment in August 1996. Public hearings on the proposed amendments were held in Philadelphia, Dallas, and San Francisco. The Standing Rules Committee approved new subdivision (f), but recommitted the proposed amendments to (c)(1) to the advisory committee.

The advisory committee's work on these proposed amendments began in 1991, when it was asked by the Judicial Conference to act on the recommendation of the Ad Hoc Committee on Asbestos Litigation to study whether Rule 23 should be amended to facilitate mass tort litigation. To understand the full scope and depth of the problems, the advisory committee sponsored or participated in a series of major conferences at the University of Pennsylvania, New York

University, Southern Methodist University, and the University of Alabama, as well as studied the issues at regularly scheduled meetings elsewhere. During these conferences, the advisory committee heard from experienced practitioners, judges, academics, and others. To shore up the minimal empirical data on current class action practices, the Federal Judicial Center, at the request of the advisory committee, completed a study of the use of class actions terminated within a two-year period in four large districts.

In the course of its six-year study, the advisory committee considered a wide array of procedural changes, including proposals to consolidate (b)(1), (b)(2), and (b)(3) class actions, to add opt-in and opt-out flexibility, to enhance notice, to define the fiduciary responsibility of class representativeness and counsel, and to regulate attorney fees. In the end, with the intent of stepping cautiously, the committee opted for what it believed were five modest changes which were published for comment in August 1996.

During the six-month commentary period, the advisory committee received hundreds of pages of written comments and testimony from some 90 witnesses at the public hearings. Comments and testimony were received from the entire spectrum of experienced users of Rule 23, including plaintiffs' class action lawyers, plaintiffs' lawyers who prefer not to use the class action device, defendants' lawyers, corporate counsel, judges, academics, journalists, and litigants who had been class members. The work of the advisory committee and the information considered by it, including all the written statements and comments and transcripts of witnesses' testimony, filled a four-volume, 3,000 page compendium of the committee's working papers published in May 1997.

Although five general changes were published for comment, the advisory committee decided to proceed with only the proposed amendments to Rule 23(c)(1) and (f) at this time. The

change to Rule 23(c)(1) would clarify the timing of the court's certification decision to reflect present practice. New subdivision (f) would authorize a permissive interlocutory appeal, in the sole discretion of the court of appeals, from an order granting or denying class certification. The remaining proposed changes either were abandoned or deferred by the advisory committee after further reflection, or set aside in anticipation of the Supreme Court's decision in *Amchem Products, Inc. v. Windsor*, No. 96-270 (decided June 25, 1997) — a Third Circuit case holding invalid a settlement of a class action that potentially consisted of tens of thousands of asbestos claimants. The advisory committee carefully considered whether to delay proceeding on the proposed amendments to Rule 23 (c)(1) and (f) and wait until action on the remaining proposed amendments to Rule 23 was completed. But it concluded unanimously that the changes to (c)(1) and (f) were important and distinct from the remaining proposed changes and needed to be acted on expeditiously. In particular, the proposed change to Rule 23(f) could have immediate and substantial beneficial impact on class action practice.

New subdivision (f) would create an opportunity for interlocutory appeal from an order granting or denying class action certification. The decision whether to permit appeal is in the sole discretion of the court of appeals. Application for appeal must be made within ten days after entry of the order. District court proceedings would be stayed only if the district judge or the court of appeals ordered a stay. Authority to adopt an interlocutory appeal provision was conferred by 28 U.S.C. § 1292(e).

The advisory committee concluded that the class action certification decision warranted special interlocutory appeal treatment. A certification decision is often decisive as a practical matter. Denial of certification can toll the death knell in actions that seek to vindicate large numbers of individual claims. Alternatively, certification can exert enormous pressure to settle.

Because of the difficulties and uncertainties that attend some certification decisions—those that do not fall within the boundaries of well-established practice—the need for immediate appellate review may be greater than the need for appellate review of many routine civil judgments. Under present appeal statutes, however, it is difficult to win interlocutory review of orders granting or denying certification that present important and difficult issues. Many such orders fail to win district court certification for interlocutory appeal under 28 U.S.C. § 1292(b), in part because some courts take strict views of the requirements for certification. Resort has been had to mandamus, with some success, but review may strain ordinary mandamus principles.

The lack of ready appellate review has made it difficult to develop a body of uniform national class-action principles. Many commentators and witnesses advised the advisory committee that district courts often give different answers to important class-action questions, and that these differences encourage forum shopping. The commentators and witnesses who testified on proposed Rule 23(f) provided strong, although not universal, support for its adoption.

The main ground for opposing the proposed amendment was that applications for permission to appeal would become a routine strategy of defendants to increase cost and delay. The advisory committee recognized that there might be strong temptations to seek permission to appeal, particularly during the early days of Rule 23(f). It hoped that lawyers would soon recognize that appeal would be granted only in cases that present truly important and difficult issues, and that the potential for many ill-founded appeal petitions would quickly dissipate. In any event, it relied on the advice of many circuit judges that applications for permission to appeal under 28 U.S.C. § 1292(b) are quickly processed, adding little to the costs and delay experienced by the parties and trial courts, and imposing little burden on the courts of appeals. The committee was confident that, as with § 1292(b) appeals, Rule 23(f) petitions would be quickly

resolved on motion. The advisory committee concluded that the benefits of the proposal greatly outweighed the small additional workload burden.

The Standing Rules Committee concurred with the advisory committee's recommendation to add a new Rule 23(f). The proposed amendments to the Federal Rules of Civil Procedure, as recommended by your Committee, are in Appendix C with an excerpt from the advisory committee report.

> **Recommendation:** That the Judicial Conference approve the proposed new Civil Rule 23(f) and transmit it to the Supreme Court for its consideration with the recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

In many class action cases, the decision to certify is the single most important judicial event, which often sets into motion a series of actions inexorably leading to settlement. The advisory committee heard much testimony about the intense pressure placed on the defendant to settle once a class action had been certified, rather than risk any chance of losing. The proposed amendment of Rule 23(c)(1) would amend the requirement that the class action certification determination be made "as soon as practicable." The advisory committee's proposed change to "when practicable" was designed to confirm present practice, which permits a ruling on a motion to dismiss or for summary judgment before addressing certification questions.

The Standing Rules Committee recognized that in most class action cases a judge needs sufficient information, which often requires adequate time for discovery, before making the critical class action certification decision. But concern was expressed that a delay in the certification decision might as a practical matter eliminate any real relief to some injured parties under certain circumstances, particularly when their claims may become moot if not acted on expeditiously. In addition, the advisory committee continues to study proposed revisions to other parts of the rule and could further consider the change to (c)(1) at the same time. Accordingly,

your Committee voted to recommit the proposed amendments to Rule 23(c)(1) to the advisory committee for further consideration.

Scope and Nature of Discovery

With the goal of reducing cost and delay in litigation, the advisory committee has embarked on a major review of the general scope and nature of discovery. As part of this overall discovery project, the advisory committee will address the discovery-related recommendations contained in the Judicial Conference's report to Congress on RAND's Civil Justice Reform Act study, including the need to revisit the "opt-in" "opt-out" mandatory disclosure provisions.

A subcommittee was appointed to explore discovery issues. It convened a conference of about 30 prominent attorneys and academics to discuss discovery problems. Building on that meeting, the advisory committee, along with the Boston College School of Law, is sponsoring a symposium on discovery in September 1997. Academics will present papers that will later be published by the school's law review. Several panels of experienced practitioners and judges will also address distinct discovery issues at the conference. The advisory committee plans to meet in October to decide which specific discovery issues discussed at the symposium it will pursue.

AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCEDURE

Rules Recommended for Approval and Transmission

The Advisory Committee on Criminal Rules submitted proposed amendments to Federal Rules of Criminal Procedure 5.1, 26.2, 31, 33, 35, and 43 together with Committee Notes explaining their purpose and intent. The proposed amendments had been circulated to the bench and bar for comment in August 1996. A public hearing was scheduled for Oakland, California, but no witnesses requested to testify.

The proposed amendments to Rule 5.1 (Preliminary Examination) would require production of a witness statement after the witness has testified at a preliminary examination hearing. The proposal is similar to current provisions in other rules that require production of a witness statement at other pretrial proceedings.

Rule 26.2 (Production of Witness Statements) would be amended to include a cross-reference to the proposed amendment to Rule 5.1, extending the requirement to produce a witness statement to a preliminary examination.

The proposed amendment to Rule 31 (Verdict) would require individual polling of jurors when polling occurs after the verdict, either at a party's request or on the court's own motion. The amendment confirms the existing practice of most courts.

Rule 33 (New Trial) would be amended to require that a motion for a new trial based on newly discovered evidence be filed within three years after the date of the "verdict or finding of guilty." The current rule uses "final judgment" as the triggering event, but courts have reached different conclusions on when a final judgment is entered. As a result of the disparate practices, the time to file the motion has varied among the districts. The published version of the proposed amendment fixed a clear starting point to begin the time period and set two years as the outside limit. The advisory committee was persuaded by the public comment, however, that an additional year was necessary. Defense attorneys often concentrate their available time and resources prosecuting an appeal immediately after the verdict or finding of guilty and only begin considering filing a motion for a new trial when they have completed the appeal.

Rule 35 (Correction or Reduction of Sentence) would be amended to permit a court to aggregate a defendant's assistance in the prosecution or investigation of another offense rendered

before and after sentencing in determining whether a defendant's assistance is "substantial" as required under Rule 35(b). The proposed amendment is intended to recognize a defendant's significant assistance rendered before and after sentencing, either of which viewed alone would be insufficient to meet the "substantial" level.

The proposed amendment to Rule 43 (Presence of the Defendant) would clarify that a defendant need not be present: (1) at a Rule 35(b) reduction of sentence proceeding for substantial assistance rendered by the defendant; (2) at a Rule 35(c) correction of sentence proceeding for a technical, arithmetical, or other clear error; or (3) at a 18 U.S.C. § 3582(c) resentencing modifying an imposed term of imprisonment. In virtually all these proceedings, the modification of a sentence can only inure to the benefit of the defendant, and the defendant's attendance is not necessary. The court does, however, retain the power to require or permit a defendant to attend any of these proceedings in its discretion. A defendant's presence would still be required at a resentencing to correct an invalid sentence following a remand under Rule 35(a).

The Standing Rules Committee concurred with the advisory committee's recommendations. The proposed amendments to the Federal Rules of Criminal Procedure, as recommended by your Committee, are in Appendix D with an excerpt from the advisory committee report.

> **Recommendation:** That the Judicial Conference approve the proposed amendments to Criminal Rules 5.1, 26.2, 31, 33, 35, and 43 and transmit them to the Supreme Court for its consideration with the recommendation that they be adopted by the Court and transmitted to Congress in accordance with the law.

Rules Approved for Publication and Comment

The Advisory Committee on Criminal Rules submitted proposed amendments to Criminal Rules 6, 11, 24, 30, and 54, abrogation of Rules 7(c)(2), 31(e), 32(d)(2), and 38(e), and a new Rule 32.2 with a recommendation that they be published for public comment.

Rule 6 (The Grand Jury) would be amended to permit the grand jury foreperson or deputy foreperson to return an indictment in open court without requiring the presence of the entire grand jury as mandated under present procedures. The amendment would be particularly helpful when the grand jury meets in places other than in the courthouse and needs to be transported to discharge a ministerial function. The second proposed amendment would allow the presence of an interpreter who is necessary to assist a juror in taking part in the grand jury deliberations. The advisory committee recommended that the exception be limited solely to interpreters assisting the hearing impaired. But the Standing Rules Committee concluded that it would be more helpful to obtain public comment on an expanded exception to the rule that would allow any interpreter found to be necessary to assist a grand juror.

The proposed amendment of Rule 11 (Pleas) would require the court to determine whether the defendant understands any provision in a plea agreement that waives the right to appeal or to collaterally attack the sentence. The advisory committee first considered the proposed amendment at the request of the Committee on Criminal Law. The amendment also conforms Rule 11 to current practices under sentencing guidelines and makes it clear that a plea agreement may include an agreement as to a sentencing range, sentencing guideline, sentencing factor, or policy statement. It also distinguishes plea agreements made under Rule 11(e)(1)(B), which are not binding on the court, and agreements under Rule 11(e)(1)(C), which are binding.

Rule 24 (Alternate Jurors) would permit the court to retain alternate jurors during the deliberations if any other regular juror becomes incapacitated. The alternate jurors would remain insulated from the other jurors until required to replace a regular juror. The option would be particularly helpful in an extended trial when two or more original jurors could not participate in the deliberations because otherwise a new trial would be required.

The proposed amendments to Rule 30 (Instructions) would permit a court to require or permit the parties to file any requests for instructions before trial. Under the present rule, a court may direct the parties to file the requests only during trial or at the close of the evidence.

New Rule 32.2 (Forfeiture Procedures) consolidates several procedural rules governing the forfeiture of assets in a criminal case, including existing Rules 7(c)(2), 31(e), 32(d)(2), and 38(e). In *Libretti v. United States*, 116 S. Ct. 356 (1995), the Supreme Court held that criminal forfeiture constitutes an aspect of the sentence imposed in a criminal case, and that the defendant has no constitutional right to have the jury determine any part of the forfeiture. The proposed amendment was originally suggested by the Department of Justice and sets up a bifurcated post-guilt adjudication forfeiture procedure. At the first proceeding, the court determines what property is subject to forfeiture. At the second, the court rules on any petition filed by a third party claiming an interest in the forfeitable property and otherwise conducts ancillary proceedings. Parties are permitted to conduct discovery in accordance with the Federal Rules of Civil Procedure to the extent determined necessary by the court.

A technical amendment is proposed to Rule 54 removing the reference to the court in the Canal Zone, which no longer exists.

The Committee voted to circulate the proposed amendments to the bench and bar for comment.

Informational Items

The Standing Committee voted to reject the recommendation of the advisory committee to seek legislation amending 18 U.S.C. § 3060 to permit a magistrate judge to conduct a preliminary examination over the defendant's objection. Criminal Rule 5(c) tracks the statutory provision, and it would also need to be amended to conform to a statutory change. At the request

of the Committee, the Committee on the Administration of the Magistrate Judges System was asked to review the advisory committee's recommendation. It agreed with the substance of the proposal and endorsed the necessary legislative and rule changes. Your Committee concluded that the proposed change should be recommitted to the advisory committee to consider action under the rulemaking process. A parallel statutory change could be pursued at the appropriate time.

A bill was introduced in the House of Representatives (H.R. 1536) that would amend 18 U.S.C. § 3321 and reduce the number of grand jurors from a range of 16-23 to 9-13, with 7 jurors instead of 12 jurors necessary to concur in an indictment. Criminal Rule 6 tracks the language of the current statutory provision. The Advisory Committee on Criminal Rules has placed the matter on the agenda of its next meeting in October 1997, which is consistent with the recommendations of the Committee on Court Administration and Case Management and the Committee on Criminal Law.

AMENDMENTS TO THE FEDERAL RULES OF EVIDENCE

Rules Recommended for Approval and Transmission

The Advisory Committee on Evidence Rules submitted proposed amendments to Federal Rules of Evidence 615 (Exclusion of Witnesses). The amendment would expand the list of witnesses who may not be excluded from attending a trial to include any victim as defined in the Victim's Rights and Restitution Act of 1990 and the Victim Rights Clarification Act of 1997. The amendment is intended to conform to the two Acts. These laws provide that: (1) a victim-witness is entitled to attend the trial unless the witness' testimony would be materially affected by the testimony at trial; and (2) a victim-witness who may testify at a later sentencing proceeding cannot be excluded from the trial for that reason.

The advisory committee's proposed amendment was limited to witnesses specifically defined by the two victim rights' statutes. The Standing Rules Committee concluded that a more expansive amendment was preferable to account for any other existing or future statutory exception. It revised the proposed amendment to extend to any "person authorized by statute to be present." The Committee also agreed with the request to forward the proposed amendments directly to the Judicial Conference without publishing them for public comment. Under the governing, *Procedures for the Conduct of Business by the Judicial Conference Committees on Rules of Practice and Procedure* the "Standing Committee may eliminate the public notice and comment requirement if, in the case of a technical or conforming amendment, it determines that notice and comment are not appropriate or necessary." The Standing Rules Committee determined that the proposed amendment, as revised, was a conforming amendment.

The proposed amendment to the Federal Rules of Evidence, as recommended by your Committee, appears in Appendix E together with an excerpt from the advisory committee report.

> **Recommendation:** That the Judicial Conference approve the proposed amendment to Evidence Rule 615 and transmit it to the Supreme Court for its consideration with the recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

Informational Items

The Standing Rules Committee recommitted to the advisory committee for further study proposed amendments to Evidence Rule 103 (Rulings on Evidence) that would add a new subdivision governing *in limine* practice. The present rules do not address *in limine* practice, and this has resulted in some conflict in the courts and confusion in the practicing bar. Proposed amendments to Evidence Rule 103 were published for comment in 1995, but were eventually withdrawn. Although generally inclined to publish for comment another proposed *in limine* rule,

several members of the Standing Rules Committee expressed concern regarding certain technical issues that they believed needed first to be addressed by the advisory committee. The Committee agreed that further study by the advisory committee would be helpful before publishing another proposed change to Rule 103.

The advisory committee has refrained from considering amending Evidence Rule 702 to account for the Supreme Court's decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and later decisions generated by it, until a time when the district courts and courts of appeals have had an opportunity to explore some of the decision's far-reaching implications. Several years have now passed. *Daubert* case law has rapidly developed and involves many areas not considered nor in issue in the 1993 case. The advisory committee has concluded that the time is now right for a review of Evidence Rules 702 and 703 and has placed the matter on its agenda for its October meeting. In addition, both the Senate and the House of Representatives are considering bills to codify the Court's decision.

RULES GOVERNING ATTORNEY CONDUCT

A study by the Committee's reporter of appellate and bankruptcy cases involving rules of attorney conduct and a Federal Judicial Center empirical study on rules governing attorney conduct have now been completed. The Committee was also advised of the current status of meetings between the Department of Justice and the Conference of Chief Justices on contacting represented parties. The Committee's reporter was asked to prepare some specific proposals for the Committee's consideration at its next meeting in January.

UNIFORM NUMBERING SYSTEM FOR LOCAL RULES OF COURT

Amendments to the Federal Rules of Practice and Procedure took effect on December 1, 1995, which required that all local rules of court "must conform to any uniform numbering

system prescribed by the Judicial Conference." In March 1996, the Conference prescribed a numbering system for local rules of court to implement the 1995 rules amendments. The Conference set April 15, 1997, as the effective date of compliance with the uniform numbering system so that courts would have sufficient time to make necessary changes to their local rules.

Slightly less than half of the courts were able to renumber their local rules by April 15, 1997. Several additional courts completed their renumbering before the Standing Rules Committee met in June. Other courts have advised the Committee that they are nearing completion of their local rules renumbering. The Committee continues to encourage those courts that have not yet adopted a uniform numbering system to renumber their local rules. The Committee finds promising the recent increase in the number of courts adopting a uniform numbering system, and it will continue to offer to help the courts that are in the process of renumbering their local rules.

LONG RANGE PLANNING

The chairs of the Standing Rules Committee and the Advisory Committee on Civil Rules participated in the May 15, 1997, meeting of the Judicial Conference committee liaisons on the judiciary's *Long Range Plan.* During the discussion on mass torts, the advisory committee chair described the extensive work of the Advisory Committee on Civil Rules on the study of mass torts in the context of class actions during the past six years. As previously noted, the advisory committee garnered substantial information and data on class action and mass torts practice, which were compiled into a four-volume compendium of working papers. The rules committee chairs favored the consensus of the liaisons that the individual Conference committees should continue to coordinate their respective work with the other committees involved in the study of mass tort litigation.

LOCAL RULES AND OFFICIAL BANKRUPTCY FORMS ON INTERNET

The Committee was advised of ongoing efforts in the Administrative Office to place local rules of court and Official Bankruptcy Forms on the Internet. Rather than furnishing paper copies of local rules of court and any amendments to the Administrative Office—as presently required by 28 U.S.C.§ 2071(d)—courts could fulfill this statutory responsibility by placing and updating their local rules directly on the Internet. It is expected that Internet access to the rules would benefit lawyers researching local practices and relieve the clerks' offices of some of their burden in providing copies of local rules and otherwise responding to inquiries regarding them. Access to Official Bankruptcy Forms would benefit practitioners and pro se claimants in bankruptcy. Paper copies of most of these forms are not available from the courts, but must be obtained from private sector sources. The advantages of having public access to the forms on the Internet are clear.

REPORT TO THE CHIEF JUSTICE

In accordance with the standing request of the Chief Justice, a summary of issues concerning select new amendments and proposed amendments generating controversy is set forth in Appendix F.

STATUS OF PROPOSED AMENDMENTS

A chart prepared by the Administrative Office (reduced print) is attached as Appendix G, which shows the status of the proposed amendments to the rules.

Respectfully submitted,

Alicemarie H. Stotler
Chair

Frank W. Bullock, Jr.	Alan W. Perry
Frank H. Easterbrook	Sol Schreiber
Seth P. Waxman	Morey L. Sear
Geoffrey C. Hazard, Jr.	James A. Parker
Phyllis A. Kravitch	E. Norman Veasey
Gene W. Lafitte	William R. Wilson, Jr.

APPENDICES

Appendix A —	Proposed Amendments to the Federal Rules of Appellate Procedure
Appendix B —	Proposed Amendments to the Federal Rules of Bankruptcy Procedure
Appendix C —	Proposed Amendments to the Federal Rules of Civil Procedure
Appendix D —	Proposed Amendments to the Federal Rules of Criminal Procedure
Appendix E —	Proposed Amendments to the Federal Rules of Evidence
Appendix F —	Report to the Chief Justice on Proposed Select New Rules or Rules Amendments Generating Controversy
Appendix G —	Chart Summarizing Status of Rules Amendments

PROPOSED SELECT NEW RULES OR RULES AMENDMENTS GENERATING SUBSTANTIAL CONTROVERSY

The following summary outlines considerations underlying the recommendations of the advisory rules committees and the Standing Rules Committee on certain new rules or controversial rules amendments. A fuller explanation of the committees' considerations was submitted to the Judicial Conference and is sent together with this report.

Federal Rules of Appellate Procedure

The proposed style revision of the Appellate Rules is intended to improve the rules' clarity, consistency, and readability. The advisory rules committee identified and eliminated ambiguities and inconsistencies that inevitably had crept into the rules since their enactment in 1976. The style changes are designed to be nonsubstantive, unless otherwise specified and except with respect to several rules that were under study when the style project commenced. Virtually all comments from the bench, bar, and law professors on the stylized rules were favorable.

The style revision has taken up most of the advisory committee's work during the past four years. The revision of the appellate rules completes the first step of a long-term plan to re-examine all the procedural rules. The rules committees do not, however, plan to revise the Evidence Rules for style purposes because of the disruptive effect it would have on trial practice. Judges and lawyers are familiar with, and rely heavily on, the current text and numbers of the Evidence Rules during trial proceedings. The style project was launched originally by Judge Robert E. Keeton, former chairman of the Standing Rules Committee, and Professor Charles Alan Wright, the first chairman of the Style Subcommittee. The consultant enlisted by them created *Guidelines for Drafting and Editing Court Rules*, which provides a uniform set of conventions for all future writing.

Two style changes are brought to the attention of the Court — the use of "en banc" instead of "in banc" and the use of "must" in place of "shall." Like several other style changes made in the rules, these two changes represent the consensus of the rules committees on a style issue that required a decision that would be adhered to uniformly throughout the rules for purposes of consistency. The committee recognizes room for differences of opinion and does not want the restylization work to be rejected due to the adoption of either usage.

Two other rules, published and commented on for revision other than style, drew notable comment. Rule 32 is of interest because it incorporates generally the acceptability of computerized word-processing programs that assist the bench and bar in determining the proper length of briefs and size of typeface for text. The proposed amendments addressed concerns expressed by many commentators that were aimed at earlier drafts of the rule. As revised in light of these comments, the amended rule was well received by the bench and bar. Rule 35 was rewritten after careful deliberations with representatives of the Department of Justice as well as careful attention to other

proposed word choices, to the extent of setting aside preferred style conventions, in order to improve the rule.

I. Use of "en banc" instead of "in banc"

A. Brief Description

The proposed amendment to Rule 35 substitutes the word "en banc" for "in banc."

B. Arguments in Favor

- "En banc" is the common usage and is overwhelmingly favored by the courts. More than 40,000 published opinions in circuit cases referred to "en banc" and just under 5,000 opinions used the term "in banc." A similar pattern was evidenced in Supreme Court opinions, with 950 opinions using "en banc" while only 46 opinions used "in banc." The Supreme Court rules refer to "en banc."

- "En banc" was used by Congress in a statute when authorizing a court of appeals having more than fifteen judges to perform its "en banc" functions. Act of Oct. 20, 1978, Pub. L. No. 95-486.

C. Objections

- 28 U.S.C. § 46(c) sets out the requirements for an "en banc" proceeding and uses the term "in banc."

D. Rules Committees' Consideration

Both the advisory rules committee and the Standing Rules Committee decided that the most commonly used spelling should be followed in the stylized rules. No objection from any committee member was expressed to the proposed use of "en banc."

II. Use of "must" instead of "shall"

A. Brief Description

The word "must" is used throughout the stylized rules whenever "is required to" is intended, instead of using the more traditional "shall."

B. Arguments in Favor

- The meaning of "must" is clear in all contexts.
- The meaning of the word "shall" is ambiguous and changes depending on the context of the sentence in which it is used. In fact, the word "shall" can shift its meaning even in midsentence. It has as many as eight senses in drafted documents. It is also commonly used as a future tense modal verb, which is inconsistent with present-tense drafting.

C. Objections

- The sound of "must" is jarring in many sentences. Statutes and current rules commonly use "shall."

D. Rules Committees' Consideration

Both the advisory rules committee and the Standing Rules Committee initially expressed skepticism about the use of "must" instead of "shall." But on careful consideration, both committees agreed that the use of "shall" has generated much unwarranted satellite litigation over its meaning. Case law is replete with examples of courts and litigants attempting to discern its precise meaning in various contexts. "Must" has the virtue of universal and uniform meaning. Both committees are sensitive to concerns over piecemeal stylistic changes and adopted the convention of using "must" in every instance that "is required to" is intended in the rules.

Federal Rules of Civil Procedure

I. Rule 23(f) (Interlocutory Appeal of Class Action Certification)

A. Brief Description

A new subdivision (f) would permit an interlocutory appeal from an order granting or denying class action certification in the sole discretion of the court of appeals. District court proceedings would be stayed only if the district judge or the court of appeals ordered a stay.

B. Arguments in Favor

- The proposed amendment would facilitate the establishment of a body of uniform class-action certification principles.

- Denial of certification can toll the death knell in actions that seek to vindicate large numbers of individual claims. A grant of certification can exert a reverse death knell, creating enormous pressure to settle that is often decisive as a practical matter. The need for immediate appellate review may be greater than the need for appellate review of many routine final civil judgments.

- Final judgment appeal, review on preliminary injunction appeal, certification for permissive appeal under § 1292(b), and mandamus together often fail to provide effective review. One response has been to strain ordinary mandamus principles.

- The committee was confident that, as with § 1292(b) appeals, the courts of appeal would act quickly and at a low cost in determining whether to grant permission to appeal. Significant costs would be incurred only in cases presenting such pressing issues as to warrant permission to appeal. In addition, the committee believed that although requests for interlocutory appeal may initially be frequent, that number would fall as the bar acquired experience with the rule and the appellate courts' responses to such requests.

- The committee also noted that a similar proposal had been introduced in Congress.

C. Objections

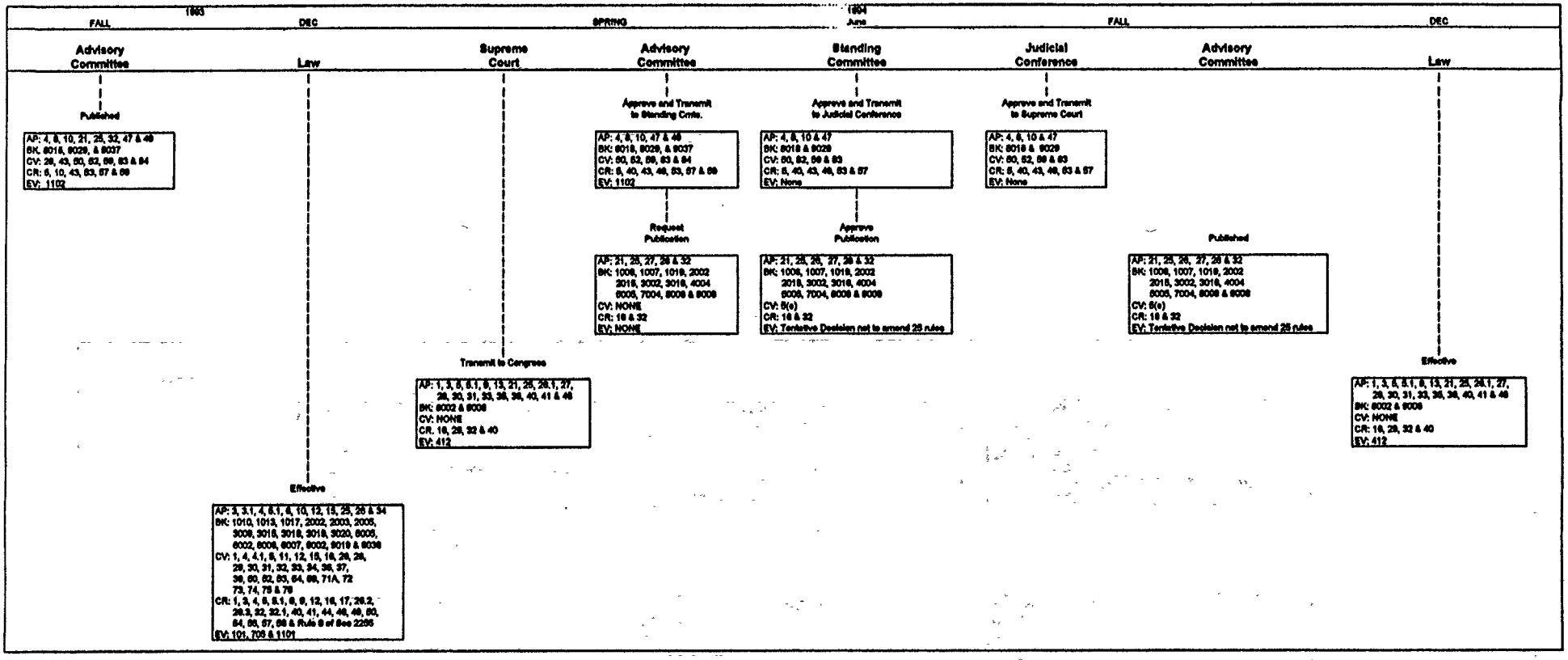
- Applications for permission to appeal would become a routine strategy to increase costs and delay.

- The proposed amendment would add hundreds, maybe thousands, of motions to the already overburdened workloads of the courts of appeals.

D. Rules Committees Consideration

Both committees agreed that the benefits of the proposed amendment greatly outweigh the predictably lesser disadvantages.

PROMULGATION OF RULES AMENDMENTS



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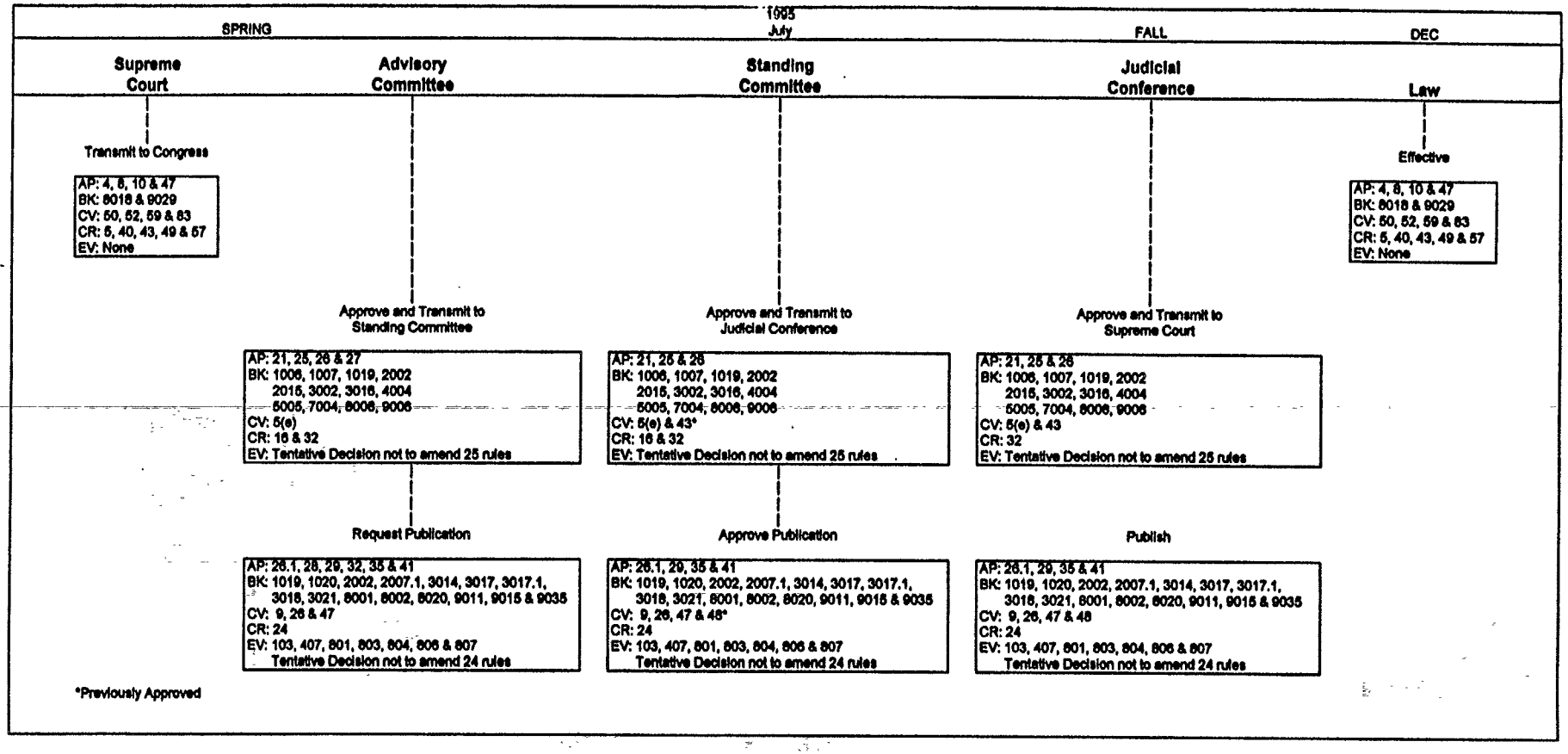

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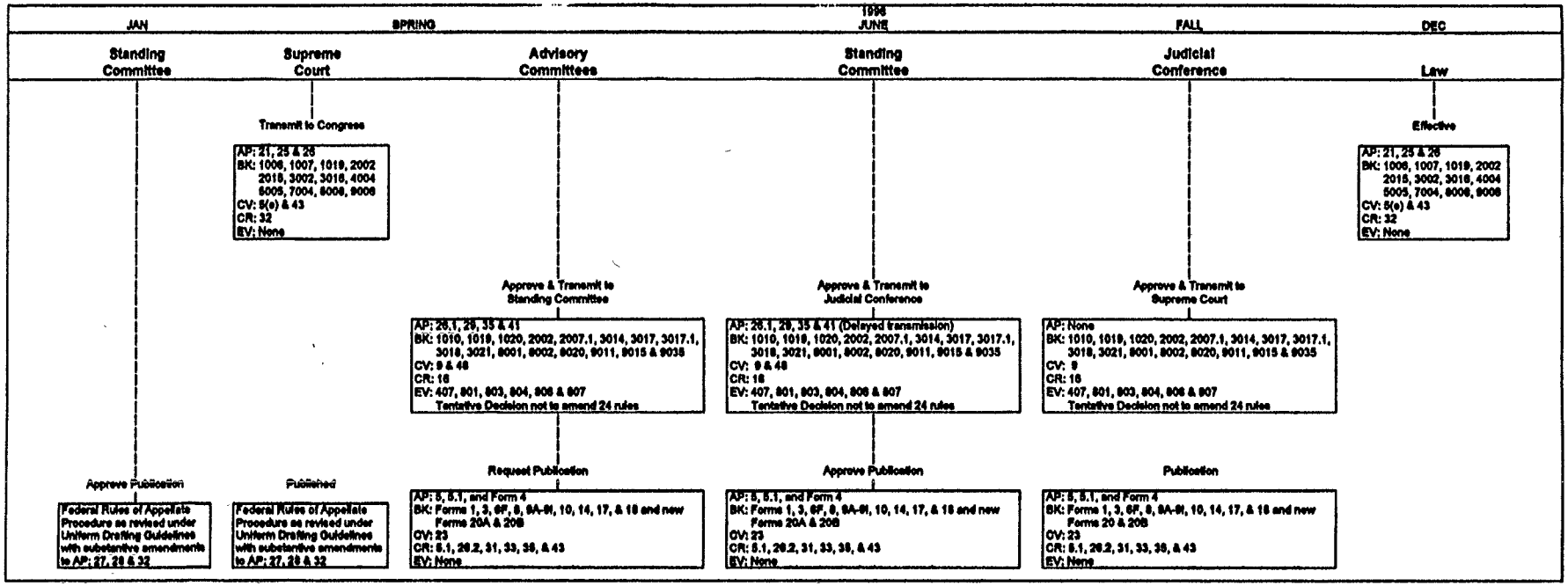

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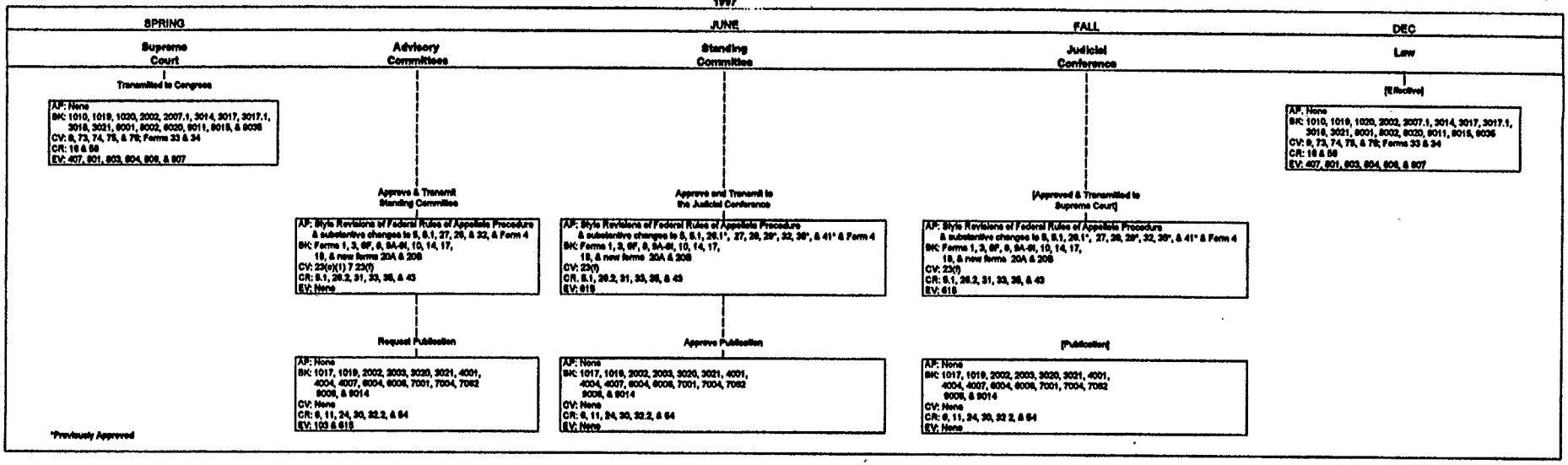

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
Draft Minutes of the Meeting of June 19-20, 1997
Washington, D.C.

The mid-year meeting of the Judicial Conference Committee on Rules of Practice and Procedure was held in Washington, D.C. on Thursday and Friday, June 19-20, 1997. The following members were present:

Judge Alicemarie H. Stotler, Chair
Judge Frank W. Bullock, Jr.
Judge Frank H. Easterbrook
Professor Geoffrey C. Hazard, Jr.
Judge Phyllis A. Kravitch
Gene W. Lafitte, Esquire
Judge James A. Parker
Alan W. Perry, Esquire
Sol Schreiber, Esquire
Judge Morey L. Sear
Chief Justice E. Norman Veasey
Acting Deputy Attorney General Seth P. Waxman
Judge William R. Wilson

Alan C. Sundberg, Esquire was unable to be present. Mr. Waxman was able to attend the meeting only on June 19. Ian H. Gershengorn, Esquire and Roger A. Pauley, Esquire represented the Department of Justice on June 20.

Supporting the committee were: Professor Daniel R. Coquillette, reporter to the committee; Peter G. McCabe, secretary to the committee; John K. Rabiej, chief of the Rules Committee Support Office of the Administrative Office of the United States Courts: Mark D. Shapiro, senior attorney in that office: and Patricia S. Channon, senior attorney in the Bankruptcy Judges Division of the Administrative Office.

Representing the advisory committees at the meeting were:

Advisory Committee on Appellate Rules -
Judge James K. Logan, Chair
Professor Carol Ann Mooney, Reporter
Advisory Committee on Bankruptcy Rules -
Judge Adrian G. Duplantier, Chair
Professor Alan N. Resnick, Reporter
Advisory Committee on Civil Rules
Judge Paul V. Niemeyer, Chair
Professor Edward H. Cooper, Reporter

Advisory Committee on Criminal Rules
Judge D. Lowell Jensen, Chair
Professor David A. Schlueter, Reporter
Advisory Committee on Evidence Rules
Professor Daniel J. Capra, Reporter

Also participating in the meeting were: Joseph F. Spaniol, Jr. and Bryan A. Garner, consultants to the committee; Mary P. Squiers, project director of the local rules project; and James B. Eaglin, acting director of the Research Division of the Federal Judicial Center.

INTRODUCTORY REMARKS

Judge Stotler reported that the Judicial Conference had submitted its final report to the Congress on the Civil Justice Reform Act. She stated that the committee at its January 1997 meeting had been presented with a proposed draft of the Conference's report, prepared by a subcommittee of the Court Administration and Case Management Committee (CACM). The members had expressed a number of serious concerns with the document, which were later conveyed informally to the Administrative Office and CACM. As a result, the final Judicial Conference report was adjusted in several respects. Judge Stotler pointed out that the report included a number of specific recommendations concerning the Federal Rules of Civil Procedure.

Judge Stotler reported that the Judicial Conference at its March 1997 session had approved the committee's recommended changes in the civil and criminal rules to conform them to recent statutory amendments to the Federal Magistrates Act. The changes had been sent to the Supreme Court for action on an expedited basis.

APPROVAL OF THE MINUTES OF THE LAST MEETING

The committee voted without objection to approve the minutes of the last meeting, held on January 9-10, 1997.

REPORT OF THE ADMINISTRATIVE OFFICE

Mr. Rabiej presented the report of the Administrative Office (AO), which consisted of: (1) a description of recent legislative activity; and (2) an update on various administrative steps that had been taken to enhance support services to the rules committees. (Agenda Item 3)

He reported that many bills had been introduced in the Congress that would amend the federal rules directly or have a substantial impact on them. He described several of the bills,

covering such diverse matters as grand jury size, scientific evidence, composition of the rules committees, offers of judgment, protective orders, cameras in the courtroom, forfeiture proceedings, and interlocutory appeals of class certification decisions.

Judge Stotler pointed out that Mr. Rabiej and the rules office had prepared written responses to the Congress setting forth the Judiciary's positions on these various legislative initiatives. She emphasized that the AO had prepared the responses in close coordination with the chairs and reporters of the Standing Committee and advisory committees. All the letters had been carefully written and approved, and the judiciary's positions had been formulated under very tight deadlines.

One of the members suggested that it might be productive for individual members of the rules committees to contact their congressional representatives on some of the legislative proposals. Judge Stotler responded that she would be pleased to take advantage of the services of the members.

REPORT OF THE FEDERAL JUDICIAL CENTER

Mr. Eaglin presented an update on the Federal Judicial Center's recent publications, educational programs, and research projects. (Agenda Item 4) Among other things, he reported that the Center was in the process of updating the manual on scientific evidence and hoped to have a new edition ready by the middle of 1998. He also pointed out that the Center was in the process of conducting a detailed survey of 2,000 attorneys to elicit their experiences with discovery practices in the federal courts. The results would be presented to the Advisory Committee on Civil Rules at the committee's September 1997 meeting.

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Judge Logan presented the report of the advisory committee, as set forth in his memorandum and attachments of May 27, 1997, and his memorandum of June 10, 1997 (Agenda Item 8).

He reported that the advisory committee had completed its style revision project to clarify and improve the language of the entire body of Federal Rules of Appellate Procedure. It now sought Judicial Conference approval of a package of proposed style and format revisions embracing all 48 appellate rules and Form 4. The comprehensive package had been developed by the committee in accordance with the *Guidelines for Drafting and Editing Court Rules* and with the assistance of the Standing Committee's Style Subcommittee and its style consultant, Bryan A. Garner.

Judge Logan stated that the public comments received in response to the package had not been very numerous, but they were very favorable to the revisions. He noted that judges and legal writing teachers had expressed great praise for the results of the project, and many judges had also commented orally that the revised rules were outstanding. Only one negative comment had been received during the publication period.

Rules With Substantive Changes

FED. R. APP. P. 5 and 5.1

Judge Logan reported that the Standing Committee had tentatively approved proposed consolidation of Rule 5 and Rule 5.1 and revisions to Form 4 at its June 1996 meeting, after the package of rules revisions had been published. Accordingly, these additional changes were published separately in August 1996.

Judge Logan pointed out that Rule 5 governs interlocutory appeals under 28 U.S.C. § 1292(b), while Rule 5.1 governs discretionary appeals from decisions of magistrate judges under authority of 28 U.S.C. § 636(c). The advisory committee had not contemplated making substantive changes in either of these two rules. But when the Advisory Committee on Civil Rules proposed publication of a new Civil Rule 23(f), authorizing discretionary appeals of class certification decisions, the appellate committee concluded that a conforming change needed to be made in the appellate rules. It decided that the best way to amend the rules was to consolidate rules 5 and 5.1 into a single, generic Rule 5 that would govern all present, and all future, categories of discretionary appeals. In late 1996, the Congress enacted the Federal Courts Improvements Act of 1996, which eliminated appeals from magistrate judges to district judges in § 636(c) cases and made Rule 5.1 obsolete.

Judge Logan said that following publication the advisory committee added language to paragraph (a)(3) to specify that the district court may amend its order to permit an appeal "either on its own or in response to a party's motion." It also added the term "oral argument" to the caption of subdivision (b), made other language changes, and included a reference in the committee note to the Federal Court Improvements Act of 1996.

The committee voted without objection to approve the proposed amendments and send them to the Judicial Conference.

FED. R. APP .P. 22

Judge Logan reported that the Anti-Terrorism and Effective Death Penalty Act of 1996 had amended Rule 22 directly. It also created two statutory inconsistencies. First, it extended the statutory habeas corpus requirements, including the requirement of a certificate of appealability, to proceedings under 28 U.S.C. § 2255. Accordingly, the caption to Rule 22, as

enacted by the statute, was amended to refer to 28 U.S.C. § 2255 proceedings. But the text of the rule made no reference to 28 U.S.C. § 2255. Second, the statute created an inconsistency between 28 U.S.C. § 2253, which provides that a certificate of appealability may be issued by "a circuit justice or judge," and Rule 22(b), which provides that the certificate may be issued by "a district or circuit judge." It was therefore unclear whether the statute authorizes a district judge to issue a certificate of appealability.

Judge Logan said that he had made telephone calls and had sent letters to the Congress when the legislation was pending, pointing to these drafting problems and offering assistance in correcting them. The Congress, however, had not shown interest in correcting the inconsistencies. Following enactment of the statute, additional attempts had been made to ascertain how the Congress would like to have the ambiguities resolved. Again, no direction was received, other than a suggestion that the problem should be resolved by the courts. Through case law development, three circuits have construed the reference in 28 U.S.C. § 2253 to a "circuit justice or judge" to include a district judge. The advisory committee followed that case law in revising the rule.

Judge Logan stated that the advisory committee had worked from the text of Rule 22, as enacted by the Congress, and had made several style improvements in it. It also recommended three substantive changes in subdivision (b) to eliminate the statutory inconsistencies.

1. The rule would be made explicitly applicable to 28 U.S.C. § 2255 proceedings.

2. The rule would allow a certificate of appealability to be issued by "a circuit justice or a circuit or district judge."

3. Since the rule would now govern 28 U.S.C. § 2255 proceedings, the waiver of the need for a certificate of appealability would apply not only when a state or its representative appeals, but also when the United States or its representative appeals.

The committee voted without objection to approve the proposed amendments and send them to the Judicial Conference.

FED. R. APP. P. 26.1

Judge Logan said that Rule 26.1, governing corporate disclosure statements, had been amended only slightly after publication. The advisory committee, for example, substituted the Arabic number "3" for the word "three." The proposal had been coordinated with the Committee on Codes of Conduct.

The committee voted without objection to approve the proposed amendments and send them to the Judicial Conference.

FED. R. APP. P. 27

Judge Logan stated that after publication the advisory committee had made a substantive change in Rule 27, dealing with motion practice. In paragraph (a)(3)(A), the committee provided that "[a] motion authorized by rules 8, 9, 18, or 41 may be granted before the 10-day period runs only if the court gives reasonable notice to the parties that it intends to act sooner." The committee was of the view that if a court acts on these motions, it should so notify the parties.

The committee voted without objection to approve the proposed amendments and send them to the Judicial Conference.

FED. R. APP. P. 28

Judge Logan stated that the advisory committee had made no changes in the rule, dealing with briefs, after publication.

The committee voted without objection to approve the proposed amendments and send them to the Judicial Conference.

FED. R. APP. P. 29

Judge Logan reported that the only significant change made in Rule 29 (brief of an amicus curiae) following publication was to add the requirement that an amicus brief must include the source of authority for filing the brief.

The committee voted without objection to approve the proposed amendments and send them to the Judicial Conference.

FED. R. APP. P. 32

Judge Logan said that following publication the advisory committee had made a few changes in Rule 32, governing the form of briefs.

The committee decided to retain 14-point typeface as the minimum national standard for briefs that are proportionally spaced. It had received many comments from appellate judges that the rule should require the largest typeface possible. But it then ameliorated the rule by giving individual courts the option of accepting briefs with smaller type fonts.

One of the members pointed out that the object of the advisory committee was to have a rule that governed all courts, making it clear that a brief meeting national standards must be accepted in every court of appeals. There was, however, substantial disagreement as to what the specific national standards should be. The compromise selected by the advisory committee was to set forth the minimum standard of 14-point typeface—meeting the needs of judges who want large type—but allowing individual courts to permit the filing of briefs with smaller type if they so chose.

Judge Logan pointed out that the advisory committee had eliminated the typeface distinction between text and footnotes and the specific limitation on the use of boldface. He added that the rule as published had included a limit of 90,000 characters for a brief. The advisory committee discovered, however, that some word processing programs counted spaces as characters, while others did not. Accordingly, the committee eliminated character count in favor of a limit of 14,000 words or 1,300 monofaced lines of text. He pointed out that a 50-page brief would include about 14,000 words.

The committee voted without objection to approve the proposed amendments and send them to the Judicial Conference.

FED. R. APP. P. 35

Judge Logan reported that the advisory committee had made post-publication changes in subdivision (f), dealing with a court's vote to hear a case en banc. He explained that the advisory committee had considered adopting a uniform national rule on voting, but the chief judges of the courts of appeals expressed opposition. There are different local rules in the courts of appeals on such issues as quorum requirements and whether senior judges may vote. The advisory committee decided, accordingly, to let the individual courts of appeals handle their own voting procedures.

Judge Stotler expressed concern about the special committee note to the rule. It would "urge" the Supreme Court to delete the last sentence of the Court's Rule 13.3 (which provides that a suggestion made to a court of appeals for a rehearing en banc is not a petition for rehearing within the meaning of that rule unless so treated by the court of appeals). She said that the note was designed to help practitioners avoid a trap in the rules, but suggested that it might be phrased simply to point out that the last sentence of the Supreme Court's rule might not be needed. Judge Logan responded that it would be better simply to delete the special note.

Judge Stotler also expressed concern that there might be debate or controversy in the Judicial Conference or the Supreme Court over the change in terminology from "in banc" to "en banc." Judge Logan replied that the advisory committee proposed including a special paragraph in the cover letters or memoranda to the Conference and the Court explaining the reasons for the change. He noted, for example, that the committee's research had shown that the Supreme Court

itself had used the term "en banc" 12 times as often in its opinions as it had used "in banc." Similarly, a review of the decisions of the courts of appeals also showed an overwhelming preference for "en banc." He added that the committee believed strongly that the rules revision package should not be held up over this usage and would urge that the package of revisions be approved, regardless of whether the Conference and the Court preferred "en banc" or "in banc."

Judge Logan added that a similar explanation was needed in the cover letters to explain the committee's use of "must," rather than "shall." The advisory committee would elaborate in the letters why it was preferable to follow that style convention, but it would also advise the Conference and the Court not to hold up the package of revisions over this particular usage.

The committee voted without objection to approve the proposed amendments and send them to the Judicial Conference.

FED. R. APP. P. 41

The amended rule provides that the filing of either a petition for rehearing en banc or a motion for a stay of mandate pending petition to the Supreme Court will delay the issuance of the mandate until the court disposes of the petition or motion. Judge Logan reported that the only change made by the advisory committee after publication was to provide that a stay may not exceed 90 days unless the party who obtained the stay files a petition for a writ of certiorari and notifies the clerk of the court of appeals in writing of the filing of the petition.

The committee voted without objection to approve the proposed amendments and send them to the Judicial Conference.

FORM 4

Judge Logan reported that the proposed revision of Form 4 (in forma pauperis affidavit) had been initiated at the request of the clerk of the Supreme Court, who had commented that the current form did not contain sufficient financial information to meet the needs of the Court. Shortly thereafter, the Congress enacted the Prison Litigation Reform Act of 1996, requiring prisoners filing civil appeals to provide more detailed information for the court to assess their eligibility to proceed in forma pauperis.

Judge Logan stated that the revised form was based in large part on the form used in the in forma pauperis pilot program in the bankruptcy courts. After publication, the advisory committee made two changes: (1) requiring the petitioner to provide employment history only for the last two years; and (2) making the form applicable to appeals of judgments in civil cases.

The committee voted without objection to approve the revised form and send it to the Judicial Conference.

Rules With Style Changes Only

Judge Logan reported that the advisory committee had made no post-publication changes in FED. R. APP. P. 1, 7, 12, 13, 14, 15.1, 16, 17, 19, 20, 33, 37, 38, 42, and 44.

He said that tiny grammatical changes had been made post-publication in FED. R. APP. P. 2, 6, 8, 10, 11, 15, 18, 23, 24, 36, 40, 43, 45, and 48. He also directed the committee's attention to minor changes made in FED. R. APP. P. 3, 4, 9, 21, 25, 26, 30, 31, 34, 39, 46, and 47, and to rule 3.1, which would be abrogated because of recent legislation..

Professor Mooney presented a number of minor style changes suggested by Mr. Spaniol to FED. R. APP. P. 3, 4, 10, 25, and the caption to title IV of the appellate rules.

Mr. Spaniol added that Form 4 was the only form being revised. He suggested that the committee might wish to state expressly in its report that no changes were being made in the other appellate forms (1, 2, 3, and 5). Alternatively, the committee might include the text of these unchanged forms in the package of revisions in the interest of having a complete package of all 48 rules and all five forms. Judge Logan agreed to the latter suggestion. He also agreed with Mr. Spaniol's suggestion that a table of contents be included in the package.

The committee voted without objection to approve the proposed amendments above and send them to the Judicial Conference.

Cover Memorandum

Judge Logan volunteered to prepare a draft communication for the Standing Committee to submit to the Judicial Conference explaining the style revision project and the style conventions followed by the advisory committee. He said that he would include in the communication a discussion of the committee's decisions to use:

1. "en banc" rather than "in banc";
2. "must" rather than "shall";
3. indentations and other format techniques to improve readability; and
4. a side-by-side format to compare the existing rules with the revised rules.

Judge Stotler inquired whether it would be advisable to send an advance copy of the style revision package to the Executive Committee of the Judicial Conference. One of the members responded that the Executive Committee might be asked to place the package on the consent calendar of the Conference.

Judge Stotler also stated that it was important to present the package of revisions to the Supreme Court and the Congress in the side-by-side format. She pointed out that the physical layout of the rules, including indentations, was an integral part of the package. She asked whether the Government Printing Office would print the material in that format. Mr. Rabiej replied that GPO would print the rules in whatever format the Supreme Court approved.

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Duplantier and Professor Resnick presented the report of the advisory committee, as set forth in Judge Duplantier's memorandum and attachments of May 12, 1997. (Agenda Item 10)

Revised Official Forms for Judicial Conference Approval

Judge Duplantier reported that the advisory committee's project to revise the official bankruptcy forms had been initiated in large part in response to comments from bankruptcy clerks of court that some of the existing forms were difficult for the public to understand and had generated numerous inquiries and requests for assistance. The advisory committee's subcommittee on forms worked on the revisions for about two years, and the package of revised forms attracted more than 200 comments during the publication period. The subcommittee and the full advisory committee made a number of additional changes in the forms as a result of the comments.

Judge Duplantier explained that the main purposes of the advisory committee were to make the forms clearer for the general public and to provide more complete and accurate descriptions of parties' rights and responsibilities. To that end, he said, the committee had to enlarge the typeface and expand the text of certain forms. As a result, some of the forms—such as the various versions of Form 9—will now have to be printed on both back and front sides, adding some cost for processing. The advisory committee, however, was satisfied that the marginal cost resulting from expansion of the forms would be more than offset by reductions in the number of inquiries made to clerks' offices and reductions in the number of documents that contain errors.

Judge Duplantier said that it would be advisable to specify a date for the revised forms to take effect. He pointed out that the revisions in bankruptcy forms normally take effect upon approval by the Judicial Conference. Several persons, however, had suggested to the committee that additional time was needed to phase in the new forms, to print them, to stock them, and to make needed changes in computer programs. Therefore, the advisory committee recommended that the revised forms take effect immediately on approval by the Judicial Conference in September 1997, but that use of them be mandated only on or after March 1, 1998.

FORM 1

Professor Resnick reported that Form 1 (voluntary petition) had been reformatted based on suggestions received during the public comment period. No substantive changes had been made by the advisory committee following publication.

FORM 3

Professor Resnick pointed out that the advisory committee had to make a policy decision with regard to Form 3 (application and order to pay a filing fee in installments). The current form, and rule 1006(b), on which it is based, provide that a debtor who has paid a fee to a lawyer is not eligible to pay the filing fee in installments. Neither the form nor the rule, however, prohibits the debtor from applying for installment payments if fees have been paid to a non-attorney bankruptcy petition preparer.

The advisory committee had received comments during the publication period that the disqualification from paying the filing fee in installments should apply if a debtor has made payments either to an attorney or to a bankruptcy petition preparer. Professor Resnick pointed out, though, that most debtors who apply for installment payments proceed pro se and may be unaware of the disqualification rule. The fiduciary responsibility that an attorney has to advise a debtor about the right to pay the filing fee in installments is not present when a non-attorney preparer assists the debtor.

Therefore, the advisory committee concluded that payment of a fee to a non-attorney bankruptcy petition preparer before commencement of the case should not disqualify a debtor from paying the filing fee in installments. Nevertheless, the bankruptcy petition preparer may not accept any fee *after* the petition is filed until the filing fee is paid in full.

FORM 6

Professor Resnick stated that the advisory committee had made only a technical change in Form 6, Schedule F (creditors holding unsecured nonpriority claims).

FORM 8

Professor Resnick said that no substantive changes had been made after publication in Form 8, the chapter 7 individual debtor's statement of intention regarding the disposition of secured property. He noted that the form had been revised to track the language of the Bankruptcy Code more closely and to clarify that debtors may not be limited to the options listed on the form.

FORM 9

Professor Resnick explained that Form 9 (notice of commencement of case under the Bankruptcy Code, meeting of creditors, and fixing of dates) was used in great numbers in the bankruptcy courts. He pointed out that the advisory committee made a number of changes following publication to refine and clarify the instructions for creditors and to conform them more closely to the provisions of the Bankruptcy Code. He added that the form had been redesigned by a graphics expert and expanded to two pages to make it easier to read.

FORM 10

Professor Resnick said that Form 10 (proof of claim) had been reformatted by a graphics expert. The advisory committee had made additional changes after publication to make the form clearer and more accurate. The revisions make it easier for a claimant to specify the total amount of a claim, the amount of the claim secured by collateral, and the amount entitled to statutory priority.

FORM 14

Professor Resnick said that no substantive changes had been made following publication in Form 14 (ballot for accepting or rejecting [a chapter 11] plan).

FORM 17

Professor Resnick pointed out that revised Form 17 (notice of appeal under § 158(a) or (b) from a judgment, order, or decree of a bankruptcy judge) took account of a 1994 statutory change providing that appeals from rulings by bankruptcy judges are heard by a bankruptcy appellate panel, if one has been established, unless a party elects to have the appeal heard by the district court. He noted that revised Form 17, as published, had included a statement informing the appellant how to exercise the right to have the case heard by a district judge, rather than a bankruptcy appellate panel. Following publication, the advisory committee expanded the statement to inform other parties that they also had the right to have the appeal heard by the district court.

FORM 18

Professor Resnick said that Form 18 (discharge of debtor) had been revised after publication to provide greater clarity. He noted that the instructions, which consist of a plain English explanation of the discharge and its effect, had been moved to the reverse side of the form.

FORMS 20A and 20B

Professor Resnick said that Forms 20A (notice of motion or objection) and 20B (notice of objection to claim) were new. He explained that many parties in bankruptcy cases do not have lawyers. They do not readily understand the nature of the legal documents they receive, such as motion papers and objections to claims. Thus, they do not know what they have to do to protect their rights. The new forms provide plain-English, user-friendly explanations to parties regarding the procedures they must follow to respond to certain motions and objections.

One of the members inquired as to the significance of the dates printed at the top of the forms. Judge Duplantier recommended that the date shown on each form should be the date on which it is approved by the Judicial Conference.

The committee voted without objection to approve all the proposed revisions in the forms and send them to the Judicial Conference, with a recommendation that they become effective immediately, but that use of the amended forms become mandatory only on March 1, 1988.

Rules Amendments for Publication

Judge Duplantier reported that the advisory committee had deferred going forward with minor changes in the rules in order to present the Standing Committee with a single package of proposed amendments. He pointed out that the package included amendments to 16 rules, seven of which dealt with a single situation (FED. R. BANKR. P. 7062, 9014, 3020, 3021, 4001, 6004, and 6006).

FED. R. BANKR. P. 7062, 9014, 3020, 3021, 4001, 6004, and 6006

FED. R. BANKR. P. 7062 incorporates FED. R. CIV. P. 62, which provides that no execution may issue on a judgment until 10 days after its entry. Rule 7062 applies on its face to adversary proceedings, but it is also made applicable to contested matters through Rule 9014.

Professor Resnick explained that Rule 7062 had been amended over the years to make exceptions to the 10-day stay rule for certain categories of contested matters, i.e., those involving time-sensitive situations when prevailing parties have a need for prompt execution of judgments. The advisory committee had pending before it requests for additional exceptions.

The committee decided that it was not appropriate to have a long, and expanding, laundry list of exceptions for contested matters in a rule designed to address adversary proceedings. It decided, instead, to conduct a comprehensive review of all types of contested matters and determine which should be subject to the 10-day stay, taking into account such factors as the need for speed and whether appeals would be effectively mooted unless the order is stayed. As a

result of the review, the advisory committee concluded as a matter of policy that the 10-day stay should *not* apply to contested matters generally, unless a court rules otherwise in a specific case.

Accordingly, the advisory committee decided: (1) to delete the language in Rule 9014 that makes Rule 7062 applicable to contested matters; and (2) to delete the list of specific categories of contested matters in Rule 7062. Thus, as amended, Rule 7062 would apply in adversary proceedings, but not in contested matters.

Professor Resnick added that the advisory committee had decided that there should be four specific exceptions to the general rule against stay of judgments in contested matters. The exceptions should be set forth, not in Rules 7062 or 9014, but in the substantive rules that govern each pertinent category of contested matter. Accordingly, the advisory committee recommended that the following categories of orders be stayed for a 10-day period, unless a court orders otherwise:

1. FED. R. BANKR. P. 3020(e) and 3021 - an order confirming a plan;

2. FED. R. BANKR. P. 4001 - an order granting a motion for relief from the automatic stay under Rule 4001(a)(1);

3. FED. R. BANKR. P. 6004 - an order authorizing the use, sale, or lease of property other than cash collateral; and

4. FED. R. BANKR. P. 6006 - an order authorizing a trustee to assign an executory contract or unexpired lease under 11 U.S.C. § 365(f).

The committee voted without objection to approve the proposed amendments for publication.

FED. R. BANKR. P. 1017

Professor Resnick stated that Rule 1017, governing dismissal or conversion of a case, currently provides that all parties are entitled to notice of a motion by a United States trustee to dismiss a chapter 7 case for failure to file schedules. The advisory committee would revise the rule to provide that only the debtor, the trustee, and other parties specified by the court are entitled to notice. He pointed out that the revision would avoid the expense of sending notices to all creditors.

FED .R. BANKR. P. 1019

Professor Resnick reported that several changes were being proposed in Rule 1019, governing conversion of a case to chapter 7. He said that the revised rule would clarify that a

motion for an extension of time to file a statement of intention regarding collateral must be filed or made orally before the time expires. The amendments would also clarify ambiguities in the rule regarding the method of obtaining payment of claims for administrative expenses. The rule would specify that a holder of such claims must file a timely request for payment under § 503(a) of the Code, rather than a proof of claim, and would set a deadline for doing so. The committee would conform the rule to recent statutory amendments and provide the government a period of 180 days to file a claim.

FED. R. BANKR. P. 2002

Professor Resnick stated that the proposed revisions to Rule 2002(a)(4) would save noticing costs. Under the current rule, notice of a hearing on dismissal of a case for failure of the debtor to file schedules must be sent to every creditor. The rule would be amended to conform with the revised Rule 1017 requiring that notice be sent only to certain parties. The same revision would be made with regard to providing notice of dismissal of a case because of the debtor's failure to pay the prescribed filing fee.

FED. R. BANKR. P. 2003

Professor Resnick noted that Rule 2003(d)(3) governs the election of a chapter 7 trustee. It requires the United States trustee to mail a copy of a report of a disputed election to any party in interest that has requested it. The revised rule would give a party 10 days from the date the United States trustee files the report—rather than 10 days from the date of the meeting of creditors—to file a motion to resolve the dispute.

Professor Resnick pointed out that the Congress had amended the Bankruptcy Code in 1994 to authorize creditors to elect a trustee in a chapter 11 case. The advisory committee then amended Rule 2007.1 to provide procedures for electing and appointing a trustee. The revised rule—scheduled to take effect on December 1, 1997—provides that the election of a chapter 11 trustee is to be conducted in the manner provided in Rule 2003(b)(3) for electing a chapter 7 trustee. The proposed revisions to Rule 2003(d), governing the report of a trustee's election and the resolution of a disputed election, are patterned after newly-revised Rule 2007.1(b)(3).

FED. R. BANKR. P. 4004 and 4007

Professor Resnick said that the advisory committee made companion changes in Rule 4004, governing objections to discharge of the debtor, and Rule 4007, governing complaints to determine the dischargeability of a particular debt. The advisory committee proposed amending these rules to clarify that the deadline for filing a complaint objecting to discharge or dischargeability is 60 days after the first date set for the meeting of creditors, whether or not the meeting is actually held on that date. The committee would also revise both rules to provide that a motion for an extension of time to file a complaint must be filed before the time has expired.

FED. R. BANKR. P. 7001

Professor Resnick explained that Rule 7001, which defines adversary proceedings, would be amended to provide that an adversary proceeding is not necessary to obtain injunctive or other equitable relief if that relief is provided for in a reorganization plan.

FED. R. BANKR. P. 7004

Professor Resnick noted that Rule 7004(e), governing service, provides that service of a summons (which may be by mail) must be made within 10 days of issuance. The proposed revision would carve out an exception by providing that the 10-day limit does not apply if the summons is served in a foreign country.

FED. R. BANKR. P. 9006

Professor Resnick noted that Rule 9006(c)((2), as amended, would prohibit any reduction of the time fixed for filing a request for payment of an administrative expense incurred after commencement of a case and before conversion of the case to chapter 7.

The committee voted without objection to approve all the proposed amendments above for publication.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Niemeyer presented the report of the advisory committee, as set forth in his memorandum of May 21, 1997 (Agenda Item 5).

Amendments for Judicial Conference Approval

FED. R. CIV. P. 23

Judge Niemeyer reported that the advisory committee had studied class actions and mass tort litigation in depth for nearly six years. During the course of that study, it had actively solicited the views of lawyers, judges, and others on every aspect of class litigation. The advisory committee, he said, had concluded that most of the perceived problems affecting class litigation and mass torts simply could not be resolved through the federal rulemaking process. After intense investigation and discussion, the advisory committee published the following five relatively modest proposals to amend Rule 23:

1. Expanding the list of factors that a judge must consider undr Rule 23(b)(3) in determining whether common questions of law or fact predominate over questions

affecting only individual class members and whether a class action is superior to other available methods for adjudicating the controversy;

2. Providing explicit authorization for a judge to certify a settlement class;

3. Requiring a judge to conduct a hearing before approving a settlement;

4. Requiring a judge to make a determination as to class certification "when practicable," rather than "as soon as practicable"; and

5. Authorizing a discretionary, interlocutory appeal of a class certification decision.

Judge Niemeyer stated that the advisory committee had received an enormous volume of responses on the proposed changes to Rule 23 and had conducted three public hearings . He stated that the comments had been very thoughtful and informative, and the debate had been conducted on the highest intellectual and practical level. Following the publication period and the hearings, the committee asked the Administrative Office to collect and publish the statements of lawyers, academics, and others for consideration by the Standing Committee and the advisory committees.

Judge Niemeyer reported that excellent points had been made by commentators on each side of each proposal. In the end, however, it was clear to the advisory committee that there are deep philosophical divisions of opinion on many of the issues. Moreover, the advisory committee had decided that it would have to defer further consideration of settlement class issues until the Supreme Court rendered a decision in *Amchem Products, Inc. v. Windsor.*

He stated that the advisory committee at this time was seeking Judicial Conference approval of only two proposed changes in Rule 23:

1. a new subdivision (f) that would authorize interlocutory appeals, and

2. an amendment to paragraph (c)(1) that would require a court to make a class certification decision "when practicable."

He added that the other proposed changes in the rule had either been withdrawn by the advisory committee or were being deferred for further study.

Rule 23(f) - Interlocutory Appeal

Judge Niemeyer stated that there was a strong consensus within the advisory committee and among the commentators in favor of permitting a court of appeals—in its sole discretion—to take an appeal from a district court order granting or denying class action certification. The

proposal would enable the courts of appeals to develop the law. This change alone, he said, might well prove to be the most effective solution to many of the problems with class actions. He emphasized that the advisory committee believed that appellate review of class action determinations was very beneficial and should not be impeded by the restraints imposed by mandamus and 28 U.S.C. § 1292(b). He added that the appellate review provision was not philosophically connected to any of the other proposed changes in Rule 23. Therefore, it should be separated from the other proposed changes and approved by the Judicial Conference immediately.

Several members pointed out that it was generally not appropriate to proceed with piecemeal changes in a rule, especially when additional changes in a rule are anticipated in the next year or two. But the consensus of the committee was that the proposed interlocutory appeal provision of Rule 23(f) was sufficiently distinct from the other changes in the rule under consideration and of sufficient benefit that it justified an exception to the normal rule.

One of the members said that the change might result in thousands of additional cases in the courts of appeals and add substantial costs to litigants, especially in civil rights cases. But many of the members of the committee, including its appellate judges, stated that the courts of appeals make prompt decisions—usually within a matter of days—on whether to accept an interlocutory appeal. And once they accept an interlocutory appeal, they normally decide it on the merits with dispatch. Several members emphasized that the courts of appeals simply will not take cases that do not appear to have merit. Some judges added that class action decisions were an important area of jurisprudence that could be helped by having more appellate decisions, especially at early stages of litigation before the parties incur great costs and delays.

The committee voted without objection to approve the proposed new Rule 23(f) and send it to the Judicial Conference.

Rule 23(c)(1) - "When practicable"

Some members observed that changing the time frame for the court to make a class action determination from "as soon as practicable" to "when practicable" merely conforms the rule to current practice in the federal courts. They argued that the amendment provides a district judge with needed flexibility to deal with the various categories and conditions of class actions in the district courts. Judge Niemeyer pointed out that district judges already exercise that flexibility without negative consequence, and no adverse comments had been received on the proposal during the public comment period.

Others argued, though, that the proposed amendment would make a significant change in the rule because it could result in district judges delaying their certification decisions. They pointed out that in 1966 the drafters of Rule 23 had made a conscious decision to require the court to make a prompt class certification decision, leaving substantive decisions to be made later

in the case when they would be binding on all parties. It was suggested, too, that the impact of the class certification decision on absentees was a very serious question that needed to be addressed further.

Some members suggested that the proposed amendment be deferred for further consideration by the advisory committee and included eventually with the package of other proposed amendments to Rule 23.

The motion to approve the amendment to Rule 23(c)(1) and send it to the Judicial Conference failed by a voice vote.

Other proposed amendments to Rule 23

Judge Niemeyer reported that the advisory committee had decided not to proceed with proposed new subparagraph (b)(3)(A). It would have added as an additional matter pertinent to the court's findings of commonality and superiority "the practical ability of individual class members to pursue their claims without class certification." He explained that the advisory committee had decided that the benefits to be derived from the change were outweighed by the risk of introducing changes in the rule. The committee also abandoned further action on the proposed amendment to subparagraph (b)(3)(B), which slightly clarified the existing subparagraph (A).

Judge Niemeyer said that the advisory committee had decided to conduct further study on the proposed amendment to subparagraph (b)(3)(C). It would authorize the court to consider the maturity of related litigation involving class members in making its commonality and superiority findings. He pointed out that as a result of public comments, the committee had improved the language of the amendment to read as follows: "the extent and nature of any related litigation and the maturity of the issues involved in the controversy."

Judge Niemeyer advised that the proposed subparagraph (b)(3)(F) would add to the list of matters pertinent to the court's findings "whether the probable relief to individual class members justifies the costs and burdens of class litigation." He said that it had attracted an enormous amount of public comment, and articulate views had been expressed both in favor of and against the proposed amendment. He pointed out that the debate over the amendment had disclosed competing economic interests and basic philosophical differences as to the very purposes of Rule 23 and class actions.

He reported that the advisory committee had not made a final decision as to whether to proceed with the amended Rule 23(b)(3)(F). It would continue to study the matter further and consider five possible options at its next meeting.

He added that the advisory committee had also deferred action on the proposed new paragraph (b)(4), regarding settlement classes, until after Supreme Court action in *Amchem Products, Inc. v. Windsor.*

Judge Niemeyer reported that the advisory committee would consider all remaining class action proposals as part of a package at its October 1997 meeting. He reemphasized that the class action debate had evoked substantial public interest and had disclosed deep philosophical divisions. On the one hand, there had been a great deal of support for amending the rule to eliminate cited abuses in current practices, particularly class actions resulting in insignificant awards for individual, largely uninterested, class members and large fees for attorneys. On the other hand, many commentators argued that class actions, regardless of the monetary value of individual awards, serve vital social purposes.

He added that sentiment had also been expressed in favor of making no additional changes in the rule because: (1) resolution of the perceived problems may well lie beyond the jurisdiction of the rules committees to correct; and (2) the courts of appeals may resolve many of the problems through the development of case law.

Informational Items

Judge Niemeyer reported that the advisory committee was making good progress in its comprehensive study of discovery. It was evaluating the role of discovery in civil litigation, its cost, and its relation to the dispute-resolution process. As part of the review, the committee would consider whether any changes could be made to lessen the cost of discovery while retaining the value of the information obtained.

In addition, he pointed out that both the Civil Justice Reform Act of 1990 and the 1993 amendments to the Federal Rules of Civil Procedure had authorized substantial local court variations in pretrial procedures. He stated that the advisory committee would like to return to greater national uniformity in civil practice as a matter of policy, but it realized the difficulty of gaining acceptance of uniform national rules after several years of local variations.

Judge Niemeyer stated that the advisory committee had planned a major symposium on discovery, to be held in September 1997 at Boston College Law School. Knowledgeable members of the bar and the academic community had been invited to identify and explore issues and make recommendations to the committee. He invited the members of the Standing Committee to attend and participate in the conference.

He reported that the advisory committee had appointed an ad hoc subcommittee to review proposed changes in the admiralty rules. The subcommittee was working closely with the admiralty bar and the Department of Justice. He pointed out that the provisions in the admiralty rules dealing with forfeiture of assets were particularly important since the admiralty rules

govern, by reference, many categories of non-admiralty forfeiture proceedings As part of its drafting process, the subcommittee had concluded that the time limits set forth in the rules for regular admiralty cases should be different from those for other categories of forfeiture cases.

Judge Niemeyer expressed concern that several bills had been introduced in the Congress to legislate forfeiture proceedings. The drafters had not had the benefit of the broad input that the advisory committee and its subcommittee had received from the bar and others. As a result, the bills, among other things, overlooked important distinctions between admiralty proceedings and other types of forfeiture proceedings.

Judge Niemeyer reported that the Civil Rules Committee was studying the inconsistent and misleading provisions governing the timing of the answer to a writ of habeas corpus under Civil Rule 81(a)(2) and Rule 4 of the § 2254 Rules, which was adopted after Rule 81(a)(2) was last amended. Correcting Rule 81 would be directly affected by and dependent on any change in the rules governing § 2254 proceedings involving the timing of the habeas corpus answer. Accordingly, Judge Niemeyer recommended that this topic should be initially addressed by the Criminal Rules Committee. Judge Jensen and Professor Schlueter, chair and reporter, respectively of the Criminal Rules committee agreed to have their committee study the issue.

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Jensen presented the report of the advisory committee, as set forth in his memorandum of May 21, 1997 (Agenda Item 6).

Amendments for Judicial Conference Approval

FED. R. CRIM. P. 5.1 AND 26.2

Judge Jensen pointed out that the amendments to Rules 5.1 and 26.2 were companion amendments. Rule 26.2 governs the production of prior statements of a witness once the witness has testified on direct examination. It has been amended several times in recent years to expand its scope to other categories of criminal proceedings besides trials, such as sentencing hearings, detention hearings, and probation revocation hearings. The proposed amendments would extend the rule's application to preliminary examinations conducted under Rule 5.1.

One member raised the possibility that the rule might be read as encompassing a witness at a preliminary examination who has testified previously at a grand jury proceeding. Some members responded that the situation was at most a theoretical possibility, since preliminary examinations are not conducted once a grand jury returns an indictment.

The committee voted without objection to approve the proposed amendments and send them to the Judicial Conference.

FED. R. CRIM. P. 31

Judge Jensen explained that the proposed amendments to Rule 31 would require that polling of a jury be conducted individually. He added, though, that the rule did not require individual polling as to each count.

The chair noticed that the text of the amended rule used "must," rather than "shall." She suggested that the use of "shall" might be more prudent in light of the Supreme Court's concern over making style changes in the rules on a piecemeal basis. Judge Jensen and Professor Schlueter concurred and said that the advisory committee would continue to use "shall" until it was ready to send forward a complete style revision of the entire body of criminal rules.

The committee voted without objection to approve the proposed amendments and send them to the Judicial Conference

FED. R. CRIM. P. 33

Judge Jensen stated that under the current rule, a motion for a new trial based on newly-discovered evidence must be made within two years after the "final judgment." The proposed amendment, as published, would have established a time period of two years from "the verdict or finding of guilty." During the public comment period, the committee received comments that the proposal would seriously reduce the amount of time available to file a motion for a new trial under some circumstances. Accordingly, the advisory committee decided that an additional year was appropriate, and it set the deadline at three years from the verdict of finding of guilty.

One of the members questioned the use of the word "must" on lines 9 and 12. Following discussion, the consensus of the committee was that the use of "may" in the text of the existing rule should be retained.

The committee voted without objection to approve the proposed amendments and send them to the Judicial Conference

FED. R. CRIM. P. 35

Judge Jensen pointed out that the proposed amendments to Rule 35(b) would allow a court to aggregate a defendant's pre-sentencing and post-sentencing assistance in determining whether to reduce a sentence to reflect the defendant's "substantial assistance" to the government.

Judge Jensen agreed to a suggestion to delete the comma in line of the text. He did not agree to change the words "subsequent assistance" to "later assistance," because the words "subsequent assistance" are contained in the pertinent statute and have been used in the case law.

The committee voted without objection to approve the proposed amendments and send them to the Judicial Conference

FED. R. CRIM. P. 43

Judge Jensen explained that the proposed amendment to the rule was intended to provide consistency in the situations when the defendant's presence is required at a resentencing proceeding.

Judge Jensen noted that Rule 35(a) deals with a situation when the sentence has been reversed on appeal and the case remanded for resentencing. This involves a "correction" of the sentence, and the defendant should be present for the resentencing. But a court should be permitted to reduce or correct a sentence under Rule 35(b) or (c) without the defendant being present. Rule 35(b) deals with reduction of a sentence for substantial assistance. Rule 35(c) gives the trial court seven days to correct a sentence for arithmetical, technical, or other clear error. There was also no need to require the presence of the defendant at resentencing hearings conducted under 18 U.S.C. § 3582(c). That statute governs resentencing conducted as a result of retroactive changes in the sentencing guidelines or a motion by the Bureau of Prisons to reduce a sentence based on "extraordinary and compelling reasons." Judge Jensen emphasized, however, that the court retains discretion to require or permit a defendant to attend any of these resentencing proceedings.

The committee voted without objection to approve the proposed amendment and send it to the Judicial Conference.

Amendments for Publication

FED. R. CRIM. P. 6

Judge Jensen reported that the proposed amendments to the rule addressed two issues. First, under the present rule, necessary interpreters are authorized to be present during grand jury sessions, but not during grand jury deliberations. The proposed amendment would allow an interpreter for a deaf juror to be present while the grand jury is deliberating or voting.

Second, under the present rule, the entire grand jury must be present in the courtroom when an indictment is returned. The proposed amendment would authorize the foreperson or deputy foreperson to return the indictment in open court on behalf of the jury. The amendment would save time, expense, and inconvenience by not requiring the whole grand jury to be transported to the courtroom.

In addition, Judge Jensen reported that legislation had just been introduced in the Congress by Representative Goodlatte, H.R. 1536, that would reduce the size of a grand jury to nine persons, with a minimum of seven needed to return an indictment. He pointed out that the advisory committee had not had the legislation on the agenda of its last meeting. Accordingly, it had not taken a position on its merits. Historically, however, the advisory committee from 1974 to 1977 favored a reduction in the size of the grand jury.

Judge Jensen said that the current legislation had been referred for response to the Judicial Conference's Court Administration and Case Management Committee and Criminal Law Committee. Both committees had considered the measure at their recent meetings and decided to recommend referring the matter to the Advisory Committee on Criminal Rules.

The members agreed that the proposal to reduce the size of grand juries should proceed through the normal Rules Enabling Act process, even though the process takes considerable time and the Congress might resolve the matter sooner by legislation. One member suggested, however, that the issue was potentially controversial and might not be enacted by the Congress. Judge Jensen stated that the advisory committee would consider the matter at its October 1997 meeting, and any proposed amendments to Rule 6 would proceed through the normal public comment process.

Judge Jensen argued that the two changes in Rule 6 recommended by the advisory committee should proceed to immediate publication without awaiting action regarding the size of grand juries. Several members concurred and urged publication of the current amendments.

Some members, however, questioned why the proposed amendment should be limited to interpreters for deaf jurors. And one member questioned the use of the word "deaf," favoring "hearing impaired" as the more appropriate characterization.

Judge Easterbrook moved to strike the word "deaf" from the amendment. The committee approved the motion on a voice vote, with four members opposed.

Judge Jensen and Professor Schlueter responded that the advisory committee was very reluctant to open up the exception by allowing all potential types of interpreters into the grand jury deliberations. Accordingly, it had specifically limited the amendment to interpreters for deaf jurors. One participant suggested that the advisory committee explicitly solicit public comments on whether the proposal should be broadened to cover other groups.

Judge Sear moved for reconsideration of Judge Easterbrook's amendment to strike the word "deaf" from the amendment. The committee approved the motion by voice vote.

On reconsideration, the committee approved Judge Easterbrook's motion by a 6-5 vote. Then it approved without objection the amendments to Rule 5 for publication.

One of the members suggested that the committee note to the rule was inconsistent with the text. He recommended that the advisory committee rewrite the note to Rule 6(d) to notify the public that it was seeking input on the issue of how broad the exception for interpreters should be.

FED. R. CRIM. P. 11

Judge Jensen reported that the first proposed amendment in Rule 11 would merely update the rule by changing the term "defendant corporation" to "defendant organization, as defined in 18 U.S.C. § 18."

The committee voted without objection to approve the proposed amendment for publication.

The second amendment, referred to the advisory committee by the Criminal Law Committee, would add to the Rule 11(c) colloquy a requirement that the court inform the defendant of the terms of any provision in a plea agreement waiving the defendant's right to appeal or collaterally attack the sentence. He said that it was increasingly common for plea agreements to include an agreement by the defendant not to appeal. But the current rule does not require the court to inquire into the waiver of appeal. He suggested that the amendment would provide greater certainty as to the plea the defendant enters.

The committee voted without objection to approve the proposed amendment for publication.

Judge Jensen said that the final proposed changes to the rule govern plea agreements and plea agreement procedures under Rule 11(e). They had been coordinated with the United States Sentencing Commission and the Criminal Law Committee.

He explained that the rule had never been modified to take into account the impact of the sentencing guidelines, which have enlarged the very concept of a sentence and the procedures for reaching a sentence. A court, for example, now must determine whether a particular provision of the guidelines, a policy statement of the commission, or a sentencing factor is applicable in a case. Accordingly, the amendments to Rule 11(e) would recognize that a plea agreement may address not only a particular sentence but also the applicability of a specific sentencing guideline, sentencing factor, or Commission policy statement.

A member suggested that the proposed style change in lines 18-19—from "engage in discussions with a view toward reaching an agreement" to "discuss an agreement"—was inappropriate. He recommended that the language be amended to read "agree that."

Several members expressed concern that the proposed amendment to Rule 11(e)(1)(C) would authorize the defendant and the United States attorney to agree to "facts" that are not established facts. They argued that it would further remove the judge as a check on the integrity of the sentencing process and as a guardian in assuring equal treatment for all defendants. Judge Jensen acknowledged the concern and said that the Sentencing Commission also was aware of potential problems with inappropriate agreements. Nevertheless, the advisory committee and the Commission urged publication and public comment on the matter. Mr. Pauley added that Department of Justice's internal guidelines prohibit prosecutors from agreeing to unestablished facts. It was also pointed out by several members that the ultimate bulwark against abuse is the district judge's authority to reject the plea agreement.

The committee voted without objection to approve the proposed amendments for publication.

FED. R. CRIM. P. 24

Judge Jensen explained that under the present rule, alternate jurors must be discharged when the jury retires to deliberate. The proposed amendments would eliminate this requirement, thereby giving the trial court discretion either to retain or discharge the alternate jurors.

The committee voted without objection to approve the proposed amendments for publication.

FED. R. CRIM. P. 30

Judge Jensen stated that the proposed amendments would permit the trial court, in its discretion, to require or permit the parties to file any proposed instructions before trial.

The committee voted without objection to approve the proposed amendments for publication.

FED. R. CRIM. P. 32.2

Judge Jensen reported that the proposed new Rule 32.2 would consolidate several procedural rules governing the forfeiture of assets in a criminal case. The changes had been motivated in large measure by the Supreme Court's decision in *Libretti v. United States*, 116 S. Ct. 356 (1995), which made it clear that forfeiture is a part of the sentence. The proposed new rule, accordingly, would incorporate forfeiture into the sentencing process. He pointed out that

the rule addressed the problem of third parties whose property rights needed to be protected. It also recognized that forfeiture proceedings are akin to a civil case and, therefore, provided for appropriate discovery.

Judge Jensen said that competing bills had been introduced in the Congress dealing with forfeiture of assets. Judge Stotler added that the bills were replete with references to the federal rules. She said that she had been struck by the fact that the Congress apparently wanted to move quickly on forfeiture legislation, but the subject matter was very complex and not well understood by lawyers and judges. There were already more than 100 forfeiture statutes on the books, and the outcome of the various forfeiture bills in the Congress was uncertain. Judge Stotler pointed out that the rules committees had attempted to deal only with a small part of the forfeiture problem, and she suggested that it would be preferable if the Congress enacted a uniform forfeiture code or simply referred all procedural issues to the rules process.

Judge Jensen responded that the advisory committee's proposal dealt only with criminal forfeiture as a part of sentencing. Mr. Waxman added that it would be desirable to have a concordance between the various statutes and rules and between civil and criminal forfeiture. Nevertheless, he urged that the proposed new Rule 32.2 be published for comment. He stated that forfeiture was a controversial subject, and the Department of Justice preferred to have criminal forfeiture procedures enacted carefully through the Rules Enabling Act process, rather than by legislative happenstance in the Congress.

Some of the members expressed concern over the complexity of the proposed rule and its blending of civil and criminal concepts. They suggested that consideration might be given to drafting a simple rule declaring that the pertinent property was forfeited to the government. Interested third parties, accordingly, would have to file a civil suit to assert their property rights.

The committee voted without objection to approve the proposed new rule for publication.

FED. R. CRIM. P. 54

Judge Jensen explained that the proposed amendment to the rule was technical. It would merely eliminate the reference to the United States District Court for the District of the Canal Zone, which no longer exists.

The committee voted without objection to approve the proposed amendment for publication.

Informational Items

Judge Jensen reported that the advisory committee had received a recommendation from the Federal Magistrate Judges Association that Rule 5(c) be amended to delete its restriction on a magistrate judge continuing a preliminary examination. He said that the advisory committee had concurred with the association on the merits of the proposal, but it concluded that the restriction emanated from the underlying statute, 18 U.S.C. § 3060, on which the rule is based. Therefore, the committee recommended that the Standing Committee ask the Judicial Conference to seek legislation to amend the statute.

Mr. McCabe added that the recommendation of the advisory committee had just been endorsed by the Magistrate Judges Committee of the Judicial Conference.

Judge Easterbrook moved to reject the recommendation seeking amendment of 18 U.S.C. § 3060(c) on the grounds that the proposed change should be enacted through the Rules Enabling Act process, relying eventually on operation of the supersession clause. He pointed out that the Supreme Court recently had voided the service provisions in the Suits in Admiralty Act on supersession clause grounds. *Henderson v. United States,* 116 S. Ct. 1638 (1996)

The committee voted without objection to approve the motion.

REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES

Professor Capra presented the report of the advisory committee, as set forth in Judge Fern M. Smith's memorandum of May 1, 1997 (Agenda Item 9).

Amendments for Judicial Conference Approval

FED. R. EVID. 615

Professor Capra stated that the proposed amendment to the rule took account of recent statutory changes giving crime victims the right not to be excluded from criminal trials.

Judge Easterbrook expressed concern over incorporating references to specific statutes in the rules. He pointed out that statutes are frequently amended or superseded. Therefore, he argued for a generic reference to categories of persons who may not be excluded from proceedings. **He moved that the following language be added to the end of Rule 615: "(4) a person authorized by statute to be present."** Professor Capra responded that the advisory committee had included a specific statutory reference because it believed that a generic reference might not be strong enough in light of the Congress' express interest and recent actions regarding victims' rights.

The motion was approved by voice vote without objection.

Professor Capra requested that the amendment be approved without publishing for public comment, since it was merely a conforming amendment. One of the members concurred and emphasized that it was very important to move quickly on the proposal because of congressional interest and policy in expanding victims' rights.

The committee voted by voice vote without objection that the proposed amendment was conforming and approved the rule without publication for public comment.

Amendments for Publication

FED. R. EVID. 103

Professor Capra explained that proposed new subdivision (e) addressed the issue of when a party must renew at trial an in limine objection decided adversely to the party. He noted that a version of the proposal had been published once before, but later withdrawn by the advisory committee after public comments had revealed the text to be unclear. The advisory committee then redrafted the rule, patterning it in large part on a Kentucky state court rule. He pointed out that the third sentence of the new subdivision was intended to codify *Luce v. United States,* 469 U.S. 38 (1984), which held that a criminal defendant must testify at trial in order to preserve an objection to the trial court's decision admitting the defendant's prior convictions for purposes of impeachment.

In response to a question from one of the members, Professor Capra stated that the advisory committee had deliberately limited the sentence's application to criminal cases, believing that its extension to civil cases might cause problems.

Judge Easterbrook expressed several objections to the new subdivision and moved to send it back to the advisory committee for further drafting. He argued that, as formulated, the third sentence of the proposed text would apply only when the court's ruling is conditioned on "the testimony of a witness," rather than on the introduction of evidence. He pointed out that, although the *Luce* case involved testimony, the principle on which it rested is not limited to testimony. In other words, there is no logical distinction between testimony and documentary evidence. Therefore, the court's ruling should be conditioned on admissibility, rather than on testimony. In addition, the text of the third sentence implied that the court's ruling itself was conditional. In reality, it is merely dependent on a party's decision to introduce evidence.

He also questioned the formulation of the second sentence of the subdivision, which states that a motion for an advance ruling, when definitively resolved on the record, is sufficient to "preserve error" for appellate review. The implication of the text, he said, was that the movant may preserve the claim for review, but not the opponent. He added that use of the words

"preserve error" was inappropriate, since there is no intent to preserve error. Rather, the language should be recast to state that a party need not make an exception to a particular ruling in order to preserve the right to appeal. Moreover, it is the court's definitive ruling against a party that preserves the right to appeal, not "a motion for an advance ruling."

Several members expressed support for the substance of the proposal. One lawyer-member emphasized that it represented a significant improvement over the earlier draft. **The consensus of the committee, however, was that the subdivision should be returned to the advisory committee for redrafting in light of the comments made during the discussion.**

Informational Items

Professor Capra pointed out that the committee notes to several of the Federal Rules of Evidence contained inaccuracies. The notes had been prepared to support and explain the advisory committee's draft of the rules. But the rules ultimately enacted by the Congress differed in several respects from the committee's version.

He reported, for example, that the advisory committee had reviewed the notes recently and had discovered that references in 21 notes to rules that were not in fact approved by the Congress. In some instances the committee notes were directly contrary to the positions eventually taken by the Congress. Accordingly, the committee notes were a potential trap for unwary attorneys.

He stated that the advisory committee was considering preparing a short list of editorial comments pointing out the discrepancies between the notes and the rules and asking law book publishers to include the comments in their publications of the rules. He explained that the proposed comments would consist of short bullets set forth at each troublesome section of the rules. The members were asked for their initial views of this proposed course of action.

A couple of participants suggested that it might be preferable to inform law book publishers that the committee notes are not meaningful and should no longer be included in their publications. Other participants, however, responded that the notes were a part of the legislative history of the rules and should continue to be made available. Some members suggested that any action that would help clarify the matter for users should be encouraged. Professor Coquillette added that the reporters had agreed to discuss the matter at their working luncheon.

STATUS REPORT ON THE ATTORNEY CONDUCT STUDY

Professor Coquillette reported that he had completed work on the several background studies of attorney conduct that the committee had requested of him. He pointed out that the last two studies—analyzing the case law under FED. R. APP. P. 46 and bankruptcy cases involving

attorney conduct rules—were set forth as Agenda Item 7. He thanked the Federal Judicial Center in general, and Marie Leary in particular, for invaluable assistance in conducting the studies, especially the survey of existing district court practices and preferences. He also thanked Judge Logan and Professor Mooney for their help in compiling the appellate court study and Patricia Channon for her help on the bankruptcy study. He concluded that the committee had now studied attorney conduct in the federal courts in every meaningful way.

Potential Courses of Action

Professor Coquillette suggested that the committee might wish to consider four possible courses of action regarding attorney conduct:

1. Do nothing.

2. Draft a model local rule on attorney conduct that could be adopted voluntarily by the district courts, and possibly by the courts of appeals.

3. Draft a small number of national rules to govern attorney conduct in the areas of primary concern to bench and bar.

4. Draft both a model local rule and uniform national rules.

He stated that the committee had conducted two special conferences on attorney conduct with knowledgeable lawyers, professors, and state bar officials. At the conferences, the participants had expressed a wide range of diverging views on how best to address attorney conduct issues. There was no clear consensus among the participants as to whether conduct matters should be governed by uniform national rules or by local court rules. Nevertheless, the one thing that all the participants agreed upon was that the present system was deficient in several respects and that the rules committees should take some kind of action.

He pointed out that the principal advantage of national rules is that they would set forth a uniform, national standard applicable in all federal courts. National rules, moreover, would have the benefit of public comment and national debate under the Rules Enabling Act process. On the other hand, a model local rule could be adopted more expeditiously and would not have to be submitted to the Congress. He noted that the recent Federal Judicial Center survey had shown that 30% of the courts favored national rules on attorney conduct, while 62% favored a local-rule approach. He added that, to guide the committee's deliberations, he had included in the agenda materials samples of: (1) a model local rule for the courts of appeals; (2) an amended version of FED. R. APP. P. 46; and (3) uniform federal rules of attorney conduct.

The members discussed generally the advantages and disadvantages of each approach. Several members emphasized that all attorneys as a matter of policy should be governed by the

conduct rules of the states in which they are licensed to practice. They added, however, that it might be appropriate to carve out a very limited number of exceptions for federal lawyers that would govern areas where there were overriding federal interests.

Concerns of Federal Lawyers

Mr. Waxman pointed out that federal lawyers face uncertainty in their practice and need, as a minimum, a clear federal law to govern conflicts between jurisdictions. He added that federal law was needed in certain limited situations that impacted on the work of federal attorneys. Chief Justice Veasey responded that the Department of Justice's interest in uniformity was understandable. Nevertheless, state bars also want uniformity for all lawyers in the state. There should not be one set of conduct standards in the state courts and a different standard for the federal courts of that state.

Mr. Waxman was asked which conduct issues were of particular concern to the Department of Justice and federal lawyers. He responded that there were no problems with the rules governing attorney conduct within a court setting. Rather, the Department's concern was limited to areas where state ethical rules reach, or purport to reach, conduct by federal prosecutors and other attorneys conducting investigations outside the court. These include such matters as contacts with represented parties, subpoenas directed to attorneys, and the presentation of exculpatory evidence to grand juries.

Concerns in Bankruptcy Cases

Professor Coquillette explained that attorney conduct in the bankruptcy courts raised certain unique problems. The local rules of the bankruptcy courts generally adopt the rules of the district courts. Nevertheless, actual practice in the bankruptcy courts is very different from that in the district courts. Bankruptcy judges usually look for guidance on matters of attorney conduct to the Bankruptcy Code and to the common law of bankruptcy. There are, he said, serious differences among the bankruptcy courts in applying these laws and a lack of clear and specific conduct case law and guidelines. He recommended that further research be conducted on attorney conduct issues and practices in the bankruptcy courts.

Judge Duplantier reported that the Advisory Committee on Bankruptcy Rules had a subcommittee in place that was considering attorney conduct issues in bankruptcy cases. Professor Resnick stated that contemporary bankruptcy practice—with thousands of creditors and claimants in an individual case—raises a number of specialized conduct issues that may not be addressed adequately by existing state rules or by model local court rules. He pointed out, for example, that the Bankruptcy Code itself defines a "disinterested person," and it requires court approval of certain appointments. The statutory definition, he said, was troublesome and had been interpreted in different ways by the various courts of appeals. He also noted that the advisory committee was considering potential amendments to FED. R. BANKR. P. 2014, which

requires an attorney, or other professional person, to disclose certain information to the court as part of the appointment process.

Committee Action

Professor Hazard moved that the committee begin drafting rules, identifying the problems, and eliciting discussion.

Judge Stotler concluded that there was a consensus among the committee members that work should begin on drafting a set of national rules providing that state law governs attorney conduct in the federal courts except in a few limited areas, such as certain investigatory functions and certain aspects of bankruptcy practice. She asked Professor Coquillette to continue with the work of drafting potential rules and making presentations on attorney conduct issues to the advisory committees.

POSTING LOCAL RULES AND OFFICIAL BANKRUPTCY FORMS ON THE INTERNET

Mr. Rabiej reported that courts are required by statute and rule to send copies of their local rules to the Administrative Office. The AO maintains the rules in loose-leaf binders in its library. They are not readily available to the public.

He stated that the rules office intends to begin posting the local rules on the Internet as a service to public. He added that the office had also proposed posting the official bankruptcy forms on the Internet.

REPORT OF THE STYLE SUBCOMMITTEE

Judge Parker, chair of the subcommittee, reported that the subcommittee had met with Professor Coquillette and had drafted a short set of proposed guidelines designed to expedite the process of reviewing proposed amendments for style. He pointed out that the advisory committees and their reporters faced extremely short deadlines for completing drafts of proposed amendments and committee notes.

Judge Parker said that the guidelines recommended that drafts be submitted by the respective reporters to the rules office in the AO at least 30 days in advance of an advisory committee meeting. The rules office immediately would send copies to the advisory committee, the style subcommittee, and Mr. Garner, the style consultant. Mr. Garner would then coordinate and consolidate the comments of the style subcommittee within 10 days and return them to the advisory committee reporter.

The reporter would then have 10 days to consider the comments of the style subcommittee, incorporate those he or she deemed appropriate, and return a revised draft to the rules office for transmission to the advisory committee members. Accordingly, the advisory committee members would have the original draft and the suggested style changes at least one week before the committee meeting. After the advisory committee meeting, the reporter would have one week to send a copy of the text and note, as approved by the committee, to the rules office. This would allow the style subcommittee sufficient time before the Standing Committee meeting to make any necessary last-minute changes.

COMMITTEE PRACTICES AND PROCEDURES

Judge Stotler reported that the Executive Committee of the Judicial Conference had requested the committee's views on certain Conference committee practices and procedures. She said that she had responded to an earlier inquiry by stating that there was no need for the rules committees to have liaison members to each of the circuits. Members of the rules committees should represent the system nationally, rather than circuit interests. She added that she proposed to have the committee stand on its previous position.

On the other hand, she emphasized that the use of liaisons between committees of the Judicial Conference had been very useful. She pointed out, for example, that members of the Court Administration and Case Management Committee and the Federal-State Jurisdiction Committee had been invited to attend rules committee meetings and that Judge Easterbrook had been in contact with the chair of the Court Administration and Case Management Committee on matters involving the Civil Justice Reform Act. She stated that the use of liaisons had opened up communications with other committees, and she asked for the committee's endorsement of the increased use of liaisons with other committees.

Mr. Rabiej added that the Executive Committee had asked for the committee's views on the use of subcommittees and the need for face-to-face subcommittee meetings. He pointed out that there was an attempt to reduce the number of subcommittees generally and to restrict their meetings to telephone conferences. He reported that it was the view of the advisory committees that the use of subcommittees was very beneficial and that there was a need for certain in-person subcommittee meetings. Other participants noted that much of the subcommittees' work is conducted by telephone, correspondence, and telefax. They argued strongly, however, that it was essential for the committees to have the flexibility to conduct face-to-face meetings when needed.

REPORT ON MEETING OF LONG RANGE PLANNING LIAISONS

Judge Niemeyer reported that he and Judge Stotler had participated in the meeting of long-range planning liaisons from 13 Judicial Conference committees on May 15, 1997. He

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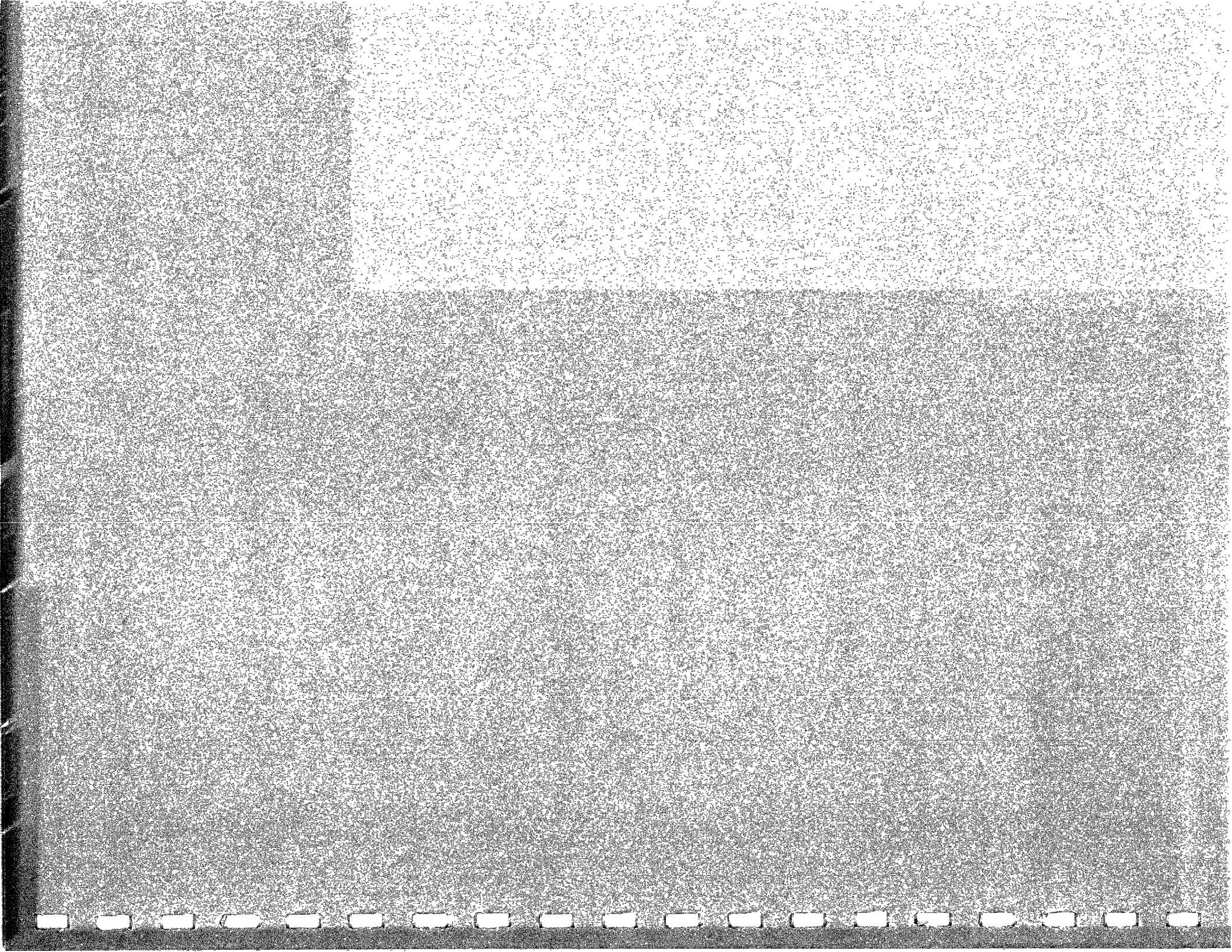

Study of Recent Bankruptcy Cases (1990-1996) Involving Rules of Attorney Conduct

Standing Committee Report
June 19 - 20, 1997

I. INTRODUCTION

This Committee is currently considering two options for changing local rules governing attorney conduct in the federal district courts. "Option one" would be the adoption of a model local rule similar to Model Local Rule IV of the Federal Rules of Disciplinary Enforcement, first proposed by the Committee on Court Administration and Case Management in 1978. (This would be recommended by the Judicial Conference to the federal courts for adoption by each court individually pursuant to 28 U.S.C. § 2071.) "Option two" is the adoption of nationwide uniform rules of attorney conduct pursuant to the Rules Enabling Act, 28 U.S.C. § 2072-2074. These uniform rules would apply to specific "core" areas where problems frequently arise in federal district courts, leaving all other areas to be governed by state standards. See Report on Local Rules Regulating Attorney Conduct, July 5, 1995; Study of Recent Federal Cases Involving Rules of Attorney Conduct, January 9, 1996; and Supplement to Study of Recent Federal Cases Involving Rules of Attorney Conduct (1990-1995), May 14, 1996.

This memorandum examines how such changes in the federal district courts would effect the bankruptcy courts and what, if anything, should be done to improve rules of attorney conduct in the bankruptcy courts. At the request of the Committee, I have conducted three separate bankruptcy studies. The first study determined the number of reported bankruptcy cases focusing on local rules of attorney conduct and categorized each case by the specific rule involved. The second study traced the sources of local rules currently governing attorney conduct in each district of the bankruptcy court system. The final study researched reported cases and law reviews discussing the application of these rules in conjunction with applicable provisions of the Bankruptcy Code, especially § 327.[1]

[1] Some districts have already made efforts to improve the administration of attorney discipline in bankruptcy court. For example, the Central District of California, by a general order, has established procedures by which bankruptcy judges can refer disciplinary problems to the Clerk of Court. See General Order 96-05, U.S. Bankruptcy Court C.D. Ca.

I am, once again, most deeply indebted to my talented and industrious research assistants, James J.G. Dimas and Thomas J. Murphy. Their hard work and intelligence has been vital to this entire series of reports, and they can take great pride in them on the eve of their graduation and entry to the "real world." In addition, I have benefited greatly from conversations with members of the Advisory Committee on Bankruptcy Rules. Of particular help has been the Chairman, the Honorable Adrian G. Duplantier, and Gerald K. Smith. Gerald Smith has attended every one of our task force meetings, and is a leading expert on attorney conduct rules in bankruptcy proceedings. The Committee's Reporter, Professor Alan N. Resnick, and Patricia S. Channon, Senior Attorney, Bankruptcy Judges Division, Administrative Office of the U.S. Courts, have also been of invaluable assistance. Particularly important was Patricia Channon's prior study of local rules in the bankruptcy courts, on which I have relied heavily. Any recommendations are, however, my own. In addition, any revisions to the Bankruptcy Rules, or any model local rules designed for bankruptcy proceedings, should be considered by the Bankruptcy Advisory Committee before action is taken.

II. METHODOLOGY AND FINDINGS:

A. "Study I": Reported Bankruptcy Cases Involving Rules of Attorney Conduct (1990-1996). See Appendices I, II.

The first study ("Bankruptcy Case Study") researched reported cases concerning local rules of attorney conduct, and categorized each case by the specific rule involved. The purpose of this study was to determine which kinds of attorney conduct are most important to the bankruptcy courts. This study was modeled after previous studies done for this Committee on local rules of attorney conduct in the federal district courts and federal courts of appeals. See Study of Recent Federal Cases (1990-1995) Involving Rules of Attorney Conduct, December 1, 1995; Supplement to Study of Recent Federal Cases (1990-1995)

Involving Rules of Attorney Conduct, May 14, 1996. (Collectively, the "Federal Case Studies")

As in the prior studies, an extensive computer search was designed, using the Descriptive Word Index of the Federal Practice Digest and the Westlaw data base. The search employed thirty five West Digest key numbers that closely tracked attorney conduct rules, as well as key words, phrases and numbers relating to these rules. A date restriction of January 1, 1990 to March 23, 1996 was used to allow for adequate comparison with the previous Federal Case Studies. The resulting search produced ninety-three reported bankruptcy cases involving local rules of attorney conduct.

Devoted research assistants then read each of the ninety-three cases. They prepared a painstaking written analysis of each case, including a summary of the underlying facts, the attorney conduct in question, the relevant standards of attorney conduct cited, the relevant key numbers assigned by West Publishing and the court's eventual decision. See Illustration I, Appendix I. At this point, a decision was to be made as to which "category" of rule was chiefly involved in each dispute. When the local standards were not based on the ABA Model Rules of Professional Conduct ("Model Rules"), the standards were "translated" into the applicable ABA Model Rule categories of Chart I, Appendix II using a system similar to the comparative table on page 128 of West's Selected Statutes, Rules and Standards of the Legal Profession (1995 ed.). Of course, this was a "rough fit," but it permits comparing "apples with apples" -- and a review of individual cases showed that the "rough fit" was more than adequate for the purposes of this study.

The results of the Bankruptcy Study show that ABA Model Rules 1.7, 1.8, 1.9, 1.10 and 1.11 or standards analogous to those rules were central to 53% of reported bankruptcy cases involving issues of attorney conduct (49 cases of the 93). The next largest category involved safekeeping of client property (ABA Model Rule 1.15 or its equivalents) accounting for 13%, or 12 cases. The third largest category involved attorney's fees (equivalent to ABA Model Rule 1.5) containing 9%, or 8 cases. Combined,

these three categories account for 75% of all reported bankruptcy cases. The next highest category involved "Lawyer as a Witness" (ABA Model Rule 3.7) with 4%, or only 4 cases.

These results were compared with the prior studies of federal district courts and courts of appeals (the "Federal Case Studies"). The frequency of "Conflict of Interest" rules was consistent with the results of the prior studies, with 53% of the reported bankruptcy cases involving such conflicts, as opposed to 46% of the other reported federal cases. But the "Communications with Represented Parties" Rule (ABA Model Rule 4.2) and the "Lawyer as Witness" Rule (ABA Model Rule 3.7) were significantly less prevalent in the Bankruptcy Study than in the prior Federal Case Studies: 4% and 1% respectively in the Bankruptcy Study, as opposed to 10% each in the Federal Case Studies. Conversely, cases involving "Attorney's Fees" (ABA Model Rule 1.5) constituted 9% of the bankruptcy cases, as opposed to 5% of the federal cases, and cases involving "Safekeeping of Client Property" (ABA Model Rule 1.15)[2] involved 13% of the bankruptcy cases, as opposed to 1% of the federal cases. Not surprisingly, in light of the Federal Case Studies, most ABA Model Rules, or their equivalents, never feature in reported bankruptcy decisions. Almost all bankruptcy cases involving attorney conduct involve the small "core" group of rules

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[2] ABA Model Rule 1.15, "Safekeeping Property," is far more important in bankruptcy courts than it is in other federal courts. The text is as follows:

> "(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of [five years] after termination of the representation.
>
> (b) Upon receiving funds or other property in which the client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
>
> (c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interest. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved."

mentioned above. See Chart I, Appendix II; see also Study of Recent Federal Cases (1990-1995) Involving Rules of Attorney Conduct, December 1, 1995; Supplement to Study of Recent Federal Cases (1990-1995) Involving Rules of Attorney Conduct, May 14, 1996.

B. "Study II": Sources of Local Rules Governing Attorney Conduct in Bankruptcy Courts. See Appendix III.

The second study ("Bankruptcy Rule Study") traced the sources of the local standards governing attorney conduct in each bankruptcy court. The purpose was to determine how closely the bankruptcy courts follow the local rules of attorney conduct used by their corresponding district courts, which in turn would reveal how widespread the impact of changes in the federal district courts would be in the bankruptcy court system. This study was built upon the excellent research of Patricia S. Channon, "Professional Responsibility Rules in the Local Rules of Bankruptcy Courts," and a previous report done for this Committee on local rules regulating attorney conduct in the federal district courts and courts of appeals. See Report on Local Rules Regulating Attorney Conduct, July 5, 1995.

The results of this study reveal that most bankruptcy courts do not have their own independently developed set of local rules governing attorney conduct. See Chart II, Appendix III, Infra. Over seventy-three (73) percent of the ninety-four bankruptcy courts have either explicitly or implicitly adopted the local rules of attorney conduct of their respective federal district courts. Thirty-two (32) of the ninety-four (94) bankruptcy courts have no local rule at all governing attorney conduct. (These courts still require that the attorney be admitted to the local federal district court, which presumably implies that the attorney is governed by the federal district court's rules of attorney conduct, if any.[3])

[3] Where the local rules of a bankruptcy court are silent on attorney conduct, we have assumed that the rules of the federal district court apply. See e.g. In re Glenn Elec. Sales Corp., 99 B.R. 596, 598 (D. N.J. 1988)

Nineteen (19) of the bankruptcy courts explicitly adopt the standards of attorney conduct employed by the local federal district court. Eighteen (18) others adopt all the rules of the local federal district court generally. Thus, sixty -nine (69) of the bankruptcy courts explicitly or implicitly adopt district court standards. Additionally, three (3) bankruptcy courts use district court rules in combination with other standards, meaning that over seventy-seven (77) percent of the bankruptcy courts could automatically import changes made to district court attorney conduct rules.

The remaining bankruptcy courts use other standards. Four (4) courts have local rules authorizing disciplinary enforcement, but fail to state the standard to be applied. Eight (8) bankruptcy courts refer to the rules of attorney conduct as promulgated by the state's highest court. Three (3) courts refer to a combination of state and ABA standards. Two (2) courts, the Bankruptcy Courts for the Eastern and Western Districts of Arkansas, adopt the Uniform Rules of Disciplinary Enforcement, first promulgated by the Committee on Court Administration and Case Management in 1978. One court (1), the Bankruptcy Court for the Southern District of Georgia, refers to the "current canons of professional ethics of the American Bar Association."

As discussed in the prior reports, there is a growing "balkanization" of rules governing attorney conduct in the federal district courts. See Report on Local Rules Regulating Attorney Conduct, July 5, 1995. It appears that the bankruptcy court system has, for the most part, "imported" this problem by adopting the differing rules of attorney conduct of their respective federal district courts. See Chart II, Appendix III. See also Knopfler v. Schraiber, 103 B.R. 1001, 1003 (Bankr. N.D. Ill 1989) (holding that a federal court may consider both the Model Code and the Model Rules as standards governing attorney conduct); In re Consupak, Inc., 87 B.R. 529, 550 (Bankr. N.D. Ill. 1988) (holding that a federal court may consider both the Model Code and the Model Rules as

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(holding that when local rules of bankruptcy court are silent on issue of attorney conduct, federal district court's local rules apply).

standards governing attorney conduct); In re Glenn Elec. Sales Corp., 99 B.R. 596, 598 (D.N.J. 1988) (disqualified law firm argues Model Code improperly invoked by District Court in Model Rules jurisdiction).

C. "Study III": Application of Rules for Attorney Conduct in Conjunction with the Bankruptcy Code. See Appendices IV, V.

The third and final study examined the application of local rules of attorney conduct in conjunction with the applicable provisions of the Bankruptcy Code, especially, § 327. See 11 U.S.C. § 327(a). The purpose was to consider what effects, if any, the options considered by this Committee would have on the application of Bankruptcy Code.

The bankruptcy system is unique in American jurisprudence and presents unique ethical issues. This is particularly true in the area of conflict of interest regulation. As revealed by our prior studies, conflict of interest issues frequently arise in federal district courts, even in ordinary civil litigation where there are only two parties. See Study of Recent Federal Cases Involving Rules of Attorney Conduct, January 9, 1996, and the other studies cited at Section I, supra. The bankruptcy arena is far more complicated. There are rarely just two diametrically opposed adversaries, and frequently dozens, or even hundreds of parties with shifting alignments and differing interests that can change over time. See Peter E. Meltzer, "Whom do You Trust? Everything You Never Wanted to Know About Ethics, Conflicts and Privileges in the Bankruptcy Process," 97 Commercial L.J. 149, 150 (1992), set out in Appendix V, infra. "[T]here are ordinarily a number of parties whose interests and alliances are constantly in a state of flux during the case." Id., 150. According to Professor Meltzer:

> "Bankruptcy involves shifting relationships: Today's enemy is tomorrow's friend and vice versa. Thus bankruptcy is rich in the potential for conflict, but it is also rich in the potential for cooperation. The parties need to work together even when they are at sword's points. This fact makes it extra difficult to identify just when a conflict exists."

Id. at 151, quoting, Ayer, "How to Think About Bankruptcy Ethics," 60 Am. Bankr. L.J. 355, 386-87 (1986).[4]

§ 327 of the Bankruptcy Code is a statutory prescribed ethical rule governing conflict of interests for attorneys and other professional persons in the bankruptcy context. The statute permits the Bankruptcy Trustee to only employ professional persons (including attorneys) "that do not hold or represent an interest adverse to the estate" and are "disinterested persons." 11 U.S.C. § 327(a). The Bankruptcy Code does not define the words "hold or represent an interest adverse to the estate," but caselaw has defined this provision to include : 1. "the possessing or asserting of any economic interest that would tend to lessen the value of the bankruptcy estate" or 2. "possessing a predisposition under circumstances that render such a bias against the estate." See In re Roberts, 46 B.R. 815, 827-29 (Bankr. D. Utah 1985), *aff'd in part, rev'd in part*, 75 B.R. 402 (D. Utah 1987) (en banc).

The Bankruptcy Code does define "disinterested person." See 11 U.S.C. § 101(14). The definition lists five categories of individuals who are not "disinterested." Examples of such individuals includes creditors, equity security holders, insiders and investment bankers for any outstanding security of the debtor. 11 U.S.C. § 101(14). The definition section also possesses a "catch-all" provision which some courts have interpreted to require an attorney to be free from "the slightest personal interest which might be

[4] For example, conflict of interest is inherent in the representation of a debtor in possession (DIP) during a chapter 11 reorganization. Unless a trustee has been appointed (not the usual situation), the DIP is the debtor itself. 11 U.S.C. § 1101. Section 1107 of the Bankruptcy Code imposes on the DIP most of the duties of a trustee. Nowhere is there any reference to duties to the owner of the debtor. See Jay Lawrence Westbrook, "Fees and Inherent Conflicts of Interest," 1 Am. Bankr. Inst. L. Rev. 287, 290 (1993). Nor is the Bankruptcy Code clear on whether any duty is owed to creditors. Id. Three cases from the Northern District of Texas, however, provide that the DIP owes a duty of loyalty to creditors. See Diamond Lumber, Inc. v. Unsecured Creditors' Comm. of Diamond Lumber, Inc., 88 B.R. 773 (N.D. Tex. 1988); In re Kendavis Indus. Int'l, Inc., 91 B.R. 742 (Bankr. N.D. Tex. 1988); In re Chapel Gate Apartments, Ltd., 64 B.R. 569 (Bankr. N.D. Tex. 1986). This can create conflict of interest. While the DIP is not charged with a duty to the owners of the debtor, the DIP is very often the owner or managers employed by the owner. Charging the DIP with a duty that conflicts with its own interest passes this conflict along to the attorneys that represent the DIP.

reflected in their decisions." See In re Tinley Plaza Assocs. L.P., 142 B.R. 272, 277-78 (Bankr. N.D. Ill. 1992)[5].

Among the bankruptcy courts, application of § 327 is far from uniform. See the extensive discussion in Marcia L. Goldstein et al., "Ethical Considerations for Bankruptcy Professionals: Disinterestedness, Conflicts of Interest, and Retainers," C995 ALI-ABA 397 (May 4, 1995); William Kohn, "Deciphering Conflicts of Interests in Bankruptcy Representation," 98 Commercial L. J. 127 (1993). For example, there is a split of authority regarding the application of § 327 for "potential" conflicts of interest. Some courts have held that a "potential conflict" is a contradiction in terms, finding that all conflicts are actual. See In re Kendavis, 91 B.R. at 753-54 ("The concept of potential conflicts of interest is based on a mistaken interpretation of the Bankruptcy Code."); In re BH & P, Inc., 103 B.R. 556, 563-64 (Bankr. N.D. Texas 1989) (holding that "[t]he terms 'actual' and 'potential' conflict merely describe different stages in the same relationship" because the prospect of future conflict could "exert a subtle influence" leading to a more active conflict.) On the other hand, the Court of Appeals for the First Circuit has rejected a literal reading of § 327(a) and held that there is no per se rule against employment of counsel where there is only a "potential" conflict. See In re Martin, 817 F.2d 175, 180 (1st Cir. 1987). The First Circuit pointed out a practical reason for this conclusion. "[T]o interpret the law in such an inelastic way would virtually eliminate any possibility of legal assistance for the debtor in possession, except under a cash-and-carry arrangement or on a pro bono basis." Id., at 180. See the extensive discussion in Peter E. Meltzer, "Whom do You Trust? Everything You Never Wanted to Know About Ethics, Conflicts and Privileges in

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[5] The "catch-all" provision defines a "disinterested person" as one who:

> "does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor or an investment banker specified in subparagraph (B) or (C) of this paragraph."

11 U.S.C. § 101(14)(E).

the Bankruptcy Process," 97 Commercial L. J. 149 (1992), 154-158, set out as Appendix V, infra.

To make matters more complex, cases applying § 327 also frequently involve the conflict of interest rules of the ABA Code of Professional Responsibility ("Model Code") and the ABA Model Rules of Professional Conduct. See e.g., SLC Ltd. v. Bradford Group West, Inc., 999 F.2d 464, 467 (10th Cir. 1993) (Attorney who had represented debtor's general partner disqualified under the Utah version of the Rules of Professional Conduct.); In re F & C Intern., Inc., 159 B.R. 220, 222-23 (Bankr. S.D. Ohio 1993) (Court denied motion of expanded employment for special counsel of DIP under § 327 of Bankruptcy Code and Canon 5 of the ABA Code).

Courts have also applied these rules in a variety of ways, contributing to a wide ranging set of interpretations of § 327. For example, some courts have imported the consent exceptions of the ABA Code or ABA Model Rules into the Bankruptcy Code, and others have not. See e.g. In re Dynamark, Ltd, 137 B.R. 380, 381 (Bankr. S.D. Cal. 1991) (after holding that attorneys did not hold or represent an adverse interest and were disinterested under § 327, the court stated that "although consent to representation by the parties is not necessarily sufficient by itself to overcome a lack of disinterestedness, this court takes judicial notice that [the client creditor] has submitted a written waiver of any conflict that exists or may exist"). But see In re Envirodyne Indus., Inc. 150 B.R. 1008, 1016 (Bankr. N.D. Ill. 1993) (holding § 327 does not allow waiver of conflicts of interest); In re Diamond Mortg. Corp. of Illinois, 135 B.R. 78, 90 (Bankr. N.D. Ill. 1990) ("certain conflicts that a client could waive after full disclosure outside of the bankruptcy context, such as simultaneous representation of the client and the client's creditors, are prohibited by the Bankruptcy Code itself from being waived.").[6] Other courts have

[6] At least one author has argued that the adoption of the consent provisions of the ABA Model Rules and the ABA Code into § 327 may be beneficial. See Karen J. Brothers, "Disagreement among the Districts: Why Section 327(a) of the Bankruptcy Code Needs Help," 138 U. Pa. L. Rev. 1733, 1751 (1990). For example, conflicts often arise when the debtor's pre-bankruptcy attorney is retained by the trustee or DIP. It

imported the vague "appearance of impropriety" aspirations of Canon 9 of the ABA Code in construing the requirements of § 327. See e.g. In re 419 Co., 133 B.R. 867, 869 (Bankr. N.D. Ohio 1991) (holding that § 327 covers "both actual and potential conflicts of interest in order to avoid even the appearance of impropriety."). This despite the intent of the drafters of the ABA Code that only the mandatory "Disciplinary Rules," not the Canons, should be enforced by sanction. See ABA Code, "Preamble and Preliminary Statement," 1. (1969).

At least one law review article has suggested that the conflict of interest standards of the ABA Model Rules are consistent with § 327, while the standards employed by the ABA Code are not. See William Kohn, "Deciphering Conflicts of Interest in Bankruptcy Representation," 98 Commercial L. J. 127, 139-140, set out as Appendix VI, infra. According to Kohn, Congress rejected a per se rule against "potential" conflicts of interest when it amended § 327 to require an "actual conflict of interest." Id. at 140. He also argues that the ABA Code contains Canon 9 which bars even "the appearance of professional impropriety," while the ABA Model Rules do not contain such a per se prohibition and therefore are more consistent with Congressional intent. See id, at 139-40. Kohn would apparently favor a uniform rule covering conflict of interest in the bankruptcy courts based on the ABA Model Rules, and would regard that as consistent with the Bankruptcy Code.

Professor Jay Lawrence Westbrook also sees practical problems in a "per se" bar against "potential" conflicts of interest in bankruptcy cases. See Jay Lawrence Westbrook, "Paying the Piper: Rethinking Professional Compensation In Bankruptcy," 1 Am. Bankr. Inst. L. Rev. 287 (1993), 288-304. He argues that a "per se" rule against "potential"

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has been suggested that disqualifying the debtor's pre bankruptcy attorney is disadvantageous because of such counsel's likely knowledge of the situation and the debtor's confidence in such counsel. Id. at 1751. One possible remedy would be to employ a standard similar to Rule 1.7, allowing the pre-bankruptcy attorney to continue representation upon disclosure and consent, with the additional requirement that parties in interest would also need to consent because the attorney would actually be representing the bankruptcy estate. Id. at 1756.

conflicts will leave debtors unrepresented or represented by inferior lawyers who are willing to face the risk of disqualification because they cannot find other work. Id. at 289. Professor Westbrook would most likely support a uniform rule for bankruptcy conflict of interest based on the ABA Model Rules because those model rules lack a "per se" prohibition against "potential" conflicts of interest.

There are many other disagreements and policy disputes concerning the proper relationship between the Bankruptcy Code provisions, particularly § 327, and local rules governing attorney conduct in the bankruptcy courts. This is true whether the bankruptcy rules are based on the ABA Code, the ABA Model Rules, or on entirely different standards. See the full discussion in Peter E. Meltzer, "Whom do You Trust? Everything You Never Wanted to Know About Ethics, Conflicts and Privileges in the Bankruptcy Process," 97 Commercial L. J. 149 (1992), set out in full at Appendix V, supra. Whatever position is taken on the individual disputes, one thing is certain. The conditions in bankruptcy practice are sufficiently different from that in other federal courts as to require separate analysis and, quite possibly, special rules of attorney conduct.

III. CONCLUSIONS

The first study ("Bankruptcy Cases") establishes that the rules of attorney conduct commonly litigated in the federal district courts are also among those most frequently invoked in the bankruptcy courts. Thus, rule reform for the federal district courts could also benefit the bankruptcy system. On the other hand, bankruptcy courts have a unique professional "culture" and a strong statutory environment. Rules appropriate for district courts cannot be automatically "carried over" with assured success. Whether the ultimate decision is to proceed with a model local rule, or with uniform rule making pursuant to the Rules Enabling Act, 28 U.S.C. § 2072-2074, the Committee should carefully consider which rules should be applied to the bankruptcy court system. For example, ABA Model

Rule 1.15 "Safekeeping of Client Property" is far more important in bankruptcy courts than in district courts[7].

The second study ("Bankruptcy Rules") indicates that seventy-seven percent of the bankruptcy courts have, explicitly or implicitly, adopted the local rules of attorney conduct used by their respective district courts. Thus, unless special care is taken, proposed changes in federal district court rules could technically carry over to most of the bankruptcy courts, even if there is no direct action on bankruptcy rules. To do this in an unreflective way would be a bad mistake. If new district court rules are inappropriate for the conditions of bankruptcy practice, they will be ignored in the bankruptcy courts. This would be of no real assistance to the bankruptcy bar. Specific, and different model local rules of attorney conduct may be required for bankruptcy courts.

Finally, the third study ("Bankruptcy Code") demonstrates that simply changing the rules of attorney conduct in the bankruptcy courts will not automatically produce consistent standards, particularly as to conduct also governed by the Bankruptcy Code. Bankruptcy courts are highly "balkanized" in their interpretation of § 327 of the Bankruptcy Code. Adopting carefully drafted uniform federal rules, however, could lead to more consistent application of statutory standards by curbing the casual use of the old ABA Canon 9 and the unpredictable disqualification of lawyers with "potential" conflicts of interest under § 327 and under the vague "catch-all" provision of 11 U.S.C. § 101(14). See Section II (C), supra. A well crafted model local rule, specially designed for bankruptcy courts, could do the same.

Initially, the Standing Committee set out to review local rules governing attorney conduct in the district courts. After the three extensive "Federal Cases" studies cited in Section I, supra, it became clear that standards for attorney conduct in district courts had become extremely "balkanized." But any attempt to restore uniform standards in the district

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[7] For text of Rule 1.15, see footnote 2, supra.

courts is bound to effect bankruptcy practice, due to the numerous "carry over" local rules described at Section II (B), supra. Unlike courts of appeals, where there are relatively few cases and no apparent barriers to adopting the same kind of rules as district courts, the bankruptcy courts are subjected to a complex statutory system, which includes conflict of interest criteria, and other standards directly governing attorney conduct. See Section II (C), supra. See also Study of Recent Cases (1990-1997) Involving Federal Rule for Appellate Procedure 46 (May 10, 1997).

Discussion with members of the Bankruptcy Advisory Committee, particularly the Honorable Adrian G. Duplantier and Gerald K. Smith, and the Reporter, Alan N. Resnick, suggest that the Standing Committee should specifically request the Bankruptcy Advisory Committee for recommendations. In addition, the Federal Judicial Center should undertake an empirical study of bankruptcy courts similar to the very helpful "Study of Standards of Attorney Conduct and Disciplinary Procedures in Federal District Courts" that the Center is now completing at the Standing Committee's request. Final recommendations could take the form of a different model local rule for bankruptcy courts, or of a uniform federal rule that made special allowance for the conditions of bankruptcy practice.

One practical first step would be for this Standing Committee to decide how to proceed with the district courts: whether to proceed with a model local rule ("option one"), or to proceed with some limited uniform rulemaking under the Enabling Act ("option two). That decision would give the Bankruptcy Advisory Committee the context necessary to make its own recommendations. No final action on new district court rules should be taken until specific provisions for bankruptcy practice are also ready.

APPENDIX I

Illustration I - Standard Form for Located Cases (1990-1996)

NAME OF CASE: _____

CITATION: _____

RELEVANT KEY NUMBERS: _____

FACTS/ATTORNEY CONDUCT AT ISSUE: _____

HOLDING: _____

RULES CITED: _____

APPENDIX II

Chart I - Break Down of Recent Bankruptcy Cases (1990-1996) by ABA Model Rules of Professional Conduct

TOTAL NUMBER OF CASES CLASSIFIED BASED ON MODEL RULES: BANKRUPTCY COURTS FROM JAN. 1, 1990 THROUGH MAR 23 1996

Rule	Subject matter	Total	
1.1	Competence	3	
1.2	Scope of Representation	3	
1.3	Diligence	0	
1.4	Communication	0	
1.5	Fees	8	
1.6	Confidentiality of Information	1	
1.7	Conflict of Interest: General	20	
1.8	Conflict of Int. Prohib. Trans.	8	
1.9	Conflict of Interest: Fmr. Client	13	
1.10	Imputed disqualification (Firm)	7	
1.11	Govt. to private employment	1	
TOTALS IN ABOVE FIVE CATEGORIES (CONFLICT OF INTEREST)		⇨	49
1.12	Former Judge or Arbitrator	1	
1.13	Organization as Client	1	
1.14	Client Under a Disability	0	
1.15	Safekeeping Property	12	
1.16	Declining / Terminating Repr.	2	
1.17	Sale of Law Practice	0	
2.1	Advisor	0	
2.2	Intermediary	0	
2.3	Eval. for use by 3rd Persons	0	
3.1	Meritorious Claims/Contentions	1	

Model rule	Subject matter	Total
3.2	Expediting Litigation	0
3.3	Candor Toward the Tribunal	2
3.4	Fairness to opposing party	1
3.5	Impart. & Decorum of Tribunal	0
3.6	Trial Publicity	0
3.7	Lawyer as Witness	4
3.8	Special respons. of Prosecutor	1
3.9	Advocate / Non adjudicative	0
4.1	Truth in Statements to Others	0
4.2	Comm. w. Pers. Rep. Couns.	1
4.3	Dealing w/ Unrep. Person	0
4.4	Respect for Rts. of 3rd Persons	0
5.1	Resp. of Partner or Supervisor	0
5.2	Resp. of Subordinate Lawyer	0
5.3	Resp. Nonlawyer Assist.	2
5.4	Professional Independence	0
5.5	Unauthorized Practice of Law	1
5.6	Restr. on Rt. to Practice	0
5.7	Resp. Reg. Law Rel. Practice	0
6.1	Voluntary Pro Bono Publico	0
6.2	Accepting Appointments	0
6.3	Member in Legal Svces. Org.	0
6.4	Law reform / Client Interests	0
7.1	Comm. Conc. Lawyer's Svces.	0
7.2	Advertising	0

Model rule	Subject matter	Total
7.3	Dir. Contact w/ Prospective Cl.	0
7.4	Comm. of Fields of Practice	0
7.5	Firm Names & Letterheads	0
8.1	Bar Admission & Disc. Matters	0
8.2	Judicial & Legal Officials	0
8.3	Reporting Prof. Misconduct	1
8.4	Misconduct	0
8.5	Disc. Auth.: Choice of Law	0
Totals		93

APPENDIX III

Chart II - Sources of Federal District Court and Bankruptcy Court Local Rules of Professional Conduct

SOURCES OF FEDERAL DISTRICT COURT & BANKRUPTCY COURT LOCAL RULES ON PROFESSIONAL CONDUCT[1]

DISTRICT	DISTRICT COURT[2]	BANKRUPTCY COURT[3]
M.D.AL.	ABA Rules and State rules (r)	Adopted District Court rules generally[4]
N.D.AL.	ABA Rules and State rules (r)	Adopted District Court rules generally
S.D.AL.	ABA Rules and State rules (r)	ABA Rules and State rules (r)
D.AK.	State Rule Based on ABA Model Rules	Adopted District Court rules generally
D.AZ.	State Rule Based on ABA Model Rules	No local rule[5]
E.D.AR.	Uniform Federal rules of Disciplinary Enforcement	Uniform Federal Rules of Disciplinary Enforcement
W.D.AR.	Uniform Federal rules of Disciplinary Enforcement	Uniform Federal Rules of Disciplinary Enforcement

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[1]The text of these local rules may be located in Federal Local Court Rules, Lawyers Cooperative Publishing, 1995 and Bankruptcy Local Court Rules Service, Callaghan & Company 1989.

[2]Sources of district court rules drawn from memorandum from Daniel R. Coquillette to the Committee on Rules of Practice and Procedure, Judicial Conference of the United States, dated Jan. 2, 1995, concerning Local Rules Regulating Attorney Conduct (attached).

[3]Sources of bankruptcy court rules drawn from memorandum from Patricia S. Channon to Gerald K. Smith, dated Mar. 27, 1996, concerning Professional Responsibility Rules in the Local Rules of Bankruptcy Courts, and Bankruptcy Local Rules Service, Callaghan & Co., 1989.

[4]Where a Bankruptcy Court is listed as having "Adopted District Court Rules Generally," it is not possible to determine from the local bankruptcy rules whether the district court rules contain provisions concerning attorney conduct and professional responsibility. See Channon Memo.

[5]Where Bankruptcy Court is listed as having "no local rule," the court still requires that an attorney must be admitted to the District Court. This usually means being a member in good standing of the state bar. Presumably, state rules apply. See Channon memo, p. 1.

DISTRICT	DISTRICT COURT	BANKRUPTCY COURT
C.D.CA.	CA. Rules of Prof. Conduct	Adopted District Court Rules[6]
E.D.CA.	Refers to ABA Code and CA Rules	Adopted District Court Rules
N.D.CA.	CA. Rules of Prof. Conduct	Incorporated into District Court Rules
S.D.CA.	Refers to ABA Code and CA Rules	Adopted District Court Rules generally
D.CO.	State Rule Based on ABA Model Rules	No Local Rule
D.CT.	State Rule Based on ABA Model Rules	No Local Rule
D.DE.	Model Federal Rules of Disciplinary Enforcement	Adopted District Court Rules generally
D.D.C.	State Rule Based on ABA Model Rules	Adopted District Court Rules generally
M.D.FL.	State Rule Based on ABA Model Rules	ABA Rules and State Rules
N.D.FL.	State Rule Based on ABA Model Rules	Adopted District Court Rules
S.D.FL.	State Rule Based on ABA Model Rules	Atty. must read and remain familiar w/ Fla. Bar's Rules of Prof. Conduct. No explicit statement on whether these rules apply or govern.
M.D.GA.	ABA rules and GA. Rules (c)	No Local Rule
N.D.GA.	State Rule Based on ABA Code	Adopted District Court Rules
S.D.GA.	Old ABA Canons	LBR 505(d), "Current canons of prof. ethics of the ABA"
D. Guam	Refers to ABA Model Code and Model Rules	Adopted District Court Rules Generally
D.HI.	State Rule Based on ABA Model Rules	No Local Rule

[6]Bankruptcy Courts listed as having "Adopted District Court rules" state they have adopted the district court's rules on attorney conduct, attorney discipline, professional responsibility, or a similar phrase. See Channon memo.

DISTRICT	DISTRICT COURT	BANKRUPTCY COURT
D.ID.	State Rule Based on ABA Model Rules	LBR 9010(g), Rules of Prof. Conduct adopted by S.Ct. of ID.
C.D.IL.	State Rule Based on ABA Model Rules	No Local rule
N.D.IL.	Unique Standing Order	Adopted District Court Rules generally
S.D.IL.	State Rule Based on ABA Model Rules	Adopted District Court Rules
N.D.IN.	State Rule Based on ABA Model Rules	Adopted District Court Rules
S.D.IN.	State Rule Based on ABA Model Rules	Adopted District Court Rules generally
N.D.IA.	No Local Rule	Modified standards
S.D.IA.	No Local Rule	Adopted District Court Rules generally
D.KS.	State Rule Based on ABA Model Rules	Adopted District Court Rules
E.D.KY.	State Rule Based on ABA Model Rules	No Local Rule
W.D.KY.	State Rule Based on ABA Model Rules	LBR 3(b)(2)(E), Stds. of Prof. Conduct adopted by KY S.Ct.
E.D.LA.	State Rule Based on ABA Model Rules	No Local Rule
M.D.LA.	State Rule Based on ABA Model Rules	Rules of Professional Conduct of LA. State Bar Assoc.
W.D.LA.	State Rule Based on ABA Model Rules	Adopted District Court Rules
D.ME.	State Rule Based on ABA Code	No Local Rule
D.MD.	State Rule Based on ABA Model Rules	LBR 42(k). Counsel are "encouraged to be familiar" with the "Discovery Guidelines of the Maryland State Bar."
D.MA.	State Rule Based on ABA Code	No Local Rule
E.D.MI.	State Rule Based on ABA Model Rules	Adopted District Court Rules Generally

DISTRICT	DISTRICT COURT	BANKRUPTCY COURT
W.D.MI.	State Rule Based on ABA Model Rules	Local rule authorizing discipline of attorneys which does not state standard to be applied.
D.MN.	State Rule Based on ABA Model Rules	No Local Rule
N.D.MS.	No Local Rule	Adopted District Court Rules
S.D.MS.	No Local Rule	Adopted District Court Rules
E.D.MO.	State Rule Based on ABA Model Rules	No Local Rule
W.D.MO.	No Local Rule	Adopted District Court Rules
D.MT.	Refers to ABA Code	Adopted District Court Rules
D.NE.	State Rule Based on ABA Code	Adopted District Court Rules
D.NV.	State Rule Based on ABA Model Rules	No separate bkrtcy. court rules; only bkrtcy. specific rules in Dist. Ct. Rules.
D.N.H.	State Rule Based on ABA Model Rules	No Local Rule
D.N.J.	State Rule Based on ABA Model Rules	Adopted District Court Rules generally
D.N.M.	State Rule Based on ABA Model Rules	No Local Rule
E.D.N.Y.	State Rules and ABA Code	No Local Rule
N.D.N.Y.	Refers to ABA Code	No Local Rule
S.D.N.Y.	State Rules and ABA Code	No Local Rule
W.D.N.Y.	State rule based on ABA Code	Local rule which does not state standard to be applied
E.D.N.C.	State rule based on ABA Model Rules	No Local Rule
M.D.N.C.	State rule based on ABA Model Rules	No Local Rule
W.D.N.C.	State rule based on ABA Model Rules	No Local Rule

DISTRICT	DISTRICT COURT	BANKRUPTCY COURT
D.N.D.	State rule based on ABA Model Rules	Adopted District Court Rules generally
D.N.M.I.	Refers to ABA Model Rules	No Local Rule
N.D.OH.	State Rule Based on ABA Code	Adopted District Court Rules
S.D.OH	Model Federal Rules of Disciplinary Enforcement	LBR 4, Code of Prof. Resp. adopted by OH S.Ct.
E.D.OK.	State Rule Based on ABA Model Rules	No Local Rule
N.D.OK.	State rule based on ABA Model Rules	No Local Rule
W.D.OK.	State Rule Based on ABA Model Rules	Adopted District Court Rules generally
D.OR.	State Rule Based on ABA Code	No Local Rule
E.D.PA.	State Rule Based on ABA Model Rules	Local rule which does not state standard to be applied
M.D.PA.	State Rule Based on ABA Model Rules	Local rule which does not state standard to be applied
W.D.PA.	State Rule Based on ABA Model Rules	Adopted District Court Rules
D.P.R.	Refers to ABA Code	Adopted District Court Rules
D.R.I.	State Rule Based on ABA Model Rules	Adopted District Court Rules generally
D.S.C.	State Rule Based on ABA Model Rules	Dist. Ct. Rule 2.0,08., SC Code of Prof. Resp.
D.S.D.	No Local Rule	Adopts District Court rules generally
E.D.TN.	State Rule Based on ABA Code	LBR 2(c), Code of Prof. Conduct adopted by S.Ct. of TN.
M.D.TN.	Refers to ABA Code	Adopts Dist. Ct. Rule and has local bankruptcy rule that asserts jurisdiction to enforce standards of conduct.
W.D.TN.	State Rule Based on ABA Code	Refers to ABA Code and District Court rules as they relate to attorney conduct
E.D.TX.	State Rule Based on ABA Model Rules	No Local Rule

DISTRICT	DISTRICT COURT	BANKRUPTCY COURT
N.D.TX.	State Rule Based on ABA Model Rules	Adopted District Court Rules
S.D.TX.	State Rules and ABA Code	Adopted District Court Rules
W.D.TX.	State Rule Based on ABA Model Rules[7]	Adopted Dist. Ct. Rules and references "litigation standard" announced in local case and states that it applies
D.UT.	State Rule Based on ABA Model Rules	LBR 4, Code of Prof. Resp. adopted by OH S. Ct.
D.VT.	State Rule Based on ABA Code	No Local Rule
E.D.VA.	State Rule Based on ABA Code	LBR 105(I), Canons of Prof. Ethics of the ABA & the VA State Bar
W.D.VA.	State rule based on ABA Code	No Local Rule
D.V.I.	. Refers to ABA Model Rules	No Local Rule
E.D.WA.	State Rule Based on ABA Model Rules	No Local Rule
W.D.WA.	State Rule Based on ABA Model Rules	Adopted District Court Rules generally
N.D.W.V.	State Rule Based on ABA Model Rules	Adopted District Court Rules
S.D.W.V.	State Rules and ABA Code	No Local Rule
E.D.WI.	State Rule Based on ABA Model Rules	Adopted District Court Rules generally
W.D.WI.	No Local Rule	No Local Rule
D.WY.	State Rule Based on ABA Model Rules	No Local Rule

[7]ABA Code noted.

APPENDIX IV

Chart III - Break Down of Recent Federal Cases (1990-96) by ABA Model Rules of Professional Conduct

TOTAL NUMBER OF CASES CLASSIFIED BASED ON MODEL RULES: FEDERAL DISTRICT AND APPEALS COURTS FROM JAN. 1, 1990 THROUGH MAR. 23, 1996

Rule	Subject matter	Civil	Criminal	Total
1.1	Competence	2	0	2
1.2	Scope of Representation	4	3	7
1.3	Diligence	1	3	4
1.4	Communication	1	0	1
1.5	Fees	24	1	25
1.6	Confidentiality of Information	10	5	15
1.7	Conflict of Interest: General	77	26	103
1.8	Conflict of Int. Prohib. Trans.	9	1	10
1.9	Conflict of Interest: Fmr. Client	81	5	86
1.10	Imputed disqualification (Firm)	20	4	24
1.11	Govt. to private employment	3	10	13
TOTALS IN ABOVE FIVE CATEGORIES (CONFLICT OF INTEREST)		191	46	237
1.12	Former Judge or Arbitrator	0	0	0
1.13	Organization as Client	6	0	6
1.14	Client Under a Disability	0	0	0
1.15	Safekeeping Property	3	1	4
1.16	Declining / Terminating Repr.	7	1	8
1.17	Sale of Law Practice	0	0	0
2.1	Advisor	0	0	0
2.2	Intermediary	0	0	0
2.3	Eval. for use by 3rd Persons	0	0	0
3.1	Meritorious Claims/Contentions	9	3	12

Rule	Subject matter	Civil	Criminal	Total
7.2	Advertising	1	0	1
7.3	Dir. Contact w/ Prospective Cl.	2	0	2
7.4	Comm. of Fields of Practice	1	0	1
7.5	Firm Names & Letterheads	0	0	0
8.1	Bar Admission & Disc. Matters	0	0	0
8.2	Judicial & Legal Officials	2	2	4
8.3	Reporting Prof. Misconduct	1	0	1
8.4	Misconduct	4	3	7
8.5	Disc. Auth.: Choice of Law	6	1	7
Totals		400	120	520

Standards of Attorney Conduct and Disciplinary Procedures

A Study of the Federal District Courts

Report to the Committee on Rules of Practice and Procedure

Marie Leary
Federal Judicial Center
June 1997

Summary

The Judicial Conference Committee on Rules of Practice and Procedure is studying the effect of having multiple standards of professional conduct for attorneys practicing in the federal district courts. The Federal Judicial Center is assisting by reporting on the experiences of federal districts with local rules that govern attorney conduct, and procedures used by the courts to address alleged misconduct. Based on the published local rules of the federal district courts and the responses to questionnaires sent to each federal district in April 1997, we have made the following findings:

I. Local rules governing attorney conduct in the federal district courts:

- Eighty-nine federal districts (95% of all districts) have a local rule informing attorneys practicing before the districts' courts which professional standards of conduct they are required to abide by. Five districts do not have such a local rule.

- The local rules of 68 districts (76% of federal districts with attorney conduct rules) incorporate the relevant standards of the state in which the district is located. The local rules of eight districts (9% of federal districts with attorney conduct rules) adopt an ABA Model directly. The local rules of 12 districts (14% of federal districts with attorney conduct rules) adopt both the relevant state standards of the state in which the district is located and an ABA Model. One district adopts a unique standard of conduct that varies substantially from the ABA model rules and state standards.

- Twenty-one districts have adopted a local rule regulating attorney conduct identical or nearly identical to Model Rule 4(B) of the Model Federal Rules of Disciplinary Enforcement. By comparing the important components of Model Rule 4(B) with those found in the local rules of the other 47 state-based districts that are not identical or similar in language to Model Rule 4(B), we found that the rules of 35 districts (74%) contain language similar in meaning to two or more of the components of Rule 4(B).

- Although the local rules differ as to the source of the standards adopted, the important components of Model Rule 4(B) are also found in a substantial number of districts with model rule-based and combination model rule and state-based local rules. Two important components are (1) whether the district also adopts any amendments to the standards adopted by the rule and (2) whether the district explicitly preserves the right to prescribe any rule or adopt any modification different than or in addition to the standards adopted. However, whereas these provisions are found in the majority of state-based local rules (60% of local rules that adopt relevant state standards), they are incorporated in only a small number of the other districts (25% of either districts with model based-rules or districts with combination state-based and model-based rules).

- Some local rules explicitly identify exceptions to its adopted standards either by providing that the standards cannot "conflict with federal law" or by explicitly identifying provisions of the adopted standards that are not incorporated. Some rules provide that no subsequent amendments to the adopted standards apply unless expressly adopted by the court. And some local rules have provisions addressing whether the district's local rule adopting a standard of conduct also adopts judicial or other agency interpretations of the standard.

- Based upon an average response rate of 75 districts, a total of 40 districts (53%) reported having experienced one or more of the following five problems: problems created by ambiguously drafted rules, federal courts incorporating standards of conduct not included in any rule, due process and vagueness problems, multiforum problems, and problems resulting from the promulgation by federal agencies of their own attorney conduct rules. However, when each of the problems are examined individually, a small minority of the districts reported their occurrence. Using the average response rate of 75 districts, 17% of all districts responding reported the occurrence of conflicts or confusion derived from ambiguous language in their local rule; 9% reported that attorneys practicing in their district were prevented from relying on the explicit language of their local rules because their court used external standards to interpret the districts; 8% reported experiencing complaints regarding lack of attorney due process caused, in part, by the vagueness of their attorney conduct rule; 9% reported having experiencing difficulties resulting from attorney conduct problems involving multiple venues; and only 9% of respondents reported that they had experienced problems due to conflicts between their local rules and rules of professional conduct adopted by a federal agency.

- Based upon a response rate of 78 districts for each category, 17 districts (22%) reported problems with their rules in one or more of the following five areas: confidentiality, communication with represented parties, lawyers as witnesses, candor towards a tribunal, and conflict of interest. However, when these reported problems are viewed in the context of all districts responding to this inquiry (4% of all districts responding reported problems with confidentiality; 17 % of all districts reported problems with communication with represented parties; 4% with lawyers as witnesses; 8% with candor towards a tribunal, and 6% reporting problems with issues involving conflict of interest), with the exception of communication with represented parties to a limited extent, these specific ethical standards do not present a problem for most federal districts.

- The majority of districts do not support having the same rules governing the professional conduct of attorneys in all federal district courts. Out of 79 districts that responded, 24 (30%) indicated that they would be in favor of a national rule; 53 respondents (67%) did not support a national rule, and two had no opinion.

- The majority of districts not in favor of national uniformity do not support, as an alternative, having the same rules governing the professional conduct of attorneys with regard to the issues of confidentiality (73% opposed), communication with represented parties (71% opposed), lawyers as witnesses (75% opposed), candor towards a tribunal (65% opposed), and conflict of interest (73% opposed).

II. Attorney discipline in the federal district courts:

- Eighty-eight federal districts (94% of all federal districts) have a local rule containing some type of procedures for the discipline of attorneys, and six do not have such a local rule.

- Relying on information in the local rules and assuming that all attorney conduct matters are handled by each district according to the procedures in the rules, we can make only the following definitive statements: (1) districts providing the judicial officer with many options and wide discretion for choosing among them for addressing complaints of attorney misconduct are in the overwhelming majority; (2) districts handling attorney discipline matters exclusively within the district or exclusively referring the matters outside of the district with no provisions for disposing of the matter within the district are a minority.

- To obtain a better sense of the actual practices followed in the districts, the respondents were asked to indicate the approaches to attorney conduct that were used by the district and the approach most frequently used by the district. Of the 73 districts responding, the procedure they reported as using most frequently (34 districts or 47% of all districts responding) was referring the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. In order of decreasing popularity, 11 districts (15% of all districts responding) reported referring the matter to a panel or group of judges within the district; eight districts (11%) refer the matter to a single judge within the district; 7 districts (10%) appoint an attorney to investigate and present the matter to the federal district court; 6 districts (8%) refer the matter to a panel or committee of attorneys in the district for investigation and presentation to the federal district court; 6 districts (8%) refer the matter to the United States Attorney for investigation; 6 districts (8%) handle the matter another way (all reported disciplinary matters are handled within the district); and 4 districts (5%) appoint the group or agency charged with enforcing state ethical standards to investigate and present the matter to the federal district court.

- Out of the approaches that the districts reported as using most frequently, 34 of these approaches (41 % of all approaches reported used most frequently) referred the disciplinary matter outside of the district court for investigation and final disposition; 39 of these approaches (47% of all approaches reported used most frequently) investigate and arrive at a final disposition of the complaint within the district court; and 17 of these approaches (20% of all approaches reported used most frequently) both send the complaint outside of the district court for investigation and within the district court for final disposition. From this comparison, we observed: (1) The approach slightly favored by the largest number (47% of all approaches reported as used most frequently) of all responding districts is to address the attorney misconduct matter within the district court, both for investigation and final disposition; (2) The majority of all responding districts (61% of all approaches reported as used most frequently) prefer to refer the investigation of attorney misconduct allegations outside of the district court; (3) The majority of all responding districts (67% of all approaches reported as used most frequently) favor handling the final disposition of the matter within the district court.

- The number of complaints or allegations of attorney misconduct that occur within the district court are small. In calendar year 1996, the median for a range of zero to 32 complaints received by the districts was 7.2, and the median for a range of zero to 32 complaints on which formal action was taken was 7.

I. Introduction[1]

The Judicial Conference Committee on Rules of Practice and Procedure is studying the effect of having multiple standards of professional conduct for attorneys practicing in the federal district courts. The Committee requested the Federal Judicial Center to assist by preparing a report on (1) the experiences of federal districts with local rules that govern attorney conduct, and (2) procedures used by the courts to address alleged misconduct. This report is based on the published local rules of the federal district courts and the responses to questionnaires sent to each federal district in April 1997. We sent each district two questionnaires. The first, addressed to the district clerk, asked about the current status of pertinent local rules, the history of the rules, and the frequency of attorney misconduct complaints. The second, addressed to the Chief Judge, or other judicial representative identified as familiar with the rules and issues, asked about the districts' experiences with the rules and procedures relating to attorney conduct and discipline.

Section II describes the current status of local rules governing attorney conduct in the federal district courts. These rules are categorized according to the source of the standards the district has adopted. In addition, the language and key components of these rules are compared to those of Model Rule 4(B) of the original 1978 Model Federal Rules of Disciplinary Enforcement. Also, Section II reports the districts' responses to inquiries concerning problems experienced with the overall approach of their rule and with specific ethical standards such as those governing confidentiality, communication with represented parties, lawyers as witnesses, candor towards the tribunal, and conflict of interest. This section also reports the responses to questions about the need for uniformity of rules governing the professional conduct of attorneys.

Section III describes the current procedures used by federal courts to address attorney misconduct matters. First, the districts' local rules that establish procedures for handling complaints of alleged misconduct are examined. These rules are loosely grouped based on the options the rule provides for the disposition of original allegations of misconduct. As will be explained in greater detail in this section, the manner in which districts are currently handling attorney misconduct allegations cannot accurately be determined from their local rules because the majority of these rules provide several procedures from which the court may chose, and some even permit the court to dispose of the matter in any other manner deemed appropriate but not described in the rules. Therefore, the questionnaires asked the districts to report the procedures they use "typically" and "most frequently." Section III also reports the districts' satisfaction with and problems experienced with the procedure they reported using most frequently. Finally, additional information is presented about districts that typically refer attorney disciplinary matters to state disciplinary authorities and districts that typically refer disciplinary matters to committees or panels created within the district.

II. Local Rules Governing Attorney Conduct in the Federal District Courts

A. Analysis of Current Local Rules

1. Present Status and Categorization of Local Rules

All 94 federal districts verified the existence (or lack thereof) and content of their current local rules adopting standards of professional conduct for attorneys practicing before the districts' courts. Eighty-nine federal districts (95% of all districts) have a local rule informing attorneys

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[1] Special acknowledgments are made to James B. Eaglin, Judith A. McKenna, David Rauma and Elizabeth C. Wiggins for their assistance throughout each stage of this study.

practicing before the districts' courts which professional standards of conduct they are required to abide by. Five districts do not have such a local rule.[2]

The July 5, 1995 report to the Committee, "Local Rules Regulating Attorney Conduct in the Federal Courts", identified several types of attorney conduct rules that vary according to the source of the standards adopted.[3] For purposes of analysis, this report uses a similar approach to categorize the current local rules:

1. State-based Rules[4]: The district's local rule incorporates the relevant standards of the state in which the district is located. The local rules of 68 districts (76% of federal districts with attorney conduct rules) follow this approach.
2. ABA Model-based Rules: The district's local rule adopts an ABA Model directly (either the ABA Canons of Professional Ethics (1908), the ABA Code of Professional Responsibility (1969) or the ABA Rules of Professional Conduct (1983)). The local rules of eight districts (9% of federal districts with attorney conduct rules) follow this approach (five adopt the ABA Model Rules, three adopt the ABA Model Code, and one adopts the ABA Canons).
3. Combination State and ABA Model-based Rules: The district's local rule adopts both the relevant state standards of the state in which the district is located and an ABA Model. The local rules of 12 districts (14% of federal districts with attorney conduct rules) follow this approach.

The local rule of one district does not follow any of these three approaches. The local rule for the Northern District of Illinois adopts a unique standard of conduct that varies substantially from the ABA Model Rules and state standards.

Verification by the districts and categorization of the districts' local rules based upon the source of the standards adopted allows us to conclude that the overwhelming majority of federal districts (95%) have adopted professional standards of attorney conduct by local rule and the majority of these districts (76%) incorporate the standards of professional conduct adopted by the state in which the district is located. Table A-1 in the Appendix identifies the current local rule governing attorney conduct in each of the eighty-nine districts with rules and shows the five districts that do not have such a local rule. In addition, this table indicates which of the three previously defined approaches each district's local rule follows.

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[2] All references to the districts' local rules and procedures are current as of April 28, 1997.

[3] Daniel R. Coquillette, Local Rules Regulating Attorney Conduct In The Federal Courts 3-5 (July 5, 1995) (Report to the Committee on Rules of Practice and Procedure, Judicial Conference of the United States) [hereinafter July 1995 Report to the Committee].

[4] *Id.* The July 1995 Report to the Committee further subdivides local rules that adopt state standards: (1) local rules that adopt state standards based on the ABA Model Rules of Professional Conduct (1983); (2) local rules that adopt state standards based on the ABA Code of Professional Responsibility (1969); (3) local rules that adopt the unique California Rules of Professional Conduct (different from both the ABA Rules and ABA Code). This report does not utilize these subdivisions.

2. Rule 4(B) of the 1978 Model Federal Rules of Disciplinary Enforcement

In 1978, the Judicial Conference Committee on Court Administration approved the Model Federal Rules of Disciplinary Enforcement to be adopted on a voluntary district-by-district basis. Model Rule 4(B) provided:

> Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility [or Rules of Professional Conduct] adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Code of Professional Responsibility [or Rules of Professional Conduct] adopted by this court is the Code of Professional Responsibility [or Rules of Professional Conduct] adopted by the highest court of the state in which this Court sits, as amended from time to time by that state court, except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state.[5]

Twenty-one districts[6] have adopted a local rule regulating attorney conduct identical or nearly identical to Model Rule 4(B). Because Model Rule 4(B) incorporates the rules of professional responsibility adopted by the highest court of the state in which the district is located, these 21 districts are part of the group of 68 districts we have identified as having adopted a state-based rule. We examined the similarity between the rules of these 21 districts and the other 47 districts with state-based rules. To do this, we determined whether the rules of the districts contained one or more of the five distinct components of Model Rule 4(B). Those components are:

1. Subject to standards: Language defining who is subject to discipline for violation of the standards of professional conduct adopted by the district. Model Rule 4(B) applies its standards to "an attorney admitted to practice before this Court."
2. Misconduct warranting discipline: Language defining misconduct and behavior warranting discipline. Model Rule 4(B) defines misconduct and behavior warranting discipline as "acts or omissions . . . individually or in concert with any other person or persons, which violate the Code of Professional Responsibility [or Rules of Professional Conduct] adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship."
3. Identification of standards: Language identifying the standard of conduct adopted by the district. Model Rule 4(B) adopts "the Code of Professional Responsibility [or Rules of Professional Conduct] adopted by the highest court of the state in which this Court sits." Note that all of the eighty-nine attorney conduct rules in the districts were required to contain this component in order to be identified as a local rule establishing professional standards of conduct in this report.

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[5] Model Rule (4) of the Model Federal Rules of Disciplinary Enforcement, as proposed by the Committee on Court Administration, Judicial Conference of the United States (1978). Bracketed language is commonly found in districts adopting this model rule in some form after adoption of the ABA Model Rules of Professional Conduct (1983).

[6] D. Me., D. Mass., D. N.H., D. Vt., E.D. Pa., M.D. Pa., W.D. Pa., M.D. N.C., E.D. Va., W.D. Va., S.D. Ohio, E.D. Mich., S.D. Ill., S.D. Ind., E.D. Ark., W.D. Ark., D. Minn., E.D. Mo., W.D. Mo., D. Neb., D. Wyo.

4. Amendments to standards: Language indicating the district's intention to also adopt any amendments to its standards which may be promulgated by the source of its standards. Modal Rule 4(B) adopts standards of the highest state court "as amended from time to time by that state court."
5. Exceptions to standards: Language explicitly preserving the district's ability to prescribe any rule or adopt any modification which is different than or in addition to the standards adopted. Model Rule 4(B) adopts standards of the highest state court as amended by that state court, "except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state."

Table 1 shows how often the components of Model Rule 4(B) are found in the 21 districts with rules similar or identical to Model Rule 4 (B) and how often the components are found in the state-based local rules of the other 47 districts. The component, identification of standards, is not addressed in the table because all of the districts' rules contain language identifying the standards adopted by the rule. For each of the 68 districts with state-based attorney conduct rules, Table A-2 in the Appendix presents the components of Model Rule 4(B) found in each rule.

Table 1
Components of Model Rule 4(B) in State-Based Attorney Conduct Local Rules

	Components of Model Rule 4(B)			
	Subject to Standards	**Misconduct Warranting Discipline**	**Amendments to Standards**	**Exceptions to Standards**
Local rules identical or similar to Model Rule 4(B) (21 districts)	21 (100%)	21 (100%)	21 (100%)	18 (86%)
State-based local rules not similar or identical to Model Rule 4(B) in language used (47 districts)	34 (72%)	20 (43%)	17 (36%)	23 (49%)

Almost by definition, three of the four components are found in the 21 local rules similar or identical in language to Model Rule 4(B); the fourth component is found in most of them. The various components of Model Rule 4(B) are also found in substantial numbers in the other state-based rules: two districts' rules contain none of the components of Model Rule 4(B); nine districts' rules contain one of the components; 22 districts' rules contain two of the components, 11 districts rules contain three of the components, and two districts' rules contain all four components. Thus, the rules of 35 districts (74%), with state-based rules not identical or similar in language to Model Rule 4(B), contain language similar in meaning to two or more of the components of Rule 4(B).

Table 2 below provides a comparison of the components of Model Rule 4(B) found in each of the three approaches to attorney conduct rules[7]: state-based local rules, model rule-based local rules, and combination model rule and state-based local rules.

Table 2
Components of Model Rule 4(B) in All Attorney Conduct Local Rules

	Components of Model Rule 4(B)			
	Subject to Standards	Misconduct Warranting Discipline	Amendments to Standards	Exceptions to Standards
State-Based Local Rules (68 districts)	55 (81%)	41 (60%)	38 (56%)	41 (60%)
Model Rule-Based Local Rules (8 districts)	7 (88%)	6 (75%)	1 (13%)	2 (25%)
Combination Model Rule and State-Based Local Rule (12 districts)	12 (100%)	10 (83%)	3 (25%)	3 (25%)

Although the local rules differ as to the source of the standards adopted, the other components of Model Rule 4(B) are found in a substantial number of districts with model rule-based and combination model rule and state-based rules. Of the eight model rule-based rules, seven (88%) contain language similar in meaning to two or more of the components of Rule 4(B). For each of these eight districts with model rule-based attorney conduct rules, Table A-3 in the Appendix presents the components of Model Rule 4(B) found in each rule. Of the rules of the 12 districts with combination model rule and state-based rules, 10 (83%) contain language similar in meaning to two or more of the components of Rule 4(B). However, whereas provisions indicating whether the district also adopts any amendments to the standards adopted by the rule or provisions which explicitly preserve the districts' right to prescribe any rule or adopt any modification different than or in addition to the standards adopted are found in the majority of state-based local rules (60% of local rules that adopt relevant state standards), these provisions have been incorporated in only a small number of the other districts (25% of either districts with model based-rules or districts with combination state-based and model-based rules).For each of these 12 districts with combination model rule and state-based attorney conduct rules, Table A-4 in the Appendix presents the components of Model Rule 4(B) found in each rule.

3. Other Important Provisions in Attorney Conduct Rules

Besides the components of Model Rule 4(B), several other provisions found in attorney conduct rules are notable. As will be reported in section II, part B.1, ambiguity in the language of a

[7] The Northern District of Illinois' local rule, which does not adopt either of the three approaches to attorney conduct rules identified in this report, only contains the first two components of Model Rule 4(B)—identification of who is subject to the adopted standards and a definition of the misconduct which will violate adopted standards and warrant discipline.

district's local rule can result in conflict between, or confusion over, the applicable standards of conduct for attorneys practicing within a district. The presence or lack of certain provisions in a district's local rule may provide important insights into a district's experience with attorney conduct issues. One such provision indicates areas where a federal district court found it necessary to explicitly diverge from the standards adopted. Model Rule 4(B) adopts standards of the highest state court as amended by that state court, "except as otherwise provided by specific Rule of this Court after consideration of comments by representatives of bar associations within the state." Many districts contain similar language generally preserving the district's ability to prescribe any rule or adopt any modification which is different than or in addition to the standards adopted. However, some districts' attorney conduct rules more explicitly identify exceptions to its adopted standards. Six districts[8] (four with state-based rules and two with ABA Model rule-based rules) have local rules that adopt standards with the exception that these standards cannot conflict with federal law (i.e., statutes, regulations, court rules or decisions or law). Furthermore, the attorney conduct rules of eight districts[9] explicitly identify provisions of the adopted standards that are not incorporated. Seven of the eight districts with explicit exceptions in their rules have a state-based rule, while one district has a combined model rule and state-based rule. The state-based rules explicitly refused to adopt state ethical standards governing the following areas: public statements by counsel in a criminal case (one district); lawyer as a witness in both civil and criminal cases (one district); propriety of prior court approval for issuance of subpoena to attorney in criminal case (five districts); confidentiality of information (one district); and misconduct issues (one district). The combination model rule and state-based rule explicitly refused to adopt ethical standards governing ABA Model Rule 3.8(f) (prosecutor's duty not to subpoena attorney in a criminal proceeding to present evidence about past or present client). These exceptions are presented in detail in the column "Exceptions to Adopted Rules" in Tables A-2 through A-4 in the Appendix.

Standards of attorney conduct, both state standards and ABA Modal Rules, are regularly amended or modified. The issue of whether a state's local rule adopting a standard of conduct also adopts all subsequent amendments or modifications to those standards is addressed by some districts in their local rule. Rule 4(B) adopts standards of the highest state court "as amended from time to time by that state court." This language indicates the district's intention to adopt any amendments to its standards which may be promulgated by the source of those standards (i.e., the state court). Three districts[10] have provisions providing for the opposite—no subsequent changes valid unless expressly adopted by court order. These exceptions are presented in detail in the column "Other Important Provisions" in Tables A-2 through A-4 in the Appendix.

Standards of attorney conduct may be interpreted by courts or other sources of attorney conduct standards. For example, state bars may issue opinions interpreting specific ethical standards. The issue of whether a district's local rule adopting a standard of conduct also adopts judicial or other agency interpretations of its standards is addressed by some districts in their local rule. Five districts[11] with state-based attorney conduct rules explicitly state the district's intention to follow judicial interpretations of their adopted state standards only by federal courts. Other districts[12] (five districts with state-based rules and three districts with combination model rule and state-based rules) explicitly state the district's intention to adopt judicial interpretations by any court to which the districts' adopted standards apply. These exceptions are presented in detail in the column "Other Important Provisions" in Tables A-2 through A-4 in the Appendix.

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[8] D. N.J., N.D. Ohio, D. Alaska, N.D. Fla., D. Del., D. V.I. See also Tables A-2 and A-3 in the Appendix.

[9] D. Conn., E.D. Pa., M.D. Pa., W.D. Pa., E.D. Va., W.D. Tenn., D. Haw., N.D. Ala. See also Tables A-2 and A-4 in the Appendix.

[10] D. Conn., M.D. La., D. Utah. *See also* Table A-2 in the Appendix .

[11] D. Conn., E.D. N.Y., S.D. N.Y., D. Utah., N.D. Ga. *See also* Table A-1 in the Appendix.

[12] D. Alaska, N.D. Cal., C.D. Cal., D. Idaho, W.D. Tex., E.D. Cal., S.D. Cal., N.D. Okla. *See also* Tables A-2 and A-4 in the Appendix.

4. History of and Anticipated Changes to Local Rules Regulating Attorney Conduct

a. History

The responses received to inquiries regarding the history of the districts' local rules indicate that local rules adopting professional standards of conduct for attorneys started emerging in the districts in the early 1970s, but by the early 1980s only a small minority of districts had adopted them. However, over the next decade the districts gradually adopted professional standards by local rule, and today all but five districts have such rules. Respondents in 52 districts reported that there have been no changes in their standards since initial adoption of the local rule. Respondents in twenty districts reported at least one change in standards since initial adoption. Eighteen districts were not aware of the history of their current local rule regulating attorney conduct. Among the districts reporting a change in standards, six districts reported changing the approach adopted by their local rule from an ABA model-based approach to a state-based approach; two districts changed from a combined ABA model rule-based approach to a state-based approach; one district reported moving from state-based standards to ABA model-based standards; three districts changed from state-based standards to combination model rule and state-based standards; and one district reported adopting a state-based local rule governing attorney conduct after previously having no specific standards. Table A-5 in the Appendix describes these reported changes in standards in more detail. Many of the respondents were not able to provide information about the reason for the changes.

b. Anticipated Changes

The districts were asked whether they had any current plans to amend their present local rule either by changing the standards governing attorney conduct in their district or adopting additional standards. Of the 76 districts responding to this inquiry, only three districts reported having current plans for significant changes to their standards. The Southern District of Indiana is examining the possibility of adding a local rule that specifically encompasses the standards of professional conduct within the Seventh Circuit and the Standards of Civility adopted by the Seventh Circuit. The District of Colorado is considering eliminating the adoption of the Colorado Supreme Court Rules of Professional Conduct and establishing its own new rules of conduct for lawyers admitted to its bar. If it does so, the District of Colorado will share the Northern District of Illinois' distinction as a federal district with standards of professional conduct unique to the district. The Middle District of North Carolina is considering amending its current rule to specifically adopt the final ethics opinions of the North Carolina State Bar that interpret and apply the Code of Professional Responsibility adopted by the North Carolina Supreme Court.

5. Districts Without a Local Rule Regulating Attorney Conduct

The five districts[13] that reported having no local rule specifying standards governing attorney conduct reported no plans to adopt such a local rule in the future. Respondents for these districts reported no problems due to the absence of a local rule. However, most of them have informal standards or local rules that establish general guidelines for attorney conduct. For example, when attorney conduct issues arise, the Northern District of Iowa applies the Code of Professional Responsibility for Lawyers adopted by the Iowa Supreme Court and supplemented by the ABA Model Rules. The Southern District of Iowa and the District of North Dakota both have

[13] W.D. Wis., N.D. Iowa, S.D. Iowa, D. N.D., D. S.D.

local rules[14] that establish general guidelines for courtroom decorum and conduct that warrants discipline, but do not adopt any specific standards of professional conduct.

B. Problems Experienced by Federal Districts Due to the Overall Approach of Their Attorney Conduct Rule

The Committee identified five major problems related to the practical application of the variants of attorney conduct rules in the districts.[15] These problems are those created by ambiguously drafted rules, federal courts incorporating standards of conduct not included in any rule, due process and vagueness problems, multiforum problems, and problems resulting from the promulgation by federal agencies of their own attorney conduct rules. Overall, based upon an average response rate of 75 districts for each of the five problems discussed below, a total of 40 districts (53%) reported having experienced one or more of these five problems with their attorney conduct rules. However, when each of these problems are examined individually as shown below, a very small minority of the districts reported their occurrence.The following five sections present the districts' responses to inquiries as to whether these problems have occurred in their district due to the approach adopted by their local rule regulating attorney conduct.

1. Problems Created by Ambiguously Drafted Rules

We asked districts: "Has ambiguity in the language of the rule resulted in any conflicts between, or confusion over, applicable standards of conduct for attorneys practicing within your district?" If so, the district was requested to indicate whether the conflict or confusion had resulted from any of the following:

1. The local rule adopts an ABA model as its standard of conduct, but the rule does not specify whether the Model Rules of Professional Conduct or the Model Code of Professional Responsibility are the applicable standard.
2. The local rule clearly adopts the Model Rules of Professional Conduct as the court's standard of conduct, but the local rule does not specify whether the standard adopts the exact ABA version of the Model Rules, or the amended version of the state in which the court sits.
3. The rule prescribes multiple standards of conduct without indicating which controls.
4. The rule adopts the standards of the highest state court but does not specify what those standards are (e.g., a version of the Model Rules of Professional Conduct or the Model Code of Professional Responsibility).
5. The rule adopts the standards of the highest state court but does not indicate the force of state interpretations before and after the date of the local rule.
6. The rule adopts the standards of the highest state court but does not specify whether those standards include amendments to the rules adopted by the state court after the date of the local rule.
7. Other. Describe any other problems that have arisen in your district due to ambiguous language in your local rule.

Sixty-nine of the 77 districts (90%) responding to this inquiry reported no conflicts or confusion resulting from ambiguity created by the language of their attorney conduct rule; 13

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[14] Local Rules for the U.S. District Court for the S.D. Iowa, Rule 83.2(f)-(h); Local Rules for the U.S. District Court for the D. N.D., Rules 79.1 & 83.2(B).

[15] July 1995 Report to the Committee, at 11-32.

(17%) reported the occurrence of conflicts or confusion derived from ambiguous language in their local rule.

Six of the 13 districts reported problems resulting from rules that adopt the standards of the highest state court but do not specify what those standards are. Five districts experienced problems because their rule adopts the standards of the highest state court but does not indicate the force of state interpretations before and after the date of the local rule. Three districts reported experiencing conflict or confusion because their rule adopts the standards of the highest state court but does not specify whether those standards include amendments to the rules adopted by the state court after the date of the local rule. Two districts reported experiencing conflict or confusion because their rule prescribes multiple standards of conduct without indicating which controls. One district reported experiencing conflict or confusion because their local rule clearly adopts the Model Rules of Professional Conduct as the court's standard of conduct, but the local rule does not specify whether the standard adopts the exact ABA version of the Model Rules, or the amended version of the state in which the court sits. In addition, seven districts reported experiencing "other" problems because of ambiguous language in their attorney conduct rule. Table A-6 in the Appendix describes the problems reported by the 13 districts.

2. Problems Created by Federal Courts Incorporating Standards Not Explicit In The Districts' Local Rules

We asked districts: "Are attorneys practicing in your district prevented from relying on the explicit language of your local rule because your district has 'incorporated' external standards into your local rules or utilized external standards not apparent in the rules themselves to interpret the rules?" If so, the districts were requested to indicate whether any of the following had occurred in their courts:

1. The local rule does not mention an ABA model, but your district has expressly incorporated an ABA model into your local rule governing attorney conduct.
2. The local rule does not mention an ABA model, but your district looks to ABA models to "interpret" local rules and resolve ambiguities, even though your district has not expressly "incorporated" ABA models into its local rules.
3. Other. Describe how standards not explicit in your local rule were used to decide an issue(s) of attorney conduct in your district and any problems that this created.

Out of the 71 districts responding to this inquiry, only seven (10%) reported that attorneys practicing in their district were prevented from relying on the explicit language of their local rules because their court used external standards to interpret the districts' attorney conduct rules. Two of the seven districts reported that their district looks to ABA models to "interpret" local rules and resolve ambiguities, even though their district has not expressly "incorporated" ABA models into its local rules. Four districts reported "other" situations and problems caused by their use of external standards. For each of these seven districts, Table A-7 in the Appendix summarizes the nature of the problems reported by the seven districts.

3. Due Process and Vagueness Problems

Standards for attorney conduct must not be so vague as to not provide an attorney with sufficient notice of the prohibited conduct to meet constitutional due process guarantees. We asked districts: "Have complaints regarding lack of attorney due process arisen due to, at least in part, the vagueness of your district's local rule?" If so, the districts were requested to describe the nature and extent of such complaints. Out of the 76 districts responding to this inquiry, only six districts (8%) reported experiencing such complaints. All of these complaints reported due process

problems with the districts' attorney-discipline and reinstatement procedures. Table A-8 in the Appendix briefly describes the nature and extent of the complaints received by the six districts.

4. Multiforum Problems

We asked districts: "Has your district experienced any difficulties arising from an attorney conduct problem involving multiple venues such as conflicts between different state standards, between different district and circuit local rules, or between federal and state standards within your own district?" Out of the 76 districts responding to this inquiry, seven (9%) districts reported having experienced difficulties resulting from attorney conduct problems involving multiple venues. Most of these districts reported problems involving conflict between federal and state standards within their district, such as disagreeing with state's interpretation of standards and the decision to impose discipline. Table A-9 in the Appendix briefly describes the nature and extent of the difficulties experienced by the seven districts.

5. Conflict with federal agencies promulgating their own attorney conduct rules.

We asked districts: "Has your district experienced any difficulties arising from conflicts between your district's local rule and rules of professional conduct adopted by some federal agencies (such as the Department of Justice, the Securities and Exchange Commission, or the Patent and Trademark Office to name a few examples) to govern the conduct of their attorneys?" Of the 74 districts responding to this inquiry, seven (9%) districts reported that they had experienced problems due to conflicts between their local rules and rules of professional conduct adopted by a federal agency. Most of these districts reported problems with conflicting standards promulgated by the Department of Justice. Table A-10 in the Appendix briefly describes the nature and extent of the difficulties experienced by the districts.

C. Problems Experienced by Districts Due to Specific Ethical Standards: Identification and Frequency of Problems

The Committee has identified five categories of rules or ethical standards that appear to be implicated in most federal disputes involving attorney conduct[16]:

1. Confidentiality: issues analogous to those addressed in ABA Model Rule 1.6.
2. Communication with represented parties: issues analogous to those addressed in ABA Model Rule 4.2.
3. Lawyers as witnesses: issues analogous to those addressed in ABA Model Rule 3.7.
4. Candor towards the tribunal: issues analogous to those addressed in ABA Model Rule 3.3.
5. Conflict of interest: issues analogous to those addressed in ABA Model Rules 1.7, 1.8, 1.9, 1.10. 1.11.

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[16] Daniel R. Coquillette, Study of Recent Federal Cases Involving Rules of Attorney Conduct (December 1, 1995) (Report to the Committee on Rules of Practice and Procedure, Judicial Conference of the United States) [hereinafter December 1995 Report to the Committee].

Through the surveys, we attempted to determine whether the concentration of disputes in these areas resulted from problems with the controlling rule or standard (for example, lack of clarity or overbreadth). The districts were asked to identify the kinds of problems, if any, that they had experienced with the rules or standards in these five areas and any other area noteworthy to the district. Seventeen districts, 22 percent of the 78 districts responding to the inquiry, reported problems in one or more of the five areas. These districts were asked to indicate whether the particular ethical standard or standards identified as having created a problem(s) did so in at least one specific instance by meeting any of the following criteria:

1. not speaking to the alleged unethical conduct.
2. being unclear.
3. being too broad.
4. being too narrow.
5. being inconsistent with other standards of conduct (e.g., local federal rules in conflict with state rules, local federal rules in conflict with other federal agency rules).
6. Other. Please specify.

For each of the 17 districts reporting a problem, Table A-11 in the Appendix shows which category of ethics standards created a problem and the manner or manners in which each standard created a problem(s) in at least one specific instance. The districts were also asked to indicate the frequency with which these problems were experienced within the past two years. Their responses are also shown in Table A-11 in parenthesis following the listing of criteria violated by the problematic ethical standard.

The table below provides a summary of the responses of the 17 districts reporting a problem with one or more of the five areas of ethical standards.

Table 3
Problems Created by Specific Ethics Standards in the Federal District Courts

Ethical standard:	# Districts Reporting Ethics Standard Created a Problem:	# Districts Responding That Ethics Standard Created a Problem by:					
		not speaking to alleged unethical conduct:	being unclear:	being too broad:	being too narrow:	being inconsistent with other standards of conduct:	Other:
1. Confidentiality	3	1	1	1		1	
2. Communication with Represented Parties	13	4	2	3	0	5	5
3. Lawyers as Witnesses	3	1	1	1		1	
4. Candor Towards A Tribunal	6	2	3		2	1	2
5. Conflict of Interest	5	2	4	1		1	1

The most problematic area is "communication with represented parties." This standard reportedly caused problems by being inconsistent with other standards of conduct (5 districts), not speaking to the alleged unethical conduct (4 districts), being too broad (3 districts), being unclear (2 districts), and for a variety of other reasons (5 districts). (See Table A-11 in the Appendix for a description of the "other" problems.) Issues involving candor towards a tribunal and conflict of interest created the second largest source of problems (65% combined), while lawyers as witnesses and confidentiality created the least (35% combined). However, when these reported problems are viewed in the context of all districts responding to this inquiry (4% of all districts responding reported problems with confidentiality; 17 % of all districts reported problems with communication with represented parties; 4% with lawyers as witnesses; 8% with candor towards a tribunal, and 6% reporting problems with issues involving conflict of interest), with the exception of communication with represented parties to a limited extent, these specific ethical standards do not present a problem for most federal districts.

D. National Uniformity

One of the questions before the Committee is whether a single set of rules should govern the professional conduct of attorneys in all federal courts.[17] We asked the questionnaire recipients[18]: "Should all federal district courts have the same rules governing the professional conduct of attorneys?"

Out of 79 districts that responded, 24 (30%) indicated that they would be in favor of a national rule; 53 respondents (67%) did not support a national rule, and two had no opinion. Table A-12 in the Appendix presents the individual responses for the 79 districts answering this inquiry.

E. Selective Uniformity

An alternative to a national standard would be uniform national federal rules for attorney conduct only in certain key areas with state standards governing all other areas. We asked the 55 respondents who said their district is not in favor of a national rule regulating attorney conduct in all areas: "Should all federal courts have the same rule governing the professional conduct of attorneys in the area of: confidentiality? communications with represented parties? lawyers as witnesses? candor towards a tribunal? conflict of interest?"

The following table presents an overview of the responses to selective uniformity for each category of ethical standards. See Table A-13 in the Appendix for the individual responses of districts in favor of uniformity for one or more of the areas of ethics standards. Close to three-fourths of the districts opposed to national uniformity are also opposed to uniformity of standards in each of the selected areas of ethical standards. In addition, among the candidates for uniformity, there is no one ethical standard significantly more favored by the districts over the others.

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[17] July 1995 Report to the Committee, at 38-40.

[18] Questions regarding national and selective uniformity of standards were asked only of the Chief Judge or other identified judicial representative for the district.

Table 4
Selective Uniformity of Ethical Standards in the Federal District Courts

Ethical Standard:	# Districts in Favor of Selective Uniformity	# Districts Opposed to Selective Uniformity	# Districts with No Opinion
1. Confidentiality	12 (22%)	40 (73%)	3 (5%)
2. Communication with Represented Parties	13 (24%)	39 (71%)	3 (5%)
3. Lawyers as Witnesses	11 (20%)	41 (75%)	3 (5%)
4. Candor Towards A Tribunal	16 (29%)	36 (65%)	3 (5%)
5. Conflict of Interest	12 (22%)	40 (73%)	3 (5%)

III. Attorney Discipline in the Federal District Courts

All 94 federal districts responded to the inquiry verifying the existence (or lack thereof) and content of their current local rule adopting procedures for the discipline of attorneys in their courts. Eighty-eight federal districts (94% of all districts) have a local rule containing some type of procedures for the discipline of attorneys, and six districts do not have such a local rule. Table A-14 in the Appendix presents the current attorney discipline rules in each district and identifies the districts without rules.

Attorney discipline in the federal districts is a catchall phrase encompassing several different situations that could warrant discipline. Attorneys convicted of a serious crime could be immediately suspended from practice before the court and after hearing, further disciplined. An attorney formally disciplined by another court could be subject to the identical discipline by the district court. Finally, a district court might impose discipline upon an attorney when misconduct or allegations of misconduct are brought to the court's attention, whether by complaint or otherwise. A district with a local rule adopting disciplinary procedures may specifically address some, all, or none of these situations.

The Committee requested information on the procedures used by districts to address complaints or allegations of attorney misconduct. These procedures may include investigation, prosecution, and application of the districts' attorney ethics standards to determine if discipline is warranted. The inquiries in the second section of the questionnaire focused on the districts' approaches for addressing allegations of misconduct, and not on their procedures for determining whether reciprocal or additional discipline should be imposed after the attorney's conduct has already been adjudicated as warranting conviction or discipline by another court. Most districts allow broad judicial discretion in this area—both in determining how complaints of attorney misconduct should be handled and where the matter should be referred. This makes it difficult to gain an accurate picture of the approaches actually followed in the districts from the local rules. Therefore, questionnaire responses are used in conjunction with their districts' local rules to provide a more complete account of the actual approaches followed by federal district courts.

A. Current Local Rules Regulating Attorney Discipline

1. Analysis and Grouping of Attorney Discipline Rules

Wide variation exists among the provisions of the districts' local rules establishing procedures for addressing misconduct or allegations of misconduct brought to the courts' attention

by formal complaint or otherwise. Some of these rules are extremely detailed and provide procedures for every stage of disposition, while others are very broad and general. For purposes of analysis and comparison, we have placed the eighty-eight districts with disciplinary rules into one of the following loosely defined groups based upon the options provided by the districts' local rule for disposition of attorney misconduct matters:

Group 1[19]: Districts with a local rule permitting ("may refer") or requiring ("shall refer") a judicial officer to refer disciplinary matters (for purposes of investigating allegations of misconduct, prosecuting disciplinary proceedings, formulating other appropriate recommendations and/or conducting a hearing at which a decision to impose discipline is made) either to bodies or person(s) outside of the federal district court[20] (such as the bar of the state wherein the district is located; the disciplinary agency of the highest court of the state wherein the attorney maintains his or her principal office; any disciplinary agency the court deems proper; the United States Attorney for the district) **and/or** to bodies or persons within the federal court (such as member(s) of the bar of the district court; permanent or temporary disciplinary bodies such as "grievance committees," "disciplinary committees or panels," "executive committees," etc.).

Group 2: Districts with a local rule requiring a judicial officer ("shall refer") to refer disciplinary matters of a more serious nature (may warrant suspension or disbarment) **exclusively** to bodies or person(s) outside of the federal district court (such as the bar of the state wherein the district is located; the disciplinary agency of the highest court of the state wherein the attorney maintains his or her principal office; any disciplinary agency the court deems proper; the United States Attorney for the district).

Group 3: Districts with a local rule permitting ("may") or requiring ("shall") a judicial officer to handle the disciplinary matter himself or herself or refer the matter **exclusively** to bodies or person(s) within the federal district court (such as member(s) of the bar of the district court; permanent or temporary disciplinary bodies such as "grievance committees," "disciplinary committees or panels," "executive committees," etc.).

At present, the disciplinary rules of 54 districts (61% of districts with rules) fit into Group 1; three districts' rules fall into Group 2 (3% of districts with rules), and the rules of 31 districts fit into Group 3 (35% of districts with rules). For each district with a disciplinary rule, Table A-14 in the Appendix indicates which of the three groups the rule fits into. If we operate under the assumption that all attorney conduct matters are handled by each district according to the procedures provided in its local rule, we cannot make many definitive statements about the approaches followed in the federal districts. With this assumption, the only conclusions that can be made are that: (1) districts providing the judicial officer with many options and wide discretion for choosing among them for addressing complaints of attorney misconduct are in the overwhelming majority; (2) districts handling attorney discipline matters exclusively within the district or exclusively referring the matters outside of the district with no provisions for disposing of the

[19] There is wide variation among the rules of districts within this grouping. Some of these rules allow for discretion as to referral of the matter either within or outside of the district court only at the investigation and prosecution stages, with the district making the final decision as to discipline. Other rules permit the matter to be referred either outside or within the district or sometimes both for investigation, prosecution and final disposition.

[20] All references to "outside of the district" or "within the district" refer to judicial employees of the federal district court and attorneys who are members of the district court's bar, and not to the geographical boundaries of the district within which the federal court is located.

matter within the district are a minority. Further, both Groups 1 and 3 (which represent 97% of all districts with disciplinary rules) contain districts with disciplinary rules that are discretionary. In other words, the rule outlines procedures for addressing attorney misconduct complaints that a judicial officer "may" choose to follow or, if not, adopt any other procedures deemed appropriate. This makes it even more difficult to accurately determine which approach among the several provided in these rules is actually used, not to mention determining which is used most frequently.

2. History of and Anticipated Changes to Local Rules on Attorney Discipline

The districts' responses to inquiries regarding the history of their disciplinary rules shows movement towards more detailed procedures for addressing complaints of attorney misconduct. Many districts (25) reported amending their rules several times since initial adoption due to a "need for more detailed procedures" and also so that their local rules reflect actual practices within the districts.

Among the 78 districts responding to an inquiry about whether they had plans to amend their current disciplinary rules, 18 reported having proposed amendments. Some proposals are only at the discussion stage while others are in draft form awaiting approval. Five of the 18 districts plan to adopt rules that contain substantially more detailed disciplinary procedures than previously found in their local rules.[21] Other reasons given for the planned or proposed changes include the need to have rules that provide more streamlined, precise and simpler disciplinary procedures from those previously described as cumbersome;[22] to adopt rules that allow for a more proactive approach to attorney discipline[23], and to adopt rules which allow for more discretion and flexibility for the court in the disciplinary process.[24]

B. Procedures Reportedly Used by the Federal District Courts to Address Complaints of Attorney Misconduct

1. Districts Report Typical Approaches Used and Most Frequently Used Approach

We asked the respondents to choose from a list of general approaches (1) all of the approaches to attorney disciplinary used by the district; and (2) the approach most frequently used by the district. The respondents chose from the following list of general approaches:

1. Refer the matter to the group or agency charged with enforcing state ethical standards (e.g., state bar or attorney grievance commission) for whatever action that agency deems warranted.
2. Appoint the group or agency charged with enforcing state ethical standards to investigate and present the matter to the federal district court.
3. Refer the matter to a single judge in the district.
4. Refer the matter to a panel or committee of judges in the district.
5. Refer the matter to a panel or committee of attorneys in the district for investigation and presentation to the federal district court.
6. Appoint an attorney to investigate and present the matter to the federal district court.

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[21] W.D. Mich., D. Or., D. N.M., D. Vt., M.D. Ala.

[22] D. P.R., S.D. Ill., W.D. Mo.

[23] S.D. Ind.

[24] D. Mass., E.D. Mich., E.D. Ark., W.D. Mo.

7. Refer the matter to the U.S. Attorney for investigation.
8. Handle it in another way. Please explain.

Next, we asked the respondents to think about the most recent case of alleged attorney misconduct in which the district used what they indicated as the "most frequently used procedure" and reply as to whether the respondent or, to his or her knowledge, other judges in the district, were either (1) dissatisfied with the procedure used; or (2) dissatisfied with the outcome of the case. The following three subsections present the responses to these inquiries for each of the three groupings of districts defined above in section III.A.

a. Group 1 Districts

For Group 1 districts, districts with rules permitting or requiring disciplinary matter to be handled within the district court and/or referred to a person or body outside of the district court, Table A-15 in the Appendix presents the approaches the individual districts reported using, the approach(es) they reported using most frequently, and their reported dissatisfaction with this procedure and outcome in a recent case. For the 45 Group 1 districts responding to these inquiries, the following table shows the number of districts that reported using each of the eight approaches listed above, the number of districts reporting each approach as the one they use most frequently, and the number of districts reporting dissatisfaction with either the procedure or outcome in a recent case in which they used one of approaches listed below.

Table 5
Approaches Used by Group 1 Districts to Address Attorney Misconduct Complaints

General Approaches:	# Districts Reported Using Approach:*	# Districts Reported Approach as Most Frequently Used:*	# Districts Reporting Dissatisfaction with Procedure in Recent Case:	# Districts Reporting Dissatisfaction with Outcome in Recent Case:
1. Refer the matter to the group or agency charged with enforcing state ethical standards (e.g., state bar or attorney grievance commission) for whatever action that agency deems warranted.	30 (67%)	19 (42%)	7	7
2. Appoint the group or agency charged with enforcing state ethical standards to investigate and present the matter to the federal district court.	13 (29%)	4 (9%)	0	1
3. Refer the matter to a single judge in the district.	15 (33%)	0		
4. Refer the matter to a panel or committee of judges in the district.	14 (31%)	7 (16%)	1	1
5. Refer the matter to a panel or committee of attorneys in the district for investigation and presentation to the federal district court.	8 (18%)	4 (9%)	0	0
6. Appoint an attorney to investigate and present the matter to the federal district court.	19 (42%)	7 (16%)	2	2
7. Refer the matter to the U.S. Attorney for investigation.	10 (22%)	3 (7%)	1	0
8. Handle it in another way. Please explain.	5 (11%)	6 (13%)	0	0

*Percentages in these columns do not add to 100 because some districts reported using more than one approach or reported more than one approach as "most frequently used".

Out of the 45 responding districts in Group 1, the approach the majority of these districts (30 districts or 67% of responding Group 1 districts) reported using, and the approach the largest group

of districts (19 districts or 42% of responding Group 1 districts) reported as the most frequently used approach in their district was referring the matter to the group or agency charged with enforcing state ethical standards for whatever action the agency deems is warranted. Likewise, this approach received the highest number (seven) of complaints of dissatisfaction both with the procedure and outcome of recent cases.

To analyze the responses further, we can divide the eight approaches into three categories based upon whether the disciplinary matter is handled outside of the district court (both for investigation and final disposition), within the district court (both for investigation and final disposition), or both outside of the district court (for investigation) and within the district court (for final disposition).[25] The category that refers the matter outside of the district court for investigation and final disposition includes the following approach (row 1 in the table above): referring the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. The second category of approaches handles the matter within the district court: referring the matter to a single judge in the district (row 3); referring the matter to a panel or committee of judges in the district (row 4); referring the matter to a panel or committee of attorneys in the district for investigation and presentation to the federal district court (row 5); handling the matter another way (these districts reported handling the matter within the district, either by the presiding judge or the court as a whole) (row 8). The third category of approaches refers the matter both outside of the district court for investigation and within the district court for final disposition: appointing the agency charged with enforcing state ethical standards to investigate and present the matter to the federal district court (row 2); and referring the matter to a United States Attorney for investigation (row 7). One approach, appointing an attorney to investigate and present the matter to the federal district court (row 6), can fit into either the second or third category depending upon whether the appointed attorney is a member of the district court (fits into second category) or not (fits into third category).

Out of the approaches the responding Group 1 districts reported using, 30 of these approaches (26% of all approaches reported being used by Group 1 districts) refer the matter outside of the district court for investigation and final disposition; 61 of these approaches (53% of all approaches reported being used by Group 1 districts) handle the investigation and final disposition within the court; and 42 of these approaches (37% of all approaches reported being used by Group 1 districts) refers the matter both outside the district court for investigation and within the district court for final disposition. Out of the approaches the responding Group 1 districts reported using most frequently, 19 of these approaches (38% of all approaches reported used most frequently by Group 1 districts) handle the matter outside of the district court for investigation and final disposition; 24 of these approaches (48% of all approaches reported used more frequently by Group 1 districts) handle the investigation and final disposition within the court; and 14 of these approaches (28% of all approaches reported used most frequently by Group 1 districts) refer the matter both outside the district court for investigation and within the district court for final disposition. Note that the percentages do not add to 100 because the reported instances of "appointing an attorney to investigate and present the matter to the federal district court" are included in the total for categories two and three, in both the calculation of approaches used by the district and approaches used most frequently.

This categorization scheme allows us to make some observations: (1) The category of approaches used by the largest number of Group 1 districts (based both upon the approaches reportedly used and used most frequently) handles complaints or allegations of attorney misconduct by addressing the matter within the district court, both investigation and final disposition; (2) The majority of Group 1 districts (based both upon the approaches reportedly used (63%) and used

[25] As indicated earlier, all references to "outside of the district" or "within the district" refer to judicial employees of the federal district court and attorneys who are members of the district court's bar, and not to the geographical boundaries of the district within which the federal court is located.

most frequently (66%)) favor the approach of referring the matter outside of the district court for investigation of the allegations.(3) The majority of Group 1 districts, based both upon the approaches reportedly used (90%) and approaches reported as used most frequentlly (78%), prefer to conduct the final disposition of the matter within the district court.

b. Group 2 Districts

For Group 2 districts, districts with rules requiring disciplinary matters of a serious nature to be referred to a person or body outside of the district court, Table A-16 in the Appendix presents the approaches the individual districts reported using in their district, the approach(es) they reported using most frequently, and their reported dissatisfaction with this procedure and outcome in a recent case. For the three Group 2 districts responding to these inquiries, the following table shows the number of districts that reported using each of the eight approaches listed above, the number of districts reporting each approach as the one they use most frequently, and the number of districts reporting dissatisfaction with either the procedure or outcome in a recent case in which they used one of approaches listed below.

Table 6
Approaches Used by Group 2 Districts to Address Attorney Misconduct Complaints

General Approaches:	# Districts Reported Using Approach:*	# Districts Reported Approach as Most Frequently Used:*	# Districts Reporting Dissatisfaction with Procedure in Recent Case:	# Districts Reporting Dissatisfaction with Outcome in Recent Case:
1. Refer the matter to the group or agency charged with enforcing state ethical standards (e.g., state bar or attorney grievance commission) for whatever action that agency deems warranted.	1 (33%)	2 (67%)	0	0
2. Appoint the group or agency charged with enforcing state ethical standards to investigate and present the matter to the federal district court.	1 (33%)	0 (0%)	0	0
3. Refer the matter to a single judge in the district.	1 (33%)	1 (33%)	0	0
4. Refer the matter to a panel or committee of judges in the district.	1 (33%)	0 (0%)	0	0
5. Refer the matter to a panel or committee of attorneys in the district for investigation and presentation to the federal district court.	0 (0%)	0 (0%)	0	0
6. Appoint an attorney to investigate and present the matter to the federal district court.	1 (33%)	0 (0%)	0	0
7. Refer the matter to the U.S. Attorney for investigation.	0 (0%)	0 (0%)	0	0
8. Handle it in another way. Please explain.	0 (0%)	0 (0%)	0	0

*Percentages in these columns do not add to 100 because some districts reported using more than one approach or reported more than one approach as "most frequently used".

Of the three responding districts in Group 2, two districts said the most frequently used approach was referring the matter to the group or agency charged with enforcing state ethical standards for whatever action the agency deems is warranted; these districts also reported sending the matter outside the district court for investigation but making the final disposition within the district court. The other Group 2 district reported that the approach it uses most frequently is referring the matter

to a single judge in the district; this district also reported sending the matter to a panel or committee of judges in the district. Thus, although the local rules of these three districts specifically require serious disciplinary matters to be sent outside of the district court for investigation and final disposition, this practice is not always followed in these districts.

c. Group 3 Districts

For Group 3 districts, districts with rules permitting or requiring disciplinary matters to be handled within the district, Table A-17 in the Appendix presents the approaches the individual districts reported using in their district, the approach(es) they reported using most frequently, and their reported dissatisfaction with this procedure and outcome in a recent case. For the 25 Group 3 districts responding to these inquiries, the following table shows the number of districts that reported using each of the eight approaches listed above, the number of districts reporting each approach as the one they use most frequently, and the number of districts reporting dissatisfaction with either the procedure or outcome in a recent case in which they used one of approaches listed below.

Table 7
Approaches Used by Group 3 Districts to Address Attorney Misconduct Complaints

General Approaches:	# Districts Reported Using Approach:*	# Districts Reported Approach as Most Frequently Used:*	# Districts Reporting Dissatisfaction with Procedure in Recent Case:	# Districts Reporting Dissatisfaction with Outcome in Recent Case:
1. Refer the matter to the group or agency charged with enforcing state ethical standards (e.g., state bar or attorney grievance commission) for whatever action that agency deems warranted.	15 (60%)	13 (52%)	1	0
2. Appoint the group or agency charged with enforcing state ethical standards to investigate and present the matter to the federal district court.	0	0	0	0
3. Refer the matter to a single judge in the district.	10 (40%)	7 (28%)	2	1
4. Refer the matter to a panel or committee of judges in the district.	7 (28%)	4 (16%)	1	0
5. Refer the matter to a panel or committee of attorneys in the district for investigation and presentation to the federal district court.	8 (32%)	2 (8%)	3	1
6. Appoint an attorney to investigate and present the matter to the federal district court.	6 (24%)	0	1	0
7. Refer the matter to the U.S. Attorney for investigation.	3 (12%)	3 (12%)	0	0
8. Handle it in another way. Please explain	3 (12%)	1 (4%)	0	0

*Percentages in these columns do not add to 100 because some districts reported using more than one approach or reported more than one approach as "most frequently used".

Out of the 25 responding districts in Group 3, the approach the majority of these districts (15 districts or 60% of responding Group 3 districts) reported using, and the approach the largest group of districts (13 districts or 52% of responding Group 3 districts) reported as the most frequently used approach in their district was referring the matter to the group or agency charged with enforcing state ethical standards for whatever action the agency deems is warranted. This finding directly contradicts the procedures provided for in these districts local rules. However, as explained in section III.A.1, several of the local rules for Group 3 districts are discretionary. The judicial

officer may use his or her discretion and either follow the procedures provided for by the rule (addressing the matter within the district) or handle the matter in another way deemed appropriate.

For further analysis, we can use the categorization introduced earlier that distinguishes between an approach that refers investigation and disposition of the misconduct complaint outside of the district court, approaches that investigate and arrive at final disposition within the district court, and approaches that both refer the matter outside of the district court for investigation and within the district court for final disposition. Of the approaches the responding Group 3 districts reported using, 15 of these approaches (29% of all approaches reported being used by Group 3 districts) refer the matter outside of the district court for investigation and final disposition; 34 of these approaches (65% of all approaches reported being used by Group 3 districts) handle the matter within the district court for investigation and final disposition; and 9 of these approaches (17% of all approaches reported being used by Group 3 districts) refer the matter both outside of the district court for investigation and within the district court for final disposition. Out of the approaches the responding Group 3 districts reported using most frequently, 13 of these approaches (43% of all approaches reported being used most frequently by Group 3 districts) refer the matter outside of the district court for investigation and final disposition; 14 of these approaches (47% of all approaches reported being used most frequently by Group 3 districts) handle the matter within the district court for investigation and final disposition; and 3 of these approaches (10% of all approaches reported being used most frequently by Group 3 districts) refer the matter both outside of the district court for investigation and within the district court for final disposition.[26]

This categorization scheme allows us to make some observations: (1) The category of approaches reportedly used by the largest number of Group 3 districts (based both upon the approaches reportedly used (65%) and reported as used most frequently (47%)) handles attorney misconduct matters within the district court, both for investigation and prosecution; (2) Although the majority of Group 3 districts (65% of approaches reportedly used) preferred to handle the investigation of attorney misconduct matters within the district court, their responses based upon the approach most frequently used shows a slight preference (53% of approaches reported as used most frequently) for referring the matter outside the district court for investigation; (3) The majority of Group 3 districts (based both upon the approaches they reported as using (82%) and as used most frequently (57%)), prefer to conduct the final disposition of the matter within the district court.

d. All Groups Combined

Of the 73 districts responding from Groups 1, 2 and 3 combined, the procedure they reported as using most frequently (34 districts or 47% of all districts responding) was referring the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. In order of decreasing popularity, 11 districts (15% of all districts responding) reported referring the matter to a panel or group of judges within the district; eight districts (11%) refer the matter to a single judge within the district; 7 districts (10%) appoint an attorney to investigate and present the matter to the federal district court; 6 districts (8%) refer the matter to a panel or committee of attorneys in the district for investigation and presentation to the federal district court; 6 districts (8%) refer the matter to the United States Attorney for investigation; 6 districts (8%) handle the matter another way (all reported disciplinary matters are

[26] Note that the percentages do not add to 100 because the reported instances of "appointing an attorney to investigate and present the matter to the federal district court" are included in the total for categories two and three, in both the calculation of approaches used by the district and approaches used most frequently. In addiiton, the approaches reported by districts that "handle the matter another way" fit within the category of approaches that address attorney misconduct matters within the district court, for both investigation and final disposition.

handled within the district); and 4 districts (5%) appoint the group or agency charged with enforcing state ethical standards to investigate and present the matter to the federal district court.

Of the approaches that Groups 1, 2, and 3 reported as using most frequently, 34 of these approaches (41 % of all approaches reported used most frequently) referred the disciplinary matter **outside** of the district court for investigation and final disposition; 39 of these approaches (47% of all approaches reported used most frequently) investigate and arrive at a final disposition of the complaint **within** the district court; and 17 of these approaches (20% of all approaches reported used most frequently) both send the complaint outside of the district court for investigation and within the district court for final disposition.[27] This comparison allows us to make some overall observations: (1) The approach slightly favored by the largest number (47% of all approaches reported as used most frequently) of all responding districts is to address the attorney misconduct matter within the district court, both for investigation and final disposition; (2) The majority of all responding districts (61% of all approaches reported as used most frequently) prefer to refer the investigation of attorney misconduct allegations outside of the district court; (3) The majority of all responding districts (67% of all approaches reported as used most frequently) favor handling the final disposition of the matter within the district court.

2. Referring Attorney Misconduct Complaints to State Disciplinary Authorities

We asked respondents from districts that typically refer the majority of attorney disciplinary matters to committees or panels created within their district to answer several questions about their practices. We asked them to indicate their district's level of overall satisfaction with the process by which allegations of attorney misconduct in federal court are addressed by the state disciplinary agencies. Of the 45 districts who responded to this inquiry, 23 districts (51%) reported being very satisfied, 15 districts (33%) reported being somewhat satisfied, 3 districts (7%) reported being somewhat dissatisfied, 2 districts (4%) reported being very dissatisfied, and 3 districts (7%) indicated they don't know.

Next, we asked these districts if there had been instances during the past two years in which the districts were not satisfied with the process by which attorney misconduct complaints were handled by state disciplinary agencies and/or the final outcome decided by the state disciplinary agency. Of the 47 districts responding to this inquiry, 34 reported no instances of dissatisfaction, and 13 districts indicated that there have been instances within the past two years when they were not satisfied. In addition, we asked the 13 districts reporting instances of dissatisfaction to indicate (1) whether they had experienced problems with the procedure and/or problems with the outcome (or other problems); and (2) whether they had addressed any of these matters de novo in federal court; and (3) the frequency of this occurrence within the past two years. Four districts indicated problems with the procedure and ten districts indicated problems with the outcome. Five of the districts reporting instances of dissatisfaction indicated they had addressed a matter de novo within the past two years.

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[27] Note that the percentages do not add to 100 because the reported instances of appointing an attorney to investigate and present the matter to the federal district court are included in the total for categories two and three, in both the calculation of approaches used by the district and approaches used most frequently. In addition, all responses to row 8 "handle another way" are included within the category that handles complaints within the district court.

3. Referring Attorney Misconduct Complaints to Committees or Panels Within the District

We asked respondents from districts that typically refer the majority of attorney disciplinary matters to committees or panels created within their district to answer several questions about their practices. We asked the 17 districts[28] that responded to discuss the advantages and disadvantages of addressing complaints of ethics violations within the district court instead of referring the matters to state disciplinary bodies or other external bodies. Ten districts felt that an advantages of having established internal bodies included the ability to address a violation occurring in the district court by the body most familiar with the issues and where relatively few complaints arise, instead of by state disciplinary bodies that are considered by some districts to be overworked and much too slow. Two districts feel that having control over the disciplinary process would more clearly and closely reflect the views and priorities of the district, rather than risk relinquishing the matter to a state agency that may have its own agenda. One district believes that handling disciplinary matters within the district court conveys to attorneys practicing in the district interest in their professional compartment and has a strong effect on the tone of practice in a district.

Disadvantages reported included the necessary time that must be allocated for disciplinary matters which results in an increased workload for federal judges and practitioners (four districts); lack of funds to support disciplinary committees (two districts); possibility of presenting conflict of interest issues (one district); and lack of public notification regarding federal committee's decision (one district). In addition, one district reported feeling that having a separate investigative body and staff would not be cost effective given the relatively few situations that present themselves for processing in the federal districts. Another respondent pointed out that since most lawyers who breach state standards also breach federal court standards simultaneously, reciprocal discipline is reasonable, fair and effective.

4. Districts Without a Local Rule Prescribing Procedures for Addressing Attorney Misconduct Complaints

As mentioned previously in section III, A.1, at present six districts do not have a local rule establishing procedures for addressing allegations of attorney misconduct. However, several of the districts reported regularly using informal procedures to address disciplinary matters. For example, in the District of Arizona the presiding judge in each division handles routine disciplinary matters, and in unusual or more serious cases, the court refers the matter to its "Lawyers Discipline Committee" consisting of two district judges and one bankruptcy judge. The Western District of Wisconsin feels that routine attorney misconduct matters are adequately addressed by individual dealings between trial judges and attorneys in the case before them. In more complex or serious cases, the chief judge may refer the matter to the state bar.

We asked these districts what problems (if any) they had or were experiencing due to their lack of local rules establishing formal disciplinary procedures. All five responding districts reported experiencing no problems. Moreover, only one district, the Western District of Louisiana, reported that it was considering adopting rules of disciplinary procedure in the future; the other five responding districts had no plans to do so.

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[28] D. Mass., D. P.R., D. R.I., E.D. N.Y., S.D. N.Y., E.D. Pa., D. Md., E.D. Va., W.D. Tex., N.D. Ohio, W.D. Ark., E.D. Wash., D. N.M.I., D. Colo., D. N.M., E.D. Okla., and N.D. Okla.

C. Frequency of Attorney Misconduct Complaints in the Federal District Courts

We conclude attempting to put a perspective on the scope of attorney misconduct problems in the federal districts. We asked the districts to provide the approximate number of complaints (either formal or otherwise) alleging attorney misconduct received or initiated sua sponte in calendar year 1996, and the number of these dropped or dismissed before any formal procedures were begun. The responses show that allegations of misconduct that occurred within the districts are very small in number. The table below shows the median and range for complaints received in 1996 and complaints on which formal action was taken in 1996. Most of the districts reported that notices from state disciplinary authorities of disciplinary action already taken and sent to the federal district court for imposition of reciprocal discipline comprise the overwhelming majority of their disciplinary matters.

Table 8
Frequency of Attorney Misconduct Complaints in the Federal Districts for Calendar 1996

	Median	Range
Number of Complaints Received in 1996:	7.5	0 - 32
Number of Complaints Formal Action was Taken on in 1996:	7	0 - 32

Table A-18 in the Appendix shows the frequency of complaints for calendar year 1996 in each of the federal districts responding to the inquiry.

Appendices

Table A-1

Rules Governing Attorney Conduct in the Federal District Courts

Circuit	District	Local Rule Regulating Attorney Conduct[1]	Approach Adopted by Local Rule		
			State-based	Model Rule-based	Combination State and Model Rule-based
01	D. Me.	Local Rule 83.3	X		
01	D. Mass.	Local Rule 83.6(4)	X		
01	D. N.H.	Local Rule 83.5 (DR-1 and DR-5)	X		
01	D. R.I.	Local Rule 4(d)	X		
01	D. P.R.	Local Rule 211.4(b) (renumbered as Rule 83.5 but effective date unknown at present)		X	
02	D. Conn.	Local Civil Rule 3(a)	X		
02	N.D. N.Y.	Local Rule 83.4(j)		X	
02	E.D. N.Y.	Local Civil Rule 1.5(b)(5)	X		
02	S.D. N.Y.	Local Civil Rule 1.5(b)(5)	X		
02	W.D. N.Y.	Local Civil Rule 83.3(c)	X		
02	D. Vt.	Local Civil Rule 83.2(d)(4)	X		
03	D. Del.	Local Rule 83.6(d)		X	
03	D. N.J.	Local Civil Rules 103.1(a) & 104.1(d)	X		
03	E.D. Pa.	Local Civil Rule 83.6, Rule IV	X		
03	M.D. Pa.	Local Rule 83.23 & Appendix D: Code of Professional Conduct	X		
03	W.D. Pa.	Local Civil Rule 83.6.1	X		
03	D. V.I.	Local Civil Rules 83.2(a)(1) & (b)(4)		X	
04	D. Md.	Local Rule 704	X		
04	E.D. N.C.	Local Rule 2.10	X		
04	M.D. N.C.	Local Rule 505	X		
04	W.D. N.C.	General Local Rule 1 & Guidelines for Resolving Scheduling Conflicts Order			X
04	D. S.C.	Local Rule 83.1.09	X		
04	E.D. Va.	Local Rule 83.1 & Appendix B: Federal Rules of Disciplinary Enforcement, Rule IV	X		
04	W.D. Va.	Local Rules for W.D. Va., Federal Rules of Disciplinary Enforcement, Disciplinary Rule 4	X		
04	N.D. W.Va.	Local Rule of General Practice 3.01			X
04	S.D. W.Va.	Local Rule of General Practice 3.01			X
05	E.D. La.	Local Rule 83.2.4E	X		
05	M.D. La.	Local Rule 20.04M	X		
05	W.D. La.	Local Rule 20.04W	X		
05	N.D. Miss.	Local Rule 21	X		
05	S.D. Miss.	Local Rule 21	X		
05	E.D. Tex.	Local Rule AT-2(a)	X		
05	N.D. Tex.	Local Rule 83.8(e), Local Criminal Rule 57.8(e).	X		
05	S.D. Tex.	Local Rule 1(L) & Appendix A, Rule 1	X		
05	W.D. Tex.	Local Rule AT-4 & Appendix M: Texas Lawyer Creed			X
06	E.D. Ky.	Local Rule 83.3(c) & Local Criminal Rule 57.3(c)	X		
06	W.D. Ky.	Local Rule 83.3(c) & Local Criminal Rule 57.3(c)	X		
06	E.D. Mich.	Local Rule 83.22(d) & Civility Plan (includes Civility Principles based on the 7th Circuit model)	X		
06	W.D. Mich.	Local Rules 17 & 21(a)	X		
06	N.D. Ohio	Local Civil Rule 83.5(b) & Local Criminal Rule 57.5(b)	X		
06	S.D. Ohio	Local Rule 83.4(f) referencing Appendix of Court Orders, Order 81-1, Rule IV	X		

[1] The identification and categorization of each district's local rule is based upon the published local rule in effect on April 28, 1997.

Circuit	District	Local Rule Regulating Attorney Conduct[1]	Approach Adopted by Local Rule		
			State-based	Model Rule-based	Combination State and Model Rule-based
06	E.D. Tenn.	Local Rules 83.6 & 83.7	X		
06	M.D. Tenn.	Local Rule 1(e)(4)		X	
06	W.D. Tenn.	Local Rule 83.1(e) & Guidelines for Professional Responsibility and Courtesy and Conduct of Memphis Bar Association adopted by the W.D. Tenn. (on file with clerk)	X		
07	C.D. Ill.	Local Rule 83.6(D)	X		
07	N.D. Ill.[2]	Local General Rule 3.52 incorporating Rules of Professional Conduct for the N.D. Ill., General Order of 10/29/91 with respect to adoption of the N.D. Ill. Rules & Seventh Circuit Standards of Professional Conduct			
07	S.D. Ill.	Local Rule 29(d)	X		
07	N.D. Ind.	Local Rule 83.5(f) & Seventh Circuit Standards of Professional Conduct	X		
07	S.D. Ind.	Local Rule 83.5(f), Rule IV of Rules of Disciplinary Enforcement & Seventh Circuit Standards of Professional Conduct	X		
07	E.D. Wis.	Local Rule 2.05(a)	X		
07	W.D. Wis.	no local rule			
08	E.D. Ark.	Local Rules for E. & W.D. Ark., Appendix: Model Federal Rules of Disciplinary Enforcement, Rule IV	X		
08	W.D. Ark.	Local Rules for E. & W.D. Ark., Appendix: Model Federal Rules of Disciplinary Enforcement, Rule IV	X		
08	N.D. Iowa	no local rule			
08	S.D. Iowa	no local rule			
08	D. Minn.	Local Rule 83.6(d)	X		
08	E.D. Mo.	Local Rule 12.02 & Rules of Disciplinary Enforcement, Rule IV	X		
08	W.D. Mo.	Local Rule 83.6	X		
08	D. Neb.	Local Rule 83.5(d)	X		
08	D. N.D.	no local rule			
08	D. S.D.	no local rule			
09	D. Alaska	Local Rule 83.1(h)	X		
09	D. Ariz.	Local Rule 1.6(d) & Standards for Professional Conduct adopted by D. Ariz.	X		
09	C.D. Cal.	Local Civil Rule 2.5	X		
09	E.D. Cal.	Local General Rule 180(e)			X
09	N.D. Cal.	Local Civil Rule 11-3(a)	X		
09	S.D. Cal.	Local Rule 83.5i			X
09	D. Haw.	Local Rule 110-3	X		
09	D. Idaho	Local Rule 83.5(a)	X		
09	D. Mont.	Local General Rule 110-3(a)		X	
09	D. Nev.	Local Rule IA 10-7(a)	X		
09	D. Or.	Local Civil Rule 110-3	X		
09	E.D. Wash.	Local Rule 83.3(a)(2)	X		
09	W.D. Wash.	Local General Rule 2(e)	X		
09	D. Guam	Local General Rule 22.3(b)			X
09	D. N.M.I.	Local Rule 1.5		X	
10	D. Colo.	Local Rule 83.6	X		
10	D. Kan.	Local Rule 83.6.1	X		
10	D. N.M.	Local Rule 83.9	X		
10	E.D. Okla.	Local Rule 83.3K	X		
10	N.D. Okla.	Local Rule 83.2	X		
10	W.D. Okla.	Local Rule 83.6(b)	X		
10	D. Utah	Local Rule 103-1(h)	X		
10	D. Wyo.	Local Rule 83.12.7	X		
11	M.D. Ala.	Local Rule 1(a)(4) (renumbered and amended to Local Rule 83.1(f) but no effective date			X

[2] The approach adopted by the N.D. Ill.'s local rule does not fit into any of the three approaches in the table because the N.D. Ill. has adopted a standard of conduct unique to their district which does not follow state standards nor any ABA Model.

Circuit	District	Local Rule Regulating Attorney Conduct[1]	Approach Adopted by Local Rule		
			State-based	Model Rule-based	Combination State and Model Rule-based
		known at present)			
11	N.D. Ala.	Local Civil Rule 83.1(f)			X
11	S.D. Ala.	Local Rule 1(A)(4) (renumbered and amended to Local Rule 83.5(f); effective 6/1/97)			X
11	M.D. Fla.	Local Rule 2.04(c)	X		
11	N.D. Fla.	Local General Rule 11.1(G)(1) & Addendum: Customary and Traditional Conduct and Decorum in the US District Court	X		
11	S.D. Fla.	Local General Rule 11.1(C) & Rules Governing Attorney Discipline, Rule IV			X
11	M.D. Ga.	Local Rule 13.1			X
11	N.D. Ga.	Local Rule 83.1C	X		
11	S.D. Ga.	Local Rule 83.5(d)		X	
DC	D. D.C.	Local Rule 706	X		

Table A-2

Components of Model Rule 4(B) in State-Based Local Rules Governing Attorney Conduct in Federal District Courts

Circuit	District	Components of Model Rule 4(B)				Exceptions to Adopted Rules	Other Important Provisions
		Subject to Standards	Misconduct Warranting Discipline	Amendments to Standards	Exceptions to Standards		
01	D. Me.	yes	yes	yes	no		
01	D. Mass.	yes	yes	yes	yes		
01	D. N.H.	yes	yes	yes	no		
01	D. R.I.	yes	no	no	no		
02	D. Conn.	yes	no	no	yes	D. Conn. adopted Rules of Professional Conduct of Conn. Superior Court as in effect on 10/1/86 except for Rules 3.6 (ethical standards governing public statements by counsel in a criminal case) & 3.7(b) (ethical standards governing participation as counsel in a case where either the attorney or another attorney in his or her firm may be a witness for both civil and criminal cases).	D. Conn. adopted Rules of Professional Conduct of Conn. Superior Court as in effect on 10/1/86 and only those subsequent changes expressly adopted by order of the District's judges. The interpretation of Rules of Professional Conduct of Conn. Superior Court by any authority other than the U.S. Supreme Court, the Second Circuit Court of Appeals and the D. Conn. shall not be binding on disciplinary proceedings initiated in the D. Conn.
02	E.D. N.Y.	yes	yes	yes	no		E.D. N.Y. adopted N.Y. State Lawyer's Code of Professional Responsibility as interpreted and applied by the U.S. Supreme Court, the Second Circuit Court of Appeals, and the E.D. N.Y.
02	S.D. N.Y.	yes	yes	yes	no		S.D. N.Y. adopted N.Y. State Lawyer's Code of Professional Responsibility as interpreted and applied by the U.S. Supreme Court, the Second Circuit Court of Appeals, and the S.D. N.Y.
02	W.D. N.Y.	no	no	no	no		
02	D. Vt.	yes	yes	yes	yes		
03	D. N.J.	yes	yes	yes	no	D.N.J. adopted ABA Rules of Professional Conduct as revised by N.J. Supreme Court, subject to such modifications as may be required or permitted by federal statute, regulation, court rule or decision of law.	
03	E.D. Pa.	yes	yes	yes	yes	E.D. Pa. adopted Rules of Professional Conduct adopted by Pa. Supreme Court, except that prior court approval as a condition to issuance of a subpoena addressed to an attorney in any criminal proceeding, including a grand jury, shall not be required.	
03	M.D. Pa.	yes	yes	yes	yes	M.D. Pa. adopted Rules of Professional Conduct adopted by Pa. Supreme Court, except Rule 3.10 (prior court approval as a condition to issuance of a	

Circuit	District	Components of Model Rule 4(B)				Exceptions to Adopted Rules	Other Important Provisions
		Subject to Standards	Misconduct Warranting Discipline	Amendments to Standards	Exceptions to Standards		
						subpoena addressed to an attorney in any criminal proceeding, including a grand jury, shall not be required.)	
03	W.D. Pa.	yes	yes	yes	yes	W.D. Pa. adopted Rules of Professional Conduct adopted by Pa. Supreme Court, except Rule 3.10 (prior court approval as a condition to issuance of a subpoena addressed to an attorney in any criminal proceeding, including a grand jury, shall not be required).	
04	D. Md.	no	no	no	no		
04	E.D. N.C.	no	no	yes	yes		
04	M.D. N.C.	yes	yes	yes	yes		
04	D. S.C.	no	no	yes	yes		
04	E.D. Va.	yes	yes	yes	yes	E.D. Va. adopted Va. Code of Professional Responsibility, except, contrary to Va. practice, prior court approval as condition to issuance of subpoena addressed to an attorney in any criminal proceeding, including a grand jury, shall not be required.	
04	W.D. Va.	yes	yes	yes	yes		
05	E.D. La.	no	no	yes	yes		
05	M.D. La.	no	no	no	yes		M.D. La. adopted Rules of Professional Conduct of La. State Bar Association in effect on 5/15/89; general court order is required for adoption of subsequently promulgated, or other rules of professional conduct.
05	W.D. La.	no	no	yes	yes		
05	N.D. Miss.	yes	yes	no	no		
05	S.D. Miss.	yes	yes	no	no		
05	E.D. Tex.	yes	yes	no	yes		E.D. Tex. adopted standards of professional conduct of State Bar of Tex. as well as requires familiarization with Tex. Disciplinary Rules of Professional Conduct, court decisions, statutes; and usages, customs, and practices of Bar of E.D. Tex.
05	N.D. Tex.	no	yes	no	no		
05	S.D. Tex.	yes	yes	no	yes		
06	E.D. Ky.	yes	yes	no	no		
06	W.D. Ky.	yes	yes	no	no		
06	E.D. Mich.	yes	yes	yes	no		
06	W.D. Mich.	yes	yes	no	yes		
06	N.D.	yes	no	no	yes	N.D. Ohio adopted ethical	

Circuit	District	Components of Model Rule 4(B)				Exceptions to Adopted Rules	Other Important Provisions
		Subject to Standards	Misconduct Warranting Discipline	Amendments to Standards	Exceptions to Standards		
	Ohio					standards of Code of Professional Responsibility adopted by the Ohio Supreme Court, so far as not inconsistent with federal law.	
06	S.D. Ohio	yes	yes	yes	yes		
06	E.D. Tenn.	yes	yes	no	no		
06	W.D. Tenn.	yes	no	yes	yes	W.D. Tenn. adopted Supreme Court of Tenn.'s Rules of Professional Responsibility, except that prior court approval as condition to issuance of a subpoena addressed to an attorney shall not be required as specified in Tenn.S.Ct.R. 8, DR7-103(c).	
07	C.D. Ill.	no	no	yes	yes		
07	S.D. Ill.	yes	yes	yes	yes		
07	N.D. Ind.	yes	no	no	no.		
07	S.D. Ind.	yes	yes	yes	yes		
07	E.D. Wis.	yes	yes	yes	yes		
08	E.D. Ark.	yes	yes	yes	yes		
08	W.D. Ark.	yes	yes	yes	yes		
08	D. Minn.	yes	yes	yes	yes		
08	E.D. Mo.	yes	yes	yes	yes		
08	W.D. Mo.	yes	yes	yes	yes		
08	D. Neb.	yes	yes	yes	yes		
09	D. Alaska	yes	yes	no	yes	D. Alaska. Adopted standards of professional conduct required of members of state bar of Alaska and contained in Alaska Rules of Professional Conduct and decisions of any court applicable thereto, except insofar as such rules and decisions shall be otherwise inconsistent with federal law.	D. Alaska Adopted standards of professional conduct required of members of state bar of Alaska and contained in Alaska. Rules of Professional Conduct and decisions of any court applicable thereto.
09	D. Ariz.	yes	no	no	no		
09	C.D. Cal.	yes	yes	no	no		C.D. Cal. adopted Cal. standards of professional conduct as contained in the State Bar Act, Rules of Professional Conduct of State Bar of Cal., and any decisions of any court applicable thereto.
09	N.D. Cal.	yes	no	no	no		N.D. Cal. adopted Cal. standards of professional conduct as contained in the State Bar Act, Rules of Professional Conduct of State Bar of Cal., and any decisions of any court applicable thereto.
09	D. Haw.	yes	no	no	yes	D. Haw. adopted standards of professional and ethical conduct required of members of Haw. State Bar, except	

Circuit	District	Components of Model Rule 4(B)				Exceptions to Adopted Rules	Other Important Provisions
		Subject to Standards	Misconduct Warranting Discipline	Amendments to Standards	Exceptions to Standards		
						(1) Rule 1.6 of Haw. Rules of Professional Conduct. In lieu thereof, ABA Model Rule 1.6 Confidentiality of Information shall apply; (2) Rule 8.4 of Haw. Rules of Professional Conduct. In lieu thereof, ABA Model Rule 8.4 Misconduct shall apply.	
09	D. Idaho	yes	yes	no	no		D. Idaho. adopted standards of professional conduct required of members of Idaho State Bar and decisions of any court applicable thereto.
09	D. Nev.	yes	yes	yes	yes		
09	D. Or.	yes	yes	no	no		
09	E.D. Wash.	yes	no	yes	no		
09	W.D. Wash.	yes	no	yes	yes		
10	D. Colo.	no	no	no	no		
10	D. Kan.	no	no	yes	yes		
10	D. N.M.	no	no	no	yes		
10	E.D. Okla.	yes	no	yes	no		
10	N.D. Okla.	yes	yes	no	no		N.D. Okla. adopted Okla. Rules of Professional Conduct, any interpretive decisions, applicable statutes, and the usages, customs, and practices of the Bar of Okla.
10	W.D. Okla.	no	no	yes	no		
10	D. Utah	yes	no	yes	yes		D. Utah adopted the Utah Rules of Professional Conduct, as revised and amended and interpreted by the D. Utah.
10	D. Wyo.	yes	yes	yes	yes		
11	M.D. Fla.	yes	no	no	no		
11	N.D. Fla.	yes	no	no	yes	N.D. Fla. adopted Rules of Professional Conduct regulating Fla. Bar, except where an act of Congress, federal rule of procedure, Judicial Conference Resolution or rule of court provides otherwise.	
11	N.D. Ga.	yes	no	no	yes		N.D. Ga. Adopted rules and regulations of State Bar of Ga and decisions of N.D. Ga. interpreting those rules and standards.
DC	D D.C.	yes	yes	no	yes		

Table A-3

Components of Model Rule 4(B) in Model Rule-Based Local Rules Governing Attorney Conduct in Federal District Courts

Circuit	District	Components of Model Rule 4(B)				Exceptions to Adopted Rules	Other Important Provisions
		Subject to Standards	Misconduct Warranting Discipline	Amendments to Standards	Exceptions to Standards		
01	D. P.R.	yes	yes	no	no		
02	N.D. N.Y.	no	no	no	no		
03	D. Del.	yes	yes	no	yes	D. Del. adopted the ABA Rules of Professional Conduct, subject to such modifications as may be required or permitted by Federal statute, court rule or decision of law.	
03	D. V.I.	yes	yes	no	yes	D. V.I. Adopted the ABA Rules of Professional Conduct, subject to such modifications as may be required or permitted by Federal statute, court rule or decision of law.	
06	M.D. Tenn.	yes	yes	no	no		
09	D. Mont.	yes	yes	no	no		
09	D. N.M.I.	yes	no	yes	no		
11	S.D. Ga.	yes	yes	no	no		

Table A-4

Components of Model Rule 4(B) in Combination Model Rule and State-Based Local Rules Governing Attorney Conduct in Federal District Courts

Circuit	District	Components of Model Rule 4(B)				Exceptions to Adopted Rules	Other Important Provisions
		Subject to Standards	Misconduct Warranting Discipline	Amendments to Standards	Exceptions to Standards		
04	W.D. N.C.	yes	no	no	no		
04	N.D. W. Va	yes	yes	no	no		
04	S.D. W.Va.	yes	yes	no	no		
05	W.D. Tex.	yes	yes	no	no		W.D. Tex. adopted ABA Code of Professional Responsibility and standards o f professional conduct required by Tex. State Bar contained in Tex. Disciplinary Rules of Professional Conduct and the decisions of any court applicable thereto.
09	E.D. Cal.	yes	yes	no	no		E.D. Cal. adopted ABA Model Code of Professional Responsibility and State Bar of Cal. Rules of Professional Conduct, and decisions of any court applicable thereto.
09	S.D. Cal.	yes	yes	no	no		S.D. Cal. adopted ABA Model Code of Professional Responsibility and standards of professional conduct required of State Bar of Cal., and decisions of any court applicable thereto.
09	D. Guam	yes	yes	yes	no		D. Guam adopted standards of professional conduct required by members of the state bar of Guam and ABA Model Rules as adopted on 8/12/69, and as hereinafter amended or judicially construed.
11	M.D. Ala.	yes	yes	no	no		
11	N.D. Ala.	yes	yes	no	yes	N.D. Ala. Adopted Ala. Rules of Professional Conduct, and to extent not inconsistent, ABA Model Rules, except Rule 3.8(f) (prosecutor's duty not to subpoena attorney in a criminal proceeding to present evidence about past or present client.)	
11	S.D. Ala.	yes	no	no	no		
11	S.D. Fla.	yes	yes	yes	yes		
11	M.D. Ga.	yes	yes	yes	yes		

Table A-5

Reported Changes in Source of Attorney Conduct Standards Adopted in the Federal District Courts

Circuit	District	Reported Change in Standards:
01	D. Me.	From ABA Code of Professional Responsibility (10/1/77) to Code of Professional Responsibility adopted by the Supreme Judicial Court of Maine (6/1/81).
02	E. & S.D. N.Y.	From ABA Code of Professional Responsibility and the N.Y. Bar Association Code of Professional Responsibility to N.Y. State Lawyer's Code of Professional Responsibility (4/15/97).
03	D. Del.	From Rules of Professional Conduct of Del. (1987) to ABA Model Rules.
04	M.D. N.C.	From ABA Canons of Professional Ethics and Canons of Ethics of the N.C. State Bar (1972) to Code of Professional Responsibility of the N.C. Supreme Court (1985).
04	N.D. W. Va.	From code as promulgated by W. Va. Supreme Court to ABA Rules of Professional Conduct, Model Federal Rules of Disciplinary Enforcement as adopted by the N.D. W.Va., and the rules of professional conduct as adopted by the W. Va. Supreme Court of Appeals (3/1/96).
05	M.D. La.	From current ABA Canons of Professional Ethics to the Rules of the La. State Bar Association (1989).
05	N.D. Tex.	From standards of highest court in which district sits (12/78) to no provision regarding applicable ethical standards (1987) to standards of professional conduct of attorneys authorized to practice law in the state of Tex. (1993).
06	E.D. Ky.	From no clearly adopted standard of conduct to Code of Conduct established by Ky. Supreme Court.
06	E.D. Mich.	From ABA Model Rules of Professional Responsibility (1981) to Rules of Professional Conduct adopted by the Mich. Supreme Court.
06	W.D. Tenn.	From ABA Code of Professional Responsibility to standards promulgated by the Tenn. Supreme Court and Memphis Bar Association (1/1/94).
07	N.D. Ill.	From ABA Model Code of Professional Responsibility to Rules of Professional Conduct for the Northern District of Illinois (10/29/91).
07	C.D. Ill.	From Code of Professional Responsibility as adopted by the Illinois Supreme Court (1980-1987) to no standards governing attorney conduct (1987-1989) to Rules of Professional Responsibility of Illinois Supreme Court (1989).
08	D. N.D.	From N.D. Rules of Professional Conduct to no specific standards governing attorney conduct.
09	E.D. Cal.	From Rules of Professional Conduct of State Bar of Cal. to Rules of Professional Conduct of State Bar of Cal. and the ABA Model Code of Professional Responsibility in absence of a Cal. standard.
10	D. Kan.	From no specific standards (1985) to Code adopted by Kan. Supreme Court (10/1/95).
10	E.D. Okla.	From ABA Code of Professional Conduct to Code of Professional Conduct of the Okla. Bar Association (10/1/96).
10	D. Utah	From Utah. Code of Professional Responsibility and Code of Professional Responsibility approved by the Judicial Conference of the U.S. (1980) to Utah. Rules of Professional Conduct and ABA Model Rules (1990) to Utah Rules of Professional Conduct (1991).

Table A-6

Federal District Courts Reporting Problems Caused by Ambiguous Language in their Attorney Conduct Rules

Circuit	District	Problems Reported as Resulting in Conflicts Between , or Confusion Over, Applicable Standards of Conduct for Attorneys Practicing Within the District:
02	E.D. N.Y.	• The rule prescribes multiple standards of conduct without indicating which controls.
04	E.D. N.C.	• Other: Pre-April 4, 1997 rules had an outdated reference to state bar ethical standards.
05	M.D. La.	• Other: M.D. La. refuses to adopt state rule on grand jury subpoenas to lawyers (although this exception is not made explicit is the local rule).
05	S.D. Tex.	• Other: S.D. Tex. is uncertain how to handle attorneys suspended or disbarred by the state, but have appeals pending concerning their discipline.
06	E.D. Mich.	• The rule adopts the standards of the highest state court but does not specify what those standards are. • The rule adopts the standards of the highest state court but does not indicate the force of state interpretations before and after the date of the local rule. • The rule adopts the standards of the highest state court but does not specify whether those standards include amendments to the rules adopted by the state court after the date of the local rule.
06	N.D. Ohio	• The rule adopts the standards of the highest state court but does not specify what those standards are. • The rule adopts the standards of the highest state court but does not indicate the force of state interpretations before and after the date of the local rule. • The rule adopts the standards of the highest state court but does not specify whether those standards include amendments to the rules adopted by the state court after the date of the local rule.
08	E.D. Ark.	• Other: "Shall refer" in our local rule sounds mandatory when it clearly should be discretionary.
08	E.D. Mo.	• The rule adopts the standards of the highest state court but does not specify what those standards are • Other: Attorneys not admitted in Mo., but admitted in E.D. Mo., are subject to Mo. Standards of conduct, even for conduct occurring outside the district.
08	W.D. Mo.	• The rule adopts the standards of the highest state court but does not specify what those standards are. • The rule adopts the standards of the highest state court but does not indicate the force of state interpretations before and after the date of the local rule. • Other: Ambiguities exist in the language that sets forth the district's disciplinary procedures.
09	D. Mont.	• Other: Our rule adopts ABA Model Rules of Professional Conduct, but references the ABA Canons of Professional Ethics.
10	D. Colo.	• The rule adopts the standards of the highest state court but does not specify what those standards are. • The rule adopts the standards of the highest state court but does not indicate the force of state interpretations before and after the date of the local rule.
10	D. N.M.	• The rule adopts the standards of the highest state court but does not specify what those standards are. • The rule adopts the standards of the highest state court but does not indicate the force of state interpretations before and after the date of the local rule. • The rule adopts the standards of the highest state court but does not specify whether those standards include amendments to the rules adopted by the state court after the date of the local rule.
10	D. Utah	• The local rule clearly adopts the Model Rules of Professional Conduct as the court's standard of conduct, but the local rule does not specify whether the standard adopts the exact ABA version of the Model Rules, or the amended version of the state in which the court sits. • The rule prescribes multiple standards of conduct without indicating which controls.

Table A-7

Federal District Courts Reporting Problems Resulting From Use of External Standards Not Explicit in the Districts' Attorney Conduct Rules

Circuit	District	Situations and Problems Reported as Resulting from Use of Standards Not Explicit in the District's Attorney Conduct Rules
02	E.D. N.Y.	• Other: In the past, federal cases have referred to a federal interest in interpreting the applicable rules of conduct which may result in interpretations and application different from that of the courts of NY state. This has now been made explicit in the E.D. N.Y.'s newly amended rule which makes interpretation by federal courts explicit.
04	E.D. N.C.	• The local rule does not mention an ABA model, but your district looks to ABA models to "interpret" local rules and resolve ambiguities, even though your district has not expressly "incorporated" ABA models into its local rules.
04	D. S.C.	• The local rule does not mention an ABA model, but your district looks to ABA models to "interpret" local rules and resolve ambiguities, even though your district has not expressly "incorporated" ABA models into its local rules.
05	N.D. Tex.	• Other. N.D. Tex.'s local rules define "ethical behavior" as conduct "that violates any code, rule, or standard of professional conduct or responsibility governing the conduct of attorneys authorized to practice law in the state of Tex." These codes, rules, or standards are external standards that are not explicitly set out in the rules themselves. In addition, standards adopted in Dondi Properties Corp. v. Commerce Savs. & Loan Ass'n, 121 F.R.D. 284 (N.D. Tex. 1988)(en banc) govern conduct of attorneys in ND. Tex. in civil cases
06	W.D. Ky.	• Other: W.D. Ky. refers to Ky Supreme Court Rules governing Ky. lawyers.
10	D. Colo.	• Other: D. Colo. felt that an example of utilization of external standards not explicit in their local rule was the presumption that disciplinary action of Colo. Supreme Court is appropriate with imposition of identical sanction in D. Colo. as result.
10	D. Utah	• Other. D. Utah lists as example the fact that their local rule does not mention circuit case decisions.

Table A-8

Federal District Courts Reporting Complaints of Lack of Due Process and Vagueness Resulting From Their Attorney Conduct Rules

Circuit	District	Brief description of nature and extent of due process and vagueness complaints reported by the district.
04	D. S.C.	• There is no provision for an attorney to receive and respond to the report and recommendation of a hearing judge.
05	S.D. Tx	• There is no consensus on whether to allow an attorney whose state suspension is on appeal to continue to practice in federal court.
06	W.D. Mich.	• W.D. Mich. has received some complaints concerning lack of express process in rules regarding attorney discipline and reinstatement after discipline.
08	W.D. Mo.	• Confusion exists over when, if at all, an attorney is entitled to a hearing on misconduct allegations or a hearing for reinstatement.
10	D. Colo.	• Questions surround our practice of imposing simultaneous and identical sanction as those imposed by Colo. Supreme Court.
10	D. N.M.	• D. N.M. feels that although its local rule is flexible, it is overly broad and vague and allows court to do whatever it feels is appropriate.

Table A-9

Federal District Courts Reporting Multiforum Problems Resulting From Their Attorney Conduct Rules

Circuit	District	Brief Description of Nature and Extent of Reported Attorney Conduct Problems Involving Multiple Venues
04	D. S.C.	•Although D. S.C. has generally deferred to the state disciplinary process, inconsistencies in the result in that venue has resulted in the district conducting its own disciplinary proceedings in several matters.
05	S.D. Tex.	•Many of the judges in the S.D. Tex. consider some state disciplinary action to be too harsh.
06	W.D. Mich.	•Although it has not arisen in a concrete manner in the W.D. Mich., the US Attorney has questioned whether state ethical rules governing prosecutors can be applied to him and his assistants.
08	E.D. Mo.	•E.D. Mo. has experienced conflict between state and federal standards regarding the effect of "any felony" conviction as grounds for disbarment.
08	W.D. Mo.	•Some conflict has arisen because the state court's application of standards is different than application that the W.D. Mo. would make for the same conduct.
10	D. Colo.	•There have been cases in which the D. Colo. disagreed with the sanction imposed by the state court.
10	D. Utah	•Differences between federal and state standards have caused some problems.

Table A-10

Federal District Courts Reporting Problems With Federal Agencies Promulgating Their Own Attorney Conduct Rules

Circuit	District	Brief description of the nature and extent of the reported problem.
01	D. N.H.	•Although DOJ has claimed that its attorneys are not subject to the local disciplinary rules, the D. N.H. has informed the DOJ that its attorneys are subject to the rules of the D. N.H.
02	E.D. N.Y.	•The DOJ has taken a position with regard to the ability of prosecutors to speak to represented persons that is in conflict with local state court interpretations of the NY State Code.
04	D. S.C.	•DOJ policies on contact with represented persons have been in conflict with the SC Rules of Professional Conduct which are incorporated into local rules of D. S.C.
06	E.D. Ky.	•E.D. Ky. experienced a problem with ethical jurisdiction over out of state attorneys thus the district is revising our rule to require pro hac vice attorneys to submit themselves to jurisdiction of E.D. Ky. However, we are uncertain over whether this will help alleviate problems with DOJ attorneys.
07	N.D. Ill.	•DOJ does not view its attorneys to be bound by N.D. Ill. Rule 4.2 which corresponds to ABA Model Rule 4.2.
08	W.D. Mo.	•Potential problems with DOJ standards on contact with represented persons has been discussed, although no actual cases have arisen.
10	N.D. Okla.	•DOJ has objected to Okla. rules regarding the subpoena of a lawyer to present evidence about a client and regarding presentation of adverse facts in ex parte proceedings, and has recommended that N.D. Okla. except these rules from the adoption of the OK. Rules of Professional Conduct.
10	D. Utah	•We have experienced problems with the SEC and the Patent and Trademark Office.

Table A-11

Problems Experienced by the Federal Districts Due to Specific Ethical Standards

Circuit	District	Indicate Manner in Which Each Category of Ethics Standards Created a Problem in at Least One Specific Instance and Frequency with which These Problems Were Experienced Within the Past 2 Years:				
		Confidentiality	Communication with Represented Parties	Lawyers as Witnesses	Candor Towards the Tribunal	Conflict of Interest
01	D. P.R.	•not speaking to alleged unethical conduct •being unclear •*(once)*	•not speaking to alleged unethical conduct •being unclear •*(once)*	•not speaking to alleged unethical conduct •being unclear •*(once)*	•not speaking to alleged unethical conduct •being unclear •*(once)*	•not speaking to alleged unethical conduct •being unclear •*(2 to 5 times)*
02	E.D. N.Y.		•being inconsistent with other standards of conduct •*(once)*			
02	S.D. N.Y.		•being too broad •*(no problems within past 2 years)*			
03	D. N.J.		•Other: There are conflicting decisions about propriety of one party conducting ex parte interviews with former employees of an adverse party. •*(5 to 10 times)*			
03	D. V.I.					•being unclear •*(frequency not provided)*
04	D. S.C.		•being inconsistent with other standards of conduct •*(frequency not provided)*			
06	E.D. Ky.				•Other: Out of state DOJ Attorneys not subject to Ky. Bar ethics jurisdiction. •*(no problems within past 2 years)*	
06	W.D. Mich.		•Other: Although conflict between state and DOJ interpretations of rule regarding federal prosecutors speaking to witnesses considered "represented parties" has arisen, W.D. Mich. hasn't had to deal with the issue formally either by rulemaking or in a particular case. •*(once)*			
06	S.D. Ohio		•not speaking to alleged unethical conduct •*(once)*			
07	N.D. Ill.		•being inconsistent with other standards of conduct •*(no problems within past 2 years)*			

Circuit	District	Indicate Manner in Which Each Category of Ethics Standards Created a Problem in at Least One Specific Instance and Frequency with which These Problems Were Experienced Within the Past 2 Years:				
		Confidentiality	Communication with Represented Parties	Lawyers as Witnesses	Candor Towards the Tribunal	Conflict of Interest
08	E.D. Ark.					•being inconsistent with other standards of conduct •*(once)*
08	W.D. Mo.		•being unclear •being too broad •*(once)*		•being too narrow •*(once)*	
08	D. S.D.				•being unclear •being too narrow •*(once)*	
10	D. Colo.		•Not speaking to alleged unethical conduct •Other: Problems with Assistant US Attorneys advising arrested suspects about sentencing guidelines before defense counsel is appointed. •*(frequency unknown)*		•Not speaking to alleged unethical conduct •being unclear •Other: Inadequate preparation and experience. •*(frequency unknown)*	•Being unclear •*(frequency unknown)*
10	N.D. Okla.	•Not speaking to alleged unethical conduct •being unclear •*(no problems within past 2 years)*	•being inconsistent with other standards of conduct •*(no problems within past 2 years)*	•being inconsistent with other standards of conduct •*(no problems within past 2 years)*	•being inconsistent with other standards of conduct •*(no problems within past 2 years)*	
10	D. Utah	•being too broad •*(2 to 5 times)*	•being too broad •being inconsistent with other standards of conduct •Other: In conflict with other court decisions. •*(10 or more times)*	•Being too broad •*(2 to 5 times)*		•Not speaking to alleged unethical conduct •being unclear •being too broad •Other: Conflict with decisions of Supreme Court and Circuit Courts. •*(10 or more times)*
11	N.D. Ala.		•Being too broad •Other: Problems as to when communications with employees/former employees can be contacted or responded to at their initiative. •*(10 or more times)*			

Table A-12

National Uniformity of Standards Governing the Professional Conduct of Attorneys in the Federal District Courts

Circuit	District	YES, in support of national uniformity.	NO, not in support of national uniformity.	No Opinion.
01	D. Me.		X	
01	D. Mass.		X	
01	D. N.H.		X	
01	D. P.R	X		
01	D. R.I.		X	
02	D. Conn.		X	
02	E.D. N.Y.	X		
02	S.D. N.Y.			X
02	W.D. N.Y.	X		
02	D. Vt.		X	
03	D. N.J.		X	
03	E.D. Pa.		X	
03	M.D. Pa.		X	
03	D. V.I.	X		
04	D. Md.		X	
04	E.D. N.C.		X	
04	M.D. N.C.		X	
04	W.D. N.C.	X		
04	D. S.C.		X	
04	E.D. Va.		X	
04	W.D. Va.		X	
04	N.D. W. Va.		X	
05	E.D. La.		X	
05	M.D. La.		X	
05	W.D. La.		X	
05	N.D. Miss.	X		
05	S.D. Miss.		X	
05	E.D. Tex.		X	
05	N.D. Tex.		X	
05	S.D. Tex.		X	
05	W.D. Tex.		X	
06	E.D. Ky.		X	
06	W.D. Ky.		X	
06	E.D. Mich.	X		
06	W.D. Mich.		X	
06	N.D. Ohio	X		
06	S.D. Ohio	X		
06	E.D. Tenn.	X		
06	M.D. Tenn.	X		
06	W.D. Tenn.		X	
07	C.D. Ill.		X	
07	N.D. Ill.		X	
07	S.D. Ill.		X	
07	N.D. Ind.	X		
07	S.D. Ind.		X	
07	E.D. Wis.		X	
08	E.D. Ark.		X	
08	W.D. Ark.	X		
08	N.D. Iowa		X	
08	S.D. Iowa		X	
08	D. Minn.	X		
08	E.D. Mo.	X		
08	W.D. Mo.		X	
08	D. Neb.		X	
08	D. S.D.		X	
09	D. Alaska		X	
09	E.D. Cal.		X	
09	D. Haw.	X		
09	D. Idaho		X	

Circuit	District	YES, in support of national uniformity.	NO, not in support of national uniformity.	No Opinion.
09	D. Mont.	X		
09	D. Or.		X	
09	E.D. Wash.	X		
09	W.D. Wash.	X		
09	D. N.M.I.	X		
10	D. Colo.	X		
10	D. Kan.		X	
10	D. N.M.	X		
10	E.D. Okla.	X		
10	N.D. Okla.		X	
10	W.D. Okla.		X	
10	D. Utah		X	
10	D. Wyo.		X	
11	M.D. Ala.		X	
11	N.D. Ala.			X
11	S.D. Ala.		X	
11	M.D. Fla.	X		
11	N.D. Fla.		X	
11	M.D. Ga.		X	
11	S.D. Ga.		X	

Table A-13

Selective Uniformity of Standards Governing the Professional Conduct of Attorneys in the Federal District Courts

Circuit	District	Indicate whether district is in favor of uniformity for each category of ethical standards:				
		confidentiality	communication with represented parties	lawyers as witnesses	candor towards a tribunal	conflict of interest
03	D. N.J.			X	X	
03	M.D. Pa.	X			X	X
04	E.D. N.C.	X	X	X	X	X
04	M.D. N.C.	X	X	X	X	
04	D. S.C.	X	X	X	X	X
04	W.D. Va.				X	
05	E.D. La.	X	X	X	X	X
05	M.D. La.	X	X	X	X	X
05	W.D. La.	X	X		X	X
05	E.D. Tex.		X	X	X	X
05	W.D. Tex.	X	X	X	X	X
06	E.D. Ky.		X			
07	S.D. Ill.	X	X		X	
07	S.D. Ind.	X	X	X	X	X
08	N.D. Iowa	X	X		X	X
10	D. Utah			X	X	X
11	N.D. Fla.	X	X	X	X	X

Table A-14

Attorney Discipline Rules in the Federal District Courts

Circuit	District	Local Rule on Attorney Discipline	Group 1[1]	Group 2[2]	Group 3[3]
01	D. Me.	Local Rule 83.3	X		
01	D. Mass.	Local Rule 83.6	X		
01	D. N.H.	Local Rule 83.5 (DR-6)	X		
01	D. R.I.	Local Rule 4(e)	X		
01	D. P.R.	Local Rule 211.5 (renumbered as Local Rule 83.5; no effective date known at present)			X
02	D. Conn.	Local Rule 3(b)-(f)	X		
02	E.D. N.Y.	Local Rule 1.5			X
02	N.D. N.Y.	Local Rule 83.4			X
02	S.D. N.Y.	Local Rule 1.5			X
02	W.D. N.Y.	Local Rule 83.3(a)			X
02	D. Vt.	Local Rule 83.2(d)	X		
03	D. Del.	Local Rule 83.6			X
03	D. N.J.	Local Civil Rule 104.1	X		
03	E.D. Pa.	Local Rule 83.6	X		
03	M.D. Pa.	Local Rules 83.20 to 83.31	X		
03	W.D. Pa.	Local Civil Rule 83.6	X		
03	D. V.I.	Local Rule 83.2(b)	X		
04	D. Md.	Local Rule 705	X		
04	E.D. N.C.	Local rule 2.10 (informs that disciplinary procedures are on file with clerk and available on request; will be published as part of local rules in 9/97.)	X		
04	M.D. N.C.	Local Rules 501-513	X		
04	W.D. N.C.	no local rule	X		
04	D. S.C.	Local Rule 83.I.09	X		
04	E.D. Va.	Local Rule 83.1(L) & Appendix B: Federal Rules of Disciplinary Enforcement	X		
04	W.D. Va.	Local Rules for W.D. Va., Model Rules of Disciplinary Enforcement	X		
04	N.D. W.Va.	no local rule	X		
04	S.D. W.Va.	Local Rule General Practice 3.01 referencing Model Federal Rules of Disciplinary Enforcement (available from clerk's office)	X		
05	E.D. La.	Local Rule 83.2.10E	X		
05	M.D. La.	Local Rule 20.10M			X
05	W.D. La.	no local rule	X		
05	N.D. Miss.	Local Rule 1 (c)		X	
05	S.D. Miss.	Local Rule 1 (c)		X	
05	E.D. Tex.	Local Rule AT-2(d)			X
05	N.D. Tex.	Local Rule 83.8 & Local Criminal Rule 57.8			X
05	S.D. Tex.	Local Rules for S.D. Tex., Appendix A. Rules of Discipline, Rule 5			X
05	W.D. Tex.	Local Rule AT-1(I)			X
06	E.D. Ky.	Local Rule 83.3 & Local Criminal Rule 57.3			X
06	W.D. Ky.	Local Rule 83.3 & Local Criminal Rule 57.3			X
06	E.D. Mich.	Local Rule 83.22(e)		X	
06	W.D. Mich.	Local Rule 21			X
06	N.D. Ohio	Local Civil Rule 83.7 & Local Criminal Rule 57.7			X
06	S.D. Ohio	Local Rule 83.4(f) incorporating Appendix of Court Orders,	X		

[1] Districts with a local rule permitting ("may refer") or requiring ("shall refer") a judicial officer to refer disciplinary matters (for purposes of investigating allegations of misconduct, prosecuting disciplinary proceedings, formulating other appropriate recommendations and/or conducting a hearing at which a decision to impose discipline is made) either to bodies or person(s) outside of the federal district court (such as the bar of the state wherein the district is located; the disciplinary agency of the highest court of the state wherein the attorney maintains his or her principal office; any disciplinary agency the court deems proper; the United States Attorney for the district) and/or to bodies or persons within the federal court (such as member(s) of the bar of the district court; permanent or temporary disciplinary bodies such as "grievance committees," "disciplinary committees or panels," "executive committees," etc.).

[2] Districts with a local rule requiring a judicial officer ("shall refer") to refer disciplinary matters of a more serious nature (may warrant suspension or disbarment) exclusively to bodies or person(s) outside of the federal district court (such as the bar of the state wherein the district is located; the disciplinary agency of the highest court of the state wherein the attorney maintains his or her principal office; any disciplinary agency the court deems proper; the United States Attorney for the district).

[3] Districts with a local rule permitting ("may") or requiring ("shall") a judicial officer to handle the disciplinary matter himself or herself or refer the matter exclusively to bodies or person(s) within the federal district court (such as member(s) of the bar of the district court; permanent or temporary disciplinary bodies such as "grievance committees," "disciplinary committees or panels," "executive committees," etc.).

Circuit	District	Local Rule on Attorney Discipline	Group 1[1]	Group 2[2]	Group 3[3]
		Order 81-1			
06	E.D. Tenn.	Local Rule 83.7	X		
06	M.D. Tenn.	Local Rule 1(e)	X		
06	W.D. Tenn.	Local Rule 83.1(e)(1) referencing Order Adopting Rules of Disciplinary Enforcement (available from clerk's office)	X		
07	C.D. Ill.	Local Rule 83.6	X		
07	N.D. Ill.	Local Rules 3.50 to 3.79	X		
07	S.D. Ill.	Local Rule 29(e)			X
07	N.D. Ind.	Local Rule 83.6	X		
07	S.D. Ind.	Local Rules for S.D. Ind., Rules of Disciplinary Enforcement	X		
07	E.D. Wis.	Local Rule 2.05			X
07	W.D. Wis.	no local rule	X		
08	E.D. Ark.	Local Rules for E. & W.D. Ark., Appendix. Model Federal Rules of Disciplinary Enforcement	X		
08	W.D. Ark.	Local Rules for E. & W.D. Ark., Appendix. Model Federal Rules of Disciplinary Enforcement	X		
08	N.D. Iowa	Local Rule 83.2(g)			X
08	S.D. Iowa	Local Rule 83.2(g)			X
08	D. Minn.	Local Rule 83.6(e)	X		
08	E.D. Mo.	Local Rule 12.02 referencing Rules of Disciplinary Enforcement (available from clerk's office)	X		
08	W.D. Mo.	local Rule 83.6	X		
08	D. Neb.	Local Rule 83.5	X		
08	D. N.D.	Local Rule 79.1(E)	X		
08	D. S.D.	Local Rule 83.2(G)	X		
09	D. Alaska	no local rule Note: Local Rule 83.1(f) contains procedures for reciprocal discipline and reinstatement, but no procedures for allegations of attorney misconduct before the district court	X		
09	D. Ariz.	no local rule	X		
09	C.D. Cal.	Local Civil Rule 2.6			X
09	E.D. Cal.	Local General Rule 184	X		
09	N.D. Cal.	Local Civil Rule 11-6			X
09	S.D. Cal.	Local Rule 83.5j	X		
09	D. Haw.	Local Rule 110-4	X		
09	D. Idaho	Local Rule 83.5(b)	X		
09	D. Mont.	Local General Rules 110-3 & 110-5	X		
09	D. Nev.	Local Rule IA 10-7			X
09	D. Or.	Local Rule 110-6			X
09	E.D. Wash.	Local Rule 83.3(a)			X
09	W.D. Wash.	Local Rule 2(e)			X
09	D. Guam	Local General Rule 22.4	X		
09	D. N.M.I.	Local Rule 1.5: Appendix A Disciplinary Rules			X
10	D. Colo.	Local Rules 83.5 & 83.6	X		
10	D. Kan.	Local Rule 83.6	X		
10	D. N.M.	Local Rule 83.2(f) & 83.10			X
10	E.D. Okla.	Local Rules 1.3 & 83.3L	X		
10	N.D. Okla.	Local Civil Rule 1.4	X		
10	W.D. Okla.	Local Rule 83.6 (c)	X		
10	D. Utah	Local Rule 103-5	X		
10	D. Wyo.	Local Rules 83.12.1 to 83.12.15	X		
11	M.D. Ala.	Local Rule 2 (renumbered and amended to Local Rule 83.1; no effective date at present)			X
11	N.D. Ala.	Local Rule 83.1	X		
11	S.D. Ala.	Local Rule 3 (renumbered and amended to Local Rule 83.6; effective date 6/1/97)			X
11	M.D. Fla.	Local Rule 2.04	X		
11	N.D. Fla.	Local General Rule 11.1(G)			X
11	S.D. Fla.	Local Rules for S.D. Fla., Rules Governing Attorney Discipline, Prefatory Statement	X		
11	M.D. Ga.	Local Rule 13	X		
11	N.D. Ga.	Local Rule 83.1F	X		
11	S.D. Ga.	Local Rule 83.5			X
DC	D. D.C.	Local Rule 707	X		

Table A-15

Group 1 Districts[1]: Approaches Reportedly Used to Address Complaints of Attorney Misconduct in the Federal District Courts

Circuit	District	Indicate Approaches District Reported Using:	Indicate Approach District Reported Using Most Frequently:	For Approach Reported As Most Frequently Utilized, Indicate Whether in a Recent Case District Reported Dissatisfaction with:	
				Outcome	Procedure
01	D. Me.	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court.	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court.		
01	D. Mass.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a panel or committee of judges in district.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a panel or committee of judges in district.		
01	D. N.H.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint an attorney to investigate and present to federal district court.			
01	D. R.I.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district. •Refer to a panel or committee of judges in district. •Appoint an attorney to investigate and present to federal district court. •Refer to U.S. Attorney for investigation.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a panel or committee of judges in district.		
02	D. Conn.	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Refer to a single judge in the district	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court.		
02	D. Vt.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Appoint an attorney to investigate and present to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint an attorney to investigate and present to federal district court.		
03	D. N.J.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district •Appoint an attorney to investigate and present to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
03	E.D. Pa.	•Refer to a panel or committee of judges in district	•Refer to a panel or committee of judges in district.		
03	M.D. Pa.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency	X	X

[1] Districts with a local rule permitting ("may refer") or requiring ("shall refer") a judicial officer to refer disciplinary matters (for purposes of investigating allegations of misconduct, prosecuting disciplinary proceedings, formulating other appropriate recommendations and/or conducting a hearing at which a decision to impose discipline is made) either to bodies or person(s) outside of the federal district court (such as the bar of the state wherein the district is located; the disciplinary agency of the highest court of the state wherein the attorney maintains his or her principal office; any disciplinary agency the court deems proper; the United States Attorney for the district) and/or to bodies or persons within the federal court (such as member(s) of the bar of the district court; permanent or temporary disciplinary bodies such as "grievance committees," "disciplinary committees or panels," "executive committees," etc.).

Circuit	District	Indicate Approaches District Reported Using:	Indicate Approach District Reported Using Most Frequently:	For Approach Reported As Most Frequently Utilized, Indicate Whether in a Recent Case District Reported Dissatisfaction with:	
				Outcome	Procedure
		•Appoint an attorney to investigate and present to federal district court.	deems warranted.		
03	W.D. Pa.				
03	D. V.I.	•Appoint an attorney to investigate and present to federal district court.	•Appoint an attorney to investigate and present to federal district court.		
04	D. Md.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district •Refer to a panel or committee of judges in district. •Appoint an attorney to investigate and present to federal district court.	•Refer to a panel or committee of judges in district.		
04	E.D. N.C.	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Refer to a single judge in the district •Refer to a panel or committee of judges in district. •Appoint an attorney to investigate and present to federal district court. •Refer to U.S. Attorney for investigation.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
04	M.D. N.C.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint an attorney to investigate and present to federal district court.	•Appoint an attorney to investigate and present to federal district court.		
04	D. S.C.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district •Refer to a panel or committee of judges in district. •Appoint an attorney to investigate and present to federal district court. •Refer to U.S. Attorney for investigation.	•Refer to U.S. Attorney for investigation.	X	
04	E.D. Va.	•Handle another way: follow procedures in local rule depending on nature of discipline.	•Handle another way: follow procedures in local rule depending on nature of discipline.		
04	W.D. Va.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Handle another way: presiding judge deals with problem.	•Handle another way: presiding judge deals with problem.		
05	E.D. La.	•Appoint an attorney to investigate and present to federal district court. •Refer to U.S. Attorney for investigation. •Handle another way: Referred to court en banc before any discipline imposed.	•Handle another way: Referred to court en banc; attorney appointed to file formal complaint; judge makes recommendation to court en banc.		
05	S.D. Ohio	•Appoint an attorney to investigate and present to federal district court.	•Appoint an attorney to investigate and present to federal district court.		
06	E.D. Tenn.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	X	X
06	M.D. Tenn.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	X	X

Circuit	District	Indicate Approaches District Reported Using:	Indicate Approach District Reported Using Most Frequently:	For Approach Reported As Most Frequently Utilized, Indicate Whether in a Recent Case District Reported Dissatisfaction with:	
				Outcome	Procedure
06	W.D. Tenn.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Refer to a single judge in the district •Refer to a panel or committee of judges in district. •Appoint an attorney to investigate and present to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	X	X
07	N.D. Ill.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district. •Appoint an attorney to investigate and present to federal district court. •Refer to U.S. Attorney for investigation.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
07	C.D. Ill.	•Refer to a panel or committee of judges in district.	•Refer to a panel or committee of judges in district.		
07	N.D. Ind.	•Appoint an attorney to investigate and present to federal district court.	•Appoint an attorney to investigate and present to federal district court.		
07	S.D. Ind.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Refer to a single judge in the district •Refer to U.S. Attorney for investigation.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	X	X
07	E.D. Ark.	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court.	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court.		X
08	W.D. Ark.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Handle another way: Handled by court as whole, through correspondence, conference calls and meetings.	•Handle another way: Handled by court as whole, through correspondence, conference calls and meetings.		
08	D. Minn.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a panel or committee of judges in district. •Appoint an attorney to investigate and present to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint an attorney to investigate and present to federal district court.	X	X
08	E.D. Mo.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court.			
08	W.D. Mo.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district •Refer to a panel or committee of judges in district. •Appoint an attorney to investigate and present	•Appoint an attorney to investigate and present to federal district court.	X	X

Circuit	District	Indicate Approaches District Reported Using:	Indicate Approach District Reported Using Most Frequently:	For Approach Reported As Most Frequently Utilized, Indicate Whether in a Recent Case District Reported Dissatisfaction with:	
				Outcome	Procedure
		to federal district court.			
08	D. Neb.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district •Refer to a panel or committee of judges in district. •Appoint an attorney to investigate and present to federal district court.	•Handle another way. Suspension is imposed by active Article III judges as result of discipline imposed by Neb. Supreme Court.		
08	D. N.D.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
08	D. S.D.	•Refer to U.S. Attorney for investigation.	•Refer to U.S. Attorney for investigation.		
08	E.D. Cal.	•Handle another way: Handled by judge before whom matter pending.	•Handle another way: Handled by judge before whom matter giving rise to misconduct is pending..		
09	S.D. Cal.				
09	D. Guam				
09	D. Haw.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
09	D. Idaho	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
09	D. Mont.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to U.S. Attorney for investigation.	•Refer to U.S. Attorney for investigation.		
10	D. Colo.	•Refer to a panel or committee of judges in district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer to a panel or committee of judges in district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.		
10	D. Kan.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a panel or committee of judges in district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
10	E.D. Okla.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted., •Refer to a single judge in the district •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.		
10	N.D. Okla.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Refer to panel or committee of attorneys in	•Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	X	X

Circuit	District	Indicate Approaches District Reported Using:	Indicate Approach District Reported Using Most Frequently:	For Approach Reported As Most Frequently Utilized, Indicate Whether in a Recent Case District Reported Dissatisfaction with:	
				Outcome	Procedure
		district for investigation and presentation to federal district court.			
10	W.D. Okla..	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court.	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court.		
10	D. Utah	•Refer to a panel or committee of judges in district.	•Refer to a panel or committee of judges in district.	X	X
10	D. Wyo.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint an attorney to investigate and present to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
11	N.D. Ala.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Refer to a single judge in the district. •Refer to a panel or committee of judges in district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court. •Refer to U.S. Attorney for investigation.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
11	M.D. Fla.	•Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.		
11	S.D. Fla.				
11	M.D. Ga.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district •Appoint an attorney to investigate and present to federal district court. •Refer to U.S. Attorney for investigation.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	X	X
11	N.D. Ga.				
DC	D. D.C.				

Table A-16

Group 2[1] Districts: Approaches Reportedly Used to Address Complaints of Attorney Misconduct in the Federal District Courts

Circuit	District	Indicate Approaches District Reported Using:	Indicate Approach District Reported Using Most Frequently:	For Approach Reported As Most Frequently Utilized, Indicate Whether in a Recent Case District Reported Dissatisfaction with:	
				Outcome	Procedure
05	N.D. Miss.	•Refer to a single judge in the district. •Refer to a panel or committee of judges in district.	•Refer to a single judge in the district.		
05	S.D. Miss.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
06	E.D. Mich.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Appoint agency charged with enforcing state ethical standards to investigate and present matter to federal district court. •Appoint an attorney to investigate and present to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		

[1] Districts with a local rule requiring a judicial officer ("shall refer") to refer disciplinary matters of a more serious nature (may warrant suspension or disbarment) exclusively to bodies or person(s) outside of the federal district court (such as the bar of the state wherein the district is located; the disciplinary agency of the highest court of the state wherein the attorney maintains his or her principal office; any disciplinary agency the court deems proper; the United States Attorney for the district).

Table A-17

Group 3[1] Districts: Approaches Reportedly Used to Address Complaints of Attorney Misconduct in the Federal District Courts

Circuit	District	Indicate Approaches District Reported Using:	Indicate Approach District Reported Using Most Frequently:	For Approach Reported As Most Frequently Utilized, Indicate Whether in a Recent Case District Reported Dissatisfaction with:	
				Outcome	Procedure
01	D. P.R.	•Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	X	X
02	E.D. N.Y.	•Refer to panel or committee of judges within district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court. •Appoint an attorney to investigate and present to federal district court.	•Refer to panel or committee of judges within district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court. •Appoint an attorney to investigate and present to federal district court.	X	
02	N.D. N.Y.	•	•		
02	S.D. N.Y.	•Refer to panel or committee of judges within district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer to panel or committee of judges within district.		
02	W.D. N.Y.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district. •Appoint an attorney to investigate and present to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
03	D. Dell.	•	•		
05	M.D. La.	•Refer to a single judge in the district.	•Refer to a single judge in the district.		
05	E.D. Tex.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district. •Appoint an attorney to investigate and present to federal district court.	•Refer to a single judge in the district.		
05	N.D. Tex.	•Handle another way: attorney discipline is handled by judge before whom case is pending, subject right to appeal to Chief Judge.	•Handle another way: attorney discipline is handled by judge before whom case is pending, subject right to appeal to Chief Judge.		
05	W.D. Tex.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.		
05	S.D. Tex.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court. •Appoint an attorney to investigate and present to federal district court.	•Refer to a single judge in the district.	X	X

[1] Districts with a local rule permitting ("may") or requiring ("shall") a judicial officer to handle the disciplinary matter himself or herself or refer the matter exclusively to bodies or person(s) within the federal district (such as member(s) of the bar of the district court; permanent or temporary disciplinary bodies such as "grievance committees," "disciplinary committees or panels," "executive committees," etc.).

Circuit	District	Indicate Approaches District Reported Using:	Indicate Approach District Reported Using Most Frequently:	For Approach Reported As Most Frequently Utilized, Indicate Whether in a Recent Case District Reported Dissatisfaction with:	
				Outcome	Procedure
06	E.D. Ky.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Handle another way: referred matter to magistrate judge for report and recommendation which court adopted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
06	W.D. Ky.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
06	W.D. Mich.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district. •Refer to panel or committee of judges within district.	•Refer to a single judge in the district.		
06	N.D. Ohio	•Refer to panel or committee of judges within district.	•Refer to panel or committee of judges within district.		
07	S.D. Ill.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district. •Refer to panel or committee of judges within district. •Appoint an attorney to investigate and present to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
07	E.D. Wis.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to U.S. Attorney for investigation.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
08	N.D. Iowa	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
08	S.D. Iowa	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
09	C.D. Cal.	•	•		
09	N.D. Cal.	•	•		
09	D. Nev.	•	•		
09	D. Or.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
09	E.D. Wash.	•Refer to panel or committee of judges within district.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to panel or committee of judges within district.		
09	W.D. Wash.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•		
09	D. N.M.I.	•Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer to panel or committee of attorneys in district for investigation and presentation		

Circuit	District	Indicate Approaches District Reported Using:	Indicate Approach District Reported Using Most Frequently:	For Approach Reported As Most Frequently Utilized, Indicate Whether in a Recent Case District Reported Dissatisfaction with:	
				Outcome	Procedure
		•Appoint an attorney to investigate and present to federal district court.	to federal district court. •Appoint an attorney to investigate and present to federal district court.		
10	D. N.M.	•Refer to a single judge in the district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to a single judge in the district. •Refer to panel or committee of attorneys in district for investigation and presentation to federal district court.	X	
11	M.D. Ala.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
11	S.D. Ala.	•Refer to a single judge in the district.	•Refer to a single judge in the district.		
11	N.D. Fla.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted. •Refer to U.S. Attorney for investigation. •Handle another way: used "order to show cause" to remove attorney from roster of attorneys authorized to practice within district without referring to state bar grievance process.	•Refer the matter to the group or agency charged with enforcing state ethical standards for whatever action that agency deems warranted.		
11	S.D. Ga.	•Refer to a single judge in the district. •Refer to panel or committee of judges within district. •Refer to U.S. Attorney for investigation.	•Refer to a single judge in the district.		

Table A-18

Frequency of Attorney Misconduct Complaints in the Federal District Courts for Calendar Year 1996

Circuit	District	# Complaints Received in 1996	# Complaints Formal Action was Taken on in 1996:
01	D. Me.	1	1
01	D. Mass.	3-5	0
01	D. N.H.	0	0
01	D. R.I.	0	0
01	D. P.R.	4	4
02	D. Conn.	14	14
02	E.D. N.Y.	4-5	4-5
02	N.D. N.Y.	0	0
02	S.D. N.Y.	26	19
02	W.D. N.Y.	1	1
02	D. Vt.	0	0
03	D. Del.	1	1
03	D. N.J.	32	32
03	E.D. Pa.	0	0
03	M.D. Pa.	not available	
03	W.D. Pa.	14	14
03	D. V.I.	5-6	5-6
04	D. Md.	13	11
04	E.D. N.C.	16	16
04	M.D. N.C.	0	0
04	W.D. N.C.	0	0
04	D. S.C.	3	1
04	E.D. Va.	0	0
04	W.D. Va.	0	0
04	N.D. W.Va.	0	0
04	S.D. W.Va.	1	1
05	E.D. La.	21	18
05	M.D. La.	0	0
05	W.D. La.	7	7
05	N.D. Miss.	11	6
05	S.D. Miss.	1	1
05	E.D. Tex.	9	9
05	N.D. Tex.	1	1
05	S.D. Tex.	7	2
05	W.D. Tex.	1	1
06	E.D. Ky.	13	8
06	W.D. Ky.	1	1
06	E.D. Mich.	1	1
06	W.D. Mich.	5	5
06	N.D. Ohio	1	1
06	S.D. Ohio	0	0
06	E.D. Tenn.	0	0
06	M.D. Tenn.	not available	
06	W.D. Tenn.	unknown	
07	C.D. Ill.	1	1
07	N.D. Ill.	8	8
07	S.D. Ill.	0	0
07	N.D. Ind.	0	0
07	S.D. Ind.	0	0
07	E.D. Wis.	0	0
07	W.D. Wis.	not provided	
08	E.D. Ark.	0	0
08	W.D. Ark.	3	3
08	N.D. Iowa	0	0
08	S.D. Iowa	5	5
08	D. Minn.	0	0
08	E.D. Mo.	0	0
08	W.D. Mo.	9	9
08	D. Neb.	11	11

Circuit	District	# Complaints Received in 1996	# Complaints Formal Action was Taken on in 1996:
08	D. N.D.	0	0
08	D. S.D.	0	0
09	D. Alaska	not provided	
09	D. Ariz.	4	4
09	C.D. Cal.	1	1
09	E.D. Cal.	1	1
09	N.D. Cal.	3	unknown
09	S.D. Cal.	0	0
09	D. Haw.	18	11
09	D. Idaho	0	0
09	D. Mont.	0	0
09	D. Nev.	0	0
09	D. Or.	0	0
09	E.D. Wash.	2	2
09	W.D. Wash.	not provided	
09	D. Guam	0	0
09	D. N.M.I.	not provided	
10	D. Colo.	9	5
10	D. Kan.	0	0
10	D. N.M.	5	5
10	E.D. Okla.	0	0
10	N.D. Okla.	2	0
10	W.D. Okla.	5	5
10	D. Utah	5	4
10	D. Wyo.	4	4
11	M.D. Ala.	0	0
11	N.D. Ala.	0	0
11	S.D. Ala.	2	0
11	M.D. Fla.	4	3
11	N.D. Fla.	0	0
11	S.D. Fla.	not provided	
11	M.D. Ga.	0	0
11	N.D. Ga.	1	1
11	S.D. Ga.	2	2
DC	D. D.C.	29	16

STUDY OF RECENT FEDERAL CASES (1990-1997) INVOLVING FEDERAL RULE OF APPELLATE PROCEDURE 46

TO: Committee on Rules of Practice and Procedure, Judicial Conference of the United States

FROM: Daniel R. Coquillette, Reporter

DATE: May 10, 1997

CONTENTS

APPENDICES

I. INTRODUCTION

This Committee is currently considering two options for changing local rules governing attorney conduct in the federal courts. "Option One" is the adoption of a model local rule similar to Model Rule IV of the Federal Rules of Disciplinary Enforcement as recommended by the Committee on Court Administration and Case Management ("CACM") in 1978. "Option Two" is the adoption of uniform rules of attorney conduct applying to specific "core" areas of federal concern, with the provision that all other areas of attorney conduct are governed by state standards. See Report on Local Rules Regulating Attorney Conduct, July 5, 1995; Study of Recent Federal Cases Involving Rules of Attorney Conduct, January 9, 1996; and Supplement to Study of Recent Federal Cases Involving Rules of Attorney Conduct (1995-1996), May 14, 1996. At the request of the Committee, I have researched cases dealing with Federal Rule of Appellate Procedure 46 to determine what effect, if any, the proposed changes will have on this rule and on the practice of Courts of Appeals.

I am again deeply indebted to my two most talented and industrious research assistants, James J.G. Dimas and Thomas J. Murphy, whose hard work and intelligence are evident on every page of this study. In addition, I have benefited greatly from discussion with members of the Advisory Committee on Appellate Rules, including the Honorable James K. Logan, Chairman, and the Committee's Reporter, Professor Carol Ann Mooney, Vice President and Associate Provost of Notre Dame. Any Recommendations are, however, my own. In addition, any revision to Rule 46 itself, or any model rules designed for Courts of Appeals, should be considered by the Advisory Committee on Appellate Rules before action is taken.

II. DISCUSSION

Rule 46 is the uniform federal rule governing attorney conduct in the courts of appeals. Fed. R. App. P. 46.[1] It is similar to Rule 8 of the Supreme Courts Rules,[2]

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[1] Federal Rule of Appellate Procedure 46 provides:

Rule 46. Attorneys

(a) Admission to the Bar of a Court of Appeals; Eligibility; Procedure for Admission. An attorney who has been admitted to practice before the Supreme Court of the United States, or the highest court of a state, or another United States court of appeals, or by a United States district court (including the district courts for the Canal Zone, Guam, and the Virgin Islands), and who is of good moral and professional character, is eligible for admission to the bar of a court of appeals.

An applicant shall file with the clerk of the court of appeals, on a form approved by the court and furnished by the clerk, an application for admission containing the applicant's personal statement showing eligibility for membership. At the foot of the application the applicant shall take and subscribe to the following oath or affirmation:

I, _____, do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of this court, uprightly and accordingly to law; and that I will support the Constitution of the United States.

Thereafter, upon written or oral motion of a member of the bar of the court, the court will act upon the application. An applicant may be admitted by oral motion in open court, but it is not necessary that the applicant appear before the court for the purpose of being admitted, unless the court shall otherwise order. An applicant shall upon admission pay to the clerk the fee prescribed by rule or order of the court.

(b) Suspension or Disbarment. When it is shown to the court that any member of its bar has been suspended or disbarred from practice in any other court of record, or has been guilty of conduct unbecoming a member of the bar of the court, the member will be subject to suspension or disbarment by the court. The member shall be afforded the opportunity to show good cause, within such time as the court shall prescribe, why the member should not be suspended or disbarred. Upon the member's response to the rule to show cause, and after hearing, if requested, or upon expiration of the time prescribed for a response if no response is made, the court shall enter an appropriate order.

(c) Disciplinary Power of the Court Over Attorneys. A court of appeals may, after reasonable notice and the opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member the bar or for failure to comply with these rules or any rule of the court.

[2] Supreme Court Rule 8 provides:

Rule 8. Disbarment and Disciplinary Action.

1. Whenever a member of the Bar of this Court has been disbarred or suspended from practice in any court of record, or has engaged in conduct unbecoming a member of the Bar of this Court, the Court will enter an order suspending that member from practice before this Court and affording the member an opportunity to show cause, within 40 days, why a disbarment order should not be entered. Upon response, or if no response is timely filed, the Court will enter an appropriate order.

2. After reasonable notice and an opportunity to show cause why disciplinary action should not be taken, and after a hearing if material facts are in dispute, the Court may take any appropriate disciplinary action against any attorney who is admitted to practice before it for conduct unbecoming a member of the Bar or for failure to comply with these Rules or any Rule or order of the Court.

which governs attorney conduct in the Supreme Court of the United States. Rule 46(b) states that a member of the bar will be subject to supervision or disbarment from the court when it is shown: (1) that the attorney has been suspended or disbarred from any other court of record or (2) has been guilty of "conduct unbecoming a member of the bar." Fed. R. App. P. 46(b). Rule 46(b) also provides an opportunity for the attorney to show good cause why suspension or disbarment would be unjustified. Rule 46(c) states that a member of the bar practicing before the court will be subject to disciplinary action for (1) "conduct unbecoming a member of the bar" or (2) "for failure to comply with these rules or any rules of the court." Rule 46(c) also requires the court to provide "reasonable notice and an opportunity to show good cause to the contrary" before taking any disciplinary action against the attorney.

A. The In re Snyder Standard. See Appendix IV.

The Supreme Court has defined the phrase "conduct unbecoming a member of the bar." See In re Snyder, 472 U.S. 634, 645, 105 S. Ct. 2874 (1985), attached as Appendix IV, infra. In the Snyder case, the Supreme Court interpreted this phrase to require "conduct contrary to professional standards that show unfitness to discharge the continuing obligations to clients or the courts, or conduct inimical to the administration of justice." Id. at 645. The Supreme Court further stated that "case law, applicable court rules and 'the lore of the profession', as embodied in codes of professional conduct" provide guidance in determining the scope of these affirmative obligations. Id. at 645. See also Matter of Hendrix, 986 F.2d 195, 201 (7th Cir. 1993) (Fed. R. Civ. P. 11 and ABA Model Rules provide guidance as to conduct sanctionable under Rule 46); In re Bithony, 486 F.2d 319, 324 (1st Cir. 1973) (complex code of behavior embodied in the ABA Code helps define "conduct unbecoming a member of the bar").

B. Local Rules Interpreting Rule 46. See Appendices V, VII.

The Rule 46 "conduct unbecoming" standard has been consistently read to include reference to "professional standards" and "codes of professional conduct", including

federal local rules governing attorney conduct. Seven courts of appeals have adopted such local rules. See Report on Local Rules Regulating Attorney Conduct in the Federal Courts (July 5, 1995), 8. Four courts of appeal have adopted local rules that have a "dynamic conformity" to the rules of attorney conduct adopted by the highest court of the state in which a particular attorney is admitted to practice. See id. Chart III, set out as Appendix VII, infra. The 11th Circuit has also adopted such a standard, but only to the extent that the state rules "are not inconsistent with the ABA Model Rules, in which case the ABA model rules govern." See Chart III, Appendix VII, infra. Furthermore, both the 11th Circuit and the Court of Appeals for the District of Columbia have local rules that show signs of influence from CACM Model Local Rule IV. See Report on Local Rules Regulating Attorney Conduct in the Federal Courts, Appendix V (July 5, 1995) (containing Model Local Rule IV). Two other courts of appeals have local rules that refer directly to ABA models. The 2nd Circuit's local rule refers to the ABA Code, which is still in effect in the state of New York, and the 6th Circuit's local rule refers to the ABA Model Rules and the Canons of Ethics. See Chart III, Appendix VII, infra.

Six courts of appeals have no local rules to supplement Rule 46.[3] The 8th Circuit has an Internal Operating Procedure which refers to the state standard in which the attorney is admitted to practice. The Clerk's Office of the 5th Circuit states that "it is long-standing practice to look to and follow the ethical rules adopted by the highest court in the state of the attorney's domicile, while always being mindful of the ABA Model Rules." See Chart III, Appendix VII, infra. The 7th Circuit has "Standards for Professional Conduct Within the Seventh Federal Judicial Circuit" which are neither based on an ABA model nor a state standard, but do provide additional guidance. See Jeffrey A. Parness "Enforcing Professional Norms for Federal Litigation Conduct: Achieving Reciprocal Cooperation," 60 Albany Law Review 303 (1996), attached as Appendix V, infra.

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[3] The United States Court of Appeals for the Federal Circuit is one of six courts of appeals which do not have local rules supplementing Rule 46.

C. Court of Appeals Cases on Rule 46. See Appendix I.

Our research shows that, since 1990, 37 decisions of the federal courts of appeals, have cited Rule 46, or a local rule which supplements it.[4] See Appendix I, infra, Chart I, Breakdown of Recent Federal Appellate Cases Citing Federal Rule of Appellate Procedure 46 (1990-1997). Most of the decisions involve misrepresentations of law or fact to a tribunal, maintaining frivolous appeals, failure to prosecute criminal appeals with due diligence, or failure to follow court rules. See Hendrix, supra, 986 F.2d at 200-01 (Court sanctioned attorney under Rule 46 for failure to cite contrary authority in appellate brief); U.S. v. Williams, 952 F.2d 418, 421, cert. denied 506 U.S. 850 (1992) (court publicly censured attorney for misstatements of record in appellate brief thus violating ABA Model Rule 3.3); U.S. v. Song, 902 F.2d 609, 610 (7th Cir. 1990) (Court sanctioned attorney under Rule 46 for lack of due diligence in filing criminal appeal); In re Solerwitz, 848 F.2d 1573, 1580-81 (Fed. Cir. 1988), cert. denied, 488 U.S. 1004 (1989) (Court sanctioned attorney under Rule 46 for filing over 100 frivolous appeals). The rest of the decisions involve other types of attorney misconduct, including misappropriation of a client's funds, conduct by an attorney intended to disrupt a tribunal, and false accusations concerning a judge's qualifications and integrity. See Appendix I, infra Chart I, Breakdown of Recent Federal Appellate Cases Citing Federal Rule of Appellate Procedure 46 (1990-1997). See also Nordberg, Inc. v. Telsmith, Inc., 82 F.3d 394, 398-99 (Fed.Cir. 1996) (Court stated that lawyer who verbally attacked opposing counsel during oral argument can be sanctioned under Rule 46); Tyson v. Jones & Laughlin Steel, 958 F.2d 756, 763 (7th Cir. 1993) (Court warned attorney through written opinion that he can be sanctioned for making unsupported charges against a judge in his appellate brief).

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[4] The exact search in the CTA database was:

> "Federal Rule of Appellate Procedure 46" "F.R.A.P. 46" "Fed. R. App. P. 46" "Fed. R. App. P. 46" (Rule /5 46 /P (Suspen! Disbar! Sanct! "Conduct Unbecoming")) & DA(AFT 1/1/1990)

A typical example is in Matter of Mix, 901 F.2d 1431 (7th Cir. 1990). There the 7th Circuit sanctioned an attorney for failure to prosecute a criminal appeal with due diligence. Id. at 1432. The attorney had let deadlines pass without filing motions for extensions, presented a poor quality brief, and failed to be available for oral argument. Id. at 1431-1432. The court publicly censured the attorney as a message to other members of the 7th Circuit bar that "lackadaisical work is not acceptable." Id. at 1432-33. Another good example is in Matter of Hendrix, supra, 986 F.2d 195 (7th Cir. 1993). There the court sanctioned counsel for filing an appellate brief without citing contrary authority. Id.at 200. (The attorney had failed to cite a reported decision within the circuit which the court would have had to overrule for the attorney's client to succeed on appeal.) The court directed counsel to submit a statement why he should not be sanctioned under Rule 46(c). The charges were 1) violating Fed. R. Civ. P. 11 by failing to make a reasonable inquiry as to whether a position is warranted by existing law and, 2) possibly violating ABA Model Rule 3.3 for intentionally concealing dispositive authority. Id. at 201.

In U.S. v. Williams, supra, 952 F.2d 418 the Court of Appeals for the District of Columbia publicly censured a government attorney for violating ABA Model Rule 3.3 by making material misstatements of the public record in an appellate brief. Id.at 421. The court publicly reprimanded the attorney. It also warned that any further similar conduct by the government would invoke the full extent of the court's sanctioning power under Rule 46. Id. at 422. In Guentchev v. I.N.S., 77 F.3d 1036, 1039 (7th Cir. 1996), the court ordered a show cause hearing why an attorney should not be suspended from practice for failure to follow court rules. There, an attorney submitted a brief without attaching the immigration judge's opinion as required by Fed. R. App. P. 30. Id. at 1038. The court ordered a show cause hearing to have the lawyer account for his failure to competently represent his client. Id. at 1039.

As these examples demonstrate, Rule 46 cases do occur, and they frequently require reference to the ABA Model Rules and the ABA Code, or other standards. While

such cases are not numerous, there appears to be no intrinsic reason for the great disparity between circuit court local rules — or lack therefore — interpreting Rule 46. Professor Gregory C. Sisk has recently completed a major study of the proliferation of disparate local rules among courts of appeals. See Gregory C. Sisk, "The Balkanization of Appellate Justice: The Proliferation of Local Rules in the Federal Circuits," 68 Colorado L. Rev. 1 (1997). (Copies have already been distributed to members of the Standing Committee). Professor Sisk has written to the Committee that:

> "Ideally, the vague standard of Federal Rule of Appellate Procedure 46 should be deleted and replaced by a new standard through the Rules Enabling Act. However, although FRAP 46 does contain a uniform national ethical standard, a model local rules approach could still be applied in this context, in the nature of a clarifying or specifying local rule giving meaningful context to the 'conduct unbecoming a lawyer' standard."

(Letter, June 26, 1996)

While local rules governing attorney conduct are not, in Sisk's view, the worst examples of appellate rule "balkanization," nothing in the reported cases indicates any reason why a simpler, more uniform approach would present difficulties.

III. CONCLUSION

This Committee is currently considering two options for changing local rules governing attorney conduct in the federal courts. "Option One" would be the adoption of a model local rule by the Judicial Conference similar to Rule IV of the Federal Rules of Disciplinary Enforcement, first recommended by the Committee on Court Administration and Case Management in 1978. "Option Two" would be the adoption of uniform rules of attorney conduct, pursuant to the Rules Enabling Act, applying to specific "core" areas of federal concern, with the provision that all other areas of attorney conduct are to be governed by state standards. See the reports cited at Section I, supra. The adoption of either option in the federal courts of appeals would provide concrete, meaningful standards governing attorney conduct, instead of the vague "conduct unbecoming" standard of Rule 46. Either option would also follow the trend of the majority of circuit courts, which have adopted local rules, internal operating procedures or other standards to clarify

Rule 46. Finally, either option would be consistent with the Supreme Court's decision in Snyder, supra, holding that supplemental rules are often necessary in determining the scope of the "conduct unbecoming" standard. See In re Synder, supra, 472 U.S. 634, at 645, set out at Appendix IV, infra.

A. "Option One." Model Local Rule. See Appendix II.

"Option One" would be a model local rule recommended by the Judicial Conference and adopted by individual courts pursuant to 28 U.S.C. § 2071. Similar local rules are already in existence in the five courts of appeals. These look to "dynamic conformity" to the rules provided by the highest court in the state in which the attorney is admitted to practice. See Rules Governing Attorney Discipline in the U.S. Court of Appeals for the Eleventh Circuit, (effective October, 1992, amended January, 1996) and Report on Local Rules Regulating Attorney Conduct in the Federal Courts (July 5, 1995) page 8 and Chart III, Appendix VII, infra. But most of these existing rules have no choice of law standard for attorneys licensed to practice in more than one state. See Chart III, infra. Furthermore, these rules do not give standards of attorney conduct for cases arise in district courts and are appealed to the circuit courts. See id. Presumably, the lower court's standards of attorney conduct should be applied in these types of cases. See e.g. U.S. v. Balter, 91 F.3d 427, 435 (3rd Cir. 1996) (applying district court's local rules of attorney conduct on appeal as to whether U.S. Attorney had violated anti-contact rule).

Thus, the Standing Committee should consider proposing an improved, new model local rule for the courts of appeals. Such a rule should provide a standard of attorney conduct for cases appealed from a district court and a choice of law standard for attorneys who practice in multiple states. For the benefit of the Committee, I have included an example of such a model local rule in Appendix II, infra.[5] This model local rule closely

[5]The Standing Committee requested that I not submit specific proposed rules until this study was completed, and further studies done in relation to Bankruptcy Courts and to actual District Court practice (now being completed by the Federal Judicial Center). Thus the rules set out here are for example only, and have not been reviewed by either the Advisory Committee or Appellate Rules on the Style Subcommittee. The Advisory Committee has, however, been advised of the general approaches under consideration, and has

follows Model Rule IV of the Federal Rules of Disciplinary Enforcement as recommended by the Committee on Court Administration and Case Management in 1978.[6] In particular, part A(2) of the proposed model local rule traces CACM Model Rule IV by imposing a "dynamic conformity" state standard of attorney discipline for issues of misconduct before the courts of appeals. In addition, part A(2) implements a choice of law standard similar to ABA Model Rule 8.5(b)(2) for situations where the attorney is admitted to practice in more than one state. Such a provision provides that an attorney is governed by the state standard of the state in which the attorney principally practices unless the conduct has its predominant effect on another state where licensed to practice. In that case, the rules of the other state govern. Finally, part B of the model local rule provides clarification regarding the range of sanctions a court of appeals may impose on an attorney, while not limiting the court's ability to provide alternative sanctions. This section was modeled after similar language in the Rules Governing Attorney Discipline in the U.S. Court of Appeals for the Eleventh Circuit, supra.

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expressed general concurrence, subject to future review. The two other requested studies should be completed by the next Committee meeting on June 18-20, 1997.

[6]Twenty five federal courts currently have local rules that reflect in some way the wording of Model Rule IV, as proposed in 1978. These courts consist of 23 district courts and two courts of appeals, the 11th Circuit and the Court of Appeals for the District of Columbia. Twelve of these courts refer to the appropriate State Supreme Court's version of the ABA Model Rules of Professional Conduct. Eight refer to the appropriate State Supreme Court's version of the ABA Code of Professional Responsibility. Five adopt the language, but not the spirit of Rule IV. Of these five, two use very similar language to Rule IV, but refer to the ABA Model Rules and not the appropriate State Rules. The other three refer to a combination of the Federal Rules of Disciplinary Enforcement, the State Supreme Court's standard and either the ABA Model Code or ABA Model Rules as their standard of attorney conduct. The following chart lists the 25 courts by their actual standard of attorney conduct:

State Rules Based on ABA Model Rules	State Rules Based on the ABA Codes	ABA Model Rules Directly	Combination of State Rules and Other Standards
E.D.AR	D.C. Appeals	D.PR	11th Cir.
W.D.AR	D.MA	D.DE	N.D.W.VA
S.D.IL	D.ME		S.D.W.VA
E.D.MI	D.NE		
D.MN	S.D.OH		
D.NH	E.D.VA		
D.NJ	W.D.VA		
M.D.NC	D.VT		

B. "Option Two:" Uniform Federal Rules of Attorney Conduct. See Appendices III, VI

"Option Two" achieves a similar result by a different means — directly amending Fed. R. App. 46. Of course, this would require the full process of the Rules Enabling Act, 28 U.S.C. § 2072-2074. While a model local rule could be directly promulgated by the Judicial Conference, a change in Fed. R. App. 46 would require at least two and one half years, and must be submitted to Congressional examination pursuant to 28 U.S.C. § 2074.

Nevertheless, direct amendment to Fed. R. App. 46 may be desirable, particularly if it is decided to adopt a uniform Federal Rules of Attorney Conduct for the district courts. Such a change would probably be achieved in the district courts by amending Fed. R. Civ. P. 83, and adding an Appendix "A", containing the new Federal Rules of Attorney Conduct. (An example of how this could be done, provided for discussion only, is provided in Appendix VI, infra.)

For the benefit of the Standing Committee, an example of such a revised Rule 46 has been drafted to reflect this option. See Appendix III, infra. It includes an appropriate standard for cases involving attorney conduct adjudicated in the district courts and appealed to the circuit courts, and a choice of law standard to determine the relevant state standard for attorneys licensed to practice in more than one state. The "revised" example of Rule 46 is almost identical to the original Rule 46 in sections (a), (b) and (c). But there is one major change. The old "conduct unbecoming" standard is removed, and replaced by references to "the courts standards for attorney conduct." These "standards" are supplied by a new section (d), "Standards for Attorney Conduct."

The new Rule 46(d)(1) in Appendix III would require a court of appeals to apply the district court standards of attorney conduct to any case appealed to the circuit court. This section was modeled after ABA Model Rule 8.5(b)(1). The new Rule 46(d)(2) would also provide that in all other cases the relevant state standard of attorney conduct applies, except as specifically provided in any new Federal Rules of Attorney Conduct. The new

Rule 46(d)(2) would also provide a choice of law standard similar to ABA Model Rule 8.5(b)(2) for those attorneys licensed to practice in more than one state. Thus, an attorney would be governed by the state standard where that attorney principally practices unless the attorney's conduct has its predominant effect in another state where the attorney is also licensed to practice. If so, the rules of the other state govern.

Attorney conduct is primarily a problem for district courts, where there are many more reported cases. There are relatively few cases in the courts of appeals. Given that both the model local rule option and the uniform rule option are reasonable solutions for the courts of appeals, the circuits should probably follow whatever option is eventually adopted for the district courts. Either a new model local rule or a new uniform federal rule will provide better guidance for attorneys practicing before the courts of appeals than the existing Rule 46 jurisprudence. The first could be done through a model local rule which supplements Rule 46, pursuant to In re Snyder, supra, while the second could only be done by directly amending Rule 46. Again, the option ultimately recommended for courts of appeals should depend primarily on the Committee's judgment about what is best for the district courts.

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Item 4-6

Items 4 through 6 will be

oral reports.

Item 7

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ALAN N. RESNICK, REPORTER

RE: RULES ON LITIGATION -- THE RULE 9013/9014 PACKAGE

DATE: AUGUST 8, 1997

At the March 1997 meeting of the Advisory Committee, proposed amendments to Rules 9013 ("Applications") and 9014 ("Administrative Proceedings") were approved in principle, subject to further refinement by the reporter, stylistic improvements by the Style Subcommittee, and deferral of certain issues. The Committee also approved in principle related amendments to Rules 1007 and deferred consideration of proposed amendments to Rule 1006.

After the March meeting, I reviewed the drafts of Rules 9013 and 9014, as approved, and made certain stylistic changes. I then forwarded a copy to the Standing Committee's Style Subcommittee (SC Subcommittee) for its review and comment. The suggestions of that subcommittee were circulated to the Advisory Committee's Style Subcommittee (AC Subcommittee), chaired by Leonard Rosen. On July 16th, the AC Subcommittee met by telephone (Ken Klee, chairman of the Litigation Subcommittee, also participated). During the two-hour telephone conference, the AC Subcommittee considered the SC Subcommittee's comments and made a number of revisions to improve the style of these two rules.

The most recent drafts of Rules 9013 and 9014, which include the stylistic improvements, are attached as Exhibit A for your information.

In addition to refining the drafts of Rules 9013 and 9014, I reviewed every rule to determine whether conforming amendments will be necessary to avoid inconsistency with the proposed amendments to Rules 9013 and 9014. As a result of this review, I found that, in my opinion, amendments should be made to 20 rules (in addition to Rules 9013, 9014, 1006 and 1007 which were the subject of discussion at prior meetings). I also found reasons to recommend a few additional revisions to the approved drafts of Rules 9013 and 9014, especially with respect to the scope of these rules.

I attach as Exhibit B a draft of Rules 9013 and 9014 (with style revisions), marked to show the additional revisions that I am now recommending as a result of my survey of the other rules. I also attach as Exhibit C a list of proposed amendments to 20 rules to conform to the proposed amendments to Rules 9013 and 9014. I attach as Exhibit D proposed amendments to Rule 1006 (proposed amendments to Rule 1006 were deferred at the March meeting), and as Exhibit E proposed amendments to Rule 1007(c) (these were approved in principle in March subject to further refinement).

One observation that I made in reviewing all the rules is that many of them provide that the United States trustee is to receive notice of a hearing on a particular issue. In contrast, Rule 9034 lists the matters in which the United States trustee is to receive all motion papers (not just notice of the hearing). The distinction between requiring transmission of notice of a

hearing under certain rules, and requiring transmission of all motion papers on other specified matters under Rule 9034, was deliberate when the Rules were amended in 1991 to accommodate the nationwide U.S. trustee program. But in view of the proposed amendments to Rule 9014 (which will, for the first time, require responses to motions) and my suspicion that lawyers, when required to transmit to the U.S. trustee only a notice of a hearing, often send the U.S. trustee all motion papers nonetheless, I suggest that this distinction between requiring only a "notice of hearing" to the U.S. trustee in some matters but requiring transmission of "all motion papers" in other matters should be discarded. Instead, I suggest that, whenever the U.S. trustee should receive notice of a hearing, Rule 9034 should include the matter so that the U.S. trustee will receive all related motion papers that are filed. I also think that this approach will be less confusing to lawyers.

Consistent with this recommendation, in the proposed amendments to the rules set forth in Exhibit C, I deleted provisions that require notice of a hearing to the United States trustee. I also added items to the list in Rule 9034. In addition, I reluctantly find it necessary to violate my own rule of not bringing back to the Committee a proposed amendment that was recently rejected. At the March meeting, I recommended that Rule 9014 contain the following:

> (m) TRANSMISSION TO UNITED STATES TRUSTEE. A copy of every paper filed and every order entered in connection with an administrative proceeding shall be transmitted to the United States trustee if required by Rule 9034.

This proposal was rejected by the Advisory Committee (with 2 dissenting votes) because it is unnecessary (Rule 9034 speaks for itself). The Committee decided instead that the committee note to Rule 9014 should refer to Rule 9034.

The Committee's conclusion that it is not necessary to refer to Rule 9034 in Rule 9014 remains correct. But the Committee may want to revisit this decision in view of (1) my proposal to replace provisions in various rules requiring notice of hearing to the United States trustee with additional items added to Rule 9034 (this proposal was not before the Committee at the March meeting), (2) the expansion of Rule 9014 to become a more comprehensive rule on administrative proceedings, including a list of the parties to be served (without mentioning the U.S. trustee), (3) the fact that practitioners may not be aware of Rule 9034, and (4) the fact that many practitioners do not regularly read committee notes. I think that including the above provision (or something like it that alerts lawyers to look to Rule 9034) will avoid a trap for the unwary and will make the rules more user friendly.

At the September 1997 meeting, the Advisory Committee should consider the proposed amendments highlighted in Exhibits B, C, and D attached to this memorandum.

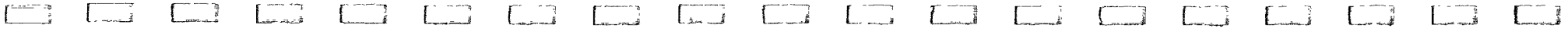

EXHIBIT A

PROPOSED AMENDMENTS TO RULE 9013 AND 9014 AS APPROVED IN PRINCIPLE AT THE MARCH 1997 MEETING, TOGETHER WITH STYLISTIC IMPROVEMENTS APPROVED BY THE ADVISORY COMMITTEE'S STYLE SUBCOMMITTEE

Rule 9013. Application for an Order

(a) SCOPE OF THIS RULE. This rule governs a request for an order relating to any of the following:

(1) payment of income to a trustee under § 1225(c) or 1325(c) of the Code;

(2) joint administration under Rule 1015;

(3) conversion of a case under § 706(a) or § 1112(a);

(4) dismissal of a case under § 1208(b) or § 1307(b);

[(5) approval of the employment of a professional person under § 327, 1103, or 1114, and in accordance with Rule 2014;]

(6) approval of the appointment of an examiner or trustee in a chapter 11 case under § 1104 and in accordance with Rule 2007.1;

(7) enlargement of time under Rule 9006(b) if the request is made before the original or enlarged period has expired other than an order enlarging the time to take action under Rule 1007(c), 1017(e), 3015(a), 4003(b), 4004(a), 4007(c), 8002, or 9033;

(8) form of, manner of sending, or publication of a notice in a chapter 7, chapter 12, or chapter 13 case;

(9) notice to a committee under Rule 2002(i);

(10) notice under Rule 9020(b);

[(11) examination of an entity under Rule 2004;]

(12) deferral of the entry of an order granting a discharge under Rule 4004(c); and

(13) reopening a case under § 350(b).

(b) REQUEST FOR RELIEF. A request for an order governed by this rule shall be made by application. The application shall be in writing, unless it is made orally at a status conference or hearing at which all parties entitled to notice of the application are present. The application shall:

(1) state with particularity the relief sought and the grounds for that relief; and

(2) if in writing, be accompanied by proof of service under Rule 9013(c) and by a proposed order for the relief requested.

(c) SERVICE OF APPLICATION. No later than the time when a written application is filed, the applicant shall serve a copy of the application, any paper filed with the application, and the proposed order on the debtor, the debtor's attorney, the trustee, any committee elected under § 705 or appointed under § 1102, and any other

entity required by federal law or these rules, and shall transmit a copy to the United States trustee. Service shall be made in the manner provided in Rule 7004 for service of a summons, but the court by local rule may permit the notice to be served by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes.

(d) NO RESPONSE REQUIRED; ORDER WITHOUT A HEARING. A response to the application is not required, and the court may order relief without a hearing.

(e) SERVICE OF ORDER. If the court issues an order, the applicant shall serve a copy on the entities listed in Rule 9013(c) and on any other entity as the court directs.

COMMITTEE NOTE

Rules 9013 and 9014 have been amended to substantially revise the rules governing motion practice in bankruptcy cases.

Rule 9013 is amended to govern a category of procedures, called "applications," that relate to certain enumerated matters which, in most instances, are nonsubstantive and noncontroversial. This rule, as amended, is designed to enable parties to obtain court orders relating to these matters in a relatively short period of time. This rule does not preclude any party from requesting appropriate relief after an application is granted and an order is entered. See, e.g., Rule 9024.

These amendments provide greater detail relating to procedures for obtaining the enumerated types of orders. They are intended to increase uniformity in litigation practice among districts and to reduce the necessity for local rules governing these matters.

In most situations, a request to enlarge a time period under these rules is noncontroversial and may be made under Rule 9013. But the enlargement of time to take certain action under these rules may be controversial and, therefore, warrant the procedural safeguards afforded in an administrative proceeding under Rule 9014. In particular, a request for an order enlarging the time to file a motion to dismiss a chapter 7 case under § 707(b) and Rule 1017(e), to file a chapter 12 plan in accordance with Rule 3015(a), to file an objection to the list of property claimed as exempt in accordance with Rule 4003(b), to file a complaint objecting to discharge under Rule 4004(a), to file a complaint to determine the dischargeability of a debt under § 523(c) and Rule 4007(c), to file a notice of appeal under Rule 8002, or to file an objection to proposed findings of fact and conclusions of law under Rule 9033, is an administrative proceeding governed by Rule 9014. In contrast, a request for an order enlarging the time to file schedules and statements is governed by Rule 1007(c), rather than 9013 or Rule 9014, so that the order may be issued without any notice.

Rule 9014. Administrative Proceeding

(a) SCOPE OF THIS RULE. This rule governs any request for an order other than the following:

(1) a petition commencing a case under § 301, 302, or 303 of the Code, or a petition commencing a case ancillary to a foreign proceeding under § 304;

(2) a proceeding or request for relief of the type described in Rule 1006(b), 1006(c), 1007(c), 1010, 1011, 1013, 1018, 4001(a)(2), 7001, or 9013(a);

(3) a motion made in an adversary proceeding under Part VII of these rules;

(4) a motion that addresses only a procedural matter relating to, or a dispositive motion within, a pending administrative proceeding, except as provided in Rule 9014(h) relating to discovery;

(5) a motion relating to an appeal to the district court or bankruptcy appellate panel.

(b) REQUEST FOR RELIEF. A request for an order governed by this rule shall be made by written motion entitled "administrative motion." The motion shall:

(1) state with particularity the relief sought and the grounds for that relief;

(2) be accompanied by proof of service and by a proposed order for the relief requested; and

(3) unless the movant is an individual debtor whose debts are primarily consumer debts, be accompanied

by:

(A) one or more supporting affidavits;

(B) a statement of the name and, if known, the address and telephone number of any person who is likely to be called as a witness by the movant at any hearing on the motion, and a summary of the anticipated testimony; and

(C) if the value of property is at issue, a valuation report has been prepared, and the movant intends to introduce the valuation report as evidence, a copy of that report, with the name, address, and telephone number of the person who prepared it.

(c) SERVICE OF MOTION AND NOTICE OF HEARING.

(1) Except as provided in Rule 9014(f), at least 25 days before the hearing date, the movant shall serve a copy of the administrative motion, a copy of any paper filed with it, and notice of the hearing on the following:

(A) any entity against whom relief is sought;

(B) the debtor;

(C) the debtor's attorney;

(D) the trustee; and

(E) any committee elected under § 705 or appointed under § 1102, or, if the case

is a chapter 9 case or a chapter 11 case and no committee of unsecured creditors has been appointed, on the creditors included in the list filed under Rule 1007(d).

(2) Service shall be made in the manner provided in Rule 7004 for service of a summons, but the court by local rule may permit service by electronic means that are consistent with technical standards, if any, that the Judicial Conference establishes.

(3) The notice of the hearing shall conform to any appropriate Official Form and shall include:

(a) the date, time, and place of the hearing;

(b) the time to file a response; and

(c) a statement that if a response is not timely filed, the court may grant the motion without a hearing.

(d) RESPONSE.

(1) A response to an administrative motion may be filed no later than 10 days before the hearing date.

(2) No later than the time when a response is filed, the responding party shall serve a copy of the response on the movant and the entities listed in Rule 9014(c)(1) in the manner prescribed by Rule

9014(c)(2).

(3) A response shall be accompanied by proof of service and, unless the respondent is an individual debtor whose debts are primarily consumer debts, by:

(A) a proposed order for the relief requested;

(B) one or more supporting affidavits if there is a factual dispute;

(C) a statement of the name and, if known, the address and telephone number of any person who is likely to be called as a witness by the respondent at any hearing on the administrative motion, and a summary of the testimony that the person is likely to give; and

(D) if the value of property is at issue, a valuation report has been prepared, and the respondent intends to introduce the valuation report as evidence, a copy of that report with the name, address, and telephone number of the person who prepared it.

(e) AFFIDAVITS. An affidavit filed in an administrative proceeding shall comply with Rule 56(e) F.R.Civ.P.

(f) INTERIM RELIEF. If a request for interim relief is included in an administrative motion, the movant shall take reasonable steps to provide all parties with the

most expeditious service and notice of a preliminary hearing feasible and shall file an affidavit specifying the efforts made. If a response is filed before the preliminary hearing, the respondent shall take reasonable steps to provide all parties with the most expeditious service and notice feasible before the preliminary hearing. At the preliminary hearing, the court shall determine the adequacy of the notice under the circumstances. Interim relief may be granted under Rule 4001(b)(2) or Rule 4001(c)(2), to the extent and under the conditions stated in those rules.

(g) ORDER WITHOUT A HEARING. If no response is timely filed, the court may order relief without a hearing to the extent provided in § 102(1), or may notify the movant, and any other entity the court considers appropriate, that a hearing will be held.

(h) DISCOVERY.

(1) Unless the court directs otherwise, Rules 26 and 28-37 F.R.Civ.P. apply, except that:

(A) the parties are not required to make the disclosures mandated by Rule 26(a)(1)-(3), F.R.Civ.P., other than as provided in Rule 9014(b) and (d), but the information described in Rule 26(a)(1)-(3) F.R.Civ.P. may be obtained by discovery methods prescribed by Rule 26(a)(5) F.R.Civ.P.;

(B) the parties are not required to meet in accordance with Rule 26(f) F.R.Civ.P.;

(C) the 30-day time periods provided in Rules 30(e), 33(b)(3), 34(b), and 36(a) F.R.Civ.P. are reduced to [10 days] or as directed by the court; and

(D) the movant may begin discovery only after a response is filed or a respondent begins discovery. A respondent may begin discovery at any time.

(2) A motion relating to a discovery dispute may not be heard unless the movant has attempted to confer with the parties involved to resolve their differences, and has filed a statement setting forth the remaining disputes.

(i) HEARING; STATUS CONFERENCE.

(1) HEARING.

(A) Except as provided in Rule 9014(i)(1)(B) or (3), if a timely response to an administrative motion is filed, the court shall hold a hearing to determine whether there is a genuine issue as to any material fact and, if not, whether any party is entitled to relief as a matter of law. No testimony may be taken at the hearing, unless the movant and all respondents consent. If

the court finds that there is no genuine issue as to any material fact, it shall order appropriate relief. If the court finds that there is a genuine issue of material fact, it shall conduct a status conference.

(B) On request or on its own initiative and on at least **[2]** days' notice to the parties, the court may order that an evidentiary hearing at which witnesses may testify shall be held on the scheduled hearing date.

(2) STATUS CONFERENCE. A status conference under Rule 9014(i)(1)(A) may be held at the time fixed for the hearing, or immediately afterward without further notice to the parties. The attorneys for the movant and for every party against whom relief is sought that filed a timely response, and every party unrepresented by an attorney, shall appear and participate at the status conference. The purpose of the status conference is to expedite the disposition of the administrative proceeding. The court may enter a pretrial order requiring the disclosure of information of the type described in Rule 26(a)(1)-(3) F.R.Civ.P., scheduling pretrial discovery, fixing the time for a hearing on factual issues, and otherwise providing for the just, speedy, and economical disposition of the

proceeding.

(3) RELIEF FROM AUTOMATIC STAY; PRELIMINARY HEARING ON USE OF CASH COLLATERAL OR OBTAINING CREDIT. If an administrative motion requests relief from an automatic stay of any act against property of the estate under § 362(d), or includes a request for a preliminary hearing as provided in Rule 4001(b)(2) or (c)(2), a hearing at which witnesses may testify may be held at the time fixed for the hearing.

(j) TESTIMONY OF WITNESSES. Rule 43(e) F.R.Civ.P. does not apply at an evidentiary hearing on an administrative motion.

(k) SERVICE OF NOTICE THAT ORDER HAS BEEN ENTERED. Notice of the entry of any order shall be served in accordance with Rule 9022 on the movant, the entities listed in Rule 9014(c)(1), and any other entity as the court directs.

(l) APPLICATION OF PART VII RULES. Unless the court orders otherwise, the following rules apply in an administrative proceeding: Rules [7009], 7017, 7019-7021, 7025, 7041, 7042, 7052, 7054-7056, 7064, 7069, and 7071. The court may at any stage in a particular matter order that one or more of the other rules in Part VII apply.

(m) RELIEF FROM PROCEDURAL REQUIREMENTS. The court for

cause may, with or without prior notice, order that any procedural requirement provided in this rule shall not apply or shall be amended in a particular proceeding.

COMMITTEE NOTE

Rules 9013 and 9014 have been amended to substantially revise the rules governing motion practice in bankruptcy cases.

Rule 9014 had been limited to the category of disputes called "contested matters." Confusion as to whether a particular motion was a contested matter, rather than a different type of proceeding, and uncertainty as to the procedural requirements relating to a contested matter, have led to the amendment of this rule.

These amendments provide more detailed procedural guidance than provided in the past. This change is intended to increase uniformity in litigation practice among districts and to reduce the number of local rules.

This rule, as amended, governs proceedings that are not applications (governed by Rule 9013), adversary proceedings (governed by Part VII), requests to pay the filing fee in installments (governed by Rule 1006(b)), or requests for extensions of time to file schedules and statements (governed by Rule 1007(c)). A motion made in either a pending adversary proceeding or in a pending administrative proceeding -- such as a motion for summary judgment or a motion for a protective order relating to discovery -- are not administrative proceedings governed by this rule. Any motion made in connection with an appeal to the district court or bankruptcy appellate panel (governed by Part VIII of these rules) is excluded from the scope of Rule 9014. Subdivision (a) also clarifies that this rule does not apply to a petition commencing a case under the Code (governed by §§ 301-303 of the Code and Rules 1002-1005, 1010, 1011, 1013, and 1018), or a petition commencing a case ancillary to a foreign proceeding (governed by § 304 of the Code and Rules 1002, 1005, 1010, 1011, and 1018).

Numerous rules require or refer to the filing of a motion for certain relief. Unless the motion to which the rule refers is of the type listed in Rule 9014(a) as being outside the scope of this rule, the motion

would commence an administrative proceeding and would be governed by Rule 9014. For example, Rule 1014(a) provides that a case filed in a proper district may be transferred to another district in the interest of justice or for the convenience of the parties "on timely motion of a party in interest." A motion requesting transfer of the case under Rule 1014(a) commences an administrative proceeding and is governed by Rule 9014.

The amendments also increase certain time periods relating to these types of proceedings. For example, current Rule 9006(d) -- which formerly applied in contested matters -- provides that a motion and notice of hearing must be served at least 5 days before the scheduled hearing date. In contrast, amended Rule 9014 provides for service at least 25 days before the date scheduled for the hearing. This time period may be enlarged in accordance with Rules 9006(b) and 9013, or reduced in accordance with Rule 9014(f). The three-day "mail rule" under Rule 9006(f) does not apply with respect to these time periods because the time for acting in accordance with this rule is not triggered by service of any notice or other paper.

Rule 9014(c) requires service of both the administrative motion and notice of the hearing, but there is no requirement that the motion and notice of hearing be in separate documents.

The court may order appropriate relief without a hearing if a timely response is not filed. If the judge wants to hold a hearing nonetheless, subdivision (g) requires that the court notify the movant that a hearing will be held. The court may hold the hearing at the originally scheduled time or on a subsequent date.

A hearing must be held if a response is filed. But, attorneys and unrepresented parties do not have to bring witnesses to the hearing unless (1) the proceeding is for relief from the automatic stay of acts against property of the estate, (2) the proceeding is for preliminary authority to use cash collateral or to obtain credit, or (3) the court gives at least [2] days' notice to the parties that an evidentiary hearing may be held on the date when the hearing is schedule. Otherwise, if a response is filed, the court will hold a hearing only for purposes of determining whether an evidentiary hearing is necessary to resolve questions of fact and, if an evidentiary hearing is not necessary, to resolve the proceeding. If an

evidentiary hearing is needed, the court will hold a status conference under Rule 9014(j)(2) to facilitate settlement discussions, set a discovery schedule, schedule an evidentiary hearing, or formulate any other pretrial order designed to expedite the proceeding. It is anticipated that the status conference will be held immediately following the court's determination that there is a genuine issue of material fact and, therefore, attorneys and unrepresented parties should attend the hearing prepared for an immediate status conference. Subdivision (j) does not preclude the court from ordering a status conference under Rule 105(d).

If the court determines based on affidavits that there are genuine issues of material fact, and an evidentiary hearing is held to resolve the issues, witnesses must testify orally in open court in accordance with Rule 9017 and Civil Rule 43(a). Under Rule 9014(j), the court may not resolve these factual issues based on affidavits.

The amendments also require automatic disclosure regarding valuation reports when the value of property is at issue. As used in this rule, the term "valuation report" includes a formal appraisal of the property, as well as any less formal written report on the value of the property.

Any party that files a paper in connection with an administrative proceeding is required to transmit a copy to the United States trustee, if the proceeding relates to any of the matters listed in Rule 9034.

Subdivision (m) gives the court discretion to order, for cause and in a particular proceeding, that any procedural requirement under this rule does not apply or is amended. The court for cause shown may enlarge or reduce any time periods prescribed by this rule in accordance with Rule 9006.

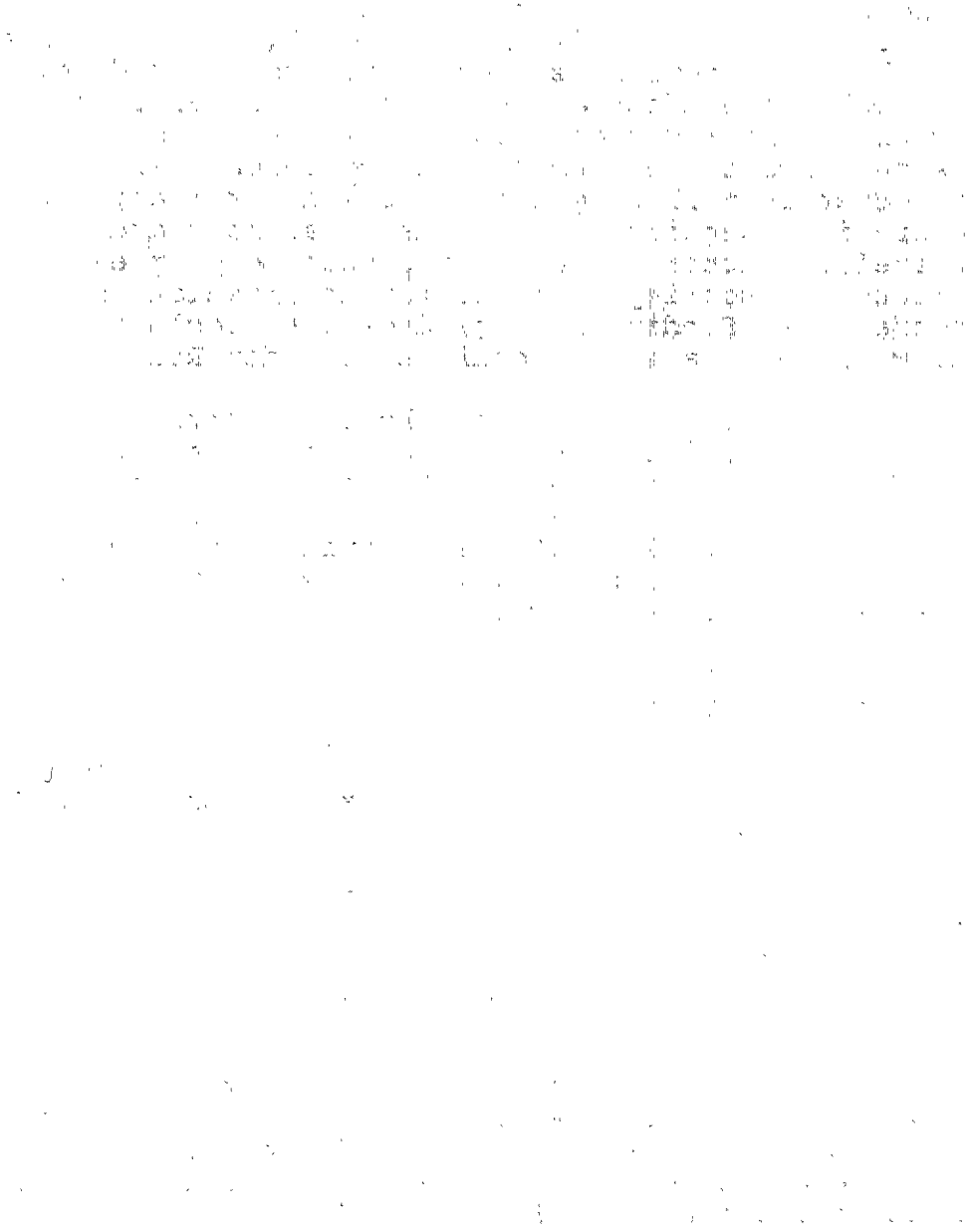

EXHIBIT B

PROPOSED AMENDMENTS TO RULE 9013 AND 9014 AS APPROVED IN PRINCIPLE WITH REPORTER'S PROPOSALS FOR ADDITIONAL REVISIONS

Rule 9013. Application for an Order

(a) SCOPE OF THIS RULE. This rule governs a request for an order relating to any of the following:

(1) payment of income to a trustee under § 1225(c) or 1325(c) of the Code;

(2) joint administration under Rule 1015;

(3) conversion of a case under § 706(a) or § 1112(a);

(4) dismissal of a case under § 1208(b) or § 1307(b);

[(5) approval of the employment of a professional person under § 327, 1103, or 1114, and in accordance with Rule 2014;]

(6) approval of the appointment of an examiner or trustee in a chapter 11 case under § 1104 and in accordance with Rule 2007.1;

(7) enlargement of time under Rule 9006(b) if the request is made before the original or enlarged period has expired other than an order enlarging the time to take action under Rule 1007(c), 1017(e), 3015(a), 4003(b), 4004(a), 4007(c), 8002, or 9033;

(8) form of, manner of sending, or publication of a

notice in a chapter 7, chapter 12, or chapter 13 case;

(9) notice to a committee under Rule 2002(i);

(10) notice under Rule 9020(b);

[(11) examination of an entity under Rule 2004;]

(12) deferral of the entry of an order granting a discharge under Rule 4004(c); and

(13) reopening a case under § 350(b);

(14) conditional approval of a disclosure statement under Rule 3017.1;

(15) protection of a secret, confidential, scandalous, or defamatory matter under Rule 9018.

(b) REQUEST FOR RELIEF. A request for an order governed by this rule shall be made by application. The application shall be in writing, unless it is made orally at a status conference or hearing at which all parties entitled to notice of the application are present. The application shall:

(1) state with particularity the relief sought and the grounds for that relief; and

(2) if in writing, be accompanied by proof of service under Rule 9013(c) and by a proposed order for the relief requested.

(c) SERVICE OF APPLICATION. No later than the time when a written application is filed, the applicant shall serve a copy of the application, any paper filed with the

application, and the proposed order on the debtor, the debtor's attorney, the trustee, any committee elected under § 705 or appointed under § 1102, and any other entity required by federal law or these rules, and shall transmit a copy to the United States trustee. Service shall be made in the manner provided in Rule 7004 for service of a summons, but the court by local rule may permit the notice to be served by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes.

(d) NO RESPONSE REQUIRED; ORDER WITHOUT A HEARING. A response to the application is not required, and the court may order relief without a hearing.

(e) SERVICE OF ORDER. If the court issues an order, the applicant shall serve a copy on the entities listed in Rule 9013(c) and on any other entity as the court directs.

COMMITTEE NOTE

Rules 9013 and 9014 have been amended to substantially revise the rules governing motion practice in bankruptcy cases.

Rule 9013 is amended to govern a category of procedures, called "applications," that relate to certain enumerated matters which, in most instances, are nonsubstantive and noncontroversial. This rule, as amended, is designed to enable parties to obtain court orders relating to these matters in a relatively short period of time. This rule does not preclude any party from requesting appropriate relief after an application is granted and an order is entered. See, e.g., Rule 9024.

These amendments provide greater detail relating to procedures for obtaining the enumerated types of orders. They are intended to increase uniformity in litigation practice among districts and to reduce the necessity for local rules governing these matters.

In most situations, a request to enlarge a time period under these rules is noncontroversial and may be made under Rule 9013. But the enlargement of time to take certain action under these rules may be controversial and, therefore, warrant the procedural safeguards afforded in an administrative proceeding under Rule 9014. In particular, a request for an order enlarging the time to file a motion to dismiss a chapter 7 case under § 707(b) and Rule 1017(e), to file a chapter 12 plan in accordance with Rule 3015(a), to file an objection to the list of property claimed as exempt in accordance with Rule 4003(b), to file a complaint objecting to discharge under Rule 4004(a), to file a complaint to determine the dischargeability of a debt under § 523(c) and Rule 4007(c), to file a notice of appeal under Rule 8002, or to file an objection to proposed findings of fact and conclusions of law under Rule 9033, is an administrative proceeding governed by Rule 9014. In contrast, a request for an order enlarging the time to file schedules and statements is governed by Rule 1007(c), rather than 9013 or Rule 9014, so that the order may be issued without any notice.

Rule 9014. Administrative Proceeding

(a) SCOPE OF THIS RULE. This rule governs any request for an order other than the following:

(1) a petition commencing a case under § 301, 302, or 303 of the Code, or a petition commencing a case ancillary to a foreign proceeding under § 304;

(2) a proceeding or request for relief of the type described in Rule 1006(b), 1006(c), 1007(c), 1010, 1011, 1013, 1017(e)(2), 1018, 3015(f) or (g), 3017, 3017.1, 3019, 3020(b), 4001(a)(2), 7001, or 9013(a);

(3) a motion made in an adversary proceeding under Part VII of these rules;

(4) a motion that addresses only a procedural matter relating to, or a dispositive motion within, a pending administrative proceeding, except as provided in Rule 9014(h) relating to discovery;

(5) a motion under Part VIII of these rules or any other motion relating to an appeal to the district court or bankruptcy appellate panel.

(b) REQUEST FOR RELIEF. A request for an order governed by this rule shall be made by written motion entitled "administrative motion." The motion shall:

(1) state with particularity the relief sought and the grounds for that relief;

(2) be accompanied by proof of service and by a

proposed order for the relief requested; and

(3) unless the movant is an individual debtor whose debts are primarily consumer debts, be accompanied by:

(A) one or more supporting affidavits;

(B) a statement of the name and, if known, the address and telephone number of any person who is likely to be called as a witness by the movant at any hearing on the motion, and a summary of the anticipated testimony; and

(C) if the value of property is at issue, a valuation report has been prepared, and the movant intends to introduce the valuation report as evidence, a copy of that report, with the name, address, and telephone number of the person who prepared it.

(c) SERVICE OF MOTION AND NOTICE OF HEARING.

(1) Except as provided in Rule 9014(f), at least 25 days before the hearing date, the movant shall serve a copy of the administrative motion, a copy of any paper filed with it, and notice of the hearing on the following:

(A) any entity against whom relief is sought;

(B) the debtor;

(C) the debtor's attorney;

(D) the trustee; ~~and~~

(E) any committee elected under § 705 or appointed under § 1102, or, if the case is a chapter 9 case or a chapter 11 case and no committee of unsecured creditors has been appointed, on the creditors included in the list filed under Rule 1007(d);

(F) any entity that has a lien or other interest in property if the lien or interest may be adversely affected by the requested relief; and

(G) any other entity entitled by federal law or these rules.

(2) Service shall be made in the manner provided in Rule 7004 for service of a summons, but the court by local rule may permit service by electronic means that are consistent with technical standards, if any, that the Judicial Conference establishes.

(3) The notice of the hearing shall conform to any appropriate Official Form and shall include:

(a) the date, time, and place of the hearing;

(b) the time to file a response; and

(c) a statement that if a response is not timely filed, the court may grant the motion without

a hearing.

(d) RESPONSE.

(1) A response to an administrative motion may be filed no later than 10 days before the hearing date.

(2) No later than the time when a response is filed, the responding party shall serve a copy of the response on the movant and the entities listed in Rule 9014(c)(1) in the manner prescribed by Rule 9014(c)(2).

(3) A response shall be accompanied by proof of service and, unless the respondent is an individual debtor whose debts are primarily consumer debts, by:

(A) a proposed order for the relief requested;

(B) one or more supporting affidavits if there is a factual dispute;

(C) a statement of the name and, if known, the address and telephone number of any person who is likely to be called as a witness by the respondent at any hearing on the administrative motion, and a summary of the testimony that the person is likely to give; and

(D) if the value of property is at issue, a valuation report has been prepared, and the

respondent intends to introduce the valuation report as evidence, a copy of that report with the name, address, and telephone number of the person who prepared it.

(e) AFFIDAVITS. An affidavit filed in an administrative proceeding shall comply with Rule 56(e) F.R.Civ.P.

(f) INTERIM RELIEF. If a request for interim relief is included in an administrative motion, the movant shall take reasonable steps to provide all parties with the most expeditious service and notice of a preliminary hearing feasible and shall file an affidavit specifying the efforts made. If a response is filed before the preliminary hearing, the respondent shall take reasonable steps to provide all parties with the most expeditious service and notice feasible before the preliminary hearing. At the preliminary hearing, the court shall determine the adequacy of the notice under the circumstances. Interim relief may be granted under Rule 4001(b)(2) or Rule 4001(c)(2), to the extent and under the conditions stated in those rules.

(g) ORDER WITHOUT A HEARING. If no response is timely filed, the court may order relief without a hearing to the extent provided in § 102(1), or may notify the movant, and any other entity the court considers appropriate, that a hearing will be held.

(h) DISCOVERY.

(1) Unless the court directs otherwise, Rules 26 and 28-37 F.R.Civ.P. apply, except that:

(A) the parties are not required to make the disclosures mandated by Rule 26(a)(1)-(3), F.R.Civ.P., other than as provided in Rule 9014(b) and (d), but the information described in Rule 26(a)(1)-(3) F.R.Civ.P. may be obtained by discovery methods prescribed by Rule 26(a)(5) F.R.Civ.P.;

(B) the parties are not required to meet in accordance with Rule 26(f) F.R.Civ.P.;

(C) the 30-day time periods provided in Rules 30(e), 33(b)(3), 34(b), and 36(a) F.R.Civ.P. are reduced to **[**10 days**]** or as directed by the court; and

(D) the movant may begin discovery only after a response is filed or a respondent begins discovery. A respondent may begin discovery at any time.

(2) A motion relating to a discovery dispute may not be heard unless the movant has attempted to confer with the parties involved to resolve their differences, and has filed a statement setting forth the remaining disputes.

(i) HEARING; STATUS CONFERENCE.

(1) HEARING.

(A) Except as provided in Rule 9014(i)(1)(B) or (3), if a timely response to an administrative motion is filed, the court shall hold a hearing to determine whether there is a genuine issue as to any material fact and, if not, whether any party is entitled to relief as a matter of law. No testimony may be taken at the hearing, unless the movant and all respondents consent. If the court finds that there is no genuine issue as to any material fact, it shall order appropriate relief. If the court finds that there is a genuine issue of material fact, it shall conduct a status conference.

(B) On request or on its own initiative and on at least **[2]** days' notice to the parties, the court may order that an evidentiary hearing at which witnesses may testify shall be held on the scheduled hearing date.

(2) STATUS CONFERENCE. A status conference under Rule 9014(i)(1)(A) may be held at the time fixed for the hearing, or immediately afterward without further notice to the parties. The attorneys for the movant and for every party against whom relief is sought that filed a timely response, and every party unrepresented by an attorney, shall appear

and participate at the status conference. The purpose of the status conference is to expedite the disposition of the administrative proceeding. The court may enter a pretrial order requiring the disclosure of information of the type described in Rule 26(a)(1)-(3) F.R.Civ.P., scheduling pretrial discovery, fixing the time for a hearing on factual issues, and otherwise providing for the just, speedy, and economical disposition of the proceeding.

(3) RELIEF FROM AUTOMATIC STAY; PRELIMINARY HEARING ON USE OF CASH COLLATERAL OR OBTAINING CREDIT. If an administrative motion requests relief from an automatic stay of any act against property of the estate under § 362(d), or includes a request for a preliminary hearing as provided in Rule 4001(b)(2) or (c)(2), a hearing at which witnesses may testify may be held at the time fixed for the hearing.

(j) TESTIMONY OF WITNESSES. Rule 43(e) F.R.Civ.P. does not apply at an evidentiary hearing on an administrative motion.

(k) SERVICE OF NOTICE THAT ORDER HAS BEEN ENTERED. Notice of the entry of any order shall be served in accordance with Rule 9022 on the movant, the entities listed in Rule 9014(c)(1), and any other entity as the court

directs.

(l) APPLICATION OF PART VII RULES. Unless the court orders otherwise, the following rules apply in an administrative proceeding: Rules [7009], 7017, 7019-7021, 7025, 7041, 7042, 7052, 7054-7056, 7064, 7069, and 7071. The court may at any stage in a particular matter order that one or more of the other rules in Part VII apply. The court shall give the parties notice of any order issued under this paragraph within the time necessary to afford them a reasonable opportunity to comply with the procedures made applicable by the order.

(m) TRANSMISSION TO UNITED STATES TRUSTEE. A copy of every paper filed and every order entered in connection with an administrative proceeding shall be transmitted to the United States trustee if required by Rule 9034.

~~(m)~~ (n) RELIEF FROM PROCEDURAL REQUIREMENTS. The court for cause may, with or without prior notice, order that any procedural requirement provided in this rule shall not apply or shall be amended in a particular proceeding. The court shall give the parties notice of the order within the time necessary to afford them a reasonable opportunity to comply with any amended procedural requirements.

COMMITTEE NOTE

Rules 9013 and 9014 have been amended to substantially revise the rules governing motion

practice in bankruptcy cases.

Rule 9014 had been limited to the category of disputes called "contested matters." Confusion as to whether a particular motion was a contested matter, rather than a different type of proceeding, and uncertainty as to the procedural requirements relating to a contested matter, have led to the amendment of this rule.

These amendments provide more detailed procedural guidance than provided in the past. This change is intended to increase uniformity in litigation practice among districts and to reduce the number of local rules.

This rule, as amended, governs proceedings that are not applications (governed by Rule 9013), adversary proceedings (governed by Part VII), requests to pay the filing fee in installments (governed by Rule 1006(b)), or requests for extensions of time to file schedules and statements (governed by Rule 1007(c)). A motion made in either a pending adversary proceeding or in a pending administrative proceeding -- such as a motion for summary judgment or a motion for a protective order relating to discovery -- are not administrative proceedings governed by this rule. Any motion made in connection with an appeal to the district court or bankruptcy appellate panel (including a motion for a stay pending appeal, a motion for leave to appeal, or any other motion under a rule in Part VIII) ~~(governed by Part VIII of these rules)~~ is excluded from the scope of Rule 9014. Subdivision (a) also clarifies that this rule does not apply to a petition commencing a case under the Code (governed by §§ 301-303 of the Code and Rules 1002-1005, 1010, 1011, 1013, and 1018), or a petition commencing a case ancillary to a foreign proceeding (governed by § 304 of the Code and Rules 1002, 1005, 1010, 1011, and 1018).

A request for approval of -- or an objection to -- a disclosure statement is not within the scope of Rule 9014. Similarly, a request to have a plan confirmed or an objection to confirmation is not governed by this rule.

Numerous rules require or refer to the filing of a motion for certain relief. Unless the motion to which the rule refers is of the type listed in Rule 9014(a) as being outside the scope of this rule, the motion would commence an administrative proceeding and would be governed by Rule 9014. ~~For example, Rule 1014(a)~~

~~provides that a case filed in a proper district may be transferred to another district in the interest of justice or for the convenience of the parties "on timely motion of a party in interest." A motion requesting transfer of the case under Rule 1014(a) commences an administrative proceeding and is governed by Rule 9014.~~ For example, Rule 3008 provides that a party in interest "may move for reconsideration of an order allowing or disallowing a claim against the estate." A motion requesting reconsideration under Rule 3008 commences an administrative proceeding and is governed by Rule 9014.

The amendments also increase certain time periods relating to these types of proceedings. For example, current Rule 9006(d) -- which formerly applied in contested matters -- provides that a motion and notice of hearing must be served at least 5 days before the scheduled hearing date. In contrast, amended Rule 9014 provides for service at least 25 days before the date scheduled for the hearing. This time period may be enlarged in accordance with Rules 9006(b) and 9013, or reduced in accordance with Rule 9014(f). The three-day "mail rule" under Rule 9006(f) does not apply with respect to these time periods because the time for acting in accordance with this rule is not triggered by service of any notice or other paper.

Rule 9014(c) requires service of both the administrative motion and notice of the hearing, but there is no requirement that the motion and notice of hearing be in separate documents.

The court may order appropriate relief without a hearing if a timely response is not filed. If the judge wants to hold a hearing nonetheless, subdivision (g) requires that the court notify the movant that a hearing will be held. The court may hold the hearing at the originally scheduled time or on a subsequent date.

A hearing must be held if a response is filed. But, attorneys and unrepresented parties do not have to bring witnesses to the hearing unless (1) the proceeding is for relief from the automatic stay of acts against property of the estate, (2) the proceeding is for preliminary authority to use cash collateral or to obtain credit, or (3) the court gives at least [2] days' notice to the parties that an evidentiary hearing may be held on the date when the hearing is schedule. Otherwise, if a response is filed, the court will hold a hearing only for purposes of determining whether an

evidentiary hearing is necessary to resolve questions of fact and, if an evidentiary hearing is not necessary, to resolve the proceeding. If an evidentiary hearing is needed, the court will hold a status conference under Rule 9014(j)(2) to facilitate settlement discussions, set a discovery schedule, schedule an evidentiary hearing, or formulate any other pretrial order designed to expedite the proceeding. It is anticipated that the status conference will be held immediately following the court's determination that there is a genuine issue of material fact and, therefore, attorneys and unrepresented parties should attend the hearing prepared for an immediate status conference. Subdivision (j) does not preclude the court from ordering a status conference under Rule 105(d).

If the court determines based on affidavits that there are genuine issues of material fact, and an evidentiary hearing is held to resolve the issues, witnesses must testify orally in open court in accordance with Rule 9017 and Civil Rule 43(a). Under Rule 9014(j), the court may not resolve these factual issues based on affidavits.

The amendments also require automatic disclosure regarding valuation reports when the value of property is at issue. As used in this rule, the term "valuation report" includes a formal appraisal of the property, as well as any less formal written report on the value of the property.

Any party that files a paper in connection with an administrative proceeding is required to transmit a copy to the United States trustee, if the proceeding relates to any of the matters listed in Rule 9034.

Subdivision (m) gives the court discretion to order, for cause and in a particular proceeding, that any procedural requirement under this rule does not apply or is amended. The court for cause shown may enlarge or reduce any time periods prescribed by this rule in accordance with Rule 9006.

EXHIBIT C
PROPOSED AMENDMENTS TO MISCELLANEOUS RULES TO CONFORM TO THE PROPOSED AMENDMENTS TO RULES 9013 AND 9014

Rule 1014. Dismissal and Change of Venue

(a) DISMISSAL AND TRANSFER OF CASES.

(1) *Cases Filed in Proper District*. If a petition is filed in a proper district, on timely motion of a party in interest, ~~and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, the case may be transferred~~ the court may transfer the case to any other district if the court determines that the transfer is in the interest of justice or for the convenience of the parties.

(2) *Cases Filed in Improper District*. If a petition is filed in an improper district, on timely motion of a party in interest ~~and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, the case may be dismissed or transferred~~ the court may dismiss the case or transfer the case to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties.

(b) PROCEDURE WHEN PETITIONS INVOLVING THE SAME DEBTOR OR RELATED DEBTORS ARE FILED IN DIFFERENT COURTS. If

petitions commencing cases under the Code are filed in different districts by or against (1) the same debtor, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, on motion filed in the district in which the petition filed first is pending ~~and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court~~, the court may determine, in the interest of justice or for the convenience of the parties, the district or districts in which the case or cases should proceed. ~~Except as otherwise ordered by the court in the district in which the petition filed first is pending, the proceedings on the other petitions shall be stayed by the courts in which they have been filed until the determination is made.~~ Until the determination is made, any other court presiding in the case where any other petition has been filed shall stay the proceedings relating to that petition, unless the court in which the motion is pending orders otherwise.

(c) PROCEDURE GOVERNING MOTION. Rule 9014 applies to a motion made under this rule and every entity that has filed a petition against the debtor under § 303 shall be treated as an entity listed in Rule 9014(c)(1).

COMMITTEE NOTE

This rule is amended to conform to the amendments to Rules 9014 and 9034. The list of entities entitled

to notice of a hearing on transfer or dismissal of a case under this rule are deleted as unnecessary because Rule 9014, which governs a motion under this rule, sets forth the list of entities entitled to service of the motion papers. Reference to the United States trustee is unnecessary because Rule 9034 includes the transfer or dismissal of a case in the list of matters with respect to which the United States trustee is entitled to receive papers.

[Note: The following text of Rule 1017 includes proposed amendments published for comment in September 1997]

Rule 1017. Dismissal or Conversion of Case; Suspension

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~~(c) DISMISSAL OF VOLUNTARY CHAPTER 7 OR CHAPTER 13 CASE FOR FAILURE TO TIMELY FILE LIST OF CREDITORS, SCHEDULES, AND STATEMENT OF FINANCIAL AFFAIRS. The court may dismiss a voluntary chapter 7 or chapter 13 case under § 707(a)(3) or § 1307(c)(9) after a hearing on notice served by the United States trustee on the debtor, the trustee, and any other entities as the court directs.~~

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(e) DISMISSAL OF INDIVIDUAL DEBTOR'S CHAPTER 7 CASE FOR SUBSTANTIAL ABUSE. An individual debtor's case may be dismissed for substantial abuse under § 707(b) only on motion by the United States trustee or on the court's own motion ~~and after a hearing on notice to the debtor, the trustee, the United States trustee, and any other entities as the court directs~~.

(1) The United States trustee may not file a motion to dismiss for substantial abuse ~~A motion by the United States trustee shall be filed no~~ later than 60 days after the first date set for the meeting of creditors under § 341(a), unless, before ~~such~~ the time has expired, the court for cause extends the time for filing the motion. The movant shall set forth in the

motion ~~The motion shall set forth~~ all matters to be submitted to the court for its consideration at the hearing.

(2) If the hearing is on the court's own motion, notice of the hearing shall be served on the debtor, the debtor's attorney, and the trustee no later than 60 days after the first date set for the meeting of creditors under § 341(a). The notice shall set forth all matters to be considered by the court at the hearing. A copy of the notice shall be transmitted to the United States trustee.

(f) PROCEDURE FOR DISMISSAL, CONVERSION, OR SUSPENSION.

(1) A proceeding to dismiss or suspend a case, or to convert a case to another chapter, except under §§706(a), 1112(a), 1208(a) or (b), ~~or~~ 1307(a) or (b), or Rule 1017(e)(2), is governed by Rule 9014.

(2) Conversion or dismissal under §§ 706(a), 1112(a), 1208(b), or 1307(b) shall be on motion filed and served as required by Rule 9013.

(3) A chapter 12 or chapter 13 case shall be converted without court order when the debtor files a notice of conversion under §§1208(a) or 1307(a). The filing date of the notice shall be deemed the date of the conversion order for the purposes of applying §348(c) and Rule 1019. The clerk shall forthwith transmit a copy of the notice to the United States

trustee.

COMMITTEE NOTE

Subdivision (e) is amended to delete the list of the entities entitled to service of the motion except when the motion is on the court's own initiative. When the United States trustee files the motion for dismissal under § 707(b), the list of the entities to be served can be found in Rule 9014(c)(1).

Subdivision (f) is amended to provided that a proceeding to dismiss a case under § 707(b) is not governed by Rule 9014 if it is initiated by the court's own motion.

The other amendments are stylistic.

[Reporter's note: Subdivision (c) -- which would be added under the recently published proposed amendments -- will not be necessary and should be deleted from the package of proposed amendments because a list of the entities to be served with the motion are in Rule 9014(c)(1).]

Rule 2001. Appointment of Interim Trustee Before Order for Relief in a Chapter 7 Liquidation Case

(a) APPOINTMENT. At any time following the commencement of an involuntary liquidation case and before an order for relief, the court on ~~written~~ motion of a party in interest may order the appointment of an interim trustee under § 303(g) of the Code. ~~The motion shall set forth the necessity for the appointment and may be granted only after hearing on notice to the debtor, the petitioning creditors, the United States trustee, and other parties in interest as the court may designate.~~ Rule 9014 governs the motion and every entity that has filed the petition against the debtor under § 303 shall be treated as an entity listed in Rule 9014(c)(1).

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COMMITTEE NOTE

This rule is amended to provide that a motion for the appointment of an interim trustee is governed by Rule 9014. The petitioners, as well as the entities listed in Rule 9014(c)(1), are entitled to be served with the motion papers. Reference to the United States trustee is unnecessary because Rule 9034 includes the appointment of an interim trustee on the list of matters as to which the United States trustee is entitled to receive papers.

Rule 2007. Review of Appointment of Creditors' Committee Organized Before Commencement of the Case

(a) MOTION TO REVIEW APPOINTMENT. If a committee appointed by the United States trustee ~~pursuant to~~ under § 1102(a) of the Code consists of the members of a committee organized by creditors before the commencement of a chapter 9 or chapter 11 case, on motion of a party in interest ~~and after a hearing on notice to the United States trustee and other entities as the court may direct,~~ the court may determine whether the appointment of the committee satisfies the requirements of § 1102(b)(1) of the Code. Rule 9014 governs the motion. If the court finds that the appointment failed to satisfy the requirements of § 1102(b)(1), the court shall direct the United States trustee to vacate the appointment of the committee and may order other appropriate relief.

(b) SELECTION OF MEMBERS OF COMMITTEE. The court may find that a committee organized by unsecured creditors before the commencement of a chapter 9 or chapter 11 case was fairly chosen if:

(1) it was selected by a majority in number and amount of claims of unsecured creditors who may vote under § 702(a) ~~of the Code~~ and were present in person or represented at a meeting of which all creditors having unsecured claims of over $1,000 or the 100 unsecured creditors having the largest claims had at least five days notice in writing, and of which meeting

written minutes reporting the names of the creditors present or represented and voting and the amounts of their claims were kept and are available for inspection;

(2) all proxies voted at the meeting for the elected committee were solicited ~~pursuant to~~ in accordance with Rule 2006 and the lists and statements required by Rule 2006(e) ~~subdivision (e) thereof~~ have been transmitted to the United States trustee; and

(3) the organization of the committee was in all other respects fair and proper.

~~(e) FAILURE TO COMPLY WITH REQUIREMENTS FOR APPOINTMENT. After a hearing on notice pursuant to subdivision (a) of this rule, the court shall direct the United States trustee to vacate the appointment of the committee and may order other appropriate action if the court finds that such appointment failed to satisfy the requirements of § 1102(b)(1) of the Code.~~

COMMITTEE NOTE

This rule is amended to conform to the amendments to Rule 9014 and to make stylistic improvements.

Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses

~~(a) APPLICATION FOR COMPENSATION OR REIMBURSEMENT. An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised, whether any compensation previously received has been shared and whether an agreement or understanding exists between the applicant and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with the case, and the particulars of any sharing of compensation or agreement or understanding therefor, except that details of any agreement by the applicant for the sharing of compensation as a member or regular associate of a firm of lawyers or accountants shall not be required. The requirements of this subdivision shall apply to an application for compensation for services rendered by an attorney or accountant even though the application is filed by a creditor or other entity. Unless the case is a chapter 9 municipality case, the applicant shall transmit to the~~

~~United States trustee a copy of the application.~~

(a) MOTION FOR COMPENSATION OR REIMBURSEMENT. Rule 9014 applies to a request for payment from the estate of interim or final compensation for services or reimbursement of necessary expenses.

(1) The movant shall state the amounts requested and the services rendered, time expended and expenses incurred. If the motion requests compensation, the movant also shall state:

(A) the payments that have been made or promised for services rendered or to be rendered in any capacity in connection with the case;

(B) the source of the compensation paid or promised;

(C) whether any compensation previously received has been shared and whether an agreement or understanding exists between the movant and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with the case; and

(D) the particulars of any sharing of compensation or agreement or understanding with respect to sharing of compensation, but the details of any

agreement by the movant for the sharing of compensation as a member or regular associate of a firm of lawyers or accountants is not required.

(2) The requirements of Rule 2016(a) applies to an application for compensation for services rendered by an attorney or accountant even though the application is filed by a creditor or other entity.

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COMMITTEE NOTE

This rule is amended to provide that a proceeding for compensation or reimbursement of expenses from the estate is governed by Rule 9014. The provision requiring transmittal of papers to the United States trustee is deleted as unnecessary. See Rule 9034. The other amendments are stylistic.

Rule 3001. Proof of Claim

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(e) TRANSFERRED CLAIM.

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~~(5) *Service of Objection or Motion; Notice of Hearing.* A copy of an objection filed pursuant to paragraph (2) or (4) or a motion filed pursuant to paragraph (3) or (4) of this subdivision together with a notice of a hearing shall be mailed or otherwise delivered to the transferor or transferee, whichever is appropriate, at least 30 days prior to the hearing.~~

(5) *Procedures Governing Objection or Motion.* An objection under Rule 3001(e)(2) or (4), or a motion under Rule 3001(e)(3) or (4), is governed by Rule 9014. The transferor or transferee, whichever is appropriate, shall be treated as an entity listed in Rule 9014(c)(1).

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COMMITTEE NOTE

Paragraph (e)(5) is amended to provide that an objection or motion under Rule 3001(e) is governed by Rule 9014. An objection is made by filing a motion in accordance with Rule 9014. Since the objection or motion is governed by Rule 9014, service must be made 25 days before the hearing date, rather than 30 days as is provided under the current Rule 3001(e)(5). The other amendments are stylistic.

Rule 3006. Withdrawal of Claim; Effect on Acceptance or Rejection of Plan

(a) WITHDRAWAL OF CLAIM. A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. Unless on motion the court orders otherwise, a creditor may not withdraw a claim if, after the creditor has filed a proof of claim, ~~If after a creditor has filed a proof of claim~~ an objection to the claim is filed, ~~thereto or~~ a complaint is filed against ~~that~~ the creditor in an adversary proceeding, ~~or~~ the creditor has accepted or rejected ~~the~~ a plan, or the creditor ~~or~~ otherwise has participated significantly in the case~~, the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession, and any creditors' committee elected pursuant to § 705(a) or appointed pursuant to § 1102 of the Code~~. Rule 9014 applies to a motion for an order authorizing the withdrawal of the claim. The order may include ~~order of the court shall contain such~~ terms and conditions as the court deems proper.

(b) EFFECT ON ACCEPTANCE OR REJECTION OF A PLAN. Unless the court orders otherwise, an authorized withdrawal of a claim ~~shall constitute~~ constitutes withdrawal of any related acceptance or rejection of a plan.

COMMITTEE NOTE

This rule is amended to conform to the amendments to Rule 9014. The list of entities entitled to notice of the hearing on a creditor's withdrawal of a claim is deleted as unnecessary. See Rule 9014(c). The other amendments are stylistic.

Rule 3007. Objections to Claims

An objection to the allowance of a claim is governed by Rule 9014 ~~shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing~~. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding.

COMMITTEE NOTE

This rule is amended to provide that an objection to the allowance of a claim is an administrative proceeding governed by Rule 9014. An objection is made by filing a motion in accordance with Rule 9014(b). Since the objection is governed by Rule 9014, service must be made 25 days before the hearing date, rather than 30 days as is provided under current Rule 3007, and the claimant is required to file a response. The other amendments are stylistic.

[Reporter's Note: The committee should consider whether objections to claims should be carved out as an exception to Rule 9014 so that creditors will not have to file a response to an objection]

Rule 3012. Valuation of Security

On motion of a party in interest, the court may determine the value of a claim secured by a lien on property in which the estate has an interest ~~on motion of any party in interest and after a hearing on notice to the holder of the secured claim and any other entity as the court may direct~~. The motion is governed by Rule 9014 and the holder of the secured claim shall be treated as an entity listed in Rule 9014(c).

COMMITTEE NOTE

This rule is amended to conform to the amendments to Rule 9014. Other amendments are stylistic.

Rule 3013. Classification of Claims and Interests

~~For the purposes of the plan and its acceptance, the court may, on motion after hearing on notice as the court may direct,~~ On motion, the court may determine classes of creditors and equity security holders ~~pursuant to §§~~ under § 1122, § 1222(b)(1), ~~and~~ or § 1322(b)(1) of the Code for purposes of the plan and its acceptance. The motion is governed by Rule 9014.

COMMITTEE NOTE

This rule is amended to provide that the motion to determine classification of claims and interests is governed by Rule 9014. The other amendments are stylistic.

[Reporter's Note: The following draft assumes that 3015(f) and (g) issues are deleted from the scope of Rule 9014. I bracketed discovery provisions because I am not sure that they are appropriate in view of the streamlined procedures in chapter 13):

Rule 3015. Filing, Objection to Confirmation, and Modification of a Plan in a Chapter 12 Family Farmer's Debt Adjustment or a Chapter 13 Individual's Debt Adjustment Case

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(f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH IN THE ABSENCE OF AN OBJECTION. A party in interest may object to confirmation of a plan by filing an objection before the plan is confirmed. The objecting party shall serve a copy of the objection ~~An objection to confirmation of a plan shall be filed and served~~ on the debtor, the debtor's attorney, and the trustee~~, and any other entity designated by the court~~ in the manner provided in Rule 9014(c)(2), and shall ~~be transmitted~~ transmit a copy to the United States trustee, before the plan is confirmed ~~confirmation of the plan~~. ~~An objection to confirmation is governed by Rule 9014.~~ [Discovery may be obtained in the manner provided in Rule 9014(h)(1)(A)-(C).] If no objection is timely filed, the court, without receiving evidence, may determine that the plan has been proposed in good faith and not by any means forbidden by law ~~without receiving evidence on such issues~~.

(g) MODIFICATION OF PLAN AFTER CONFIRMATION.

(1) *Request for Modification.* A party requesting modification of a plan under § 1229 or § 1329 ~~A request~~

~~to modify a plan pursuant to § 1229 or § 1329 of the Code~~ shall identify the proponent and shall file the proposed modification together with the request ~~be filed together with the proposed modification~~.

(2) *Notice.* The clerk, or ~~some other person as the court may designate,~~ another person that the court designates, shall ~~give~~ mail to the debtor, the trustee, and all creditors a copy of the proposed modification or a summary of the proposed modification, and not less than 20 days notice ~~by mail~~ of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. ~~A copy of the proposed modification, or a summary thereof, shall be included with the notice.~~ If required by the court, the proponent shall furnish a sufficient number of copies of the proposed modification~~, or a summary thereof,~~ or summary to enable the clerk to include a copy with each notice.

(3) *Objection.* A party in interest may object to the proposed modification by filing a timely objection. The objecting party shall serve a copy of the objection on the debtor, the debtor's attorney, and the trustee in the manner provided in Rule 9014(c)(2), and shall

transmit a copy to the United States trustee. ~~Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.~~ [Discovery may be obtained in the manner provided in Rule 9014(h)(1)(A)-(C).]

COMMITTEE NOTE

Subdivisions (f) and (g) are amended to conform to Rule 9014(a) which, as amended, will provide that an objection to confirmation or modification of a plan under this rule is not governed by Rule 9014. Although an objection under Rule 3015(f) or (g) is not an administrative proceeding under Rule 9014, service of an objection must be made in the manner provided in Rule 9014(c)(2) [and discovery may be obtained in the manner provided in Rule 9014(h)(1)(A)-(C)].

Deletion of the phrase that provided that the court may designate other entities to receive copies of an objection is intended to avoid the appearance that an objecting party must inquire as to the proper parties to be served. This amendment is not intended to deprive the court of the power to require, in a particular case, that a copy of an objection be served on another entity.

Consistent with the amendments to Rule 9014, a copy of an objection must be served on the debtor's attorney.

The other amendments to this rule are stylistic.

[Reporter's Note: These amendments assume that Rule 3020 objections are deleted from the scope of Rule 9014]

Rule 3020. Deposit; Confirmation of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

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(b) ~~OBJECTION TO AND HEARING ON CONFIRMATION~~ CONFIRMATION OF A PLAN IN A CHAPTER 9 OR CHAPTER 11 CASE.

(1) *Objection to Confirmation*. Within the time fixed by the court, a party in interest may object to confirmation of a plan by filing an objection and serving copies of it ~~An objection to confirmation of the plan shall be filed and served~~ on the debtor, the debtor's attorney, the trustee, the proponent of the plan, and any committee appointed under the Code in the manner provided in Rule 9014(c)(2) ~~, and any other entity designated by the court, within a time fixed by the court~~. Unless the case is a chapter 9 municipality case, the objecting party shall transmit a copy of the ~~every~~ objection ~~to confirmation shall be transmitted by the objecting party~~ to the United States trustee within the time fixed for filing objections. Discovery may be obtained in the manner provided in Rule 9014(h)(1)(A)-(C). ~~An objection to confirmation is governed by Rule 9014.~~

****

COMMITTEE NOTE

Subdivision (b)(1) is amended to conform to Rule 9014(a) which, as amended, will provide that an

objection to confirmation of a plan under this rule is not governed by Rule 9014. Although an objection to confirmation under Rule 3020(b) is not an administrative proceeding under Rule 9014, service of an objection must be made in the manner provided in Rule 9014(c)(2) and discovery may be obtained in the manner provided in Rule 9014(h)(1)(A)-(C).

Deletion of the phrase that provided that the court may designate other entities to receive copies of an objection is intended to avoid the appearance that an objecting party must inquire as to the proper parties to be served. This amendment is not intended to deprive the court of the power to require, in a particular case, that a copy of an objection be served on any other entity.

Consistent with the amendments to Rule 9014, a copy of an objection must be served on the debtor's attorney.

The other amendments to this rule are stylistic.

Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements

(a) RELIEF FROM STAY; PROHIBITING OR CONDITIONING THE USE, SALE, OR LEASE OF PROPERTY.

(1) *Procedures Governing Motion*. Rule 9014 applies to a ~~A~~ motion for relief from an automatic stay provided by the Code or a motion to prohibit or condition the use, sale, or lease of property under ~~pursuant to~~ § 363(e) ~~shall be made in accordance with Rule 9014 and shall be served on any committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to § 1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct~~.

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(b) USE OF CASH COLLATERAL.

(1) *Procedures Governing Motion* ~~*Motion; Service*~~. Rule 9014 applies to a ~~A~~ motion for authorization to use cash collateral ~~shall be made in accordance with Rule 9014 and shall be served on any entity which has an interest in the cash collateral, on any committee elected pursuant to § 705 or appointed pursuant to §~~

~~1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to § 1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct~~. Every entity that has an interest in the cash collateral shall be treated as an entity listed in Rule 9014(c)(1).

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~~(3) *Notice.* Notice of hearing pursuant to this subdivision shall be given to the parties on whom service of the motion is required by paragraph (1) of this subdivision and to such other entities as the court may direct.~~

(c) OBTAINING CREDIT.

(1) *Procedures Governing Motion.* ~~*Motion; Service.*~~ Rule 9014 applies to a ~~A~~ motion for authority to obtain credit ~~shall be made in accordance with Rule 9014 and shall be served on any committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to § 1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such~~

~~other entities as the court may direct.~~ The motion shall include ~~be accompanied by~~ a copy of the agreement relating to the credit to be obtained.

****

~~(3) Notice. Notice of hearing pursuant to this subdivision shall be given to the parties on whom service of the motion is required by paragraph (1) of this subdivision and to such other entities as the court may direct.~~

(d) AGREEMENT RELATING TO RELIEF FROM THE AUTOMATIC STAY, PROHIBITING OR CONDITIONING THE USE, SALE, OR LEASE OF PROPERTY, PROVIDING ADEQUATE PROTECTION, USE OF CASH COLLATERAL, AND OBTAINING CREDIT.

(1) *Administrative Proceeding.* ~~*Motion; Service.*~~ Except as provided in Rule 4001(d)(3), Rule 9014 applies to a ~~A~~ motion for approval of an agreement relating to any of the following:

(A) ~~to provide~~ providing adequate protection~~;~~,

(B) ~~to prohibit or condition~~ prohibiting or conditioning the use, sale, or lease of property~~;~~,

(C) ~~to modify or terminate~~ modifying or terminating the stay provided for in § 362~~;~~,

(D) ~~to use~~ using cash collateral~~;~~, or

(E) consenting to the creation of a lien senior or equal to an existing lien or interest in property of the estate ~~between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property shall be served on any committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to § 1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct~~.

(2) Copy of the Agreement. The motion shall ~~be accompanied by~~ include a copy of the agreement.

~~(2) *Objection*. Notice of the motion and the time within which objections may be filed and served on the debtor in possession or trustee shall be mailed to the parties on whom service is required by paragraph (1) of~~

~~this subdivision and to such other entities as the court may direct. Unless the court fixes a different time, objections may be filed within 15 days of the mailing of notice.~~

~~(3) *Disposition; Hearing*. If no objection is filed, the court may enter an order approving or disapproving the agreement without conducting a hearing. If an objection is filed or if the court determines a hearing is appropriate, the court shall hold a hearing on no less than five days' notice to the objector, the movant, the parties on whom service is required by paragraph (1) of this subdivision and such other entities as the court may direct.~~

~~(4)~~ (3) *Procedures For Approval of Agreement in Settlement of Motion*. The court may direct that the procedures prescribed in Rule 4001(d)(1) and (2) do ~~paragraphs (1), (2), and (3) of this subdivision shall~~ not apply, and that the agreement of the kind listed in Rule 4001(d)(1) may be approved without further notice if the court determines that a motion made under Rule 4001(a), (b) or (c) ~~pursuant to subdivisions (a), (b), or (c) of this rule~~ was sufficient to afford reasonable notice of the material provisions of the agreement and opportunity for a hearing.

COMMITTEE NOTE

This rule is amended to conform to the amendments to Rule 9014. The list of parties entitled to service

of the motion and notice of the hearing is deleted from Rule 4001(a), (b), and (c), because Rule 9014(c)(1) lists the entities that must be served. Other amendments are stylistic.

Rule 6004. Use, Sale, or Lease of Property

(a) NOTICE OF PROPOSED USE, SALE, OR LEASE OF PROPERTY. Except as provided in Rule 6004(c), notice ~~Notice~~ of a proposed use, sale, or lease of property, other than cash collateral, not in the ordinary course of business shall be given ~~pursuant to~~ in accordance with Rule 2002(a)(2), (c)(1), (i), and (k) and, if applicable, in accordance with § 363(b)(2) of the Code. The notice may include a time for the hearing in the event that a timely objection is filed.

(b) TIME TO OBJECT ~~OBJECTION TO PROPOSAL~~. Except as provided in Rule 6004(c) and (d), a party in interest may object to a proposed use, sale, or lease of property not later than five days before the date set for the proposed action or within the time fixed by the court ~~subdivisions (c) and (d) of this rule an objection to a proposed use, sale, or lease of property shall be filed and served not less than five days before the date set for the proposed action or within the time fixed by the court. An objection to the proposed use, sale, or lease of property is governed by Rule 9014~~.

~~(c) SALE FREE AND CLEAR OF LIENS AND OTHER INTERESTS. A motion for authority to sell property free and clear of liens or other interests shall be made in accordance with Rule 9014 and shall be served on the parties who have liens or other interests in the property to be sold. The notice~~

~~required by subdivision (a) of this rule shall include the date of the hearing on the motion and the time within which objections may be filed and served on the debtor in possession or trustee.~~

~~(d)~~ (c) SALE OF PROPERTY UNDER $2,500. ~~Notwithstanding subdivision (a) of this rule, when~~ When all of the nonexempt property of the estate has an aggregate gross value less than $2,500, it shall be sufficient to give a general notice of intent to sell ~~such~~ the property other than in the ordinary course of business to all creditors, indenture trustees, committees appointed or elected under ~~pursuant to~~ the Code, the United States trustee and other persons as the court may direct. A party in interest may object to the proposed sale ~~An objection to any such sale may be filed and served by a party in interest~~ within 15 days ~~of~~ after ~~the mailing of~~ the notice is mailed~~,~~ or within the time fixed by the court. ~~An objection is governed by Rule 9014.~~

(d) PROCEDURE GOVERNING OBJECTION. An objection to a proposed use, sale, or lease of property under Rule 6004(b) or (c) is governed by Rule 9014.

~~(e)~~ (e) SALE FREE AND CLEAR OF LIENS AND OTHER INTERESTS. Rule 9014 applies to a ~~A~~ motion for authority to sell property free and clear of liens or other interests, [and every party who has a lien or other interest in the property shall be treated as an entity listed in Rule 9014(c)(1)] ~~shall be made in accordance with Rule 9014 and~~

~~shall be served on the parties who have liens or other interests in the property to be sold~~. The notice required by Rule 6004(a) ~~subdivision (a) of this rule~~ shall include the date of the hearing on the motion and the time within which objections may be filed and served ~~on the debtor in possession or trustee~~.

~~(c) HEARING. If a timely objection is made pursuant to subdivision (b) or (d) of this rule, the date of the hearing thereon may be set in the notice given pursuant to subdivision (a) of this rule.~~

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COMMITTEE NOTE

This rule is amended to conform to the amendments to Rule 9014. An objection to a proposed use, sale, or lease of property under this rule is made by filing a motion in accordance with Rule 9014. Other amendments, including the rearranging of subdivisions, are stylistic.

Rule 6006. Assumption, Rejection and Assignment of Executory Contracts and Unexpired Leases

(a) PROCEEDING TO ASSUME, REJECT, OR ASSIGN. A proceeding to assume, reject, or assign an executory contract or unexpired lease, other than as part of a plan, is governed by Rule 9014. The other party to the contract or lease shall be treated as an entity listed in Rule 9014(c)(1).

(b) PROCEEDING TO REQUIRE TRUSTEE TO ACT. A proceeding by a party to an executory contract or unexpired lease in a chapter 9 municipality case, chapter 11 reorganization case, chapter 12 family farmer's debt adjustment case, or chapter 13 individual's debt adjustment case, to require the trustee, debtor in possession, or debtor to determine whether to assume or reject the contract or lease is governed by Rule 9014. The other party to the contract or lease shall be treated as an entity listed in Rule 9014(c)(1).

~~(c) NOTICE. Notice of a motion made pursuant to subdivision (a) or (b) of this rule shall be given to the other party to the contract or lease, to other parties in interest as the court may direct, and, except in a chapter 9 municipality case, to the United States trustee.~~

COMMITTEE NOTE

This rule is amended to conform to the amendments to Rules 9014 and 9034. Subdivision (c) is deleted as unnecessary. Rule 9014(c)(1) lists the entities entitled to receive the motion papers and Rule 9034 requires transmittal of the motion papers to the United States trustee.

Rule 6007. Abandonment or Disposition of Property

(a) NOTICE OF PROPOSED ABANDONMENT OR DISPOSITION; OBJECTION ~~OBJECTIONS; HEARING~~. Unless the court directs otherwise ~~otherwise directed by the court~~, the trustee ~~or debtor in possession~~ shall give notice of a proposed abandonment or disposition of property to the United States trustee, all creditors, indenture trustees, and committees elected ~~pursuant to~~ under § 705 or appointed ~~pursuant to~~ under § 1102 ~~of the Code~~. A party in interest may file an objection to the proposed abandonment or disposition of property no later than 15 days after the notice is mailed ~~and serve an objection within 15 days of the mailing of the notice,~~ or within the time fixed by the court. ~~If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other entities as the court may direct.~~ The objection is governed by Rule 9014.

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COMMITTEE NOTE

This rule is amended to provide that an objection to a proposed abandonment or disposition of property is governed by Rule 9014. The objection is made by filing and serving a motion in accordance with Rule 9014 before the time for objecting expires. Reference to a debtor in possession is deleted as unnecessary. See Rule 9001(10). Other amendments are stylistic.

Rule 9006. Time

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(d) [abrogated] ~~FOR MOTIONS AFFIDAVITS. A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than five days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 9023, opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time.~~

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COMMITTEE NOTE

Subdivision (c) is abrogated. See Rule 9013 on applications and Rule 9014 on administrative motions.

Rule 9017. Evidence

Except as provided in Rule 9014(j), the ~~The~~ Federal Rules of Evidence and Rules 43, 44 and 44.1 F.R. Civ. P. apply in cases under the Code.

COMMITTEE NOTE

This rule is amended to conform to Rule 9014(j), which provides that Rule 43(e) F.R. Civ. P. does not apply at an evidentiary hearing in an administrative proceeding. The effect of Rule 9014(j) is that a witness must testify in open court, rather than by affidavit, at an evidentiary hearing in an administrative proceeding governed by Rule 9014.

Rule 9021. Entry of Judgment

Except as otherwise provided ~~herein~~ in this rule, Rule 58 F.R. Civ. P. applies in cases under the Code. Every judgment entered in an adversary proceeding or ~~contested matter~~ administrative proceeding shall be set forth on a separate document. A judgment is effective when entered as provided in Rule 5003. The reference in Rule 58 F.R. Civ. P. to Rule 79(a) F.R. Civ. P. shall be read as a reference to Rule 5003 of these rules.

COMMITTEE NOTE

This rule is amended to conform to the amendments to Rule 9014.

Rule 9034. Transmittal of Pleadings, Motion Papers, Objections, and Other Papers to the United States Trustee

Unless the United States trustee requests otherwise or the case is a chapter 9 municipality case, any entity that files a pleading, motion, objection, or similar paper relating to any of the following matters shall transmit a copy ~~thereof~~ to the United States trustee within the time required by these rules for service of the paper:

(a) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business;

(b) rejection, assumption, or assignment of an executory contract or unexpired lease;

~~(b)~~ (c) the approval of a compromise or settlement of a controversy;

~~(c)~~ (d) the dismissal of a case, transfer of a case to another district, or conversion of a case to another chapter;

~~(d)~~ (e) the employment of a professional person ~~persons~~;

~~(e)~~ (f) an application for compensation or reimbursement of expenses;

~~(f)~~ (g) a motion for, or approval of an agreement relating to, the use of cash collateral or authority to obtain credit;

(h) the appointment of an interim trustee before an order for relief in an involuntary case;

~~(g)~~ (i) the election of a trustee or the appointment of a trustee or examiner in a chapter 11 reorganization case;

(j) review of the appointment of a creditors' committee organized before the commencement of a chapter 9 or chapter 11 case;

~~(h)~~ (k) the approval of a disclosure statement;

~~(i)~~ (l) the confirmation of a plan;

~~(j)~~ (m) an objection to, or waiver or revocation of, the debtor's discharge;

~~(k)~~ (n) any other matter in which the United States trustee requests copies of filed papers or the court orders copies transmitted to the United States trustee.

COMMITTEE NOTE

Several rules have contained provisions requiring that notice of a hearing on a particular matter be transmitted to the United States trustee. See, e.g., Rules 1014, 2001(a), 2007(a), 4001, and 6007. Those provisions have been deleted and replaced with the additional matters added to the list in Rule 9034. In addition, the election of a chapter 11 trustee under § 1104 is added to the list in this rule so that the United States trustee will receive all papers relating to the election. Other amendments are stylistic.

EXHIBIT D

PROPOSED AMENDMENTS TO RULE 1006

Rule 1006. Filing Fee

(a) GENERAL REQUIREMENT. Every petition shall be accompanied by the filing fee except as provided in subdivision (b) or (c) of this rule. For the purpose of this rule, "filing fee" means the filing fee prescribed by 28 U.S.C. § 1930(a)(1)-(a)(5) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code.

(b) PAYMENT OF FILING FEE IN INSTALLMENTS.

(1) *Request ~~Application~~ for Permission to Pay Filing Fee in Installments.* A voluntary petition by an individual shall be accepted for filing if accompanied by the debtor's signed ~~application~~ request stating that the debtor is unable to pay the filing fee except in installments. The ~~application~~ request shall state the proposed terms of the installment payments and that the ~~applicant~~ debtor has neither paid any money nor transferred any property to an attorney for services in connection with the case.

(2) *Action on ~~Application~~ Request.* Before ~~Prior to~~ the meeting of creditors, the court, with

or without notice or a hearing, may order the filing fee paid to the clerk or grant leave to pay in installments and fix the number, amount and dates of payment. The number of installments shall not exceed four, and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid ~~not~~ no later than 180 days after filing the petition.

(3) *Postponement of ~~Attorney's~~ Fees*. After the petition is filed, ~~The~~ the filing fee must be paid in full before the debtor or chapter 13 trustee may pay an attorney, bankruptcy petition preparer, or any other person who renders services to the debtor in connection with the case.

(c) *Waiver of Filing Fee*. If a filing fee may be waived under applicable law, and a request for waiver of the filing fee is filed, the court, with or without notice or a hearing, may waive the fee.

COMMITTEE NOTE

This rule is amended to provide that a request to pay the filing fee in installments or a request for a waiver of the filing fee may be granted by the court without notice or a hearing. The procedural requirements for an application under Rule 9013 or an administrative motion under Rule 9014 are not

applicable to these requests. This rule is not intended to expand or create any right to a waiver of fees.

Under subdivision (b)(1), the debtor is required to state in the request for permission to pay the filing fee in installments that the debtor has neither paid money nor transferred property to an attorney for services rendered in connection with the case. A similar statement is not required with respect to bankruptcy petition preparers. A debtor who pays a bankruptcy petition preparer should not be disqualified from paying the filing fee in installments. But after the petition is filed, the debtor is prohibited by Rule 1006(b)(3) from paying fees to an attorney, bankruptcy petition preparer, or any other person for services in connection with the case until the filing fee, including every installment, is paid in full.

EXHIBIT E

PROPOSED AMENDMENTS TO RULE 1007
APPROVED IN SUBSTANCE IN MARCH 1997
(WITH REPORTER'S STYLE REVISIONS)

Rule 1007. Lists, Schedules and Statements; Time Limits

* * * * *

(c) TIME LIMITS. Except as provided in Rule 1007(d), (e) and (h), the debtor shall file the ~~The~~ schedules and statements, other than the statement of intention, ~~shall be filed~~ with the petition in a voluntary case~~,~~ or, if the petition is accompanied by a list of all the debtor's creditors and their addresses, within 15 days after the petition is filed~~, within 15 days thereafter, except as otherwise provided in subdivisions (d), (e), and (h) of this rule~~. In an involuntary case, the debtor shall file the schedules and statements, other than the statement of intention, ~~shall be filed by the debtor~~ within 15 days after ~~entry of~~ the order for relief is entered. Schedules and statements filed ~~prior to~~ before a case is converted ~~the conversion of a case~~ to another chapter ~~shall be~~ is deemed filed in the converted case unless the court directs otherwise. Any request for an extension of time for the filing of the schedules and statements may be granted with or without notice or a hearing ~~only on motion for cause shown and on notice to the United~~

~~States trustee and to any committee elected under § 705 or appointed under § 1102 of the Code, trustee, examiner, or other party as the court may direct~~. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.

* * * * *

COMMITTEE NOTE

This rule is amended to provide that a request for an extension of time to file schedules and statements under subdivision (c) may be resolved by the court without notice or a hearing. The procedural requirements for an application under Rule 9013 or an administrative motion under Rule 9014 are not applicable to the request. The other amendments are stylistic.

Item 8

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ALAN N. RESNICK, REPORTER

RE: NOTICE TO GOVERNMENTAL UNITS

DATE: AUGUST 11, 1997

At the March 1997 Advisory Committee meeting, the subject of notices to governmental units was discussed and proposals (including written proposals submitted by the reporter, by Chris Kohn, and by David B. Foltz, Jr.) were considered. At the conclusion of the discussion, the matter was referred to a new subcommittee chaired by Judge A. Thomas Small and including Judge A. Jay Cristol, Professor Charles Tabb, Henry Sommer, Chris Kohn, and Richard Heltzel.

The subcommittee met by telephone on June 11, 1997 (Judge Duplantier, Beth Wiggins of the Federal Judicial Center, and Pat Channon also participated in the call), and formulated recommendations for the Advisory Committee. At the conclusion of the call, I was asked to draft proposed amendments to Rules 1007, 2002, and 5003, and to the Statement of Financial Affairs, consistent with the subcommittee's recommendations. I then circulated to the subcommittee drafts of the proposed amendments. Except for Chris Kohn, no member of the subcommittee had any substantive comments regarding the drafts.

After I circulated the drafts, I added a few minor stylistic or clarifying revisions suggested by Judge Duplantier and Chris Kohn.

I enclose for the Committee's consideration at the September meeting drafts of proposed amendments to Rules 1007, 2002, and

5003, and to the Statement of Financial Affairs. These drafts contain, in substance, the recommendations of the subcommittee.

You will notice that certain language at the beginning of Question 24 (Environmental Information) of the Statement of Financial Affairs (see page 11 of the enclosed draft) is in brackets. These brackets highlight an issue for the Advisory Committee. If the Committee decides to add these questions to the Statement of Financial Affairs and to require the debtor to mail responses to the environmental agency, should these responses be mailed even if the environmental agency is listed as a creditor so that it will receive notice of the case in any event? Or, should the debtor be required to mail the response to the environmental agency only if it is not listed as a creditor?

One concern is worth mentioning regarding the subcommittee's recommendation that the debtor be required to mail a copy of the relevant portions of the Statement of Financial Affairs to the Environmental Protection Agency or other environmental agency. See the note at the beginning of Question 24 on the enclosed draft. I, as well as others, have expressed reservations about imposing a duty on the debtor to send a copy of the statement, or to send any other notice, by merely amending an official form. I question whether an amendment to an official form (which is not promulgated by the Supreme Court and does not go to Congress) could impose such a duty without amending the rules.

In the event that the Advisory Committee wants to adopt the approach that requires the debtor to send a copy of relevant

pages of the Statement of Financial Affairs to an environmental agency, but believes that a rule change would be necessary, I drafted the following new subdivision (n) of Rule 1007 to accomplish that result:

(n) NOTICE TO ENVIRONMENTAL AGENCY. If a governmental unit that has jurisdiction to enforce any environmental law [is not listed or scheduled as a creditor, but] is identified in the response to any question in the statement of financial affairs relating to an environmental matter, the debtor shall mail to the governmental unit copies of the response and the first page of the statement of financial affairs within [10] days after filing the statement.

COMMITTEE NOTE

The official form for the statement of financial affairs is being revised to require the debtor to disclose certain information regarding environmental matters. Rule 1007(n) is added to require the debtor to send a copy of any response in the statement of financial affairs, together with the first page of the statement, to any environmental agency that is identified in the response [unless the agency is listed as a creditor].

Preliminary Draft Dated 8/11/97 (Not Approved by the Advisory Committee)

Rule 1007. Lists, Schedules, and Statements; Time Limits

****

(m) IDENTIFICATION OF GOVERNMENTAL UNIT.

(1) If the debtor lists a governmental unit as a creditor in any list or schedule filed under Rule 1007, the debtor shall identify, if known to the debtor, any department, agency, or instrumentality of the governmental unit through which the debtor is indebted.

(2) If the governmental unit listed as a creditor is the United States or the state in which the district is located -- or is a department, agency, or instrumentality of the United States or the state in which the district is located -- and its mailing address is designated in the register kept by the clerk under Rule 5003(e), the debtor shall state in the list or schedule the mailing address designated in the register.

(3) Any failure to comply with Rule 1007(m) shall not invalidate the legal effect of any notice that (A) is mailed to an

appropriate address of the governmental unit, or (B) is actually received by the governmental unit in time to enable it, with reasonable diligence, to participate in the proceeding that is the subject of the notice.

COMMITTEE NOTE

Governmental units, including federal, state and municipal governments, may have difficulty or may experience delay in identifying the particular department or agency through which a debt is owed. To facilitate earlier and more effective participation by governmental units who are creditors in bankruptcy cases, Rule 1007(m) has been added to require the debtor to identify in the lists and schedules filed under this rule the particular department, agency, or instrumentality of the governmental unit through which the debtor is indebted, if the debtor knows this information.

If the United States or the state in which the district is located has filed a statement under Rule 2002(g)(2) designating a mailing address for notice purposes, the address may be found in a register in the clerk's office. See Rule 5003(e). If the United States or the state in which the district is located is listed as a creditor in the lists or schedules, the debtor should consult the clerk's office to determine whether a mailing address is listed in the register and should use that mailing address in preparing the lists and schedules.

Although the debtor is required to comply with Rule 1007(m), failure to do so does not invalidate the legal effect of any notice if the notice is mailed to an appropriate address of the governmental unit, even if the address used differs from the address stated in the register kept by the clerk under Rule 5003(e). In addition, if the notice is actually received by the governmental unit in time to enable it -- acting with reasonable diligence and allowing for appropriate means of communication between employees and departments of the governmental unit -- to participate in the

proceeding that is the subject of the notice, the debtor's failure to state an appropriate mailing address or to comply with Rule 1007(m) will not invalidate the legal effect of the notice.

Rule 2002. Notices to Creditors, Equity Security Holders, United States, and United States Trustee

****

(g) ~~ADDRESSES OF NOTICES.~~ NAMES AND ADDRESSES FOR NOTICES.

(1) *Addresses.* A notice required to be mailed under this rule to a creditor, equity security holder, or indenture trustee shall be addressed as such entity or an authorized agent ~~may direct~~ has directed in a filed request~~; otherwise,~~. If a request has not been filed, the notices shall be mailed to the address shown in the list of creditors or the schedule, whichever is filed later. If a different address is stated in a proof of claim duly filed, that address shall be used unless a notice of no dividend has been given.

(2) *Federal and State Governmental Units.* If the United States or the state in which the district is located has filed a statement designating a mailing address for the purpose of receiving notices in cases pending in the district, the clerk shall include the address in the register kept under Rule 5003(e), and the address shall be used for the purpose of mailing notices to the governmental unit under this rule. If in a particular case, the United States or the state files and serves on the debtor and the trustee a separate request to use a different name and mailing address for notices, all notices under this rule shall be addressed

as directed in the request. Any failure to comply with this paragraph shall not invalidate the legal effect of any notice that (1) is mailed to an appropriate address of the governmental unit, or (2) is actually received by the governmental unit in time to enable it, with reasonable diligence, to participate in the proceeding that is the subject of the notice.

****

(j) NOTICES TO THE UNITED STATES. Copies of notices required to be mailed to all creditors under this rule shall be mailed:

(1) in a chapter 11 reorganization case in which the Securities Exchange Commission has filed either a notice of appearance in the case or a written request to receive notices, to the Securities and Exchange Commission at any place the Commission ~~designates~~ has designated in the notice of appearance or the written request ~~, if the Commission has filed either a notice of appearance in the case or a written request to receive notices~~;

(2) in a commodity broker case, to the Commodity Futures Trading Commission at Washington, D.C.;

(3) in a chapter 11 case, to the District Director of Internal Revenue for the district in which the case is pending;

(4) if the papers filed in the case disclose a stock interest of the United States, to the Secretary of the Treasury at Washington, D.C.,; and

~~(4)~~ (5) if the papers in the case disclose a debt to the United States other than for taxes, to the United States attorney for the district in which the case is pending and to the department, agency, or instrumentality of the United States through which the debtor ~~became~~ is indebted. ~~; or if the filed papers disclose a stock interest of the United States, to the Secretary of the Treasury at Washington, D.C~~. The department, agency, or instrumentality shall be identified in the address of the notice mailed to the United States attorney.

COMMITTEE NOTE

Subdivision (g)(2) is added to provide a mechanism for the United States and the state in which the district is located, to designate mailing addresses for notice purposes. This information will be kept in a register in the clerk's office for debtors and lawyers to use in determining proper mailing addresses. See Rule 5003(e). This amendment, and the related amendments to Rules 1007 and 5003, should reduce delays that federal and state governmental units have experienced in routing notices to the appropriate officials in time to participate in the case effectively, and will assist debtors and others in identifying proper mailing addresses.

Under this rule, the United States and the state may designate a separate mailing address for each department, agency, or instrumentality

through which a debt is owed. For example, the United States may designate an address to be used for notice purposes when a debt is owed through the Small Business Administration, and a different address to be used when the debt is owed through the Department of Education.

Although the state may designate a mailing address to be included in the register kept under Rule 5003(e) -- including a separate address for each department, agency, or instrumentality of the state -- this rule does not allow the state to designate for inclusion in the register mailing addresses for municipalities or other local governmental units.

Whether or not the United States or the state has a designated mailing address listed in the register kept by the clerk, it may, in a particular case, file and serve on the debtor and the trustee a separate request to use a different name and mailing address for notices.

Subdivision (j) is amended to require that the address of any notice mailed to the United States attorney under Rule 2002(j) identify the particular department, agency or instrumentality through which the debtor is indebted to the United States. This requirement may be satisfied by including in the address either the name or an acronym commonly used to identify the department. For example, this requirement may be satisfied by addressing the notice to "United States Attorney (SBA)" if the debt is owed through the Small Business Administration. If the debtor is indebted to the United States through more than one department, agency or instrumentality, each should be identified in the address.

Other amendments to Rule 2002 are stylistic.

Rule 5003. Records Kept By the Clerk

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(e) *Register of Federal and State Government Mailing Addresses*. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a register that includes mailing addresses for notice purposes designated in statements filed under Rule 2002(g)(2) by the United States or the state in which the district is located. The clerk shall not be required to include in the register more than one mailing address for each department, agency, or instrumentality of the United States or the state, and shall not update the register more than once within any six-month period.

~~(e)~~ (f) *Other Books and Records of the Clerk*. The clerk shall also keep ~~such~~ any other books and records as may be required by the Director of the Administrative Office of the United States Courts.

COMMITTEE NOTE

Subdivision (e) is added to provide a source where debtors and their attorneys may go to determine whether the United States or the state in which the district is located has filed a statement under Rule 2002(g)(2) designating a mailing address for notice purposes. The register must be readily available to the public.

The register may include a separate mailing address for each department, agency, or instrumentality of the United States or the state, but may not include addresses of municipalities or other local governmental

units. See the committee note to the proposed amendments to Rule 2002(g).

Although it is important for the register to be kept current, debtors and their attorneys should be able to rely on mailing addresses listed in the register without the need to continuously inquire as to new or amended addresses. Therefore, the clerk is not permitted to update the register more than once in any six-month period.

To avoid unnecessary cost and burden on the clerk and to keep the register a reasonable length, the clerk is not required to include more than one mailing address for a particular federal or state department, agency, or instrumentality. This provision is flexible, however, in that the clerk has the discretion to include more than one address for a particular agency.

STATEMENT OF FINANCIAL AFFAIRS

[The following questions would be added to the Statement of Financial Affairs following question 15, and existing questions will have to be renumbered accordingly]

16. SPOUSES AND FORMER SPOUSES. List the name and social security number of the debtor's spouse and of any former spouse to whom the debtor had been married at any time within the six-year period immediately preceding the commencement of this case.

NAME SOCIAL SECURITY NUMBER

17. FORMER BUSINESSES. If the debtor is an individual, list the name and, if known, the federal taxpayer identification number of any business that the debtor managed or owned at any time within the six-year period immediately preceding the commencement of the case (do not list any business that the debtor currently manages or owns).

NAME OF BUSINESS TAXPAYER IDENTIFICATION NUMBER

[The following questions would be added to the Statement of Financial Affairs following question 21]

22. TAX CONSOLIDATION GROUP. List the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within the six-year period immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION TAXPAYER IDENTIFICATION NUMBER

23. PENSION FUNDS. List the name and federal taxpayer identification number of any pension fund to which the debtor has been responsible for contributing at any time within the six-year period immediately preceding the commencement of the case.

NAME OF PENSION FUND TAXPAYER IDENTIFICATION NUMBER

24. ENVIRONMENTAL INFORMATION.

NOTE: THE DEBTOR SHALL MAIL COPIES OF THE DEBTOR'S RESPONSE TO THIS QUESTION, TOGETHER WITH A COPY OF THE FIRST PAGE OF THIS STATEMENT OF FINANCIAL AFFAIRS, TO ANY GOVERNMENTAL UNIT [THAT IS NOT LISTED AS A CREDITOR IN THE LIST OR SCHEDULES FILED BY THE DEBTOR, BUT IS] LISTED BELOW IN THE DEBTOR'S RESPONSE TO THIS QUESTION.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to statutes or regulations regulating the cleanup of these substances.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law.

a. List the name and address of every site for which the debtor, within [five] years immediately preceding the commencement of the case, has been notified in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material within [five] years immediately preceding the commencement of the case. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party at any time within [five] years immediately preceding the commencement of the case. Indicate the name and address of the governmental unit that is or was a party to the proceeding, the docket number, and the status or disposition of the proceeding.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION

Item 9

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ALAN N. RESNICK, REPORTER

RE: BANKRUPTCY RULE 9020 - CONTEMPT

DATE: AUGUST 9, 1997

Bankruptcy Rule 9020, which governs contempt proceedings, provides as follows:

Rule 9020. Contempt Proceedings

(a) CONTEMPT COMMITTED IN PRESENCE OF BANKRUPTCY JUDGE. Contempt committed in the presence of a bankruptcy judge may be determined summarily by a bankruptcy judge. The order of contempt shall recite the facts and shall be signed by the bankruptcy judge and entered of record.

(b) OTHER CONTEMPT. Contempt committed in a case or proceeding pending before a bankruptcy judge, except when determined as provided in subdivision (a) of this rule, may be determined by the bankruptcy judge only after a hearing on notice. The notice shall be in writing, shall state the essential facts constituting the contempt charged and describe the contempt as criminal or civil and shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense. The notice may be given on the court's own initiative or on application of the United States attorney or by an attorney appointed by the court for that purpose. If the contempt charged involves disrespect to or criticism of a bankruptcy judge, that judge is disqualified from presiding at the hearing except with the consent of the person charged.

(c) SERVICE AND EFFECTIVE DATE OF ORDER; REVIEW. The clerk shall serve forthwith a copy of the order of contempt on the entity named therein. The order shall be effective 10 days after service of the order and shall have the same force and effect as an order of contempt entered by the district court unless, within the 10 day period, the entity named therein serves and files objections prepared in the manner provided in Rule 9033(b). If timely objections are filed, the order shall be reviewed as provided in Rule 9033.

(d) RIGHT TO JURY TRIAL. Nothing in this rule shall be construed to impair the right to jury trial whenever it otherwise exists.

In his letter of February 14, 1997, Judge A. Thomas Small requested that the Advisory Committee consider amending Rule 9020. A copy of his letter is attached. In particular, Judge Small believes that the provisions in Rule 9020(c) that delay for at least 10 days the effectiveness of a civil contempt order and that render the order subject to de novo review by the district court should be changed so that a bankruptcy judge's civil contempt order may be effective immediately and will be subject to only traditional appellate review. Judge Small writes that "the circuit courts have now recognized the bankruptcy court's civil contempt authority, and Rule 9020 is an unnecessary hinderance to the exercise of that power."

I agree with Judge Small that Rule 9020 should be amended. I suggest that the following key aspects of the rule be changed (among other more minor revisions):

(1) The rule should distinguish between civil and criminal contempt. With respect to civil contempt, the bankruptcy judge should have the power to issue an appropriate order, effective immediately and subject to traditional appellate review.

(2) With respect to criminal contempt, the rule should treat the proceeding in the same way that a non-core proceeding is conducted under Rule 9033, except that the bankruptcy judge should file a proposed order as well as proposed findings of fact and conclusions of law. To avoid challenges to the bankruptcy judge's

authority to enter an order of criminal contempt, I would suggest that the district judge enter the order [the current rule permits the bankruptcy judge to enter the order, subject to de novo review].

I offer the following draft of proposed amendments to Rule 9020 for the Committee's consideration at the September meeting:

Rule 9020. Contempt Proceedings

(a) CONTEMPT COMMITTED IN ~~PRESENCE OF~~ BANKRUPTCY JUDGE'S PRESENCE ~~JUDGE~~. A bankruptcy judge may determine summarily a contempt ~~Contempt~~ committed in the judge's presence ~~of a bankruptcy judge may be determined summarily by a bankruptcy judge~~. ~~The order of contempt shall recite the facts and shall be signed by the bankruptcy judge and entered of record.~~ Rule 9020(c) applies to the order of contempt.

~~(b) OTHER CONTEMPT. Contempt committed in a case or proceeding pending before a bankruptcy judge, except when determined as provided in subdivision (a) of this rule, may be determined by the bankruptcy judge only after a hearing on notice. The notice shall be in writing, shall state the essential facts constituting the contempt charged and describe the contempt as criminal or civil and shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense. The notice may be given on the court's own initiative or on application of the United States attorney or by an attorney appointed by the~~

~~court for that purpose. If the contempt charged involves disrespect to or criticism of a bankruptcy judge, that judge is disqualified from presiding at the hearing except with the consent of the person charged.~~

(b) OTHER CONTEMPT. Contempt committed in a case or proceeding pending before a bankruptcy judge, but not in the presence of a bankruptcy judge, may be determined only after a hearing on written notice allowing a reasonable time for preparation of the defense. Rule 9020(c) applies to the order of contempt.

(1) NOTICE. The notice of the hearing may be given on the court's own initiative or on application of the United States attorney, and may be served by the clerk, the United States attorney, or by an attorney appointed by the court for that purpose. The notice shall state the essential facts constituting the contempt charged, describe the contempt as criminal or civil, and state the time and place of the hearing.

(2) HEARING. Unless the district court withdraws the proceeding under 28 U.C.S § 157(d), a bankruptcy judge may preside at the hearing. If the contempt charged involves disrespect to or criticism of a bankruptcy judge, that judge is disqualified from presiding at the hearing except with the consent of the entity charged.

~~(c) SERVICE AND EFFECTIVE DATE OF ORDER; REVIEW. The~~

~~clerk shall serve forthwith a copy of the order of contempt on the entity named therein. The order shall be effective 10 days after service of the order and shall have the same force and effect as an order of contempt entered by the district court unless, within the 10 day period, the entity named therein serves and files objections prepared in the manner provided in Rule 9033(b). If timely objections are filed, the order shall be reviewed as provided in Rule 9033.~~

(c) ORDER AND REVIEW.

(1) CIVIL CONTEMPT. If the contempt is civil, the bankruptcy judge may issue an order of contempt. Upon entry of the order, the clerk shall serve, in the manner provided in Rule 7004, a copy of the order and notice of its entry on any entity held in contempt. Appellate review of the order is governed by Part VIII of these rules.

(2) CRIMINAL CONTEMPT. If the contempt is criminal,the bankruptcy judge may file a proposed order of contempt, including proposed findings of fact and conclusions of law. The clerk, in the manner provided in Rule 7004, shall serve forthwith on the entity charged a copy of the proposed order and a notice stating that the entity charged may file an objection within 10 days after the date of service. The clerk shall note the date of service on the docket. The district court, without further notice or hearing, may

issue the order of contempt as proposed, unless a timely objection to the proposed order is filed within the time and in the manner provided in Rule 9033(b) and (c). If a timely objection is filed, the district court shall review the proposed order as provided in Rule 9033(d).

(d) RIGHT TO JURY TRIAL. Nothing in this rule shall be construed to impair the right to jury trial whenever it otherwise exists. A bankruptcy judge may preside at a jury trial under this rule to the extent provided in 28 U.S.C. § 157(e).

COMMITTEE NOTE

This rule is amended to recognize that a bankruptcy judge may issue an appropriate order holding an entity in civil contempt. See, e.g., Matter of Terrebonne Fuel and Lube, Inc., 108 F.3d 609 (5th Cir. 1997); In re Hardy, 97 F.3d 1384 (11th Cir. 1996); In re Rainbow Magazine, Inc., 77 F.3d 278 (9th Cir. 1996). In contrast to the current rule, the amended rule permits a bankruptcy judge to issue an order of civil contempt that becomes effective immediately, whether the contempt is determined summarily because it is committed in the presence of the bankruptcy judge or is determined after a hearing under subdivision (b). The provision that delays the effect of a civil contempt order for 10 days is deleted. In addition, a civil contempt order is no longer subject to de novo review by the district court, but will be subject to traditional appellate review under 28 U.S.C. § 158.

The case law is less clear regarding a bankruptcy judge's power to hold a person in criminal contempt. See, e.g., In re Rigar, 3 F.3d 1174 (8th Cir. 1993) (upholding criminal contempt order entered by bankruptcy judge where order was stayed for 10 days to provide an opportunity object in district court); Matter of Hipp, Inc., 895 F.2d 1503, 1509 (5th Cir. 1990) (bankruptcy judge does not have power to punish for criminal contempt). Under the present rule, a bankruptcy judge's order of criminal contempt is not

effective for 10 days so that the defendant may file an objection in the manner provided in Rule 9033. The amendments make the procedures applicable to criminal contempt orders more consistent with non-core proceedings under Rule 9033. That is, the bankruptcy judge may preside at the hearing, but instead of issuing an order that is not effective for 10 days, the bankruptcy judge files a *proposed* order, including proposed findings of fact and conclusions of law, and, unless a timely objection is filed by the defendant, the district judge then enters the order as proposed 10 days later.

The rule is amended further to clarify that, where a right to trial by jury exists, the bankruptcy judge may preside at the trial only to the extent permitted under 28 U.S.C. 157(e), which was added as part of the Bankruptcy Reform Act of 1994.

Other amendments to this rule are stylistic or for the purpose of clarification.

Background and Discussion

The Bankruptcy Reform Act of 1978 added § 1481 to title 28 to govern jurisdiction of the bankruptcy court. Section 1481 provided that a bankruptcy court "may not ... punish a criminal contempt not committed in the presence of the judge of the court or warranting a punishment of imprisonment." To implement this provision, Rule 9020 (then titled "Criminal Contempt Proceedings") was promulgated in 1983 (the rule was modeled after former Rule 902).

As promulgated in 1983, Rule 9020 dealt only with criminal contempt. In essence, it provided that a bankruptcy judge may punish a person for criminal contempt (without any delay in the effectiveness of the order), but that if the bankruptcy court thought that it did not have the power to punish the contempt, "the judge may certify the facts to the district court." A copy

of the 1983 version of Rule 9020 is attached for your information.

Section 1481 was repealed in 1984 and, since then, there has been no statutory provision that specifically mentions the powers of a bankruptcy judge regarding contempt. In view of this void, Rule 9020 was changed to its present form in 1987 [the rule was amended again in 1991, but only for a minor stylistic change]. As noted by Judge Small, the present rule delays the effectiveness of any contempt order (whether civil or criminal) for at least 10 days and provides for de novo review by the district court. The reason for this change is reflected in the 1987 Committee Note, which includes the following:

> "The United States Bankruptcy Courts, as constituted under the Bankruptcy Reform Act of 1978, were courts of law, equity, and admiralty with an inherent contempt power, but former 28 U.S.C. § 1481 restricted the criminal contempt power of bankruptcy judges. Under the 1984 amendments, bankruptcy judges are judicial officers of the district court, 28 U.S.C. § 151, 152(a)(1). **There are no decisions by the court of appeals concerning the authority of bankruptcy judges to punish for either civil or criminal contempt under the 1984 amendments. This rule, as amended, recognizes that bankruptcy judges may not have the power to punish for contempt.**"

Since 1987, courts have widely recognized the inherent power of a bankruptcy judge to issue a civil contempt order. Although an early decision of the Ninth Circuit, In re Sequoia Auto Brokers, Ltd., 87 F.2d 1281 (9th Cir. 1987), held that a bankruptcy judge does not have the inherent power to hold a person in contempt, the Ninth Circuit has since changed its position. See In re Rainbow Magazine, Inc., 77 F.3d 278 (9th Cir. 1996) (the court of appeals commented that its decision in

Sequoia has been superseded by subsequent developments).

Most recently, the Fifth Circuit held that a bankruptcy judge has inherent power to issue a civil contempt order. In Matter of Terrebonne Fuel and Lube, Inc., 108 F.3d 609 (5th Cir. 1997) (copy attached), the court of appeals upheld the bankruptcy judge's power to hold a creditor in civil contempt for violating a discharge injunction when it attempted to collect on a preconfirmation debt in state court. The court of appeals agreed with "the majority of circuits which have addressed this issue and find that a bankruptcy court's inherent power to conduct civil contempt proceedings and issue orders in accordance with the outcome of those proceedings lies in 11 U.S.C. § 105." The court then quoted § 105(a) of the Code, which provides:

> "(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or prevent an abuse of process."

Other decisions recognizing the inherent civil contempt power of a bankruptcy judge include, among others, In re Rainbow Magazine, Inc., 77 F.3d 278 (9th Cir. 1996); In re Hardy, 97 F.3d 1384 (11th Cir. 1996); In re Skinner, 917 F.2d 444 (10th Cir. 1990).

In view of the post-1987 judicial decisions that recognize the bankruptcy judge's power to hold a person in civil contempt (a recognition that did not exist when the rule was amended in

1987), I think that it is appropriate for Rule 9020 to be amended to permit the bankruptcy court to issue civil contempt orders that (a) are effective immediately, and (b) are not subject to de novo review.

On the other hand, courts have not widely recognized a bankruptcy judge's power to hold a person in criminal contempt. In Matter of Terrebonne Fuel and Lube, Inc., 108 F.3d 609, 613 n.3 (5th Cir. 1997), the court noted in a footnote that "[a]lthough we find that bankruptcy judges can find a party in civil contempt, we must point out that bankruptcy courts lack the power to hold persons in criminal contempt." See also, Matter of Hipp, Inc., 895 F.2d 1503 (5th Cir. 1990). Compare In re Rigar, 3 F.3d 1174 (8th Cir. 1993), which upheld a criminal contempt order that was stayed for 10 days to give the defendant the opportunity to object in accordance with Rule 9033(b).

There is an inconsistency between the treatment of criminal contempt under present Rule 9020, and the treatment of non-core matters under Rule 9033. Under Rule 9020, the bankruptcy court enters a contempt order, but it is not effective for 10 days so that objections in accordance with Rule 9033(b) may be filed. In contrast, under Rule 9033 and 28 U.S.C. § 157(c)(1), a bankruptcy court in a non-core matter may only submit proposed findings of fact and conclusions of law (rather than enter an order), and the district court enters any order. I suggest that the Committee consider amending Rule 9020 to be more consistent with Rule 9033 when the proceeding involves criminal contempt. That is, the

bankruptcy judge should only submit a proposed order, including proposed findings of fact and conclusions of law. Any order of criminal contempt should be entered by the district court. This amendment would not significantly change the current procedures, but should avoid any jurisdictional challenge to the order of criminal contempt based on the lack of a bankruptcy judge's criminal contempt powers.

United States Bankruptcy Court
Eastern District of North Carolina

A. Thomas Small
Chief Judge
919-856-4603
Fax 919-856-4693

Post Office Drawer 2747
Room 220
Century Station
300 Fayetteville Street Mall
Raleigh, North Carolina 27602

February 14, 1997

The Honorable Adrian G. Duplantier
Chair, Advisory Committee
on Bankruptcy Rules
Senior U.S. District Judge
Eastern District of Louisiana
United States Courthouse
500 Camp Street
New Orleans, LA 70130

Dear Adrian:

I am writing to call your attention to a problem with Bankruptcy Rule 9020. Specifically, the problem is that Rule 9020(c) provides that contempt orders entered by bankruptcy judges are not effective for 10 days, and if objections are filed, are subject to de novo review.

If a bankruptcy judge enters a coercive civil contempt order, e.g., to turn over the keys or pay a fine of $100 per day, the order is, at best, not effective for 10 days, and at worst, not effective at all until it has been reviewed de novo by the district court.

Rule 9020 was probably adopted at a time when there was considerable doubt as to the contempt authority of bankruptcy judges, and the Rule was an attempt to expand that authority. However, the circuit courts have now recognized the bankruptcy court's civil contempt authority, and Rule 9020 is an unnecessary hindrance to the exercise of that power.

I hope you agree that this issue merits the attention of the Committee.

Very truly yours,

Tom

A. Thomas Small

ATS:lw

cc: Peter G. McCabe
Alan N. Resnick

1983 Version of Rule 9020

Advisory Committee Note

This rule provides the procedure for invoking the court's power under § 107 of the Code.

Rule 9019.

COMPROMISE AND ARBITRATION

(a) Compromise. On motion by the trustee and after a hearing on notice to creditors, the debtor and indenture trustees as provided in Rule 2002(a) and to such other persons as the court may designate, the court may approve a compromise or settlement.

(b) Authority To Compromise or Settle Controversies Within Classes. After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice.

(c) Arbitration. On stipulation of the parties to any controversy affecting the estate the court may authorize the matter to be submitted to final and binding arbitration.

Advisory Committee Note

Subdivisions (a) and (c) of this rule are essentially the same as the provisions of former Bankruptcy Rule 919 and subdivision (b) is the same as former Rule 8-514(b), which was applicable to railroad reorganizations. Subdivision (b) permits the court to deal efficiently with a case in which there may be a large number of settlements.

Rule 9020.

CRIMINAL CONTEMPT PROCEEDINGS

(a) Procedure.

(1) Summary Disposition. Criminal contempt which may be punished by a bankruptcy judge acting pursuant to 28 U.S.C. § 1481 may be punished summarily by a bankruptcy judge if he saw or heard the conduct constituting the contempt and if it was committed in his actual presence.

The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(2) Disposition After a Hearing. Criminal contempt which may be punished by a bankruptcy judge acting pursuant to 28 U.S.C. § 1481, except when determined as provided in paragraph (1) of this subdivision, may be punished by the bankruptcy judge only after a hearing on notice. The notice shall be in writing, shall state the essential facts constituting the criminal contempt charged and describe the contempt as criminal and shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense. The notice may be given on the court's own initiative or on application of the United States attorney or by an attorney appointed by the court for that purpose. If the contempt charged involves disrespect to or criticism of a bankruptcy judge, that judge is disqualified from presiding at the hearing except with the consent of the person charged.

(3) Certification to District Court. If it appears to a bankruptcy judge that criminal contempt has occurred but the court is without power under 28 U.S.C. § 1481, to punish or to impose the appropriate punishment for the criminal contempt the judge may certify the facts to the district court.

(b) Right to Jury Trial. Nothing in this rule shall be construed to impair the right to jury trial whenever it otherwise exists.

Advisory Committee Note

Section 1481 of Title 28 provides that a bankruptcy court "may not . . . punish a criminal contempt not committed in the presence of the judge of the court or warranting a punishment of imprisonment." Rule 9020 does not enlarge the power of bankruptcy courts.

Subdivision (a) is adapted from former Bankruptcy Rule 920 and Rule 42 F. R. Crim. P. Paragraph (1) of the subdivision permits summary imposition of punishment for contempt if the conduct is in the presence of the court and is of such nature that the conduct "obstruct[s] the administration of justice." See 18 U.S.C. § 401(a). Cases interpreting Rule 42(a) F. R. Crim. P. have held that when criminal contempt is in question summary disposition should be the exception: summary disposition should be reserved for situations where it is necessary to protect the judicial institution. 3 Wright,

Federal Practice & Procedure—Criminal § 707 (1969). Those cases are equally pertinent to the application of this rule and, therefore, contemptuous conduct in the presence of the judge may often be punished only after the notice and hearing requirements of subdivision (b) are satisfied.

If the bankruptcy court concludes it is without power to punish or to impose the proper punishment for conduct which constitutes contempt, subdivision (a)(3) authorizes the bankruptcy court to certify the matter to the district court.

Subdivision (b) makes clear that when a person has a constitutional or statutory right to a jury trial in a criminal contempt matter this rule in no way affects that right. See Frank v. United States, 395 U.S. 147 (1969).

The Federal Rules of Civil Procedure do not specifically provide the procedure for the imposition of civil contempt sanctions. The decisional law governing the procedure for imposition of civil sanctions by the district courts will be equally applicable to the bankruptcy courts.

Rule 9021.

ENTRY OF JUDGMENT; DISTRICT COURT RECORD OF JUDGMENT

(a) Original Entry of Judgment of Bankruptcy Court. Subject to the provisions of Rule 54(b) F. R. Civ. P.: (1) on a general verdict of a jury, or on a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign and enter the judgment without awaiting any direction by the court; (2) on a decision by the court granting other relief, or on a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment entered in an adversary proceeding or contested matter shall be set forth on a separate document. A judgment is effective when entered as provided in Rule 5003. Entry of the judgment shall not be delayed for the taxing of costs.

(b) District Court Record of Judgments of Bankruptcy Courts. On certification by the clerk of the bankruptcy court to the clerk of the district court of a copy of a judgment of the bankruptcy court for the recovery of money or property, the clerk

Citation Found Document Rank 1 of 1 Database
108 F.3d 609 CTA
Bankr. L. Rep. P 77,327, 11 Tex.Bankr.Ct.Rep. 192
(Cite as: 108 F.3d 609)

In the Matter of TERREBONNE FUEL AND LUBE, INCORPORATED, Debtor.
PLACID REFINING COMPANY, Appellant-Cross-Appellee,
v.
TERREBONNE FUEL AND LUBE, INC., Appellee-Cross-Appellant.
No. 96-30508.
United States Court of Appeals,
Fifth Circuit.
March 27, 1997.

Bankruptcy court held creditor in contempt for violating Chapter 11 debtor's discharge injunction by pursuing preconfirmation debt in state court. On appeal following remand, 158 B.R. 71, 20 F.3d 1169, the United States District Court for the Eastern District of Louisiana, A.J. McNamara, J., 194 B.R. 1002, upheld award, and creditor appealed. The Court of Appeals held that: (1) contempt proceedings were civil, as opposed to criminal; (2) bankruptcy court had authority to conduct civil contempt proceedings; and (3) creditor was not denied due process in contempt proceedings.

Affirmed.

See also 681 So.2d 1292.

[1] CONTEMPT 3
93k3
Contempt proceedings are classified as either civil or criminal: if purpose of order is to punish contemnor or to vindicate authority of court, order is viewed as "criminal"; if, on other hand, purpose of contempt order is to coerce compliance with order or to compensate another party for contemnor's violation, order is considered to be "civil."
See publication Words and Phrases for other judicial constructions and definitions.

[1] CONTEMPT 4
93k4
Contempt proceedings are classified as either civil or criminal: if purpose of order is to punish contemnor or to vindicate authority of court, order is viewed as "criminal"; if, on other hand, purpose of contempt order is to coerce compliance with order or to compensate another party for contemnor's violation, order is considered to be "civil."
See publication Words and Phrases for other judicial constructions and definitions.

[2] BANKRUPTCY 2465.1
51k2465.1
Contempt proceedings against creditor for pursuing preconfirmation reconventional demand in state court, based upon preconfirmation claim against Chapter 11 debtor, in violation of discharge injunction were "civil," rather than "criminal" in nature, where purpose of sanction was to compensate debtor

for costs and expenses in defending reconventional demand.
See publication Words and Phrases for other judicial constructions and definitions.

[3] BANKRUPTCY⚷ 2134
51k2134
Bankruptcy courts have statutory authority to conduct civil contempt proceedings. Bankr.Code, 11 U.S.C.A. § 105.

[4] BANKRUPTCY⚷ 2134
51k2134
Bankruptcy court's power to conduct civil contempt proceedings and issue orders in accordance with outcome of those proceedings lies in bankruptcy court general powers provision. Bankr.Code, 11 U.S.C.A. § 105.

[5] BANKRUPTCY⚷ 2126
51k2126
Bankruptcy court can issue any order, including civil contempt order, necessary or appropriate to carry out Bankruptcy Code provisions. Bankr.Code, 11 U.S.C.A. § 105.

[5] BANKRUPTCY⚷ 2134
51k2134
Bankruptcy court can issue any order, including civil contempt order, necessary or appropriate to carry out Bankruptcy Code provisions. Bankr.Code, 11 U.S.C.A. § 105.

[6] BANKRUPTCY⚷ 2134
51k2134
Bankruptcy courts lack power to hold persons in criminal contempt. Bankr.Code, 11 U.S.C.A. § 105.

[7] BANKRUPTCY⚷ 2187
51k2187
Bankruptcy court's decision to impose sanctions is discretionary.

[8] BANKRUPTCY⚷ 3784
51k3784
Court of Appeals reviews exercise of bankruptcy court power to impose sanctions for abuse of discretion.

[9] BANKRUPTCY⚷ 2187
51k2187
Automatic stay ended upon Chapter 11 plan confirmation, so that bankruptcy court properly sanctioned creditor under Chapter 11 plan confirmation provision, rather than under automatic stay. Bankr.Code, 11 U.S.C.A. §§ 362, 1141.

[9] BANKRUPTCY⚷ 2464

51k2464
Automatic stay ended upon Chapter 11 plan confirmation, so that bankruptcy court properly sanctioned creditor under Chapter 11 plan confirmation provision, rather than under automatic stay. Bankr.Code, 11 U.S.C.A. §§ 362, 1141.

[10] BANKRUPTCY⚷ 2465.3
51k2465.3
Creditor was not denied due process in bankruptcy court contempt proceedings arising from creditor's pursuit of state court reconventional demand against Chapter 11 debtor for preconfirmation debts, in violation of discharge injunction, though bankruptcy court did not strictly follow bankruptcy contempt proceeding rule; creditor received constitutionally required notice and opportunity to be heard before being sanctioned. U.S.C.A. Const.Amend. 5; Bankr.Code, 11 U.S.C.A. § 1141; Fed.Rules Bankr.Proc.Rule 9020, 11 U.S.C.A.

[10] CONSTITUTIONAL LAW⚷ 306(4)
92k306(4)
Creditor was not denied due process in bankruptcy court contempt proceedings arising from creditor's pursuit of state court reconventional demand against Chapter 11 debtor for preconfirmation debts, in violation of discharge injunction, though bankruptcy court did not strictly follow bankruptcy contempt proceeding rule; creditor received constitutionally required notice and opportunity to be heard before being sanctioned. U.S.C.A. Const.Amend. 5; Bankr.Code, 11 U.S.C.A. § 1141; Fed.Rules Bankr.Proc.Rule 9020, 11 U.S.C.A.

***610** James G. Burke, Jr., Robert D. Hoffman, Jr., Burke & Mayer, New Orleans, LA, for Appellant-Cross-Appellee.

C. Berwick Duval, II, Patricia P. Reeves, Duval, Funderburk, Sundbery & Lovell, Houma, LA, for Appellee-Cross-Appellant.

Appeals from the United States District Court for the Eastern District of Louisiana.

Before REYNALDO G. GARZA, SMITH and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:

Placid Refining Company and Terrebonne Fuel and Lube have been engaged in an eleven-year battle originating from a fuel purchase agreement between them. Although a number of legal issues have been presented to both state and federal courts over the years, presently before this court is an appeal from a bankruptcy court's order finding Placid Refining Company in contempt ***611** for violating a post-confirmation injunction against bringing actions stemming from pre-confirmation debts.

Background

As previously recognized by the many courts which have addressed various issues in this action, the procedural history of this case is a tangled one. It all started on April 28, 1985, when Terrebonne Fuel and Lube, Inc. ("Terrebonne"), a wholesale fuel distributor, entered into a diesel fuel purchase agreement with Placid Refining Company ("Placid"), whereby Placid agreed to sell Terrebonne up to 50,000 barrels of diesel fuel per month on credit with payments be made

within 65 days of shipment. This agreement was for a term of one year. Placid secured Terrebonne's commitment with three separate security agreements consisting of: 1) a chattel mortgage on Terrebonne's inventory; 2) assignment of Terrebonne's accounts receivable; and 3) signatory rights on Terrebonne's bank account. These three agreements, collectively, acted as collateral. In order for Terrebonne to purchase the diesel it had to maintain and certify that 85% of the total certified value of this combined collateral exceeded the sum of its existing debt to Placid plus the price of the diesel to be purchased. Terrebonne made such certifications through borrowing base reports that were submitted weekly to Placid.

According to Placid, at the expiration of the agreement, Terrebonne owed it over $1 million of which $500,000 was past due. Placid contends that when it tried to exercise the lien against Terrebonne's bank account, Terrebonne sought protection under Chapter 11. Terrebonne did, in fact, file for Chapter 11 on May 1, 1986. On April 16, 1987, the bankruptcy court, over Placid's objections, confirmed Terrebonne's proposed reorganization plan which provided for payment of Placid's debt over five (5) years. On April 24, 1987, three days before the order of confirmation became final, Terrebonne filed an equitable subordination complaint against Placid alleging that Placid had forced it into bankruptcy by not delivering the quantities of fuel provided for in the agreement. Placid moved to dismiss this complaint on the grounds of res judicata.

On June 29, 1989, the bankruptcy court dismissed Terrebonne's complaint holding that it failed to state a claim for equitable subordination and because the matters raised therein were not "core" proceedings. Thus, the bankruptcy court declined to exercise jurisdiction over the claim. No appeal was taken from this ruling. [FN1]

> FN1. We subsequently noted that the bankruptcy court erred in determining that Terrebonne's claims against Placid were not "core" proceedings. See In re Terrebonne Fuel and Lube, Inc., No. 93-3553 at p. 6, 29 F.3d 626 (5th Cir. April 4, 1994). However, we refused to re-visit that holding then and we refuse to re-visit that holding now since neither party appealed from that ruling.

Following the refusal of the bankruptcy court to exercise jurisdiction over what it viewed as a breach of contract claim arising under state law, Terrebonne brought its action in Louisiana state court. Placid reasserted its res judicata claim arguing that the reorganization plan was final and therefore barred Terrebonne's state claim. Placid then sought leave to file a reconventional demand, a pleading identical to a counter claim, alleging that Terrebonne had over-inflated its excess positive collateral in the weekly base borrowing reports. Placid sought damages for, inter alia, fees and expenses incurred in the bankruptcy proceeding. Terrebonne objected to Placid's request to file this reconventional demand on numerous grounds, but the state court granted Placid's request.

In response to the filing of this reconventional demand, Terrebonne went to bankruptcy court on February 16, 1993, seeking to hold Placid in contempt for seeking damages from pre-confirmation actions in state court. Placid, in

response, asked the court to order Terrebonne to dismiss its state court claims, again, on res judicata grounds. On March 22, 1993, the bankruptcy court signed its order holding Placid in contempt and ordered Terrebonne to submit evidence of the cost and expense it incurred in the matter, stating that it would designate the amount of sanctions after submission of this information. In the meantime, Placid, believing ***612** to be in compliance with the contempt order, moved the state court for leave to strike all references to pre-confirmation damages from its reconventional demand and informed the state court that the only damages it was seeking were those that arose post-confirmation. In addressing Placid's response requesting a dismissal on a res judicata basis, the bankruptcy court refused to entertain Placid's request on the grounds that the matter was neither a "core" proceeding nor "related to" the bankruptcy case. Although Placid appealed this ruling on March 24, 1993, it did not obtain a stay of the bankruptcy court's order pending appeal.

The state court matter went to trial and on March 29, 1993. At the conclusion of this trial, a judgment in favor of Terrebonne was returned in the amount of $500,000. Placid filed a suspensive appeal to the state court proceeding on May 5, 1993. Cognizant of the state court's final judgment on the merits, the district court dismissed as moot (on res judicata grounds) Placid's appeal of the bankruptcy court decision. We subsequently affirmed the district court. See In re Terrebonne Fuel and Lube, Inc., No. 93-3553 at p. 6 (5th Cir. April 4, 1994).

In response to Placid's pursuit of a suspensive appeal in state court [FN2], Terrebonne filed a second motion in bankruptcy court to hold Placid in contempt for continuing to prosecute a claim of damages arising out of pre-confirmation conduct. After extensive discovery and a hearing on the merits held on January 7, 1994, the bankruptcy court entered an order holding Placid in contempt and awarded Terrebonne $18,357.48 for costs and fees associated with the defense of the reconventional demand. The district court affirmed this decision, Placid timely filed its notice of appeal, and Terrebonne filed its notice of cross appeal requesting the court to increase the sanction imposed on Placid for having to defend itself against Placid's appeal.

> FN2. It appears as though the state court appeals are complete. The intermediate court reversed the trial court, holding that Terrebonne's claim was barred by res judicata, but it was in turn reversed by the Louisiana Supreme Court. See Terrebonne Fuel & Lube, Inc. v. Placid Refining Co., 666 So.2d 624 (La.1996). On remand to address the merits, the intermediate court rendered judgment in favor of Placid on its reconventional demand. See Terrebonne Fuel & Lube, Inc. v. Placid Refining Co., 681 So.2d 1292 (La.App. 4 Cir.1996), writ denied, --- So.2d ----, 1996 WL 733100 (La., December 13, 1996).

Analysis

The thrust of Placid's argument is that, notwithstanding the fact that the bankruptcy court committed error in 1989 by dismissing Terrebonne's adversary complaint as a "non-core" proceeding, its actions were not violative of any order, standing or specific, of the bankruptcy court. However, before we reach

the "core" of Placid's argument we must first address one very important issue. We must determine whether the bankruptcy court had the authority to conduct contempt proceedings in this case. If we conclude that the court did have authority then we can review the substantive issues addressing the exercise of that authority raised by both Placid and Terrebonne.

I. Contempt proceedings

[1][2] Contempt proceedings are classified as either civil or criminal, depending on their primary purpose. Lamar Financial Corp. v. Adams, 918 F.2d 564, 566 (5th Cir.1990). If the purpose of the order is to punish the party whose conduct is in question or to vindicate the authority of the court, the order is viewed as criminal. Id. If, on the other hand, the purpose of the contempt order is to coerce compliance with a court order or to compensate another party for the contemnor's violation, the order is considered to be civil. Id. We are convinced that the contempt proceedings in this case were civil in nature, as the clear purpose of the sanction imposed upon Placid was to compensate Terrebonne for the costs and expenses in defending Placid's reconventional demand.

[3] While we have not yet specifically addressed the issue of whether the bankruptcy courts have the statutory authority to conduct civil contempt proceedings, many other Circuits have. In Re Walters, 868 F.2d 665, 669 (4th Cir.1989) ("A court of bankruptcy has authority [under § 105] to ***613** issue any order necessary or appropriate to carry out the provisions of the bankruptcy code."); In Re Rainbow Magazine, Inc., 77 F.3d 278, 284 (9th Cir.1996) ("There can be little doubt that bankruptcy courts have the inherent power to sanction vexatious conduct [under § 105]."); In Re Skinner, 917 F.2d 444, 447 (10th Cir.1990) (holding that Congress granted bankruptcy courts civil contempt power under 11 U.S.C. § 105.); In Re Hardy, 97 F.3d 1384, 1389 (11th Cir.1996) ("Section 105 grants statutory contempt powers in the bankruptcy context."); See also In Re Power Recovery Systems, Inc., 950 F.2d 798, 802 (1st Cir.1991) ("Bankruptcy Rule 9020(b) specifically provides that a bankruptcy court may issue an order of contempt if proper notice of procedures are given.").

[4][5][6] We agree with our brethren in their ultimate determination. Moreover, we assent with the majority of the circuits which have addressed this issue and find that a bankruptcy court's power to conduct civil contempt proceedings and issue orders in accordance with the outcome of those proceedings lies in 11 U.S.C. § 105. This section provides in pertinent part:

> (a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or prevent an abuse of process.

The language of this provision is unambiguous. Reading it under its plain meaning, we conclude that a bankruptcy court can issue any order, including a civil contempt order, necessary or appropriate to carry out the provisions of the bankruptcy code. [FN3] We find that an order, such as the one entered by the bankruptcy court, which compensates a debtor for damages suffered as a result of a creditor's violation of a post-confirmation injunction under 11

U.S.C. § 1141, was both necessary and appropriate to carry out the provisions of the bankruptcy code.

> FN3. Although we find that bankruptcy judge's can find a party in civil contempt, we must point out that bankruptcy courts lack the power to hold persons in criminal contempt. See Matter of Hipp, Inc., 895 F.2d 1503, 1509 (5th Cir.1990).

II. Issues raised by the parties

[7][8] In light of this finding, we now summarily address the substantive issues in the case. Although the bankruptcy appellate process makes this court the second level of review, we perform the identical function as the district court. We review a bankruptcy court's finding of fact for clear error, see Matter of Haber Oil Co., 12 F.3d 426, 434 (5th Cir.1994), and decide issues of law de novo. Matter of Oxford Management, Inc., 4 F.3d 1329, 1333 (5th Cir.1993). Where the district court has affirmed the bankruptcy court's factual findings, we will only reverse if left with a firm conviction that error has been committed. See Id. The bankruptcy court's decision to impose sanctions is discretionary, therefore we review the exercise of this power for abuse of discretion. See Shipes v. Trinity Indus., 987 F.2d 311, 323 (5th Cir.), cert. denied, 510 U.S. 991, 114 S.Ct. 548, 126 L.Ed.2d 450 (1993).

Given the facts briefed on appeal, the facts in the record, oral arguments, and an adequately prepared opinion by the district court, we find that the issues raised by both Placid and Terrebonne do not merit prolonged discussion.

[9] We find that appellant's contention that the bankruptcy court erred in imposing sanctions under 11 U.S.C. § 362(h) is inapplicable to the case at hand. The automatic stay under § 362 terminated upon confirmation of the 1987 plan of reorganization. Since Placid did not file its state reconventional demand until 1993, its claim was governed under 11 U.S.C. § 1141, the post-confirmation discharge injunction. Hence, § 362 is inapposite and the bankruptcy court correctly sanctioned Placid under § 1141.

[10] We find that the lower court was correct in finding that Placid was not denied due process under Bankruptcy Rule 9020. Although the bankruptcy court did not strictly follow this rule, Placid was given the constitutionally ***614** required notice and an opportunity to be heard before being sanctioned. See International Union, United Mine Workers of America v. Bagwell, 512 U.S. 821, ---- - ----, 114 S.Ct. 2552, 2557-2558, 129 L.Ed.2d 642 (1994).

We find that the lower court did not abuse its discretion in actually holding Placid in contempt.

Finally, we deny Terrebonne's request for an increase in the sanctions for having to pursue this matter on appeal.

Conclusion

Based on the foregoing reasons, the order of the bankruptcy court holding Placid in contempt is hereby AFFIRMED. Furthermore, Terrebonne's request in its cross-appeal that the amount of sanctions be increased is DENIED.

END OF DOCUMENT

Item 10

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ALAN N. RESNICK, REPORTER

RE: BANKRUPTCY RULES 4003(b) AND 1017(e)(1) -- EXTENSIONS OF TIME

DATE: August 6, 1997

RULE 4003(b)

Bankruptcy Rule 4003(b) imposes a 30-day time limit for filing an objection to the debtor's list of property claimed as exempt "unless, within such period, further time is granted by the court."

Several courts have construed this phrase to mean that a bankruptcy court has no power to extend the 30-day period after it has expired, whether or not a timely motion for an extension has been filed within the 30-day period. Most recently, the Court of Appeals for the Sixth Circuit in In re Laurain (copy enclosed) held that the bankruptcy court lost jurisdiction to rule on a timely-filed request for an extension when it failed to rule within the 30-day period. In doing so, the Sixth Circuit followed the decisions of two other circuits that held that a bankruptcy court has no power to grant an extension after the 30-day period has expired. See In re Stoulig, 45 F.3d 957 (5th Cir. 1995); In re Brayshaw, 912 F.2d 1255 (10th Cir. 1990).

Chief United States Bankruptcy Judge Steven W. Rhodes (E.D. Mich.), in his letter to Judge Paul Mannes dated June 4, 1997, (copy enclosed) has requested that the Advisory Committee consider amending Rule 4003(b) so that the 30-day time limit may be extended if the request for an extension is filed within the

30-day period, regardless of when the court rules on the request.

If the Committee decides to amend Rule 4003(b) as suggested by Judge Rhodes, I suggest that the rule be amended as follows:

Rule 4003. Exemptions

****

(b) OBJECTIONS TO CLAIM OF EXEMPTIONS. The trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after ~~the conclusion of~~ the meeting of creditors held ~~pursuant to Rule 2003(a)~~ under § 341(a) is concluded or within 30 days after ~~the filing of~~ any amendment to the list or supplemental schedules is filed, whichever is later. ~~unless, within such period, further time is granted by the court~~. The court for cause may extend the time for filing objections if, before the 30-day period expires, the trustee or a creditor files a request for an extension. Copies of the objections shall be delivered or mailed to the trustee, ~~and to~~ the person filing the list, and the attorney for ~~such~~ that person.

****

COMMITTEE NOTE

This rule is amended to permit the court to grant a timely request for an extension of time to file objections to the list of claimed exemptions, whether the court rules on the request before or after the expiration of the 30-day period. The purpose of this amendment is to avoid the harshness of the present rule which has been construed to deprive a bankruptcy court of jurisdiction to grant a timely request for an extension if it has failed to rule on the request within the 30-day period. See In re Laurain, __ F.3d __ (6th Cir. 1997); In re Stoulig, 45 F.3d 957 (5th

Cir. 1995); In re Brayshaw, 912 F.2d 1255 (10th Cir. 1990). The amendment also clarifies that the extension may be granted only for cause.

Other amendments are stylistic.

RULE 1017(e)(1)

Judge Duplantier has asked me to review the rules to determine whether there are any other provisions -- similar to Rule 4003(b) -- that deprive the court of the power to grant a timely request for an extension of time due to the court's failure to rule on the request before the time has expired. I found one.

Rule 1017(e)(1) governs the procedure for a United States trustee's motion to dismiss a chapter 7 case for "substantial abuse" under § 707(b). The rule provides that the United States trustee may file the motion not later than 60 days after the first date set for the meeting of creditors "unless, before such time has expired, the court for cause extends the time for filing the motion."

The Committee should consider the following amendments to Rule 1017(e)(1):

Rule 1017. Dismissal or Conversion of Case; Suspension

****

(e) DISMISSAL OF INDIVIDUAL DEBTOR'S CHAPTER 7 CASE FOR SUBSTANTIAL ABUSE. An individual debtor's case may be dismissed for substantial abuse ~~pursuant to~~ under § 707(b) only on motion by the United States trustee or on the

court's own motion and after a hearing on notice to the debtor, the trustee, the United States trustee, and ~~such~~ any other ~~parties in interest~~ entities as the court directs.

(1) The United States trustee may not file a motion to dismiss for substantial abuse ~~A motion by the United States trustee shall be filed no~~ later than 60 days ~~following~~ after the first date set for the meeting of creditors ~~held pursuant to~~ under § 341(a), unless, on request filed by the United States trustee before ~~such~~ the time has expired, the court for cause extends the time for filing the motion to dismiss. The movant shall set forth in the motion ~~The motion shall advise the debtor of~~ all matters to be submitted to the court for its consideration at the hearing.

****

COMMITTEE NOTE

This rule is amended to permit the court to grant a timely request filed by the United States trustee for an extension of time to file a motion to dismiss a chapter 7 case under § 707(b), whether the court rules on the request before or after the expiration of the 60-day period. Other amendments are stylistic.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SUITE 1800
211 W. FORT STREET
DETROIT, MICHIGAN 48226

OFFICE OF
STEVEN W. RHODES
CHIEF UNITED STATES BANKRUPTCY JUDGE

(313) 234-0020

June 4, 1997

Honorable Paul Mannes
Chief U.S. Bankruptcy Judge
385A United States Courthouse
6500 Cherrywood Lane
Greenbelt, Maryland 20770

Dear Judge Mannes:

Enclosed please find a decision from the United States Court of Appeals for the Sixth Circuit in the case of In re Laurain. The court held that the bankruptcy court did not have jurisdiction to enter an order extending the time to object to an exemption after the 30-day time period under Bankruptcy Rule 4003(b). The court reasoned that this result is required by the plain language of the rule.

I request that your Bankruptcy Rules Advisory Committee consider amending this rule such that the only explicit deadline is that a motion to extend must be filed within the 30 days. As the rule is written and applied in In re Laurain, there can be severe consequences to creditors if a judge is not available to consider a last minute request to extend the objection deadline.

Thank you for your consideration.

Sincerely,

Steven W. Rhodes

Enclosure

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 24

ELECTRONIC CITATION: 1997 FED App. 0155P (6th Cir.)
File Name: 97a0155p.06

No. 96-5093

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In re: VICTORIA JOHNSTON LAURAIN,

Debtor.

DAVID G. ROGERS, Trustee,
Plaintiff-Appellee,

v.

VICTORIA JOHNSTON LAURAIN,
Defendant-Appellant.

ON APPEAL from the United States District Court for the Middle District of Tennessee

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Decided and Filed May 15, 1997

Before: KENNEDY, CONTIE, and NORRIS, Circuit Judges.

KENNEDY, J., delivered the opinion of the court, in which NORRIS, J., joined. CONTIE, J. (pp. 11-17), delivered a separate dissenting opinion.

OPINION

KENNEDY, Circuit Judge. This appeal presents an issue of first impression in this Circuit: Does a bankruptcy court's failure to rule on a timely filed FED. R. BANKR. P. 4003(b) motion for an extension of time to file objections to a claimed exemption of property from the bankrupt estate divest the bankruptcy court of jurisdiction to grant an extension after the Rule's prescribed thirty-day period expires? The bankruptcy court held that it lost jurisdiction to rule on a timely-filed request for an extension when it failed to rule within the thirty-day period. The District Court reversed. Because we agree with the bankruptcy court, we REVERSE.

I. Facts

The facts of this case are undisputed. Victoria Johnston Laurain (debtor) filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on May 16, 1995. Pursuant to a Schedule C filed with the bankruptcy court on June 16, 1995, the debtor claimed various items of personal property exempt. Included among the items was an interest in a contingent and unliquidated claim for personal injuries sustained by the debtor as the result of an "ACTD category" breast implant.

On June 19, 1995, the meeting of creditors took place.[1] On July 18, 1995, David G. Rogers, the debtor's trustee (trustee), filed a Motion to Extend Time to Object to Exemptions of Debtor. In an order signed on July 20, but not entered until July 26, 1995, the bankruptcy court granted an additional 60 days from the entry of the order to file an objection. The debtor filed no objections to this order.

[1]Section 341(a) of the Bankruptcy Code provides: "Within a reasonable time after the order for relief in a case under this title, the United States trustee shall convene and preside at a meeting of creditors." 11 U.S.C. § 341(a).

On August 11, 1995, the trustee filed an objection to the debtor's exemption of the ACTD breast implant claim. On September 12, 1995, the bankruptcy court conducted a hearing on the trustee's objection. At this hearing, the trustee orally requested additional time within which to ascertain the value of the ACTD claim, because both parties had been unable to place a value on the claim. The bankruptcy court took this request under advisement. Counsel for the debtor objected to the request for an additional extension of time.

By an order entered October 3, 1995, the bankruptcy court set aside the July 26 order purporting to extend the objection period, because it found that it had lost jurisdiction to grant an extension on July 19, thirty days after the meeting of creditors was concluded. It therefore denied the trustee's objection and the oral motion for an additional extension of time as untimely.

The trustee appealed. The District Court reversed the bankruptcy court. The court agreed that the literal language of Rule 4003(b) requires that the court grant an extension of time for the filing of objections within thirty days after the conclusion of the meeting of creditors. However, it concluded that such a strict application of the rule was inappropriate and that the drafters really intended only that the filing of a request for an extension of time be made within the prescribed thirty days, but that the court could grant the request after the thirty days had expired.

This timely appeal followed.

II. Discussion

A. Standard of Review

The proper interpretation of Rule 4003(b) is a question of law which we review *de novo*. *See Baker & Getty Fin. Servs., Inc. v. Rafoth*, (*In re Baker & Getty Fin. Servs., Inc.*), 106 F.3d 1255, 1259 (6th Cir. 1997).

B. Trustee's First Request for Additional Time

When a debtor files a bankruptcy petition, all of the debtor's property becomes property of the bankruptcy estate. *See* 11 U.S.C. § 541. However, the debtor is entitled to exempt certain eligible property from the bankruptcy estate. *See id.* § 522(*l*). Section 522(*l*) states the procedure for claiming exemptions and objecting to claimed exemptions as follows: "The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. . . . Unless a party in interest objects, the property claimed as exempt on such list is exempt." Although § 522(*l*) itself does not specify the time for objecting to a claimed exemption, Rule 4003(b) provides in pertinent part:

> The trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a) . . . unless, within such period, further time is granted by the court.

FED. R. BANKR. P. 4003(b).

Statutes, regulations, and rules of the court must be read in a "straightforward" and "commonsense" manner. *See Bartlik v. United States Dep't of Labor*, 62 F.3d 163, 165-66 (6th Cir. 1995) (en banc). When we can discern an unambiguous and plain meaning from the language of a rule, our task is at an end. *Id.* at 166. Rule 4003(b) unambiguously requires that an extension of time be granted within the prescribed thirty-day period. The Rule can only be read to require that an interested party must file a motion for an extension within the prescribed thirty-day period *and* the court must rule on that motion within the same thirty-day period. Indeed, the rule only implicitly requires that a request for an extension be made within the thirty-day period, while it expressly requires that the court

grant such an extension within that period.[2] Moreover, FED. R. BANKR. P. 9006(b)(3) provides that the court may enlarge the time for taking action under Rule 4003(b) "only to the extent and under the conditions stated in those rules." Thus, Rule 4003(b) should be viewed as jurisdictional. Because Rule 4003(b) is jurisdictional, it does not matter that the debtor did not object when the Bankruptcy Court granted the extension after the thirty-day period had expired.

The Supreme Court has noted that Congress spent nearly ten years overhauling the bankruptcy system and that "as long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute." *United States v. Ron Pair Enters.*, 489 U.S. 235, 240-41 (1989). Like the bankruptcy statute, the bankruptcy rules also have undergone revisions in the past decade. When Congress approved the change to Rule 4003(b) in 1987[3] and its amendment in 1991, the rule did not alter the requirement that the bankruptcy judge must rule on a motion for an extension within a specific time period. *Compare* [Transfer Binder] Bankr. L. Rep. (CCH) ¶ 20,123, at 20,150 *with* 92 F.R.D. 499, 596 (1982) (preliminary draft of proposed new

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[2] *Collier on Bankruptcy* advises: "The time period for filing objections to exemptions may be extended only by the court and only if the extension is granted within the original time period." 9 COLLIER ON BANKRUPTCY ¶ 4003.03[1], at 4003-9 (15th ed. 1996).

[3] Rule 403(c), the predecessor of Rule 4003(b), provided:

> Any creditor or the bankrupt may file objections to the report within 15 days after its filing, *unless further time is granted by the court within such 15-day period.*

[Transfer Binder] Bankr. L. Rep. (CCH) ¶ 20,123, at 20,150 (emphasis added). The Bankruptcy Code changed the thrust of Rule 403 by making it the burden of the debtor to list his or her exemptions and the burden of the parties in interest to raise objections. *See* FED. R. BANKR. P. 4003 advisory committee's note.

bankruptcy rules) *and* FED. R. BANKR. P. 4003(b). Furthermore, such a focus on timely action by the court is not unique to Rule 4003(b). While some bankruptcy rules provide that only the motion for an extension of time must be filed within a prescribed time period, *see, e.g.*, FED. R. BANKR. P. 4004(b), 4007(c), other rules provide that the court must act within a prescribed time period, *see, e.g.*, FED. R. BANKR. P. 1017(e)(1).

Two circuits have addressed the exact issue presented in this case, and both have held that the bankruptcy court must act within the thirty-day time period. In *Stoulig v. Traina (In re Stoulig)*, 45 F.3d 957 (5th Cir. 1995), the trustee moved for an extension of time two days before the expiration of the thirty-day period. Two months later, the bankruptcy court granted the extension. The Fifth Circuit held that under Rule 4003(b) the bankruptcy court was without jurisdiction to grant an extension of time after the prescribed thirty-day period. *Id.* at 957-58. Similarly, in *Clark v. Brayshaw (In re Brayshaw)*, 912 F.2d 1255, 1257 (10th Cir. 1990), the Tenth Circuit held that "[t]here simply is no room in the wording for construing Rule 4003(b) or Rule 9006(b) to permit granting an extension of time to file objections outside the original thirty-day time limit."

One court has approached Rule 4003(b) differently. In *In re Williams*, 124 B.R. 864 (Bankr. N.D. Fla. 1991), the bankruptcy court held that Rule 4003(b) simply requires that a trustee or creditor file a request for an extension of time within the thirty-day period, but that the court can rule on that request after the period has expired. The *Williams* court relied in part on *Southwest Aircraft Services, Inc. v. City of Long Beach, (In re Southwest Aircraft Services, Inc.)*, 831 F.2d 848 (9th Cir. 1987), *cert. denied*, 487 U.S. 1206 (1988), a case involving Bankruptcy Code § 365(d)(4). Section 365(d)(4) requires a trustee to assume or reject a lease within sixty days after the order for relief, "or within such additional time as the court, for cause, within such sixty-day period, fixes." 11 U.S.C. § 365(d)(4). The Ninth Circuit considered whether the

bankruptcy court had authority to rule on a timely filed motion for an extension after the sixty-day limit. The court found that the language of the section was ambiguous because it was unclear whether the second term--"within such 60-day period"--modified the term that preceded it or the term that followed it. *See* 831 F.2d at 850. The court adopted the more "liberal" reading, holding that the cause must arise within the sixty-day period, but that the court could grant an extension after the sixty-day period had expired. *Id.* *Southwest Aircraft* is distinguishable, however, because the court's conclusion was premised on the fact that "the meaning of the words of section 365(d)(4) is not entirely clear," *id.* at 849. Here, Rule 4003(b)'s meaning is unambiguous.

The *Southwest Aircraft* and *Williams* courts also relied on cases dealing with the former version of FED. R. CRIM. P. 35, which was widely accepted as unambiguous. Judge Contie, in his dissent, relies on these cases as well. Rule 35 afforded district courts only 120 days within which to act in order to reduce a sentence.[4] Thus, the 120-day limit in Rule 35 applied to the court, not the defendant. *See United States v. Taylor*, 768 F.2d 114, 116 n.3 (6th Cir. 1985). Moreover, FED. R. CRIM. P. 45(b), like FED. R. BANKR. P. 9006(b)(3), provided that "the court may not extend the time for taking any action under Rules 29, 33, 34 and 35, except to the extent and under the conditions stated in them." In dictum, the Supreme Court had stated that the 120-day time limit "is jurisdictional and may not be

[4]The former version of Rule 35 provided in pertinent part:

> The Court may reduce a sentence within 120 days after the sentence is imposed or probation is revoked, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation.

FED. R. CRIM. P. 35(b).

extended." *United States v. Addonizio*, 442 U.S. 178, 189 (1979). Thus, if courts had followed the literal language of Rule 35, district courts would have had no jurisdiction to act on pending sentence reduction motions once the 120-day period expired. However, even after *Addonizio*, a majority of the circuits adhered to the view that the district courts retained jurisdiction for a "reasonable time" beyond the 120-day period to consider timely filed Rule 35 motions. *See, e.g., Diggs v. United States*, 740 F.2d 239, 245 n.9 (3d Cir. 1984); *United States v. DeMier*, 671 F.2d 1200, 1205-1207 (8th Cir. 1982); *United States v. Smith*, 650 F.2d 206, 209 (9th Cir. 1981); *United States v. Mendoza*, 581 F.2d 89, 90 (5th Cir. 1978) (en banc); *United States v. Stollings*, 516 F.2d 1287, 1288 (4th Cir. 1975).

This Circuit never ruled on the question whether the time limit in Rule 35 was jurisdictional, although we suggested, in *United States v. Blanton*, 739 F.2d 209, 213 (6th Cir. 1984), that jurisdiction might extend beyond the 120-day period where a timely motion had been filed or a showing of special circumstances justifying delay had been made. *See Taylor*, 768 F.2d at 117 n.3. We cannot reliably say, however, that we would have ultimately agreed with the majority view, and we therefore cannot draw on such precedent to support a more expansive interpretation of Rule 4003(b), assuming that comparing a bankruptcy rule of procedure to a criminal rule of procedure is even appropriate. Moreover, the cases that held the majority view did so because of practical and equitable concerns, not because of constitutional problems with the rule. For example, in *Stollings*, 516 F.2d at 1288, the Fourth Circuit explained that "[w]e need not give the Rule so literal a reading . . . and we can not assume that such a reading was intended when the consequences would be so devastating and arbitrarily fortuitous."

Rule 4003(b) arguably raises due process concerns. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982) (holding that the plaintiff's due process rights were violated when his property interest, *i.e.* cause of action, was

terminated as the result of a failure to hear and decide his timely filed claim within a specified deadline); *Southwest Aircraft*, 831 F.2d at 853 n.6 ("While here the right that Southwest would lose directly is the right to obtain an extension of time in which to decide whether to assume or reject a lease, because the failure to consider the claim before the statutory deadline effectively deprives the debtor of his leasehold interest in property the *Logan* analysis may well be applicable."). However, as applied here, Rule 4003(b) presents no due process problems, because the trustee was given an opportunity to obtain some form of expedited consideration of his request for an extension. The bankruptcy court stated that "[w]hen trustees find their exemption investigations incomplete near the end of the 30-day period, the 'walk-through' procedure in place in this district provides a dependable means for execution of orders with early, necessary deadlines." Rule 3.8 of the Local Rules of the Bankruptcy Court of the Middle District of Tennessee provides that an emergency motion, defined as "those rare matters requiring action on less than three days' notice", must be filed personally with the clerk or the deputy clerk with a declaration of why emergency action is needed. Thus, in this case, the trustee could have taken steps to ensure timely action on his motion.

We realize that a literal reading of Rule 4003(b) may be impractical and unfair. A judge may be on vacation, ill, or overworked and consequently unable to rule on the motion for an extension within the thirty-day period. But as the Seventh Circuit explained with regard to FED. R. CRIM. P. 35, "if there should be no limit on the time within which the judge can act . . . the rule ought to be rewritten by those who have the authority to do so; the court of appeals do not." *United States v. Kajevic*, 711 F.2d 767, 771 (7th Cir. 1983).

C. Second Request for Additional Time

In view of our holding that the bankruptcy court lost jurisdiction to grant the trustee's first request for an extension of time once the original thirty-day period

prescribed in Rule 4003(b) expired, we do not decide whether the court may grant an additional extension during an extension period.

III. Conclusion

For the foregoing reasons, we REVERSE.

CONTIE, Circuit Judge, dissenting. The bankruptcy court held that it lacked jurisdiction to rule on a timely-filed motion for an extension of time because it failed to rule within the 30-day period provided by Bankruptcy Rule 4003(b). The district court reversed. Because the district court's decision should be affirmed, I respectfully dissent.

I.

When filing a bankruptcy petition, a debtor may exempt certain property from the bankruptcy estate pursuant to 11 U.S.C. § 522. Thereafter, pursuant to Bankruptcy Rule 4003(b), "[t]he trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a) or the filing of any amendment to the list or supplemental schedules unless, within such period, further time is granted by the court." Though Trustee Rogers moved for additional time to object to the Debtor's claimed exemptions less than thirty days after the meeting of creditors concluded, the bankruptcy court failed to sign and enter the order granting additional time within the 30-day period.

Unfortunately, it isn't clear whether an order granting an extension of time must be signed and entered prior to the end of the 30-day period, or whether the filing of the motion before the expiration of the 30-day period satisfies Rule 4003(b)'s mandate. Though at least two circuits have construed Rule 4003(b) narrowly to require that an extension *be granted* within thirty days following the conclusion of the meeting of creditors,[1] I believe that those

[1] In *Matter of Stoulig*, 45 F.3d 957 (5th Cir. 1995), the Fifth Circuit held that the bankruptcy court lacked jurisdiction to grant the trustee's timely-filed motion for an extension of time to object to the debtor's claimed exemptions after the 30-day period set forth in Rule 4003(b) expired. Similarly, in *In re Brayshaw*, 912 F.2d 1255 (10th Cir. 1990), the Tenth Circuit held that the bankruptcy court lacked jurisdiction to grant a timely-filed motion for an extension of time after the 30-day period expired.

decisions, and the majority's decision in this action, are wrongly decided.

Unfortunately, little case law exists with respect to Bankruptcy Rule 4003(b) and its 30-day requirement. However, numerous courts have addressed this same issue as it pertains to other statutes and rules. For example, prior to its amendment in 1985, Federal Rule of Criminal Procedure 35(b) provided: "The court may reduce a sentence within 120 days after the sentence is imposed, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction." After numerous courts narrowly construed Rule 35(b) to mean that a judge must act within 120 days,[2] Congress amended Rule 35(b) to clarify its intended meaning:[3]

> This amendment to Rule 35(b) conforms its language to the nonliteral interpretation which most courts have already placed upon the rule, namely, that it suffices that the defendant's motion was made within the 120 days and that the court determines the motion within a reasonable time thereafter. Despite these decisions, a change in the language is deemed desirable to remove any doubt which might arise from dictum in some cases that Rule 35 only "authorizes District Courts to reduce a sentence within 120 days" and that this time period "is jurisdictional, and may not be extended."
>
> As for the "reasonable time" limitation, reasonableness in this context "must be evaluated in light of the policies supporting the time limitations and the reasons for the delay in each case." The time runs "at least for so long as the judge reasonably needs time to consider and act upon the motion."

Fed. R. Crim. P. 35 (Advisory Committee Note to 1985 amendment) (citations omitted).[4] *See also United States v. Hayes*, 983 F.2d 78, 81 (7th Cir. 1992) ("Furthermore, a jurisdictional interpretation of the one-year time period in Rule 35(b) would create arbitrary and inequitable results by depriving a defendant of a ruling due to circumstances entirely outside his control. . . . A defendant who fully cooperates with governmental authorities should not be penalized by possible tardiness on the part of the Government or the courts."); *United States v. Walgren*, 885 F.2d 1417, 1426-27 (9th Cir. 1989) ("Walgren filed his motion for a new trial [pursuant to Fed. R. Crim. P. 33] within the two-year time limit. The district court, however, decided that its jurisdiction had lapsed because of the delay between the filing of the motion and when the

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[2] *See, e.g., United States v. Inendino*, 655 F.2d 108, 109 (7th Cir. 1981) ("Rule 35 does not refer to any time period during which a defendant must make his motion to reduce sentence. It imposes instead a limit on the time during which the sentencing judge may act to reduce the sentence.") (footnote omitted); *United States v. Olds*, 426 F.2d 562, 565 (3d Cir. 1970) ("The Government correctly points out that under Rule 35 a sentencing judge may reduce a lawful sentence only within 120 days after sentence is imposed.").

[3] Federal Rule of Criminal Procedure 35(b), as amended in 1985, provided:

> A motion to reduce a sentence may be made . . . within 120 days after the sentence is imposed or probation is revoked, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation. The court shall determine the motion within a reasonable time.

Fed. R. Crim. P. 35(b).

[4] Though Advisory Committee notes are not binding on courts, *see, e.g., United States v. Abdul-Hamid*, 966 F.2d 1228, 1231 (7th Cir. 1992), they are "analogous to legislative history which we use to clarify legislative intent." *United States v. Hayes*, 983 F.2d 78, 82 (7th Cir. 1992).

motion was finally heard. [Because] the delay was not unreasonable and does not undermine the district court's jurisdiction[,] [t]he district court erred when it dismissed the motion for lack of jurisdiction.").

The Ninth Circuit adopted this same philosophy when it held that a bankruptcy court may grant a debtor's timely-filed motion for an extension of time (under 11 U.S.C. § 365(d)(4)) even after the relevant time period has expired:

> We are asked here to resolve a question of first impression in the circuit courts regarding the interpretation of section 365(d)(4) of the Bankruptcy Code. . . . Under section 365(d)(4), a nonresidential lease is deemed rejected by a debtor-lessee unless that party assumes the lease within 60 days after filing for Chapter 11 protection or within such additional period as is fixed by the bankruptcy court. In the case before us, the debtor-lessee moved, before the initial 60-day period had expired, for an extension of time within which to assume or reject a commercial lease, but the bankruptcy court did not hear the motion until after that period had ended. The court held that the lease was deemed rejected immediately upon the expiration of the sixtieth day, and that it was without authority to grant the timely filed motion for extension. The bankruptcy appellate panel affirmed; we reverse.
>
> . . . .
>
> While the bankruptcy judge declared that he would be inclined to grant the extension motion, he concluded that he no longer had authority to do so, ruling that the lease was deemed rejected pursuant to section 365(d)(4) of the Bankruptcy Code. . . . Under the bankruptcy judge's view, rejection was automatic since the 60-day deadline passed before he had held any hearing or issued any ruling on the motion. The Bankruptcy Appellate Panel affirmed, holding that the language of section 365(d)(4) "is precise and leaves no room for arguing that an extension may be granted or confirmed after 60 days have elapsed."
>
> . . . .
>
> Long Beach's interpretation of section 365(d)(4) would produce fortuitous and inequitable results. It would also require us to assume that Congress intended to take the most unusual and highly questionable step of interfering with the normal operation of the judicial branch by ordering the termination of jurisdiction over a particular issue whenever a court failed to make a ruling within a brief period. In light of those circumstances, we cannot conclude that the more restrictive interpretation of the section accurately reflects the intent of Congress.
>
> Rather, the interpretation we believe best comports with congressional intent is the one that preserves the authority of the bankruptcy court to rule on timely filed motions. It strikes the balance between creditor protection and debtor relief that Congress intended, and is eminently reasonable, fair and sensible. We fully agree with the bankruptcy courts that have previously adopted that view.
>
> For all the above reasons, we hold that if cause for an extension arises within the 60-day period and a motion for an extension is made within that period, a bankruptcy court may, even after the 60-day period has expired, consider the debtor's motion and, if it finds there was sufficient cause at the time the motion was filed, grant the requested extension.

In re Southwest Aircraft Servs., Inc., 831 F.2d 848, 848-53 (9th Cir. 1987) (citations and footnotes omitted), *cert. denied*, 487 U.S. 1206 (1988).

Simply stated, the rule "[t]he plain meaning of legislation should be conclusive," *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 242 (1989), an exception exists "in the rare cases [in which] the literal application of

a statute will produce a result demonstrably at odds with the intentions of its drafters." *Id.* (citation and internal quotations omitted) (brackets in original).[5] Because a literal application of Rule 4003(b) fails to account for practical problems such as an ill or vacationing bankruptcy judge who is unable to act on a timely-filed motion within the 30-day period articulated in Rule 4003(b), or a motion that is filed on the thirtieth day, minutes after the bankruptcy judge has gone home, I believe that Congress did not intend the literal and nonsensical interpretation of Rule 4003(b) that the majority adopts. The drafters of Rule 4003(b) intended that objections to claimed exemptions be *filed* within thirty days, not decided within thirty days. *See generally United States v. Mendoza*, 581 F.2d 89, 90 (5th Cir. 1978) ("We hold that if a motion to reduce sentence is properly filed within the 120 days required by [Federal Rule of Criminal Procedure 35], the district court retains jurisdiction for a reasonable time after the expiration of 120 days in those rare circumstances in which it is unable to decide the motion within the 120-day period."). Because Trustee Rogers filed his motion for an extension of time within the 30-day period contemplated by Bankruptcy Rule 4003(b), the bankruptcy court had jurisdiction to decide the trustee's motion.

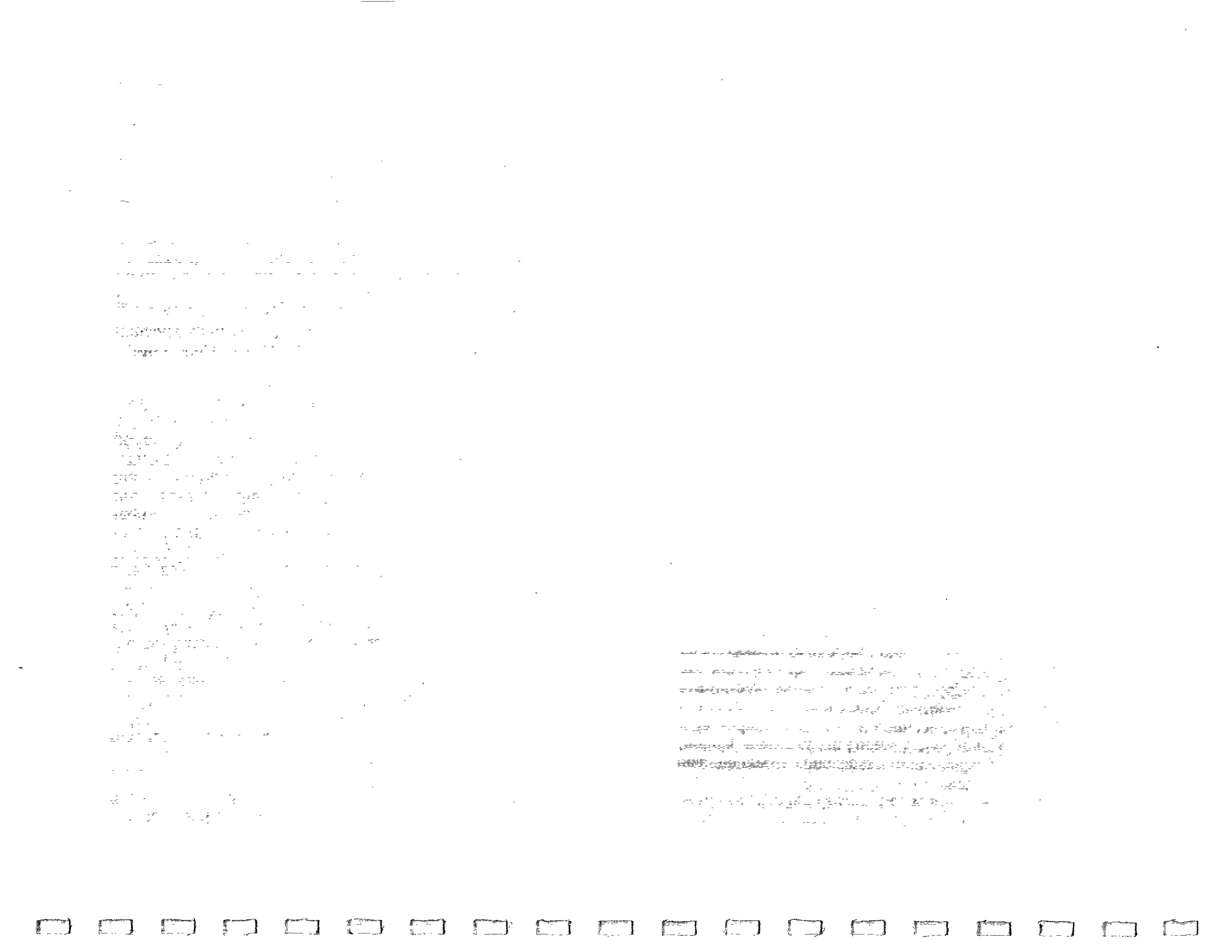
More importantly, perhaps, I am concerned that the judiciary's independence is threatened by Rule 4003(b), as it is interpreted by the majority. Specifically, I believe that Congress overstepped its bounds by telling bankruptcy judges that they must rule on timely-filed motions within specified time periods.[6] Indeed, an independent judiciary is fundamental to our system of government and is

[5]Questions of statutory interpretation are subject to *de novo* review. *United States v. Hans*, 921 F.2d 81, 82 (6th Cir. 1990).

[6]The Bankruptcy Rules are enacted by the Supreme Court and reviewed by Congress. *See* 28 U.S.C. § 2075 (Congress' delegation of power to the Supreme Court to prescribe bankruptcy procedural rules).

guaranteed by separation of powers principles. *See Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 60 (1982) ("In sum, our Constitution unambiguously enunciates a fundamental principle - that the 'judicial Power of the United States' must be reposed in an independent Judiciary. It commands that the independence of the Judiciary be jealously guarded, and it provides clear institutional protections for that independence."). Because one branch of the government is not permitted to encroach on the domain of another branch of government, the district court correctly decided this action.

Accordingly, I would **AFFIRM**.



Item II

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ALAN N. RESNICK, REPORTER

RE: BANKRUPTCY RULE 2002(a)(6) -- ADJUSTMENT OF DOLLAR AMOUNT

DATE: August 7, 1997

Bankruptcy Rule 2002(a)(6) requires that 20-days' notice be sent to all creditors of "hearings on all applications for compensation or reimbursement of expenses totaling in excess of $500." At the March 1997 meeting of the Advisory Committee, Henry Sommer suggested that the $500 amount be changed to $1000 to account for inflation. This paragraph was last changed in 1987 when the amount was raised from $100 to $500.

In discussing Henry's proposal, Committee members noted two ambiguities in the existing rule. First, it is not clear whether the dollar amount applies to a single fee application, rather than the aggregate of the present and all prior fee applications filed by the same professional. Second, it is not clear whether the dollar amount applies to each professional requesting fees, or to the aggregate of all fee applications filed by all professionals scheduled to be heard at the same hearing. The Committee decided to defer discussion of these issues to the September meeting.

I recommend that Rule 2002(a)(6) be amended to clarify that the dollar amount apply only with respect to the particular fee application that is scheduled to be considered at the hearing, regardless of any prior amounts awarded to the same professional. My reasons are as follows:

(1) Under § 331, a professional may not apply for compensation more than once every 120 days. It is unlikely, therefore, that a professional will abuse Rule 2002(a)(6) by intentionally filing many applications for amounts that do not exceed $1000. If a court suspects that a professional is abusing the rule by filing multiple fee applications, the court may order that notice be sent to all creditors.

(2) If a professional is awarded a fee of $1000, and later performs additional work that entitles him or her to another $100, it seems to me a waste of estate funds to have to send notice to every creditor regarding the $100 request (notice would not have been sent to all creditors regarding the original $1000 request).

(3) Although notice may not be sent to all creditors, the Committee is considering extensive amendments to Rule 9014 and to Rule 2016 that would require that notice of a motion requesting compensation (regardless of the amount) be served on the trustee, the debtor, the debtor's attorney, and any committee serving in the case (or the 20 largest creditors in a chapter 11 case in which a creditors' committee has not been appointed). A copy also must be transmitted to the United States trustee. This should be adequate notice to prevent abuse by a professional.

I also suggest that the dollar amount in Rule 2002(a)(6)

apply to each professional's fee application, whether or not the hearing is combined with the hearing on fee applications of other professionals. If two professionals file fee applications, each for $600, whether all creditors must get notice of the hearing on each application should not depend on whether the hearings are held at the same time, rather than one immediately after the other. As a practical matter, I am not sure I understand how one hearing can be held on the reasonableness of fees or expenses of two or more professionals. It seems that separate hearings must be held, although they may be scheduled at the same time.

For these reasons, I suggest the following amendments to Rule 2002(a)(6):

Rule 2002. Notices to Creditors, Equity Security Holders, United States, and United States Trustee

(a) TWENTY-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i), and (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 20 days' notice by mail of:

****

(6) ~~hearings on all applications for compensation or reimbursement of expenses totaling in excess of $500~~ the hearing on a request for compensation or reimbursement of expenses if the total amount that any entity requests at the hearing exceeds $1,000;

****

COMMITTEE NOTE

This rule is amended to increase the dollar amount in paragraph (a)(6) from $500 to $1,000. The amount was last amended in 1987, when it was changed from $100 to $500.

Other amendments clarify that notice under paragraph (a)(6) is required only if a particular entity is requesting more than $1,000 as compensation or reimbursement of expenses. If several professionals are requesting compensation or reimbursement, and only one hearing will be held on all applications, notice under paragraph (a)(6) is required only with respect to the entities that have requested more than $1,000. If each applicant requests $1,000 or less, notice under paragraph (a)(6) is not required even though the aggregate amount of all applications to be considered at the hearing is more than $1,000.

If a particular entity had filed prior applications or had received compensation or reimbursement of expenses at an earlier time in the case, the amounts previously requested or awarded are not considered when determining whether the present application exceeds $1,000 for the purpose of applying this rule.

Item 12

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ALAN N. RESNICK, REPORTER

RE: BANKRUPTCY RULE 2002(g)

DATE: August 6, 1997

Under Bankruptcy Rule 2002(g), an address stated by a creditor in a proof of claim form is to be used for notice purposes "unless a notice of no dividend has been given." The purpose of the "unless" clause is so that clerks do not have to spend the time and energy to read proofs of claim after creditors have been informed in a chapter 7 case that there are no assets and that proofs of claim need not be filed.

Judge Paul Mannes has pointed out the following flaw in this provision: If a notice of no dividend is given under Rule 2002(e), but it later appears that there may be assets sufficient to pay a dividend, Rule 3002(c)(5) requires the clerk to notify creditors of that fact and to inform them of the deadline for filing proofs of claim (the deadline is 90 days after mailing the Rule 3002(c)(5) notice). If a Rule 3002(c)(5) notice of a possible dividend is sent, which supersedes the Rule 2002(e) notice of no dividend, then an address listed by the creditor in a proof of claim should be used for mailing purposes. But a literal application of the last sentence of Rule 2002(g) relieves the clerk of the duty to use the mailing address in the proof of claim, despite the fact that the Rule 3002(c)(5) notice has superseded the Rule 2002(e) notice of no dividend.

I agree with Judge Mannes that the last sentence of Rule

2002(g) should be amended to limit the "unless" clause to situations in which a notice of no dividend has been given that has not been superseded by a Rule 3002(c)(5) notice.

In particular, I recommend that the Committee consider the following amendments to Rule 2002(g) (all proposed amendments are stylistic except for the final sentence):

Rule 2002. Notices to Creditors, Equity Security Holders, United States, and United States Trustee

****

(g) ~~ADDRESSES OF NOTICES~~ ADDRESS OF NOTICE. A notice required to be mailed under this rule to a creditor, equity security holder, or indenture trustee shall be addressed as such entity or an authorized agent ~~may direct~~ has directed in a filed request~~; otherwise,~~. If a request has not been filed, the notices shall be mailed to the address shown in the list of creditors or the schedule, whichever is filed later. If a different address is stated in a proof of claim duly filed, that address shall be used unless a notice of no dividend under Rule 2002(e) has been given and a subsequent notice of possible dividend under Rule 3002(c)(5) has not been given.

****

COMMITTEE NOTE

The final sentence of subdivision (g) is amended to require the use of the address stated in a proof of claim if a notice of no dividend has been given under Rule 2002(e), but has been superseded by a subsequent notice of possible dividend under Rule 3002(c)(5).

Item 13

United States Bankruptcy Court

EASTERN DISTRICT OF CALIFORNIA
OFFICE OF THE CLERK

RICHARD G. HELTZEL
CLERK

REPLY TO:

[illegible] U.S. COURTHOUSE
650 CAPITOL MALL
SACRAMENTO, CA 95814
(916) 498-5525

1130 12TH STREET
SUITE C
MODESTO, CA 95354
(209) 521-5160

2656 U.S. COURTHOUSE
1130 O STREET
FRESNO, CA 93721
(209) 498-7217

July 14, 1997

Professor Alan N. Resnick
Reporter, Advisory Committee of Bankruptcy Rules
121 Hofstra University
Hempstead, NY 11550-1090

Dear Alan:

Last week Pat Channon reminded me that I needed to follow up with you regarding a possible change to FRBP 9022. At the last rules committee meeting, I proposed amending this rule to permit the court to delegate responsibility to the prevailing party to effect notice of entry of judgments or orders. The idea seemed to have the support of several members of the committee.

I offer the following proposed amendment:

Rule 9022.

NOTICE OF JUDGMENT OR ORDER

(a) Judgment or Order of Bankruptcy Judge. Immediately on the entry of a judgment or order, the clerk *or some other person as the court may direct*, shall serve a notice of the entry by mail in the manner provided by Rule 7005 on the contesting parties and on other entities as the court directs. Unless the case is a chapter 9 municipality case, the clerk shall forthwith transmit to the United States trustee a copy of the judgment or order. *If service of the notice is made by a person other than the clerk, a certificate of service shall be filed with the court in the manner provided for in Rule 7005(d).* Service of the notice shall be noted in the docket. Lack of notice of the entry does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002.

Adoption of this amendment would relieve the clerks' offices of workload associated with preparing and mailing copies of judgements or orders, tasks which generally require hand processing. Requiring a certificate of service when service is effected by a person other than the clerk is intended to prevent abuse caused by a party's failure to serve the notice.

Time permitting, I would like to see this suggestion added to the September meeting agenda. If you have any questions, please contact me at (916) 498-5578.

Sincerely,

Richard G. Heltzel
Clerk, U.S. Bankruptcy Court

cc: Judge Adrian G. Duplantier
Peter G. McCabe
Patricia S. Channon

Item 14-15

Materials for Items 14 and 15

will be provided later.

Item 16

(Official Form 1) (9/97)

FORM B1

United States Bankruptcy Court
District of _____

Voluntary Petition

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. & Street, City, State & Zip Code):	Street Address of Joint Debtor (No. & Street, City, State & Zip Code):
County of Residence or of the Principal Place of Business:	County of Residence or of the 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 street address above):	

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable 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.

Type of Debtor (Check all boxes that apply)

☐ Individual(s) ☐ Railroad
☐ Corporation ☐ Stockbroker
☐ Partnership ☐ Commodity Broker
☐ Other _____

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)

☐ Chapter 7 ☐ Chapter 11 ☐ Chapter 13
☐ Chapter 9 ☐ Chapter 12
☐ Sec. 304 - Case ancillary to foreign proceeding

Nature of Debts (Check one box)

☐ Consumer/Non-Business ☐ Business

Filing Fee (Check one box)

☐ Full 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.

Chapter 11 Small Business (Check all boxes that apply)

☐ Debtor is a small business as defined in 11 U.S.C. § 101
☐ Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

Statistical/Administrative Information (Estimates only)

☐ 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 IS FOR COURT USE ONLY

Estimated Number of Creditors	1-15	16-49	50-99	100-199	200-999	1000-over
	☐	☐	☐	☐	☐	☐

Estimated Assets	$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
	☐	☐	☐	☐	☐	☐	☐	☐

Estimated Debts	$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
	☐	☐	☐	☐	☐	☐	☐	☐

(Official Form 1) (9/97)

Voluntary Petition
(This page must be completed and filed in every case)

Name of Debtor(s): **FORM B1,** Page 2

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 Filed:
District:	Relationship:	Judge:

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Debtor

X _____
Signature of Joint Debtor

_____
Telephone Number (If not represented by attorney)

_____
Date

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Authorized Individual

_____
Printed Name of Authorized Individual

_____
Title of Authorized Individual

_____
Date

Signature of Attorney

X _____
Signature of Attorney for Debtor(s)

_____
Printed Name of Attorney for Debtor(s)

_____
Firm Name

_____
Address

_____

_____
Telephone Number

_____
Date

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

_____
Printed Name of Bankruptcy Petition Preparer

_____
Social Security Number

_____
Address

_____
Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

X _____
Signature of Bankruptcy Petition Preparer

_____
Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. §110; 18 U.S.C. §156.

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] 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 for Debtor(s) Date

Form B1, Exh.A (9/97)

Exhibit "A"

[If debtor is required to file periodic reports (*e.g.*, forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11 of the Bankruptcy Code, this Exhibit "A" shall be completed and attached to the petition.]

[Caption as in Form 16B]

Exhibit "A" to Voluntary Petition

1. If any of the debtor's securities are registered under Section 12 of the Securities Exchange Act of 1934, the SEC file number is _____.

2. The following financial data is the latest available information and refers to the debtor's condition on _____.

a. Total assets $ _____

b. Total debts (including debts listed in 2.c., below) $ _____

					Approximate number of holders
c. Debt securities held by more than 500 holders.					
secured / /	unsecured / /	subordinated / /	$ _____		_____
secured / /	unsecured / /	subordinated / /	$ _____		_____
secured / /	unsecured / /	subordinated / /	$ _____		_____
secured / /	unsecured / /	subordinated / /	$ _____		_____
secured / /	unsecured / /	subordinated / /	$ _____		_____
d. Number of shares of preferred stock				_____	_____
e. Number of shares common stock				_____	_____

Comments, if any: _____

_____

_____

3. Brief description of debtor's business: _____

_____

_____

4. List the names of any person who directly or indirectly owns, controls, or holds, with power to vote, 5% or more of the voting securities of debtor:

_____

_____

_____

Form 1

COMMITTEE NOTE

The form has been substantially amended to simplify its format and make the form easier to complete correctly. The Latin phrase "In re" has been deleted as unnecessary. The amount of information requested in the boxes labeled "Type of Debtor" and "Nature of Debt" has been reduced, and the reporting by a corporation of whether it is a publicly held entity has been moved to Exhibit "A" of the petition. The box labeled "Representation by Attorney" has been deleted; the information it contained is requested in the signature boxes on the second page of the form.

In the statistical information section, the labels on the ranges of estimated assets and liabilities have been rewritten to improve the accuracy of reporting. The asset/liability range of $10 million to $100 million has been divided into two categories to promote better statistical reporting of business cases. Requests for information in chapter 11 and chapter 12 cases concerning the number of the debtor's employees and equity security holders have been deleted.

The second page of the form has been simplified so that a debtor need only sign the petition once. The request for information concerning the filing of a plan has been deleted.

Exhibit "A" has been simplified. In addition, the category of chapter 11 debtors required to file Exhibit "A" is modified to include a corporation, partnership, or other entity, but only if the debtor has issued publicly-traded equity securities or debt instruments. Most small corporations will not be required to file Exhibit "A."

Form B3 (Official Form 3)
(9/97)

Form 3. APPLICATION AND ORDER TO PAY FILING FEE IN INSTALLMENTS

[*Caption as in Form 16B.*]

APPLICATION TO PAY FILING FEE IN INSTALLMENTS

1. In accordance with Fed. R. Bankr. P. 1006, I apply for permission to pay the Filing Fee amounting to $_____ in installments.

2. I certify that I am unable to pay the Filing Fee except in installments.

3. I further certify that I have not paid any money or transferred any property to an attorney for services in connection with this case and that I will neither make any payment nor transfer any property for services in connection with this case until the filing fee is paid in full.

4. I propose the following terms for the payment of the Filing Fee.*

$ _____ Check one ☐ With the filing of the petition, or
☐ On or before _____

$ _____ on or before _____

$ _____ on or before _____

$ _____ on or before _____

* The number of installments proposed shall not exceed four (4), and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition. Fed. R. Bankr. P. 1006(b)(2).

5. I understand that if I fail to pay any installment when due my bankruptcy case may be dismissed and I may not receive a discharge of my debts.

_____
Signature of Attorney Date

_____
Name of Attorney

_____
Signature of Debtor Date
(In a joint case, both spouses must sign.)

_____
Signature of Joint Debtor (if any) Date

CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION (See 11 U.S.C. § 110)

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document. I also certify that I will not accept money or any other property from the debtor before the filing fee is paid in full.

_____ _____
Printed or Typed Name of Bankruptcy Petition Preparer Social Security No.

_____

_____
Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

x_____ _____
Signature of Bankruptcy Petition Preparer Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

Form B3 continued
(9/97)

UNITED STATES BANKRUPTCY COURT
_____ DISTRICT OF _____

In re _____, Case No. _____
Debtor

Chapter _____

ORDER APPROVING PAYMENT OF FILING FEE IN INSTALLMENTS

IT IS ORDERED that the debtor(s) may pay the filing fee in installments on the terms proposed in the foregoing application.

IT IS FURTHER ORDERED that until the filing fee is paid in full the debtor shall not pay any money for services in connection with this case, and the debtor shall not relinquish any property as payment for services in connection with this case.

BY THE COURT

Date: _____

_____
United States Bankruptcy Judge

Form 3

COMMITTEE NOTE

The form has been reorganized and the paragraphs numbered. The debtor's certification concerning payment for services in the case has been placed ahead of the statement of proposed terms for installment payment of court fees. Acknowledgement by the debtor of the potential consequences of failure to pay any installment when due has been added. (See 11 U.S.C. § 707(a)(2).) The language of the form also has been changed to conform to Rule 1006 and to clarify that a debtor is not disqualified from paying the filing fee in installments because the debtor has paid money to a bankruptcy petition preparer.

FORM B6F (Official Form 6F) (9/97)

In re _____, Debtor

Case No. _____ (If known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and account number, if any, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

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 maybe 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 total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding unsecured nonpriority claims to report on this Schedule F.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							

_____ continuation sheets attached

Subtotal ▶ $

Total ▶ $

(Report total also on Summary of Schedules)

Form 6

COMMITTEE NOTE

The form is amended to add to the column labels a reference to community liability for claims. The amendment is technical and corrects an editorial oversight.

Form B8 (Official Form 8)
(9/97)

Form 8. INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

[*Caption as in Form 16B*]

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

1. I have filed a schedule of assets and liabilities which includes consumer debts secured by property of the estate.

2. I intend to do the following with respect to the property of the estate which secures those consumer debts:

a. *Property to Be Surrendered.*

Description of Property **Creditor's name**

b. Property to Be Retained *[Check any applicable statement.]*

Description of Property	Creditor's Name	Property is claimed as exempt	Property will be redeemed pursuant to 11 U.S.C. § 722	Debt will be reaffirmed pursuant to 11 U.S.C. § 524(c)

Date: _____

_____
Signature of Debtor

CERTIFICATION OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

_____ _____
Printed or Typed Name of Bankruptcy Petition Preparer Social Security No.

_____

_____
Address

Names and Social Security Numbers of all other individuals who prepared or assisted in preparing this document.

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

X_____ _____
Signature of Bankruptcy Petition Preparer Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

Form 8

COMMITTEE NOTE

The form is amended to conform more closely to the language of the Bankruptcy Code. The amendments also make clear that the form is not intended to take a position regarding whether the options stated on the form are the only choices available to the debtor. Compare Lowry Federal Credit Union v. West, 882 F.2d 1543 (10th Cir. 1989), with In re Taylor, 3 F.3d 1512 (11th Cir. 1993).

FORM B9A (Chapter 7 Individual or Joint Debtor No Asset Case (9/97))

UNITED STATES BANKRUPTCY COURT _____ **District of** _____

Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 7 on_____.]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor(s) (name(s) and address):	Case Number: Social Security/Taxpayer ID Nos.:
Attorney for Debtor(s) (name and address): Telephone number:	Bankruptcy Trustee (name and address): Telephone number:

Meeting of Creditors:

Date: / / Time: ( ) A.M. ( ) P.M. Location:

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Complaint Objecting to Discharge of the Debtor *or* to Determine Dischargeability of Certain Debts:

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Please Do Not File A Proof of Claim Unless You Receive a Notice To Do So.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

EXPLANATIONS

FORM B9A (9/97)

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Creditors May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. *You therefore should not file a proof of claim at this time.* If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727(a) *or* that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—

FORM B9B (Chapter 7 Corporation/Partnership No Asset Case) (9/97)

UNITED STATES BANKRUPTCY COURT _____ District of _____

Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 7 on _____.]

You may be a creditor of the debtor. You may want to consult an attorney to protect your rights.
All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor (name(s) and address):	Case Number: Taxpayer ID Nos.:
Attorney for Debtor (name and address): Telephone number:	Bankruptcy Trustee (name and address): Telephone number:

Meeting of Creditors:

Date: / / Time: ( ) A.M. ( ) P.M. Location:

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Please Do Not File A Proof of Claim Unless You Receive a Notice To Do So.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

EXPLANATIONS

FORM B9B (9/97)

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Creditors May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. *You therefore should not file a proof of claim at this time.* If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—

FORM B9C (Chapter 7 Individual or Joint Debtor Asset Case) (9/97)

UNITED STATES BANKRUPTCY COURT _____ District of _____

Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 7 on _____.]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor(s) (name(s) and address):	Case Number: Social Security/Taxpayer ID Nos.:
Attorney for Debtor(s) (name and address): Telephone number:	Bankruptcy Trustee (name and address): Telephone number:

Meeting of Creditors:

Date: / / Time: ( ) A.M. ( ) P.M. Location:

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit):

For a governmental unit:

Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts:

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

EXPLANATIONS

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Creditors May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727(a) *or* that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Liquidation of the Debtor's Property and Payment of Creditors' Claims	The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property that is not exempt. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you must file a Proof of Claim, as described above.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—

FORM B9D (Chapter 7 Corporation/Partnership Asset Case) (9/97)

UNITED STATES BANKRUPTCY COURT _____ District of _____

Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 7 bankruptcy case concerning the debtor [corporation] *or* [partnership] listed below was filed on _____(date).]
or [A bankruptcy case concerning the debtor [corporation] *or* [partnership] listed below was originally filed under chapter ____ on _____ (date) and was converted to a case under chapter 7 on_____.]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor (name(s) and address):	Case Number: Taxpayer ID Nos.:
Attorney for Debtor (name and address): Telephone number:	Bankruptcy Trustee (name and address): Telephone number:

Meeting of Creditors:

Date: / / Time: ( ) A.M. ( ) P.M. Location:

Deadline to File a Proof of Claim

Proof of Claim must be *received* by the bankruptcy clerk's office by the following deadline:

For all creditors (except a governmental unit):	For a governmental unit:

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

EXPLANATIONS

FORM B9D (9/97)

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor listed on the front side, and an order for relief has been entered.
Creditors May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor.
Liquidation of the Debtor's Property and Payment of Creditors' Claims	The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you must file a Proof of Claim, as described above.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—

FORM B9E (Chapter 11 Individual or Joint Debtor Case) (9/97)

UNITED STATES BANKRUPTCY COURT _____ District of _____

Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 11 on _____.]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor(s) (name(s) and address):	Case Number: Social Security/Taxpayer ID Nos.:
Attorney for Debtor(s) (name and address):	Telephone number:

Meeting of Creditors:

Date: / / Time: ( ) A.M. ( ) P.M. Location:

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:

Notice of deadline will be sent at a later time.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Deadline to File a Complaint Objecting to Discharge of the Debtor:

First date set for hearing on confirmation of plan.
Notice of that date will be sent at a later time.

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

EXPLANATIONS

FORM B9E (9/97)

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Creditors May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all *or* if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim against the debtor in the bankruptcy case. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice.
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 1141(d)(3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—

FORM B9E (ALT.) (Chapter 11 Individual or Joint Debtor Case) (9/97)

UNITED STATES BANKRUPTCY COURT _____ District of _____

Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 11 on _____.]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor(s) (name(s) and address):	Case Number: Social Security/Taxpayer ID Nos.:
Attorney for Debtor(s) (name and address):	Telephone number:

Meeting of Creditors:

Date: / / Time: ( ) A.M. ( ) P.M. Location:

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): For a governmental unit:

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Deadline to File a Complaint Objecting to Discharge of the Debtor:

First date set for hearing on confirmation of plan.
Notice of that date will be sent at a later time.

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

EXPLANATIONS

FORM B9E (ALT.) (9/97)

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Creditors May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all *or* if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, or you might not be paid any money on your claim against the debtor in the bankruptcy case.
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 1141(d)(3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—

FORM B9F (Chapter 11 Corporation/Partnership Asset Case) (9/97)

UNITED STATES BANKRUPTCY COURT _____ District of _____

Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 11 bankruptcy case concerning the debtor [corporation] *or* [partnership] listed below was filed on _____ (date).] *or* [A bankruptcy case concerning the debtor [corporation] *or* [partnership] listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 11 on _____.]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor (name(s) and address):	Case Number: Taxpayer ID Nos.:
Attorney for Debtor (name and address):	Telephone number:

Meeting of Creditors:

Date: / / Time: ( ) A.M. ( ) P.M. Location:

Deadline to File a Proof of Claim

Proof of Claim must be *received* by the bankruptcy clerk's office by the following deadline:

Notice of deadline will be sent at a later time.

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

EXPLANATIONS

FORM B9F (9/97)

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Creditors May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all *or* if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim against the debtor in the bankruptcy case. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice.
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—

FORM B9F (ALT.) (Chapter 11 Corporation/Partnership Case) (9/97)

UNITED STATES BANKRUPTCY COURT _____ District of _____

Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 11 bankruptcy case concerning the debtor [corporation] *or* [partnership] listed below was filed on _____ (date).] *or* [A bankruptcy case concerning the debtor [corporation] *or* [partnership] listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 11 on _____.]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor (name(s) and address):	Case Number: Taxpayer ID Nos.:
Attorney for Debtor (name and address):	Telephone number:

Meeting of Creditors:

Date: / / Time: ( ) A.M. ( ) P.M. Location:

Deadlines to File a Proof of Claim

Proof of Claim must be *received* by the bankruptcy clerk's office by the following deadline:

For all creditors (except a governmental unit):	For a governmental unit:

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

EXPLANATIONS

FORM B9F (Alt.) (9/97)

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Creditors May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all *or* if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, or you might not be paid any money on your claim against the debtor in the bankruptcy case.
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141(d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—

FORM B9G (Chapter 12 Individual or Joint Debtor Family Farmer) (9/97)

UNITED STATES BANKRUPTCY COURT _____ District of _____

Notice of Chapter 12 Bankruptcy Case, Meeting of Creditors, & Deadlines

[The debtor(s) listed below filed a chapter 12 bankruptcy case on _____ (date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 12 on _____.]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor(s) (name(s) and address):	Case Number: Social Security/Taxpayer ID Nos.:
Attorney for Debtor(s) (name and address): Telephone number:	Bankruptcy Trustee (name and address): Telephone number:

Meeting of Creditors:

Date: / / Time: ( ) A.M. ( ) P.M. Location:

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): For a governmental unit:

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Deadline to Object to Exemptions:
Thirty (30) days after the *conclusion* of the meeting of creditors.

Filing of Plan, Hearing on Confirmation of Plan

[The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:
Date: _____ Time: _____ Location: _____]
or [The debtor has filed a plan. The plan or a summary of the plan and notice of confirmation hearing will be sent separately.]
or [The debtor has not filed a plan as of this date. You will be sent separate notice of the hearing on confirmation of the plan.]

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, the debtor's property, and certain codebtors. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

EXPLANATIONS

FORM B9G (9/97)

Filing of Chapter 12 Bankruptcy Case	A bankruptcy case under chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] *or* [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] *or* [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.
Creditors May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—

FORM B9H (Chapter 12 Corporation/Partnership Family Farmer) (9/97)

UNITED STATES BANKRUPTCY COURT _____ District of _____

Notice of Chapter 12 Bankruptcy Case, Meeting of Creditors, & Deadlines

[The debtor [corporation] *or* [partnership] listed below filed a chapter 12 bankruptcy case on _____(date).]
or [A bankruptcy case concerning the debtor [corporation] *or* [partnership] listed below was originally filed under chapter ____ on _____ (date) and was converted to a case under chapter 12 on_____.]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor (name(s) and address):	Case Number: Social Security/Taxpayer ID Nos.:
Attorney for Debtor (name and address): Telephone number:	Bankruptcy Trustee (name and address): Telephone number:

Meeting of Creditors:

Date: / / Time: ( ) A.M. ( ) P.M. Location:

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): For a governmental unit:

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Filing of Plan, Hearing on Confirmation of Plan

[The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:
Date: _____ Time: _____ Location: _____]
or [The debtor has filed a plan. The plan or a summary of the plan and notice of confirmation hearing will be sent separately.]
or [The debtor has not filed a plan as of this date. You will be sent separate notice of the hearing on confirmation of the plan.]

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, the debtor's property, and certain codebtors. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

EXPLANATIONS

FORM B9H (9/97)

Filing of Chapter 12 Bankruptcy Case	A bankruptcy case under chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] *or* [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] *or* [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.
Creditors May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—

FORM B9I (Chapter 13 Case) (9/97)

UNITED STATES BANKRUPTCY COURT _____ District of _____

Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines

[The debtor(s) listed below filed a chapter 13 bankruptcy case on _____ (date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 13 on _____.]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side For Important Explanations.

Debtor(s) (name(s) and address):	Case Number: Social Security/Taxpayer ID Nos.:
Attorney for Debtor(s) (name and address): Telephone number:	Bankruptcy Trustee (name and address): Telephone number:

Meeting of Creditors:

Date: / / Time: ( ) A.M. ( ) P.M. Location:

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): For a governmental unit:

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Filing of Plan, Hearing on Confirmation of Plan

[The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:
Date: _____ Time: _____ Location: _____]
or [The debtor has filed a plan. The plan or a summary of the plan and notice of confirmation hearing will be sent separately.]
or [The debtor has not filed a plan as of this date. You will be sent separate notice of the hearing on confirmation of the plan.]

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, debtor's property, and certain codebtors. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

EXPLANATIONS

FORM B9I (9/97)

Filing of Chapter 13 Bankruptcy Case	A bankruptcy case under chapter 13 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specified amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] *or* [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] *or* [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.
Creditors May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1301. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor.
Exempt Propery	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—

Form 9

COMMITTEE NOTE

Forms 9A - 9I (and the alternate versions of Forms 9E and 9F) have been amended, redesigned, and rewritten. Minor conforming changes have been made to respond to amendments made in the Bankruptcy Reform Act of 1994: the longer claims filing period for governmental units in section 502(b)(9) of the Code (see Forms 9C, 9D, 9E(Alt.), 9F(Alt.), 9G, 9H, and 9I); and a reference to dischargeability actions under section 523(a)(15) (see Forms 9A, 9C, 9E, and 9E(Alt.), 9G, and 9H). All of the forms have been substantially revised to make them easier to read and understand. The titles have been simplified. Recipients are told why they are receiving the notice. Explanations are provided on the back of the form and are set in larger type. Plain English is used. Deadlines are highlighted on the front of the form. Recipients are told that papers must be received by the bankruptcy clerk's office by the applicable deadline. The box for the trustee has been deleted from the chapter 11 notices (Forms 9E and 9F and the alternates). Various alternatives are set out in brackets in many of the forms, permitting each bankruptcy clerk's office to tailor the forms even more precisely to fit the needs of a particular case. The court may use blank spaces on the form to include additional information applicable to the particular district.

FORM B10 (Official Form 10) (9/97)

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____ | **PROOF OF CLAIM**

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):	☐ 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.
Name and address where notices should be sent: Telephone number:	☐ 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.
Account or other number by which creditor identifies debtor:	Check here ☐ replaces if this claim ☐ amends a previously filed claim, dated:_____

THIS SPACE IS FOR COURT USE ONLY

1. Basis for Claim

- ☐ Goods sold
- ☐ Services performed
- ☐ Money loaned
- ☐ Personal injury/wrongful death
- ☐ Taxes
- ☐ Other_____

- ☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)
- ☐ Wages, salaries, and compensation (fill out below)

  Your SS #: _____ _____ _____

  Unpaid compensation for services performed

  from _____ (date) to _____ (date)

2. Date debt was incurred:

3. If court judgment, date obtained:

4. Total Amount of Claim at Time Case Filed: $_____

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured Claim.

☐ Check this box if your claim is secured by collateral (including a right of setoff).

Brief Description of Collateral:

☐ Real Estate ☐ Motor Vehicle ☐ Other_____

Value of Collateral: $_____

Amount of arrearage and other charges at time case filed included in secured claim, if any: $_____

6. Unsecured Priority Claim.

☐ Check this box if you have an unsecured priority claim

Amount entitled to priority $_____

Specify the priority of the claim:

- ☐ Wages, salaries, or commissions (up to $4000),* earned within 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 - 11 U.S.C. § 507(a)(4).
- ☐ Up to $1,800* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6).
- ☐ Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).
- ☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
- ☐ Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(___).

Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. Supporting Documents: *Attach copies of supporting documents,* such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

9. Date-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.

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.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In particular types of cases or circumstances, such as bankruptcy cases that are not filed voluntarily by a debtor, there may be exceptions to these general rules.

DEFINITIONS

Debtor

The person, corporation, or other entity that has filed a bankruptcy case is called the debtor.

Creditor

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

Proof of Claim

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

Secured Claim

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim*.)

Unsecured Claim

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

Unsecured Priority Claim

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims*.

Items to be completed in Proof of Claim form (if not already filled in)

Court, Name of Debtor, and Case Number:
Fill in the name of the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the court, all of this information is near the top of the notice.

Information about Creditor:
Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form.

1. Basis for Claim:
Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

2. Date Debt Incurred:
Fill in the date when the debt first was owed by the debtor.

3. Court Judgments:
If you have a court judgment for this debt, state the date the court entered the judgment.

4. Total Amount of Claim at Time Case Filed:
Fill in the total amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

5. Secured Claim:
Check the appropriate place if the claim is a secured claim. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured. (See DEFINITIONS, above).

6. Unsecured Priority Claim:
Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority. (See DEFINITIONS, above). A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

7. Credits:
By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

8. Supporting Documents:
You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

Form 10

COMMITTEE NOTE

Numbered sections 4. and 5. of the form have been reformatted to eliminate redundant information and make it easier to complete the form correctly. A creditor will report the total amount of the claim first, and will report only that amount unless the claim is secured by collateral or entitled to a priority under § 507 of the Code.

Explanatory definitions and instructions for completing the form also have been added.

Form B14 (Official Form 14)
(9/97)

Form 14. BALLOT FOR ACCEPTING OR REJECTING A PLAN

[Caption as in Form 16A]

CLASS [ ] BALLOT FOR ACCEPTING OR REJECTING PLAN OF REORGANIZATION

[Proponent] filed a plan of reorganization dated *[Date]* (the "Plan") for the Debtor in this case. The Court has *[conditionally]* approved a disclosure statement with respect to the Plan (the "Disclosure Statement"). The Disclosure Statement provides information to assist you in deciding how to vote your ballot. If you do not have a Disclosure Statement, you may obtain a copy from *[name, address, telephone number and telecopy number of proponent/proponent's attorney.]* Court approval of the disclosure statement does not indicate approval of the Plan by the Court.

You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and your classification and treatment under the Plan. Your *[claim] [equity interest]* has been placed in class [ ] under the Plan. If you hold claims or equity interests in more than one class, you will receive a ballot for each class in which you are entitled to vote.

If your ballot is not received by [*name and address of proponent's attorney or other appropriate address]* on or before *[date]*, and such deadline is not extended, your vote will not count as either an acceptance or rejection of the Plan.

If the Plan is confirmed by the Bankruptcy Court it will be binding on you whether or not you vote.

ACCEPTANCE OR REJECTION OF THE PLAN

[At this point the ballot should provide for voting by the particular class of creditors or equity holders receiving the ballot using one of the following alternatives;]

[If the voter is the holder of a secured, priority, or unsecured nonpriority claim:]

The undersigned, the holder of a Class [ ] claim against the Debtor in the unpaid amount of Dollars ($)

[or, if the voter is the holder of a bond, debenture, or other debt security:]

The undersigned, the holder of a Class [ ] claim against the Debtor, consisting of Dollars ($) principal amount of *[describe bond, debenture, or other debt security]* of the Debtor (For purposes of this Ballot, it is not necessary and you should not adjust the principal amount for any accrued or unmatured interest.)

[or, if the voter is the holder of an equity interest:]

The undersigned, the holder of Class *[ ]* equity interest in the Debtor, consisting of _____ shares or other interests of *[describe equity interest]* in the Debtor

[In each case, the following language should be included:]

(Check one box only)

[ ] ACCEPTS THE PLAN [ ] REJECTS THE PLAN

Dated: _____

Print or type name: _____

Signature: _____

Title (if corporation or partnership) _____

Address: _____

_____

RETURN THIS BALLOT TO:

[Name and address of proponent's attorney or other appropriate address]

Form 14

COMMITTEE NOTE

The form has been substantially amended to simplify its format and make it easier to complete correctly.

Directions or blanks for proponent to complete the text of the ballot are in italics and enclosed within brackets. A ballot should include only the applicable language from the alternatives shown on this form and should be adapted to the particular requirements of the case.

If the plan provides for creditors in a class to have the right to reduce their claims so as to qualify for treatment given to creditors whose claims do not exceed a specified amount, the ballot should make provisions for the exercise of that right. See section 1122(b) of the Code.

If debt or equity securities are held in the name of a broker/dealer or nominee, the ballot should require the furnishing of sufficient information to assure that duplicate ballots are not submitted and counted and that ballots submitted by a broker/dealer or nominee reflect the votes of the beneficial holders of such securities. See Rule 3017(e).

In the event that more than one plan of reorganization is to be voted upon, the form of ballot will need to be adapted to permit holders of claims or equity interests (a) to accept or reject each plan being proposed, and (b) to indicate preferences among the competing plans. See section 1129(c) of the Code.

Form B17 (Official Form 17)
(9/97)

FORM 17. NOTICE OF APPEAL UNDER 28 U.S.C. § 158(a) or (b) FROM A JUDGMENT, ORDER, OR DECREE OF A BANKRUPTCY JUDGE

[Caption as in Form 16A, 16B, or 16D, as appropriate]

NOTICE OF APPEAL

_____, the plaintiff [*or* defendant *or* other party] appeals under 28 U.S.C. § 158(a) or (b) from the judgment, order, or decree of the bankruptcy judge (describe) entered in this adversary proceeding [*or other proceeding, describe type*] on the _____ day of _____, (year).

The names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys are as follows:

Dated: _____

Signed: _____
Attorney for Appellant (or Appellant, if not represented by an Attorney)

Attorney Name: _____

Address: _____

_____

Telephone No: _____

If a Bankruptcy Appellate Panel Service is authorized to hear this appeal, each party has a right to have the appeal heard by the district court. The appellant may exercise this right only by filing a separate statement of election at the time of the filing of this notice of appeal. Any other party may elect, within the time provided in 28 U.S.C. § 158(c), to have the appeal heard by the district court.

Form 17

COMMITTEE NOTE

The form has been amended to conform to Rule 8001(a), which requires the notice to contain the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys. A party filing a notice of appeal pro se should provide equivalent information.

Form B18 (Official Form 18)
(9/97)

Form 18. DISCHARGE OF DEBTOR

IN A CHAPTER 7 CASE

[Caption as in Form 16A]

DISCHARGE OF DEBTOR

It appearing that the debtor is entitled to a discharge, **IT IS ORDERED:** The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

Dated: _____

BY THE COURT

_____

United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

EXPLANATION OF BANKRUPTCY DISCHARGE IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. *[In a case involving community property:]* [There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts that are Not Discharged.

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

a. Debts for most taxes;

b. Debts that are in the nature of alimony, maintenance, or support;

c. Debts for most student loans;

d. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;

e. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle while intoxicated;

f. Some debts which were not properly listed by the debtor;

g. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;

h. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

Form 18

COMMITTEE NOTE

The discharge order has been simplified by deleting paragraphs which had detailed some, but not all, of the effects of the discharge. These paragraphs have been replaced with a plain English explanation of the discharge. This explanation is to be printed on the reverse of the order, to increase understanding of the bankruptcy discharge among creditors and debtors. The bracketed sentence in the second paragraph should be included when the case involves community property.

Form B20A (Official Form 20A)
(9/97)

Form 20A. Notice of Motion or Objection

[Caption as in Form 16A.]

NOTICE OF [MOTION TO] [OBJECTION TO]

_____ has filed papers with the court to [relief sought in motion or objection].

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to [relief sought in motion or objection], or if you want the court to consider your views on the [motion] [objection], then on or before (date), you or your attorney must:

[File with the court a written request for a hearing {*or, if the court requires a written response,* an answer, explaining your position} at:

{address of the bankruptcy clerk's office}

If you mail your {request}{response} to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

You must also mail a copy to:

{movant's attorney's name and address}

{names and addresses of others to be served}]

[Attend the hearing scheduled to be held on (date), (year), at ___ a.m./p.m. in Courtroom ____, United States Bankruptcy Court, {address}.]

[Other steps required to oppose a motion or objection under local rule or court order.]

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Date: _____

Signature: _____
Name:
Address:

Form B20B (Official Form 20B)
(9/97)

Form 20B. Notice of Objection to Claim

[Caption as in Form 16A.]

NOTICE OF OBJECTION TO CLAIM

_____ has filed an objection to your claim in this bankruptcy case.

Your claim may be reduced, modified, or eliminated. You should read these papers carefully and discuss them with your attorney, if you have one.

If you do not want the court to eliminate or change your claim, then on or before (date), you or your lawyer must:

{If required by local rule or court order.}

[File with the court a written response to the objection, explaining your position, at:

{address of the bankruptcy clerk's office}

If you mail your response to the court for filing, you must mail it early enough so that the court will **receive** it on or before the date stated above.

You must also mail a copy to:

{objector's attorney's name and address}

{names and addresses of others to be served}]

Attend the hearing on the objection, scheduled to be held on (date), (year), at _____a.m./p.m. in Courtroom ____, United States Bankruptcy Court, {address}.

If you or your attorney do not take these steps, the court may decide that you do not oppose the objection to your claim.

Date: _____

Signature: _____
Name:
Address:

Forms 20A & 20B

COMMITTEE NOTE

These forms are new. They are intended to provide uniform, plain English explanations to parties regarding what they must do to respond in certain contested matters which occur frequently in bankruptcy cases. Such explanations have been given better in some courts than in others. The forms are intended to make bankruptcy proceedings more fair, equitable, and efficient, by aiding parties, who sometimes do not have counsel, in understanding the applicable rules. It is hoped that use of these forms also will decrease the number of inquiries to bankruptcy clerks' offices.

These notices will be sent by the movant unless local rules provide for some other entity to give notice.

These forms are not intended to dictate the specific procedures to be used by different bankruptcy courts. The forms contain optional language that can be used or adapted, depending on local procedures. Similarly, the signature line will be adapted to identify the actual sender of the notice in each circumstance. All adaptations of the form should carry out the intent to give notice of applicable procedures in easily understood language.

Item 17-20

Items 17 through 20 will be

oral reports and the field trip.

Item 21-22

STATUS LIST OF BANKRUPTCY RULES AMENDMENTS

September 1997

1. "Class of '97." Prescribed by Supreme Court and transmitted to Congress April 11, 1997. Projected effective date 12/1/97.

1019(3), (5)	3021
1020 [new rule]	8001(a), (b), (e)
2002(a), (n)	8002(c)
2007.1	8020 [new rule]
3014	9011
3017	9015
3017.1 [new rule]	9035
3018(a)	

2. Official Bankruptcy Forms. Approved by Committee on Rules of Practice and Procedure at its June 1997 meeting, and will be transmitted to Judicial Conference for consideration at September 1997 session. Recommended effective date: immediately upon approval by the Judicial Conference, but use not to be mandatory until March 1, 1998, (to accommodate conversion by court computer systems and private publishers).

Amended Forms No. 1, 3, 6 (Schedule F only), 8, 9 (A - I), 10, 14, 17, 18, and new Forms No. 20A and 20B.

3. "Class of '99" Amendments approved by Advisory Committee September 1995, March 1996, September 1996, and March 1997. Approved for publication and comment by the Committee on Rules of Practice and Procedure at its June meeting.

1017	4007
1019	6004
2002	6006
2003	7001
3020	7004
3021	7062
4001	9006
4004	9014

NEXT MEETING

The next meeting of the Advisory Committee will be

March 26 - 27, 1998

at the

Winrock International Conference Center
Morrilton, Arkansas