ADVISORY COMMITTEE
ON
BANKRUPTCY RULES

San Francisco, CA
April 7-8, 2011

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of April 7 - 8, 2011
San Francisco, California

Introductory Items

1. Greetings; Introduction of new members (Judge Jordan and Judge Jonker); and Introduction of new assistant reporter (Professor McKenzie). (Judge Wedoff)

2. Approval of minutes of Santa Fe meeting of September 30 - October 1, 2010. (Judge Wedoff)

   - Draft minutes.

3. Oral reports on meetings of other committees:

   A. January 2011 meeting of the Committee on Rules of Practice and Procedure. (Judge Wedoff and Professor Gibson)

   - Draft minutes of the Standing Committee meeting and a summary of the September meeting of the Judicial Conference will be distributed separately.

   B. January 2011 meeting of the Committee on the Administration of the Bankruptcy System. (Judge Lefkow and Judge Perris)

   C. November 2010 and April 2011 meetings of the Advisory Committee on Civil Rules. (Judge Harris)

   D. October 2010 and April 2011 meetings of the Advisory Committee on Evidence. (Judge Wizmur)

   E. April 2011 meeting of the Advisory Committee on Appellate Rules. (Professor Gibson)

   F. Bankruptcy CM/ECF Working Group, the CM/ECF NextGen Project, and the Pro Se Pathfinder Project. (Judge Perris and Mr. Waldron)

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues. (Judge Harris and Professor Gibson)

   A. Recommendation concerning comments submitted on the proposed amendment to Rule 3001(c) concerning the information required to support a proof of claim

when the claim is based on an open-end or revolving consumer credit agreement. (Judge Harris and Professor Gibson)

- Memo of March 15, 2011 by Professor Gibson.
- Draft amendment to Rule 3001(c)(3) and Committee Note.

B. Recommendation concerning Suggestion (09-BK-H) by Judge Margaret Dee McGarity and Suggestion (09-BK-N) by Judge Michael E. Romero on behalf of the Bankruptcy Judges Advisory Group to amend Rule 3007(a) to provide for disposition of objections to claims by negative notice and to clarify the proper method of serving objections to claims. (Judge Harris and Professor Gibson)

- Memo of March 9, 2011, by Professor Gibson.
- Draft amendment to Rule 3007(a) and Committee Note.

C. Recommendation concerning proposed technical amendment to Rule 3001(c)(1) to conform the rule to Instruction 7 on Official Form 10, the Proof of Claim, which directs claimants not to send original documents. (Judge Harris and Professor Gibson)

- Memo of March 4, 2011, by Professor Gibson.

D. Recommendation concerning proposed amendment to Rule 5009(b) to conform the rule to the proposed amendment to Rule 1007(b)(7) to allow personal financial management course providers to file a statement of completion. (Judge Harris and Professor Gibson)

- Memo of March 4, 2011, by Professor Gibson.

5. Joint Report by the Subcommittees on Consumer Issues and on Forms. (Judge Harris, Judge Perris, and Professor Gibson)

Recommendation concerning amendment to Schedule C (Official Form 6C) as a result of the Supreme Court's decision in *Schwab v. Reilly*, 130 S. Ct. 2652 (2010), in which the Court dealt with the extent of a claimed exemption. (Judge Harris, Judge Perris, and Professor Gibson)

- Memo of March 10, 2011, by Professor Gibson.

6. Report of the Subcommittee on Forms. (Judge Perris, Professor Gibson, Mr. Myers, and Mr. Wannamaker)

A. Recommendations concerning comments and testimony on proposed new mortgage claim attachments forms – Official Form 10 (Attachment A), Official

Form 10 (Supplement 1), and Official Form 10 (Supplement 2). (Judge Perris, Judge Harris, and Professor Gibson)

- Memo of March 14, 2011 by Professor Gibson.
- Draft revisions of proposed forms for mortgage claim attachments.

B. Recommendations concerning comments on proposed amendments to Official Form 10, Proof of Claim. (Judge Perris and Professor Gibson)

- Memo of March 9, 2011, by Professor Gibson.
- Draft revision of Official Form 10 and Committee Note.

C. Recommendation concerning comments on proposed amendment to Form 25A. (Professor Gibson)

- Memo of March 4, 2011, by Professor Gibson.

D. Recommendation concerning amending Official Forms 22A and 22C as a result of the Supreme Court's decision in *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716 (2011). (Judge Perris and Professor Gibson)

- Memo of March 7, 2011, by Professor Gibson.
- Draft revision of Official Forms 22A and 22C -- including the amendments at Items 23G and 23H in the Bullpen -- and Committee Note.

E. Recommendation concerning Suggestion 10-BK-G by Judge Margaret Mahoney and Comment 10-BK-M by States' Association of Bankruptcy Attorneys (SABA) to adopt a form chapter 13 plan. (Judge Perris and Professor Gibson)

- Memo of March 7, 2011, by Judge Perris.

F. Recommendation concerning Suggestion 10-BK-I by Aaron Cahn to revise the definition of "insider" on page 1 of Official Form 7, Statement of Financial Affairs, to conform to the statutory definition in 11 U.S.C.. § 101(31). (Judge Perris and Professor Gibson)

- Memo of March 4, 2011, by Professor Gibson.
- Draft revision of Official Form 7.

G. Oral report on amendment to Director's Form 240A/B(Alt.), Reaffirmation Agreement, to conform to the Bankruptcy Technical Corrections Act of 2010. Judge Perris and Mr. Wannamaker)

- Draft revision of Director's Form 240A/B(Alt.)

H. Recommendation concerning Suggestion 10-BK-E by Scooter LeMay of the Middle District of Alabama for the addition of a bar code indicating the form number for each Official Form. (Judge Perris and Professor Gibson)

- Memo of March 4, 2011, by Professor Gibson.

7. Oral report on status of the Bankruptcy Forms Modernization Project. (Judge Perris)

8. Reporter's recommendations on comments on proposed amendments to Rule 7054 and Rule 7056. (Professor Gibson)

- Memo of March 5, 2011, Professor Gibson.

9. Report of the Subcommittee on Business Issues. (Judge Wizmur and Professor Gibson)

A. Oral report on status of Suggestion 09-BK-J by Judge William F. Stone, Jr., for rules and an Official Form to govern applications for the payment of administrative expenses. (Judge Wizmur and Professor Gibson)

- Results of the survey conducted by Molly Johnson and Beth Wiggins regarding the need for a national rule or forms for the allowance of administrative expenses will be distributed separately.

B. Recommendation concerning Suggestion 10-BK-H by the Institute for Legal Reform for a rule and form to promote greater transparency in the operation of trusts established under 11 U.S.C.§ 524(g). (Judge Wizmur and Professor Gibson)

- Memo of March 10, 2011, by Professor Gibson.

C. Recommendation concerning Suggestion 10-BK-F by Douglas M. Neistat concerning a rule requiring publication of notice of the sale of estate assets pursuant to 11 U.S.C. § 363(f) on a national registry similar to one maintained by the Central District of California. (Judge Wizmur and Professor Gibson)

- Memo of March 4, by Professor Gibson.

10. Joint Discussion with the Advisory Committee on Appellate Rules. (Judge Jeffrey S. Sutton, chair of the Appellate Committee; Professor Catherine T. Struve, reporter of the Appellate Committee; Judge Pauley; Professor Gibson)

Oral report by the Subcommittee on Privacy, Public Access, and Appeals on the revision of the Part VIII rules. (Judge Pauley and Professor Gibson)

- Joint memo of March 8, 2011, by Professor Struve and Professor Gibson.
- Draft revision of Appellate Rule 6.
- Working draft of the proposed revision of the Part VIII rules.
- Draft combination of the Notice of Appeal and Statement of Election

11. Oral Report of the Subcommittee on Technology and Cross Border Insolvency. (Mr. Baxter and Professor Gibson)

12. Oral Report of the Subcommittee on Attorney Conduct and Health Care. (Mr. Rao and Professor Gibson)

13. Oral report on technical amendment to Rule 2015(a)(3) to correct reference to 11 U.S.C. § 704(a)(8). (Judge Wedoff and Professor Gibson)

Discussion Items

14. Suggestion 10-BK-J by Judge Linda Riegle to amend Rule 1014. (Judge Wedoff and Professor Gibson)

15. Suggestion 10-BK-M by James Jacobsen on behalf of the States' Association of Bankruptcy Attorneys for a national rule on admission to practice before the bankruptcy courts and local counsel requirements for governmental entities, and for a national uniform Chapter 13 plan. (Judge Wedoff and Professor Gibson)

16. Suggestion by Judge Thomas W. Waldrep, Jr., for new rules to provide more clarity in the selection process for creditors' committees and to discourage unethical behavior by counsel. (Judge Wedoff and Professor Gibson)

17. Suggestion 10-BK-K by Judge Paul Mannes to amend Rule 4004(c)(1)(J). (Judge Wedoff and Professor Gibson)

18. Suggestion by David Andersen to eliminate unneeded and wasted regular mailings in bankruptcy cases. (Judge Wedoff and Professor Gibson)

19. Charlie Y, Inc., v. Carey, B.A.P. 9th Cir. (Mar. 4, 2011), in which the Bankruptcy Appellate Panel found that there is a gap in Rule 7054 as to the procedure for requesting allowance of attorney's fees in adversary proceedings. (Judge Wedoff and Professor Gibson)

- Copy of the opinion.

20. Oral report on impact of the sunset of the National Guard and Reservists Debt Relief Act

of 2008, Public Law No: 110-438, on Interim Rule 1007-I and Official Form 22A. The statute, codified at 11 U.S.C. § 707(b)(2)(D)(ii), applies to cases commenced in the three years after December 19, 2008. (Judge Wedoff and Professor Gibson)

Information Items

21. Oral report on the status of bankruptcy-related legislation. (Mr. Wannamaker, Judge Wedoff, Professor Gibson)

22. Oral update on opinions interpreting 11 U.S.C. § 521(i). (Prof Gibson)

23. Bullpen:

A. Amendment to Rule 1007(b)(7) to authorize providers of postpetition personal financial courses to notify the court directly of a debtor's completion of the course, approved at September 2010 meeting.

B. Technical amendment to Rule 1007(c) to conform to the December 1, 2010, amendment to Rule 1007(a)(2) changing the deadline for the debtor in an involuntary case to file a list of creditors, approved at September 2010 meeting. Also, Suggestion 10-BK-L by Susan Ivancsis.

C. New Rule 8007.1 and the amendment to Rule 9024 (indicative rulings), approved at September 2008 meeting.

D. Amendments to Rule 9006, Rule 9013, and Rule 9014 to address the timing of the service of any written response to a motion, not just opposing affidavits, approved at September 2010 meeting.

E. Amendment to Official Form 1 to implement new Rule 1004.2 by providing space for a chapter 15 debtor to indicate the country of its center of main interests and each country in which a foreign proceeding is pending, approved at September 2010 meeting.

F. Technical and conforming amendments to Official Forms 9A - 9I, the meeting of creditors notices, including amendments to implement the proposed amendment to Rule 2003(e), approved at September 2010 meeting.

G. Amendment to Official Form 22C to implement the Supreme Court's decision in *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010), by directing an above-median-family-income debtor to state any change from the income or expenses reported elsewhere on the form that has occurred or is virtually certain to occur during the 12-month period following the date of the filing of the

petition, approved at September 2010 meeting. (Set out at Item 6D)

H. Amendment to Official Forms 22A and 22C to permit deduction of expenses for business cell phone service necessary for the production of income, if not reimbursed by the debtor's employer, approved at September 2010 meeting. (Set out at Item 6C)

I. Amendment to Official Form 23 to implement the proposed amendment to Rule 1007(b)(7), which would authorize providers of postpetition personal financial courses to notify the court directly of a debtor's completion of the course, approved at September 2010 meeting.

24. Rules Docket.

25. Future meetings:

Fall 2011 meeting, September 26 - 27, 2011, at the Sofitel Water Tower Hotel in Chicago, Illinois. Possible locations for the spring 2012 meeting.

26 New business.

27. Adjourn.

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Chair:	Reporters:
Honorable Eugene R. Wedoff United States Bankruptcy Court Everett McKinley Dirksen United States Courthouse 219 South Dearborn Street Chicago, IL 60604	Professor S. Elizabeth Gibson Burton Craige Professor of Law 5073 Van Hecke-Wettach Hall University of North Carolina at Chapel Hill C.B. #3380 Chapel Hill, NC 27599-3380 Professor Troy A. McKenzie New York University School of Law 40 Washington Square South New York, NY 10012
Members: Michael St. Patrick Baxter, Esq. Covington & Burling LLP 1201 Pennsylvania Avenue, NW Washington, DC 20004-2401	 Honorable Karen K. Caldwell United States District Court United States Courthouse and Post Office 101 Barr Street Lexington, KY 40507
Honorable Arthur I. Harris United States Bankruptcy Court Howard M. Metzenbaum U. S. Courthouse 201 Superior Avenue, Room 148 Cleveland, OH 44114-1238	Honorable Sandra Segal Ikuta United States Court of Appeals Richard H. Chambers Court of Appeals Bldg 125 South Grand Avenue, Room 305 Pasadena, CA 91105-1621
Honorable Robert James Jonker United States District Court Gerald R. Ford Federal Building 110 Michigan Street, N.W., Room 685 Grand Rapids, MI 49503	Honorable Adalberto Jordan United States District Court Wilkie D. Ferguson, Jr. United States Courthouse 400 North Miami Avenue, Room 10-1 Miami, FL 33128
J. Christopher Kohn, Esq. Director, Commercial Litigation Branch Civil, U.S. Dept. of Justice (ex officio) P.O. Box 875, Ben Franklin Station Washington, DC 20044-0875 (1100 L Street, N.W., 10th Flr, Rm 10036) Washington, DC 20005)	J. Michael Lamberth, Esq. Lamberth, Cifelli, Stokes & Stout, P.A. 3343 Peachtree Road, N.E., Suite 550 Atlanta, GA 30326
David A. Lander, Esq. Gallop Johnson & Neuman 101 South Hanley Road Suite 1700 St. Louis, MO 63105	Professor Edward R. Morrison Columbia Law School Greene Hall, Room 819 435 West 116th Street New York, NY 10027

Honorable William H. Pauley III United States District Court 2210 Daniel Patrick Moynihan U. S. Courthouse 500 Pearl Street New York, NY 10007-1581	Honorable Elizabeth L. Perris Chief Judge United States Bankruptcy Court 700 Congress Center 1001 Southwest Fifth Avenue Portland, OR 97204-1145
John Rao, Esq. National Consumer Law Center 7 Winthrop Square, 4th Floor Boston, MA 02110-1245	Honorable Judith H. Wizmur Chief Judge United States Bankruptcy Court Mitchell H. Cohen U. S. Courthouse 2nd Floor – 400 Cooper Street Camden, NJ 08102-1570
Advisors and Consultants: Patricia S. Ketchum, Esq. 113 Richdale Avenue #35 Cambridge, MA 02140	 Mark A. Redmiles, Deputy Director Executive Office for U.S. Trustees 20 Massachusetts Ave., N.W., Suite 8000 Washington, DC 20530
James J. Waldron Clerk, United States Bankruptcy Court Martin Luther King, Jr. Federal Building and United States Courthouse Third Floor, 50 Walnut Street Newark, NJ 07102-3550	**Liaison Member:** Honorable James A. Teilborg United States District Judge United States District Court 523 Sandra Day O'Connor U. S. Courthouse 401 West Washington Street – Suite 523 Phoenix, AZ 85003-2146
Liaison from Committee on the Administration of the Bankruptcy System: Honorable Joan Humphrey Lefkow United States District Court Everett McKinley Dirksen U. S. Courthouse 219 South Dearborn Street, Room 1956 Chicago, IL 60604	
Secretary: Peter G. McCabe Secretary, Committee on Rules of Practice & Procedure Washington, DC 20544	**Chief Counsel:** Andrea Kuperman Chief Counsel to the Rules Committees 11535 Bob Casey U.S. Courthouse 515 Rusk Avenue Houston, TX 77002-2600

Advisory Committee on Bankruptcy Rules

Subcommittee/Liaison Assignments, Effective March 1, 2011

Subcommittee on Consumer Issues Judge Arthur I. Harris, Chair Judge Sandra Segal Ikuta Judge William H. Pauley III Judge Karen K. Caldwell Judge Judith H. Wizmur John Rao, Esq. David A. Lander, Esq. James J. Waldron, *ex officio* Mark A. Redmiles, Esq., *EOUST liaison*	**Subcommittee on Business Issues** Judge Judith H. Wizmur, Chair Judge Robert James Jonker J. Christopher Kohn, Esq. J. Michael Lamberth, Esq. Michael St. Patrick Baxter, Esq. David A. Lander, Esq. Professor Edward R. Morrison James J. Waldron, *ex officio* Mark A. Redmiles, Esq., *EOUST liaison*
Subcommittee on Forms Judge Elizabeth L. Perris, Chair Judge Judith H. Wizmur Judge Arthur I. Harris J. Christopher Kohn, Esq. John Rao, Esq. J. Michael Lamberth, Esq. James J. Waldron, *ex officio* Mark A. Redmiles, Esq., *EOUST liaison* Patricia S. Ketchum, Esq., *Consultant*	**Forms Modernization Project** Judge Elizabeth L. Perris, Chair Judge Judith H. Wizmur Judge Arthur I. Harris J. Christopher Kohn, Esq. John Rao, Esq. J. Michael Lamberth, Esq. James J. Waldron, *ex officio* Mark A. Redmiles, Esq., *EOUST liaison* Patricia S. Ketchum, Esq., *Consultant*
Subcommittee on Privacy, Public Access and Appeals Judge William H. Pauley, III, Chair Judge Sandra Segal Ikuta Judge Karen K. Caldwell Judge Adalberto Jordan Judge Elizabeth L. Perris J. Christopher Kohn, Esq. Michael St. Patrick Baxter, Esq. David A. Lander, Esq. Mark A. Redmiles, Esq., *EOUST liaison*	**Subcommittee on Style** Judge Karen K. Caldwell, Chair Judge Sandra Segal Ikuta Judge Judith H. Wizmur Judge Arthur I. Harris J. Christopher Kohn, Esq. J. Michael Lamberth, Esq. David A. Lander, Esq. Michael St. Patrick Baxter, Esq.

Subcommittee on Attorney Conduct and Healthcare John Rao, Esq., Chair Judge William H. Pauley, III Judge Karen K. Caldwell Judge Robert James Jonker Judge Arthur I. Harris J. Michael Lamberth, Esq. Mark A. Redmiles, Esq., *EOUST liaison*	**Subcommittee on Technology and Cross Border Insolvency** Michael St. Patrick Baxter, Esq., Chair Judge Sandra Segal Ikuta Judge William H. Pauley III Judge Adalberto Jordan Judge Arthur I. Harris Professor Edward R. Morrison Mark A. Redmiles, Esq., *EOUST liaison*
Civil Rules Liaison: Judge Arthur I. Harris --- **Evidence Rules Liaison:** Judge Judith H. Wizmur	**CM/ECF Working Group and CM/ECF Next Gen Liaison:** Judge Elizabeth L. Perris

Advisory Committee on Bankruptcy Rules

Members	Position	District/Circuit	Start Date		End Date
Eugene R. Wedoff Chair	B	Illinois (Northern)	Member: Chair:	2004 2010	---- 2013
Michael St. Patrick Baxter	ESQ	Washington, DC		2008	2011
Karen K. Caldwell	D	Kentucky (Eastern)		2009	2012
Arthur I. Harris	B	Ohio (Northern)		2010	2012
Sandra Segal Ikuta	C	Ninth Circuit		2010	2012
Robert James Jonker	D	Michigan (Western)		2010	2013
Adalberto Jose Jordan	D	Florida (Southern)		2010	2013
J. Christopher Kohn*	DOJ	Washington, DC		----	Open
J. Michael Lamberth	ESQ	Georgia		2005	2011
David A. Lander	ESQ	Missouri		2008	2011
Edward R. Morrison	ACAD	New York		2010	2013
William H. Pauley III	D	New York (Southern)		2005	2011
Elizabeth L. Perris	B	Oregon		2007	2013
John Rao	ESQ	Massachusetts		2006	2012
Judith H. Wizmur	B	New Jersey		2008	2011
S. Elizabeth Gibson Reporter	ACAD	North Carolina		2008	Open

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Jim H. Wannamaker 202-502-1910

* Ex-officio

LIAISON MEMBERS

Appellate:	
Dean C. Colson	(Standing Committee)
Bankruptcy:	
Judge James A. Teilborg	(Standing Committee)
Civil:	
Judge Arthur I. Harris	(Bankruptcy Rules Committee)
Judge Diane P. Wood	(Standing Committee)
Criminal:	
Judge Reena Raggi	(Standing Committee)
Evidence:	
Judge Judith H. Wizmur	(Bankruptcy Rules Committee)
Judge Paul S. Diamond	(Civil Rules Committee)
Judge John F. Keenan	(Criminal Rules Committee)
Judge Marilyn Huff	(Standing Committee)

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

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Molly T. Johnson (Bankruptcy Rules Committee) Senior Research Associate Research Division One Columbus Circle, N.E. Washington, DC 20002-8003	Emery G. Lee (Civil Rules Committee) Senior Research Associate Research Division One Columbus Circle, N.E. Washington, DC 20002-8003
Laural L. Hooper (Criminal Rules Committee) Senior Research Associate Research Division One Columbus Circle, N.E. Washington, DC 20002-8003	Tim Reagan (Evidence Rules Committee) Senior Research Associate Research Division One Columbus Circle, N.E. Washington, DC 20002-8003

TAB-1

Greetings; Introduction of new members

Item 1 will be an oral report.

TAB-2

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of September 30 – October 1, 2010
Santa Fe, New Mexico
(DRAFT MINUTES)

The following members attended the meeting:

District Judge Laura Taylor Swain, Chair
Circuit Judge Sandra Segal Ikuta
District Judge Karen Caldwell
District Judge David Coar
Bankruptcy Judge Arthur I. Harris
Bankruptcy Judge Elizabeth L. Perris
Bankruptcy Judge Eugene R. Wedoff
Bankruptcy Judge Judith H. Wizmur
Professor Edward R. Morrison
Dean Lawrence Ponoroff
Michael St. Patrick Baxter, Esquire
J. Christopher Kohn, Esquire
J. Michael Lamberth, Esquire
David A. Lander, Esquire
John Rao, Esquire

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
District Judge Lee H. Rosenthal, chair of the Committee on Rules of Practice and Procedure (Standing Committee)
District Judge James A. Teilborg, liaison from the Standing Committee
District Judge Joan Humphrey Lefkow, liaison from the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee)
Professor Daniel Coquillette, reporter of the Standing Committee
Mark Redmiles, Deputy Director, Executive Office for U.S. Trustees (EOUST)
Lisa Tracy, Counsel to the Director, EOUST
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
John Rabiej, Administrative Office of the U.S. Courts (Administrative Office)
James Ishida, Administrative Office
James H. Wannamaker, Administrative Office
Stephen "Scott" Myers, Administrative Office
Molly Johnson, Federal Judicial Center
Elizabeth Wiggins, Federal Judicial Center
Philip S. Corwin, Butera & Andrews

The following summary of matters discussed at the meeting is written in the order of the meeting agenda unless otherwise specified, not necessarily in the order actually discussed. It should be read in conjunction with the agenda materials and other written materials referred to,

all of which are on file in the office of the Secretary of the Standing Committee.

An electronic copy of the agenda materials, other than materials distributed at the meeting after the agenda was published, is available at http://www.uscourts.gov/RulesAndPolicies/FederalRulemaking/ResearchingRules/Reports.aspx Votes and other action taken by the Committee and assignments by the Chair appear in **bold**.

Introductory Items

1. Greetings and Introduction of new chair, Judge Wedoff, new committee member, Professor Morrison, and new liaison, Judge Lefkow; acknowledgment of the service of Judge Coar, and Dean Ponoroff.

The Chair welcomed Judge Wedoff as the incoming chair and Professor Morrison as the Committee's newest member. She also welcomed new liaisons from the Bankruptcy Committee, Judge Joan Humphrey Lefkow, and from the FJC, Ms. Molly Johnson. She thanked outgoing members Judge David Coar and Dean Lawrence Ponoroff for their service.

The Chair also asked for a moment of silence to honor Francis Szczebak, former chief of the Bankruptcy Judges Division, who unexpectedly passed away on Saturday, September 18, 2010.

2. Approval of minutes of New Orleans meeting of April 29-30, 2010.

The New Orleans minutes were approved with minor changes noted by Judge Wedoff and Mr. Kohn.

3. Oral reports on meetings of other committees.

(A) June 2010 meeting of the Committee on Rules of Practice and Procedure.

The Reporter said that all recommendations from the Committee were accepted with a minor wording change to Rule 7056. The Chair added that so far only one comment has been received on the rules published for comment, and she noted that the hearing dates, if needed, would be January 7 in San Francisco and February 4 in Washington D.C.

(B) June 2010 meeting of the Committee on the Administration of the Bankruptcy System.

The Chair gave the report. She said the primary topic of interest for this Committee was the Bankruptcy Committee's support of the current judgeship bill. Based on the results of the last additional needs survey conducted in 2008, the judiciary submitted a request to Congress for 13 additional bankruptcy judgeships, conversion of 22 existing temporary judgeships to

permanent status, and extension of two temporary judgeships. She said that one bill incorporating the bankruptcy judgeship requests has passed the House, and has been reported favorably by the Senate Judiciary Committee. She said another judgeship bill, which included an Article III judgeship request as well as the bankruptcy judgeship request, has also been reported favorably by the Senate Judiciary Committee. The Chair said both bills await Senate floor action.

(C) Upcoming Meeting of the Advisory Committee on Civil Rules.

Judge Wedoff said that although the Civil Rules Committee has not met since this Committee's last meeting, it did hold its conference on the civil rules and the cost of litigation at Duke Law School in May, and that it would discuss that conference at its meeting this fall.

(D) Upcoming October 2010 meeting of the Advisory Committee on Evidence.

Judge Caldwell said that at its next meeting, the Evidence Committee will consider changes to its restyled rules suggested by the Standing Committee.

(E) Upcoming October 2010 meeting of the Advisory Committee on Appellate Rules.

The Reporter said that at its next meeting the Appellate Rules Committee will be considering Rule 6 and direct bankruptcy appeals to circuit courts. She said that this Committee will work closely with the Appellate Rules Committee concerning the proposed revisions to Part VIII Rules, and that the two Committees will overlap their meetings this spring in San Francisco.

(F) Bankruptcy CM/ECF Working Group and the CM/ECF NextGen Project.

Judge Perris reported on the work of the CM/ECF Working Group and the CM/ECF NextGen Project in the context of her report on the work of the Forms Modernization Project at Agenda Item 11.

(G) Progress report from the Sealing Committee.

The Reporter said that the Sealing Committee has completed its work. She said that the Committee found very few instances where entire cases are sealed and it concluded that there is no need for new national rules regarding sealing.

(H) Progress report from the Privacy Committee.

The Reporter said that the Privacy Committee has concluded that existing rules seem to adequately protect privacy and it does not plan to recommend any rule changes. She said that it did recommend, however, that the FJC conduct random annual reviews of files to check for party compliance with the rules and to make sure privacy identifiers are being redacted. It will also

recommend more education about the redaction rules to make sure parties are not unnecessarily seeking information that will later need to be redacted, and it will ask the AO to monitor technology advances that will assist in identifying information that should be redacted.

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues.

(A) Recommendations concerning Suggestion (09-BK-H) by Judge Margaret Dee McGarity and Suggestion (09-BK-N) by Judge Michael E. Romero (both on behalf of the Bankruptcy Judges Advisory Group) to amend Rule 3007(a) to provide for disposition of objections to claims by negative notice and to clarify the proper method of serving objections to claims.

Judge Wedoff said that the Subcommittee supported Judge McGarity's suggestion to clarify that Rule 3007(a) allows a negative notice procedure for objections to proofs of claim. He said that the Subcommittee was prepared to recommend amending the rule (to allow for negative notice) at the last committee meeting, but withdrew its recommendation to consider Judge Romero's related observation that the rules are unclear as to whether Rule 3007 governs service of an objection to claim, or just notice of the objection and hearing date.

After discussing the suggestions, the Subcommittee recommended amending Rule 3007(a) as set forth in the materials to clarify that an objection may be granted after notice and an *opportunity* for a hearing (i.e., on negative notice). The Subcommittee also concluded that except for the federal government, service of an objection to claim should be allowed to be made on the name and address provided by the creditor on the proof of claim, and therefore recommended amending the rule as set forth in the materials to clarify that Rule 3007 governs both service and notice of objections to claim.

In discussing the Subcommittee's recommendation, one member pointed out that Rule 7004(h) contains detailed service requirements concerning insured depository institutions that are applicable in adversary proceedings and in contested matters. Because an objection to a claim is a contested matter, he thought either Rule 7004(h) would need a carve-out for claims objections, or that the proposed change to Rule 3007(a) would need a carve-out for objections to claims filed by insured depository institutions. The member said additional research might be needed before the Committee took a vote, however, because he thought that Rule 7004(h) was added by congress. Several members suggested that the Subcommittee research the issue to ensure that the proposed change would not make the rule inconsistent with any congressional enactment.

Two members questioned the Subcommittee's decision to shorten the response time from 30 to 21 days, and suggested that if a multiple of seven days is preferred that it be 28 days. Another member questioned why the rule allowed for local variation with respect to the shortened time period. Judge Wedoff responded that the Subcommittee thought that a default

period of 30 days (or 28) was longer than needed, but noted that the rule allowed for a longer period if necessary. He said that local variation was already widespread under the current rule and seemed to be working well. **After additional discussion, the Committee voted to approve the negative notice provision. It asked the Subcommittee to recommend in the spring whether a carve-out is needed for federal deposit institutions, and to consider further whether the response time period should be 21, 28 or 30 days.**

(B) Recommendation concerning Suggestion (09-BK-J) by Judge William F. Stone, Jr., to amend Rules 9013 and 9014 to require that the caption of a motion that initiates a contested matter set forth the name of every person whose interests would be directly affected by the relief sought.

Judge Wedoff said that the Subcommittee carefully considered Judge Stone's suggestion during its August 2 conference call, and that it recommends the Advisory Committee take no further action on the suggestion. He said that in the early 1980s many bankruptcy courts required (as Judge Stone suggests) that motions be captioned similar to Official Form 16B, requiring respondents' names as well as a motion number. The courts also organized the motions, responses, and subsequent papers in separate motions folders, rather than in the case file. The practice was largely abandoned as unnecessary and burdensome, however, after the courts' electronic docketing systems such as BANCAP and NIBS became sophisticated enough to link motions and related papers on the docket.

Given the widespread abandonment of this type of caption, the Subcommittee recommended that any decision to require naming the parties in the caption of certain motions be left to local courts. The Subcommittee also thought that Judge Stone's concerns were addressed in part by Official Form 20A, Notice of Motion or Objection. The form contains a clear warning in bold lettering that the recipient's rights are at risk and directs the recipient to talk with an attorney and file a response within a specified time period.

One member said that requiring the respondent's name in the caption could be helpful if that meant it would also be reflected in the docket. But Mr. Wannamaker said that the docket is not controlled by rule, and that motion captions are not necessarily reflected on the docket. He said there are standard dictionary events such as "objection to claim" but that it's up to the filing attorney to decide how much detail to add to the docket event. Another member said that the docket is meant to be transactional, and that too much detail would make the transactional information harder to find. **A motion to take no further action carried without objection.**

(C) Recommendation concerning Suggestion (09-BK-I) by Dana C. McWay (on behalf of the Next Generation Bankruptcy CM/ECF Clerk's Office Functional Requirements Group) to amend Rule 1007(b)(7) to allow providers of personal financial management courses to file statements of individual chapter 7 and chapter 13 debtors' completion of the course.

Judge Wedoff said that Dana McWay, the clerk of the Bankruptcy Court for the Eastern District of Missouri, submitted suggestion 09-BK-I on behalf of the NextGen Clerk's Office Functional Requirements Group ("FRG"). He said that the FRG proposes that approved providers of personal financial management courses be allowed to notify the court of the debtor's completion of the course, rather than requiring – as Rule 1007(b)(7) now does – the debtor to file Official Form 23. Judge Wedoff said that Subcommittee agreed with the suggestion for permissive filing by providers – so long as the debtor retained ultimate filing responsibility. The Subcommittee therefore recommended that Rule 1007(b)(7) and the preface and instructions to Form 23 be amended as set forth in the agenda materials.

In discussing the suggestion, one member recommended a change to the committee note, on page 103, so that the second sentence reads: "Course providers approved under § 111 of the Code may be permitted to file this notification ...". **The Committee approved the proposed change to Rule 1007(b)(7), as set forth on page 103 of the materials and with the proposed change to the committee note. It recommended that the rule change be published for comment in August 2011. It also approved the related changes to B23, to be published for comment in August 2012.**

(D) Recommendation concerning Comment (09-BK-032) by attorney William J. Neild that Official Forms 22A and 22C be revised to allow individual debtors to deduct expenses for telecommunication services to the extent they are necessary for the production of income and not reimbursed by the debtor's employer.

Judge Wedoff said that the Subcommittee agreed that the Forms 22A and 22C do not currently allow employed individuals to deduct business expenses. The Internal Revenue Manual, however, allows the deduction of extra telecommunication expenses if they are incurred for the production of income. The Subcommittee therefore recommends a change to line 32 of Form 22A and 37 of Form 22C, as shown on page 108 of the materials. Because the change is small, the Subcommittee recommends that the change be held in the bullpen until other changes to the forms are recommended. **The recommendation was approved without objection.** [Note, as a result of the recommendation at Agenda Item 5A below, the Committee recommended publishing the proposed telecommunication changes in August 2011].

5. Joint Report by the Subcommittee on Consumer Issues and the Subcommittee on Forms.

(A) Report on what changes, if any, should be made in Official Form 22C as a result of the Supreme Court's decision in *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010), in which the Court rejected a purely "mechanical" approach to the calculation of a chapter 13 debtor's projected disposable income under 11 U.S.C. § 1325(b)(1)

The Reporter said that under *Lanning,* the debtor's Current Monthly Income ("CMI") is

the presumptive starting point of calculating "Projected Disposable Income" (PDI), but that in unusual cases, the bankruptcy court can taking into account known or virtually-certain-to-occur changes to income and expenses.

The Reporter said that in considering *Lanning* the main concern of the Consumer and Forms Subcommittees (the Joint Subcommittee) was whether to change Official Form 22C, and/or Schedules I and J, to require the debtor to report changes in income (and by analogy expenses) that were likely to occur during the applicable commitment period of the chapter 13 plan. She said that a majority of the Joint Subcommittee supported the recommendation at page 116 of the materials, which added a new line 61 to Form 22C.

The Joint Subcommittee's recommended amendment to Form 22C would require above-median debtors to report any change in income that has occurred or is virtually certain to occur during the applicable commitment period (three to five years). The Reporter explained that in making its recommendation, the Joint Subcommittee had to resolve several issues that the *Lanning* decision does not clearly address: (1) whether all chapter 13 debtors, or just above-median debtors, should be required/allowed to report known or virtually-certain-to-occur changes to income; (2) whether a similar approach should be taken with respect to expenses; (3) given that above-median-income debtors report some expense deductions based on IRS standards rather than actual expenses, whether changes to actual expenses matter; (4) whether the form should provide some guidance regarding "known or virtually certain" changes by limiting requested disclosure to those changes likely to happen in limited time period after the form is completed, such as six months or a year; (5) if only above-median debtors – whose expenses are determined under IRS standards – are required to completed proposed line 61, should below-median debtors, whose actual income and expenses are used in computing disposable income, be required to provide similar information about projected changes on Schedules I and J.

(1) Should the proposed change to Form 22C be limited to above-median debtors?

Judge Wedoff explained that CMI has three roles in chapter 13: (i) determination of the applicable commitment period – five years for above median debtors and three years for below median debtors; (ii) how expenses are calculated – using IRS standards for above-median debtors, and judicially determined standards for below-median debtors; and (iii) to calculate disposable income for above-median debtors. He said the Joint Committee's proposal was limited to above-median debtors because as currently designed Form 22C only calculates disposable income for above-median debtors (by subtracting IRS standards from CMI). Calculating expenses for below-median debtors would complicate Form 22C, and he recommended that if the Committee determined that *Lanning* required form changes for below-median debtors, such changes be made to Schedules I and J.

(2) Should changes in expenses be addressed?

The Reporter explained that because the issue in *Lanning* concerned changes in income,

that the opinion's discussion of changes in expenses was *dicta*. The Joint Committee concluded, however, that it doesn't make sense to address known or virtually certain changes in income without also addressing similar changes in expenses.

(3) Given that IRS standards are used for many of the expenses reported by above-median debtors, how should reporting changes in actual expenses be handed?

The Subcommittee's recommended that the debtor list changes to the actual expenditures reported in Part IV that are virtually certain to occur during the applicable commitment period. With respect to the amounts reported in Part IV that are determined by the IRS national and local standards, only changed amounts that result from changed circumstances in the debtor's life – such as the addition of a family member or the surrender of a vehicle – should be reported.

(4) Over what time period should the forms request changes?

Without elaboration, *Lanning* considers changes that have happened by the time of confirmation or are virtually certain to happen. The Joint Subcommittee's recommended amendment would require reporting any change that is virtually certain to change during the commitment period, which for above-median debtors is generally five years. Some members were in favor of a shorter time period, while others thought that the phrase "virtually certain" is inherently self-limiting, and that putting a time limit in the form doesn't add any clarity. One member suggested a one-year forward-looking time frame because 11 U.S.C. § 521(a)(1)(vi) already requires the debtor to report changes in income and expenses that are reasonably anticipated to occur a year after the petition is filed.

(5) Should Schedules I and J be changed in addition to or instead of changing Form 22C to account for *Lanning*?

Some members thought changes to Form 22C could be avoided because Schedules I and J already require reporting actual income and expenses as of the petition date (which would pick up changes that "have occurred" as of the petition date), and also require the debtor to report any changes to income and expenses "reasonable anticipated to occur" within a year of the filing of the form. Other members said that even if anticipated changes are reported on Schedules I and J, that information would still need to be transferred to Form 22C to determine plan feasibility, because PDI for above-median debtors requires using IRS categories for some expenses. Also Form 22C does not include some categories of the debtor's income, such as social security income. **The Committee voted 6 to 4 in favor of addressing *Lanning* in Form 22C instead of Schedules I and J.**

After additional discussion, **the Committee voted without objection to require that only above-median debtors be required to disclose changes in income and expenses that have occurred or are "virtually certain to occur" within one year of the petition date. Thus the Committee voted to recommend publishing for comment in August 2011 the**

Subcommittee's proposed line 61, as set out at pages 114-15 of the materials, with the following change: the phrase "during your applicable commitment period" was replaced with "during the 12-month period following the date of the filing of your petition."

> (B) Report on what changes, if any, should be made in Schedule C (Official Form 6C) as a result of the Supreme Court's decision in *Schwab v. Reilly*, 130 S. Ct. 2652 (2010), in which the Court dealt with the extent of a claimed exemption.

The Reporter explained that in *Schwab* the Supreme Court held that an objection under § 522(*l*) of the Bankruptcy Code and Fed. R. Bankr. P. 4003 is not required in order for a trustee to challenge the debtor's valuation of exempt property and thereby permit the estate to recover any value exceeding the claimed exemption amount. She said that the Joint Subcommittee considered several possible changes to Schedule C in response to *Schwab* but had not reached a consensus. Instead, it settled on three alternatives for the Committee to consider.

Alternative A. No change is needed because the *Schwab* court has explained how to complete the form if the debtor intends to exempt her entire interest (by claiming as exempt "full fair market value (FMV)" or "100% of FMV"). Supporters of this approach said that instructions to the form could provide a road map for exempting the debtor's entire interest. Joint Subcommittee members opposed to this approach were concerned that not all debtors read the instructions, and that the form is not currently designed to prompt filers to put anything other than a dollar amount in the valuation column.

Alternative B. Change header of "value of claimed exemption" column to "extent of claimed exemption" and give the debtor two checkbox options: "Debtor's interest in the property limited to $___" or "Debtor's entire interest in the property, not limited in amount." Joint Subcommittee members opposed to this approach noted that it may create problems with capped exemptions and how wild card exemptions are being used.

Alternative C. Keep the valuation column, but add a column that indicates whether the debtor's entire interest is being exempted. Subcommittee members favoring this option thought it reflected the *Schwab* holding by giving the debtor an option to clearly exempt his entire interest in the property, while also requiring the listing of an exemption amount that would allow the trustee to understand how the debtor was attempting to allocate any wildcard exemption.

Joint Subcommittee members suggested that regardless of the alternative chosen, an instruction might be added informing the debtor that claiming the entire value is appropriate only if the exemption is not capped or claiming it is otherwise consistent with Rule 9011.

In discussing the alternatives, several members continued to support Alternative A (no change) because the Supreme Court has already explained how to fill out the existing version of the form. Supporters of this approach would, however, update the instructions to reflect the *Schwab* decision.

Several other members supported Alternatives B or C because those alternatives included – on the form – language making clear the debtor's intent to exempt his entire interest in the property. There was some dispute, however, about whether the phrase "debtor's entire interest in the property" would clearly convey the debtor's intent to exempt the property itself, or if the phrasing in *Schwab*, "Full fair market value of the property" should be used instead. Some members favored Alternative B over Alternative C because it forced the debtor to either claim his entire interest in the property, or a specific amount.

Supporters of Alternative C favored adding a column to deal with whether the debtor intended to exempt her entire interest in the property. Alternative C supporters said retaining a separate "value of claimed exemption" column was necessary to make clear how the debtor intended to allocate wildcard exemptions. Those opposed to Alternative C said that, as in *Schwab*, a problem would arise when the debtor's interest in property (i.e., the equity) turned out to be worth more than the dollar amount the debtor exempted in "value" column. The form doesn't tell the court or the trustee whether the value column or the "entire interest" column should control.

After additional discussion, the Committee took two votes. In the first vote, **the Committee eliminated Alternative B. In the second vote, the Committee recommended Alternative C, 8-4. The Joint Subcommittee was directed to revise Alternative C to determine which column controls when the "entire interest" column is checked, and the debtor's interest is greater than the dollar amount the debtor lists for the exemption.**

6. Report of the Subcommittee on Forms.

(A) Recommendation concerning amending Official Form 1 to implement proposed new Rule 1004.2 (Petition in Chapter 15 Cases).

Judge Perris said that new Rule 1004.2, scheduled to go into effect December 1, 2011, requires a chapter 15 petition to "state the country where the debtor has the center of its main interests ... [and] also identify each country in which a foreign proceeding by, regarding, or against the debtor is pending." She said the Subcommittee recommended the proposed version of Official Form 1 in the materials (pages 131-34) to accomplish this new requirement. The Subcommittee recommended approval without publication. **The Committee recommended that the revised Form 1 be approved without publication with an effective date to coincide with the scheduled effective date of proposed Rule 1004.2: December 1, 2011.**

(B) Recommendation concerning amending Official Forms 9A-I to reflect the proposed amendment of Rule 2003(e) (effective December 2011) and stylistic changes.

Judge Perris said the Subcommittee recommends one substantive change and a number of

stylistic changes to all versions of Official Form 9. She said that a pending amendment to Rule 2003(e), scheduled to go into effect December 1, 2011, will require the presiding official at a meeting of creditors who wishes to complete the meeting at a later date to file a statement specifying the date and time to which such a meeting is adjourned. She said all versions of Form 9, however, incorporate the current wording of Rule 2003(e), which states the meeting "may be adjourned ... by announcement at the meeting of the adjourned date and time without further written notice."

To conform Forms 9A – I to the pending change in Rule 2003(e), the Subcommittee recommends revising the explanation of "Meeting of Creditors" on the back of each form to state that the "meeting may be continued and concluded at a later date specified in a notice filed with the court." Because the proposed revision would simply conform the forms to revised Rule 2003(e), the Subcommittee concluded that publication for comment was unnecessary. She said that because all versions of the form need to be revised, the Subcommittee also recommends several stylistic changes described in the agenda materials. **After a short discussion, the Committee approved the forms as set forth in the agenda materials and recommended that the changes go into effect without publication on December 1, 2011.**

(C) Report by Mr. Myers on revision of Director's Form 200, to account for pending change to Bankruptcy Rule 1007(c). **(Oral addition to agenda)**

Mr. Myers said that on December 1, 2010, unless Congress acts to the contrary, a pending change to Bankruptcy Rule 1007(c) will increase the time a chapter 7 debtor has to file the statement of completion of financial management course (Official Form 23) from 45 to 60 days after the first day set for the meeting of creditors. He said this change requires an update to the last item on page one of Director's Form B200. He explained that the change was ministerial and was illustrated in a one page handout distributed at the meeting, which shows the change from 45 to 60 days. He said that because the change applies to a director's form, committee action is not required.

(D) Report by Mr. Wannamaker on need to update Interim Rule 1007-I to reflect the pending December changes to Rule 1007(c), and the need to correct a pending discrepancy between subparagraphs (a)(2) and (c). **(Oral addition to agenda)**

Mr. Wannamaker said that 45- to 60-day time period change in Rule 1007(c) described in Agenda Item 6(C), would also need to be incorporated into subsection (c) of Interim Rule 1007-I, a local rule adopted by courts to address temporary waivers of the presumption of abuse that apply to certain service members as a result of the National Guard and Reservists Debt Relief Act of 2008. He recommended informing the courts of the need to update Interim Rule 1007-I by memo, similar to what was done when the time-amendment changes in 2009 required changes Interim Rule 1007-I. **The Committee supported the recommendation.**

Mr. Wannamaker said that in reviewing Interim Rule 1007-I to conform it to Rule 1007, he discovered an unrelated oversight in the pending amendments to Rule 1007. In December, Rule 1007(a)(2) will shorten from 14 to seven days after the order for relief the time a debtor in an involuntary case has to file the mailing matrix (i.e., the list used by the clerk to provide notice of the Section 341 meeting of creditors and equity security holders). This 14-day deadline is repeated (but was not amended) in Rule 1007(c). Mr. Wannamaker said the discrepancy could be fixed by deleting the phrase "the list in subdivision (a)(2)" from subsection (c), but that the earliest this could occur through the regular rules process was December 2012. A temporary fix could be put into place immediately, however, by deleting the suggested language from subpart (c) of the interim rule.

The Committee approved removing the phrase "the list in subdivision (a)(2)" from subsection (c) as a technical amendment to Rule 1007, with a scheduled effective date of December 1, 2012. Initially, the Committee also approved removing the suggested language from subsection (c) of Interim Rule 1007-I, but that decision was reversed after the meeting because it would confuse the purpose of the interim rule, which is simply to provide a procedure to implement the National Guard and Reservists Debt Relief Act of 2008.

7. Report of the Subcommittee on Business Issues.

(A) Recommendation concerning Suggestion 09-BK-J by Judge William F. Stone, Jr., to provide rules and an Official Form to govern applications for the payment of administrative expenses.

Judge Wizmur said the Subcommittee considered Judge Stone's request and agreed that the Code and Rules provide very little detail about how to seek payment of administrative expenses. Generally, section 503 of the Code provides only that an entity may "file a request for payment of an administrative expense..." and that the administrative expense shall be allowed "after notice and a hearing." Although the legislative history for § 503(a) contemplates that the bankruptcy rules "will specify the time, the form, and the method of such a filing." S. REP. NO. 95-989, at 66 (1978), there has never been a national form or rule for filing administrative expenses requests.

Judge Wizmur said that the Subcommittee does not have a recommendation at this time, but proposes instead to survey court clerks about existing local rules, practices, and forms, and the scope of procedures that currently exist at the local level for the payment of administrative expenses. After considering the results of the survey, the Subcommittee proposes to report its recommendation to the Committee at the spring 2011 meeting. **Motion for the Subcommittee to gather further information and report at the spring 2011 meeting carried without opposition.**

(B) Recommendation concerning Suggestion 10-BK-D by Judge Raymond T. Lyons to delete Bankruptcy Rule 9006(d).

Judge Wizmur explained that Judge Lyons believes that Rule 9006(d), which provides default rules for serving motions, is superfluous, misplaced, and likely to create confusion. Judge Lyons suggested that the rule is superfluous because local rules have been developed and replace the defaults in most courts, and he thinks that the provision is misplaced because Rules 9013 and 9014 generally address motion practice. He suggests that the scheduling of motions and responses should be left to local practice and deleted from the national rule.

The Subcommittee considered the suggestion and concluded that Rule 9006(d) should be retained as a default, even given the existence of local rules and procedures governing motion practice, because some districts do not have their own rules specifying the time for filing motions and supporting and opposing affidavits. The Subcommittee agreed with Judge Lyons, however, that Rule 9006(d) and Rules 9013 and 9014 should have better cross-references.

The Subcommittee also concluded that, to better serve as a default rule for motion practice, the coverage of subdivision (d) should be expanded to address the timing of the service of any written response to a motion, not just opposing affidavits. The Subcommittee recommends changes to Rule 9006(d) and Rules 9013 and 9014 as set forth in the agenda materials at pages 170-72. **Motion to approve the Subcommittee's recommendation, and to publish for comment the proposed amendments to Rule 9006(d), and Rules 9013 and Rules 9014 in August 2011, approved with the following stylistic changes:** Rule 9006(d) – insert a period after "motion" on line 8, delete the word "and," and finish the sentence as "Except as otherwise provided in Rule 9023, ~~opposing affidavits~~ any written response may be served not later than one day before the hearing, unless the court ~~permits them to be served at some other time~~ orders otherwise; Rule 9013 – change "by" to "under" on line 7; and Rule 9014 – change "by" to "under" on line 3, "opposition" to "response" on line 5, and "period prescribed by" to "determined under" on line 6.

> (C) Recommendation concerning suggestion by Deputy Clerk Debbie Lewis, a legal management advisor in the Southern District of Florida, to provide an official form or rule for corporate and partnership debtors filing schedules of current income and expenditures.

Judge Wizmur said that Debbie Lewis, the legal management advisor for the Bankruptcy Court for the Southern District of Florida, contacted staff at the Administrative Office concerning the need for corporations and partnerships to file schedules of current income and expenses under the Bankruptcy Code and Rules, and the consequences of their failure to do so. She questioned whether the clerk's office could overlook the failure of a corporation to file income and expense schedules, and suggested that the failure would be less likely if official income and expense forms were developed for non-individuals.

Judge Wizmur said that the Subcommittee carefully considered the applicable Code and rule sections. It concluded that, like an individual, a partnership or corporation is required to file

a schedule of current income and expenses. The consequence of the failure to file those schedules is different, however. If the debtor is an individual, the case will automatically be dismissed in 45 days. If a corporation or a partnership fails to file the schedules, however, the case cannot be dismissed unless a party in interest (in a chapter 11 case) or the U.S. trustee (in a chapter 7 case) seeks that relief, and then only after notice and a hearing. The Subcommittee concluded that these different consequences, and the need for a motion in a partnership or corporation case before court action can occur, explain why the deficiency notice is needed in an individual case but not in a partnership or corporation case.

The Subcommittee considered whether a rule or form amendment is needed to encourage compliance with this filing requirement by non-individual debtors. Mr. Redmiles said that U.S. trustees do not perceive this matter to present a problem because they already receive the income and expense information they need from the monthly operating reports filed by non-individual debtors.

The Subcommittee concluded that there is no need to take any further action on this issue. Because compliance with § 521(a) and Rule 1007(b) by non-individual debtors has not been identified as a problem needing a rule or form solution by U.S. trustees or creditors, the Subcommittee concluded that implementation of the filing requirement can continue to be left to local rules and practices. **A motion to take no further action was approved.**

8. Report of the Subcommittee on Privacy, Public Access, and Appeals.

Judge Pauley gave a brief overview of the Part VIII revision project. He explained that former member Eric Brunstad proposed a complete rewrite of Part VIII rules at the spring 2008 meeting so that they would more closely track the style and changes that have been made to the Federal Rules of Appellate Procedure (FRAP) over the years. Mr. Brunstad submitted an initial draft of the revised Part VIII rules at the fall 2008 meeting in Denver. To encourage comment from the bench and bar, the Subcommittee held two open subcommittee meetings in conjunction with the spring and fall 2009 Committee meetings in San Diego and Boston. Judge Pauley said that many of the comments received at the open subcommittee meetings have been incorporated into the draft.

At the spring 2010 meeting in New Orleans, the Committee asked the Subcommittee to proceed with its consideration of a comprehensive revision of the bankruptcy appellate rules and endorsed the following goals for the revision:

- Make the bankruptcy appellate rules easier to read and understand by adopting the clearer and more accessible style of the Federal Rules of Appellate Procedure (FRAP).
- Incorporate into the Part VIII rules useful FRAP provisions that currently are unavailable for bankruptcy appeals.

- Retain distinctive features of the Part VIII rules that address unique aspects of bankruptcy appeals or that have proven to be useful in that context.
- Clarify existing Part VIII rules that have caused uncertainty for courts or practitioners that have produced differing judicial interpretations.
- Modernize the Part VIII rules to reflect technological changes – such as the electronic filing and storage of documents – while also allowing for future technological advancements.

The Reporter said that over the summer she and the Subcommittee updated the draft revision with the Committee's goals in mind, and they are now asking for feedback on some of the drafting issues that arose, and on some of the new practices in the proposed rules. A copy of revised Rules 8001 - 8012, with draft committee notes, was distributed at the meeting.

The Reporter said that the current draft incorporates some overarching stylistic choices. For example, the term "appellate court" is defined in Rule 8001 to mean either the BAP or district court depending on which court the appeal went to, which makes it easier to talk about appellate courts in later rules. Whenever "clerk" is mentioned, however, it is prefaced with the relevant court – bankruptcy, BAP, district, or court of appeals – to avoid confusion.

The Reporter noted that Rule 8002 continues to deal with timing because the statute refers to the rule by number.

She said that Rules 8003(d) and 8004(c) change current practice by "docketing" the appeal in the appellate court as soon the notice of appeal is transmitted (rather than after the record is complete). In reviewing Rules 8003 and 8004, one member commented that in some instances the clerk is directed to "transmit" the notice of appeal and in other places "transmit a copy" of the notice of appeal. The suggestion was to use just "transmit."

The Reporter said that proposed Rule 8005(c) provides a new procedure for resolving disputes about whether an election to have an appeal heard by the district court is valid. Under the proposal, a party challenging the election would have to file a motion in the district court. The Reporter said that the committee note included language clarifying that the rule does not prevent the bankruptcy court or BAP from determining the validity of the motion on its own motion. Several members supported this approach.

One member questioned the need for a separate document under proposed Rule 8005 to elect to have an appeal heard by the district court, and suggested that the district court election could simply be included in the notice of appeal. He thought that the separate-document requirement could be a trap for the unwary. Another member argued that the separate-document requirement was to prevent appellants from inadvertently appealing to the district court in circuits that have BAPs. There was some discussion of how a separate document is defined in the electronic-filing age, and a member suggested that the rule could refer to a document filed separately from the notice of appeal.

The Reporter asked the Committee for thoughts on whether the Subcommittee should make further attempts to incorporate the appellate rules by reference (similar to the Civil Rules' incorporation in part VII of the Bankruptcy Rules) or whether they should continue the present process restating relevant appellate rule provisions. She said that one practical consideration in favor of the present process of restating the appellate rules was to account for technological changes that have not yet been addressed in the appellate rules – one of the goals of the revision project.

Some members were in favor of incorporation to the extent possible because it would make it less likely that the two sets of rules would diverge in the future. Other members favored repetition simply because it allows for refinement of the rules in the bankruptcy context, and because it would spare users from having to consult two sets of rules in order to understand bankruptcy appellate procedure. The Committee recommended that the Reporter solicit feedback from the Standing Committee in January. The Committee also agreed that it would be helpful to illustrate the differences in approach by presenting a side-by-side comparison of a rule revised according to each method.

The Reporter said that the next step would be to complete the draft. She explained that the Committee's spring meeting in San Francisco will overlap with the appellate rules committee meeting and that the two committees will meet jointly for half a day. She said that originally the goal had been to gain approval of the Standing Committee for an August 2011 publication. Given the scope of the project, however, and the significant time that will be required for the styling process and the Standing Committee's consideration of the rules, it is probably more realistic to aim for a projected publication date in August 2012. She noted that these timing and process issues can be discussed with the Standing Committee at its January 2011 meeting.

9. Oral Report of the Subcommittee on Technology and Cross Border Insolvency.

The Chair said that there would be no report because that there was no activity by the Subcommittee over the past term.

10. Oral Report of the Subcommittee on Attorney Conduct and Health Care.

The Chair said that there would be no report because that there was no activity by the Subcommittee over the past term.

11. Oral report on status of the Bankruptcy Forms Modernization Project [Includes report on CM/ECF Working Group and CM/ECF NextGen Project].

Judge Perris said that the CM/ECF Working Group continues to meet and consider modification requests for the current generation of CM/ECF. She said that version 4.1 will be rolling out next and that it will include "e-orders" and new reports.

Judge Perris said the CM/ECF NextGen is still in the requirements stage of the process, but that the project is on target to complete this phase by February 2011. She said that the next phase will be to prioritize implementation, and to write code.

Judge Perris said that since the Committee's spring meeting the FMP has made significant progress in reformatting and rephrasing the questions in an initial filing package of forms to be used by individual debtors in bankruptcy, and has now completed initial drafts of most of those forms. She said that at its summer meeting, the FMP approved a tentative project time line for completing and testing the individual-debtor filing package, drafting forms for individuals that will be used later in the case, and for beginning the business filing package.

Beth Wiggins and Molly Johnson spoke about the project timeline, noting that it projects testing of the individual-debtor filing package next year and sets a goal for publishing the package for comment in the fall of 2012. Ms. Wiggins and Ms. Johnson explained that this process would include a prepublication testing phase next year that would include soliciting feedback from representatives of professional organizations, software providers, a group of career law clerks, a group of "occasional" attorney filers, and lay people. They said that prepublication versions of the individual filing package would likely be presented to the Committee at the fall 2011 and spring 2012 meetings, with a request to approve formal publication for comment in the fall of 2012.

Judge Perris added that concurrent with the prepublication phase of the individual-filing package, that the FMP would continue revising individual debtor forms and would also begin drafting the entity-filing package.

Judge Perris said that the FMP also continues to work with the NextGen CM/ECF Project to promote functional requirements it believes should be included in the future version of CM/ECF. Those functional requirements include the ability to store information in data form and retrieve the data in user-specified reports. Significant numbers of judicial users have identified court needs for such capabilities. The requirements also include capacity to control users' access to data, to ensure that CM/ECF will continue to operate in conformity with Judicial Conference privacy and access policies.

Discussion Items

12. Oral report on the new Strategic Plan for the Federal Judiciary approved by the Judicial Conference at its meeting in September.

The Chair briefly reviewed the Strategic Plan for the Federal Judiciary that was approved by the Judicial Conference at its September meeting. She said the Strategic Plan was organized around seven issues that affect the judiciary's mission and core values. She said the issues of most interest to the Committee were probably Issue 1: Providing Justice; Issue 4: Harnessing

Technology's Potential; and Issue 5: Enhancing Accesses to the Judicial Process. She encouraged members to review the plan and keep its goals and strategies in mind as the Committee develops its work in the future.

Information Items

13. Report on the status of bankruptcy-related legislation.

Mr. Wannamaker updated the Committee on pending and recently enacted bankruptcy-related legislation.

14. Oral update on opinions interpreting section 521(i).

The Reporter said that the bankruptcy courts are still divided on whether "automatic" means automatic, but that the trend at the circuit level (First and Ninth) and recently in the Sixth Circuit BAP is that the bankruptcy court has discretion to retain the case after the 45th day. She said that so long as the courts seemed to breaking in favor of finding the that statute allows discretion, it would be hard to develop a rule to implement automatic dismissal.

15. ***Bull Pen***.

As a result of decisions at this meeting and prior meetings, the following proposed changes are in the bull pen: Proposed new Rule 8007.1 and the proposed amendment to Rule 9024 (indicative rulings), approved at September 2008 meeting. Until proposed publication in August, 2012, the Rule 1007-related changes to Form 23 discussed at Agenda Item 4C.

16. **Rules Docket**.

Mr. Wannamaker said the Rules Docket was in the materials and that it reflects that the Committee has been very busy. The Chair thanked Mr. Wannamaker for maintaining the Rules Docket so that it reflects the status of all the work the Committee has in play.

17. **Future meetings**:

Spring 2011 meeting, April 7-8, 2011, at the Fairmont Hotel in San Francisco, California. The Chair asked members to make suggestions for possible locations for the fall 2011 meeting to the incoming chair, Judge Wedoff.

18. **New business**.

Members thanked Judge Swain for her dedication, stewardship, and leadership as the Chair of this Committee over the past three years.

19. **Adjourn.**

Respectfully submitted,

Stephen "Scott" Myers

TAB-3

Reports on meetings of other committees

Item 3 will be oral reports.

TAB-4-A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

RE: COMMENTS AND TESTIMONY ON PROPOSED AMENDMENTS TO RULE 3001(c)

DATE: MARCH 15, 2011

Among the rules published for comment last August were amendments to Rule 3001(c) that would create an exception in subdivision (c)(1) and add a new subdivision (c)(3) governing claims based on an open-end or revolving consumer credit agreement. Four witnesses testified at the February 4, 2011, hearing on these proposed amendments, and 24 people submitted written comments on them. During their joint conference call on February 18, the Subcommittees on Consumer Issues and on Forms carefully reviewed all of the testimony and comments and considered whether any changes to the published amendments should be made in response.

After reviewing the background of the proposed amendments and their content, this memorandum summarizes the testimony and comments that were submitted on proposed Rule 3001(c). It then discusses the recommendation of the Consumer Subcommittee for approval of the Rule 3001(c)(1) and (c)(3) amendments with some revisions of the rule and committee note.

Background of the Proposed Amendments

The issue of amending the rules to address claims filed by bulk purchasers of consumer debt was first raised by Bankruptcy Judge Tom Small (E.D.N.C.) (suggestion 08-BK-J). He suggested that the Advisory Committee consider possible rule or form amendments to address a problem of inadequately documented and sometimes time-barred credit card claims filed by bulk

debt purchasers. The Consumer Subcommittee first discussed the issues and then appointed a working group to consider in greater detail whether any rule or form changes should be proposed. The group presented its report at the spring 2009 meeting of the Advisory Committee, and the Committee voted to recommend for publication an amendment to Rule 3001(c)(1) that would have required a credit-card claimant to attach to its proof of claim ("POC") the last account statement sent to the debtor.

The Advisory Committee advanced several reasons for proposing the addition of the credit-card provision to subdivision (c)(1). Some members noted that the attachment of the last account statement to the POC would enable the debtor to identify more easily the debt being pursued. The account statement would likely bear the name of a creditor with whom the debtor was familiar, thereby assisting in situations in which the debt had been sold and the claim was filed by an entity whose name the debtor did not recognize. In addition, members of the Committee noted that the date of the last statement might provide the debtor and the debtor's lawyer with an indication of whether the claim might be barred by the statute of limitations and thus further investigation should be undertaken. Finally, it was suggested that the claimant's ability to produce the last account statement would provide some assurance that the claim had been validly assigned to it.

The proposed amendment, which was published for comment in August 2009, provoked a vigorous response by both sides of the issue – bulk purchasers of credit card debt and consumer debtor attorneys. The comments that were submitted presented two starkly conflicting viewpoints about the need for and the appropriateness of the proposed amendment. Bulk claim purchasers vigorously opposed the amendment on several grounds. Among their arguments were the following:

- The last account statement will often not be available when the POC is filed. Under federal record retention policies for financial institutions, credit card account records generally need to be retained for only two years. Furthermore, account information is usually stored in an electronic format, and it may not be practicable to produce a duplicate of an account statement.
- Providing account statements could reveal private information about the debtor, including where purchases were made and in some cases the nature of medical treatment that was obtained.
- No problem has been shown that would require providing additional account information, as demonstrated by the low objection rate to claims filed by bulk claims purchasers.
- The threat of the imposition of sanctions for the failure to produce information in a specific form would have a devastating impact on the debt purchasing market, which provides important benefits to the U.S. economy.

Consumer debtor attorneys, on the other hand, recounted their frustrating experiences in dealing with bare POCs filed by bulk claims purchasers. They said that claims failed to comply with existing documentation requirements and that it was impossible to determine how the claim amounts were calculated. Furthermore, they argued, when additional information was sought, claimants frequently failed to respond until an objection was filed, at which point they either withdrew their claims or belatedly provided information that should have been attached to the POC. Some lawyers and trustees said that when they had pursued challenges to claims filed by bulk purchasers, they had discovered claims that were time-barred, filed against the wrong debtor, or excessive in amount.

In response to the comments and testimony, the Advisory Committee voted at the spring 2010 meeting to withdraw the proposal for the attachment of the last account statement and to propose in its place a new Rule 3001(c)(3) that specifies information that must be provided for a claim based on an open-end or revolving consumer credit agreement. This proposal stemmed in part from suggestions of two witnesses who testified at the February 2010 hearing in opposition to the proposed amendment of Rule 3001(c)(1). They suggested that supporting information about credit card claims could be provided by account summaries attached to the POC. Prior to the Advisory Committee's consideration of the new proposed amendment, an email was sent to all persons who had commented on the originally proposed amendment. The email outlined the substitute proposal that was ultimately proposed and solicited feedback. Few responses were received.

Summary of the Proposed Amendment

The amendments to Rule 3001(c) that were published in August 2010 would, in new subdivision (c)(3), require a statement to be filed with a POC based on an open-end or revolving consumer credit agreement. The statement would require disclosure of the following information, to the extent applicable:

- name of entity from whom the creditor purchased the account;
- name of the entity to whom the debt was owed at the time of the last transaction by the account holder;
- date of the last transaction by the account holder;
- date of the last payment on the account; and
- charge-off date.

Rule 3001(c)(1) would be amended to exempt claims covered by (c)(3) from the requirement of attaching to the POC the writing on which a claim is based, but under (c)(3)(B), the holder of such a claim would have to provide that documentation if requested in writing by a party in interest.

Testimony and Comments on the Published Amendment

At the February 4, 2011, hearing in Washington, D.C., four witnesses testified concerning the proposed amendment to Rule 3001(c). Their testimony is summarized below.

Philip S. Corwin (on behalf of the American Bankers Association) – The proposed amendments to Rule 3001(c) may be inconsistent with § 502(b) of the Code, which provides the exclusive grounds for disallowance of a claim. Proposed subdivision (c)(3) would place an unreasonable burden on consumer lenders and debt purchasers. The rule would shift the burden of proof to the creditor and would adversely affect an industry that purchased $100 billion of charged-off debt last year. He is not aware of any objective evidence that indicates a problem that needs addressing. Most credit card debts for which POCs are filed have already been scheduled by the debtors, and the vast majority of chapter 7 consumer cases have no assets to distribute. Proposed Rule 3001(c)(3) as drafted is unclear. What do "as applicable" and "last transaction" mean? The rule should be clarified to indicate that it is not applicable to home equity lines of credit. The documentation requirements are inconsistent with Rule 3001(f), which presumes the validity of a creditor's claim. The proposed rule is also inconsistent with Federal Rules of Evidence 803(6), 803(15), and 807.

Raymond P. Bell, Jr. (Creditors Interchange Receivables Management LLC) – He commends the Committee for its recent revision of Rule 3001. The reference in (c)(3) to consumer credit agreement should be changed to consumer credit bilateral agreement. Rather

than requiring disclosure of the name of the entity from whom the creditor purchased the account, (c)(3)(i) should require disclosure of the name of the original creditor. He is unaware of any criminal prosecutions for filing fraudulent POCs.

Michael Bahner (Resurgent Capital Services L.P.) – Proposed Rule 3001(c)(3)(B) does not clearly state what is required. The Committee should consider deleting it, but if it is retained, a threshold showing (such as a good faith dispute) should be required before the creditor has to produce the underlying writing. It is unclear which writing must be produced. It could be the credit application, the terms and conditions of the credit agreement, or evidence of a transaction. The timeframe for responding is not stated. This provision creates more questions than it answers.

Brett Weiss (on behalf of the National Association of Consumer Bankruptcy Attorneys) – Virtually all credit card claims today are filed by debt buyers. They typically buy only specific electronic data; as a result there are large gaps in what a filing creditor knows about the claim. What they file in court is just hearsay, based on what they were told by the creditor from whom they purchased the account. Significant errors result. The information required by (c)(3)(A)(i) and (ii) – creditor from whom account was purchased and creditor at time of account holder's last transaction – is important. A comment should be added to the Committee Note stating that if an account is purchased from a securitized trust, the full name of the trust must be provided. The rule should also require the creditor to provide a chain of title, showing the creditor's entitlement to file the POC. Subdivision (c)(3)(B) should state a time in which the creditor must respond to a request for the underlying writing and the penalty for failing to do so. Moreover, it is not clear why a credit card creditor, unlike all other creditors, should have to provide this documentation only upon request.

Twenty-four written comments were submitted. Summaries of those comments follow.

Bankruptcy Judge William R. Sawyer (M.D. Ala.) – The new rule and amended POC form will add much clarity to current practice, which too often involves the filing of vague claims that are met by vague objections.

Fred Welch – Requiring more information for a POC will prevent debtors from having to pay more than they owe and creditors from receiving more than they are entitled to receive.

Hartley Roush – The rule changes should be adopted as proposed.

Nathan Davis – POCs for credit card claims should have to identify the name of the creditor that appears on the credit card since many issuers use more than one trade name. Requiring the debt buyer to tell who the original creditor was will assist the debtor in recognizing the debt and will eliminate unnecessary challenges.

Peter A. Ryan – The rules should require a debt buyer to provide a complete chain of title, and failure to provide the required documentation should constitute prima facie evidence of the invalidity of the claim. The burden should be on the creditor to prove that the debt is owed.

Daniel Greenbaum – While the proposed rules are a welcome improvement, they do not go far enough to protect consumer debtors. Stricter rules need to be imposed for all creditors, not just holders of credit card debt.

Penny Souhrada – Often the attachment to a POC filed by a debt buyer consists of only a redacted account number and an amount owed. Debt buyers should be required to provide the name of the original creditor and subsequent assignees, as well as the writing on which the claim is based. The rule needs to provide a deadline for responding and penalties for failure to respond to a request for the underlying writing.

Ellen Carlson – Credit card creditors and assignees should be required, like other creditors, to provide a copy of the account-opening document or an explanation of why it is not available.

David R. Badger – It is a major problem to obtain the original account application in order to determine whether the non-filing spouse is jointly liable or simply received a courtesy card. The credit card industry should not get a free pass on POC documentation. The rules need to provide some balance in the system. Requiring account writings to be produced upon request is an improvement, but requiring a request will unnecessarily delay case administration and increase costs.

Ellen Holland Keller – If a credit card debt has been sold more than once, the current creditor should be required to provide a complete chain of title back to the original creditor. Otherwise, duplicate claims may be filed. With that change, it would be acceptable to require the credit card claimant to produce the underlying writing only upon request.

Raymond P. Bell, Jr. (written comments in addition to hearing testimony) – Rule 3001(c)(3) should refer to "an originated open-end or revolving credit claim as defined under the Truth in Lending Act." Rather than requiring the name of the entity to which the debt was owed at the time of the last transaction, the rule should require the name of the original creditor. Subdivision (c)(3)(A)(iii) should require disclosure of the date of the last payment by the account holder, not the date of the last transaction. Items (iv) and (v) should be deleted, as should (c)(3)(B).

B-Line, LLC (submitted by Linh K. Tran) – The proposed amendments to Rule 3001(c) should not be approved. They violate due process and conflict with Rules 3001, 3007, 9010, 9014, the Part VII rules, and Fed. R. Civ. P. 26, 34, and 37. Because the sanction provision of

Rule 3001(c) that is scheduled to go into effect in December 2011 is justified as being similar to Civil Rule 37, the Advisory Committee must view every POC as a complaint filed in an adversary proceeding. As a result, an attorney would have to sign the POC. Moreover, by requiring information from only the claimant, the proposed rule impermissibly requires one-sided discovery and permits the imposition of one-sided sanctions. Moreover, a party in interest that requests the writing underlying a credit card claim does not need to act in good faith or provide any reason for making the request, as Rule 9011 would not apply to the request since it is not filed in court. The rule also permits the imposition of sanctions on a claimant for the failure to disclose "enumerated data fields," even if the data do not exist or are not reasonably available. Because there is no requirement for the parties to confer in good faith, the rule will encourage litigation.

American Bankers Association, Independent Community Bankers of America, and the Financial Services Roundtable (written comments submitted by Philip Corwin) – The proposed amendments to Rule 3001(c) should be withdrawn because they:

- are not prompted by any legislative action or by any comprehensive data indicating a pervasive problem causing demonstrable harm;
- are at odds with the Rules Enabling Act read in conjunction with the relevant provision of the Bankruptcy Code;
- fundamentally alter the balance between creditors and debtors in bankruptcy proceedings by placing a new burden on creditors to prove the validity of claims in advance of any objection;
- are at odds with Bankruptcy Rule 3001(f) as well as with several Rules of Evidence;

- will encourage unnecessary litigation;
- will place unjustifiable costs upon lenders that will diminish the availability and increase the cost of consumer credit;
- may stray across the boundary that separates administrative implementation from impermissible policymaking;
- are not required in the interests of justice and cannot be justified under any reasonable cost-benefit analysis; and
- contain confusing and ambiguous terms.

The Judicial Conference should also reconsider the amendments to Rule 3001(c) that are scheduled to go into effect this year that require an itemization of interest and fees and authorize the imposition of sanctions.

Wendell J. Sherk – Rule 3001 should require more diligence, more documentation, and more care in the preparation of a POC, especially given the "sorry state of compliance with existing rules." The U.S. Trustee Program recently settled a case with Capital One Bank with a multi-million dollar refund to consumers and estates. That problem would probably have been caught sooner if Rule 3001 had been strengthened and strictly enforced. The proposed amendments largely eliminate the utility of Rule 3001, apparently as the result of "special pleading and lobbying." A POC should require sufficient documentation to meet a prima facie burden of proof.

Michael Bahner (on behalf of Resurgent Capital Services LP) (written comments in addition to hearing testimony) – Proposed Rule 3001(c)(3)(B) should either be removed or it should broadly define "writing on which the debt was based," given the realities associated with

credit card origination and use. The best approach would be to eliminate the writing requirement for a revolving debt instrument unless there is a bona fide dispute. A valuable compromise would be to acknowledge that compliance with Rule 3001(c)(3)(A) entitles the claimant to prima facie validity of the claim and to add a burden-shifting mechanism as a precondition to a (c)(3)(B) request. If the writing requirement is interpreted as meaning the credit application, otherwise undisputed claims may be subject to challenge or disallowance merely because the credit application has been destroyed or because a writing never existed. If the writing means the terms and conditions mailings, courts will likely disagree about what is the relevant time period. In addition, the requirement of disclosure of the last transaction date should be eliminated from Rule 3001(c)(3)(A). That information will not assist the debtor in assessing the timeliness or validity of the claim.

Matthew Bogosian – He supports proposed Rule 3001, but it should be made clear that it sets the minimum threshold in bankruptcy court and does not preempt states from creating more stringent debt-buyer standards for state-based actions.

Portfolio Recovery Associates, Inc. (submitted by Christopher D. Lagow) – PRA appreciates the Committee's revisions based on the earlier public comment. As drafted, however, the proposed amendments are likely to cause more confusion and litigation. Subdivision (c)(3)(A)(iii) should either be deleted or revised to define the meaning of "transaction." Subdivision (c)(3)(A)(iv) should be revised to provide for the possibility that no payment has ever been made. If a creditor complies with (c)(3), the claim should be entitled to prima facie validity. That would shift the burden of proof to the debtor on any claim objection. Subdivision (c)(3)(B) will likely lead to more litigation and will do little to enhance the debtor's

recognition of accounts. There is no compelling evidence of a need for these changes, but if amendments are approved, they should address the concerns noted.

Jane McLaughlin – Unsecured creditors in bankruptcy should have the same burden of proof that would be imposed on them in collection actions outside of bankruptcy.

Alane A. Becket – It will be impossible for many unsecured creditors to comply with proposed Rule 3001(c)(2)(A) [approved by the Judicial Conference in September 2010] that requires an itemized statement of interest, fees, and charges. Credit card balances revolve, and interest compounds; thus it is not possible to break down a credit card balance into its component parts. Proposed Rule 3001(c)(3)(B) will subject unsecured creditors to arbitrary and harassing requests for documents with no articulated or demonstrated need for the writing. The provision should at least require a requesting party to articulate a substantive need for the documents or dispute the underlying debt and subject the requesting party to sanctions if the request is not made in good faith.

National Association of Consumer Bankruptcy Attorneys (submitted by Henry J. Sommer) – The importance of the proposed amendments cannot be overstated. As bad as the problems in the mortgage servicing industry have been, "they pale in comparison to the abuses that [NACBA] members have seen in the credit card and credit card debt buying arena." Claims are regularly filed without a showing of entitlement of the claimant to collect. For example, claims are filed even though the statute of limitations has run on the claim, the debtor has already settled with a prior debt buyer or collection agency, the claim arises from identity theft, or the debt was discharged in a prior bankruptcy. Others have seen these same problems. (He cites, among other things, the U.S. Trustee Program's settlement with Capital One for filing thousands of previously discharged claims, Consumers Union report on problems with debt buyers, and an

FTC report). The proposed amendments to Rule 3001 are "quite modest and, at best, barely adequate to deal with the widespread problems." It is not clear why one group of creditors should be excused from the requirements applicable to all other creditors. Mere inconvenience to debt buyers is not a good reason. The rule does not specify how long a claimant has to respond to a request for a writing or what the consequences are for failing to comply. The committee note should make clear that the documentation required upon request includes the chain of title, the contract upon which the claim is based, and a transaction record. Requiring adequate documentation of claims protects other creditors as well as the debtor. Trustees also need the information to carry out their statutory duties.

Bass & Associates, P.C. (submitted by David Melcer) – If the information required by subdivision (c)(3)(A) is filed with the claim, the claim should be entitled to a presumption of prima facie validity under Rule 3001(f) without the actual writing on which the claim is based. That result would be made clear by eliminating subdivision (c)(3)(B). The new proposal is an improvement over the withdrawn requirement for the last account statement, but there are ambiguities in the wording of (c)(3). For example, the meaning of "transaction" is not clear. It would be better to use "purchase" or "borrowing." There is no need for the required information when a debtor has scheduled the claim in question, thereby admitting the claim's validity.

Richard I. Isacoff – A full account transaction history should be required. For credit cards and other revolving lines, once payments stop and the debt is sold, there is an industry practice of showing a payment that was never made to avoid a statute of limitations defense.

Travis L. Starr – These amendments should absolutely not be adopted. Credit card claimants should not be relieved of the obligation of filing the writing on which the claim is

based. They should also have to file a transactional history. Unsecured creditors are required to prove what they are owed.

Dee Compton – Adopt the NACBA position on Rule 3001.

Recommendations

Many of the issues raised in the testimony and written comments are ones that the Advisory Committee previously considered. They include last year's amendments to Rule 3001(c), which have now been approved by the Judicial Conference; the decision not to require submission of a chain of title; requiring credit card claimants to produce the underlying writing only upon request; and the need for more information regarding credit card claims than is generally being provided under the existing rules.

The Subcommittee believes that the Committee has properly devised a rule that will create a reasonable and enforceable information requirement on creditors that seek to recover from bankruptcy estates for claims based on open-end or revolving consumer credit agreements. Under the existing rule, all creditors with claims based on a writing are required to file with their POCs the writing on which the claim is based. This requirement is generally not being complied with by credit card claimants, as is evident from the comments on both sides of the issue. Rather than imposing a new documentation requirement on credit card claimants, the proposed amendments allow those creditors greater flexibility in providing information that will provide a basis for debtors and trustees to assess whether the claim is valid and enforceable. The Subcommittee concluded that the comments and testimony did not provide any reason to revisit the basic decisions that the Committee had previously reached.

Many commentators – on both sides of the debate – raised issues about proposed Rule 3001(c)(3)(B), which requires the holder of a claim based on an open-end or revolving consumer

credit agreement to provide a party in interest, upon written request, with the writing on which the claim is based – which the current version of the rule requires to be attached to the POC without request. In particular, questions were raised about whether a time period for response should be specified, whether any threshold showing by the requesting party should be required, whether the parties should be required to confer in good faith before seeking relief from the court, and whether sanctions for non-compliance should be specified. With the exception of the latter issue, these were issues that the Subcommittees discussed at some length during the February 18 conference call. It concluded that the sanction issue did not need to be considered further because the pending amendment creating Rule 3001(c)(2)(D) provides sanctions that may be imposed "if the holder of a claim fails to provide any information required by this subdivision (c)." That authority would therefore apply to the failure to comply with (c)(3)(B).

The Subcommittee agreed that a deadline for responding to a request for the underlying writing should be imposed. Specifying a time limit will enable the requesting party to determine when there has been a failure to comply if the request is met with silence. **The Subcommittee therefore recommends that a 30-day deadline for responding to a written request under proposed Rule 3001(c)(3)(B) be added to the provision.** The time would run from the transmittal of the written request. This time limit would be subject to enlargement or reduction by the court for cause under Rule 9006.

Because there is no deadline for making a request under proposed Rule 3001(c)(3)(B), the Subcommittee discussed at what point a properly filed POC based on an open-end or revolving credit card agreement would be entitled to be treated under Rule 3001(f) as prima facie evidence of the validity and amount of the claim. If the applicability of subdivision (f) depended upon compliance with proposed subsection (c)(3)(B), it would be uncertain whether the POC

was entitled to the benefit of prima facie validity until a written request was made – if and whenever that might occur – and the claimant did or did not provide a proper response. **The Subcommittee therefore recommends that a POC based on an open-end or revolving credit card agreement that is filed and executed in accordance with Rule 3001(a), (b), (c)(2), (c)(3)(A), and (e) would obtain the benefit of subdivision (f).** Failure of a claimant to comply with proposed Rule (c)(3)(B) would not affect the applicability of subdivision (f), but, as discussed above, would subject the claimant to possible sanctions. The revised Committee Note clarifies this issue.

Finally, the Subcommittee agreed that proposed Rule 3001(c)(3) was not intended to apply to home equity lines of credit. Those types of loans, which are secured by a security interest in the debtor's principal residence, are covered by the pending home mortgage amendments and were not intended to be included within subdivision (c)(3). **The Subcommittee therefore recommends that an exception for these types of loans be added to proposed Rule 3001(c)(3).**

Proposed Rule 3001(c)(1) and (c)(3) and the Committee Note, as recommended by the Subcommittee for approval, follow this memorandum. If approved by the Advisory Committee, the proposed rule would be sent to the Standing Committee in June for final approval, and it would be on track to take effect on December 1, 2012.

Rule 3001. Proof of Claim[1]

* * * * *

(c) SUPPORTING INFORMATION.

(1) *Claim Based on a Writing.* Except for a claim governed by paragraph (3) of this subdivision, w~~W~~hen a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

* * * * *

(3) *Claim Based on an Open-End or Revolving Consumer Credit Agreement.*

(A) When a claim is based on an open-end or revolving consumer credit agreement – except for one for which a security interest is claimed in property that is the debtor's principal residence – a statement shall be filed with the proof of claim including, as applicable, the following information:

(i) the name of the entity from whom the creditor purchased the account;

(ii) the name of the entity to whom

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[1] Incorporates amendments that are due to take effect on December 1, 2011, if approved by the Supreme Court, and if Congress takes no action otherwise.

the debt was owed at the time of the last transaction on the account by an account holder;

(iii) the date of the last transaction on the account by an account holder;

(iv) the date of the last payment on the account;

(v) the date on which the account was charged to profit and loss.

(B) On written request, the holder of a claim based on an open-end or revolving consumer credit agreement shall, within 30 days after transmittal of the request, provide a party in interest the documentation specified in paragraph (1) of this subdivision.

COMMITTEE NOTE

Subdivision (c) is amended to add paragraph (3). Except with respect to claims secured by a security interest in the debtor's principal residence (such as a home equity line of credit), paragraph (3) specifies information that must be provided in support of a claim based on an open-end or revolving consumer credit agreement (such as an agreement underlying the issuance of a credit card). Because a claim of this type may have been sold one or more times prior to the debtor's bankruptcy, the debtor may not recognize the name of the person filing the proof of claim. Disclosure of the information required by paragraph (3) will assist the debtor in associating the claim with a known account. It will also provide a basis for assessing the timeliness of the claim. The date, if any, on which the account was charged to profit and loss ("charge-off" date) under subparagraph (A)(v) should be determined in accordance with applicable standards for the classification and account management of consumer credit. A proof of claim executed and filed in accordance with subparagraph (A), as well as the applicable provisions of subdivisions (a), (b), (c)(2), and (e), constitutes prima facie evidence of the validity and

amount of the claim under subdivision (f).

To the extent that paragraph (3) applies to a claim, paragraph (1) of subdivision (c) is not applicable. A party in interest, however, may obtain the writing on which an open-end or revolving consumer credit claim is based by requesting in writing that documentation from the holder of the claim. The holder of the claim must provide the documentation within 30 days after the transmittal of the request. The court, for cause, may extend or reduce that time period under Rule 9006.

TAB-4-B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

RE: OBJECTIONS TO CLAIMS – NEGATIVE NOTICE AND SERVICE

DATE: MARCH 9, 2011

At the fall 2010 meeting, the Subcommittee presented a recommendation to the Advisory Committee regarding a proposed amendment to Rule 3007(a) that was designed to authorize the use of a negative notice procedure for objections to claims and to clarify the method for serving claim objections. This recommendation was made in response to two suggestions that had been submitted to the Committee: one by Judge Margaret D. McGarity (09-BK-H) and the other by Judge Michael E. Romero (09-BK-N).

During the Advisory Committee's discussion of the recommendation, three questions were raised, as a result of which the matter was referred back to the Subcommittee for further consideration. The issues were (1) whether service of a claim objection on an insured depository institution is statutorily required to be made according to the methods specified in Rule 7004(h); (2) whether the required length of notice should be retained at 30 days, as under the current rule, or reduced to 21 days; and (3) what event or action the last sentence of the proposed amended rule refers to in requiring that notice be given. These issues were carefully considered by the Subcommittee during its December 7, 2010, conference call. Based on its deliberations, the Subcommittee presents a revised proposed amendment of Rule 3007(a), which it recommends for approval.

Service on Insured Depository Institutions

The amendment proposed at the fall meeting would have permitted all claimants, with the exception of the federal government, to be served by mail addressed to the person designated on the proof of claim for receipt of notice. Mr. Rao noted at the Advisory Committee meeting that claimants that are insured depository institutions may be required by statute to be served as specified in Rule 7004(h). That provision requires service on such institutions by certified mail addressed to an officer of the institution, subject to three exceptions. A different method of service is permitted when the institution has appeared by its attorney, in which case the attorney must be served by first-class mail; when the "court orders otherwise" after the institution has been served by certified mail with notice of an application to permit service by first-class mail on an officer designated by the institution; or when the institution waives in writing its entitlement to be served by certified mail "by designating an officer to receive service."

This service provision was written by Congress and enacted as part of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 114, 108 Stat. 4106. Although the legislation expressly amended Bankruptcy Rule 7004, which applies to adversary proceedings, the amendment states that it applies to service on an insured depository institution "in a contested matter or adversary proceeding." The House Report (H.R. 103-835) on the legislation briefly explained that § 114 requires service by certified mail, while the "rule that is presently in operation only requires that service be achieved by first class mail."

The Subcommittee concluded that Congress has mandated the method of service on insured depository institutions in all contested matters, including one initiated by the filing of an objection to a claim, and the method required is generally service by certified mail on an officer of the institution. Furthermore, the Subcommittee did not think that the institution's designation

on the proof of claim of someone to receive notice would invariably trigger one of the Rule 7004(h) exceptions. The designated person may not be the institution's attorney, and the attorney may not file the claim. Thus it could not be construed to constitute an appearance by the attorney. Nor would the other two exceptions apply. There would be no service by certified mail of notice of an application to permit service by first-class mail, and the institution's naming of a person to receive notice on the proof of claim form (even if an officer) would not likely constitute a "waiv[er] in writing [of] its entitlement to service by certified mail."

The Subcommittee therefore concluded that the amendment to Rule 3007(a) must require service on insured depository institutions pursuant to Rule 7004(h).

Length of Notice Period

Current Rule 3007(a) requires that a copy of the objection with notice of the hearing be mailed or otherwise delivered to the claimants and others "at least 30 days prior to the hearing." The amendment proposed last fall, by contrast, would have required that notice be provided "no later than 21 days before any scheduled hearing on the objection and any deadline for the claimant to request a hearing" unless the court orders otherwise. At the Advisory Committee meeting, two members questioned the advisability of shortening the presumptive notice period by nine days, noting that the change could be burdensome for large institutional claimants, including the federal government.

In light of the questions that were raised about that change, the Subcommittee concluded that there was no reason to shorten the notice period.

Notice of What?

At the fall meeting, a member of the Advisory Committee noted that the last sentence of the amendment then proposed did not specify the subject of the required notice.[1] The Subcommittee agreed that the sentence needed to be clarified and concluded that the intent was to require that notice be given of the objection to the claim. As reworded, the proposed amendment makes clear that a copy of the objection and Official Form 20B (Notice of Objection to Claim) must be served on the claimant and others.

Subcommittee's Recommendation

The Subcommittee recommends that its revised proposal to amend Rule 3007(a), which follows this memorandum, be approved by the Advisory Committee and sent to the Standing Committee with the request that it be published for comment in August 2011. The expected effective date of the amended provision would be December 1, 2013.

[1] It stated, "Unless the court orders otherwise, notice shall be provided no later than 21 days before any scheduled hearing on the objection and any deadline for the claimant to request a hearing."

Rule 3007. Objections to Claims

(a) OBJECTIONS TO CLAIMS. An objection to the allowance of a claim and a notice of objection that conforms substantially to the appropriate Official Form shall be ~~in writing and~~ filed~~.~~ and served on the claimant, the debtor or debtor in possession, and the trustee at least 30 days before any scheduled hearing on the objection or any deadline to request a hearing. The objection and notice shall be served on the person most recently designated by the claimant on its original or amended proof of claim to receive notices, at the address there indicated, by first-class mail or other means of delivery allowed by Rule 7004. In addition, an objection to the allowance of a claim of the United States, or any of its officers or agencies, and the accompanying notice, shall be served in the manner provided for service of a summons and complaint by Rule 7004(b)(4) or (5) respectively, and an objection to the allowance of a claim of an insured depository institution, and the accompanying notice, shall be served according to Rule 7004(h). ~~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.~~

COMMITTEE NOTE

Subdivision (a) is amended to specify the manner in which an objection to a claim and notice of the objection must be served. It clarifies that Rule 7004 does not apply to the service of most claim objections. Instead, a claimant must be served by first-class mail, or other means of delivery allowed by Rule 7004, to the person that the claimant most recently designated on its proof of claim to receive notices, at the address so indicated. If, however, the claimant is the United States, an officer or agency of the United States, or an insured depository institution, service must also be made according to the method prescribed by the appropriate provision of Rule 7004. The service methods for the depository institutions are statutorily mandated, and the size and dispersal of the decisionmaking and litigation authority of the federal government necessitate service on the appropriate United States attorney's office and the Attorney General, as well as the person designated on the proof of claim.

As amended, subdivision (a) no longer requires that a hearing be scheduled or held on every objection. The rule requires the objecting party to provide notice and an opportunity for a hearing on the objection, but, by deleting from the subdivision references to "the hearing," it permits local practices that require a claimant to timely request a hearing or file a response in order to obtain a hearing. The official notice form served with a copy of the objection will inform the claimant of any actions it must take.

TAB-4-C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

RE: SUGGESTION TO DELETE RULE 3001(c)(1)'s REFERENCE TO THE ORIGINAL OF A DOCUMENT

DATE: MARCH 4, 2011

In response to the August 2010 publication of amendments to Rule 3001(c) and Form 10 (Proof of Claim or "POC"), Linda Spaight of the Administrative Office's Bankruptcy Court Administration Division submitted a comment pointing out a discrepancy between Rule 3001(c)(1) and paragraph 7 of the instructions for Form 10. The rule requires the attachment of "the original or a duplicate" of a writing on which a claim is based, whereas the instructions direct the claimant not to "send original documents, as attachments may be destroyed after scanning."

The Forms Subcommittee considered this comment along with the others that were submitted on the Form 10 amendments. It concluded that the discrepancy pointed out by Ms. Spaight was not created by either the pending amendments to Rule 3001(c) or the proposed amendments to Form 10. It dates back to an earlier decision by the Advisory Committee. The Forms Subcommittee therefore decided that Ms. Spaight's comment should be considered a suggestion for an amendment to Rule 3001(c). It recommended that the suggestion be referred to this Subcommittee, since it is also making a recommendation on the published amendments to Rule 3001(c)(1) and (c)(3).

Judge Wedoff referred Ms. Spaight's suggestion to this Subcommittee. It recommends that a technical amendment be made to Rule 3001(c)(1) so that the rule will be consistent with current practice and the instructions for Form 10.

Background Information

In August 2005, a proposed amendment to Rule 3001(c) was published for comment that would have done two things: (1) require the filing of copies, not originals, of supporting documents in order to reconcile the rule and the POC instructions, and (2) impose a limit of 25 pages for attached documents. Opposition was expressed to the idea of limiting the number of pages of supporting documentation. In response to the concerns that were expressed by commentators and members of the Committee, the Committee voted unanimously at the March 2006 meeting to withdraw the amendment. This decision resulted in withdrawal of both aspects of the amendment, despite the fact, according to the minutes, that the reporter noted the following:

> [W]ithdrawing all proposed amendments to Rule 3001 would leave in effect a provision in the rule that allows claimants to submit an original writing (as opposed to a copy or duplicate) as evidence of a claim. He pointed out that because of electronic filing many courts have sought authorization to destroy any paper claims and attachments after they are scanned and placed on the electronic claims docket, and that claimants may not realize that their original documents may not be returned. Therefore, he suggested pulling only the proposed amendments that deal with page limits.

After the Committee voted to withdraw the entire amendment to Rule 3001(c), the potential inconsistency between the rule and the Form 10 instructions, which stated, "DO NOT SEND ORIGINAL DOCUMENTS," was again noted. In response to a proposal to delete the reference to "the original" in Rule 3001(c), the Committee voted to leave the rule as it was and to strengthen the warning in the POC form about the possible destruction of documents after scanning. Language that currently appears in box 7 – "DO NOT SEND ORIGINAL

DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING." – was approved.

After discussion, the Subcommittee concluded that the language of the form, rather than of the rule, reflects current practice: copies, not originals, of documents are filed with POCs. **The Subcommittee therefore recommends that the version of Rule 3001(c)(1) that will be recommended for approval at the June Standing Committee be amended as follows:**

Rule 3001. Proof of Claim*

* * * * *

(c) SUPPORTING INFORMATION.

(1) *Claim Based on a Writing.* Except for a claim governed by paragraph (3) of this subdivision, when a claim, or an interest in property of the debtor securing the claim, is based on a writing, ~~the original or a duplicate~~ a copy shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

* * * * *

COMMITTEE NOTE

Subdivision (c). Subdivision (c) is amended to add paragraph (3), which specifies information that must be provided in support of a claim based on an open-end or revolving consumer credit agreement (such as an agreement underlying the issuance of a credit card). Because a claim of this type may have been sold one or more times prior to the debtor's bankruptcy, the debtor may not recognize the name of the person filing the proof of claim. Disclosure of the information required by paragraph (3) will assist the debtor in associating the claim with a known account.

* Incorporates amendments that are due to take effect on December 1, 2011, if Congress takes no action otherwise.

It will also provide a basis for assessing the timeliness of the claim. The date, if any, on which the account was charged to profit and loss ("charge-off" date) under subparagraph (A)(v) should be determined in accordance with applicable standards for the classification and account management of consumer credit.

To the extent that paragraph (3) applies to a claim, paragraph (1) of subdivision (c) is not applicable. A party in interest, however, may obtain the writing on which an open-end or revolving consumer credit claim is based by requesting in writing that documentation from the holder of the claim.

The former requirement in paragraph (1) to file an original or duplicate of a supporting document is amended to reflect the current practice of filing only copies. The proof of claim form instructs claimants not to file the original of a document because it may be destroyed by the clerk's office after scanning.

The Subcommittee suggests that this new amendment is sufficiently technical that it can be included in the proposed amendment to Rule 3001(c) that will be sent to the Standing Committee in June for final approval. Because this amendment would bring the rule into alignment with Form 10 and existing practice, the Subcommittee concluded that it does not need to be published for comment.

TAB-4-D

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

RE: CONFORMING AMENDMENT TO RULE 5009(b)

DATE: MARCH 4, 2011

At the fall 2010 meeting, the Advisory Committee accepted this Subcommittee's proposal to amend Rule 1007(b)(7) and Official Form 23 to permit a provider of a personal financial management course to notify the court directly that an individual debtor has completed the course.[1] Such notification would relieve the debtor of the obligation to file Official Form 23 (Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management).

After the fall meeting, Scott Myers noted that the proposed changes to Rule 1007(b)(7) and Form 23 also necessitate a change to Rule 5009(b). That provision, which took effect on December 1, 2010, provides as follows:

> (b) NOTICE OF FAILURE TO FILE RULE 1007(b)(7) STATEMENT. If an individual debtor in a chapter 7 or 13 case has not filed the statement required by Rule 1007(b)(7) within 45 days after the first date set for the meeting of creditors under § 341(a) of

[1] Rule 1007(b)(7) would be amended to provide that the debtor must file Form 23 "[u]nless an approved provider of an instructional course concerning personal financial management has notified the court that a debtor has completed the course after filing the petition." Form 23 would be similarly amended to state, "*This form should not be filed if an approved provider of a postpetition instructional course concerning personal financial management has already notified the court of the debtor's completion of the course.*"

the Code, the clerk shall promptly notify the debtor that the case will be closed without entry of a discharge unless the statement is filed within the applicable time limit under Rule 1007(c).

Because, under the proposed amendments approved at the fall 2010 meeting, a debtor would not always have to file a certificate of completion, Rule 5009(b) needs to be amended to take account of direct notification by the course provider.

Proposed Amendment

The Subcommittee recommends that Rule 5009(b) be amended as follows:

Rule 5009. Closing Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, Chapter 13 Individual's Debt Adjustment, and Chapter 15 Ancillary and Cross-Border Cases

* * * * *

(b) NOTICE OF FAILURE TO FILE RULE 1007(b)(7) STATEMENT. If an individual debtor in a chapter 7 or 13 case is required to ~~has not~~ filed ~~the~~ a statement under ~~required by~~ Rule 1007(b)(7) and has failed to do so within 45 days after the first date set for the meeting of creditors under § 341(a) of the Code, the clerk shall promptly notify the debtor that the case will be closed without entry of a discharge unless the required statement is filed within the applicable time limit under Rule 1007(c).

* * * * *

COMMITTEE NOTE

Subdivision (b) is amended to conform to the amendment of Rule 1007(b)(7). Rule 1007(b)(7) relieves an individual debtor of the obligation

to file a statement of completion of a personal financial management course if the course provider has notified the court that the debtor has completed the course. The clerk's duty under subdivision (b) to notify the debtor of the possible closure of the case without discharge if the statement is not timely filed therefore applies only if the course provider has not already notified the court of the debtor's completion of the course.

The Subcommittee recommends that the Advisory Committee submit the proposed amendment to the Standing Committee at the June 2011 meeting for approval for publication, along with the amendment of Rule 1007(b)(7). The amendment of Form 23 could remain in the bullpen until the spring 2013 meeting, and it could then be submitted to the Standing Committee for approval without publication as a conforming amendment. That would place the amendment of both rules and the form on track to take effect on December 1, 2013.

TAB-5

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEES ON CONSUMER ISSUES AND ON FORMS

RE: PROPOSED AMENDMENT OF SCHEDULE C IN RESPONSE TO *SCHWAB v. REILLY*

DATE: MARCH 10, 2011

At the fall 2010 meeting, the Advisory Committee discussed the impact of the Supreme Court's decision in Schwab v. Reilly, 130 S. Ct. 2651 (2010), on Official Form 6, Schedule C (Property Claimed as Exempt). Concluding that the Court's decision pointed out an ambiguity in Schedule C, the Committee decided that the form should be amended to provide an express option for the debtor to state an intent to exempt the full fair market value of an asset, regardless of the dollar amount of that value. By doing so, the debtor would notify the trustee of the need to object to the exemption within the period prescribed by Rule 4003(b) in order to preserve for the estate any value in the property exceeding a statutory limit. After a lengthy discussion at the fall meeting, the Committee was unable to agree on the precise wording of an amendment to Schedule C. A majority, however, voted in support of pursuing an approach along the lines of one of the options presented at the meeting, and the matter was referred back to the Subcommittees for development of a recommendation to be presented at the spring meeting based on that option.

The Subcommittees held a joint conference call on October 6, 2010, during which the members discussed several options for amending Schedule C. Based on that discussion and further email communication, the Subcommittees now present both a revised version of the option favored at the fall meeting and a revised version of another of the options that was

presented at that meeting. **The Subcommittees recommend that both proposals be considered by the Advisory Committee and that one of them be approved and sent to the Standing Committee with a request that it be published for comment in August 2011.** The anticipated effective date of the amended form would be December 1, 2012.

The *Schwab* Decision

The chapter 7 debtor in *Schwab* listed as an asset on Schedule B business equipment valued at $10,718. On her Schedule C, she claimed an exemption for the equipment in the same dollar amount and also specified that amount as the value of the equipment. The bankruptcy trustee did not object to the exemption of the equipment within the 30-day period allowed by Rule 4003(b). Later, however, arguing that the property was worth more than the amount stated by the debtor, the trustee moved to sell the equipment, pay the debtor her claimed exemptions in the amount she specified, and distribute the rest of the proceeds to her creditors. The debtor opposed this motion by arguing that her Schedule C indicated the intent to exempt the full value of the equipment. Thus, she claimed, because the trustee had not timely objected, the property in its entirety was now exempt under § 522(*l*).[1] The lower courts agreed with the debtor.

The Supreme Court granted *certiorari* to resolve a split among the circuits over whether an exemption claimed in the same amount as the value specified for the exempted property constitutes a claim for the entire value of the property, even if that value is more than the specified amount.[2] The Court reversed the lower courts' affirmative answer in a 6-3 decision written by Justice Thomas. The majority concluded that the debtor "accurately describe[d] an

[1] **Error! Main Document Only.**Section 522(*l*) requires a debtor to "file a list of property that the debtor claims as exempt" and states that "[u]nless a party in interest objects, the property claimed as exempt on such list is exempt."

[2] "The starting point for our analysis is the proper interpretation of Reilly's Schedule C. If we read the Schedule Reilly's way, she claimed exemptions in her business equipment that could exceed statutory limits, and thus claimed exemptions to which Schwab should have objected if he wished to enforce those limits for the benefit of the estate. If we read Schedule C Schwab's way, Reilly claimed valid exemptions to which Schwab had no duty to object." 130 S.Ct. 15 2659-60.

asset subject to an exempt interest and . . . declare[d] the 'value of [the] claimed exemption' as a dollar amount within the range the Code allows." 130 S. Ct. at 2662. Thus, according to the Court, her Schedule C revealed a valid exemption claim to which the trustee had no duty to object.

At the end of the majority opinion, the Court explained how a debtor can indicate the intent to exempt "the full market value of the asset or the asset itself" in a manner that puts the trustee on notice of the scope of the claimed exemption. The Court stated that the debtor can list as the exempt value of the asset on Schedule C "'full fair market value (FMV)' or '100% of FMV.'" Then, the Court explained, "[i]f the trustee fails to object, or if the trustee objects and the objection is overruled, the debtor will be entitled to exclude the full value of the asset." 130 S. Ct. at 2668.

Current Schedule C and Alternative C

In its current form, Schedule C requires a debtor, for each item of property being claimed as exempt, to provide the following information: a description of the property, the law providing each exemption, the value of the claimed exemption, and the current value of the property without deducting any exemptions. It looks like this (using the facts from *Schwab* to illustrate):

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Market Value of Property Without Deducting Exemptions
See attached list of business equipment.	11 U.S.C. § 522(d)(6) 11 U.S.C. § 522(d)(5)	$ 1,850 8,868 10,718	$10,718

At the fall meeting, a majority of the Advisory Committee decided that the form should be changed because it does not inform the debtor of the option described in *Schwab* of claiming the entire fair market value of the property as exempt.

The Committee was divided, however, on how best to express that option. After a series of votes, the following alternative gained the most support:

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Market Value of Property Without Deducting Exemptions	Specify Whether Debtor's Entire Interest In Property Is Claimed As Exempt (Mark 'yes' or 'no' for each entry)
See attached list of business equipment.	11 U.S.C. § 522(d)(6) 11 U.S.C. § 522(d)(5)	$ 1,850 8,868 10,718	$10,718	☒ Yes ☐ No

This alternative adds a fifth column to the existing form that inquires whether the debtor is claiming her entire interest in the property as exempt. It was not finally approved by the Committee, however. Members raised concerns that courts might differ over whether column 3 – value of claimed exemption – or the new column 5 controlled when the amounts were not the same. Some members also stated that column 5 should incorporate the language used by the *Schwab* Court – "full fair market value" – even though "debtor's entire interest in property claimed as exempt" is more consistent with the Code. In the end, the Committee voted to return the matter to the Subcommittees to revise the alternative and bring it back with a recommendation at the spring meeting.

The Subcommittees' Deliberations and Recommendations

The Subcommittees considered and discussed at length three versions of the alternative favored at the fall meeting. All of them used the language "full fair market value," but they differed in how they expressed that column 5 would control if the fair market value differed from or exceeded the value claimed as exempt. In the course of these discussions, a Committee member who had previously supported the alternative suggested that one of the options that had been rejected at the fall meeting might merit further consideration. This version takes existing Schedule C and, without adding a fifth column, includes two options in the column for value of

claimed exemption, one of which allows the debtor to claim the full fair market value of the property. As presented at the meeting, that version looked like this:

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption (check only one box for each claimed exemption)	Current Market Value of Property Without Deducting Exemptions
See attached list of business equipment.	11 U.S.C. § 522(d)(6) 11 U.S.C. § 522(d)(5)	☐ Exemption limited to $_____ ☒ Full fair market value of the exempted property	$10,718

Two additional issues about the amendment of Schedule C were discussed by the Subcommittees. One member suggested that the column for the current market value of the property be moved so that it follows the description of the property (i.e. it becomes column 2). This suggestion was based on the *Schwab* Court's conclusion that the property valuation information is not essential to the exemption claim and does not trigger an obligation to object if the trustee believes the value is incorrect. It is merely useful information regarding the property. The Subcommittees therefore discussed whether it would be more appropriate to place this valuation information near the description of the property and then to group together information about the basis for and amount of the claimed exemption.

The other issue the Subcommittees discussed was whether to include a reminder that Rule 9011 governs the claiming of exemptions. This suggestion was raised in response to concerns that creating a new option to claim the entire fair market value of an asset as exempt might lead debtors to routinely choose that option, even when claiming exemptions with a capped amount.

Following the Subcommittees' joint conference call, the members voted by email on a series of questions. This vote revealed a consensus on the following points:

- The preferred version of the five-column alternative that the Subcommittees were directed to revise is the following:

1. Description of Property	2. Current Market Value of Property Without Deducting Exemptions	3. Specify Law Providing Each Exemption	4. Value of Claimed Exemption	5. If you claim an exemption in the full fair market value of the property, regardless of the amount claimed in column 4, check the box in this column.
See attached list of business equipment.	$10,718	11U.S.C.§522(d)(6) 11 U.S.C. §522(d)(5)	$1,850 8,868 10,718	☒ Full Fair Market Value

- The Subcommittees also ask the Advisory Committee to reconsider an amendment of Schedule C that does not add a fifth column, but gives the debtor the choice of listing either a specific dollar amount or full fair market value as the value of the claimed exemption. It would look like this:

Description of Property	Current Market Value of Property Without Deducting Exemptions	Specify Law Providing Each Exemption	Value of Claimed Exemption (check one box only for each claimed exemption)
See attached list of business equipment.	$10,718	11 U.S.C. § 522(d)(6) 11 U.S.C. § 522(d)(5)	☐ Exemption limited to $_____ ☒ Full fair market value of the exempted property

- A Rule 9011 warning should not be added because it is not included in most other forms that are subject to the rule.
- The information about current market value of the property should be placed in column 2.

The Subcommittees recommend that either of the two amended versions of Schedule C shown above be approved and sent to the Standing Committee for publication. The five-column option allows a debtor to claim as exempt the full fair market value of an asset, and it also provides a dollar amount of each exemption claimed. The latter information is helpful in calculating other exemptions when unused exemption amounts may be applied to other property

(for example, the remaining amount of a wildcard exemption or a not-fully-used homestead exemption). The wording of the fifth column allows the debtor to indicate that the intent to exempt the entire value of the asset even if that amount differs from the specified value of the claimed exemption, thus putting the trustee on notice of the need to object in order to challenge the debtor's claimed exemption of the entire asset.

The other option for amending Schedule C makes a debtor choose between specifying a dollar value of the exemption and claiming the full fair market value as exempt. This design eliminates the need to indicate which exemption amount controls because the debtor must pick one or the other. Thus there is no risk of ambiguity. If the debtor checks the second box (full fair market value), there will not be an exact exemption amount specified, but the debtor will likely calculate any spillover exemption amounts available for other property based on the value the debtor assigned to this asset. If that value is challenged and the court finds it to be greater than the claimed amount, the debtor may have to amend exemptions claimed on other property, but that will also be true if the other recommended version of the form is used. Anytime a debtor claims an exemption in the full value of an asset, any spillover exemption amounts will have to be readjusted if the debtor's valuation is rejected.

TAB-6-A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEES ON CONSUMER ISSUES AND ON FORMS

RE: COMMENTS AND TESTIMONY ON PROPOSED MORTGAGE FORMS

DATE: MARCH 14, 2011

In August 2010 three new proposed official forms were published for comment: Form 10 (Attachment A); Form 10 (Supplement 1); and Form 10 (Supplement 2). These forms were proposed to implement the pending amendments to Rule 3001(c)(2) and new Rule 3002.1. If approved, both the new rules and forms will take effect on December 1, 2011.

Attachment A (Mortgage Proof of Claim Attachment) would implement the requirements of Rule 3001(c)(2) concerning a claim secured by a security interest in the debtor's principal residence. It would accompany the proof of claim ("POC") and would require a statement of the principal and interest due as of the petition date; a statement of prepetition fees, expenses, and charges; and a statement of the amount necessary to cure a default as of the petition date.

Supplement 1 (Notice of Mortgage Payment Change) is designed to implement Rule 3002.1(b). It would be used by the holder of a home mortgage claim to provide notice of any escrow account payment adjustment, interest payment change, and any other mortgage payment change while a chapter 13 case is pending.

Supplement 2 (Notice of Postpetition Mortgage Fees, Expenses, and Charges) would implement Rule 3002.1(c). It would be used in a chapter 13 case by the holder of a home mortgage claim to provide notice of the date incurred and amount of any postpetition fees, expenses, and charges.

This memorandum summarizes the testimony and comments that were submitted regarding these proposed forms. It then discusses the Subcommittees' consideration of the testimony and comments, followed by their recommendations for approval of the forms with minor revisions and continued study of whether a additional information should be required.

Testimony at the February 4, 2011, Hearing

Two witnesses at the Washington, D.C., hearing spoke about the proposed forms – Bankruptcy Judges Marvin Isgur (S.D. Tex.) and Elizabeth Magner (E.D. La). A summary of their testimony follows.

Judge Isgur – Home mortgage claimants should be required to submit with their POCs a loan history that reflects amounts received and applied by the lender. His district requires a detailed loan history, rather than just a summary of amounts due as of the petition, and this requirement has worked well. Because the loan history shows how the lender applied payments received from the debtor, the parties are able to reconcile differences in their calculations for themselves. The components of charges are revealed, thereby allowing a comparison of the claimed arrearages with the debtor's own payment records. Major lenders have developed programs to extract the necessary information from their databases, at a cost of under $10,000. They have expressed a desire for a uniform national form so that they can set up a single automation system to comply with the proposed new rules.

The POC attachment should require disclosure of all charges incurred since the date of default, rather than amounts owed as of the petition date. The latter disclosure would not reveal improper charges that were paid out of a suspense account prior to bankruptcy.

New forms should be adopted, but they should be ones that work. The currently proposed forms should not be adopted without substantial amendment.

Judge Magner – The proposed forms represent an improvement, but more information is needed. Without a history of payment and assessment in date order, the debtor cannot determine whether the claim amounts were properly calculated. In the 25 trials that she has conducted involving mortgage claim calculations, incorrect accounting was discovered in all of the cases. The forms also need to provide an explanation for how the lender calculated the escrow balance, since there are at least three different methods of accounting that might comply with RESPA.

Nothing in the published forms is incorrect; the information solicited is just incomplete. Rather than requiring lenders to extract the dates that charges were incurred, a spreadsheet would be easier to produce and would provide better information. It will allow the lender in some cases to see and correct errors itself.

Summaries of the Written Comments

Thirteen written comments were submitted that addressed the proposed forms or aspects of Rules 3001(c)(2) and 3002.1 that affect the proposed forms.

Judge Isgur (written comments addressing issues not noted above) – The POC attachment form and Supplement 1 do not properly account for escrows. The attachment form can result in an incorrect amount being listed as the amount of claim in item 1 of the POC. That is because part 2 of the POC attachment form includes components of an escrow shortage (such as a forecast escrow shortage) that should not be included in the claim amount. Supplement 1 – the payment change form – should not instruct the mortgagee to attach an escrow account statement "prepared according to applicable nonbankruptcy law." That instruction, which provides for a RESPA-based analysis, improperly allows the mortgagee to collect the escrow shortage under the plan as part of the cure payment *and* as part of an ongoing adjusted mortgage payment.

Judge Magner (written comments addressing issues not noted above) – Part 3 of the POC attachment form, which provides for the calculation of the amount necessary to cure any default as of the petition date, leads to an incorrect calculation of past due escrow balances. The cure amount should include past due, prepetition principal and interest portions of mortgage installment payments, plus escrow balances calculated by a method she has ordered for use in her court. This method "does assume that the past due amounts owed for escrow charges and missed prepetition escrow payments are reflected on the proof of claim as part of the arrearage to satisfy post petition."

Brett Weiss on behalf of National Association of Consumer Bankruptcy Attorneys (written comments submitted in addition to his hearing testimony on Rule 3001(c)(3)) – The disclosure requirements of Rule 3002.1 are most welcome. Lenders should not be allowed to impose fees for completing and filing POCs and attachments and supplements.

Richard I. Isacoff, P.C. – All creditors, but especially holders of home mortgage claims, should be required to provide a full account transaction history if the debtor requests it. They should have 14 days to comply.

Wendell J. Sherk – The mortgage attachment form should apply to all residential mortgages. It is crucial that it contain a payment history, not just a summary. The history reveals the lender's management of the debtor's account. The rule should allow local rules to require additional documentation.

Erin Shank – She expresses strong support for requiring mortgage companies to inform debtors of any charges assessed during bankruptcy. In one of her cases, the mortgagee paid property taxes without the debtor's knowledge, even though those taxes were being paid under the plan. Toward the end of the five-year plan, the lender sought to foreclose due to their

payment of the taxes. It took over a year and six hearings to straighten the matter out (efforts handled pro bono by the attorney).

National Association of Consumer Bankruptcy Attorneys (submitted by Henry Sommer) – The mortgage attachments should apply to all residential mortgages. The POC attachment should include in Part 3, item 2, a line to subtract amounts that are to be refunded to the debtor's account (such as a sheriff's sale deposit paid by the lender for a sale that was not conducted). The attachment of a payment history should be required. Often disputes about amounts claimed arise from the way in which the lender applied the debtor's payments. A payment history can allow these disputes to be resolved. Since local laws governing foreclosure vary so widely, the Committee Note should clarify that local rules can require additional information. The Committee Notes to the forms should state that, by asking for information about various types of charges, the forms do not express any opinion about whether the mortgagee is entitled to collect them. In particular, the forms should not be deemed to take a position on whether the lender may assess attorney's fees for preparation of a POC. Likewise, the Committee Note to Supplement 2 should state that creditors are not authorized to charge additional fees for sending a notice of a change in payments or the assessment of additional charges. Outside of bankruptcy, creditors cannot collect fees for such notices.

Yvonne V. Valdez – She expresses strong support for the requirement of greater information disclosure by mortgage creditors. A payment history should also be provided, as well as a complete chain of title. This information will make it easier to identify errors and miscalculations by the mortgage lender.

Keith Rodriguez (chapter 13 trustee) – Rules that require mortgage servicers to provide more specific information are welcomed. POCs filed by servicers often make it difficult to

determine whether the servicer has a right to file the claim. Notices of payment change are not always provided. Without that information, disbursements may be made that result in the debtor incurring late charges. The debtor needs complete information to emerge from bankruptcy with a fresh start.

Daniel Greenbaum – He expresses excitement and relief for the prospect that the mortgage rules may be implemented. The rules, however, do not go far enough. The mortgage industry has been involved in fraudulent and suspicious lending practices.

Penny Souhrada – The new mortgage forms will be an important step in insuring that accurate claims are filed. Creditors should not be allowed to charge the debtor with the costs incurred in providing information that the creditor should already have available.

Ellen Carlson – The mortgage forms that implement Rule 3002.1 should not be limited to use in chapter 13 cases. They should also apply in chapter 7 asset cases and chapter 11 cases.

Neal R. Allen – The mortgage claimant should be required to attach a chain of title from the original mortgagee to show that it actually owns the note and mortgage or deed of trust.

The Subcommittees' Consideration of the Testimony and Comments

During their February 18, 2011, joint conference call, the Subcommittees thoroughly discussed the testimony and comments that had been submitted on the proposed mortgage forms. Members of Subcommittees agreed that a major issue raised at the hearing and in the comments was whether a mortgage lender should be required to provide a complete account history as an attachment to its POC. The Advisory Committee had considered this issue prior to recommending the proposed forms for publication, and the decision not to require this information had been based largely on the desire to require the disclosure of more information about the basis for a mortgage claim without imposing an undue burden on the mortgagee or

overwhelming the debtor with too much detail. The Subcommittees recognized that some of the comments and testimony called into question whether the proper balance had been struck.

The Subcommittees discussed various options that would allow further consideration of whether a full loan history should be required. In the end, the Subcommittees concluded that it was important that the proposed rules and forms requiring greater disclosure of information about mortgage claims not be delayed and that they remain on track to take effect in December 2011. Amending the attachment form to require a loan history would require republication and thus a year's delay in the effective date of the form. The Subcommittees did not support allowing the rules to go into effect without all of the implementing forms.

Members of the Subcommittees did not, however, want to dismiss completely the possibility of requiring a loan history. Testimony and comments supporting such a requirement persuasively explained the value that this information might provide. But only a small number of persons have been heard from. Members of the Subcommittees expressed some concerns about the feasibility of complying with a loan-history requirement by creditors of all sizes and whether the costs of implementing automation systems to provide this information were justified by the value of the information to parties and the courts.

The Subcommittees concluded that gathering information about people's experience with the proposed rules and forms after they go into effect could be helpful to the Advisory Committee in deciding later whether to require a loan history. Several means of gathering this information were discussed, including holding a mini-conference of mortgage lenders and servicers, chapter 13 trustees, consumer debtors' attorneys, and judges; asking the Federal Judicial Center to undertake a survey or study; or having the reporter publish a request for information. Subcommittee members were especially interested in pursuing the idea of a mini-

conference, which might be held six months to a year after the new rules and forms go into effect.

With respect to the calculation of escrow balances, the Advisory Committee previously decided that the forms should not dictate the method of determining escrow arrearages since that is an issue on which courts disagree. In response to one of Judge Isgur's comments, however, the Subcommittees agreed that the instructions in Parts 1 and 2 of the Notice of Mortgage Payment Change form should be worded the same way that Part 3 of the attachment form is worded: "Attach . . . an escrow account statement prepared . . . in a form consistent with applicable nonbankruptcy law" (rather than "prepared according to applicable nonbankruptcy law"). That change would clarify that nonbankruptcy law determines only the form of disclosure and not the method of calculating escrow balances.

In response to other filed comments and suggestions by Subcommittee members, the Subcommittees recommend the following modifications to the proof of claim attachment form:

- Change the instruction at the top of Part 2 to read: "Itemize the fees, expenses, and charges due on the claim as of the petition date . . . ." This statement more precisely explains that the intended disclosure is of amounts remaining due as of the petition date, not all amounts that have been incurred as of that date.
- After the item in the Part 2 list labeled "Escrow shortage or deficiency," change the parenthetical to read: "(Do not include amounts that are part of any installment payment listed in Part 3.)" This change is to prevent duplication with the escrow portion of missed installment payments listed in Part 3.
- In Part 3, add a new line after "Subtract total of unapplied funds (funds received but not credited to account)," that reads: "Subtract amounts for which debtor is entitled to a

refund." This change is responsive to Mr. Sommers' comment about the need to account for amounts required to be refunded, such as deposits for sheriff's sales that never occur.

- For clarity, add a new item in Part 3 that says "3. Calculation of cure amount." This heading appears on the far left of the page following the line for "Total installment payments due as of the petition date."
- For ease of completion and reading, add numbers to the left and right columns of Part 2, and make a similar change to Part 1 of Supplement 2.

Recommendations

1. The Consumer and Forms Subcommittees recommend that the Advisory Committee approve proposed Official Form 10 (Attachment A), Form 10 (Supplement 1), and Form 10 (Supplement 2) as published, with the revisions discussed above and illustrated on the forms that follow this memorandum. If approved by the Standing Committee at its June meeting, they will be submitted to the Judicial Conference for approval, with an effective date of December 1, 2011.

2. The Subcommittees recommend that the Advisory Committee give further consideration in the future to requiring attachment of a complete loan history to a POC filed for a claim secured by a security interest in the debtor's principal residence. A decision by the Committee should be informed by information obtained after a period of experience with the currently proposed attachment form.

Mortgage Proof of Claim Attachment

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See Bankruptcy Rule 3001(c)(2).

Name of debtor: _____ Case number: _____

Name of creditor: _____ Last four digits of any number you use to identify the debtor's account: ____ ____ ____ ____

Part 1: Statement of Principal and Interest Due as of the Petition Date

Itemize the principal and interest due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on your Proof of Claim form).

1. **Principal due** (1) $ _____

2. **Interest due**

Interest rate	From mm/dd/yyyy	To mm/dd/yyyy	Amount
_____%	__/__/____	__/__/____	$ _____
_____%	__/__/____	__/__/____	$ _____
_____%	__/__/____	__/__/____	+ $ _____

Total interest due as of the petition date $ _____ Copy total here ▶ (2) + $ _____

3. **Total principal and interest due** (3) $ _____

Part 2: Statement of Prepetition Fees, Expenses, and Charges

Itemize the fees, expenses, and charges due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on the Proof of Claim form).

Description	Dates incurred	Amount
1. **Late charges**	_____	(1) $ _____
2. **Non-sufficient funds (NSF) fees**	_____	(2) $ _____
3. **Attorney's fees**	_____	(3) $ _____
4. **Filing fees and court costs**	_____	(4) $ _____
5. **Advertisement costs**	_____	(5) $ _____
6. **Sheriff/auctioneer fees**	_____	(6) $ _____
7. **Title costs**	_____	(7) $ _____
8. **Recording fees**	_____	(8) $ _____
9. **Appraisal/broker's price opinion fees**	_____	(9) $ _____
10. **Property inspection fees**	_____	(10) $ _____
11. **Tax advances (non-escrow)**	_____	(11) $ _____
12. **Insurance advances (non-escrow)**	_____	(12) $ _____
13. **Escrow shortage or deficiency** (Do not include amounts that are part of any installment payment listed in Part 3.)	_____	(13) $ _____
14. **Property preservation expenses. Specify:** _____	_____	(14) $ _____
15. **Other. Specify:** _____	_____	(15) $ _____
16. **Other. Specify:** _____	_____	(16) $ _____
17. **Other. Specify:** _____	_____	(17) + $ _____
18. **Total prepetition fees, expenses, and charges. Add all of the amounts listed above.**		(18) $ _____

Part 3. Statement of Amount Necessary to Cure Default as of the Petition Date

Does the installment payment amount include an escrow deposit?

☐ No

☐ Yes. Attach to the Proof of Claim form an escrow account statement prepared as of the petition date in a form consistent with applicable nonbankruptcy law.

---

1. **Installment payments due**

   Date last payment received by creditor __/__/____

   Number of installment payments due (1) _____

2. **Amount of installment payments due**

   _____installments @ $ _____

   _____installments @ $ _____

   _____installments @ + $ _____

   Total installment payments due as of the petition date $ _____ Copy total here ► (2) $ _____

3. **Calculation of cure amount**

   Add total prepetition fees, expenses, and charges Copy total from Part 2 here ► + $ _____

   Subtract total of unapplied funds (funds received but not credited to account) - $ _____

   Subtract amounts for which debtor is entitled to a refund - $ _____

   Total amount necessary to cure default as of the petition date (3) $ _____

   Copy total onto Item 4 of Proof of Claim form

B 10 (Supplement 1) (12/11) (post publication draft)

UNITED STATES BANKRUPTCY COURT

_____ District of _____

In re _____, Debtor

Case No. _____

Chapter 13

Notice of Mortgage Payment Change

If you file a claim secured by a security interest in the debtor's principal residence provided for under the debtor's plan pursuant to § 1322(b)(5), you must use this form to give notice of any changes in the installment payment amount. File this form as a supplement to your proof of claim at least 21 days before the new payment amount is due. See Bankruptcy Rule 3002.1.

Name of creditor: _____

Court claim no. (if known): _____

Last four digits of any number you use to identify the debtor's account: ____ ____ ____ ____

Date of payment change:
Must be at least 21 days after date of this notice ____/____/____

New total payment:
Principal, interest, and escrow, if any $ _____

Part 1: Escrow Account Payment Adjustment

Will there be a change in the debtor's escrow account payment?

- ☐ No
- ☐ Yes. Attach a copy of the escrow account statement prepared in a form consistent with applicable nonbankruptcy law. Describe the basis for the change. If a statement is not attached, explain why:

  _____

  Current escrow payment: $ _____ **New escrow payment:** $ _____

Part 2: Mortgage Payment Adjustment

Will the debtor's principal and interest payment change based on an adjustment to the interest rate in the debtor's variable-rate note?

- ☐ No
- ☐ Yes. Attach a copy of the rate change notice prepared in a form consistent with applicable nonbankruptcy law. If a notice is not attached, explain why: _____

  Current interest rate: _____% **New interest rate:** _____%

  Current principal and interest payment: $ _____ **New principal and interest payment:** $ _____

Part 3: Other Payment Change

Will there be a change in the debtor's mortgage payment for a reason not listed above?

- ☐ No
- ☐ Yes. Attach a copy of any documents describing the basis for the change, such as a repayment plan or loan modification agreement. (*Court approval may be required before the payment change can take effect.*)

  Reason for change: _____

  Current mortgage payment: $ _____ **New mortgage payment:** $ _____

Part 4: Sign Here

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this Supplement applies.

Check the appropriate box.

❒ I am the creditor. ❒ I am the creditor's authorized agent.
(Attach copy of power of attorney, if any.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

✕ _____ Date ___/___/_____
Signature

Print: _____ Title _____
First Name Middle Name Last Name

Company _____

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____–_____ Email _____

B 10 (Supplement 2) (12/11) **(post publication draft)**

UNITED STATES BANKRUPTCY COURT

_____ District of _____

In re _____, Debtor

Case No. _____

Chapter 13

Notice of Postpetition Mortgage Fees, Expenses, and Charges

If you hold a claim secured by a security interest in the debtor's principal residence, you must use this form to give notice of any postpetition fees, expenses, and charges that you assert are recoverable against the debtor or against the debtor's principal residence. File this form as a supplement to your proof of claim. See Bankruptcy Rule 3002.1.

Name of creditor: _____ **Court claim no.** (if known): _____

Last four digits of any number you use to identify the debtor's account: ____ ____ ____ ____

Does this notice supplement a prior notice of postpetition fees, expenses, and charges?

- ☐ No
- ☐ Yes. Date of the last notice: ____/____/_____

Part 1: Itemize Postpetition Fees, Expenses, and Charges

Itemize the fees, expenses, and charges incurred on the debtor's mortgage account after the petition was filed. Do not include any escrow account disbursements or any amounts previously itemized in a notice filed in this case or ruled on by the bankruptcy court.

Description	Dates incurred		Amount
1. Late charges	_____	(1)	$ _____
2. Non-sufficient funds (NSF) fees	_____	(2)	$ _____
3. Attorney fees	_____	(3)	$ _____
4. Filing fees and court costs	_____	(4)	$ _____
5. Bankruptcy/Proof of claim fees	_____	(5)	$ _____
6. Appraisal/Broker's price opinion fees	_____	(6)	$ _____
7. Property inspection fees	_____	(7)	$ _____
8. Tax advances (non-escrow)	_____	(8)	$ _____
9. Insurance advances (non-escrow)	_____	(9)	$ _____
10. Property preservation expenses. Specify: _____	_____	(10)	$ _____
11. Other. Specify: _____	_____	(11)	$ _____
12. Other. Specify: _____	_____	(12)	$ _____
13. Other. Specify: _____	_____	(13)	$ _____
14. Other. Specify: _____	_____	(14)	$ _____

The debtor or trustee may challenge whether the fees, expenses, and charges you listed are required to be paid. See 11 U.S.C. § 1322(b)(5) and Bankruptcy Rule 3002.1.

Part 2: Sign Here

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this Supplement applies.

Check the appropriate box.

☐ I am the creditor.

☐ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

X _____ Date ___/___/_____
Signature

Print: _____ Title _____
First Name Middle Name Last Name

Company _____

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____ – _____ Email _____

TAB-6-B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

RE: COMMENTS SUBMITTED ON FORM 10 AMENDMENTS

DATE: MARCH 9, 2011

In addition to the proposed new mortgage proof-of-claim attachments, amendments to Form 10 itself were published for comment last August. The proposed amendments consist of the following:

- a request for additional information about the interest rate for secured claims and a clarification that the information concerns the rate as of the filing of the petition;
- clarification that a summary of supporting documents may be submitted only in addition to copies of the documents themselves and not as a substitute;
- additional emphasis of the need to redact attached documents to eliminate personal data identifiers;
- changes to the date and signature box to emphasize the duty of care that must be exercised in filing a proof of claim ("POC") and to require disclosure of the capacity in which the filer is acting;
- the addition of a space for a uniform claim identifier; and
- various formatting and stylistic changes.

Six comments were submitted regarding the proposed POC amendments, and an additional inquiry was informally made regarding that form. The Subcommittee thoroughly discussed these comments and suggestion during its February 25, 2011, conference call. They

are summarized below, followed by the Subcommittee's recommendations for action by the Committee.

Summary of Comments on Form 10

Bankruptcy Judge Paul Mannes (D. Md.) – Form 10 contains two places to indicate whether the POC is being filed by a trustee or debtor, rather than by a creditor. The first request for that information should be deleted, and that space should be used to allow the claimant to indicate that it did not receive notice of the filing of the bankruptcy case from the court.

Linda Spaight (Administrative Office, Bankruptcy Court Administration Division) – There is a discrepancy between Rule 3001(c)(1) and paragraph 7 of the instructions to Form 10. The rule requires the attachment of "the original or duplicate" of a writing on which a claim is based, whereas the instructions direct the claimant not to "send original documents, as attachments may be destroyed after scanning."

Margaret Grammer Gay (Senior Advisor to the Clerk, Bankr. D.N.M.) – Form 10, as well as Supplements 1 and 2, use the term "email." According to the Microsoft Manual of Style for Technical Publications, the word should be spelled "E-mail."

Henry Sommer (on behalf of National Association of Consumer Bankruptcy Attorneys) -- Form 10, either on its face or in the instructions, should state that attachments are required for open-end consumer credit claims and mortgage claims. Not all claimants will be familiar with the rules requiring the attachment of these documents.

Wendell J. Sherk (Missouri attorney) – The changes to Official Form 10 are very good and should be adopted.

Ebony R. Huddleston (Illinois attorney) – This is a good start to revising the POC requirements.

Robby Robinson (AO Bankruptcy Court Administration Division, on behalf of NextGen project) – (These comments were informally raised in a phone call to Mr. Wannamaker.) The proposed amendments to Form 10 add a space for the creditor's email address in two places: the box for listing where notices should be sent and the box for listing where payments should be sent. (In addition there is a space to list an email address in the signature box.) These proposed additions raise several questions. Why is this email address information being sought, and what impact will it have on notice and service requirements? In particular, can the listing of an email address on the POC be viewed as constituting written consent to receive notices and service by email at that address? Rule 2002(g)(1)(A) provides that a POC filed by a creditor that designates a mailing address constitutes a filed request to mail notices to that address. Does that rule apply to a designated email address?

The Subcommittee's Recommendations

In response to these comments, the Subcommittee recommends that several changes to be made to the published version of Form 10 and its Committee Note.

1. **Delete the debtor/trustee checkbox on page 1, and do not put anything in its place for now.** Judge Mannes's comment relates to the checkbox on the first page of the form for designating whether the filer is the debtor or trustee in the case. His statement that this item duplicates a similar request elsewhere on the form refers to the designation option in the signature block at the end of the form. Among other options, it contains a checkbox that says, "I am the trustee, or the debtor." The Subcommittee concluded that there is no need to obtain this information twice. It agreed with Judge Mannes that the first request for this information should be deleted, since the statement in the signature box is one of several possible statuses that can be designated.

The Subcommittee, however, recommends that no new request for information be inserted into the vacated space. Judge Mannes suggested that the claimant be allowed to indicate here that it did not receive notice of the commencement of the case from the court. This item was previously included in Form 10, but it was deleted in 2007. The 2005-2007 Committee Note explained the reason for the deletion as follows:

> The checkboxes for indicating that the creditor's address provided on the proof of claim is a new address, and that the creditor never received any notices from the court in the case have been deleted. The computer systems now used by the courts make it unnecessary for a creditor to "flag" a new address or call attention to the fact that the creditor is making its first appearance in the case. In place of the deleted items is a new checkbox to be used when a debtor or a trustee files a proof of claim for a creditor; it will alert the clerk to send the notice required by Rule 3004.

In the absence of any information to suggest that problems have been caused by the deletion of the checkbox regarding lack of notice, the Subcommittee concluded that the space should just be left blank until a need for additional information on the POC is identified.

2. Add a statement to the Committee Note indicating that the new requests for email addresses do not affect requirements for service or notice. This recommendation is made in response to Mr. Robinson's inquiry. The Subcommittee concluded that the blanks for email addresses were added just for ease of communication. The clerk, trustee, or other party in interest may want to contact the claimant, and in this day and age, contact by email is often the preferable method. There was no intent to change any rules about who must be served or the method of making service or providing notice.

The Subcommittee therefore recommends that the issue should be clarified by adding a statement to the Committee Note as indicated below:

COMMITTEE NOTE

* * * * *

Section 8 – the date and signature box – is revised to include a declaration that is intended to impress upon the filer the duty of care that must be exercised in filing a proof of claim. The individual who completes the form must sign it. By doing so, he or she declares under penalty of perjury that the information provided "is true and correct to the best of my knowledge, information and reasonable belief." That individual must also provide identifying information – name; title; company; and, if not already provided, mailing address, ~~and~~ telephone number, and email address ~~(if not already provided)~~ – and indicate by checking the appropriate box the basis on which he or she is filing the proof of claim (for example, as creditor or authorized agent for the creditor). When a servicing agent files a proof of claim on behalf of a creditor, the individual completing the form must sign it and must provide his or her own name, as well as the name of the company that is the servicing agent.

Amendments are made to the instructions that reflect the changes made to the form, and stylistic and formatting changes are made to the form and instructions. Spaces are added for providing email addresses in addition to other contact information in order to facilitate communication with the claimant. The provision of this additional information does not affect any requirements for serving or providing official notice to the claimant.

3. Add language to box 7 of the form and the accompanying instructions advising creditors with open-end consumer debt or home mortgage claims of the need to file the supporting documentation that will be required by the pending amendments to Rule 3001(c). This information would supplement existing reminders and instructions in Form 10 about attaching required documentation. As amended, box 7 would read as follows:

> **7. Documents:** Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, ~~and~~ security interests, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. *(See instruction # 7, and the definition of "**redacted**.")*
>
> DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain.

The Subcommittee recommends that, if approved by the Advisory Committee, this amendment be held in the bullpen until spring 2012. Because the suggested additions would merely serve as a reminder of otherwise existing obligations, they could be sent to the Standing Committee for final approval without the need for publication. But if they were submitted this June, the reference to the 3001(c)(3) statement would appear in the form a year before the rule provision would become effective. Rather than make the amendment in two steps (reference to the mortgage claim in 2011; reference to the 3001(c)(3) statement in 2012), the Subcommittee decided it would be better to wait and send forward both amendments next year to take effect in 2012.

As for the other comments that suggested changes, the Subcommittee does not recommend a change in the spelling of "email." The trend appears to favor the spelling used in the form, and that is how the word is currently spelled in Rules 2015.1(a) and 6011(a)(2), which were adopted in 2008. Ms. Spaight's comment was considered to be a suggestion for an amendment to Rule 3001(c)(1), so it was referred to the Subcommittee on Consumer Issues and is addressed in the agenda materials at Tab 4C.

The draft revision of Form 10 that follows this memorandum is the version that the Subcommittee recommends the Advisory Committee approve and send to the Standing Committee for its approval in June of this year. It therefore does not include the language discussed in recommendation 3 above, which would be held in the bullpen for a year.

B 10 (Official Form 10) (12/11) (2.25.11 draft))

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____	PROOF OF CLAIM
Name of Debtor: / Case Number:	
NOTE: *Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.*	
Name of Creditor (the person or other entity to whom the debtor owes money or property):	COURT USE ONLY
Name and address where notices should be sent: Telephone number: email:	❒ Check this box if this claim amends a previously filed claim. **Court Claim Number:**_____ (*If known*) Filed on:_____
Name and address where payment should be sent (if different from above): Telephone number: email:	❒ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

1. Amount of Claim as of Date Case Filed: $_____

If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

❒ Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. Basis for Claim: _____
(See instruction #2)

3. Last four digits of any number by which creditor identifies debtor:	**3a. Debtor may have scheduled account as:**	**3b. Uniform Claim Identifier (optional):**
___ ___ ___ ___	_____ (See instruction #3a)	_____ (See instruction #3b)

4. Secured Claim (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: ❒ Real Estate ❒ Motor Vehicle ❒ Other
Describe:

Value of Property:$_____

Annual Interest Rate_____% ❒ Fixed or ❒ Variable
(when case was filed)

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:
$_____

Basis for perfection: _____

Amount of Secured Claim: $_____

Amount Unsecured: $_____

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.

❒ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

❒ Wages, salaries, or commissions (up to $11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. §507 (a)(4).

❒ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

Amount entitled to priority:

❒ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 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 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)

7. **Documents:** Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. *(See instruction #7, and the definition of "redacted".)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. **Signature:** (See instruction #8)

Check the appropriate box.

☐ I am the creditor. ☐ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.) ☐ I am the trustee, or the debtor, or their authorized agent.. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: _____
Title: _____
Company: _____
Address and telephone number (if different from notice address above):
_____
_____
_____
Telephone number: email:

_____
(Signature) (Date)

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 certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:
Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor
A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor
A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

Claim
A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim
A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. §506(a)
A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a)
Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted
A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.

Evidence of Perfection
Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

Acknowledgment of Filing of Claim
To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim
Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

COMMITTEE NOTE

The form is amended in several respects. A new section – 3b – is added to allow the reporting of a uniform claim identifier. This identifier, consisting of 24 characters, is used by some creditors to facilitate automated receipt, distribution, and posting of payments made by means of electronic funds transfers by chapter 13 trustees. Creditors are not required to use a uniform claim identifier.

Language is added to section 4 to clarify that the annual interest rate that must be reported for a secured claim is the rate applicable at the time the bankruptcy case was filed. Check boxes for indicating whether the interest rate is fixed or variable are also added.

Section 7 of the form is revised to clarify that, consistent with Rule 3001(c), writings supporting a claim or evidencing perfection of a security interest must be attached to the proof of claim. If the documents are not available, the filer must provide an explanation for their absence. The instructions for this section of the form explain that summaries of supporting documents may be attached only in addition to the documents themselves.

Section 8 – the date and signature box – is revised to include a declaration that is intended to impress upon the filer the duty of care that must be exercised in filing a proof of claim. The individual who completes the form must sign it. By doing so, he or she declares under penalty of perjury that the information provided "is true and correct to the best of my knowledge, information and reasonable belief." That individual must also provide identifying information – name; title; company; and, if not already provided, mailing address, ~~and~~ telephone number, and email address ~~(if not already provided)~~ – and indicate by checking the appropriate box the basis on which he or she is filing the proof of claim (for example, as creditor or authorized agent for the creditor). Because a trustee or debtor that files a proof of claim under Rule 3004 will indicate that basis for filing here, the checkbox on the first page of the form for stating the filer's status as a trustee or debtor is deleted. When a servicing agent files a proof of claim on behalf of a creditor, the individual completing the form must sign it and must provide his or her own name, as well as the name of the company that is the servicing agent.

Amendments are made to the instructions that reflect the changes made to the form, and stylistic and formatting changes are made to the form and instructions. Spaces are added for providing email addresses in addition to other contact information in order to facilitate communication with the claimant. The provision of this additional information does not affect any requirements for serving or providing official notice to the claimant.

TAB-6-C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

RE: PUBLISHED AMENDMENT TO FORM 25A

DATE: MARCH 4, 2011

Among the official form amendments published for comment in August 2010 was an amendment to Official Form 25A – Plan of Reorganization in Small Business Case under Chapter 11. The proposed amendment would change the effective date provision in the model small business plan to reflect the 2009 amendments that increased from 10 to 14 days the time periods for filing a notice of appeal and for the duration of the stay of a confirmation order. Under the amended provision, the effective date of the plan would generally be the first business day following the date that is 14 days after the entry of the order of confirmation.

No comments were submitted on this proposed amendment. **The Subcommittee recommends that it be sent to the Standing Committee for approval and transmission to the Judicial Conference.**

TAB-6-D

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

RE: PROPOSED AMENDMENTS TO FORMS 22A AND 22C IN RESPONSE TO *RANSOM*

DATE: MARCH 7, 2011

Mark Redmiles, Deputy Director of the Executive Office for United States Trustees, has submitted a suggestion for amending Official Forms 22A and 22C in response to the Supreme Court's recent decision in Ransom v. FIA Card Servs., N.A., 131 S. Ct. 716 (2011). The Subcommittee discussed this suggestion during its conference call on February 25, and it recommends amendments to Official Forms 22A and 22C to reflect the Court's holding in the case.

The *Ransom* Decision

The issue in *Ransom* was whether, in applying the means test, a debtor who owns a car outright may nonetheless deduct the IRS ownership expense amount for that car. Section 707(b)(2)(A)(ii)(I) of the Code provides that among the debtor's monthly expenses that may be deducted from current monthly income are "the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards . . . issued by the Internal Revenue Service for the area in which the debtor resides." This provision applies to above-median-income debtors in determining whether the granting of relief in chapter 7 constitutes an abuse (§ 707(b)) and in calculating the amount of projected disposable income in chapter 13 (§ 1325(b)(2)). One of the IRS local standards incorporated by the means test is for

transportation. It includes two components – ownership and operation – and local standards are established for both.[1]

The debtor in *Ransom*, whose income placed him above the median for his state, filed a chapter 13 petition. In calculating his projected disposable income for his plan, he deducted $471 for the ownership of his car, the amount specified by the IRS, even though he owned his car free of any debt. The Supreme Court, in an 8-1 decision, held that "a person cannot claim an allowance for vehicle-ownership costs unless he has some expense falling within that category." 131 S. Ct. at 725. It concluded that the only types of expenses falling within IRS vehicle-ownership category are loan and lease payments. *Id.* Accordingly, the Court held that Mr. Ransom could not deduct any amount for car ownership because "the Local Standard expense amount for transportation 'Ownership Costs' is not 'applicable' to a debtor who will not incur any such costs during his bankruptcy plan." *Id.* at 730.

Suggested Amendment of Forms 22A and 22C

When the B 22 forms were adopted following enactment of BAPCPA in 2005, the Advisory Committee chose to avoid resolving ambiguous statutory language regarding the means test. Instead, the forms were drafted to allow debtors to apply the means test in the manner they believed was appropriate under the Code, even if other readings were possible. With respect to local standards for transportation ownership/lease expenses, Forms 22A and 22C direct the debtor to "[c]heck the number of vehicles for which you *claim* an ownership/lease expense" (emphasis added). The Committee Note states that the "forms take no position on the question of whether the debtor must actually be making payments on a vehicle in order to claim the ownership/lease allowance."

[1] As noted by Justice Kagan in *Ransom*, only the operating-expense allowance varies by region; the ownership-expense allowance is the same amount throughout the country. Nevertheless, the IRS lists both components in the local standards. 131 S. Ct. at 722, n.3.

Now that the Supreme Court has resolved that ambiguity, the Subcommittee agrees with Mr. Redmiles that Forms 22A and 22C should be amended to reflect the Supreme Court's holding. **The Subcommittee therefore recommends that line 23 on Form 22A and line 28 on Form 22C be amended to substitute "you are obligated to make a loan or lease payment" for "you claim an ownership/lease expense."**

The draft revisions of Forms 22A and 22C that follow this memo incorporate these proposed changes, along with amendments to the forms that were approved by the Committee at the fall 2010 meeting. A consolidated Committee Note discussing all of the amendments follows the forms. If the amendments discussed in this memo are approved, the entire package of amendments to Forms 22A and 22C will be sent to the Standing Committee in June for approval for publication, with an expected effective date of December 1, 2012.

In re _____
Debtor(s)

Case Number: _____
(If known)

According to the information required to be entered on this statement (check one box as directed in Part I, III, or VI of this statement):

☐ **The presumption arises.**
☐ **The presumption does not arise.**
☐ **The presumption is temporarily inapplicable.**

CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME AND MEANS-TEST CALCULATION

In addition to Schedules I and J, this statement must be completed by every individual chapter 7 debtor. If none of the exclusions in Part I applies, joint debtors may complete one statement only. If any of the exclusions in Part I applies, joint debtors should complete separate statements if they believe this is required by § 707(b)(2)(C).

Part I. MILITARY AND NON-CONSUMER DEBTORS

1A	**Disabled Veterans.** If you are a disabled veteran described in the Declaration in this Part IA, (1) check the box at the beginning of the Declaration, (2) check the box for "The presumption does not arise" at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement. ☐ **Declaration of Disabled Veteran.** By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. §901(1)).
1B	**Non-consumer Debtors.** If your debts are not primarily consumer debts, check the box below and complete the verification in Part VIII. Do not complete any of the remaining parts of this statement. ☐ **Declaration of non-consumer debts.** By checking this box, I declare that my debts are not primarily consumer debts.
1C	**Reservists and National Guard Members; active duty or homeland defense activity.** Members of a reserve component of the Armed Forces and members of the National Guard who were called to active duty (as defined in 10 U.S.C. § 101(d)(1)) after September 11, 2001, for a period of at least 90 days, or who have performed homeland defense activity (as defined in 32 U.S.C. § 901(1)) for a period of at least 90 days, are excluded from all forms of means testing during the time of active duty or homeland defense activity and for 540 days thereafter (the "exclusion period"). If you qualify for this temporary exclusion, (1) check the appropriate boxes and complete any required information in the Declaration of Reservists and National Guard Members below, (2) check the box for "The presumption is temporarily inapplicable" at the top of this statement, and (3) complete the verification in Part VIII. **During your exclusion period you are not required to complete the balance of this form, but you must complete the form no later than 14 days after the date on which your exclusion period ends, unless the time for filing a motion raising the means test presumption expires in your case before your exclusion period ends.** ☐ **Declaration of Reservists and National Guard Members.** By checking this box and making the appropriate entries below, I declare that I am eligible for a temporary exclusion from means testing because, as a member of a reserve component of the Armed Forces or the National Guard a. ☐ I was called to active duty after September 11, 2001, for a period of at least 90 days and ☐ I remain on active duty /or/ ☐ I was released from active duty on _____, which is less than 540 days before this bankruptcy case was filed; OR b. ☐ I am performing homeland defense activity for a period of at least 90 days /or/ ☐ I performed homeland defense activity for a period of at least 90 days, terminating on _____, which is less than 540 days before this bankruptcy case was filed.

Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION

2	**Marital/filing status.** Check the box that applies and complete the balance of this part of this statement as directed. a. ☐ Unmarried. **Complete only Column A ("Debtor's Income") for Lines 3-11.** b. ☐ Married, not filing jointly, with declaration of separate households. By checking this box, debtor declares under penalty of perjury: "My spouse and I are legally separated under applicable non-bankruptcy law or my spouse and I are living apart other than for the purpose of evading the requirements of § 707(b)(2)(A) of the Bankruptcy Code." **Complete only Column A ("Debtor's Income") for Lines 3-11.** c. ☐ Married, not filing jointly, without the declaration of separate households set out in Line 2.b above. **Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.** d. ☐ Married, filing jointly. **Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.**		
	All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.	**Column A Debtor's Income**	**Column B Spouse's Income**
3	**Gross wages, salary, tips, bonuses, overtime, commissions.**	$	$
4	**Income from the operation of a business, profession or farm.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. If you operate more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. **Do not include any part of the business expenses entered on Line b as a deduction in Part V.** a. Gross receipts $ b. Ordinary and necessary business expenses $ c. Business income Subtract Line b from Line a	$	$
5	**Rent and other real property income.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 5. Do not enter a number less than zero. **Do not include any part of the operating expenses entered on Line b as a deduction in Part V.** a. Gross receipts $ b. Ordinary and necessary operating expenses $ c. Rent and other real property income Subtract Line b from Line a	$	$
6	**Interest, dividends and royalties.**	$	$
7	**Pension and retirement income.**	$	$
8	**Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child support paid for that purpose.** Do not include alimony or separate maintenance payments or amounts paid by your spouse if Column B is completed. Each regular payment should be reported in only one column; if a payment is listed in Column A, do not report that payment in Column B.	$	$
9	**Unemployment compensation.** Enter the amount in the appropriate column(s) of Line 9. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below: Unemployment compensation claimed to be a benefit under the Social Security Act Debtor $ _____ Spouse $ _____	$	$

10	**Income from all other sources.** Specify source and amount. If necessary, list additional sources on a separate page. **Do not include alimony or separate maintenance payments paid by your spouse if Column B is completed, but include all other payments of alimony or separate maintenance.** Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. a. $ b. $ Total and enter on Line 10	$	$
11	**Subtotal of Current Monthly Income for § 707(b)(7).** Add Lines 3 thru 10 in Column A, and, if Column B is completed, add Lines 3 through 10 in Column B. Enter the total(s).	$	$
12	**Total Current Monthly Income for § 707(b)(7).** If Column B has been completed, add Line 11, Column A to Line 11, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 11, Column A.	$	

Part III. APPLICATION OF § 707(b)(7) EXCLUSION

13	**Annualized Current Monthly Income for § 707(b)(7).** Multiply the amount from Line 12 by the number 12 and enter the result.	$
14	**Applicable median family income.** Enter the median family income for the applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	$
15	**Application of Section 707(b)(7).** Check the applicable box and proceed as directed. ☐ **The amount on Line 13 is less than or equal to the amount on Line 14.** Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete Part VIII; do not complete Parts IV, V, VI or VII. ☐ **The amount on Line 13 is more than the amount on Line 14.** Complete the remaining parts of this statement.	

Complete Parts IV, V, VI, and VII of this statement only if required. (See Line 15.)

Part IV. CALCULATION OF CURRENT MONTHLY INCOME FOR § 707(b)(2)

16	**Enter the amount from Line 12.**	$
17	**Marital adjustment.** If you checked the box at Line 2.c, enter on Line 17 the total of any income listed in Line 11, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. Specify in the lines below the basis for excluding the Column B income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If you did not check box at Line 2.c, enter zero. a. $ b. $ c. $ Total and enter on Line 17.	$
18	**Current monthly income for § 707(b)(2).** Subtract Line 17 from Line 16 and enter the result.	$

Part V. CALCULATION OF DEDUCTIONS FROM INCOME

Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

19A **National Standards: food, clothing and other items.** Enter in Line 19A the "Total" amount from IRS National Standards for Food, Clothing and Other Items for the applicable number of persons. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) The applicable number of persons is the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support. $

19B **National Standards: health care.** Enter in Line a1 below the amount from IRS National Standards for Out-of-Pocket Health Care for persons under 65 years of age, and in Line a2 the IRS National Standards for Out-of-Pocket Health Care for persons 65 years of age or older. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) Enter in Line b1 the applicable number of persons who are under 65 years of age, and enter in Line b2 the applicable number of persons who are 65 years of age or older. (The applicable number of persons in each age category is the number in that category that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.) Multiply Line a1 by Line b1 to obtain a total amount for persons under 65, and enter the result in Line c1. Multiply Line a2 by Line b2 to obtain a total amount for persons 65 and older, and enter the result in Line c2. Add Lines c1 and c2 to obtain a total health care amount, and enter the result in Line 19B.

Persons under 65 years of age			**Persons 65 years of age or older**		
a1.	Allowance per person		a2.	Allowance per person	
b1.	Number of persons		b2.	Number of persons	
c1.	Subtotal		c2.	Subtotal	

$

20A **Local Standards: housing and utilities; non-mortgage expenses.** Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court). The applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support. $

20B **Local Standards: housing and utilities; mortgage/rent expense.** Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court) (the applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 42; subtract Line b from Line a and enter the result in Line 20B. **Do not enter an amount less than zero.**

a.	IRS Housing and Utilities Standards; mortgage/rental expense	$
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42	$
c.	Net mortgage/rental expense	Subtract Line b from Line a.

$

21 **Local Standards: housing and utilities; adjustment.** If you contend that the process set out in Lines 20A and 20B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:

_____

_____

_____ $

22A	**Local Standards: transportation; vehicle operation/public transportation expense.** You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation. Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 8. ☐ 0 ☐ 1 ☐ 2 or more. If you checked 0, enter on Line 22A the "Public Transportation" amount from IRS Local Standards: Transportation. If you checked 1 or 2 or more, enter on Line 22A the "Operating Costs" amount from IRS Local Standards: Transportation for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (These amounts are available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	$
22B	**Local Standards: transportation; additional public transportation expense.** If you pay the operating expenses for a vehicle and also use public transportation, and you contend that you are entitled to an additional deduction for your public transportation expenses, enter on Line 22B the "Public Transportation" amount from IRS Local Standards: Transportation. (This amount is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	$
23	**Local Standards: transportation ownership/lease expense; Vehicle 1.** Check the number of vehicles for which you ~~claim an ownership/lease expense~~ are obligated to make a loan or lease payment. (You may not claim an ownership/lease expense for more than two vehicles.) ☐ 1 ☐ 2 or more. Enter, in Line a below, the "Ownership Costs" for "One Car" from the IRS Local Standards: Transportation (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 42; subtract Line b from Line a and enter the result in Line 23. **Do not enter an amount less than zero.**	$
24	**Local Standards: transportation ownership/lease expense; Vehicle 2.** Complete this Line only if you checked the "2 or more" Box in Line 23. Enter, in Line a below, the "Ownership Costs" for "One Car" from the IRS Local Standards: Transportation (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 42; subtract Line b from Line a and enter the result in Line 24. **Do not enter an amount less than zero.**	$
25	**Other Necessary Expenses: taxes.** Enter the total average monthly expense that you actually incur for all federal, state and local taxes, other than real estate and sales taxes, such as income taxes, self-employment taxes, social-security taxes, and Medicare taxes. **Do not include real estate or sales taxes.**	$
26	**Other Necessary Expenses: involuntary deductions for employment.** Enter the total average monthly payroll deductions that are required for your employment, such as retirement contributions, union dues, and uniform costs. **Do not include discretionary amounts, such as voluntary 401(k) contributions.**	$
27	**Other Necessary Expenses: life insurance.** Enter total average monthly premiums that you actually pay for term life insurance for yourself. **Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.**	$
28	**Other Necessary Expenses: court-ordered payments.** Enter the total monthly amount that you are required to pay pursuant to the order of a court or administrative agency, such as spousal or child support payments. **Do not include payments on past due obligations included in Line 44.**	$

a.	IRS Transportation Standards, Ownership Costs	$
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42	$
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.

a.	IRS Transportation Standards, Ownership Costs	$
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42	$
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.

29	**Other Necessary Expenses: education for employment or for a physically or mentally challenged child.** Enter the total average monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	$
30	**Other Necessary Expenses: childcare.** Enter the total average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. **Do not include other educational payments.**	$
31	**Other Necessary Expenses: health care.** Enter the total average monthly amount that you actually expend on health care that is required for the health and welfare of yourself or your dependents, that is not reimbursed by insurance or paid by a health savings account, and that is in excess of the amount entered in Line 19B. **Do not include payments for health insurance or health savings accounts listed in Line 34.**	$
32	**Other Necessary Expenses: telecommunication services.** Enter the total average monthly amount that you actually pay for telecommunication services other than your basic home telephone and cell phone service—such as pagers, call waiting, caller id, special long distance, ~~or~~ internet service, or business cell phone service—to the extent necessary for your health and welfare or that of your dependents or for the production of income if not reimbursed by your employer. **Do not include any amount previously deducted.**	$
33	**Total Expenses Allowed under IRS Standards.** Enter the total of Lines 19 through 32.	$

Subpart B: Additional Living Expense Deductions

Note: Do not include any expenses that you have listed in Lines 19-32

34	**Health Insurance, Disability Insurance, and Health Savings Account Expenses.** List the monthly expenses in the categories set out in lines a-c below that are reasonably necessary for yourself, your spouse, or your dependents. a. Health Insurance $ b. Disability Insurance $ c. Health Savings Account $ Total and enter on Line 34 **If you do not actually expend this total amount**, state your actual total average monthly expenditures in the space below: $ _____	$
35	**Continued contributions to the care of household or family members.** Enter the total average actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.	$
36	**Protection against family violence.** Enter the total average reasonably necessary monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.	$
37	**Home energy costs.** Enter the total average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. **You must provide your case trustee with documentation of your actual expenses, and you must demonstrate that the additional amount claimed is reasonable and necessary.**	$
38	**Education expenses for dependent children less than 18.** Enter the total average monthly expenses that you actually incur, not to exceed $147.92* per child, for attendance at a private or public elementary or secondary school by your dependent children less than 18 years of age. **You must provide your case trustee with documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.**	$

**Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.*

39	**Additional food and clothing expense.** Enter the total average monthly amount by which your food and clothing expenses exceed the combined allowances for food and clothing (apparel and services) in the IRS National Standards, not to exceed 5% of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) **You must demonstrate that the additional amount claimed is reasonable and necessary.**	$
40	**Continued charitable contributions.** Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).	$
41	**Total Additional Expense Deductions under § 707(b).** Enter the total of Lines 34 through 40	$

Subpart C: Deductions for Debt Payment

42 **Future payments on secured claims.** For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, state the Average Monthly Payment, and check whether the payment includes taxes or insurance. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Enter the total of the Average Monthly Payments on Line 42.

	Name of Creditor	Property Securing the Debt	Average Monthly Payment	Does payment include taxes or insurance?
a.			$	☐ yes ☐ no
b.			$	☐ yes ☐ no
c.			$	☐ yes ☐ no
			Total: Add Lines a, b and c	

$

43 **Other payments on secured claims.** If any of debts listed in Line 42 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 42, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.

	Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount
a.			$
b.			$
c.			$
			Total: Add Lines a, b and c

$

44	**Payments on prepetition priority claims.** Enter the total amount, divided by 60, of all priority claims, such as priority tax, child support and alimony claims, for which you were liable at the time of your bankruptcy filing. **Do not include current obligations, such as those set out in Line 28.**	$

45	**Chapter 13 administrative expenses.** If you are eligible to file a case under chapter 13, complete the following chart, multiply the amount in line a by the amount in line b, and enter the resulting administrative expense.	
	a. Projected average monthly chapter 13 plan payment. — $	
	b. Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) — x	
	c. Average monthly administrative expense of chapter 13 case — Total: Multiply Lines a and b	$
46	**Total Deductions for Debt Payment.** Enter the total of Lines 42 through 45.	$

Subpart D: Total Deductions from Income

47	**Total of all deductions allowed under § 707(b)(2).** Enter the total of Lines 33, 41, and 46.	$

Part VI. DETERMINATION OF § 707(b)(2) PRESUMPTION

48	**Enter the amount from Line 18 (Current monthly income for § 707(b)(2))**	$
49	**Enter the amount from Line 47 (Total of all deductions allowed under § 707(b)(2))**	$
50	**Monthly disposable income under § 707(b)(2).** Subtract Line 49 from Line 48 and enter the result	$
51	**60-month disposable income under § 707(b)(2).** Multiply the amount in Line 50 by the number 60 and enter the result.	$
52	**Initial presumption determination.** Check the applicable box and proceed as directed. ☐ **The amount on Line 51 is less than $7,025*.** Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. Do not complete the remainder of Part VI. ☐ **The amount set forth on Line 51 is more than $11,725*.** Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII. Do not complete the remainder of Part VI. ☐ **The amount on Line 51 is at least $7,025*, but not more than $11,725*.** Complete the remainder of Part VI (Lines 53 through 55).	
53	**Enter the amount of your total non-priority unsecured debt**	$
54	**Threshold debt payment amount.** Multiply the amount in Line 53 by the number 0.25 and enter the result.	$
55	**Secondary presumption determination.** Check the applicable box and proceed as directed. ☐ **The amount on Line 51 is less than the amount on Line 54.** Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. ☐ **The amount on Line 51 is equal to or greater than the amount on Line 54.** Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII.	

Part VII: ADDITIONAL EXPENSE CLAIMS

56 **Other Expenses.** List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.

	Expense Description	Monthly Amount
a.		$
b.		$
c.		$
	Total: Add Lines a, b and c	$

*Amounts are subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

Part VIII: VERIFICATION	
57	I declare under penalty of perjury that the information provided in this statement is true and correct. *(If this is a joint case, both debtors must sign.)* Date: _____ Signature: _____ *(Debtor)* Date: _____ Signature: _____ *(Joint Debtor, if any)*

In re _____
Debtor(s)

Case Number: _____
(If known)

According to the calculations required by this statement:
☐ **The applicable commitment period is 3 years.**
☐ **The applicable commitment period is 5 years.**
☐ **Disposable income is determined under § 1325(b)(3).**
☐ **Disposable income is not determined under § 1325(b)(3).**
(Check the boxes as directed in Lines 17 and 23 of this statement.)

CHAPTER 13 STATEMENT OF CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD AND DISPOSABLE INCOME

In addition to Schedules I and J, this statement must be completed by every individual chapter 13 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. REPORT OF INCOME

		Column A Debtor's Income	Column B Spouse's Income
1	**Marital/filing status.** Check the box that applies and complete the balance of this part of this statement as directed. a. ☐ Unmarried. **Complete only Column A ("Debtor's Income") for Lines 2-10.** b. ☐ Married. **Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.**		
	All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.		
2	**Gross wages, salary, tips, bonuses, overtime, commissions.**	$	$
3	**Income from the operation of a business, profession, or farm.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 3. If you operate more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. **Do not include any part of the business expenses entered on Line b as a deduction in Part IV.**		
	a. Gross receipts — $		
	b. Ordinary and necessary business expenses — $		
	c. Business income — Subtract Line b from Line a	$	$
4	**Rent and other real property income.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. Do not enter a number less than zero. **Do not include any part of the operating expenses entered on Line b as a deduction in Part IV.**		
	a. Gross receipts — $		
	b. Ordinary and necessary operating expenses — $		
	c. Rent and other real property income — Subtract Line b from Line a	$	$
5	**Interest, dividends, and royalties.**	$	$
6	**Pension and retirement income.**	$	$
7	**Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child support paid for that purpose.** Do not include alimony or separate maintenance payments or amounts paid by the debtor's spouse. Each regular payment should be reported in only one column; if a payment is listed in Column A, do not report that payment in Column B.	$	$

8	**Unemployment compensation.** Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below: Unemployment compensation claimed to be a benefit under the Social Security Act — Debtor $ _____ — Spouse $ _____	$	$
9	**Income from all other sources.** Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. **Do not include alimony or separate maintenance payments paid by your spouse, but include all other payments of alimony or separate maintenance. Do not include** any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. a. $ b. $	$	$
10	**Subtotal.** Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).	$	$
11	**Total.** If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.	$	

Part II. CALCULATION OF § 1325(b)(4) COMMITMENT PERIOD

12	**Enter the amount from Line 11.**	$
13	**Marital adjustment.** If you are married, but are not filing jointly with your spouse, AND if you contend that calculation of the commitment period under § 1325(b)(4) does not require inclusion of the income of your spouse, enter on Line 13 the amount of the income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of you or your dependents and specify, in the lines below, the basis for excluding this income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If the conditions for entering this adjustment do not apply, enter zero. a. $ b. $ c. $ Total and enter on Line 13.	$
14	**Subtract Line 13 from Line 12 and enter the result.**	$
15	**Annualized current monthly income for § 1325(b)(4).** Multiply the amount from Line 14 by the number 12 and enter the result.	$
16	**Applicable median family income.** Enter the median family income for applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	$
17	**Application of § 1325(b)(4).** Check the applicable box and proceed as directed. ☐ **The amount on Line 15 is less than the amount on Line 16.** Check the box for "The applicable commitment period is 3 years" at the top of page 1 of this statement and continue with this statement. ☐ **The amount on Line 15 is not less than the amount on Line 16.** Check the box for "The applicable commitment period is 5 years" at the top of page 1 of this statement and continue with this statement.	

Part III. APPLICATION OF § 1325(b)(3) FOR DETERMINING DISPOSABLE INCOME

18	**Enter the amount from Line 11.**	$

19	**Marital adjustment.** If you are married, but are not filing jointly with your spouse, enter on Line 19 the total of any income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. Specify in the lines below the basis for excluding the Column B income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If the conditions for entering this adjustment do not apply, enter zero. a. — $ b. — $ c. — $ Total and enter on Line 19.	$
20	**Current monthly income for § 1325(b)(3).** Subtract Line 19 from Line 18 and enter the result.	$
21	**Annualized current monthly income for § 1325(b)(3).** Multiply the amount from Line 20 by the number 12 and enter the result.	$
22	**Applicable median family income.** Enter the amount from Line 16.	$
23	**Application of § 1325(b)(3).** Check the applicable box and proceed as directed. ☐ **The amount on Line 21 is more than the amount on Line 22.** Check the box for "Disposable income is determined under § 1325(b)(3)" at the top of page 1 of this statement and complete the remaining parts of this statement. ☐ **The amount on Line 21 is not more than the amount on Line 22.** Check the box for "Disposable income is not determined under § 1325(b)(3)" at the top of page 1 of this statement and complete Part VII of this statement. **Do not complete Parts IV, V, or VI.**	

Part IV. CALCULATION OF DEDUCTIONS FROM INCOME

Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

24A	**National Standards: food, apparel and services, housekeeping supplies, personal care, and miscellaneous.** Enter in Line 24A the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable number of persons. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) The applicable number of persons is the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.	$
24B	**National Standards: health care.** Enter in Line a1 below the amount from IRS National Standards for Out-of-Pocket Health Care for persons under 65 years of age, and in Line a2 the IRS National Standards for Out-of-Pocket Health Care for persons 65 years of age or older. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) Enter in Line b1 the applicable number of persons who are under 65 years of age, and enter in Line b2 the applicable number of persons who are 65 years of age or older. (The applicable number of persons in each age category is the number in that category that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.) Multiply Line a1 by Line b1 to obtain a total amount for persons under 65, and enter the result in Line c1. Multiply Line a2 by Line b2 to obtain a total amount for persons 65 and older, and enter the result in Line c2. Add Lines c1 and c2 to obtain a total health care amount, and enter the result in Line 24B.	$

Persons under 65 years of age			Persons 65 years of age or older		
a1.	Allowance per person		a2.	Allowance per person	
b1.	Number of persons		b2.	Number of persons	
c1.	Subtotal		c2.	Subtotal	

25A	**Local Standards: housing and utilities; non-mortgage expenses.** Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court). The applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.	$

25B	**Local Standards: housing and utilities; mortgage/rent expense.** Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court) (the applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 47; subtract Line b from Line a and enter the result in Line 25B. **Do not enter an amount less than zero.**	
	a. IRS Housing and Utilities Standards; mortgage/rent expense — $	
	b. Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47 — $	
	c. Net mortgage/rental expense — Subtract Line b from Line a.	$
26	**Local Standards: housing and utilities; adjustment.** If you contend that the process set out in Lines 25A and 25B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below: _____ _____ _____	$
27A	**Local Standards: transportation; vehicle operation/public transportation expense.** You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation. Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 7. ☐ 0 ☐ 1 ☐ 2 or more. If you checked 0, enter on Line 27A the "Public Transportation" amount from IRS Local Standards: Transportation. If you checked 1 or 2 or more, enter on Line 27A the "Operating Costs" amount from IRS Local Standards: Transportation for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (These amounts are available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	$
27B	**Local Standards: transportation; additional public transportation expense.** If you pay the operating expenses for a vehicle and also use public transportation, and you contend that you are entitled to an additional deduction for your public transportation expenses, enter on Line 27B the "Public Transportation" amount from IRS Local Standards: Transportation. (This amount is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	$
28	**Local Standards: transportation ownership/lease expense; Vehicle 1.** Check the number of vehicles for which you ~~claim an ownership/lease expense~~ are obligated to make a loan or lease payment. (You may not claim an ownership/lease expense for more than two vehicles.) ☐ 1 ☐ 2 or more. Enter, in Line a below, the "Ownership Costs" for "One Car" from the IRS Local Standards: Transportation (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 47; subtract Line b from Line a and enter the result in Line 28. **Do not enter an amount less than zero.**	
	a. IRS Transportation Standards, Ownership Costs — $	
	b. Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47 — $	
	c. Net ownership/lease expense for Vehicle 1 — Subtract Line b from Line a.	$

29	**Local Standards: transportation ownership/lease expense; Vehicle 2.** Complete this Line only if you checked the "2 or more" Box in Line 28. Enter, in Line a below, the "Ownership Costs" for "One Car" from the IRS Local Standards: Transportation (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 47; subtract Line b from Line a and enter the result in Line 29. **Do not enter an amount less than zero.**	
	a. IRS Transportation Standards, Ownership Costs — $	
	b. Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47 — $	
	c. Net ownership/lease expense for Vehicle 2 — Subtract Line b from Line a.	$
30	**Other Necessary Expenses: taxes.** Enter the total average monthly expense that you actually incur for all federal, state, and local taxes, other than real estate and sales taxes, such as income taxes, self-employment taxes, social-security taxes, and Medicare taxes. **Do not include real estate or sales taxes.**	$
31	**Other Necessary Expenses: involuntary deductions for employment.** Enter the total average monthly deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. **Do not include discretionary amounts, such as voluntary 401(k) contributions.**	$
32	**Other Necessary Expenses: life insurance.** Enter total average monthly premiums that you actually pay for term life insurance for yourself. **Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.**	$
33	**Other Necessary Expenses: court-ordered payments.** Enter the total monthly amount that you are required to pay pursuant to the order of a court or administrative agency, such as spousal or child support payments. **Do not include payments on past due obligations included in Line 49.**	$
34	**Other Necessary Expenses: education for employment or for a physically or mentally challenged child.** Enter the total average monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	$
35	**Other Necessary Expenses: childcare.** Enter the total average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. **Do not include other educational payments.**	$
36	**Other Necessary Expenses: health care.** Enter the total average monthly amount that you actually expend on health care that is required for the health and welfare of yourself or your dependents, that is not reimbursed by insurance or paid by a health savings account, and that is in excess of the amount entered in Line 24B. **Do not include payments for health insurance or health savings accounts listed in Line 39.**	$
37	**Other Necessary Expenses: telecommunication services.** Enter the total average monthly amount that you actually pay for telecommunication services other than your basic home telephone and cell phone service—such as pagers, call waiting, caller id, special long distance, ~~or~~ internet service, or business cell phone service—to the extent necessary for your health and welfare or that of your dependents or for the production of income if not reimbursed by your employer. **Do not include any amount previously deducted.**	$
38	**Total Expenses Allowed under IRS Standards.** Enter the total of Lines 24 through 37.	$

Subpart B: Additional Living Expense Deductions
Note: Do not include any expenses that you have listed in Lines 24-37

39	**Health Insurance, Disability Insurance, and Health Savings Account Expenses.** List the monthly expenses in the categories set out in lines a-c below that are reasonably necessary for yourself, your spouse, or your dependents. a. Health Insurance $ b. Disability Insurance $ c. Health Savings Account $ Total and enter on Line 39 **If you do not actually expend this total amount**, state your actual total average monthly expenditures in the space below: $ _____	$
40	**Continued contributions to the care of household or family members.** Enter the total average actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. **Do not include payments listed in Line 34.**	$
41	**Protection against family violence.** Enter the total average reasonably necessary monthly expenses that you actually incur to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.	$
42	**Home energy costs.** Enter the total average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities that you actually expend for home energy costs. **You must provide your case trustee with documentation of your actual expenses, and you must demonstrate that the additional amount claimed is reasonable and necessary.**	$
43	**Education expenses for dependent children under 18.** Enter the total average monthly expenses that you actually incur, not to exceed $147.92 per child, for attendance at a private or public elementary or secondary school by your dependent children less than 18 years of age. **You must provide your case trustee with documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.**	$
44	**Additional food and clothing expense.** Enter the total average monthly amount by which your food and clothing expenses exceed the combined allowances for food and clothing (apparel and services) in the IRS National Standards, not to exceed 5% of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) **You must demonstrate that the additional amount claimed is reasonable and necessary.**	$
45	**Charitable contributions.** Enter the amount reasonably necessary for you to expend each month on charitable contributions in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2). **Do not include any amount in excess of 15% of your gross monthly income.**	$
46	**Total Additional Expense Deductions under § 707(b).** Enter the total of Lines 39 through 45.	$

Subpart C: Deductions for Debt Payment

47	**Future payments on secured claims.** For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, state the Average Monthly Payment, and check whether the payment includes taxes or insurance. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Enter the total of the Average Monthly Payments on Line 47.				
		Name of Creditor	Property Securing the Debt	Average Monthly Payment	Does payment include taxes or insurance?
	a.			$	☐ yes ☐ no
	b.			$	☐ yes ☐ no
	c.			$	☐ yes ☐ no
				Total: Add Lines a, b, and c	
					$

48 **Other payments on secured claims.** If any of debts listed in Line 47 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 47, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.

	Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount
a.			$
b.			$
c.			$
			Total: Add Lines a, b, and c

$

49 **Payments on prepetition priority claims.** Enter the total amount, divided by 60, of all priority claims, such as priority tax, child support and alimony claims, for which you were liable at the time of your bankruptcy filing. **Do not include current obligations, such as those set out in Line 33.** $

50 **Chapter 13 administrative expenses.** Multiply the amount in Line a by the amount in Line b, and enter the resulting administrative expense.

a.	Projected average monthly chapter 13 plan payment.	$
b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x
c.	Average monthly administrative expense of chapter 13 case	Total: Multiply Lines a and b

$

51 **Total Deductions for Debt Payment.** Enter the total of Lines 47 through 50. $

Subpart D: Total Deductions from Income

52 **Total of all deductions from income.** Enter the total of Lines 38, 46, and 51. $

Part V. DETERMINATION OF DISPOSABLE INCOME UNDER § 1325(b)(2)

53 **Total current monthly income.** Enter the amount from Line 20. $

54 **Support income.** Enter the monthly average of any child support payments, foster care payments, or disability payments for a dependent child, reported in Part I, that you received in accordance with applicable nonbankruptcy law, to the extent reasonably necessary to be expended for such child. $

55 **Qualified retirement deductions.** Enter the monthly total of (a) all amounts withheld by your employer from wages as contributions for qualified retirement plans, as specified in § 541(b)(7) and (b) all required repayments of loans from retirement plans, as specified in § 362(b)(19). $

56 **Total of all deductions allowed under § 707(b)(2).** Enter the amount from Line 52. $

57 **Deduction for special circumstances.** If there are special circumstances that justify additional expenses for which there is no reasonable alternative, describe the special circumstances and the resulting expenses in lines a-c below. If necessary, list additional entries on a separate page. Total the expenses and enter the total in Line 57. **You must provide your case trustee with documentation of these expenses and you must provide a detailed explanation of the special circumstances that make such expenses necessary and reasonable.**

	Nature of special circumstances	Amount of expense
a.		$
b.		$
c.		$
		Total: Add Lines a, b, and c

$

58	**Total adjustments to determine disposable income.** Add the amounts on Lines 54, 55, 56, and 57 and enter the result.	$
59	**Monthly Disposable Income Under § 1325(b)(2).** Subtract Line 58 from Line 53 and enter the result.	$

Part VI: ADDITIONAL INFORMATION ~~EXPENSE CLAIMS~~

60 **Other Expenses.** List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.

	Expense Description	Monthly Amount
a.		$
b.		$
c.		$
	Total: Add Lines a, b, and c	$

61 **Change in income or expenses.** If any change from the income or expenses you reported in this form has occurred or is virtually certain to occur during the 12-month period following the date of the filing of your petition, state in the space below: each line affected, the reason for the change, the date of the change, and the amount by which the income or expense reported on the affected line would be increased or decreased. For example, if the wages reported in Line 2 have increased or decreased, or are definitely scheduled to increase or decrease in the future, you would make an entry listing Line 2, the reason for the increase or decrease, the date it has occurred or will occur, and the amount of the change. Make a similar entry for increases or decreases in expenses reported earlier in this form. Add a separate page with additional lines, if necessary.

Line to change	Reason for change	Date of change	Increase (+) or decrease (-)	Amount of change
				$
				$
				$

Part VII: VERIFICATION

~~61~~

62 I declare under penalty of perjury that the information provided in this statement is true and correct. *(If this is a joint case, both debtors must sign.)*

Date: _____ Signature: _____
(Debtor)

Date: _____ Signature: _____
(Joint Debtor, if any)

COMMITTEE NOTE

The chapter 13 form is amended in response to the Supreme Court's decision in *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010). Adopting a forward-looking approach, the Court there held that the calculation of a chapter 13 debtor's projected disposable income under § 1325(b) of the Code may take into account changes to income or expenses reported elsewhere on this form that, at the time of plan confirmation, have occurred or are virtually certain to occur. Those changes could result in either an increased or decreased projected disposable income.

A new line 61 is added to Form 22C for the reporting of those changes, and the title of Part VI is changed to reflect its broadened content. Only debtors whose annualized current monthly income exceeds the applicable median family income have their projected disposable income determined exclusively by the information provided on Form 22C. Therefore they are the only debtors required to provide the information about changes to income and expenses on this form. Debtors whose annualized current monthly income falls at or below the applicable median must report on Schedules I and J any changes to income and expenses that are reasonably expected to occur within the next year.

In reporting changes to income on line 61, a debtor must indicate whether the amounts reported in Part I of the form – which are monthly averages of various types of income received during the six months prior to the filing of the bankruptcy case – have already changed or are virtually certain to change during the 12 months following the filing of the bankruptcy petition. For each change, the debtor must indicate the line of this form on which the changed amount was reported, the reason for the change, the date of its occurrence, whether the change was an increase or decrease of income, and the amount of the change.

In reporting changes to expenses on line 61, a debtor must list changes to the debtor's actual expenditures reported in Part IV that are virtually certain to occur during the 12 months following the filing of the bankruptcy petition. With respect to the deductible amounts reported in Part IV that are determined by the IRS national and local standards, only changed amounts that result from changed circumstances in the debtor's life – such as the addition of a family member or the surrender of a vehicle – should be reported. For each change in expenses, the same information required to be provided for income changes must be reported.

Because of the addition of new line 61, the line for the debtor's verification is renumbered as 62.

The chapter 7 and chapter 13 forms are amended to reflect the Supreme Court's decision in *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716 (2011). The Court held that in order to deduct a transportation ownership/lease expense for a vehicle (Lines 23 and 24 on Form 22A and Lines 28 and 29 on Form 22C), the debtor must actually be obligated to make such payments. The forms therefore now make clear that a debtor may not deduct the ownership/lease expense for a vehicle the debtor owns outright.

The chapter 7 and chapter 13 forms are also amended to permit the deduction of telecommunications expenses (Line 32 on Form 22A and line 37 on Form 22C) that are necessary for the production of income if those expenses have not been reimbursed by the debtor's employer. If a debtor is self-employed, those expenses may be deductible as ordinary and necessary operating expenses at line 5 on Form 22A and line 4 on Form 22C.

TAB-6-E

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEES ON FORMS AND CONSUMER ISSUES

RE: SUGGESTIONS FOR AN OFFICIAL CHAPTER 13 PLAN FORM OR AMENDMENTS TO RULES SETTING CHAPTER 13 PLAN TEMPLATE

DATE: MARCH 7, 2011

Background

During calendar year 2010, debtors filed 439,913 chapter 13 cases.1 Two suggestions have been submitted during the last six months recommending the development of a national uniform chapter 13 plan form. Hon. Margaret Mahoney, a bankruptcy judge, submitted the first suggestion. (Suggestion 10-BK-G). She observed that a uniform national form would make it easier for judges, trustees, and creditors to find the provisions that interest them than the current disparate local forms and "would make it easier to insure proper notice of plan provisions." In the alternative, she suggested the development of a mandatory form template that would require that chapter 13 plan provisions be organized in a particular order. The States' Association of Bankruptcy Attorneys (SABA) also suggested development of a national uniform chapter 13 plan form for reasons similar to those advanced by Judge Mahoney. (Comment 10-BK-M). The states, as creditors and regulators, are involved in cases around the country and find it difficult, especially with their dwindling resources, to deal with approximately 100 local form plans.

The Consumer and Forms Subcommittees ("Subcommittees") discussed the suggestion of a uniform chapter 13 plan or template during a joint conference call. The Subcommittees

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1 Table F2. U.S. Bankruptcy Courts—Business and Nonbusiness Cases Commenced, by Chapter of the Bankruptcy Code, During the 12-Month Period Ending December 31, 2010.

recommend that a working group be appointed to study the possibility of developing an Official Form Chapter 13 plan or, in the alternative, propose an amended rule that sets a template for chapter 13 plans. In making this study, the Subcommittees suggest that the working group consider a number of issues and approaches. The Subcommittees suggest the framework of issues for discussion below.

Framework

I. Should the Bankruptcy Rules require a uniform chapter 13 plan?

The suggestions raise the question of whether uniformity of chapter 13 plans is a goal that should be pursued. If it is, the next question is how to attain that goal. Alternatives are proposing amended rules to provide guidelines about what substantive provisions should be in plans and in what order, or developing an Official Form Chapter 13 Plan that the rules would require to be used in chapter 13 cases. Uniformity would facilitate review by the courts, trustees, and creditors by having provisions that are of particular interest in the same place in every plan, thereby increasing efficiency, and would assist debtors in developing confirmable plans by providing a template that shows what provisions are required and what are allowable.

It may be that rule amendments setting out a structure and order for chapter 13 plans would gain approval more easily than an Official Form, as local courts may have their own local forms that work for the particular district and could be adjusted in light of amended rules to follow the more uniform structure. Courts that have their own local forms that work for them might be more resistant to an Official Form mandated for use in every jurisdiction.

On the other hand, the uniformity achieved by use of an Official Form would be of benefit in particular to creditors that appear in multiple districts and currently must scrutinize every plan for provisions that might affect them.

II. If a Bankruptcy Rule is amended to direct particular plan content, what content should the Official Form Chapter 13 Plan or amended rules include and in what order?

Judge Mahoney suggested that the plan content rule could provide that a proposed chapter 13 must follow a particular structure, such as:

A. Provisions regarding the monthly amount to be paid to the trustee and the length of the plan.

B. Adequate protection payments.

C. Treatment of secured creditors.

D. Treatment of priority creditors.

E. Treatment of unsecured creditors.

F. Other provisions.

The "other provisions" section could be used to include provisions that are district-specific.

An Official Form Chapter 13 Plan could be developed using the same structure.

III. In developing either an Official Form Chapter 13 Plan or a rule setting a structure for chapter 13 plans, the group may collect and analyze model and local court-required plan forms from around the country.

Collecting model and local court-required plan forms from around the country should be a less burdensome task than it appears. According to John Rao, the National Consumer Law Center (NCLC) has undertaken a similar task recently and expects to have available by April 2011 a spreadsheet cataloging the various approaches and plan provisions with the original source documents (forms and rules) identified and available.

The working group would also benefit from reviewing and considering the work done by the Advanced Consumer Bankruptcy Practice Institute on developing a Model Chapter 13 Plan prior to BAPCPA. According to Judge Keith Lundin, the Institute began development of the Model Plan in 2000, and after collecting, dissecting and sorting more than 100 plans, the Institute created a Model Plan. The Model Plan was published, and at times between 20 and 30 districts used some form of the Model Plan. After BAPCPA, the Model Plan was not revised to address the changes to the Bankruptcy Code.

The work done by the Institute would, however, be of great assistance to the work group in developing either an Official Form Chapter 13 Plan or a rule setting the structure for chapter 13 plans. The work group could consider the Model Plan, its various versions, as well as the issues raised during development of the Model Plan. The Model Plan could provide a useful starting point for development of an Official Form Chapter 13 Plan. The work group would then consider how the Model Plan should be revised to take into account changes in the law that resulted from the enactment of BAPCPA. Because the information that will soon be available from NCLC will organize similar provisions together and catalog the different approaches taken on specific types of provisions, the working group will have the benefit of more than five years of post-BAPCPA experience.

The working group would be able to identify those provisions that are commonly included, those that are included less frequently, and those that are optional. This information could be put into a spreadsheet to facilitate review.

IV. What legal issues may be resolved by a chapter 13 plan? How, if at all, should Official Form Chapter 13 Plan or Bankruptcy Rules resolve those issues?

Many legal issues arise with regard to various chapter 13 plan provisions, and courts take different approaches to whether those provisions are permissible. Here are a few examples of issues that arise in connection with proposed chapter 13 plans and the differing approaches in different districts:

A. Can collateral securing claims be valued through the plan? In re Calvert, 907 F.2d 1069 (11th Cir. 1990) (yes, as long as secured creditor had sufficient notice that valuation would be determined at confirmation); Massachusetts Housing Finance Agency v. Evora, 255 B.R. 336 (D. Mass. 2000) (yes, valuation of secured claim in plan binding on creditor so long as creditor had adequate notice; debtor objected to secured creditor's proof of claim); In re Karbel, 220 B.R. 108 (10th Cir. BAP 1998) (yes, chapter 13 plan contained motion for valuation of collateral, secured creditor had notice, and did not object).

B. Can liens be stripped through the plan? In re Dronsfield, 441 B.R. 242 (Bankr. M.D. Pa. 2010) (no, where chapter 13 plan merely stated that judgments would be avoided but did not give specific notice that a particular judgment would be avoided); In re Stansbury, 403 B.R. 741 (Bankr. M.D. Fla. 2009) (yes; plan can contain any matter that does not require adversary proceeding, if adequate notice).

C. Can the plan direct how mortgage payments are to be credited or impose other procedural requirements on mortgage lenders? In re Russell, 2010 WL 2671496 (Bankr. E.D. Va. 2010) (no, provisions directing how payments are to be credited are either unnecessary or impose requirements that do not exist under current law); In re Collins, 2007 WL 2116416 (Bankr. E.D. Tenn. 2007) (no, if those provisions vary the rights of the lender under the loan documents; what is permissible in a plan is governed by § 1322); In re Wilson, 321 B.R. 222

(Bankr. N.D. Ill. 2005) (plan may impose procedural requirements for resolving disagreements as to default or amounts owed during the chapter 13 case).

Judge Lundin has identified a number of additional potential issues that could be addressed by rule amendments. These include a postpetition claims rule to enable plan management of postpetition claims, clarification of the procedure for assumption and rejection of contracts and leases through a chapter 13 plan, amendment of Rule 3002 to fix the bar date for secured creditors to file claims in chapter 13 cases, a rule addressing the procedure for surrender of collateral, and a rule providing a default plan effective date.

The working group should catalog such issues, recommend whether each issue can be resolved by a uniform national plan form or amended rule, or whether the form or rule should provide sufficient flexibility to allow for different district approaches for particular issues.

V. Are there "best practices" that should be incorporated into a Official Form Chapter 13 Plan or pertinent rules?

Judge Lundin has also identified a number of "best practices" for management of chapter 13 cases that might be incorporated into plan provisions. His list includes practices regarding mortgage payments, identifying and managing domestic support obligations and other priority claims, order of distributions by trustee after confirmation, when direct payments by the debtor are allowed or required, lien retention requirements, lien avoidance, lease and executory contract provisions, management of postpetition claims, pre- and postconfirmation adequate protection payment practices, provisions regarding revesting of property, limitations and procedures regarding incurring debt or transferring property during the case, provisions regarding payment of postpetition taxes, insurance and the like during the case, debtor duties

during the case and at discharge, and the plan effective date. John Rao would add crediting of payments on mortgage claims for purposes of § 524(i) to Judge Lundin's list.

Recommendation

The Consumer and Forms Subcommittees recommend that a working group be appointed to study development of an Official Form Chapter 13 plan or, in the alternative, propose an amended rule that sets a template for Chapter 13 plans. The Subcommittees further recommend that the working group be directed to consider what rule amendments, if any, would foster implementation of national consistency in chapter 13 plans and related practices.

TAB-6-F

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

RE: SUGGESTION FOR AMENDMENT OF DEFINITION OF "INSIDER" IN OFFICIAL FORM 7

DATE: MARCH 4, 2011

Aaron Cahn, a New York attorney, has submitted suggestion 10-BK-I. He points out that Form 7 (Statement of Financial Affairs or "SOFA") defines "insider" to include "any owner of 5 percent or more of the voting or equity securities of a corporate debtor." By contrast, the definition of "insider" in § 101(31) of the Code does not list such a person as being an insider of a corporate debtor. Section 101(31) includes an affiliate as an insider, but "affiliate" is defined in § 101(2) to mean, among other things, an "entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor." The Code definition of "insider" lists other relationships that make someone an insider, including a "person in control" of a corporate debtor, but Mr. Cahn says that the statute contains no bright-line test that would invariably make a 5% shareholder an insider. He suggests therefore that Form 7 be amended to conform to the Code.

This suggestion was referred to the Forms Subcommittee and was discussed during its February 25, 2011, conference call. The Subcommittee recommends that the definition of "insider" on page 1 of Form 7 be amended as discussed below.

The Subcommittee recognizes that the Code definition of "insider" is not exclusive, since it says that the term "includes" the relationships that are listed. It found no basis, however, for

concluding that § 101(31) provides authority for the form to create the bright-line, 5% definition that currently appears in Form 7.

The record is silent as to why this provision was included in the SOFA definition of "insider."[1] At the March 1998 Advisory Committee meeting, a proposal for various amendments to Form 7 was on the agenda. Among them was the substitution of the phrase "owner of 5 percent or more of the voting or equity securities of a corporation" for "person in control." This proposed amendment, however, was to the definition of "in business" on page 1 of the form, not to the definition of "insider." There was no explanation of this proposed amendment in the agenda book, the Committee Note, or the minutes of the meeting.

When the amendments to Form 7 were presented to the Standing Committee at the June 1998 meeting for its approval for publication, the same language change – the 5% provision substituted for "person in control" – was also included in the definition of "insider" on the form. Although the Advisory Committee apparently made this change during the March meeting, there is no written explanation for why this change was made. Form 7, with the changed definitions of both "in business" and "insider," was published for comment in August1998, and no comments were submitted on this aspect of the proposed amendments. They went into effect on December 1, 2000, and were not addressed in the Committee Note.

Recommendation

The Subcommittee recommends that the phrase "any owner of 5 percent or more of the voting or equity securities" be deleted and that in its place "persons in control" be inserted in the definition of "insider" in Official Form 7. It further recommends that the citation at the end of the definition be made more precise by substituting "11 U.S.C.

[1] The Subcommittee speculated that the choice of a 5% ownership threshold might have been inspired by the provision of the Securities Exchange Act of 1934 that imposes a reporting requirement on persons who acquire 5% or more of the equity securities of a class that is registered under the Act. *See* 15 U.S.C. § 78m(d).

§ 101(2), (31)" for "11 U.S.C. § 101." Because there is no statutory definition of "in business," the Subcommittee does not recommend that a similar change be made to that SOFA definition. Nor does it recommend a change to any of the questions in the form. A draft revision of Official Form 7 with the recommended changes follows in these materials, along with a Committee Note explaining the reason for the proposed amendment.

B7 (Official Form 7) (12/12) DRAFT

UNITED STATES BANKRUPTCY COURT

_____ DISTRICT OF _____

In re: _____, Debtor

Case No. _____ (if known)

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and ~~any owner of 5 percent or more of the voting or equity securities~~ any persons in charge of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101(2), (31).

1. Income from employment or operation of business

None ☐ State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE

2. Income other than from employment or operation of business

None ☐ State the amount of income received by the debtor other than from employment, trade, profession, operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE

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3. Payments to creditors

Complete a. or b., as appropriate, and c.

None ☐ a. *Individual or joint debtor(s) with primarily consumer debts:* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than $600. Indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING

None ☐ *b. Debtor whose debts are not primarily consumer debts: List each payment or other transfer to any creditor made* within **90 days** immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than $5,850*. If the debtor is an individual, indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS/ TRANSFERS	AMOUNT PAID OR VALUE OF TRANSFERS	AMOUNT STILL OWING

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* *Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.*

None ☐ c. *All debtors:* List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING

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4. Suits and administrative proceedings, executions, garnishments and attachments

None ☐ a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION

None ☐ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY

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5. Repossessions, foreclosures and returns

None ☐ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY

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6. **Assignments and receiverships**

None ☐ a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT

None ☐ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE Of PROPERTY

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7. **Gifts**

None ☐ List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than $200 in value per individual family member and charitable contributions aggregating less than $100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT

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8. **Losses**

None ☐ List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case.** (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS

---

9. Payments related to debt counseling or bankruptcy

None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYER IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY

10. Other transfers

None ☐ a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED

None ☐ b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY

11. Closed financial accounts

None ☐ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING

12. Safe deposit boxes

None ☐ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or

chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY

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13. Setoffs

None ☐ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF

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14. Property held for another person

None ☐ List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY

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15. Prior address of debtor

None ☐ If debtor has moved within **three years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY

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16. Spouses and Former Spouses

None ☐ If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within **eight**

years immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

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17. Environmental Information.

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, wastes, or material.

"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.

None ☐ a. List the name and address of every site for which the debtor has received notice 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

None ☐ 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. 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

None ☐ 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. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION

---

18 . Nature, location and name of business

None ☐ a. *If the debtor is an individual*, list the names, addresses, taxpayer-identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer-identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer-identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

NAME	LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/ COMPLETE EIN	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES

None ☐ b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

---

19. Books, records and financial statements

None ☐ a. List all bookkeepers and accountants who within **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED

None ☐ b. List all firms or individuals who within **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED

None ☐ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME	ADDRESS

None ☐ d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within **two years** immediately preceding the commencement of this case.

NAME AND ADDRESS	DATE ISSUED

---

20. Inventories

None ☐ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY	INVENTORY SUPERVISOR	DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)

None ☐ b. List the name and address of the person having possession of the records of each of the inventories reported in a., above.

DATE OF INVENTORY	NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS

---

21 . Current Partners, Officers, Directors and Shareholders

None ☐ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST

None ☐ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP

---

22 . Former partners, officers, directors and shareholders

None ☐ a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL

None ☐ b. If the debtor is a corporation, list all officers or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION

---

23 . Withdrawals from a partnership or distributions by a corporation

None ☐ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY

---

24. Tax Consolidation Group.

None ☐ If the debtor is a corporation, 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 **six years** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER-IDENTIFICATION NUMBER (EIN)

---

25. Pension Funds.

None ☐ If the debtor is not an individual, list the name and federal taxpayer-identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within **six years** immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER-IDENTIFICATION NUMBER (EIN)

* * * * * *

[If completed by an individual or individual and spouse]

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date _____ Signature of Debtor _____

Date _____ Signature of Joint Debtor (if any) _____

[If completed on behalf of a partnership or corporation]

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date _____ Signature _____

Print Name and Title _____

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

___continuation sheets attached

Penalty for making a false statement: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

_____ _____

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer | Social-Security No. (Required by 11 U.S.C. § 110.)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social-security number of the officer, principal, responsible person, or partner who signs this document.

_____

Address

_____ _____

Signature of Bankruptcy Petition Preparer | Date

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person

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. 18 U.S.C. § 156.

COMMITTEE NOTE

The definition of "insider" is amended to conform to the statutory definition of the term. See 11 U.S.C. § 101(31). Under the Code definition, ownership of 5% or more of the voting shares of a corporate debtor does not automatically make the owner an insider of the corporation. And in order to be an affiliate of the debtor and an insider on that basis, ownership or control of at least 20% of the outstanding voting securities of the debtor is required. 11 U.S.C. § 101(2). The phrase "any owner of 5% or more of the voting or equity securities" is therefore deleted. Because § 101(31) provides that a person in control of a debtor corporation is an insider, that term is substituted for the deleted phrase

TAB-6-G

B240A/B ALT (Form 240A/B ALT) (Reaffirmation Agreement) (12/11) DRAFT

☐ **Presumption of Undue Hardship**
☐ **No Presumption of Undue Hardship**
(Check box as directed in Part D: Debtor's Statement in Support of Reaffirmation Agreement.)

UNITED STATES BANKRUPTCY COURT

_____ District of _____

In re _____, Debtor

Case No._____
Chapter_____

REAFFIRMATION AGREEMENT

[Indicate all documents included in this filing by checking each applicable box.]

☐ Part A: Disclosures, Instructions, and Notice to Debtor (pages 1 - 5)

☐ Part B: Reaffirmation Agreement

☐ Part C: Certification by Debtor's Attorney

☐ Part D: Debtor's Statement in Support of Reaffirmation Agreement

☐ Part E: Motion for Court Approval

*[**Note:** Complete Part E only if debtor was not represented by an attorney during the course of negotiating this agreement. **Note also:** If you complete Part E, you must prepare and file Form 240C ALT - Order on Reaffirmation Agreement.]*

Name of Creditor: _____

☐ *[Check this box if]* Creditor is a Credit Union as defined in §19(b)(1)(a)(iv) of the Federal Reserve Act

PART A: DISCLOSURE STATEMENT, INSTRUCTIONS AND NOTICE TO DEBTOR

1. DISCLOSURE STATEMENT

Before Agreeing to Reaffirm a Debt, Review These Important Disclosures:

SUMMARY OF REAFFIRMATION AGREEMENT

This Summary is made pursuant to the requirements of the Bankruptcy Code.

AMOUNT REAFFIRMED

The amount of debt you have agreed to reaffirm: $_____

The amount of debt you have agreed to reaffirm includes all fees and costs (if any) that have accrued as of the date of this disclosure. Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.

ANNUAL PERCENTAGE RATE

[The annual percentage rate can be disclosed in different ways, depending on the type of debt.]

a. If the debt is an extension of "credit" under an "open end credit plan," as those terms are defined in § 103 of the Truth in Lending Act, such as a credit card, the creditor may disclose the annual percentage rate shown in (i) below or, to the extent this rate is not readily available or not applicable, the simple interest rate shown in (ii) below, or both.

(i) The Annual Percentage Rate disclosed, or that would have been disclosed, to the debtor in the most recent periodic statement prior to entering into the reaffirmation agreement described in Part B below or, if no such periodic statement was given to the debtor during the prior six months, the annual percentage rate as it would have been so disclosed at the time of the disclosure statement: _____%.

--- *And/Or* ---

(ii) The simple interest rate applicable to the amount reaffirmed as of the date this disclosure statement is given to the debtor: _____%. If different simple interest rates apply to different balances included in the amount reaffirmed, the amount of each balance and the rate applicable to it are:

$ _____@ _____%;
$_____ @ _____%;
$_____ @ _____%.

b. If the debt is an extension of credit other than under than an open end credit plan, the creditor may disclose the annual percentage rate shown in (I) below, or, to the extent this rate is not readily available or not applicable, the simple interest rate shown in (ii) below, or both.

(i) The Annual Percentage Rate under §128(a)(4) of the Truth in Lending Act, as disclosed to the debtor in the most recent disclosure statement given to the debtor prior to entering into the reaffirmation agreement with respect to the debt or, if no such disclosure statement was given to the debtor, the annual percentage rate as it would have been so disclosed: _____%.

--- And/Or ---

(ii) The simple interest rate applicable to the amount reaffirmed as of the date this disclosure statement is given to the debtor: _____%. If different simple interest rates apply to different balances included in the amount reaffirmed,

the amount of each balance and the rate applicable to it are:
$ _____@ _____%;
$_____@ _____%;
$_____@ _____%.

c. If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act:

The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower.

d. If the reaffirmed debt is secured by a security interest or lien, which has not been waived or determined to be void by a final order of the court, the following items or types of items of the debtor's goods or property remain subject to such security interest or lien in connection with the debt or debts being reaffirmed in the reaffirmation agreement described in Part B.

Item or Type of Item	Original Purchase Price or Original Amount of Loan

Optional---At the election of the creditor, a repayment schedule using one or a combination of the following may be provided:

Repayment Schedule:

Your first payment in the amount of $_____ is due on _____(date), but the future payment amount may be different. Consult your reaffirmation agreement or credit agreement, as applicable.

— Or —

Your payment schedule will be: _____(number) payments in the amount of $_____ each, payable (monthly, annually, weekly, etc.) on the _____ (day) of each _____ (week, month, etc.), unless altered later by mutual agreement in writing.

— Or —

A reasonably specific description of the debtor's repayment obligations to the extent known by the creditor or creditor's representative.

2. INSTRUCTIONS AND NOTICE TO DEBTOR

Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).

2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

3. If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must have signed the certification in Part C.

4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part E.

5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

6. If the creditor is not a Credit Union and you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D. If the creditor is a Credit Union and you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.

7. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you and the creditor of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home.

YOUR RIGHT TO RESCIND (CANCEL) YOUR REAFFIRMATION AGREEMENT

You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).

Frequently Asked Questions:

What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.

Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A ''lien'' is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the property securing the lien ~~security property~~ if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you must make a single payment to the creditor equal to the amount of the allowed secured claim ~~current value of the security property~~, as agreed by the parties or determined by the court.

NOTE: When this disclosure refers to what a creditor ''may'' do, it does not use the word "may'' to give the creditor specific permission. The word ''may'' is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don't have an attorney helping you, the judge will explain the effect of your reaffirming a debt when the hearing on the reaffirmation agreement is held.

PART B: REAFFIRMATION AGREEMENT.

I (we) agree to reaffirm the debts arising under the credit agreement described below.

1. Brief description of credit agreement:

2. Description of any changes to the credit agreement made as part of this reaffirmation agreement:

SIGNATURE(S):

Borrower:

_____
(Print Name)

_____
(Signature)

Date: _____

Co-borrower, if also reaffirming these debts:

_____
(Print Name)

_____
(Signature)

Date: _____

Accepted by creditor:

_____
(Printed Name of Creditor)

_____
(Address of Creditor)

_____
(Signature)

_____
(Printed Name and Title of Individual Signing for Creditor)

Date of creditor acceptance:

_____

PART C: CERTIFICATION BY DEBTOR'S ATTORNEY (IF ANY).

[To be filed only if the attorney represented the debtor during the course of negotiating this agreement.]

I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

☐ *[Check box, if applicable and the creditor is not a Credit Union.]* A presumption of undue hardship has been established with respect to this agreement. In my opinion, however, the debtor is able to make the required payment.

Printed Name of Debtor's Attorney: _____

Signature of Debtor's Attorney: _____

Date: _____

PART D: DEBTOR'S STATEMENT IN SUPPORT OF REAFFIRMATION AGREEMENT

*[Read and complete sections 1 and 2, **OR**, if the creditor is a Credit Union and the debtor is represented by an attorney, read section 3. Sign the appropriate signature line(s) and date your signature. If you complete sections 1 and 2 **and** your income less monthly expenses does not leave enough to make the payments under this reaffirmation agreement, check the box at the top of page 1 indicating "Presumption of Undue Hardship." Otherwise, check the box at the top of page 1 indicating "No Presumption of Undue Hardship"]*

1. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is $_____, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total $_____, leaving $_____ to make the required payments on this reaffirmed debt.

I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: _____

_____

_____ .

(Use an additional page if needed for a full explanation.)

2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.

Signed: _____
(Debtor)

_____
(Joint Debtor, if any)

Date: _____

— Or —

[If the creditor is a Credit Union and the debtor is represented by an attorney]

3. I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.

Signed: _____
(Debtor)

_____
(Joint Debtor, if any)

Date: _____

PART E: MOTION FOR COURT APPROVAL
[To be completed and filed only if the debtor is not represented by an attorney during the course of negotiating this agreement.]

MOTION FOR COURT APPROVAL OF REAFFIRMATION AGREEMENT

I (we), the debtor(s), affirm the following to be true and correct:

I am not represented by an attorney in connection with this reaffirmation agreement.

I believe this reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement, and because (provide any additional relevant reasons the court should consider):

Therefore, I ask the court for an order approving this reaffirmation agreement under the following provisions (*check all applicable boxes)*:

☐ 11 U.S.C. § 524(c)(6) (debtor is not represented by an attorney during the course of the negotiation of the reaffirmation agreement)

☐ 11 U.S.C. § 524(m) (presumption of undue hardship has arisen because monthly expenses exceed monthly income)

Signed:_____
(Debtor)

_____
(Joint Debtor, if any)

Date: _____

TAB-6-H

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

RE: SUGGESTION FOR ADDITION OF BAR CODE INDICATING FORM NUMBER

DATE: MARCH 4, 2011

Scooter LeMay, Director of Information Technology for the Bankruptcy Court for the Middle District of Alabama, has submitted suggestion 10-BK-E. He requests the Advisory Committee to consider adding a bar code to the upper right-hand corner of each official form to indicate the form number. He explains that this addition would allow scanning software to recognize the form being processed and would thereby enable the automatic creation of an email or deficiency notice for missing forms and the appropriate routing of documents to staff members in the clerk's office.

The Subcommittee carefully considered this suggestion and concluded that it is appropriate for consideration by the Forms Modernization and NextGen projects. Because it involves the design of forms (to create space for a bar code) and the technology for pro-se filings, the Forms Modernization Project may want to consider it. And because it involves the technology used for forms that are filed in person and then scanned, it will be impacted by the new CM/ECF system being designed by the NextGen team.

The Subcommittee therefore recommends that the suggestion be referred to the Forms Modernization Project and called to the attention of the CM/ECF NextGen Project.

TAB-7

Report on status of the Bankruptcy Forms Modernization Project

Item 7 will be an oral report.

TAB-8

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ELIZABETH GIBSON, REPORTER

RE: PUBLISHED AMENDMENTS TO RULES 7054 AND 7056

DATE: MARCH 5, 2011

Proposed amendments to Rules 7054 and 7056 were published for comment in August 2010. No comments were submitted on the Rule 7056 amendment, and one comment was submitted on the amendment to Rule 7054.

Rule 7056

Rule 7056 makes Fed. R. Civ. P. 56 applicable in adversary proceedings.[1] The amendment was proposed in response to the civil rule's imposition of a new default deadline for filing a motion for summary judgment. Under the civil rule, the deadline for filing a motion for summary judgment is 30 days after the close of all discovery, unless a different time is set by local rule or court order. Fed. R. Civ. P. 56(c)(1)(A). Because hearings in bankruptcy cases sometimes occur shortly after the close of discovery, the proposed amendment to Rule 7056 bases the default deadline on the scheduled hearing date, rather than on the close of discovery. The deadline for filing a summary judgment motion would be 30 days before the initial date set for an evidentiary hearing on any issue for which summary judgment is sought, unless a local rule or the court sets a different deadline.

[1] Under Rule 9014(c), Rule 7056 also applies in contested matters unless the court directs otherwise.

No one submitted a comment on this amendment. **I recommend that the Committee approve the proposed amendment to Rule 7056 as published and submit it to the Standing Committee in June for approval.** It would be on track to go into effect on December 1, 2012.

Rule 7054

Rule 7054 incorporates Fed. R. Civ. P. 54(a)-(c) for adversary proceedings, and in subdivision (b) it provides for the awarding of costs.[2] The proposed amendment that was published for comment would amend (b) to provide more time – 14 days rather than one day – for a party to respond to the prevailing party's bill of costs, and extend from five to seven days the time for seeking court review of the costs taxed by the clerk. The first change was proposed in order to provide a more reasonable period of time for a response, and the latter period was changed to conform to the 2009 time-computation amendments, which changed five-day periods in the rules to seven days.[3] These changes are also intended to make the rule consistent with Civil Rule 54, which was previously amended to adopt the proposed time periods.

One comment was submitted on this proposed amendment (10-BK-026). Norman H. Meyer, Jr., Clerk of the U.S. Bankruptcy Court for the District of New Mexico, suggests that both time periods in Rule 7054(b) be extended to 14 days. His district's local rule allows 14 days after entry of the judgment to move for the taxation of costs, 14 days after notice of the motion to object to the bill of costs, and 14 days after the taxation of costs to seek court review.

Because one of the goals of the proposed amendment is to make Rule 7054(b) consistent with the civil rule, **I recommend that the proposed amendment to Rule 7054(b) be approved as published and sent to the Standing Committee for approval, with an anticipated effective date of December 1, 2012.**

---

[2] Rule 7054 also generally applies in contested matters pursuant to Rule 9014(c).

[3] This deadline in Rule7054(b) was overlooked when the other time-computation changes were made.

TAB-9-A

Payment of administrative expenses

Item 9A will be an oral report.

Results of the survey regarding the need for a national rule or forms for the allowance of administrative expenses will be distributed separately.

TAB-9-B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: SUGGESTION FOR RULE REQUIRING QUARTERLY REPORTING BY § 524(g) TRUSTS

DATE: MARCH 10, 2011

The Institute for Legal Reform ("ILR"), an affiliate of the U.S. Chamber of Commerce, has submitted a suggestion (10-BK-H) for a new rule that is aimed at requiring "greater transparency in the operation of trusts established under 11 U.S.C. § 524(g)." In the chapter 11 case of an asbestos defendant,[1] § 524(g) authorizes the creation of, and channeling of liability to, a trust for the post-confirmation compensation of present and future claimants. According to a 2010 study by the RAND Corporation,[2] 54 asbestos bankruptcy trusts had been established through June 2010. ILR argues that there is a need for greater access to information about the operation of these trusts in order to prevent the payment of duplicate demands for trust payments, inaccurate or inconsistent demands, and avoidance of tort system allocation rules. The Advisory Committee chair referred this suggestion to the Subcommittee for a preliminary discussion of it during its conference call on March 2.

Part I of this memorandum provides some background information about asbestos bankruptcy trusts and § 524(g). Part II discusses ILR's proposed rule and implementing form and its arguments in support of the suggestion. Part III then discusses some issues regarding the

[1] According to §524(g)(2)(B)(i)(I), the provision applies to a debtor that "has been named as a defendant in personal injury, wrongful death, or property-damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products."

[2] LLOYD DIXON, GEOFFREY MCGOVERN & AMY COOMBE, RAND INST. FOR CIVIL JUSTICE, ASBESTOS BANKRUPTCY TRUSTS – AN OVERVIEW OF TRUST STRUCTURE AND ACTIVITY WITH DETAILED REPORTS ON THE LARGEST TRUSTS xii (2010).

suggestion that the Subcommittee has identified and would like to consider further. The Subcommittee agrees with the importance of ensuring that trusts established through the bankruptcy process operate with integrity and in a manner consistent with the intent underlying § 524(g). It has some doubts, however, about whether bankruptcy rulemaking is an appropriate means of achieving these goals. After considering the matter in greater depth, the Subcommittee will be in a position to report its recommendation to the Advisory Committee at its fall 2011 meeting.

I. Asbestos Bankruptcy Trusts and § 524(g)[3]

The first bankruptcy cases filed by asbestos manufacturers in order to resolve their tort liability were commenced in 1982 by UNR and by Johns-Manville. At the time of the filing of these chapter 11 cases, the use of bankruptcy to resolve such large numbers of personal injury claims was unprecedented. The courts in these cases therefore had to grapple with a variety of novel issues presented by the attempt to apply the Bankruptcy Code to the resolution of hundreds of thousands of unliquidated tort claims held by both present and future claimants. The ways in which these issues were resolved by the UNR and Johns-Manville cases laid the groundwork for the numerous asbestos bankruptcy cases that followed.

The reorganization plans that were eventually confirmed in both the UNR and Johns-Manville cases provided for the creation of a trust to assume and resolve the asbestos claims against the debtor. The asbestos trust was funded by stock in the reorganized company and other company assets, including insurance proceeds. A so-called channeling injunction was entered, which prevented present and future claimants from pursuing their claims against the reorganized

[3] The information in this section is derived primarily from the following sources: S. ELIZABETH GIBSON, FED. JUDICIAL CTR., JUDICIAL MANAGEMENT OF MASS TORT BANKRUPTCY CASES (2005); S. ELIZABETH GIBSON, FED. JUDICIAL CTR., CASE STUDIES OF MASS TORT LIMITED FUND CLASS ACTION SETTLEMENTS & BANKRUPTCY REORGANIZATIONS (2000).

debtor and related entities. Thus claimants' only means of obtaining compensation with respect to this particular defendant was to follow the procedures established for seeking compensation from the trust. This method of providing compensation to asbestos claimants permitted the deferral of individual claims resolution to the post-confirmation phase of the bankruptcy case.

In 1994 Congress amended the Bankruptcy Code to add § 524(g),[4] which to a large degree validated and wrote into the law for future asbestos bankruptcy cases the approach that the first asbestos bankruptcy cases had taken. This complex and detailed statutory provision specifies the circumstances under which a channeling injunction may be entered in an asbestos bankruptcy case. Among other things, it requires the creation of a trust to assume the debtor's liability for damages due to the exposure of claimants to the debtor's asbestos-containing products. This trust must be funded by securities of the debtor and by the debtor's obligation to make future payments, including dividends, to the trust. The trust is required to own a majority of the voting shares of the debtor company or a parent or subsidiary corporation, and it must use its assets to pay claims (or demands) of present and future tort claimants. In order for the channeling injunction to be valid, § 524(g) requires approval by at least 75% of the affected tort claimants who vote on the confirmation of the reorganization plan. Moreover, for the injunction to be enforceable against future claimants, the bankruptcy court must have appointed a legal representative to protect the rights of future claimants in the bankruptcy proceedings.

Trust documents governing the creation and operation of asbestos bankruptcy trusts and documents specifying the trust distribution procedure ("TDP") have either been incorporated into confirmed bankruptcy reorganization plans or have been separately approved by the bankruptcy court presiding over an asbestos debtor's reorganization case. The TDP specifies in detail the procedures that the trust will follow in paying asbestos personal injury claims that are submitted

[4] Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 111, 108 Stat. 4106, 4114 (1994).

to it. Because payment from the trust is a claimant's exclusive avenue for compensation on account of injury by the debtor – given the channeling injunction – a claimant must comply with the TDP. The payment procedures are designed to ensure that the trust retains sufficient funds to make equitable payments to all eligible present and future claimants.

Typically a TDP for an asbestos bankruptcy trust specifies several categories of asbestos-related diseases and a scheduled value for most of those types of diseases. The values range from several hundred dollars for a non-asbestosis, non-malignant asbestos disease to a hundred thousand dollars or more for mesothelioma. If a claimant submits satisfactory evidence of diagnosis and exposure to satisfy the announced criteria of a particular category, the trust will offer to liquidate the claim at the scheduled amount. That offer, however, does not mean that the claimant is paid the scheduled value. Instead, with the exception of the lowest dollar amount, the liquidated value is multiplied by a payment percentage (for example 10%) set by the trustees in order to ensure the retention of sufficient funds to pay future claims at approximately the same level. The trustees retain the right to periodically adjust the payment percentage as they deem appropriate.

If a claimant fails to satisfy the medical or exposure criteria or chooses not to accept the scheduled value, he or she may seek an individual evaluation of the claim. This process could result in the trust offering to liquidate the claim for an amount that is either greater or less than the scheduled value. Again, however, actual payment would be the product of the liquidated amount multiplied by the payment percentage.

A claimant who does not accept the liquidated amount offered by the trust generally may seek either binding or non-binding arbitration. If non-binding arbitration is chosen and the result is not accepted, the claimant may at that point bring a lawsuit against the trust in the tort system.

The payment percentage is applicable to any judgment that is rendered, and additional restrictions may apply to the timing of payment of such judgments.

Courts presiding over asbestos and other mass tort bankruptcy cases have continued to exercise post-confirmation jurisdiction over proceedings involving or affecting the trust that was established to pay the tort claims. Among the actions of this type that bankruptcy courts have taken are the removal of trustees, limitation of fees for claimants' attorneys, entry of orders governing procedures for litigated and arbitrated claims against the trust, interpretation of confirmed plans and confirmation orders, enforcement of channeling injunctions, oversight of continued funding of the trust, receipt of annual reports and financial statements of the trust, and settlement of accounts of trustees.

II. ILR Suggestion

ILR has proposed that the following bankruptcy rule be adopted in order to make information about claims submitted and paid by asbestos bankruptcy trusts publicly accessible:

Rule 4009. Reports from Trusts Established Under Section 524(g)

> In addition to performing other duties prescribed by the Code and the rules, and subject to reasonable privacy safeguards, a trust established under Section 524(g) shall file periodic reports, available to the public and in a form prescribed by the Judicial Conference, on a quarterly basis. Such reports shall describe, with particularity, each demand for payment the trust received during the reporting period, including exposure history, as well as each amount paid for demands during the report period. Such reports shall not include confidential medical records or claimant social security numbers. If trust payments or demands are relevant to an action in any state or federal court, the trust

established under Section 524(g) shall provide information related to demands and payments to any party to such action, upon written request and subject to protective orders as appropriate.

ILR also proposes an official form for making the required reports. It would provide an attachment for listing demands presented to the trust during the reporting period, revealing for each demand the name of the party making it, the amount of the demand, and the factual basis for it, including exposure history. There would also be an attachment for demands paid, which would require disclosure for each payment of the party to whom it was made, the amount paid, and the factual basis for the payment and amount.

In support of its suggested new rule, ILR argues that greater transparency regarding the operation of asbestos bankruptcy trusts is needed. It notes concern about claimants making demands for payment from several trusts that rest on inconsistent exposure histories or constitute duplicate demands. This overclaiming, it argues, undermines the congressional desire for equitable treatment of present and future claimants, which purpose underlies § 524(g). Of special concern for ILR is the difficulty that defendants to tort actions brought by trust claimants have in obtaining information from the trusts about demands made by and amounts paid to the plaintiffs. The unavailability of this information undermines state rules for contribution and allocation of liability among tortfeasors and prevents defendants from introducing evidence of the plaintiffs' prior inconsistent allegations of the cause of their injuries.

ILR asserts that the Rules Enabling Act, 28 U.S.C. § 2075, provides authority for promulgation of the proposed rule because it authorizes the establishment of "rules that facilitate the operation of the bankruptcy laws so long as the rules do not modify existing substantive

rights." Suggestion at p. 2. Mere disclosure of information, it contends, does not impact any substantive right created by § 524(g).

III. Some Issues Raised by the Suggestion

The ILR proposal brings to the Advisory Committee an important issue – disclosure of information about the operation of asbestos bankruptcy trusts – that has recently attracted congressional attention. Representative Lamar Smith, chair of the House Committee on the Judiciary, has requested the GAO to undertake a study on asbestos bankruptcy trust claims and payments, so it is possible that there will be legislative efforts on this issue.

A threshold issue for the Advisory Committee is whether the problem described by ILR is properly addressed by the Bankruptcy Rules. The Subcommittee, in its preliminary discussions, identified three issues that it believes need to be resolved in order to determine what action to recommend regarding this proposal.

1. Does the proposed rule fall within the scope of the Supreme Court's rulemaking authority? The Bankruptcy Rules Enabling Act provides that the "Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11. Such rules shall not abridge, enlarge, or modify any substantive right." 28 U.S.C. § 2075. Existing bankruptcy rules, as well as some pending amendments, require the disclosure of various types of information by parties participating in bankruptcy cases. The rule proposed by ILR, however, would operate after a chapter 11 plan is confirmed and would apply to entities that, although created through the reorganization process, act outside the contours of a bankruptcy case. The Subcommittee noted in particular the last sentence of the proposed rule, which would require § 524(g) trusts to provide information upon written request to parties in state or federal court actions. Members of the Subcommittee were

concerned that mandating discovery in tort and other non-bankruptcy suits might exceed the authority to prescribe rules for "the practice and procedure in cases under title 11."

2. Would implementation of the proposed rule exceed the scope of bankruptcy jurisdiction? Bankruptcy jurisdiction, whether exercised by a district or a bankruptcy judge in the first instance, extends to "all cases under title 11 [and] all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(a), (b). While this conferral of jurisdiction has spawned much litigation, its scope is especially uncertain in the post-confirmation phase of a chapter 11 case. It is generally recognized that the bankruptcy court's jurisdiction does not cease in its entirety upon plan confirmation, but it does decrease at that point. *See, e.g.,* Binder v. Price Waterhouse & Co. (*In re* Resorts Int'l, Inc.), 372 F.3d 154, 165 (3d Cir. 2004). The Third Circuit held that the test for whether the bankruptcy court retains jurisdiction after confirmation is "whether there is a [sufficiently] close nexus to the bankruptcy plan or proceeding." *Id.* at 166. It went on to explain that "[m]atters that affect the interpretation, implementation, consummation, execution, or administration of the confirmed plan will typically have the requisite close nexus." *Id.* at 167.

Bankruptcy courts that have confirmed plans in asbestos bankruptcies that created trusts under § 524(g) have continued to exercise jurisdiction in the case to receive annual reports and accounts from the trustees. In the Eagle-Picher asbestos bankruptcy case,[5] for example, the plan was confirmed in November 1996. A recent check of the docket in that case showed that Judge Perlman entered an order on June 10, 2010, approving the trustees' annual report and account for the 2009 calendar year and releasing the trustees from further liability for that period. The annual report and account, which was accompanied by audited financial statements, provided a summary of the claims processed and amounts paid to date and during 2009, as well as

[5] Consolidated Case No. 1-91-10100 (Bankr. S.D. Ohio).

information about trust and asset management. Of relevance to the ILR suggestion, the Eagle-Picher trust report stated that during 2009 the trust had responded to approximately 459 subpoenas that sought claims filing information. This information, it said, was sought primarily by non-asbestos defendants. The trust stated that it "did not divulge any medical information or trust settlement amounts in responding to the subpoenas." Annual Report and Account at p. 5.

Courts have provided relatively little explanation of the basis of continuing jurisdiction over the asbestos trusts. The exercise of that jurisdiction may be based on the view that the court that approved the creation and operating procedures of the trust has jurisdiction to provide continuing oversight of its operation. Even so, the Subcommittee questioned whether the existence of jurisdiction to provide an annual accounting necessarily extends to receipt of all of the information that the proposed rule would require. The resolution of that issue leads to the final question identified by the Subcommittee.

3. Is there a bankruptcy need for the quarterly reporting of the information sought by ILR? Two reasons are put forth for the need for greater disclosure by asbestos bankruptcy trusts: (1) ensuring the integrity of the trust payment system, and (2) enabling defendants in tort actions to determine whether the plaintiff has already received payment for the injury being alleged and whether the plaintiff has made inconsistent claims of exposure or causation.

As for the first goal, it is not clear to the Subcommittee that the quarterly reporting sought by ILR to each court that has approved the creation of a trust will provide a mechanism for rooting out improper claim payments. The mere fact that one person has sought and received payment from several trusts does not reveal impropriety. Many asbestos claimants were exposed to several different manufacturers' asbestos products, and they generally are paid less than 100% of their damages from any trust. It would be difficult to determine, therefore, when a claimant

has received more than he or she is entitled to receive. Furthermore, it is unlikely that any bankruptcy judge would be in a position to compare the various reports that are filed over time with numerous courts to determine if there have been inconsistent allegations or overpayments.

With respect to the second goal, the Subcommittee was concerned that it is beyond the scope of the bankruptcy court's responsibilities to serve as a repository of information merely for use in non-bankruptcy litigation. The bankruptcy court does not need information at the proposed level of detail in order to approve the trustees' report and account, and ILR does not suggest any use that the bankruptcy court will make the quarterly reports. It instead seems to be seeking to use the Bankruptcy Rules to mandate public disclosure of information that has been difficult or impossible to obtain.

To the extent that non-bankruptcy law allows a tort defendant to share liability with other tortfeasors or to offset against a judgment any amounts that the plaintiff has already been paid for the same injury, the Subcommittee agreed that there should be a way to discover this information. But if discovery tools in the tort litigation have proven to be ineffective and it is determined that the trusts should be providing more information than they currently are, the Subcommittee's preliminary thought was that this may be a matter more appropriately addressed by a legislative solution – such as an amendment of § 524(g) that imposes additional requirements on trusts created under that provision.

TAB-9-C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: SUGGESTION REGARDING PUBLICATION OF NOTICE OF § 363 SALE

DATE: MARCH 4, 2011

Douglas Neistat, an attorney at Greenberg & Bass LLP in Encino, California, submitted a suggestion (10-BK-F) that was referred to this Subcommittee. The Subcommittee discussed the suggestion during its March 2, 2011, conference call.

Mr. Neistat suggests the adoption of a national rule that is similar to the Central District of California's Local Bankruptcy Rule 6004-1(f). That rule, governing publication of notice of the sale of estate property, provides as follows:

> Whenever the trustee or debtor in possession is required to give notice of a sale or of a motion to sell property of the estate pursuant to FRBP 6004 and 2002(c), an additional copy of the notice and court approved form F 6004-2, Notice of Sale of Estate Property must be submitted to the clerk at the time of filing for purposes of publication by the clerk on the court's website.

In support of his suggestion, Mr. Neistat relates the experience in a recent chapter 11 case (*In re* Jackson Corp., No. 2:09-10594 VZ (Bankr. C.D. Cal)). In that case, a company offered to purchase the debtor's assets for $510,000. An asset purchase agreement was entered into, and the debtor in possession filed a sale motion under § 363(f). The debtor failed, however, to comply with the local rule's requirement that the notice of the motion to sell be published on the court's website. As a result, Judge Zurzolo continued the hearing until the notice was published as required. After the notice was placed on the court's website, two additional bidders came

forward. In the end, one of the new parties purchased the assets for $1,250,000, and the court approved the sale.

Mr. Neistat cites this example as illustrating the value of publication of the notice of an asset sale in attracting additional bidders. He says that a central listing of such notices on the court's website – *see* http://www.cacb.uscourts.gov/ (News/Notices/Publications → Notices/Lists (Notice of Sale of Estate Property)) – benefits all parties: debtor, asset purchaser, secured lender, all classes of creditors that will benefit from a higher sale price, and the U.S. trustee. He therefore urges the Committee to adopt a similar national rule that would require publication of sale notices on a national registry.

Recommendation

The Subcommittee agreed that the practice the Central District of California has adopted in Local Rule 6004-1(f) appears to be a good way to publicize sales of estate assets and thereby attract potential buyers (at least once people become aware of the practice and know to look at the website listing). It is not the only effective method of doing so, however. A brief sampling of the local rules of 20 other districts of varying sizes and locations[1] revealed no other court with a similar requirement. The Subcommittee voted not to recommend that the practice be mandated by rule for all bankruptcy courts at this time.

Rather than pursuing this suggestion as a rules matter, the Subcommittee recommends that the suggestion be referred to the Bankruptcy Judges Advisory Group ("BJAG") for its consideration. If the BJAG views the Central District of California's Local Rule 6004-1(f) favorably, it could encourage the Administrative Office of the Courts ("AO") to call this practice to the attention of all bankruptcy courts, urge the AO to create a national

[1] D. Del., S.D.N.Y., S.D. Tex., N.D. Ga., D. Ore., N.D. Ill., N.D. Ohio, E.D. Mo., D. Mass., D.D.C., N.D. Cal., E.D. Cal., S.D. Cal., E.D.N.C., M.D.N.C., W.D.N.C., D.S.D., D. Colo., E.D. Tenn., S.D. Fla.

registry for courts that want to publish their notices of sales of estate property, or refer the matter back to the Advisory Committee if it believes the practice should be mandated by national rule.

TAB-10

MEMORANDUM

DATE: March 8, 2011

TO: Advisory Committees on Bankruptcy and Appellate Rules

FROM: S. Elizabeth Gibson, Reporter
Catherine T. Struve, Reporter

RE: Part VIII Revision Project and Related Appellate Rules Amendments

I. Introduction and Overview

This memorandum is prepared by the reporters in preparation for the joint meeting of the two Advisory Committees on April 7, 2011. The purpose of the meeting is to provide an opportunity for both Committees to discuss the proposed revision of the bankruptcy appellate rules – Part VIII of the Bankruptcy Rules – and related proposed amendments to Appellate Rule 6, which governs bankruptcy appeals in the court of appeals.

The discussion will largely focus on the aspects of the Part VIII draft that directly impact the Appellate Rules. For the most part, the Part VIII rules apply to appeals from bankruptcy courts to district courts and bankruptcy appellate panels under 28 U.S.C. § 158(a) and (b). To that extent, they do not directly affect practice in the courts of appeals and are likely of lesser interest to the Appellate Rules Committee. Several Part VIII rules do, however, govern or affect appeals of bankruptcy proceedings to courts of appeals. These rules include ones governing a direct appeal to the court of appeals under 28 U.S.C. § 158(d)(2) [Rule 8006]; indicative rulings [Rule 8008]; designation and preparation of the record on appeal, including the handling of documents under seal [Rule 8009]; and motions for rehearing in the district court or bankruptcy appellate panel [Rule 8023].[1] The Committees' discussion of these rules and related Appellate Rules will help to ensure that the two sets of rules address all necessary procedural details and do so without redundancy or inconsistency.

Another aspect of the Part VIII draft that the Committees may want to discuss is the effort to take existing Appellate Rules that assume the use and physical transmittal of paper documents and to draft Part VIII rules that incorporate electronic filing and transmittal

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[1] Except as otherwise indicated, references in this memorandum to Part VIII rules use the rule numbers designated in the current working draft of the revision. For many rules these section numbers differ from the existing rule numbers in Part VIII, because one of the purposes of the proposed revision is to follow more closely the organization of the Appellate Rules.

technology. As discussed below, one of the goals of the Part VIII revision project is to modernize the bankruptcy appellate rules to take advantage of existing technology – such as the electronic filing and storage of documents – while also allowing for future technological advancements. Because decisions made in revising these Bankruptcy Rules may pave the way for a similar recognition of electronic technology in other federal rules, including the Appellate Rules, the Bankruptcy Rules Committee hopes to obtain the input of members of the Appellate Rules Committee on this aspect of the Part VIII draft.

Finally, the joint meeting will provide an opportunity for the Bankruptcy Rules Committee to obtain the benefit of the thinking underlying the Appellate Rules Committee's drafting and revision of some of the rules on which the draft Part VIII rules are based.

This memorandum is intended to provide necessary background information for both Committees in preparation for these discussions. Part II provides information about the origins, development, and current status of the Part VIII revision project. Parts III and IV discuss proposed amendments to Appellate Rule 6 that are currently under consideration by the Appellate Rules Committee. Then in Part V the memo discusses a series of issues that have arisen in the initial drafting of the Part VIII revision and the amendments to Appellate Rule 6. A draft of proposed amendments to Appellate Rule 6 and the current working draft of the Part VIII revision are included in the agenda materials following this memo.

II. Background Information on the Part VIII Revision Project

At the spring 2008 meeting of the Bankruptcy Rules Committee, then-member Eric Brunstad, an experienced bankruptcy appellate practitioner, proposed that the Committee undertake a thorough revision of Part VIII of the Bankruptcy Rules to bring them into closer alignment with the Appellate Rules. The Chair referred the matter to the Subcommittee on Privacy, Public Access, and Appeals for further consideration. Under the Subcommittee's supervision, Mr. Brunstad produced a draft of a complete revision of Part VIII , along with annotations indicating the source of each rule and the differences from the existing Part VIII rules. This draft was presented to the Committee at its fall 2008 meeting, and it approved proceeding further with the project.

Because of the relatively specialized nature of bankruptcy appeals, the Bankruptcy Rules Committee held two special subcommittee meetings with judges, lawyers, professors, and court personnel who have experience with bankruptcy appeals and the current Part VIII rules. The purpose of the meetings was to provide a forum for discussion of the current operation of the appellate rules and the desirability of revising Part VIII, as well as to obtain specific feedback on the draft revision.

The meetings were held in March 2009 in San Diego and in September 2009 in Boston. Participants at both meetings expressed support for a revision of Part VIII, including incorporating into the rules recognition of modern technology for the handling of court papers.

Further revisions of the initial draft were made in response to the comments received at the meetings.

At the spring 2010 Bankruptcy Rules Committee meeting, the Committee formally approved the following goals for the project:

- Make the bankruptcy appellate rules easier to read and understand by adopting the clearer and more accessible style of the Federal Rules of Appellate Procedure.
- Incorporate into the Part VIII rules useful Appellate Rule provisions that currently are unavailable for bankruptcy appeals.
- Retain distinctive features of the Part VIII rules that address unique aspects of bankruptcy appeals or that have proven to be useful in that context.
- Clarify existing Part VIII rules that have caused uncertainty for courts or practitioners or that have produced differing judicial interpretations.
- Modernize the Part VIII rules to take advantage of existing technology – such as the electronic filing and storage of documents – while also allowing for future technological advancements.

Since last spring's meeting, the reporter, with valuable input from the Subcommittee and Professor Struve, has revised the earlier draft of the Part VIII revision and drafted Committee Notes for each rule. This current working draft will be the subject of the discussion at the joint meeting of the Committees. Following this meeting, the Subcommittee anticipates engaging in a careful editing, review, and style process that will include incorporation of changes suggested by the two Committees. The Bankruptcy Rules Committee will then carefully review the draft with the aim of presenting it to the Standing Committee for approval of its publication for comment in August 2012.

III. Amending Appellate Rule 6(b)

The detailed consideration of bankruptcy appellate practice, in connection with the Part VIII project, provides a useful opportunity to consider the operation of Appellate Rule 6 generally. This section discusses possible changes that could be made to Rule 6(b), which governs bankruptcy appeals from district courts and bankruptcy appellate panels to courts of appeals.

A. Updating the list of excluded provisions in Appellate Rule 6(b)(1)(A)

Appellate Rule 6(b)(1)(A) lists Appellate Rules provisions that do not apply to bankruptcy appeals from a district court or bankruptcy appellate panel to a court of appeals. This list of exclusions originated in 1989 as part of the new Appellate Rule 6 that was adopted in the wake of *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982),

and the Bankruptcy Amendments and Federal Judgeship Act of 1984.[2] The list of exclusions has been updated only once, as part of the 1998 restyling; at that point, references to Appellate Rules 3.1 and 5.1 were removed (due to the 1998 abrogation of those Rules). In the light of the other changes to Rule 6 that are under consideration, it seems useful to review the Appellate Rules to see whether any other changes that have been made since 1989 might warrant an adjustment to the list of exclusions. It turns out that only one such change appears necessary.[3]

Appellate Rule 6(b)(1)(A)'s reference to Appellate Rule 12(b) appears to need updating. In 1989, Appellate Rule 12(b) concerned the record and read as follows:

> (b) Filing the Record, Partial Record, or Certificate. Upon receipt of the record transmitted pursuant to Rule 11(b), or the partial record transmitted pursuant to Rule 11(e), (f), or(g), or the clerk's certificate under Rule 11(c), the clerk of the court of appeals shall file it and shall immediately give notice to all parties of the date on which it was filed.

In 1993, a new Appellate Rule 12(b) was added and the existing Appellate Rule 12(b) was re-numbered 12(c). Appellate Rule 6(b) was not amended to take account of this re-numbering. It seems useful to do so at this point so as to restore the original intent of this exclusion. It seems reasonable to assume that it would be useful to apply Appellate Rule 12(b) to bankruptcy appeals from district courts or BAPs to a court of appeals; that provision requires the filing of a representation statement, and would seem equally useful in connection with bankruptcy appeals as it is in connection with other appeals as of right. Accordingly, Rule 6(b)(1)(A)'s reference to Appellate Rule 12(b) should become a reference to Appellate Rule 12(c).

B. Amending Appellate Rule 6(b)(2)(A) to track Appellate Rule 4(a)(4)

The sketch of a possible revision of Appellate Rule 6 that is included in these materials illustrates proposed changes to subdivision (b)(2)(A) that would parallel the 2009 amendment to Appellate Rule 4(a)(4). These changes – which are discussed in Part III.B.1 below – have received support, in principle, from the Bankruptcy Rules Committee's Subcommittee on Privacy, Public Access, and Appeals. A pending proposal to further amend Rule 4(a)(4) would address the possibility that time might elapse between the entry of an order disposing of the last

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[2] Pub. L. No. 98-353, 98 Stat. 333.

[3] Appellate Rule 12.1 took effect in 2009 and formalizes the practice of indicative rulings. Though that practice may be more rare in the bankruptcy context, there seems to be no need to exclude the Rule from operating in that context. Thus, it appears that Rule 12.1 should not be added to the list of exclusions unless a reason emerges for doing so. Appellate Rule 6(b)(1)(C) will direct users to read Appellate Rule 12.1's references to the district court as also encompassing bankruptcy appellate panels.

remaining tolling motion and any ensuing alteration or amendment of the judgment. The latter proposal to amend Appellate Rule 4(a)(4) has not yet taken final shape, and thus a parallel proposal to amend Appellate Rule 6(b)(2)(A) is not reflected in the proposed rule. Issues relating to that pending proposal to amend Rule 4(a)(4) are summarized in Part III.B.2 below.

1. Paralleling the 2009 amendment to Appellate Rule 4(a)(4)

Rule 6(b)(2)(A)(ii) contains an ambiguity similar to the ambiguity in former Rule 4(a)(4) that was pointed out in *Sorensen v. City of New York*, 413 F.3d 292 (2d Cir. 2005). A 2009 amendment to Rule 4(a)(4) removed the ambiguity in that rule by altering Rule 4(a)(4)(B)(ii) as follows: "A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a ~~judgment altered or amended~~ judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal — in compliance with Rule 3(c) — within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion."

Rule 6(b)(2)(A)(ii) deals with the effect of motions under current Bankruptcy Rule 8015 on the time to appeal from a judgment, order, or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction in a bankruptcy case. Rule 6(b)(2)(A)(ii) states that "[a] party intending to challenge an altered or amended judgment, order, or decree must file a notice of appeal or amended notice of appeal within the time prescribed by Rule 4 ... measured from the entry of the order disposing of the motion." Before the 1998 restyling of the Appellate Rules, the comparable subdivision of Rule 6 instead read, "A party intending to challenge an alteration or
amendment of the judgment, order, or decree shall file an amended notice of appeal ...."

At its fall 2008 meeting, the Appellate Rules Committee discussed the possibility of amending Rule 6(b)(2) to eliminate the Rule's ambiguity. The Committee decided to seek the views of the Bankruptcy Rules Committee on this question. The Bankruptcy Rules Committee referred the matter to its Subcommittee on Privacy, Public Access, and Appeals. The sketch in the attachment reflects the Subcommittee's guidance on the drafting of this possible amendment.

2. The pending proposal to amend Rule 4(a)(4)

As noted elsewhere in the Appellate Rules Committee's agenda book,[4] the Civil / Appellate Subcommittee has been considering the possibility of amending Appellate Rule 4(a)(4) to clarify appeal deadlines in cases where a motion tolls the appeal time. The Rule 4(a)(4) proposal grows out of a suggestion that problems may arise in some cases because Appellate Rules 4(a)(4)(A), (B)(i) and (B)(ii) all peg timing questions to the entry of the order

[4] See the memo on Item No. 08-AP-D.

disposing of the last remaining tolling motion, and they do not take account of the possibility that time may elapse between that order and any ensuing amendment or alteration of the judgment.[5] If the Appellate Rules Committee were to adopt an amendment in response to that concern, it might alter Rule 4(a)(4)(B)(ii)'s wording to run the appeal time "from the latest of entry of the order disposing of the last such remaining motion or entry of any altered or amended judgment resulting from such a motion." Similar changes would be made to Rules 4(a)(4)(A) and 4(a)(4)(B)(i). Such amendments, if adopted, might raise a question as to whether the wording of Appellate Rule 6(b)(2)(A)(i) and (ii) should be amended in similar fashion.

The Appellate Rules Committee discussed the Rule 4(a)(4) proposals at its fall 2010 meeting. That discussion revealed a number of drafting issues and consideration of those issues is still ongoing. Thus, it may be premature to ask the Bankruptcy Rules Committee to consider this question at this time. But regardless of the outcome of the discussions concerning Appellate Rule 4(a)(4), the two Committees will need to coordinate their approaches to the question of tolling motions.

Current Bankruptcy Rule 8015 explicitly addresses the question of appeal time – and does so in a way that is at odds with current Appellate Rule 6(b)(2)(A). It provides that "[u]nless the district court or the bankruptcy appellate panel by local rule or by court order otherwise provides, a motion for rehearing may be filed within 14 days after entry of the judgment of the district court or the bankruptcy appellate panel. If a timely motion for rehearing is filed, the time for appeal to the court of appeals for all parties shall run from the entry of the order denying rehearing or the entry of subsequent judgment." Appellate Rule 6(b)(2)(A)(i) currently provides in part that "[i]f a timely motion for rehearing under Bankruptcy Rule 8015 is filed, the time to appeal for all parties runs from the entry of the order disposing of the motion." Thus, oddly, both of these rules purport to set the point from which the re-started appeal time runs, and the two rules specify what may (in some cases) turn out to be two different points in time. That is to say, in cases where the order granting rehearing is entered on Day X and the resulting amended judgment is entered on Day X + 20, Appellate Rule 6(b)(2)(A) currently tells us that the appeal time runs from Day X, yet Bankruptcy Rule 8015 tells us that the appeal time runs from Day X + 20.

This inconsistency is eliminated in the working draft of revised Part VIII. Proposed Rule 8023 governs motions for rehearing in bankruptcy appeals filed in the district court and BAP, thus replacing current Rule 8015. Following the example of Civil Rules 50, 52 and 59, proposed Rule 8023 does not address the question of when the appeal time re-starts after disposition of a tolling motion. Instead, it leaves the issue to be addressed by Appellate Rule 6(b)(2)(A)(i).

Despite the potential elimination of the direct conflict between the Bankruptcy and Appellate Rules on this issue, coordination should continue between the two Committees concerning the re-start of appeal time following the resolution of tolling motions. That issue also

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[5] Such time delays might arise, for example, where remittitur is ordered.

is presented in the context of an appeal from the bankruptcy court to the district court or BAP. Proposed Rule 8002(b)(1) addresses the issue of when the appeal time starts to run, and the two Committees may decide that it would be beneficial to adopt a uniform approach to this issue throughout both sets of rules.

It should also be noted that because the Part VIII project will re-number Bankruptcy Rule 8015, Appellate Rule 6's reference to Bankruptcy Rule 8015 will require revision.

IV. Adopting a new Appellate Rule 6(c) to take account of permissive direct appeals under 28 U.S.C. § 158(d)(2)

The Appellate Rules do not currently take special notice of permissive direct appeals under 28 U.S.C. § 158(d)(2). The time has come, however, to consider amending the Appellate Rules to provide specially for such appeals. The Part VIII project provides an opportune vehicle for crafting such changes to the Appellate Rules, because commentators on the Part VIII project can also focus their attention on ensuring that the Appellate Rules dovetail properly with the Part VIII rules.

The Appellate Rules will need to treat the record on direct appeals differently than the record on bankruptcy appeals from a district court or bankruptcy appellate panel. Appeals from the district court or BAP exercising appellate jurisdiction in a bankruptcy case are governed by Appellate Rule 6(b). That rule contains a streamlined procedure for redesignating and forwarding the record on appeal, because the appellate record will already have been compiled for purposes of the appeal to the district court or the BAP. In the context of a direct appeal, the record will generally require compilation from scratch. The closest model for the compilation and transmission of the bankruptcy court record would appear to be the rules chosen by the Part VIII project for appeals from the bankruptcy court to the district court or the BAP. Thus, the sketch shown in the appendix to this memo incorporates the relevant Part VIII rules by reference while making some adjustments to account for the particularities of direct appeals to the court of appeals.

A. The background

At the time that Section 158(d)(2) came into being as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 [BAPCPA], the Appellate Rules Committee decided that no immediate action was necessary with respect to the Appellate Rules. The minutes of the Committee's April 2005 meeting explain:

> ... [BAPCPA] would amend § 158 to permit appeals by permission -- both of final orders and of interlocutory orders -- directly from a bankruptcy court to a court of appeals....

When Rule 5 was restyled in 1998, the Committee intentionally wrote the rule broadly so that it could accommodate new permissive appeals authorized by Congress or the Rules Enabling Act process. In this instance, that strategy appears to have worked, as Rule 5 seems broad enough to handle the new permissive appeals authorized by § 1233 [of BAPCPA]. Indeed, § 1233 specifically provides that "an appeal authorized by the court of appeals under section 158(d)(2)(A) of title 28 ... shall be taken in the manner prescribed in subdivisions (a)(1), (b), (c), and (d) of rule 5 of the Federal Rules of Appellate Procedure." Section 1233 clarifies that references in Rule 5 to "district court" should be deemed to include a bankruptcy court or BAP and that references to "district clerk" should be deemed to include a clerk of a bankruptcy court or BAP.

The Reporter said that neither he nor Prof. Morris (the Reporter to the Bankruptcy Rules Committee) believes that anything in § 1233 requires this Committee to amend Rule 5. With the clarifications made by § 1233 itself, Rule 5 should suffice to handle the new permissive appeals.

.... By consensus, the Committee agreed to remove Item No. 05-03 from its study agenda.

Importantly, a key basis for the Committee's conclusion that no Appellate Rules amendments were needed was the fact that BAPCPA put in place interim procedures for administering the new direct appeals mechanism. Section 1233(b) – the uncodified BAPCPA provision setting forth those interim procedures – specifies that "[a] provision of this subsection shall apply to appeals under section 158(d)(2) of title 28, United States Code, until a rule of practice and procedure relating to such provision and such appeals is promulgated or amended under chapter 131 of such title [28 U.S.C.A. § 2071 et seq.]."

Effective December 1, 2008, a new subdivision (f) was added to Bankruptcy Rule 8001 to address appeals under Section 158(d)(2). Thus, as to the matters covered in Rule 8001(f), the interim BAPCPA procedures no longer apply. Rule 8001(f) was amended effective December 1, 2009 to adjust time periods as part of the time-computation project. The general thrust of the Rule continues to be as described in the 2008 Committee Note to Rule 8001(f):

Subdivision (f) is added to the rule to implement the 2005 amendments to 28 U.S.C. § 158(d). That section authorizes appeals directly to the court of appeals, with that court's consent, upon certification that a ground for the appeal exists under § 158(d)(2)(A)(i)-(iii). Certification can be made by the court on its own initiative under subdivision (f)(4), or in response to a request of a party or a majority of the appellants and appellees (if any) under subdivision (f)(3). Certification also can be made by all of the appellants and appellees under subdivision (f)(2)(B). Under subdivision (f)(1), certification is effective only when a timely appeal is commenced under subdivision (a) or (b), and a notice of appeal has been timely filed under Rule 8002. These actions will provide

> sufficient notice of the appeal to the circuit clerk, so the rule dispenses with the uncodified temporary procedural requirements set out in § 1233(b)(4) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8.
>
> ...
>
> A certification under subdivision (f)(1) does not place the appeal in the circuit court. Rather, the court of appeals must first authorize the direct appeal. Subdivision (f)(5) therefore provides that any party intending to pursue the appeal in the court of appeals must seek that permission under Rule 5 of the Federal Rules of Appellate Procedure. Subdivision (f)(5) requires that the petition for permission to appeal be filed within 30 days after an effective certification.

For the moment, then, the state of play concerning permissive direct appeals under Section 158(d)(2) is that current Rule 8001(f) governs a variety of aspects of procedure before the bankruptcy court, district court and bankruptcy appellate panel and – with respect to proceedings in the court of appeals – provides that "[a] petition for permission to appeal in accordance with F. R. App. P. 5 shall be filed no later than 30 days after a certification has become effective as provided in subdivision (f)(1)."[6] Current Rule 8001(f)'s 30-day time limit for the petition for permission to appeal thus supersedes the 10-day time limit previously set in the interim statutory provision (Section 1233(b)(4)(A) of BAPCPA).[7] But Rule 8001(f) does not address any other aspect of procedure in the court of appeals (other than to direct that it proceed under Appellate Rule 5). It therefore seems possible to argue that Sections 1233(b)(5) and (6) of BAPCPA are still operative despite the adoption of Rule 8001(f).[8] Those sections provide:

> (5) References in rule 5.--For purposes of rule 5 of the Federal Rules of

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[6] Current Rule 8001(f)(1), in turn, provides that "[a] certification of a judgment, order, or decree of a bankruptcy court to a court of appeals under 28 U.S.C. § 158(d)(2) shall not be effective until a timely appeal has been taken in the manner required by subdivisions (a) or (b) of this rule and the notice of appeal has become effective under Rule 8002." The concept of the notice of appeal becoming effective appears to refer to Rule 8002's treatment of the effect of tolling motions.

[7] Of course, the bankruptcy rules ordinarily do not have the effect of superseding statutes. (28 U.S.C. § 2075, concerning rulemaking for "cases under Title 11," does not include a supersession clause.) But in the case of the interim procedures set by BAPCPA, Section 1233(b)(1) explicitly provides for supersession. And it seems fair to count Rule 8001(f) as a "rule authorizing the appeal" for purposes of Appellate Rule 5(a)(2)'s deference to "the time specified by the statute or rule authorizing the appeal."

[8] The argument would be that as yet no rule has been promulgated "relating to such provision[s]" within the meaning of BAPCPA Section 1233(b)(1).

Appellate Procedure--

> (A) a reference in such rule to a district court shall be deemed to include a reference to a bankruptcy court and to a bankruptcy appellate panel; and
>
> (B) a reference in such rule to a district clerk shall be deemed to include a reference to a clerk of a bankruptcy court and to a clerk of a bankruptcy appellate panel.

(6) Application of rules.--The Federal Rules of Appellate Procedure shall apply in the courts of appeals with respect to appeals authorized under section 158(d)(2)(A), to the extent relevant and as if such appeals were taken from final judgments, orders, or decrees of the district courts or bankruptcy appellate panels exercising appellate jurisdiction under subsection (a) or (b) of section 158 of title 28, United States Code.

Both of these provisions appear to serve a useful function. Rule 5's references to the district court and district clerk will not always make sense, in connection with Section 158(d)(2) appeals, unless they are read to include references to the other two types of court and types of clerk as appropriate. Likewise, it is useful to specify which portions of the Appellate Rules apply to a Section 158(d)(2) appeal.

Although these interim rules are useful, it seems worthwhile to consider whether to specify in more detail the way in which the Appellate Rules apply to direct appeals under Section 158(d)(2). The Part VIII project provides an opportune context in which to obtain input and guidance on this question. As a step in that direction, the sketch in the appendix to this memo includes a new subdivision (c) dealing with such direct appeals.

B. The list of Appellate Rules that do not apply to direct appeals

The sketch of proposed Appellate Rule 6(c)(1) lists the Appellate Rules provisions that would not apply to direct bankruptcy appeals under Section 158(d)(2). The list is modeled roughly on the similar list of excluded provisions in existing Appellate Rule 6(b)(1)(A), with the following modifications:

- Appellate Rules 3 and 4 are excluded because they concern appeals as of right.

- Appellate Rule 5(a)(3) is excluded. That Rule provides: "If a party cannot petition for appeal unless the district court first enters an order granting permission to do so or stating that the necessary conditions are met, the district court may amend its order, either on its own or in response to a party's motion, to include the required permission or statement. In that event, the time to petition runs from entry of the amended order." This provision

would cause confusion in the case of direct appeals from bankruptcy court, because the case may be in the bankruptcy court, the district court, or the bankruptcy appellate panel at the time the required certification is sought. The question of which court may make the certification is addressed in proposed Bankruptcy Rule 8006, and it seems better to leave the matter to that Rule and to exclude Appellate Rule 5(a)(3) from applying to such appeals.

- Appellate Rules 6(a) and (b) are excluded.

- Appellate Rule 12 is excluded. Rule 12(a) appears inapposite because, in the case of permissive appeals, docketing is accounted for in Appellate Rule 5(d)(3).[9] Rule 12(c) is supplanted, in this context, by proposed Rule 6(c)(2)(C). Rule 12(b) – which requires the filing of a representation statement – might be useful to apply in the context of direct appeals under Section 158(d)(2), but Rule 12(b) is awkwardly worded for use in such a context. Therefore, if participants wish to include the requirement of a representation statement, I propose including that requirement as a separate Rule 12(c)(2)(D) (shown in brackets in the sketch in Part I of this memo).

C. Dealing with tolling motions

As discussed in Part III.B.2 of this memo, there is currently an inconsistency (in the context of appeals from a district court or BAP) between the Appellate Rule 6(b)(2)(A)(i) and current Bankruptcy Rule 8015 about the re-start of appeal time after the resolution of a tolling motion. Although proposed Bankruptcy Rule 8023 would eliminate that inconsistency, consideration should be given to whether a similar question might arise with respect to tolling motions in the context of permissive direct appeals under Section 158(d)(2). The question is pertinent because proposed Bankruptcy Rule 8006 – governing the process for initiating an attempt to appeal under Section 158(d)(2) – requires the taking of "a timely appeal ... in accordance with Rule 8003 or 8004," and proposed Bankruptcy Rules 8003 and 8004 require the filing of a notice of appeal with the bankruptcy clerk "within the time allowed by Rule 8002." Proposed Bankruptcy Rule 8002(b) provides for the effect of tolling motions on the time for taking appeals from the bankruptcy court.

The process for taking a direct appeal under § 158(d)(2) requires (1) a timely appeal from the bankruptcy court, (2) a certification (by a lower court or by all parties) under Section 158(d)(2), and (3) the filing of a request for permission to appeal in the court of appeals.

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[9] That Rule provides: "The district clerk must notify the circuit clerk once the petitioner has paid the fees. Upon receiving this notice, the circuit clerk must enter the appeal on the docket. The record must be forwarded and filed in accordance with Rules 11 and 12(c)." The Rule 6 amendments sketched in the appendix to this memo would direct that Rule 5(d)(3)'s reference to "Rules 11 and 12(c)" be read as referring to proposed Rules 6(c)(2)(B) and (C).

Proposed Bankruptcy Rule 8006 will address events (1) and (2) in detail, and will set the time limit for event (3). Thus, the question of timing seems to be well covered by the proposed Part VIII rules, and it seems unnecessary for Appellate Rule 6(c) to discuss the effect of tolling motions filed in the bankruptcy court. The matter is, for that reason, not addressed in the sketch set forth in the appendix to this memo. As noted in Part III.B.2, however, the Committees may want to ensure that the provision in Bankruptcy Rule 8002(b) regarding the re-start of the appeal time is worded in the same manner as parallel provisions in the Appellate Rules.

V. Other Issues of Coordination Between the Appellate Rules and the Proposed Revision of Part VIII of the Bankruptcy Rules

A. Dealing with electronic filing and transmission

At the urging of participants at the special subcommittees meetings on a revision of Part VIII, the working draft of the revised bankruptcy appellate rules assumes as a default rule the use of electronic means of transmission of documents. Section 8001(e) defines the term "transmit" to mean "to send electronically unless the governing rules of the court permit or require mailing or other means of delivery of the document in question." This terminology is used with respect to the filing and service of briefs and other documents (Rule 8011) and the sending of the record to the appellate court (Rule 8010). In light of this reorientation to electronic transmission, references to "writings" and "copies" have been avoided. In taking this approach, the Part VIII revision would be following the path already taken by some federal courts on a local basis.

This approach of the Part VIII rules presents some challenges to the drafting of provisions relating to direct appeals from the bankruptcy court to the court of appeals. The Appellate Rules have always assumed a contrary default rule – that the record will be forwarded and filed in paper form. The sketch of Rule 6(c) included in these materials takes the default rule of electronic filing and transmission as a given, while also accommodating the use of a paper record. Proposed Rule 6(c)(2)(C) addresses the event that traditionally has been known as filing the record. If the record is transmitted in the form of electronic links to electronic docket entries, then it might seem odd to speak of the circuit clerk "filing" the record. Thus, the second bracketed option in Rule 6(c)(2)(C) speaks instead of the clerk noting the record's receipt on the docket. Because other parts of the Appellate Rules use the date of filing of the record for purposes of computing certain deadlines, proposed Rule 6(c)(2)(C) defines the receipt date as the filing date. Assuming that such an approach is appropriate, it would also be a good idea to consider similar modifications to Appellate Rule 6(b)(2)(B), (C) and (D), which concern the treatment of the record on appeal from a judgment of a district court or BAP exercising appellate jurisdiction in a bankruptcy case.

On a broader level, the Bankruptcy Rules Committee recognizes that incorporating the use of electronic technology into a set of federal rules presents its own challenges. Among the issues that must be considered are the need to accommodate courts and judges who prefer to

receive paper copies of documents; the application of the rules to persons who lack access to electronic technology; and the need to draft the rules in a manner that is not tied to any existing form of technology and that can accommodate further technological advancements. The joint meeting of the two Committees will provide an opportunity for discussion of whether the working draft has sufficiently met these challenges. The Bankruptcy Rules Committee will be especially interested in hearing the experiences of members of the Committees who sit on or practice before courts that have adopted rules for the electronic submission of briefs and records.

B. Dealing with stays pending direct appeals

The working draft of Part VIII uses the term "appellate court" to mean "either the district court or the BAP – whichever is the court in which the bankruptcy appeal is pending or to which the appeal will be taken." Rule 8001(d). In light of that definition, proposed Rule 8007 as currently drafted does not address the procedure for seeking a stay pending a direct appeal under Section 158(d)(2).[10] Under proposed Appellate Rule 6(c)(1)(A), Appellate Rule 8 would apply to requests for stays pending direct appeal. The procedures set out in Appellate Rule 8 and in proposed Rule 8007 are generally but not entirely similar.

One notable difference is that Appellate Rule 8(b) provides for a proceeding against a surety and provides for the enforcement of the surety's liability in the "district court." Proposed Appellate Rule 6(c)(1)(B) would define "district court" to "include[] – to the extent appropriate – a bankruptcy court or bankruptcy appellate panel." Would the translation of the surety-proceeding practice into the context of the bankruptcy court pose any jurisdictional problems? It would seem to be a practical measure, and it is consistent with the approach taken in Bankruptcy Rule 9025. That rule provides as follows:

> Whenever the Code or these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court, and liability may be determined in an adversary proceeding governed by the rules in Part VII.

A proceeding against a surety is not one of the matters expressly listed as a core proceeding under 28 U.S.C. § 157(b)(2), but that provision states that the list is not exhaustive. Perhaps it is properly considered a proceeding arising in a case under title 11 and thus a core proceeding. If not, would it be appropriate to adopt wholesale the procedure currently specified in Appellate Rule 8(b)? Would there be need for a consent provision in the Appellate Rules similar to Rule 9025 (or should Rule 9025 be made applicable when Appellate Rule 8(b) applies

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[10] For a discussion of the potential importance of stays in this context, see generally Lindsey Freeman, Comment, *BAPCPA and Bankruptcy Direct Appeals: the Impact of Procedural Uncertainty on Predictable Precedent*, 159 U. PA. L. REV. 543 (2011).

to direct bankruptcy appeals)?[11] One might argue that the jurisdictional question need not be resolved, given that proposed Appellate Rule 6(c)(1)(B)'s definition of "district court" to include bankruptcy courts applies only "to the extent appropriate." But if it is possible to clarify this jurisdictional issue, that would seem desirable.

C. Dealing with indicative rulings

Under the proposals as currently drafted, both Appellate Rule 12.1 and proposed Bankruptcy Rule 8008 would govern indicative-ruling practice in the context of direct appeals under Section 158(d)(2). Because Rule 8008 operates differently depending on whether an appeal is pending in an "appellate court" (defined in Rule 8001(d) as either the district court or bankruptcy appellate panel) or a court of appeals, the rule needs to be considered carefully to ensure that it and the Appellate Rule 12.1 work together properly when an indicative ruling is sought in the bankruptcy court while a direct appeal under § 158(d)(2) is pending in the court of appeals.

Rule 8008 is modeled on Civil Rule 62.1 and Appellate Rule 12.1. When appeals are pending in the district court or bankruptcy appellate panel, this rule governs the indicative-ruling procedure in both the bankruptcy court and the appellate court. When, however, an appeal is pending in the court of appeals under § 158(d)(2), Rule 8008 specifies only the bankruptcy court's options and the notice that must be provided to the clerk of the court of appeals.[12] Thus in this context it operates in a similar fashion to Civil Rule 62.1. The procedures applicable to the court of appeals are then specified by Appellate Rule 12.1, which would be made applicable in the case of a direct bankruptcy appeal by proposed Rule 6(c)(1).

An issue that should be considered is whether the procedures set out in Bankruptcy Rule 8008 and Appellate Rule 12.1 should also apply when an indicative ruling is sought in the bankruptcy court while a non-direct appeal is pending in the court of appeals under 28 U.S.C. § 158(d)(1). The text of Rule 8008(a) and (b) is broad enough to cover this situation, and Rule 12.1 is made applicable to such appeals by Rule 6(b)(1). If that is the correct approach, the Committee Note to Rule 8008 should be revised to reflect that it is applicable to all bankruptcy appeals in the court of appeals.

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[11] *See* 28 U.S.C. § 157(c)(2) ("Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.").

[12] In subdivisions (a) and (b), the term "court in which the appeal is pending" is used to include the court of appeals as well as the district court or BAP.

D. Dealing with documents under seal

Proposed Bankruptcy Rule 8009(f) deals with the treatment (for purposes of the record on appeal) of documents that were filed in the bankruptcy court under seal. The Appellate Rules do not include any similar provision, but the circuits have a number of local rules that address the treatment of sealed documents. Proposed Appellate Rule 6(c), as currently drafted, would apply proposed Bankruptcy Rule 8009(f) to direct appeals under Section 158(d)(2). It is worth considering whether that is the most desirable approach.

E. Dealing with BAP local rules

Proposed Bankruptcy Rule 8027 addresses the promulgation of local rules for bankruptcy appeals in district courts and bankruptcy appellate panels. The existing provision – Rule 8018 – refers to rulemaking by circuit councils that have authorized BAPs, and it also provides that Civil Rule 83 "governs the procedure for making and amending rules to govern appeals." This wording presented two issues in revising the rule.

First, it seemed questionable that the district court's authority to promulgate local rules is the proper authority to apply to local BAP rules. Since bankruptcy appellate panels are established by the judicial council of a circuit, Appellate Rule 47 seems the more relevant authority for BAP rules. But if that conclusion is correct, that raises the second question. What is the appropriate rulemaking authority for BAP local rules – the circuit council or the court of appeals?[13] Appellate Rule 47 authorizes each court of appeals to "make and amend rules governing its practice." Should proposed Rule 8027 therefore refer to the promulgation of BAP local rules by the court of appeals? Or because a BAP is created by the judicial council of a circuit, is the circuit council the proper authority to promulgate the BAP's rules?

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[13] 28 U.S.C. § 2071 authorizes rulemaking by "all courts established by Act of Congress." Would a BAP count as such? One could argue that the answer should be yes, because 28 U.S.C. § 158(b)(1) appears to direct the establishment of BAPs unless the relevant judicial council makes certain findings. On the other hand, one might argue the answer should be no, because the statute itself didn't actually establish the BAPs. For an example of a BAP citing Section 2071 as rulemaking authority, see In re Adoption of Interim Procedural Rules, 332 B.R. 199 (9th Cir. BAP 2005). The most recent order of the Judicial Council of the Ninth Circuit continuing the Ninth Circuit BAP, however, provides that the BAP may establish rules governing practice and procedure before it, but that such rules must be submitted to and approved by the Judicial Council of the Circuit. *See* Amended Order Continuing the Bankruptcy Appellate Panel of the Ninth Circuit (effective Nov. 18, 1988; as amended May 4, 2010) (http://207.41.19.15/web/bap.nsf/BAPDocumentView/judicial+council+order/$file/baporderrevised.pdf).

Sketch of proposed amendments to Appellate Rule 6

The proposed amendments to Appellate Rule 6 might read as follows:[1]

Rule 6. Appeal in a Bankruptcy Case ~~From a Final Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel~~

(a) Appeal From a Judgment, Order, or Decree of a District Court Exercising Original Jurisdiction in a Bankruptcy Case. An appeal to a court of appeals from a final judgment, order, or decree of a district court exercising jurisdiction under 28 U.S.C. § 1334 is taken as any other civil appeal under these rules.

(b) Appeal From a Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel Exercising Appellate Jurisdiction in a Bankruptcy Case.

(1) Applicability of Other Rules. These rules apply to an appeal to a court of appeals under 28 U.S.C. § 158(d) from a final judgment, order, or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction under 28 U.S.C. § 158(a) or (b). But there are 3 exceptions:

(A) Rules 4(a)(4), 4(b), 9, 10, 11, ~~12(b)~~ 12(c), 13-20, 22-23, and 24(b) do not apply;

(B) the reference in Rule 3(c) to "Form 1 in the Appendix of Forms" must be read as a reference to Form 5; and

(C) when the appeal is from a bankruptcy appellate panel, the term "district court," as used in any applicable rule, means "appellate panel."

(2) Additional Rules. In addition to the rules made applicable by Rule 6(b)(1), the following rules apply:

(A) Motion for rehearing.[2]

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[1] This sketch is similar but not identical to that presented in the Fall 2010 Appellate Rules agenda materials.

[2] The Fall 2010 Appellate Rules materials reflected additional proposed revisions to Appellate Rule 6(b)(2)(A) that were designed to track a pending proposal to amend Appellate Rule 4(a)(4). The Rule 4(a)(4) proposal has encountered drafting complications and its final form is yet to be determined. For that reason, that proposal is not reflected in the text shown here.

(i) If a timely motion for rehearing under Bankruptcy Rule ~~8015~~ [8023][3] is filed, the time to appeal for all parties runs from the entry of the order disposing of the motion. A notice of appeal filed after the district court or bankruptcy appellate panel announces or enters a judgment, order, or decree--but before disposition of the motions for rehearing--becomes effective when the order disposing of the motion for rehearing is entered.

(ii) ~~Appellate review of~~ A party intending to challenge the order disposing of the motion – or the alteration or amendment of a judgment, order, or decree upon such a motion – ~~requires the party, in compliance with Rules 3(c) and 6(b)(1)(B), to amend a previously filed notice of appeal. A party intending to challenge an altered or amended judgment, order, or decree~~ must file a notice of appeal, or an amended notice of appeal, in compliance with Rules 3(c) and 6(b)(1)(B). The notice or amended notice must be filed within the time prescribed by Rule 4 – excluding Rules 4(a)(4) and ~~4~~(b) – measured from the entry of the order disposing of the motion.

(iii) No additional fee is required to file an amended notice.

(B) The record on appeal.

(i) Within 14 days after filing the notice of appeal, the appellant must file with the clerk possessing the record assembled in accordance with Bankruptcy Rule ~~8006~~ [8009] – and serve on the appellee – a statement of the issues to be presented on appeal and a designation of the record to be certified and sent to the circuit clerk.

(ii) An appellee who believes that other parts of the record are necessary must, within 14 days after being served with the appellant's designation, file with the clerk and serve on the appellant a designation of additional parts to be included.

(iii) The record on appeal consists of:

- the redesignated record as provided above;
- the proceedings in the district court or bankruptcy appellate panel; and
- a certified copy of the docket entries prepared by the clerk under Rule 3(d).

(C) Forwarding the record.

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[3] References to proposed Bankruptcy Rules are bracketed because the Part VIII project will re-number the relevant Bankruptcy Rules.

(i) When the record is complete, the district clerk or bankruptcy appellate panel clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(ii) All parties must do whatever else is necessary to enable the clerk to assemble and forward the record. The court of appeals may provide by rule or order that a certified copy of the docket entries be sent in place of the redesignated record, but any party may request at any time during the pendency of the appeal that the redesignated record be sent.

(D) Filing the record. Upon receiving the record--or a certified copy of the docket entries sent in place of the redesignated record--the circuit clerk must file it and immediately notify all parties of the filing date.

(c) Permissive direct review under 28 U.S.C. § 158(d)(2).

(1) Applicability of Other Rules. These rules apply to a direct appeal by permission under 28 U.S.C. § 158(d)(2), but:

(A) Rules [3-4, 5(a)(3), 6(a), 6(b), 9, 10, 11, 12, 13-20, 22-23, and 24(b)] do not apply;

(B) the term "district court," as used in any applicable rule, includes – to the extent appropriate – a bankruptcy court or bankruptcy appellate panel, and the term "district clerk," as used in any applicable rule, includes – to the extent appropriate – the clerk of the bankruptcy court or of the bankruptcy appellate panel; and

(C) the reference to "Rules 11 and 12(c)" in Rule 5(d)(3) must be read as a reference to Rules 6(c)(2)(B) and (C).

(2) Additional Rules. In addition to the rules made applicable by Rule 6(c)(1), the following rules apply:

(A) **The record on appeal.** Bankruptcy Rule [8009] governs the record on appeal.

(B) **Transmitting the record.** Bankruptcy Rule [8010] governs the completion and transmission of the record.

(C) **Duties of circuit clerk.** Upon receiving the record the circuit clerk must [file it and immediately notify all parties of the filing date.] [note its receipt on the docket. The date noted on the docket shall serve as the filing date of the record for purposes of [these Rules] [Rules 28.1(f), 30(b)(1), 31(a)(1), and 44]. The circuit clerk shall immediately notify all parties of the filing date].

[(D) **Filing a representation statement**. Unless the court of appeals designates another time, the attorney who sought leave to appeal must, within 14 days after entry of the order granting permission to appeal, file a statement with the circuit clerk naming the parties that the attorney represents on appeal.]

Committee Note

Subdivision (b)(1). Subdivision (b)(1) is updated to reflect the renumbering of Rule 12(b) as Rule 12(c).

Subdivision (b)(2)(A). Subdivision (b)(2)(A)(ii) is amended to address problems that stemmed from the adoption — during the 1998 restyling project — of language referring to challenges to "an altered or amended judgment, order, or decree." Current Rule 6(b)(2)(A)(ii) states that "[a] party intending to challenge an altered or amended judgment, order, or decree must file a notice of appeal or amended notice of appeal ...." Before the 1998 restyling, the comparable subdivision of Rule 6 instead read "[a] party intending to challenge an alteration or amendment of the judgment, order, or decree shall file an amended notice of appeal ...." The 1998 restyling made a similar change in Rule 4(a)(4). One court has explained that the 1998 amendment introduced ambiguity into that Rule: "The new formulation could be read to expand the obligation to file an amended notice to circumstances where the ruling on the post-trial motion alters the prior judgment in an insignificant manner or in a manner favorable to the appellant, even though the appeal is not directed against the alteration of the judgment." *Sorensen v. City of New York*, 413 F.3d 292, 296 n.2 (2d Cir. 2005). Though the *Sorensen* court was writing of Rule 4(a)(4), a similar concern arises with respect to Rule 6(b)(2)(A)(ii). Rule 4(a)(4) was amended in 2009 to remove the ambiguity identified by the *Sorensen* court. The current amendment follows suit by removing Rule 6(b)(2)(A)(ii)'s reference to challenging "an altered or amended judgment, order, or decree," and referring instead to challenging "the alteration or amendment of a judgment, order, or decree."

Subdivision (c). New subdivision (c) is added to govern permissive direct appeals from the bankruptcy court to the court of appeals under 28 U.S.C. § 158(d)(2).

Subdivision (c)(1). Subdivision (c)(1) provides for the general applicability of the Federal Rules of Appellate Procedure, with specified exceptions, to appeals covered by subdivision (c) and makes necessary word adjustments.

Subdivision (c)(2). Subdivision (c)(2)(A) provides that the record on appeal is governed by Bankruptcy Rule [8009]. Subdivision (c)(2)(B) provides that the transmission of the record is governed by Bankruptcy Rule [8010].

Subdivision (c)(2)(C) sets the duties of the circuit clerk upon receipt of the record. [Because the record may be transmitted in electronic form, subdivision (c)(2)(C) does not direct the clerk to "file" the record. Rather, it directs the clerk to note the date of receipt on the docket and to notify the parties of that date, which shall serve as the date of filing the record for purposes of provisions in these Rules that calculate time from that filing date.]

[Subdivision (c)(2)(D) is modeled on Rule 12(b), with appropriate adjustments.]

March 2011 draft

FEDERAL RULES OF BANKRUPTCY PROCEDURE

PART VIII. BANKRUPTCY APPEALS

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Rule 8001. Scope of Part VIII Rules; Definitions

(a) GENERAL SCOPE. These Part VIII rules govern the procedure in United States district courts and bankruptcy appellate panels for appeals taken from judgments, orders, and decrees of bankruptcy judges. They also govern the procedure for certification of appeals directly to courts of appeals under 28 U.S.C. § 158(d)(2).

(b) PROCEDURE IN OTHER COURTS. When these rules provide for filing a document in a bankruptcy court or a court of appeals, the procedure shall comply with the practice of the court in which the document is filed.

(c) "BAP." As used in these Part VIII rules, "BAP" means a bankruptcy appellate panel established by the judicial council of a circuit and authorized to hear appeals from the bankruptcy court for the district in which an appeal under 28 U.S.C. § 158 is taken.

(d) "APPELLATE COURT." As used in these Part VIII rules, "appellate court" means either the district court or the BAP – whichever is the court in which the bankruptcy appeal is pending or to which the appeal will be taken.

(e) "TRANSMIT." As used in these Part VIII rules, "transmit" means to send electronically unless the governing rules of the court permit or require mailing or other means of delivery of

the document in question.

COMMITTEE NOTE

These Part VIII rules apply to appeals under 28 U.S.C. § 158(a) from bankruptcy courts to district courts and BAPs. As provided in subdivision (d) of this rule, the term "appellate court" is used in Part VIII to refer to the court – district court or BAP – to which a bankruptcy appeal is taken.

Subsequent appeals to courts of appeals are governed by the Federal Rules of Appellate Procedure. Five of the Part VIII rules do, however, relate to appeals to courts of appeals. Rule 8006 governs the procedure for certification under 28 U.S.C. § 158(d)(2) of a direct appeal from a judgment, order, or decree of a bankruptcy judge to a court of appeals. Rule 8008 authorizes a bankruptcy court to issue an indicative ruling while an appeal is pending in a court of appeals. Rules 8009 and 8010 govern the record on appeal in a direct appeal allowed under 28 U.S.C. § 158(d)(2). And Rule 8026 governs the granting of a stay of an appellate court judgment pending an appeal to the court of appeals.

These rules take account of the evolving technology in the federal courts for the electronic filing, storage, and transmission of documents. The term "transmit" is used to encompass the electronic conveyance of information. Unless these or local rules require or permit another means of sending a particular document, a provision in the Part VIII rules to transmit a document requires it to be sent electronically.

Rule 8002. Time for Filing Notice of Appeal

(a) FOURTEEN-DAY PERIOD.

(1) Except as provided in Rule 8002 (b) and (c), the notice of appeal required by Rule 8003 or 8004 shall be filed with the bankruptcy clerk within 14 days after entry of the judgment, order, or decree being appealed.

(2) If one party files a timely notice of appeal, any other party may file a notice of appeal with the bankruptcy clerk within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise allowed by this Rule 8002, whichever period ends later.

(3) A notice of appeal filed after a bankruptcy court announces a decision or order, but before entry of the judgment, order, or decree, shall be treated as filed after entry of the judgment, order, or decree and on the date of entry.

(4) If a notice of appeal is mistakenly filed with the appellate court or the court of appeals, the clerk of that court shall indicate on the notice the date on which it was received and transmit it to the bankruptcy clerk. The notice of appeal is deemed filed with the bankruptcy clerk on the date so indicated.

(b) EFFECT OF MOTION ON TIME FOR APPEAL.

(1) If a party timely files in the bankruptcy court

any of the following motions, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion, or the entry of any judgment, order, or decree altered or amended upon such motion, whichever is later:

(A) to amend or make additional findings under Rule 7052, whether or not granting the motion would alter the judgment;

(B) to alter or amend the judgment under Rule 9023;

(C) for a new trial under Rule 9023; or

(D) for relief under Rule 9024 if the motion is filed no later than 14 days after entry of the judgment.

(2)(A) If a party files a notice of appeal after the court announces or enters a judgment, order, or decree – but before it disposes of any motion listed in Rule 8002(b)(1) – the notice becomes effective to appeal a judgment, order, or decree, in whole or in part, when the order disposing of the last such remaining motion is entered, or when any judgment, order, or decree altered or amended upon such motion is entered, whichever is later.

(B) A party intending to challenge on appeal an order disposing of any motion listed in Rule 8002(b)(1), or the alteration or amendment of a judgment, order, or decree upon such

a motion, shall file a notice of appeal or an amended notice of appeal. The notice of appeal or amended notice of appeal shall be filed in compliance with Rule 8003 or 8004 and within the time prescribed by this Rule 8002, measured from the entry of the order disposing of the last such remaining motion, or the entry of any judgment, order, or decree altered or amended upon such motion, whichever is later. No additional fee is required to file an amended notice of appeal.

(c) APPEAL BY AN INMATE. The provisions of Rule 4(c)(1) and (c)(2) F.R. App. P. apply to an appeal taken by an inmate from a judgment, order, or decree of a bankruptcy judge to an appellate court. The reference in Rule 4(c)(2) F.R. App. P. to "the 14-day period provided in Rule 4(a)(3)" shall be read as a reference to the 14-day period in Rule 8002(a)(2), and the term "district court" in Rule 4(c)(2) F.R. App. P. 4(c)(2) means "bankruptcy court."

(d) EXTENSION OF TIME FOR APPEAL.

(1) The bankruptcy court may extend the time for filing a notice of appeal by a party unless the judgment, order, or decree appealed from:

(A) grants relief from an automatic stay under § 362, § 922, § 1201, or § 1301 of the Code;

(B) authorizes the sale or lease of property or the use of cash collateral under § 363 of the Code;

(C) authorizes the obtaining of credit under § 364 of the Code;

(D) authorizes the assumption or assignment of an executory contract or unexpired lease under § 365 of the Code;

(E) approves a disclosure statement under § 1125 of the Code; or

(F) confirms a plan under § 943, § 1129, § 1225, or § 1325 of the Code.

(2) A request to extend the time for filing a notice of appeal shall be made by motion filed with the bankruptcy clerk before the time for filing a notice of appeal has expired, but such a motion filed no later than 21 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect. An extension of time for filing a notice of appeal may not exceed 21 days after the time otherwise prescribed by this Rule 8002, or 14 days after the date the order granting the motion is entered, whichever is later.

COMMITTEE NOTE

This rule is derived from former Rule 8002 and F.R. App. P. 4(a).

With the exception of subdivision (c), the changes to the former rule are stylistic. The rule retains the former rule's 14-day time period for filing a notice of appeal, as opposed to the longer periods permitted for appeals in civil cases under F.R. App. P. 4(a).

Subdivision (a) continues to allow any other party to file a notice of appeal within 14 days after the first notice of appeal is filed, or thereafter to the extent otherwise authorized by this rule. Subdivision (a) also retains provisions of the former rule that prescribe the date of filing of the notice of appeal if the appellant files it prematurely or in the wrong court.

Subdivision (b), like former Rule 8002(b) and F.R. App. P. 4(a), tolls the time for filing a notice of appeal when certain post-judgment motions are filed, and it provides the effective date of a notice of appeal that is filed before the court disposes of all of the specified motions. As under the former rule, a party that wants to appeal the court's disposition of such a motion or the alteration or amendment of a judgment, order, or decree in response to such a motion must file a notice of appeal or, if it has already filed one, an amended notice of appeal. Although Rule 8003(a)(3)(C) requires a notice of appeal to be accompanied by the required fee, no additional fee is required for the filing of an amended notice of appeal under subdivision (b) of this rule.

Subdivision (c) incorporates the provisions of F.R. App. P. 4(c)(1) and (2), which specify timing rules for a notice of appeal filed by an inmate confined in an institution. The inmate's filing of a notice of appeal is timely if it is deposited in the institution's internal mail system on or before the last date for filing. If the institution has a special system for legal mail, it must be used. When the inmate is the first party to file a notice of appeal, the 14-day period for any other party to file a notice of appeal runs from the bankruptcy court's docketing of the inmate's notice.

Subdivision (d) continues to allow the court to grant an extension of time to file a notice of appeal, except with respect to certain specified judgments, orders, and decrees.

Rule 8003. Appeal as of Right – How Taken; Docketing of Appeal

(a) FILING THE NOTICE OF APPEAL.

(1) Except as provided by Rule 8002(c), an appeal from a judgment, order, or decree of a bankruptcy judge to a district court or a BAP as permitted by 28 U.S.C. § 158(a)(1) or (a)(2) may be taken only by filing a notice of appeal with the bankruptcy clerk within the time allowed by Rule 8002.

(2) An appellant's failure to take any step other than timely filing a notice of appeal does not affect the validity of the appeal, but is ground for such action as the appellate court deems appropriate, including dismissal of the appeal.

(3) The notice of appeal shall:

(A) conform substantially to the appropriate Official Form;

(B) attach the judgment, order, or decree, or part thereof, being appealed; and

(C) be accompanied by the prescribed fee.

(4) If requested by the bankruptcy clerk, each appellant shall promptly file the number of copies of the notice of appeal that the bankruptcy clerk needs for compliance with Rule 8003(c).

(b) JOINT OR CONSOLIDATED APPEALS.

(1) When two or more parties are entitled to appeal from a judgment, order, or decree of a bankruptcy judge and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When parties have separately filed timely notices of appeal, the appeals may be joined or consolidated by the appellate court.

(c) SERVING THE NOTICE OF APPEAL.

(1) The bankruptcy clerk shall serve the notice of appeal by transmitting it to counsel of record for each party to the appeal other than the appellant or, if a party is not represented by counsel, to the party at its last known address.

(2) The bankruptcy clerk's failure to serve notice does not affect the validity of the appeal.

(3) The bankruptcy clerk shall give to each party served notice of the date of the filing of the notice of appeal and shall note on the docket the names of the parties served and the date and method of the transmission.

(4) The bankruptcy clerk shall promptly transmit the notice of appeal to the United States trustee, but failure to transmit notice to the United States trustee does not affect the validity of the appeal.

(d) TRANSMITTING THE NOTICE OF APPEAL TO THE BAP OR DISTRICT COURT; DOCKETING THE APPEAL.

(1) The bankruptcy clerk shall promptly transmit the notice of appeal to the BAP clerk if a BAP has been established for appeals from that district and the appellant has not elected to have the appeal heard by the district court. Otherwise, the bankruptcy clerk shall promptly transmit the notice of appeal to the district clerk.

(2) Upon receiving the notice of appeal, the clerk of the appellate court shall docket the appeal under the title of the bankruptcy court action with the appellant identified – adding the appellant's name if necessary – and promptly give notice of the date on which the appeal was docketed to all parties to the appealed judgment, order, or decree.

COMMITTEE NOTE

This rule is derived in part from former Rule 8001(a) and F.R. App. P. 3. It makes stylistic changes to the former provision governing appeals as of right. In addition it addresses joint and consolidated appeals and incorporates and modifies provisions of former Rule 8004 regarding service of the notice of appeal. The rule changes the timing of the docketing of an appeal in the district court or BAP.

Subdivision (a) incorporates much of the content of former Rule 8001(a) regarding the taking of an appeal as of right under 28 U.S.C. § 158(a)(1) or (2). The rule now requires that the judgment, order, or decree being appealed be attached to the notice of appeal.

Subdivision (b), which is an adaptation of F.R. App. P. 3(b), permits

the filing of a joint notice of appeal by multiple appellants that have sufficiently similar interests that their joinder is practicable. It also provides for the appellate court's consolidation of appeals taken separately by two or more parties.

Subdivision (c) is derived from former Rule 8004 and F.R. App. P. 3(d). By using the term "transmitting," it modifies the former rule's requirement that service of the notice of appeal be accomplished by mailing and allows for service by electronic transmission **[to counsel]** by the bankruptcy clerk.

Subdivision (d) modifies the provision of former Rule 8007(b), which delayed the docketing of an appeal by the appellate court until the record was complete and transmitted by the bankruptcy clerk. The new provision, adapted from F.R. App. P. 3(d) and 12(a), requires the bankruptcy clerk to promptly transmit the notice of appeal to the clerk of the appellate court. Upon receipt of the notice of appeal, the clerk of the appellate court must docket the appeal. Under this procedure, motions filed in the appellate court prior to completion and transmission of the record can generally be placed on the docket of an already pending appeal.

Rule 8004. Appeal by Leave – How Taken; Docketing of Appeal

(a) NOTICE OF APPEAL AND MOTION FOR LEAVE TO APPEAL. An appeal from an interlocutory judgment, order, or decree of a bankruptcy judge as permitted by 28 U.S.C. § 158(a)(3) may be taken only by filing with the bankruptcy clerk a notice of appeal of the judgment, order, or decree – as prescribed by Rule 8003(a) and within the time allowed by Rule 8002 – accompanied by a motion for leave to appeal prepared in accordance with Rule 8004(b) and, unless served electronically using the court's transmission equipment, with proof of service in accordance with Rule 8011(d).

(b) CONTENT OF MOTION; RESPONSE.

(1) A motion for leave to appeal under 28 U.S.C. § 158(a)(3) shall contain:

(A) a statement of the facts necessary to understand the questions presented;

(B) a statement of those questions and the relief sought;

(C) a statement of the reasons why leave to appeal should be granted; and

(D) an attachment of the interlocutory judgment, order, or decree from which appeal is sought, and any

related opinion or memorandum.

(2) Within 14 days after the motion is served, a party may file with the clerk of the appellate court a cross-motion or a response.

(c) TRANSMITTING THE NOTICE OF APPEAL AND MOTION; DOCKETING THE APPEAL; DETERMINING THE MOTION.

(1) The bankruptcy clerk shall promptly transmit the notice of appeal and the motion for leave to appeal, together with any statement of election under Rule 8005, to the clerk of the appellate court.

(2) Upon receiving the notice of appeal and motion for leave to appeal, the clerk of the appellate court shall docket the appeal under the title of the bankruptcy court action with the movant-appellant identified – adding the movant-appellant's name if necessary – and promptly give notice of the date on which the appeal was docketed to all parties to the interlocutory judgment, order, or decree from which appeal is sought.

(3) The motion and any response or cross-motion are submitted without oral argument unless the appellate court orders otherwise. If the motion for leave to appeal is denied, the appellate court shall dismiss the appeal.

(d) FAILURE TO FILE A MOTION. If an appellant does not file a required motion for leave to appeal an interlocutory judgment, order, or decree, but does timely file a notice of appeal, the appellate court may:

- direct that a motion for leave to appeal be filed; or
- treat the notice of appeal as a motion for leave to appeal and either grant or deny leave.

If the court directs that a motion for leave to appeal be filed, the appellant shall file the motion within 14 days after the order directing the filing is entered, unless the order provides otherwise.

(e) DIRECT APPEAL TO COURT OF APPEALS. If leave to appeal an interlocutory judgment, order, or decree is required under 28 U.S.C. § 158(a)(3) and has not been granted by the district court or the BAP, an authorization by the court of appeals of a direct appeal under 28 U.S.C. § 158(d)(2) satisfies the requirement for leave to appeal.

COMMITTEE NOTE

This rule is derived from former Rules 8001(b) and 8003 and F.R. App. P. 5. It retains the practice for interlocutory bankruptcy appeals of requiring a notice of appeal to be filed along with a motion for leave to appeal. Like current Rule 8003, it alters the timing of the docketing of the appeal in the appellate court.

Subdivision (a) requires a party seeking leave to appeal under 28 U.S.C. § 158(a)(3) to file with the bankruptcy clerk both a notice of appeal and a motion for leave to appeal.

Subdivision (b) prescribes the contents of the motion, retaining the requirements of former Rule 8003(a). It also continues to allow another party to file a cross-motion or response to the appellant's motion. Because of the prompt docketing of the appeal under the current rule, the cross-motion or response must be filed in the appellate court, rather than in the bankruptcy court as the former rule required.

Subdivision (c) requires the bankruptcy clerk to transmit promptly the notice of appeal and the motion for leave to appeal to the appellate court. Upon receipt of the notice and the motion, the clerk of the appellate court must docket the appeal. Unless the appellate court orders otherwise, no oral argument will be held on the motion.

Subdivision (d) retains the provisions of former Rule 8003(c) that state the appellate court's options if the appellant timely files a notice of appeal but fails to file a motion for leave to appeal. The court can either direct that a motion be filed or treat the notice of appeal as the motion and either grant or deny leave.

Subdivision (e), like former Rule 8003(d), treats the authorization of a direct appeal by the court of appeals as a grant of leave to appeal under 28 U.S.C. § 158(a)(3) if the district court or BAP has not already granted leave to appeal. Thus a separate order granting leave to appeal is not required. If the court of appeals grants permission to appeal, the record must be assembled and transmitted in accordance with Rules 8009 and 8010.

Rule 8005. Election to Have Appeal Heard by District Court Instead of BAP

(a) FILING OF THE STATEMENT OF ELECTION. An election under 28 U.S.C. § 158(c)(1) to have an appeal heard by the district court may be made only by a statement of election that conforms substantially to the appropriate Official Form and is filed within the time prescribed by 28 U.S.C. § 158(c)(1).

(b) TRANSFER OF THE APPEAL. Upon receiving an appellant's timely statement of election, the bankruptcy clerk shall transmit all documents related to the appeal to the district court. Upon receiving a timely statement of election by a party other than the appellant, the BAP clerk shall promptly transfer the appeal and any pending motions to the district court.

(c) DETERMINING THE VALIDITY OF AN ELECTION. No later than 14 days after the statement of election is filed, a party seeking a determination of the validity of an election shall file a motion in the court in which the appeal is then pending.

(d) APPEAL BY LEAVE – TIMING OF ELECTION. If an appellant moves for leave to appeal under Rule 8004 and fails to file a separate notice of appeal concurrently with the filing of its motion, the motion shall be treated as if it were a notice of appeal for purposes of determining the timeliness of the filing of a

statement of election.

COMMITTEE NOTE

This rule is derived from former Rule 8001(e), and it implements 28 U.S.C. § 158(c)(1).

As was required by the former rule, subdivision (a) requires an appellant that elects to have its appeal heard by a district court, rather than the BAP established in its circuit, to file with the bankruptcy clerk a statement of election when it files its notice of appeal. The statement must conform substantially to Official Form __. If a BAP has been established for appeals from the bankruptcy court and the appellant does not file a timely statement of election, any other party that elects to have the appeal heard by the district court must file a statement of election with the BAP clerk no later than 30 days after service of the notice of appeal.

Subdivision (b) requires the bankruptcy clerk to transmit all appeal documents to the district clerk if the appellant files a timely statement of election. If the appellant does not make that election, the bankruptcy clerk must transmit the appeal documents to the BAP clerk, and upon a timely election by any other party, the BAP clerk must promptly transfer the appeal to the district court.

Subdivision (c) provides a new procedure for the resolution of disputes regarding the validity of an election. A motion challenging the validity of an election must be filed no later than 14 days after the statement of election is filed. Nothing in this rule prevents a court from determining the validity of an election on its own motion.

Subdivision (d) provides that, in the case of an appeal by leave, if the appellant files a motion for leave to appeal but fails to file a notice of appeal, the filing of the motion will be treated for timing purposes under this rule as the filing of the notice of appeal.

Rule 8006. Certification of Direct Appeal to Court of Appeals

(a) EFFECTIVE DATE OF CERTIFICATION. Certification of a judgment, order, or decree of a bankruptcy judge for direct review in a court of appeals under 28 U.S.C. § 158(d)(2) is effective when the following events have occurred: (i) the certification has been filed; (ii) a timely appeal has been taken from the judgment, order, or decree in accordance with Rule 8003 or 8004; and (iii) the notice of appeal has become effective under Rule 8002.

(b) FILING OF CERTIFICATION. A certification that a circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists shall be filed with the clerk of the court in which a matter is pending. For purposes of this rule, a matter is pending in the bankruptcy court for 30 days after the filing of the first notice of appeal from the judgment, order, or decree for which direct review in the court of appeals is sought, or the entry of the order disposing of the last remaining motion specified in Rule 8002(b), whichever is later. A matter is pending in the appellate court thereafter.

(c) JOINT CERTIFICATION BY ALL APPELLANTS AND APPELLEES. A joint certification by all the appellants and appellees that a circumstance specified in 28 U.S.C.

§ 158(d)(2)(A)(i)-(iii) exists shall be made by executing the appropriate Official Form and filing it with the clerk of the court in which the matter is pending. The certification may be supplemented by a short statement of the basis for the certification, which may include the information listed in Rule 8006(f)(3).

(d) COURT THAT MAY MAKE CERTIFICATION.

(1) Only the bankruptcy court may make a certification on request of parties or on its own motion while the matter is pending before it as provided in Rule 8006(b).

(2) Only the district court or the BAP may make a certification on request of parties or on its own motion while the matter is pending before it as provided in Rule 8006(b)

(e) CERTIFICATION ON THE COURT'S OWN MOTION.

(1) A certification on the court's own motion that a circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists shall be set forth in a separate document served on the parties in the manner required for service of a notice of appeal under Rule 8003(c)(1). The certification shall be accompanied by an opinion or memorandum that contains the information required by Rule 8006(f)(3)(A)-(D).

(2) Within 14 days after the court's certification, a

party may file with the clerk of the certifying court a short supplemental statement regarding the merits of certification.

(f) CERTIFICATION BY THE COURT ON REQUEST.

(1) A request by a party for certification that a circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists, or a request by a majority of the appellants and a majority of the appellees, shall be filed with the clerk of the court in which the matter is pending within the time specified by 28 U.S.C. § 158(d)(2)(E).

(2) A request for certification shall be served in the manner required for service of a notice of appeal under Rule 8003(c)(1).

(3) A request for certification shall include the following:

(A) the facts necessary to understand the question presented;

(B) the question itself;

(C) the relief sought;

(D) the reasons why the appeal should be allowed and is authorized by statute and rule, including why a circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists; and

(E) an attached copy of the judgment, order, or decree that is the subject of the requested certification and any related opinion or memorandum.

(4) A party may file a response to a request for certification within 14 days after the request is served, or such other time as the court in which the matter is pending may fix. A party may file a cross-request for certification within 14 days after notice of the request is served, or within 60 days after the entry of the judgment, order, or decree, whichever occurs first.

(5) The request, cross-request, and any response are not governed by Rule 9014 and are submitted without oral argument unless the court in which the matter is pending otherwise directs.

(6) A certification of an appeal under 28 U.S.C. § 158(d)(2) in response to a request shall be made in a separate document served on the parties in the manner required for service of a notice of appeal under Rule 8003(c)(1).

(g) PROCEEDING IN THE COURT OF APPEALS FOLLOWING CERTIFICATION. A request for permission to take a direct appeal to the court of appeals under 28 U.S.C. § 158(d)(2) shall be filed with the circuit clerk within 30 days after the date the certification becomes effective under subdivision (a).

COMMITTEE NOTE

This rule is derived from former Rule 8001(f), and it provides the procedures for the certification of a direct appeal of a judgment, order, or decree of a bankruptcy judge to the court of appeals under 28 U.S.C. § 158(d)(2). Once a case has been certified in the bankruptcy court or the appellate court for direct appeal and a request for permission to appeal has been timely filed, the Federal Rules of Appellate Procedure govern any further proceedings in the court of appeals.

Subdivision (a), like the former rule, requires that an appeal must be properly taken – now under Rule 8003 or 8004 – before a certification for direct review in the court of appeals takes effect. This rule requires the timely filing of a notice of appeal under Rule 8002 and takes into account the delayed effectiveness of a notice of appeal filed before all motions specified under Rule 8002(b) have been resolved by the bankruptcy judge.

Subdivision (b) provides that a certification must be filed in the court in which the matter is pending, as determined by this subdivision. This provision modifies the former rule. Because of the prompt docketing of appeals in the appellate court under Rules 8003 and 8004, a matter is deemed – for purposes of this rule only – to remain pending in the bankruptcy court for 30 days after the filing of the notice of appeal from the judgment, order, or decree being appealed, or the disposition of the last remaining motion specified in Rule 8002(b), whichever is later. This provision will in appropriate cases give the bankruptcy judge, who will be familiar with the matter being appealed, an opportunity to decide whether certification of direct review is appropriate. Similarly, subdivision (d) provides that, when certification is made by the court, only the court in which the matter is then pending according to (b) may make the certification.

Section 158(d)(2) provides three different ways in which an appeal may be certified for direct review. Implementing these options, the rule provides in subdivision (c) for the joint certification by all appellants and appellees, in subdivision (e) for the bankruptcy or appellate court's certification on its own motion, and in subdivision (f) for the bankruptcy or appellate court's certification on request of a party or of a majority of appellants and a majority of appellees.

Subdivision (g) requires that, once a certification for direct review has been made, a request of the court of appeals for permission to take a direct appeal to that court must be filed with the circuit clerk no later than

30 days after the effective date of the certification. Rule 6(c) of the Federal Rules of Appellate Procedure, which incorporates all of F.R. App. P. 5 except subdivision (a)(3), prescribes the procedure for requesting the permission of the court of appeals, and it governs any proceedings that take place thereafter in that court.

Rule 8007. Stay Pending Appeal; Bonds; Suspension of Proceedings

(a) INITIAL MOTION IN THE BANKRUPTCY COURT; TIME TO FILE.

(1) A party shall ordinarily move first in the bankruptcy court for the following relief:

(A) a stay of a judgment, order, or decree of a bankruptcy judge pending appeal;

(B) approval of a supersedeas bond;

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending; or

(D) the suspension or continuation of proceedings in a case or other relief permitted by Rule 8007(e).

(2) A motion for a type of relief specified in (1) may be made in the bankruptcy court either before or after the filing of a notice of appeal of the judgment, order, or decree appealed from.

(b) MOTION IN THE APPELLATE COURT; CONDITIONS ON RELIEF.

(1) A motion for a type of relief specified in Rule 8007(a)(1), or to vacate or modify an order of the bankruptcy court granting such relief, may be made in the appellate court.

(2) When the motion is made in the appellate court,

the motion shall:

(A) show that it would be impracticable to move first in the bankruptcy court if the moving party has not sought relief in the first instance in the bankruptcy court; or

(B) state that the bankruptcy court denied the motion or failed to afford the relief requested and state any reasons given by the bankruptcy court for its action or inaction.

(3) If the motion is made in the appellate court, it shall also include:

(A) the reasons for granting the relief requested and the pertinent facts;

(B) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(C) relevant parts of the record.

(4) If the motion is made in the appellate court, the movant shall give reasonable notice of the motion to all parties.

(c) FILING OF BOND OR OTHER SECURITY. The appellate court may condition relief under this rule on the filing of a bond or other appropriate security with the bankruptcy court.

(d) REQUIREMENT OF BOND FOR TRUSTEE OR THE UNITED STATES. When a trustee appeals, a bond or other appropriate security may be required. When an appeal is taken by

the United States, its officer, or its agency or by direction of any department of the federal government, a bond or other security shall not be required.

(e) CONTINUATION OF PROCEEDINGS IN THE BANKRUPTCY COURT. Notwithstanding Rule 7062 and subject to the authority of the appellate court, the bankruptcy court may:

(1) suspend or order the continuation of other proceedings in the case; or

(2) make any other appropriate orders during the pendency of an appeal on terms that protect the rights of all parties in interest.

COMMITTEE NOTE

This rule is derived from former Rule 8005 and F.R. App. P. 8. The changes from the former rule are primarily stylistic.

Subdivision (a), like the former rule, requires a party ordinarily to seek relief pending an appeal in the bankruptcy court. Subdivision (a)(1) expands the list of relief enumerated in F.R. App. P. 8(a)(1) to reflect bankruptcy practice. It includes the suspension or continuation of other proceedings in the bankruptcy case, as authorized by subdivision (e). Subdivision (a)(2) clarifies that a motion for a stay pending appeal, approval of a supersedeas bond, or any other relief specified in paragraph (1) may be made in the bankruptcy court before or after the filing of a notice of appeal.

Subdivision (b) continues to authorize a party to seek the relief specified in (a)(1) by means of a motion filed in the appellate court. Accordingly, a notice of appeal need not be filed with respect to a bankruptcy court's order granting or denying such a motion. The motion for relief in the appellate court must state why it was impracticable to seek relief initially in the bankruptcy court, if a motion was not filed there, or why the bankruptcy court denied the relief sought.

Subdivisions (c) and (d) retain the provisions of the former rule that permit the appellate court to condition the granting of relief on the posting of a bond by the appellant, except when that party is a federal government entity. Rule 9025 governs proceedings against sureties.

Rule 8008. Indicative Rulings

(a) RELIEF PENDING APPEAL. If a party files a timely motion in the bankruptcy court for relief that the bankruptcy court lacks authority to grant because an appeal has been docketed and is pending, the bankruptcy court may:

(1) defer consideration of the motion;

(2) deny the motion; or

(3) state that the court would grant the motion if the court in which the appeal is pending remands for that purpose, or state that the motion raises a substantial issue.

(b) NOTICE TO COURT IN WHICH THE APPEAL IS PENDING. If the bankruptcy court states that it would grant the motion, or that the motion raises a substantial issue, the movant shall promptly notify the clerk of the court in which the appeal is pending.

(c) REMAND AFTER INDICATIVE RULING. If the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue and the appeal is pending in an appellate court, the appellate court may remand for further proceedings, but it retains jurisdiction unless it expressly dismisses the appeal. If the appellate court remands but retains jurisdiction, the parties shall promptly notify the clerk of that court when the

bankruptcy court has decided the motion on remand.

COMMITTEE NOTE

This rule is an adaptation of F.R. Civ. P. 62.1 and F.R. App. P. 12.1. It provides a procedure for the issuance of an indicative ruling when a bankruptcy court determines that, because of a pending appeal, the court lacks jurisdiction to grant a request for relief that the court concludes is meritorious or raises a substantial issue. The rule, however, does not attempt to define the circumstances in which an appeal limits or defeats the bankruptcy court's authority to act in the face of a pending appeal. (Rule 8002(b) identifies motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before the last such motion is resolved. In these circumstances, the bankruptcy court has authority to resolve the motion without resorting to the indicative ruling procedure.)

Subdivision (b) requires the movant to notify the court in which an appeal is pending if the bankruptcy court states that it would grant the motion or that it raises a substantial issue. This provision applies to appeals pending in the district court, the BAP, or the court of appeals under 28 U.S.C. § 158(d)(2).

Federal Rules of Appellate Procedure 6(c) and 12.1 govern the procedure in the court of appeals following notification of the bankruptcy court's indicative ruling.

Subdivision (c) of this rule governs the procedure in the district court or BAP upon notification that the bankruptcy court has issued an indicative ruling. The appellate court may remand to the bankruptcy court for a ruling on the motion for relief. The appellate court may also remand all proceedings, thereby terminating the initial appeal, if it expressly states that it is dismissing the appeal. It should do so, however, only when the appellant has stated clearly its intention to abandon the appeal. Otherwise, the appellate court may remand for the purpose of ruling on the motion, while retaining jurisdiction to proceed with the appeal after the bankruptcy court rules, provided that the appeal is not then moot and any party wishes to proceed.

Rule 8009. Record and Issues on Appeal; Sealed Documents

(a) DESIGNATION AND COMPOSITION OF RECORD ON APPEAL; STATEMENT OF ISSUES ON APPEAL.

(1) *Appellant's Duties.* Within 14 days after filing a notice of appeal as prescribed by Rule 8003(a); entry of an order granting leave to appeal; entry of an order disposing of the last remaining motion of a kind listed in Rule 8002(b)(1); or entry of an altered or amended judgment, order, or decree; whichever is last, the appellant shall file with the bankruptcy clerk and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented. A designation and statement served prematurely shall be treated as served on the first day on which filing is timely under this paragraph.

(2) *Appellee's and Cross-Appellant's Duties.* Within 14 days after service of the appellant's designation and statement, the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal and, if the appellee has filed a cross-appeal, the appellee as cross-appellant shall file and serve a statement of the issues to be presented on the cross-appeal and a designation of additional items to be included in the record.

(3) *Cross-Appellee's Duties.* Within 14 days after service of the cross-appellant's designation and statement, a cross-appellee may file and serve on the cross-appellant a designation of additional items to be included in the record.

(4) *Record on Appeal.* Subject to Rule 8009(d) and (e), the record on appeal shall include the following:

- items designated by the parties as provided by paragraphs (1)-(3);
- the notice of appeal;
- the judgment, order, or decree being appealed;
- any order granting leave to appeal;
- any certification under 28 U.S.C. § 158(d)(2);
- any opinion, findings of fact, and conclusions of law of the court;
- any transcript ordered as prescribed by Rule 8009(b); and
- any statement required by Rule 8009(c).

Notwithstanding the parties' designations, the appellate court may order the inclusion of additional items from the record as part of the record on appeal.

(5) *Copies for the Bankruptcy Clerk.* If paper copies are needed, a party filing a designation of items to be

included in the record shall provide to the bankruptcy clerk a copy of any designated items that the bankruptcy clerk requests. If the party fails to provide the copy, the bankruptcy clerk shall prepare the copy at the party's expense.

(b) TRANSCRIPT OF PROCEEDINGS.

(1) *Appellant's Duty.* Within the time period prescribed by Rule 8009(a)(1), the appellant shall:

(A) order in writing from the reporter a transcript of any parts of the proceedings not already on file that the appellant considers necessary for the appeal, and file the order with the bankruptcy clerk; or

(B) file with the bankruptcy clerk a certificate stating that the appellant is not ordering a transcript.

(2) *Cross-Appellant's Duty.* Within 14 days after the appellant files with the bankruptcy clerk a copy of the transcript order or a certificate stating that appellant is not ordering a transcript, the appellee as cross-appellant shall:

(A) order in writing from the reporter a transcript of any parts of the proceedings not ordered by appellant and not already on file that the cross-appellant considers necessary for the appeal, and file a copy of the order with the bankruptcy clerk; or

(B) file with the bankruptcy clerk a certificate stating that the cross-appellant is not ordering a transcript.

(3) *Appellee's or Cross-Appellee's Right to Order.* Within 14 days after the appellant or cross-appellant files with the bankruptcy clerk a copy of a transcript order or certificate stating that a transcript will not be ordered, the appellee or cross-appellee may order in writing from the reporter a transcript of any parts of the proceedings not already ordered or on file that the appellee or cross-appellee considers necessary for the appeal. The order shall be filed with the bankruptcy clerk.

(4) *Payment.* At the time of ordering, a party shall make satisfactory arrangements with the reporter for paying the cost of the transcript.

(5) *Unsupported Finding or Conclusion.* If an appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all testimony and copies of all exhibits relevant to that finding or conclusion.

(c) STATEMENT OF THE EVIDENCE WHEN A TRANSCRIPT IS UNAVAILABLE. Within the time period prescribed by Rule 8009(a)(1), the appellant may prepare a

statement of the evidence or proceedings from the best available means, including the appellant's recollection, if a transcript of the hearing or trial is unavailable. The statement shall be served on the appellee, who may serve objections or proposed amendments within 14 days after being served. The statement and any objections or proposed amendments shall then be submitted to the bankruptcy court for settlement and approval. As settled and approved, the statement shall be included by the bankruptcy clerk in the record on appeal.

(d) AGREED STATEMENT AS THE RECORD ON APPEAL. Instead of the record on appeal as defined in (a), the parties may prepare, sign, and submit to the bankruptcy court a statement of the case showing how the issues presented by the appeal arose and were decided by the bankruptcy judge. The statement shall set forth only those facts averred and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is truthful, it, together with any additions that the bankruptcy court may consider necessary to a full presentation of the issues on appeal, shall be approved by the bankruptcy court and certified to the appellate court as the record on appeal. The bankruptcy clerk shall then transmit it to the clerk of the appellate court within the time provided by Rule 8010(b)(1).

A copy of the agreed statement may be filed instead of the appendix required by Rule 8018(b).

(e) CORRECTION OR MODIFICATION OF THE RECORD.

(1) If any dispute arises about whether the record truly discloses what occurred in the bankruptcy court, the dispute shall be submitted to and settled by the bankruptcy judge and the record conformed accordingly. If an item has been improperly designated as part of the record on appeal, a party may move to strike the improperly designated item.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected, and a supplemental record may be certified and transmitted:

(A) on stipulation of the parties;

(B) by the bankruptcy court before or after the record has been forwarded; or

(C) by the appellate court.

(3) All other questions as to the form and content of the record shall be presented to the appellate court.

(f) SEALED DOCUMENTS. A document placed under seal by the bankruptcy court may be designated as part of the

record on appeal. In designating a sealed document, a party shall identify it without revealing confidential or secret information. The bankruptcy clerk shall not transmit a sealed document to the clerk of the appellate court as part of the transmission of the record. Instead, a party seeking to present a sealed document to the appellate court as part of the record on appeal shall file a motion with the appellate court to accept the document under seal. If the motion is granted, the movant shall notify the bankruptcy court of the ruling, and the bankruptcy clerk shall promptly transmit the sealed document to the clerk of the appellate court.

(g) OTHER. All parties to an appeal shall take any other action necessary to enable the bankruptcy clerk to assemble and transmit the record.

(h) DIRECT APPEALS TO COURT OF APPEALS. Rules 8009 and 8010 apply to appeals taken directly to the court of appeals under 28 U.S.C. § 158(d)(2). A reference in Rules 8009 and 8010 to the "appellate court" includes the court of appeals when it has authorized a direct appeal under 28 U.S.C. § 158(d)(2). In direct appeals to the court of appeals, the reference in Rule 8009(d) to Rule 8018(b) means Appellate Rule 30.

COMMITTEE NOTE

This rule is derived from former Rule 8006 and F.R. App. P. 10 and

11(a). It retains the practice of former Rule 8006 of requiring the parties to designate items to be included in the record on appeal. In this respect the bankruptcy rule differs from the appellate rule. Among other things, F.R. App. P. 10(a) provides that the record on appeal consists of all the documents and exhibits filed in the case. This requirement would often be unworkable in a bankruptcy context because thousands of items might have been filed in the overall bankruptcy case.

Subdivision (a) provides the time period for the appellant's filing of a designation of items to be included in the record on appeal and a statement of the issues to be presented. It then provides for the designation of additional items by the appellee, cross-appellant, and cross-appellee, as well as for the cross-appellant's statement of the issues to be presented in its appeal. Subdivision (a)(4) prescribes the content of the record on appeal. Ordinarily, the bankruptcy clerk will not need to have paper copies of the designated items because the clerk will either transmit them to the appellate court electronically or otherwise make them available electronically. If the bankruptcy clerk requires a paper copy of some or all of the items designated as part of the record, the clerk may request the parties to provide the necessary copies, and the parties must comply with the request.

Subdivision (b) governs the process for ordering a complete or partial transcript of the bankruptcy court proceedings. In situations in which a transcript is unavailable, subdivision (c) allows for the parties' preparation of a statement of the evidence or proceedings, which must be approved by the bankruptcy court.

Subdivision (d) adopts the practice of F.R. App. P. 10(d) of permitting the parties to agree on a statement of the case in place of the record on appeal. The statement must show how the issues raised on appeal arose and were decided in the bankruptcy court. It must be approved by the bankruptcy judge in order to be certified as the record on appeal.

Subdivision (e), modeled on F.R. App. P. 10(e), provides a procedure for correcting a record on appeal if an item is improperly designated, omitted, or misstated.

Subdivision (f) is a new provision that governs the handling of any document that remains sealed by the bankruptcy court and that a party wants to include in the record on appeal. The party must request the appellate court to accept the document under seal, and that motion must be granted before the bankruptcy clerk may transmit the sealed document to the clerk of the appellate court.

Subdivision (g), which requires the parties' cooperation with the bankruptcy clerk in assembling and transmitting the record, retains the requirement of former Rule 8006, which was adapted from F.R. App. P. 11(a).

Subdivision (h) is new. It makes the provisions of this rule and Rule 8010 applicable to appeals taken directly to a court of appeals under 28 U.S.C. § 158(d)(2). See F.R. App. P. 6(c)(2)(A) and (B).

Rule 8010. Completion and Transmission of the Record

(a) DUTIES OF REPORTER TO PREPARE AND FILE TRANSCRIPT. The reporter shall prepare and file a transcript as follows:

(1) Upon receiving a request for a transcript, the reporter shall file in the appellate court an acknowledgment of the request, the date it was received, and the date on which the reporter expects to have the transcript completed.

(2) Upon completing the transcript, the reporter shall file it with the bankruptcy clerk and notify the clerk of the appellate court of the filing.

(3) If the transcript cannot be completed within 30 days of receipt of the request, the reporter shall seek an extension of time from the clerk of the appellate court. The action of that clerk shall be entered on the docket, and the parties shall be notified.

(4) If the reporter does not file the transcript within the time allowed, the clerk of the appellate court shall notify the bankruptcy judge.

(b) DUTY OF BANKRUPTCY CLERK TO TRANSMIT RECORD.

(1) Subject to Rules 8009(f) and 8010(b)(5), when

the record is complete for purposes of appeal, the bankruptcy clerk shall transmit to the clerk of the appellate court either the record or a notice of the availability of the record and the means of accessing it electronically.

(2) If there are multiple appeals from a judgment or order, the bankruptcy clerk shall transmit a single record.

(3) Upon receiving the transmission of the record or notice of the availability of the record, the clerk of the appellate court shall enter its receipt on the docket and give prompt notice to all parties to the appeal.

(4) If the appellate court directs that paper copies of the record be furnished, the clerk of that court shall notify the appellant and, if the appellant fails to provide the copies, the bankruptcy clerk shall prepare the copies at the appellant's expense.

(5) Subject to Rule 8010(c), if a motion for leave to appeal has been filed with the bankruptcy clerk under Rule 8004, the bankruptcy clerk shall prepare and transmit the record only after the appellate court grants leave to appeal.

(c) RECORD FOR PRELIMINARY MOTION IN APPELLATE COURT. If, prior to the transmission of the record as prescribed by (b), a party moves in the appellate court for any of

the following relief:

- leave to appeal;
- dismissal;
- a stay pending appeal;
- approval of a supersedeas bond, or additional security on a bond or undertaking on appeal; or
- any other intermediate order –

the bankruptcy clerk shall transmit to the clerk of the appellate court any parts of the record designated by a party to the appeal or a notice of the availability of those parts and the means of accessing them electronically.

COMMITTEE NOTE

This rule is derived from former Rule 8007 and F.R. App. P 11.

Subdivision (a) retains the procedure of former Rule 8007(a) regarding the reporter's duty to prepare and file a transcript if one is requested by a party. It clarifies that, while the reporter must file the completed transcript with the bankruptcy clerk, it is the clerk of the appellate court who must receive the reporter's acknowledgment of the request for a transcript and statement of the expected completion date and who must grant an extension of time beyond 30 days for completion of the transcript.

Subdivision (b) requires the bankruptcy clerk to transmit the record to the clerk of the appellate court when the record is complete and, in the case of appeals under 28 U.S.C. § 158(a)(3), leave to appeal has been granted. This transmission will be made electronically, either by sending the record itself or sending notice of how the record can be accessed electronically. The appellate court may, however, require that a paper copy of some or all of the record be furnished, in which case the bankruptcy clerk

will direct the appellant to provide the copies or will make the copies at the appellant's expense.

In a change from former Rule 8007(b), subdivision (b) of this rule no longer directs the clerk of the appellate court to docket the appeal upon receipt of the record from the bankruptcy clerk. Instead, under Rules 8003(d) and 8004(c), the clerk of the appellate court dockets the appeal upon receipt of the notice of appeal or, in the case of appeals under 28 U.S.C. § 158(a)(3), the notice of appeal and the motion for leave to appeal. Those documents are to be sent promptly to the appellate court by the bankruptcy clerk. Accordingly, by the time the clerk of the appellate court receives the record, the appeal will already be docketed in that court.

Subdivision (c) is derived from former Rule 8007(c) and F.R. App. P. 11(g) . It provides for the transmission of parts of the record designated by the parties for consideration by the appellate court in ruling on specified preliminary motions filed prior to the preparation and transmission of the record on appeal.

Rule 8009(h) makes this rule applicable to direct appeals to the court of appeals under 28 U.S.C. § 158(d)(2). It also provides that, for purposes of this rule and Rule 8009,"appellate court" includes the court of appeals when it has authorized a direct appeal under § 158(d)(2).

Rule 8011. Filing and Service; Signature

(a) FILING.

(1) *Filing with the Clerk.* A document required or permitted to be filed in the appellate court shall be filed with the clerk of that court.

(2) *Filing: Method and Timeliness.*

(A) *In general.* Filing may be accomplished by transmission to the clerk of the appellate court, but, except as provided in (B), filing is not timely unless the clerk receives the document within the time fixed for filing.

(B) *Brief or appendix.* A brief or appendix is timely filed if, on or before the last day for filing, it is:

(i) transmitted to the clerk of the appellate court in accordance with applicable electronic transmission procedures for the filing of documents in that court;

(ii) mailed to the clerk of the appellate court by first-class mail – or other class of mail that is at least as expeditious – postage prepaid, if the court's procedures permit or require a brief or appendix to be filed by mailing; or

(iii) dispatched to a third-party commercial carrier for delivery within three days to the clerk of the

appellate court, if the court's procedures permit or require a brief or appendix to be filed by delivery to the clerk.

(C) *Inmate filing.* Rule 25(a)(2)(C) F.R. App. P. applies to an appeal taken by an inmate from a judgment, order, or decree of a bankruptcy judge to an appellate court.

(D) *Electronic filing.* The appellate court may by local rule permit or require documents to be filed, signed, or verified by electronic means that are consistent with any technical standards that the Judicial Conference of the United States establishes. A local rule requiring filing by electronic means shall allow reasonable exceptions, including for individuals who are not represented by counsel.

(E) *Copies.* If a document is filed electronically in the appellate court, no paper copy is required. If a document is filed by mail or delivery in the district court, an original and one copy of the document shall be filed. If a document is filed by mail or delivery in the BAP, an original and three copies shall be filed. The district court or BAP may, however, require by local rule or order in a particular case the filing or furnishing of a specified number of paper copies of a document filed electronically or a different number of copies than required by this subparagraph.

(3) *Filing a Motion with a Judge.* In appeals to the BAP, if a motion requests relief that may be granted by a single judge, a judge of that court may permit the motion to be filed with the judge if authorized by local rule. The judge shall note the filing date on the motion and transmit it to the BAP clerk.

(4) *Clerk's Acceptance of Documents.* The clerk of the appellate court shall not refuse to accept for filing any document transmitted for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice. The appellate court may, by order, direct the correction of any deficiency in any document that does not conform to the requirements of these rules or applicable local rule, and may prescribe such other relief as the court deems appropriate.

(5) *Privacy Protection.* Rule 9037 applies to an appeal to the appellate court taken from a judgment, order, or decree of a bankruptcy judge.

(b) SERVICE OF DOCUMENTS REQUIRED. Copies of all documents filed by any party and not required by these Part VIII rules to be served by the clerk of the appellate court shall, at or before the time of filing, be served on all other parties to the appeal by the party making the filing or a person acting for that

party. Service on a party represented by counsel shall be made on counsel.

(c) MANNER OF SERVICE.

(1) Service may be made by any of the following methods:

(A) personal, including delivery to a responsible person at the office of counsel;

(B) mail;

(C) third-party commercial carrier for delivery within three days; or

(D) electronic means, if the party being served consents in writing, or as otherwise permitted or required by applicable local procedure.

(2) If authorized by local rule, a party may use the appellate court's transmission equipment to make the electronic service under Rule 8011(c)(1)(D).

(3) When it is reasonable, considering such factors as the immediacy of the relief sought, distance, and cost, service on a party shall be by a manner at least as expeditious as the manner used to file the document with the appellate court. Service by electronic means shall be used when feasible and otherwise permitted.

(4) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on transmission, unless the party making service receives notice that the document was not transmitted successfully to the party attempted to be served.

(d) PROOF OF SERVICE.

(1) Documents presented for filing shall contain either:

(A) an acknowledgment of service by the person served; or

(B) proof of service in the form of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) for each person served, the mail or electronic address, facsimile number, or the address of the place of delivery, as appropriate for the manner of service.

(2) The clerk of the appellate court may permit documents to be filed without acknowledgment or proof of service at the time of filing, but shall require the acknowledgment or proof of service to be filed promptly thereafter.

(3) When a brief or appendix is filed by mailing, delivery, or electronic transmission in accordance with Rule 8011(a)(2)(B), the proof of service shall also state the date and manner by which the document was filed.

(e) SIGNATURE. If filed electronically, every motion, response, reply, brief, or submission authorized by these Part VIII rules shall include the electronic signature of the person filing the document or, if the person is represented, the electronic signature of counsel. The electronic signature shall be provided by electronic means that are consistent with any technical standards that the Judicial Conference of the United States establishes. If filed in paper form, every motion, response, reply, brief, or submission authorized by these rules shall be signed by the person filing the document or, if the person is represented, by counsel.

COMMITTEE NOTE

This rule is derived from former Rule 8008 and F.R. App. P. 25. It adopts some of the additional details of the appellate rule, and it provides greater recognition of the possibility of electronic filing and service.

Subdivision (a) governs the filing of documents in the appellate court. Consistent with other provisions of these Part VIII rules, subdivision (a)(2) requires electronic filing of documents, including briefs and appendices, unless the appellate court's procedures permit or require filing by mail or personal delivery. An electronic filing is timely if it is received by the clerk of the appellate court within the time fixed for filing. No paper copies need be submitted when documents are filed electronically, unless the appellate court requires them.

Subdivision (a)(5) clarifies that Rule 9037, which requires redaction of certain personally identifying information, applies to documents filed in the appellate court.

Subdivisions (b) and (c) address the service of documents in the appellate court. Except for documents that the clerk of the appellate court must serve, a party who makes a filing must serve copies of the document on all other parties to the appeal. Service on represented parties must be made on counsel. The methods of service are listed in subdivision (c). Electronic service is authorized upon a party who has consented to that type of service in writing or when permitted or required by the appellate court.

Subdivision (d) retains the former rule's provisions regarding proof of service of a document filed in the appellate court. In addition it provides that, when service is made electronically, a certificate of service must state the mail or electronic address or facsimile number to which service was made.

Subdivision (e) is a new provision that requires an electronic signature of counsel or an unrepresented filer for documents that are filed electronically in the appellate court. The method of providing an electronic signature may be specified by a local court rule that is consistent with any standards established by the Judicial Conference of the United States. Paper copies of documents filed in the appellate court must bear an actual signature of counsel or the filer.

Rule 8012. Corporate Disclosure Statement

(a) WHO SHALL FILE. Any nongovernmental corporate party to an appeal shall file in the appellate court a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

(b) TIME FOR FILING; SUPPLEMENTAL FILING. A party shall file the statement prescribed by subdivision (a) with its principal brief or upon filing a motion, response, petition, or answer in the appellate court, whichever occurs first, unless a local rule requires earlier filing. Even if the statement has already been filed, the party's principal brief shall include a statement before the table of contents. A party shall supplement its statement whenever the information that shall be disclosed under subdivision (a) changes.

COMMITTEE NOTE

This rule is derived from F.R. App. P. 26.1. It requires the filing of corporate disclosure statements and supplemental statements in order to assist appellate court judges in determining whether they have interests that should cause recusal. If filed separately from a brief, motion, response, petition, or answer, the statement must be filed and served in accordance with Rule 8011. Under Rule 8015(a)(7)(B)(iii), the corporate disclosure statement is not included in calculating applicable word-count limitations.

Rule 8013. Motions; Intervention

(a) CONTENTS OF MOTION; RESPONSE; REPLY.

(1) *Application for Relief.* A request for an order or other relief, including an extraordinary writ, shall be made by filing with the clerk of the appellate court a motion for that order or relief, with proof of service on all other parties to the appeal.

(2) *Contents of a Motion.*

(A) *Grounds and relief sought.* A motion shall state with particularity the grounds for the motion and the order or relief sought.

(B) *Motion to expedite appeal.* A motion to expedite the consideration of an appeal shall explain why expedition is warranted and what circumstances justify the appellate court considering the appeal ahead of other matters. If a motion to expedite is granted, the appellate court may accelerate the transmission of the record, the deadline for filing briefs and other documents, oral argument, and resolution of the appeal. Under appropriate circumstances, a motion to expedite the consideration of an appeal may be filed as an emergency motion under Rule 8013(d).

(C) *Accompanying documents.*

(i) Any affidavit, declaration, brief, or other document necessary to support a motion shall be served and filed with the motion.

(ii) An affidavit or declaration shall contain only factual information, not legal argument.

(iii) A motion seeking substantive relief from a judgment, order, or decree of a bankruptcy court shall include a copy of the bankruptcy court's order, and any accompanying opinion, as a separate exhibit.

(D) *Documents not required.* Neither a notice of motion nor a proposed order is required.

(3) *Response and Reply; Time to File.* Unless the appellate court shortens or extends the time to file, any party to the appeal may file a response to the motion within seven days after service of the motion. The movant may file a reply to a response within seven days after service of the response. A reply shall be limited to matters addressed by the response.

(b) DETERMINATION OF A MOTION FOR A PROCEDURAL ORDER. Notwithstanding Rule 8013(a)(3), the appellate court may act on a motion for a procedural order, including a motion under Rule 9006(b) or (c), at any time without awaiting a response. Any party affected by such action may move

for reconsideration, vacation, or modification of the action within seven days after service of the procedural order.

(c) ORAL ARGUMENT. A motion will be decided without oral argument unless the appellate court orders otherwise.

(d) EMERGENCY MOTION.

(1) Whenever a movant requests expedited action on a motion on the ground that, to avoid irreparable harm, relief is needed in less time than would normally be required for the appellate court to receive and consider a response, the word "Emergency" shall precede the title of the motion.

(2) The emergency motion shall

(A) be accompanied by an affidavit or declaration setting forth the nature of the emergency;

(B) state whether all grounds advanced in support of it were submitted to the bankruptcy judge and, if any grounds relied on were not submitted, why the motion should not be remanded for reconsideration by the bankruptcy judge;

(C) include, when known, the email addresses, office addresses, and telephone numbers of moving and opposing counsel; and

(D) be served as prescribed by Rule 8011.

(3) Before filing an emergency motion, the movant shall make every practicable effort to notify opposing counsel in time for counsel to respond to the motion. The affidavit or declaration accompanying the emergency motion shall also state when and how opposing counsel was notified, or, if opposing counsel was not notified, why it was impracticable to do so.

(e) POWER OF A SINGLE BAP JUDGE TO ENTERTAIN A MOTION.

(1) A single judge of a BAP may grant or deny any request for relief that under these rules may properly be sought by motion, except that a single judge may not dismiss or otherwise decide an appeal, deny a motion for leave to appeal, or deny a motion for a stay pending appeal if denial would result in mootness of the appeal.

(2) The BAP may review the action of a single judge, either on its own motion or on the motion of a party.

(f) FORMAT OF DOCUMENT; PAGE LIMITS; COPIES.

(1) *Format of Paper Document.* Rules 27(d)(1) and 32(a)(1)-(6) F.R. App. P. apply in the appellate court to a paper version of a motion, response, reply, or brief that is permitted or required to be filed.

(2) *Format of Electronically Filed Document.* A motion, response, reply, or brief filed electronically shall comply with the requirements made applicable to a paper copy under (1) regarding covers, line spacing, margins, typeface, and type styles. It shall also comply with the length requirements under (3).

(3) *Page Limits.* Unless the appellate court permits or directs otherwise, the following page limits apply:

(A) a motion or a response to a motion shall not exceed 10 pages, exclusive of the corporate disclosure statement and accompanying documents authorized by Rule 8013(a)(2)(C);

(B) a reply to a response shall not exceed 5 pages;

(C) a brief in support of a motion or in support of a response to a motion shall not exceed 20 pages, exclusive of accompanying documents authorized by Rule 8013(a)(2)(C); and

(D) a brief in support of a reply shall not exceed 10 pages.

(4) *Copies.* Copies shall be provided as required by Rule 8011(a)(2)(E).

(g) INTERVENTION. Unless a statute provides another method, a person who wants to intervene in an appeal pending in the appellate court shall file a motion for leave to intervene with the clerk of the appellate court and serve a copy on all parties to the appeal. The motion, or other notice of intervention authorized by statute, shall be filed within 30 days after the appeal is docketed and shall contain a concise statement of the movant's interest and ground for intervention.

COMMITTEE NOTE

Rule 8013 is derived from current Rule 8011 and F.R. App. P. 15(d), 27, and 32(a). It adopts many of the provisions of the appellate rules that specify the form and page limits of motions and accompanying documents, while also adapting those requirements for the context of electronic filing. In addition, it prescribes the procedure for seeking to intervene in the appellate court.

Subdivision (a) retains much of the content of former Rule 8011(a) regarding the contents of a motion, response, and reply. It also specifies the documents that may accompany a motion. Unlike F.R. App. P. 27, which bars the filing of briefs supporting or in response to a motion, subdivision (a) continues the bankruptcy appellate practice of permitting briefs in support of a motion, a response to a motion, and a reply.

Subdivision (a)(2)(B) clarifies procedures for a motion to expedite the consideration of an appeal. This motion seeks to expedite the time for the disposition of the appeal as a whole, whereas an emergency motion – which is addressed by subdivision (d) – typically involves an urgent request for relief short of disposing of the entire appeal (for example, an emergency request for a stay pending appeal to prevent imminent mootness). In appropriate cases – such as when there is an urgent need to resolve the appeal quickly to prevent harm to a party – a motion to expedite the consideration of an appeal may be filed as an emergency motion.

Subdivision (b) retains the substance of former Rule 8011(b). It authorizes the appellate court to act on a motion for a procedural order without awaiting a response to the motion. It specifies that a party seeking reconsideration, vacation, or modification of the order must file such a motion within seven days after service of the order.

Subdivision (c) continues the practice of former Rule 8011(c) and F.R. App. P. 27(e) of dispensing with oral argument of motions in the appellate court unless the court orders otherwise.

Subdivision (d), which carries forward the content of former rule 8011(d), governs emergency motions that the appellate court may rule on without awaiting a response when necessary to prevent irreparable harm. A party seeking expedited action on a motion in the appellate court must explain the nature of the emergency, whether all grounds in support of the motion were first presented to the bankruptcy court, and, if not, why a remand for reconsideration should not be ordered. The moving party must also explain the steps taken to notify opposing counsel in advance of filing

the emergency motion and, if counsel was not notified, why it was impracticable to do so.

Subdivision (e), like former Rule 8011(e) and similar to F.R. App. P. 27(c), authorizes a single BAP judge to rule on certain motions. This authority, however, does not extend to issuing rulings that would dispose of the appeal. For that reason the rule now prohibits a single BAP judge from denying a motion for a stay pending appeal when the effect of that ruling would be to require dismissal of the appeal as moot. A ruling by a single judge is subject to review by the BAP.

Subdivision (f) incorporates by reference the formatting and appearance requirements of F.R. App. P. 27(d)(1) and 32(a). When paper copies of the listed documents are filed, they must comply with the specified requirements of the Federal Rules of Appellate Procedure regarding reproduction, covers, binding, appearance, and format. When these documents are filed electronically, they must comply with the relevant requirements of the appellate rules regarding covers and format. Subdivision (f) also specifies page limits for motions and related documents, which was a matter not addressed by former Rule 8011.

Subdivision (g) clarifies the procedures for seeking to intervene in a case that has been appealed. It adopts the provisions of F.R. App. P. 15(d). The former Part VIII rules did not address intervention.

Rule 8014. Briefs

(a) APPELLANT'S BRIEF. The appellant's brief shall contain under appropriate headings and in the order here indicated:

(1) a corporate disclosure statement, if required by Rule 8012;

(2) a table of contents, with page references;

(3) a table of authorities listing cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where they are cited;

(4) a jurisdictional statement, including:

(A) the basis for the bankruptcy court's subject matter jurisdiction, with citations to applicable statutory provisions and a brief discussion of the relevant facts establishing jurisdiction;

(B) the basis for the appellate court's jurisdiction, with citations to applicable statutory provisions and a brief discussion of the relevant facts establishing jurisdiction;

(C) the filing dates establishing the timeliness of the appeal; and

(D) an assertion that the appeal is from a final judgment, order, or decree, or information establishing the appellate court's jurisdiction on another basis;

(5) a statement of the issues presented and the applicable standard of appellate review;

(6) a statement of the case, which shall contain a brief discussion of the nature of the case and the facts relevant to the issues presented on appeal, including the course of the proceedings and the disposition in the bankruptcy court, with appropriate references to the record;

(7) an argument, which may be preceded by a summary, and which shall contain the appellant's contentions with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on;

(8) a short conclusion stating the precise relief sought; and

(9) the certificate of compliance, if required by Rule 8015(a)(7) or (b).

(b) APPELLEE'S BRIEF. The appellee's brief shall conform to the requirements of Rule 8014 (a)(1)-(7) and (9), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

(1) the jurisdictional statement;

(2) the statement of the issues and the applicable standard of appellate review; and

(3) the statement of the case.

(c) REPLY BRIEF. The appellant may file a brief in reply to the appellee's brief. A reply brief shall contain a table of contents, with page references, and a table of authorities listing cases alphabetically arranged, statutes, and other authorities, with references to the pages of the reply brief where they are cited.

(d) NO FURTHER BRIEFS. Unless the appellate court permits, no further briefs shall be filed.

(e) REFERENCES TO PARTIES. In briefs and at oral argument, counsel should minimize use of the terms "appellant" and "appellee." To make briefs clear, counsel should use the parties' actual names or the designations used in the bankruptcy court, such as "the debtor" or "the trustee."

(f) REFERENCES TO THE RECORD. References to the parts of the record contained in the appendix filed with the appellant's brief shall be to pages of the appendix.

(g) STATUTES, RULES, REGULATIONS, OR SIMILAR AUTHORITY. If determination of the issues presented requires reference to the Code or other statutes, rules, regulations,

or similar authority, relevant parts thereof shall be set out in the brief or in an addendum.

(h) BRIEFS IN A CASE INVOLVING MULTIPLE APPELLANTS OR APPELLEES. In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.

(i) SUBMISSION OF SUPPLEMENTAL AUTHORITIES. If pertinent and significant authorities come to a party's attention after the party's brief has been filed, or after oral argument but before a decision, the party may promptly advise the clerk of the appellate court by a signed submission setting forth the citations. The submission, which shall also be transmitted to the other parties to the appeal, shall state the reasons for the supplemental citations, referring either to the pertinent page of a brief or to a point argued orally. The body of the submission shall not exceed 350 words. Any response shall be made promptly and shall be similarly limited.

COMMITTEE NOTE

Rule 8014 is derived from former Rule 8010(a) and (b) and F.R. App. P. 28. Adopting much of the content of Rule 28, it provides greater detail regarding appellate briefs than former Rule 8010 contained.

Subdivision (a) prescribes the content and structure of the appellant's brief. It largely follows former Rule 8010(a)(1), but, in order to ensure national uniformity, it eliminates the provision of authority for an appellate court to alter these requirements. Implementing Rule 8012, subdivision (a)(1) directs the placement of a corporate disclosure statement, when required to be filed, at the beginning of an appellant's brief. Subdivision (a)(9) is also new. It implements the requirement under Rule 8015(a)(7) and (b) for the filing of a certificate of compliance with the limit on the number of words or lines allowed to be in a brief.

Subdivisions (b) carries forward the provisions of former Rule 8010(a)(2).

Subdivisions (c) and (d) are derived from F.R. App. P. 28(c). They explicitly authorize an appellant to file a reply brief, which filing will generally complete the parties' briefing process.

Subdivisions (e) and (f) are derived from F.R. App. P. 28 (d) and (e). Because Rule 8018, unlike F.R. App. P. 30(c), does not authorize a deferred filing of the appendix, subdivision (f) of this rule does not include provisions concerning references to the record when the appendix is prepared after the briefs are filed.

Subdivision (g) is similar to former Rule 8010(b), but it is reworded to reflect the likelihood that briefs will generally be filed electronically rather than in paper form.

Subdivision (h) adopts the procedures of F.R. App. P 28(j) with respect to the filing of supplemental authorities with the appellate court after a brief has been filed or after oral argument. The supplemental submission must comply with the signature requirements of Rule 8011(e).

Rule 8015. Form of Briefs, Appendices, and Other Papers.

(a) PAPER COPIES OF BRIEFS. If a paper copy of a brief may or must be filed, the following requirements apply:

(1) *Reproduction.*

(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper shall be opaque and unglazed. Only one side of the paper may be used.

(B) Text shall be reproduced with a clarity that equals or exceeds the output of a laser printer.

(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original. A glossy finish is acceptable if the original is glossy.

(2) *Cover.* Except for filings by unrepresented parties, the cover of the appellant's brief shall be blue; the appellee's, red; an intervenor's or amicus curiae's, green; any reply brief, gray; and any supplemental brief, tan. The front cover of a brief shall contain:

(A) the number of the case centered at the top;

(B) the name of the court;

(C) the title of the case as prescribed by Rule 8003(d)(2) or 8004(c)(2);

(D) the nature of the proceeding and the name of the court below;

(E) the title of the brief, identifying the party or parties for whom the brief is filed; and

(F) the name, office address, telephone number, and email address of counsel representing the party for whom the brief is filed.

(3) *Binding*. The brief shall be bound in any manner that is secure, does not obscure the text, permits the brief to lie reasonably flat when open, and is easy to scan.

(4) *Paper Size, Line Spacing, and Margins*. The brief shall be on 8½ by 11 inch paper. The text shall be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins shall be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(5) *Typeface*. Either a proportionally spaced or monospaced face may be used.

(A) A proportionally spaced face shall include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face shall be 14-point or larger.

(B) A monospaced face may not contain more than 10½ characters per inch.

(6) *Type Styles*. A brief shall be set in plain, roman style, although italics or boldface may be used for emphasis. Case names shall be italicized or underlined.

(7) *Length*.

(A) *Page limitation*. A principal brief of the appellant or appellee shall not exceed 30 pages, or a reply brief 15 pages, unless it complies with (B) and (C).

(B) *Type-volume limitation*.

(i) A principal brief of the appellant or appellee is acceptable if:

- it contains no more than 14,000 words; or
- it uses a monospaced face and contains no more than 1,300 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in (i).

(iii) Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules, or regulations, and any certificates of counsel do not count toward the limitation.

(C) *Certificate of Compliance.*

(i) A brief submitted under Rule 8015(a)(7)(B) shall include a certificate signed by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate shall state either:

- the number of words in the brief; or
- the number of lines of monospaced type in the brief.

(ii) A certificate of compliance that conforms substantially to the appropriate Official Form shall be regarded as sufficient to meet the requirements of (i).

(b) ELECTRONICALLY FILED BRIEFS. A brief that is filed electronically shall comply with (a), other than (a)(1) and

(a)(3), the color requirements of (a)(2), and the paper requirement of (a)(4).

(c) PAPER COPIES OF APPENDICES. If a paper copy of an appendix may or must be filed, it shall comply with Rule 8014(a)(1), (2), (3), and (4), with the following exceptions:

(1) The cover of a separately bound appendix shall be white.

(2) An appendix may include a legible photocopy of any document found in the record or of a printed decision.

(3) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8½ by 11 inches, and need not lie reasonably flat when opened.

(d) ELECTRONICALLY FILED APPENDICES. An appendix that is filed electronically shall comply with Rule 8014(a)(2) and (4), other than the color requirements of (a)(2) and the paper requirement of (a)(4).

(e) OTHER DOCUMENTS.

(1) Motion. The form of a motion, response, or reply is governed by Rule 8013(f).

(2) Paper Copies of Other Documents. If a paper copy of any other document may or must be filed, other than a

submission under Rule 8014(i), it shall comply with Rule 8015(a), with the following exceptions:

(A) A cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 8015(a)(2). If a cover is used, it shall be white.

(B) Rule 8015(a)(7) does not apply.

(3) Other Documents that Are Electronically Filed. Any other document that is filed electronically, other than a submission under Rule 8014(i), shall comply with the appearance requirements under (2).

(f) LOCAL VARIATION. Every appellate court shall accept documents that comply with the applicable requirements of this rule. By local rule or order in a particular case, an appellate court may accept documents that do not meet all of the requirements of this rule.

COMMITTEE NOTE

This rule is derived primarily from Fed. R. App. P. 32. Former Rule 8010(c) prescribed page limits for principal briefs and reply briefs. Those limits are now addressed by subdivision (a)(7) of this rule. In addition, the rule incorporates the considerable detail of Appellate Rule 32 regarding the appearance and format of briefs, appendices, and other documents, along with new provisions that apply when those documents are filed electronically.

Subdivision (a) prescribes the form requirements for briefs that are filed in paper form. It incorporates Fed. R. App. P. 32(a) in all respects except the following: Rule 8015(a)(2)(F) requires the cover of a brief to

include counsel's email address; (a)(3) requires that a brief be bound in a way that facilitates scanning of the document; and cross-references to the appropriate bankruptcy rule are substituted for references to other Federal Rules of Appellate Procedure.

Subdivision (a)(7) decreases the page limits that were permitted by former Rule 8010(c) – from 50 to 30 pages for a principal brief and from 25 to 15 for a reply brief – to achieve consistency with Fed. R. App. P. 32(a)(7). It also permits the limits on the length of a brief to be measured by a word or line count, as an alternative to a page limit. By adopting the same limits on brief length that are imposed by the Federal Rules of Appellate Procedure, the amendment seeks to prevent a party whose case is eventually appealed to the court of appeals from having to substantially reduce the length of its brief at that appellate level.

Subdivision (b) adapts for briefs that are electronically filed subdivision (a)'s form requirements. With the use of electronic filing, the method of reproduction, color of covers, method of binding, and use of paper become irrelevant. Information required on the cover, formatting requirements, and limits on brief length remain the same, however.

Subdivisions (c) and (d) prescribe the form requirements for appendices. Subdivision (c), applicable to appendices in paper form, is derived from Fed. R. App. P. 32(b), and subdivision (d) adapts those requirements for appendices that are electronically filed.

Subdivision (e), which is based on Fed. R. App. P. 32(c), addresses the form required for documents – in paper form or electronically filed – that are not otherwise covered by these rules.

Subdivision (f), like Fed. R. App. P. 32(e), is intended to provide assurance to lawyers and parties that compliance with the form requirements of this rule will allow a brief or other document to be accepted by any appellate court. A court may, however, by local rule or by order in a particular case choose to accepts briefs and documents that do not comply with all of this rule's requirements.

Under Rule 8011(e), all briefs and other submissions must be signed by the party filing the document or, if represented, by counsel. If the document is filed electronically, an electronic signature must be provided in accordance with Rule 8011(e).

Rule 8016. Cross-Appeals

(a) APPLICABILITY. This rule applies to a case in which a cross-appeal is filed. Rules 8014(a)-(d), 8015(a)(2), 8015(a)(7)(A)-(B), and 8018(a) do not apply to such a case, except as otherwise provided in this rule.

(b) DESIGNATION OF APPELLANT. The party who files a notice of appeal first is the appellant for purposes of this rule and Rules 8018(b) and 8019. If notices are filed on the same day, the plaintiff, petitioner, applicant, or movant in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

(c) BRIEFS. In a case involving a cross-appeal:

(1) *Appellant's Principal Brief.* The appellant shall file a principal brief in the appeal. That brief shall comply with Rule 8014(a).

(2) *Appellee's Principal and Response Brief.* The appellee shall file a principal brief in the cross-appeal and shall, in the same brief, respond to the principal brief in the appeal. That brief shall comply with Rule 8014(a), except that the brief need not include a statement of the case or a statement of the facts unless the appellee is dissatisfied with the appellant's statement.

(3) *Appellant's Response and Reply Brief.* The appellant shall file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief shall comply with Rule 8014(a)(2)-(7) and (9), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:

(A) the jurisdictional statement;

(B) the statement of the issues and the applicable standard of appellate review; and

(C) the statement of the case.

(4) *Appellee's Reply Brief.* The appellee may file a brief in reply to the response in the cross-appeal. That brief shall comply with Rule 8014(a)(2)-(3) and (9) and shall be limited to the issues presented by the cross-appeal.

(5) *No Further Briefs.* Unless the appellate court permits, no further briefs shall be filed in a case involving a cross-appeal.

(d) COVER. If a paper copy may or must be filed, except for filings by unrepresented parties, the cover of the appellant's principal brief shall be blue; the appellee's principal and response brief, red; the appellant's response and reply brief, yellow; the

appellee's reply brief, gray; an intervenor's or amicus curiae's brief, green; and any supplemental brief, tan. The front cover of a brief shall contain the information required by Rule 8015(a)(2).

(e) LENGTH.

(1) *Page Limitation.* Unless it complies with (2) and (3), the appellant's principal brief shall not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's brief, 15 pages.

(2) *Type-Volume Limitation.*

(A) The appellant's principal brief or the appellant's response and reply brief is acceptable if:

(i) it contains no more than 14,000 words; or

(ii) it uses a monospaced face and contains no more than 1,300 lines of text.

(B) The appellee's principal and response brief is acceptable if:

(i) it contains no more than 16,500 words; or

(ii) it uses a monospaced face and contains no more than 1,500 lines of text.

(C) The appellee's reply brief is acceptable if it contains no more than half of the type volume specified in (A).

(3) *Certificate of Compliance.* A brief submitted either electronically or in paper form under (2) shall comply with Rule 8015(a)(7)(C).

(f) TIME TO SERVE AND FILE A BRIEF. Briefs shall be served and filed as follows:

(1) The appellant shall serve and file its principal brief within 30 days after the docketing of the notice of transmission of the record or notice of availability of the record pursuant to Rule 8010(b)(3).

(2) The appellee shall serve and file its principal and response brief within 30 days after service of the appellant's principal brief.

(3) The appellant shall serve and file its response and reply brief within 30 days after service of the appellee's principal and response brief.

(4) The appellee shall file its reply brief within 14 days after service of the appellant's response and reply brief, or seven days before scheduled argument, whichever is earlier, unless the appellate court, for good cause, allows a later filing.

(5) If an appellant or appellee fails to file a principal brief within the time provided by this rule, or within an extended time authorized by the appellate court, the appeal or cross-appeal may be dismissed. An appellee who fails to file a responsive brief will not be heard at oral argument on the appeal, and an appellant who fails to file a responsive brief will not be heard at oral argument on the cross-appeal unless the appellate court grants permission.

COMMITTEE NOTE

This rule is modeled on F.R. App. P. 28.1. It governs the timing, content, length, filing, and service of briefs in bankruptcy cases in which there is a cross-appeal. The former Part VIII rules did not separately address the topic of cross-appeals.

Subdivision (b) prescribes which party is designated the appellant when there is a cross-appeal. Generally, the first to file a notice of appeal will be the appellant.

Subdivision (c) specifies the briefs that are permitted to be filed by the appellant and the appellee. Because of the dual role of the parties to the appeal and cross-appeal, each party is permitted to file a principal brief and a response to the opposing party's brief, as well as a reply brief. For the appellee, the principal brief in the cross-appeal and the response in the appeal are combined into a single brief. The appellant, on the other hand, initially files a principal brief in the appeal and later files a response to the appellee's principal brief in the cross-appeal, along with a reply brief in the appeal. The final brief that may be filed is the appellee's reply brief in the cross-appeal.

Subdivision (d) adopts the provisions of F.R. App. P. 28.1(d) for covers of briefs that are filed in paper form in cases in which there is a cross-appeal.

Subdivision (e), which prescribes page limits for briefs, is adopted from F.R. App. P. 28.1(e). It applies to briefs that are filed electronically, as well as those filed in paper form. Like Rule 8015(a)(7), it imposes limits measured either by number of pages or number of words or lines of text.

Subdivision (f) governs the time for filing briefs in cases in which there is a cross-appeal. It adopts the provisions of F.R. App. P. 28.1(f). It further authorizes the dismissal of an appeal or cross-appeal if the appellant or cross-appellant fails to timely file a principal brief, and it denies oral argument to a party who fails to file a responsive brief, unless the appellate court orders otherwise.

Rule 8017. Brief of an Amicus Curiae

(a) WHEN PERMITTED. The United States or its officer or agency, or a State, Territory, Commonwealth, or the District of Columbia may file an amicus-curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing. On its own motion, and with notice to all parties to an appeal, the appellate court may request a brief by an amicus curiae.

(b) MOTION FOR LEAVE TO FILE. The motion shall be accompanied by the proposed brief and state:

(1) the movant's interest; and

(2) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the appeal.

(c) CONTENT AND FORM. An amicus brief shall comply with Rule 8015. In addition to the requirements of Rule 8015, the cover of an amicus brief that may or must be filed in paper form shall identify the party or parties supported and indicate whether the brief supports affirmance or reversal. If an amicus curiae is a corporation, the brief shall include a disclosure

statement like that required by Rule 8012. An amicus brief need not comply with Rule 8014, but shall include the following:

(1) a table of contents, with page references;

(2) a table of authorities listing cases alphabetically arranged, statutes, and other authorities, with references to the pages of the brief where they are cited;

(3) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(4) unless the amicus curiae is one listed in the first sentence of Rule 8017(a), a statement that indicates:

(A) whether a party's counsel authored the brief in whole or in part;

(B) whether a party or a party's counsel contributed money that was intended to fund preparation or submission of the brief; and

(C) the name of any person other than the amicus curiae, its members, or its counsel who contributed money that was intended to fund preparation or submission of the brief;

(5) an argument, which may be preceded by a summary and need not include a statement of the applicable standard of review; and

(6) a certificate of compliance, if required by Rule 8015(a)(7)(C), 8015(b), or 8016(e)(3).

(d) LENGTH. Except by the court's permission, an amicus brief shall be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(e) TIME FOR FILING. An amicus curiae shall file its brief, accompanied by a motion for filing when necessary, no later than seven days after the principal brief of the party being supported is filed. If an amicus curiae does not support either party, it shall file its brief no later than seven days after the appellant's brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.

(f) REPLY BRIEF. Except by the court's permission, an amicus curiae shall not file a reply brief.

(g) ORAL ARGUMENT. Except by the court's permission, an amicus curiae shall not participate in oral argument.

(h) SUBMISSION OF SUPPLEMENTAL AUTHORITIES. If pertinent and significant authorities come to the attention of an amicus curiae after its brief has been filed, or after oral argument but before a decision, the amicus curiae may

promptly advise the clerk of the appellate court by a signed submission setting forth the citations. The submission, which shall also be transmitted to the other parties to the appeal, shall state the reasons for the supplemental citations, referring either to the pertinent page of a brief or to a point argued orally. The body of the submission shall not exceed 350 words. Any response shall be made promptly and shall be similarly limited.

COMMITTEE NOTE

This rule is derived from F.R. App. P. 29. The former Part VIII rules did not address the participation by an amicus curiae in a bankruptcy appeal.

Subdivision (a) adopts the provisions of F.R. App. P. 29(a). In addition, it authorizes the court on its own motion – with notice to the parties – to request the filing of a brief by an amicus curiae.

Subdivisions (b)-(g) adopt F.R. App. P. 29(b)-(g).

Subdivision (h) provides authority for an amicus curiae to submit supplemental citations, just as Rule 8014(i) authorizes a party to do.

Rule 8018. Serving and Filing Briefs; Appendices

(a) TIME TO SERVE AND FILE A BRIEF. Unless the appellate court by order excuses the filing of briefs or specifies different time limits:

(1) The appellant shall serve and file a brief within 30 days after the docketing of the notice of transmission of the record or notice of availability of the record pursuant to Rule 8010(b)(3).

(2) The appellee shall serve and file a brief within 30 days after service of the appellant's brief.

(3) The appellant may serve and file a reply brief within 14 days after service of the appellee's brief, or three days before scheduled argument, whichever is earlier, unless the appellate court, for good cause, allows a later filing.

(4) If an appellant fails to file a brief within the time provided by this rule, or within an extended time authorized by the appellate court, the appeal may be dismissed. An appellee who fails to file a brief will not be heard at oral argument unless the appellate court grants permission.

(5) If the appellate court has a mediation procedure applicable to bankruptcy appeals, the clerk of the appellate court shall notify the parties promptly after docketing the appeal what

effect the mediation procedure has on the time for filing briefs in the appeal and the requirements of the mediation procedure.

(b) DUTY TO SERVE AND FILE APPENDIX TO BRIEF

(1) Subject to Rules 8009(d) and 8018(e), the appellant or cross-appellant shall serve and file with its principal brief excerpts of the record as an appendix, which shall include the following:

(A) the relevant entries in the bankruptcy docket;

(B) the complaint and answer or other equivalent filings;

(C) the judgment, order, or decree from which the appeal is taken;

(D) any other orders, pleadings, jury instructions, findings, conclusions, or opinions relevant to the appeal;

(E) the notice of appeal; and

(F) any relevant transcript or portion thereof.

(2) The appellee or cross-appellee may also serve and file with its brief an appendix that contains material required

to be included by the appellant or cross-appellant, or relevant to the appeal or cross-appeal, but omitted by appellant or cross-appellant.

(c) FORMAT OF APPENDIX. The appendix shall begin with a table of contents identifying the page at which each part begins. The relevant docket entries shall follow the table of contents. Other parts of the record shall follow chronologically. When pages from the transcript of proceedings are placed in the appendix, the transcript page numbers shall be shown in brackets immediately before the included pages. Omissions in the text of documents or of the transcript shall be indicated by asterisks. Immaterial formal matters, such as captions, subscriptions, acknowledgments, and the like, shall be omitted.

(d) APPENDIX EXHIBITS. Exhibits designated for inclusion in the appendix may be reproduced in a separate volume or volumes, suitably indexed.

(e) APPEAL ON THE ORIGINAL RECORD WITHOUT AN APPENDIX. The appellate court may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and permit an appeal to proceed on the original record, with the submission of any relevant parts of the record that the appellate court orders the parties to file.

COMMITTEE NOTE

This rule is derived from former Rule 8009 and F. R. App. P. 30 and 31. Like former Rule 8009, it addresses the timing of serving and filing briefs and appendices, as well as the content and format of appendices. It retains the bankruptcy practice of permitting the appellee to file its own appendix, rather than requiring the appellant to include in the appendix it files matters designated by the appellee.

Subdivision (a) retains the provision of former Rule 8009 that allows the appellate court to dispense with briefing or to provide different time periods than the ones specified by this rule. It increases some of the time periods for filing briefs from the periods prescribed by the former rule, while still retaining shorter time periods than some provided by F.R. App. P. 31(a). The time for filing the appellant's brief is expanded from 14 to 30 days after the docketing of the notice of the transmission of the record or notice of the availability of the record. That triggering event is equivalent to the docketing of the appeal under former Rule 8007. Appellate Rule 31(a)(1), by contrast, provides the appellant 40 days after the record is filed to file its brief. The shorter time period for bankruptcy appeals reflects the frequent need for greater expedition in the resolution of bankruptcy appeals, while still providing the appellant a more realistic time period to prepare its brief than the former rule provided.

Subdivision (a)(2) similarly expands the time period for filing the appellee's brief from 14 to 30 days after the service of the appellant's brief. This period is the same as the period provided by F.R. App. 31(a)(1).

Subdivision (a)(3) retains the 14-day time period for filing a reply brief that the former rule prescribed, but it qualifies that period to ensure that the final brief is filed at least seven days before oral argument.

Subdivision (a)(4) is new. Based on F.R. App. P. 31(c), it provides for actions that may be taken – dismissal of the appeal or denial of participation in oral argument – if the appellant or appellee fails to file its brief.

Subdivision (a)(5) is also new. If an appellate court has a mediation procedure that is applicable to bankruptcy appeals, the clerk of the appellate court must advise the parties – promptly after the docketing of the appeal – that such a procedure applies, what its requirements are, and how the procedure affects that timing of the filing of briefs in the appeal.

Subdivisions (b) and (c) govern the content and format of the appendix to a brief. Subdivision (b) is similar to former Rule 8009(b), and subdivision (c) is derived from F.R. App. P. 30(d).

Subdivision (d), which addresses the inclusion of exhibits in the appendix, is derived from F.R. App. P. 30(e).

Rule 8011 governs the methods of filing and serving briefs and appendices. It prescribes the number of copies of paper documents that must be filed and authorizes the appellate court to require the submission of paper copies of documents that are filed electronically.

Rule 8019. Oral Argument

(a) PARTY'S STATEMENT. Any party may file a statement explaining why oral argument should, or need not, be allowed.

(b) PRESUMPTION OF ORAL ARGUMENT AND EXCEPTION. Oral argument shall be allowed in every case unless the appellate court determines after examination of the briefs and record that oral argument is unnecessary for any of the following reasons:

(1) the appeal is frivolous;

(2) the dispositive issue or issues have been authoritatively decided; or

(3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

(c) NOTICE OF ARGUMENT; POSTPONEMENT. The appellate court shall advise all parties of the date, time, and place for oral argument, and the time allowed for each side. A motion to postpone the argument or to allow longer argument shall be filed reasonably in advance of the hearing date.

(d) ORDER AND CONTENTS OF ARGUMENT. The appellant opens and concludes the argument. Counsel shall not read at length from briefs, the record, or authorities.

(e) CROSS-APPEALS AND SEPARATE APPEALS. If there is a cross-appeal, Rule 8016(b) determines which party is the appellant and which is the appellee for the purposes of oral argument. Unless the appellate court directs otherwise, a cross-appeal or separate appeal shall be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

(f) NONAPPEARANCE OF A PARTY. If the appellee fails to appear for argument, the appellate court may hear appellant's argument. If the appellant fails to appear for argument, the appellate court may hear the appellee's argument. If neither party appears, the case will be decided on the briefs, unless the appellate court orders otherwise.

(g) SUBMISSION ON BRIEFS. The parties may agree to submit a case for decision on the briefs, but the appellate court may direct that the case be argued.

(h) USE OF PHYSICAL EXHIBITS AT ARGUMENT; REMOVAL. Counsel intending to use physical exhibits other than documents at the argument shall arrange to place them in the courtroom on the day of the argument before the court convenes.

After the argument, counsel shall remove the exhibits from the courtroom, unless the appellate court directs otherwise. The clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them.

COMMITTEE NOTE

This rule generally retains the provisions of former Rule 8012 and adds much of the additional detail of F.R. App. P. 34. By incorporating the more detailed provisions of the appellate rule, Rule 8019 promotes national uniformity regarding oral argument in bankruptcy appeals.

Subdivision (a), like F.R. App. P. 34(a)(1), now allows a party to submit a statement explaining why there is no need for oral argument. Former Rule 8012 authorized only statements about why oral argument should be allowed.

Subdivision (b) retains the reasons set forth in former Rule 8012 for the appellate court to conclude that oral argument is not needed.

The remainder of this rule adopts the provisions of F.R. App. P. 34(b)-(g), with one exception. Rather than requiring the appellate court to hear appellant's argument if the appellee does not appear, subdivision (e) authorizes the appellate court to go forward with the argument in the appellee's absence. Should the court decide, however, to postpone the oral argument in that situation, it would be authorized to do so.

Rule 8020. Disposition of Appeal; Weight Accorded Bankruptcy Judge's Findings of Fact and Conclusions of Law

(a) DISPOSITION OF APPEAL. The appellate court may affirm, modify, vacate, or reverse a bankruptcy judge's judgment, order, or decree, or remand with instructions for further proceedings.

(b) ACCORDED WEIGHT. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy judge to assess the credibility of the witnesses. Questions of law are subject to de novo review. A matter committed to the discretion of the bankruptcy judge is reviewed for abuse of discretion unless the bankruptcy judge applied an incorrect standard of law. Any matter may be reviewed for clear error.

COMMITTEE NOTE

This rule is derived from former Rule 8013. It specifies the possible actions that the appellate court may take in ruling on an appeal and the appropriate standards of appellate review. It does not apply to the district court's review of a bankruptcy judge's proposed findings of fact and conclusions of law in a non-core matter under 28 U.S.C. § 157(c)(1). Proposed findings of fact and conclusions of law as to which a party has timely and specifically objected are subject to the provisions of Rule 9033 and the review that it prescribes.

Rule 8021. Damages and Costs for Frivolous Appeal

If the appellate court determines that an appeal from a judgment, order, or decree of a bankruptcy judge is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee. The relief authorized by this rule does not limit any other relief or power available to the appellate court.

COMMITTEE NOTE

This rule is derived from F.R. App. P. 38. The second sentence is added to clarify that the authority conferred by this rule does not affect the appellate court's exercise of any inherent or other authority over the conduct of parties or counsel.

Rule 8022. Costs

(a) AGAINST WHOM ASSESSED. The following rules apply unless the law provides or the appellate court orders otherwise:

(1) if an appeal is dismissed other than as provided in Rule 8024, costs are taxed against the appellant, unless the parties agree otherwise;

(2) if a judgment, order, or decree is affirmed, costs are taxed against the appellant;

(3) if a judgment, order, or decree is reversed, costs are taxed against the appellee;

(4) if a judgment, order, or decree is affirmed or reversed in part, modified, or vacated, costs are taxed only as the court orders.

(b) COSTS FOR AND AGAINST THE UNITED STATES. Costs for or against the United States, its agency, or officer may be assessed under (a) only if authorized by law.

(c) COSTS TAXABLE ON APPEAL. The bankruptcy clerk shall tax the following costs in favor of the party entitled to costs under this rule:

(1) costs incurred in the production of any required copies of a brief, appendix, exhibit, or the record;

(2) costs incurred in the preparation and transmission of the record;

(3) the cost of the reporter's transcript if necessary for the determination of the appeal;

(4) premiums paid for supersedeas bonds or other bonds to preserve rights pending appeal; and

(5) the fee for filing the notice of appeal.

(d) RATES. Each appellate court shall, by local rule, fix the maximum rate for taxing the cost of producing required copies of a brief, appendix, exhibit, or the record. The rate shall not exceed that generally charged for such work in the area where the office of the clerk of the appellate court is located and should encourage economical methods of copying.

(e) BILL OF COSTS; OBJECTIONS. A party who wants costs taxed shall, within 14 days after entry of judgment on appeal, file with the clerk of the appellate court, with proof of service, an itemized and verified bill of costs. Objections shall be filed within 14 days after service of the bill of costs, unless the court extends the time. The clerk of the appellate court shall prepare and certify an itemized statement of costs.

COMMITTEE NOTE

This rule is derived from former Rule 8014 and F.R. App. P. 39. It retains the former rule's authorization for taxing appellate costs against the losing party and its specification of the costs that may be taxed. Taxable costs do not include attorney's fees. The rule also incorporates some of the additional details regarding the taxing of costs contained in F.R. App. P. 39. Consistent with former Rule 8014, all costs are taxed by the clerk of the bankruptcy court. Subdivision (b) is added to clarify that additional authority is required for the taxation of costs by or against federal governmental parties.

Rule 8023. Motion for Rehearing.

(a) TIME TO FILE; CONTENTS; ANSWER; ACTION BY THE APPELLATE COURT.

(1) *Time.* Unless the time is shortened or extended by order or local rule, any motion for rehearing by the appellate court shall be filed within 14 days after entry of judgment on appeal.

(2) *Contents.* The motion shall state with particularity each point of law or fact that the movant believes the appellate court has overlooked or misapprehended and shall argue in support of the motion. Oral argument is not permitted.

(3) *Answer.* Unless the appellate court requests, no answer to a motion for rehearing is permitted. But ordinarily, rehearing will not be granted in the absence of such a request.

(4) *Action by the Appellate Court.* If a motion for rehearing is granted, the appellate court may do any of the following:

(A) make a final disposition of the appeal without reargument;

(B) restore the case to the calendar for reargument or resubmission; or

(C) issue any other appropriate order.

(b) FORM OF MOTION; LENGTH. The motion shall comply in form with Rule 8015(a)(1)-(6) and 8015(b). Copies shall be served and filed as provided by Rule 8011. Unless the appellate court by local rule or order provides otherwise, a motion for rehearing shall not exceed 15 pages.

COMMITTEE NOTE

This rule is derived from former Rule 8015 and F.R. App. P. 40. It deletes the provision of former Rule 8015 regarding the time for appeal to the court of appeals because the matter is addressed by F.R. App. P. 6(b)(2)(A)(i).

Rule 8024. Voluntary Dismissal

(a) DISMISSAL IN THE BANKRUPTCY COURT. If an appeal has not been docketed in the appellate court, the appeal may be dismissed by the bankruptcy court on the filing of a stipulation for dismissal signed by all the parties, or on motion and notice by the appellant.

(b) DISMISSAL IN THE APPELLATE COURT. If an appeal has been docketed in the appellate court, and the parties to the appeal sign and file with the clerk of the appellate court an agreement that the appeal be dismissed and pay any court costs or fees that may be due, the clerk of the appellate court shall enter an order dismissing the appeal. An appeal may also be dismissed on the appellant's motion on terms and conditions fixed by the appellate court.

COMMITTEE NOTE

This rule is derived from former Rule 8001(c), which was adapted from F.R. App. P. 42. It retains the requirement of the former rule that the clerk of the appellate court dismiss an appeal upon the parties' agreement that the appeal be dismissed and their payment of any required costs or fees. The bankruptcy and appellate courts continue to have discretion to dismiss an appeal under the circumstances specified in the rule. Nothing in the rule prohibits an appellate court from dismissing an appeal for other reasons authorized by law, such as the failure to prosecute an appeal.

Rule 8025. Duties of Clerk on Disposition of Appeal

(a) ENTRY OF JUDGMENT ON APPEAL. Unless the appellate court by local rule provides otherwise, the clerk of the appellate court shall prepare, sign, and enter the judgment following receipt of the opinion of the appellate court or, if there is no opinion, following the instruction of the appellate court. The notation of a judgment in the docket constitutes entry of judgment.

(b) NOTICE OF AN ORDER OR JUDGMENT; RETURN OF RECORD. Immediately upon the entry of a judgment or order, the clerk of the appellate court shall transmit a notice of the entry to each party to the appeal, to the United States trustee, and to the bankruptcy clerk, together with a copy of any opinion respecting the judgment or order, and shall make a note of the transmission in the docket. If any original documents were transmitted as the record on appeal, they shall be returned to the bankruptcy clerk on disposition of the appeal.

COMMITTEE NOTE

This rule is derived from former Rule 8016, which was adapted from F.R. App. P. 36 and 45 (c) and (d). The rule is reworded to reflect that often the record will not be physically transmitted to the appellate court and thus there will be no documents to return to the bankruptcy clerk. Other changes to the former rule are stylistic.

Rule 8026. Stay of Appellate Court Judgment

(a) AUTOMATIC STAY OF JUDGMENT ON APPEAL. Unless the appellate court orders otherwise, its judgment is stayed for 14 days after entry of the judgment.

(b) STAY PENDING APPEAL TO THE COURT OF APPEALS.

(1) On motion and notice to the parties to the appeal, the appellate court may stay its judgment pending an appeal to the court of appeals.

(2) The stay shall not extend beyond 30 days after the entry of the judgment of the appellate court unless the period is extended for cause shown.

(3) If before the expiration of a stay entered pursuant to this subdivision there is an appeal to the court of appeals by the party who obtained the stay, the stay continues until final disposition by the court of appeals.

(4) A bond or other security may be required as a condition of the grant or continuation of a stay of the judgment.

(5) A bond or other security may be required if a trustee obtains a stay, but a bond or security may not be required if a stay is obtained by the United States or its officer or agency or at

the direction of any department of the Government of the United States.

(c) AUTOMATIC STAY OF ORDER, JUDGMENT, OR DECREE OF BANKRUPTCY COURT. If the appellate court enters a judgment affirming an order, judgment, or decree of the bankruptcy court, a stay of the appellate court's judgment automatically stays the bankruptcy court's order, judgment, or decree for the duration of the stay, unless otherwise ordered.

(d) POWER OF COURT OF APPEALS NOT LIMITED. This rule does not limit the power of a court of appeals or any of its judges to do the following:

(1) stay a judgment pending appeal;

(2) stay proceedings during the pendency of an appeal;

(3) suspend, modify, restore, vacate, or grant a stay or an injunction during the pendency of an appeal; or

(4) make any order appropriate to preserve the status quo or the effectiveness of any judgment to be entered.

COMMITTEE NOTE

This rule is derived from former Rule 8017. Most of the changes to the former rule are stylistic. Subdivision (c) is new. It provides generally for the automatic stay of a bankruptcy court order, judgment, or decree that is affirmed on appeal if the appellate court judgment is stayed, even if the bankruptcy court's ruling itself was not stayed.

Rule 8027. Rules by Courts of Appeals and District Courts; Procedure When There is No Controlling Law

(a) LOCAL RULES BY COURTS OF APPEALS AND DISTRICT COURTS.

(1) Courts of appeals for circuits that have authorized a BAP pursuant to 28 U.S.C. § 158(b) and district courts may make and amend rules governing practice and procedure for appeals from judgments, orders, or decrees of bankruptcy judges to the BAP or district court. Local rules shall be consistent with, but not duplicative of, Acts of Congress and these Part VIII rules.

(2) Local rules shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Rule 83 F.R.Civ.P. and Rule 47 F.R.App. P. respectively govern the procedure for making and amending rules to govern appeals in district courts and BAPs.

(3) A local rule imposing a requirement of form shall not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.

(b) PROCEDURE WHEN THERE IS NO CONTROLLING LAW.

(1) A district judge or BAP may regulate practice in any manner consistent with federal law, these Rules, the Official Forms, and local rules of the circuit council or the district court.

(2) No sanction or other disadvantage shall be imposed for noncompliance with any requirement not in federal law, applicable federal rules, the Official Forms, or the local rules of the circuit council or district court unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

COMMITTEE NOTE

This rule is derived from former Rule 8018. The changes to the former rule are primarily stylistic.

Subdivision (a)(2) recognizes the authority given courts of appeals under F.R. App. P. 47 to promulgate local rules. Some courts of appeals have delegated rule-making authority to the BAP within the circuit to make and amend local rules governing practice and procedure before the BAP. **[Is this correct?]**

Rule 8028. Suspension of Rules in Part VIII

In the interest of expediting decision or for other cause in a particular case, the appellate court may suspend the requirements or provisions of the rules in Part VIII, except Rules 8001, 8002, 8003, 8004, 8005, 8006, 8007, 8012, 8020, 8021, 8025, 8026, 8027, and 8028.

COMMITTEE NOTE

This rule is derived from former Rule 8019 and F.R. App. P. 2. In order to promote uniformity of practice and compliance with statutory authority, the rule includes a more extensive list of requirements that may not be suspended than either the former rule or the Rules of Appellate Procedure provide. Rules that may not be suspended are those governing the following:

- scope of the rules and definitions;
- time for filing a notice of appeal;
- taking an appeal as of right;
- taking an appeal by leave;
- election to have appeal heard by district court instead of BAP;
- certification of direct appeal to court of appeals;
- stay pending appeal;
- corporate disclosure statement;
- disposition of appeals and weight to be accorded bankruptcy judge's findings of fact and conclusions of law;
- sanctions for frivolous appeals;
- clerk's duties on disposition of appeal;
- stay of appellate court's judgment;
- local rules; and
- suspension of Part VIII rules.

Fill in this information to identify the case and adversary proceeding involved:

United States Bankruptcy Court for the: _____ _____ District of _____

Case Name: In re _____ Case number _____

If applicable, Adversary Proceeding Name: _____ (Plaintiff) v. _____ (Defendant)

Adversary Proceeding number _____

Notice of Appeal and Statement of Election

2011

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s) _____
2. Position of appellant(s) in the case or proceeding involved in this appeal

For appeals involving adversary proceedings.

- ☐ Plaintiff
- ☐ Defendant
- ☐ Other (describe) _____

For appeals that do not involve adversary proceedings

- ☐ Debtor
- ☐ Creditor
- ☐ Trustee
- ☐ Other (describe) _____

Part 2: Identify the subject of this appeal

Describe the judgment, order, or decree appealed from: _____

State the date on which the judgment, order or decree was entered _____ (month) _____ (day) _____ (year)

Part 3: Identify the other parties to this appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. Party: _____ Attorney: _____
2. Party: _____ Attorney: _____

Part 4: Optional election to have this appeal heard by the District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check the box below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

☐ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Signature

_____
Signature of appellant(s) or attorney for appellant(s)

Name, address, and telephone number of attorney:

_____
_____
_____
_____

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

TAB-11-18

Subcommittee on Technology and Cross Border Insolvency
Subcommittee on Attorney Conduct and Health Care
Technical amendment to Rule 2015(a)(3)
Suggestions 10-BK-J and 10-BK-M
Suggestion by Judge Thomas W. Waldrep, Jr.
Suggestion 10-BK-K
Suggestion by David Andersen

Items 11 - 18 will be oral reports.

TAB-19

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. EC-10-1309-DHKi
ROBERT J. CAREY,	Bk. No. 09-31861
Debtor.	Adv. No. 09-02531
CHARLIE Y., INC.,	
Appellant,	
v.	**OPINION**
ROBERT J. CAREY,	
Appellee.	

Argued and Submitted on February 17, 2011
at Sacramento, California

Filed - March 4, 2011

Appeal from the United States Bankruptcy Court
for the Eastern District of California

Honorable Christopher Klein, Bankruptcy Judge, Presiding.

Appearances: Elizabeth Shoemaker argued for Appellant Charlie Y., Inc. and Kenrick Young argued for Appellee Robert J. Carey.

Before: DUNN, HOLLOWELL, and KIRSCHER, Bankruptcy Judges.

DUNN, Bankruptcy Judge:

Following trial of an adversary proceeding ("Adversary Proceeding"), the bankruptcy court excepted from discharge Charlie Y., Inc.'s ("Appellant") claim against Robert J. Carey ("Debtor") for breach of a guarantee obligation in circumstances in which Appellant alleged that the Debtor had made written misrepresentations regarding his financial condition. After a judgment was entered in Appellant's favor for $35,000, Appellant moved for an award of attorney's fees in the amount of $43,155.25. Debtor opposed the motion. After a hearing, the bankruptcy court denied Appellant's motion for attorney's fees based on its conclusion that Appellant's complaint in the Adversary Proceeding did not state a claim for attorney's fees consistent with the requirements of Federal Rule of Bankruptcy Procedure 7008(b).[1] For the reasons set forth below, we VACATE the bankruptcy court's dismissal of Appellant's Fee Motion and REMAND to the bankruptcy court to determine an appropriate award of attorney's fees in Appellant's favor.

FACTS[2]

This appeal results from collection efforts concerning

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[1] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The Federal Rules of Civil Procedure are referred to as Civil Rules.

[2] Only such factual background from the record of the Adversary Proceeding as is relevant to this appeal is included herein.

defaults on a restaurant purchase obligation. In 2003, Appellant sold its restaurant business to SGBD Restaurant I LLC, a Delaware limited liability company ("SGBD"). The unpaid balance of the purchase price was to be paid pursuant to a promissory note ("Promissory Note") in the principal amount of $90,000, bearing interest at 8% per annum, signed on behalf of SGBD by David A. Zebny ("Zebny") and Virginia Ann George ("George") as its Member Managers. The Promissory Note provided that,

> If any action be instituted on this Promissory Note, the undersigned agree to pay such sums as the Court may fix as attorney's fees, costs and expenses associated therewith.

Payment of the Promissory Note was supported by the personal guarantees ("Guarantee") "jointly and severally, unconditionally and irrevocably" of Zebny and George. The Guarantee provided that,

> The undersigned jointly and severally agree to pay on demand . . . all expenses of collecting and enforcing this guarantee including, without limitation, expenses and fees of legal counsel, court costs and the cost of appellate proceedings.

In February 2005, the Debtor replaced George as a personal guarantor of payment of the Promissory Note. The Debtor's acceptance of guarantee obligations was documented by a First Addendum to Promissory Note and Personal Guaranty (the "Replacement Guarantee"), dated February 18, 2005, and signed by the Debtor "as an Individual and Member of SGBD . . . and Guarantor." Appellant and SGBD agreed in the Replacement Guarantee that the Promissory Note and Guarantee would "remain in full effect" subject to the modifications set forth in the Replacement Guarantee. The Replacement Guarantee further

provided that,

> [The Debtor and Zebny] agree to act as responsible parties for all liability under the [Promissory] Note as members of [SGBD] and under the [Guarantee] as individuals. [The Debtor] has been a member of [SGBD] since its inception.

Following a default by SGBD of its payment obligations under the Promissory Note, Appellant began collection efforts against SGBD and Zebny, resulting in collection of part of the balance owed on the Promissory Note. However, by late 2008, Zebny ceased communicating with Appellant, and Appellant received notice that SGBD had filed for bankruptcy protection. At that point, Appellant contacted the Debtor to collect under the Replacement Guarantee, without success. On or about May 6, 2009, Appellant filed a complaint in Marin County, California Superior Court against the Debtor for collection of the outstanding balance under the Promissory Note. The Debtor filed his chapter 7 bankruptcy petition on or about June 10, 2009.

On or about August 17, 2009, Appellant filed its complaint ("Complaint") to except the Debtor's debt to Appellant under the Replacement Guarantee from discharge pursuant to § 523(a)(2)(B). In the preamble to the Complaint, Appellant stated:

> Plaintiff requests entry of a non-dischargeable judgment against the Debtor for the full amount of any debt (including, but not limited to principal, interest, costs, and attorney's fees) determined to be owing to Plaintiff by the Debtor and determined to be non-dischargeable pursuant to 11 U.S.C. § 523. (Emphasis added.)

In Paragraph 1 of the Complaint, Appellant alleged that,

> Plaintiff received a promissory note guaranteed by Defendant, and on May 6, 2009, Plaintiff filed a complaint in Marin County Superior Court to collect from Defendant the amount owed on the promissory note.

In Paragraph 7 of the Complaint, Appellant alleged, among other things, that the Debtor signed the Replacement Guarantee. In Paragraph 10 of the Complaint, Appellant alleged that,

> On or about May 6, 2009, Plaintiff filed a complaint against Defendant in Marin County Superior Court demanding payment of damages in the amount of $37,040.45, interest on such damages, and attorney's fees. (Emphasis added.)

In its First Claim for Relief under 11 U.S.C. § 523(a)(2)(B), in Paragraph 19 of the Complaint, Appellant "re-alleges and incorporates by reference the previous allegations of paragraphs 1 through 18 above as though fully set forth herein." In its Prayer for Relief, Paragraph B, Appellant requests "judgment for such non-dischargeable debt in the full amount of Plaintiff's damages (including principal, accrued and accruing interest, costs, and attorney's fees) to be proved at trial . . . ." (Emphasis added.)

In his Answer to the Complaint, the Debtor "prays that Plaintiff's Complaint be dismissed and Defendant be awarded reasonable attorney's fees and for any other relief the court may deem appropriate." (Emphasis added.)

The Adversary Proceeding was tried by the bankruptcy court on May 13, 2010. In her opening statement at the trial, counsel for Appellant requested an exception to discharge determination as to Appellant's damages "plus legal costs and attorneys' fees" but otherwise did not present any evidence as to the attorney's fees that Appellant sought to collect from the Debtor at the trial.

Following the presentation of evidence, the bankruptcy court made oral findings in favor of Appellant on its § 523(a)(2)(B)

claim for relief. An exception to discharge judgment ("Judgment") in favor of Appellant, awarding damages of $35,000 against the Debtor, was entered on May 13, 2010. Neither party appealed the Judgment.

On or about May 27, 2010, Appellant filed a Bill of Costs requesting a total costs award of $1,688.56. The bankruptcy court denied Appellant an award of costs, stating as the reason:

> The judgment entered in this case on May 13, 2010 does not award costs to the Plaintiff, so your Bill of Costs will not be entered.

Appellant did not appeal the denial of its Bill of Costs.

On or about June 10, 2010, Appellant filed a motion ("Fee Motion") for approval of an award of attorney's fees in the Adversary Proceeding, consistent with the terms of the Promissory Note. Appellant supported the Fee Motion with a Declaration of its counsel itemizing her time with respect to the collection efforts against the Debtor under the Replacement Guarantee. Debtor opposed the Fee Motion.

Following a hearing, the bankruptcy court dismissed the Fee Motion based on its conclusion that the Complaint did not state a claim for attorney's fees as required by Rule 7008(b). The bankruptcy court entered a minute order ("Minute Order") dismissing the Fee Motion on August 13, 2010.

Appellant filed a Notice of Appeal of the Minute Order on August 17, 2010.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(B) and (I). We have jurisdiction to determine our jurisdiction. Hupp v. Educational Credit

Management Corp. (In re Hupp), 383 B.R. 476, 478 (9th Cir. BAP 2008). In this appeal, we conclude that we have jurisdiction under 28 U.S.C. § 158, as discussed below.

ISSUES

1) Was Appellant's Notice of Appeal filed timely?

2) Did the bankruptcy court err in dismissing the Fee Motion based on its conclusion that the Complaint did not state a claim for attorney's fees consistent with the requirements of Rule 7008(b)?

STANDARD OF REVIEW

Review of the bankruptcy court's decision to dismiss the Fee Motion based on failure to state a claim for attorney's fees in the Complaint is analogous to review of a decision on a motion to dismiss for failure to state a claim upon which relief can be granted under Civil Rule 12(b)(6). The standard for review is de novo. Movsesian v. Victoria Versicherung AG, 629 F.3d 901, 905 (9th Cir. 2010). De novo means that we look at the matter anew, the same as if it had not been heard before, and as if no decision previously had been rendered, giving no deference to the bankruptcy court's determinations. McComish v. Bennett, 611 F.3d 510, 519 (9th Cir. 2010).

DISCUSSION

I. Appellant's Notice of Appeal was timely.

The Debtor argues that we have no jurisdiction to hear Appellant's appeal because the notice of appeal was not filed timely. In relevant part, Rule 8002(a) states, "The notice of appeal shall be filed with the clerk within 14 days of the date of the entry of the judgment, order, or decree appealed from."

The untimely filing of a notice of appeal deprives us of jurisdiction. Slimick v. Silva (In re Slimick), 928 F.2d 304, 306 (9th Cir. 1990); Greene v. United States (In re Souza), 795 F.2d 855, 857 (9th Cir. 1986). Debtor's argument is that since the Judgment was entered on May 13, 2010, with no reservation for an award of attorney's fees, the appeal period ran 14 days later, on May 27, 2010, with no notice of appeal having been filed. Accordingly, the Notice of Appeal filed on August 17, 2010 was late, leaving us without jurisdiction to hear the appeal in this case.

Debtor's argument raises an interesting procedural question. Civil Rule 54 deals with judgments, costs and attorney's fees. Civil Rule 54(a)-(c) concern the form and content of judgments. Civil Rule 54(d)(1) and (2) concern claims for costs and attorney's fees. Specifically, Civil Rule 54(d)(2)(A) provides that a "claim for attorney's fees . . . must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages." Rule 7054, applicable in adversary proceedings in bankruptcy, provides in section (a) that "[Civil] Rule 54(a)-(c) . . . applies in adversary proceedings." Rule 7054(b) goes on to address the allowance of costs in adversary proceedings. However, Rule 7054 is silent as to the procedure for requesting allowance of attorney's fees in adversary proceedings. Unfortunately, there is no Advisory Committee Note to Rule 7054 providing any rationale for the omission to incorporate Civil Rule 54(d) for adversary proceedings. 10 Collier on Bankruptcy ¶ 7054.RH (Alan N. Resnick

and Henry J. Sommer eds., 16th ed. 2010).[3]

Rule 7008(b), discussed in greater detail below, requires that a request for attorney's fees be pled as a claim in a complaint, but it does not shed any light on whether such a claim must be proven at trial or left for determination on application or motion following the trial. Certainly, a claim for attorney's fees could be a subject for the presentation of evidence at trial, but arguably, judicial economy is better served by leaving determination of a reasonable fee award to the prevailing party to follow the trial, when a complete time itemization can be presented to support the fee claim. As with Rule 7054, there is no Advisory Committee Note to Rule 7008(b) giving any procedural guidance as to how to deal with claims for attorney's fees beyond the pleading stage.

The Local Rules of Practice for the United States Bankruptcy Court for the Eastern District of California do not include any rule(s) for pursuing a claim for attorney's fees.[4]

In this appeal, we do not face the situation confronted by this Panel and the Ninth Circuit in In re Slimick, where the unappealed order entered in advance of the later judgment included a complete adjudication of the matters at issue. In re

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[3] We suggest that the Judicial Conference's Advisory Committee on Bankruptcy Rules may want to address this apparent "gap" in Rule 7054.

[4] In contrast, Rule 293(a) ([Civil Rule] 54) of the Local Rules of the United States District Court for the Eastern District of California provides that, "Motions for awards of attorneys' fees to prevailing parties pursuant to statute shall be filed not later than twenty-eight (28) days after entry of final judgment." (Emphasis added.)

Slimick, 928 F.2d at 307-08. The Judgment simply does not address Appellant's attorney's fee claim, even though Appellant's counsel mentioned the claim for attorney's fees in her opening statement at the trial. If the bankruptcy court considered the Judgment to be a complete adjudication of the issues between Appellant and the Debtor, it could have so stated at the beginning of the hearing on the Fee Motion. Instead, the bankruptcy court heard argument and based its decision to dismiss the Fee Motion on its conclusion that the Complaint did not state a claim for attorney's fees.

In these circumstances, we conclude that no provision of the Rules proscribed the Appellant's request for an award of attorney's fees through the Fee Motion following the trial of the Adversary Proceeding. The bankruptcy court documented its final determination of the Fee Motion in the Minute Order entered on August 13, 2010. Appellant filed its Notice of Appeal of the Minute Order on August 17, 2010, well within the 14 day appeal period mandated by Rule 8002(a). Accordingly, we conclude that Appellant's appeal is timely.

II. The Complaint provided adequate notice to Debtor of Appellant's attorney's fee claim.

Since the decision of the Supreme Court in Travelers Cas. & Sur. Co. v. Pacific Gas & Elec. Co., 549 U.S. 443 (2007), the allowance of claims for attorney's fees in bankruptcy generally is recognized as governed by state law. Id. at 450-51. This is particularly true in exception to discharge cases, such as the Adversary Proceeding, where the litigation ordinarily has no

direct impact on the bankruptcy estate.[5]

Under the American Rule, "the prevailing litigant is ordinarily not entitled to collect a reasonable attorneys' fee from the loser." Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 247 (1975). However, this general rule can be overcome by statute or by an "enforceable contract" allocating attorney's fees. Fleischmann Distilling Corp. v. Maier Brewing Co., 386 U.S. 714, 717 (1967). See also Busson-Sokolik and Praq v. Milwaukee Sch. of Eng'g (In re Busson-Sokolik), ___ F.3d ___ Nos. 08-4317, 09-4009 & 10-1456, at pp. 8-9 (7th Cir. Feb. 10, 2011). In California, § 1021 of the California Code of Civil Procedure provides exactly that:

> Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties . . . .

See, e.g., Aozora Bank, Ltd. v. 1333 North Cal. Blvd, 15 Cal. Rptr.3d 340, 341 (2004).

In this case, Appellant relies on the provisions for attorney's fees in the Promissory Note and Guarantee, as discussed above, supported by the provisions of the Replacement Guaranty that 1) the provisions of the Promissory Note and

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[5] Before the Supreme Court, the appellee Pacific Gas & Electric Co. ("Pacific") argued that allowance of unsecured contract claims for postpetition attorney's fees was proscribed by § 506(b). The Supreme Court declined to address that argument because it had not been raised by Pacific before the bankruptcy court or earlier in the appeal process. Id. at 454-56. Whatever the merits of that argument in a claim allowance contest, it has no application in litigation over whether a claim should be excepted from the debtor's discharge, as in the Adversary Proceeding. See Cohen v. De la Cruz, 523 U.S. 213 (1998).

Guarantee would "remain in full effect," and 2) the Debtor agreed to accept responsibility for all liability under the Promissory Note and Guarantee. Appellant's claim for attorney's fees accordingly arises out of the terms of the parties' written contracts. Appellant argues that once it prevailed on its § 523(a)(2)(B) claim, the agreements entitled it to a judgment enhanced by its attorney's fees generated to establish and collect its claim.

The bankruptcy court dismissed Appellant's Fee Motion based on its determination that Appellant did not state a claim for attorney's fees in its Complaint consistent with the requirements of Rule 7008(b). Rule 7008 sets forth general rules for pleadings in adversary proceedings in bankruptcy. Rule 7008(b) states that, "A request for an award of attorney's fees shall be pleaded as a claim in a complaint . . . ."[6] However, Rule 7008(a) provides that Civil Rule 8 generally applies in adversary proceedings. Civil Rule 8 lays out general rules for pleading in litigation in federal court. Civil Rule 8(a)(2) provides that a claim for relief must contain no more than "a short and plain statement of the claim showing that the pleader is entitled to relief . . . ."

The pleading provisions in the Civil Rules are intended to provide parties with adequate notice of the opposing party's claims or defenses.

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[6] It is not clear from the transcript of the hearing on the Fee Motion whether the bankruptcy court dismissed it because Appellant did not state a claim for attorney's fees in its "First Claim for Relief" or because Appellant did not include a separate "Second Claim for Relief," specifically addressing its claim for attorney's fees. See Hr'g Tr. (Aug. 3, 2010) at 10-12.

> [T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the [Civil] Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests . . . . Such simplified "notice pleading" is made possible by the liberal opportunity for discovery and the other pretrial procedures established by the [Civil] Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues . . . . The [Civil] Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.

Conley v. Gibson, 355 U.S. 41, 47-48 (1957), abrogated on other grounds by Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007). See Swierkiewicz v. Soreme N.A., 534 U.S. 506, 512-14 (2002); Securities Investor Prot. Corp. v. Capital City Bank (In re Meridian Asset Mgmt, Inc.), 296 B.R. 243, 249 (Bankr. N.D. Fla. 2003).

Factual allegations in a complaint "must be enough to raise a right to relief above the speculative level," Bell Atl. Corp. v. Twombly, 550 U.S. at 555, and must be adequate to "state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, ___ U.S. ___, 129 S. Ct. 1937, 1949 (2009). However, dismissal on the pleadings is appropriate only if the complaint fails to plead facts sufficient "to raise a reasonable expectation that discovery will reveal evidence" supporting relief. Bell Atl. Corp. v. Twombly, 550 U.S. at 556.

In this appeal, the Complaint clearly stated in its first paragraph that Appellant sought an award of attorney's fees from the Debtor. In Paragraph 1 of the Complaint, Appellant identified the Promissory Note as a basis for its claim. In

Paragraph 7 of the Complaint, Appellant referenced the Debtor's execution of the Replacement Guarantee. In Paragraph 10 of the Complaint, Appellant noted that it previously filed a complaint against the Debtor in the Marin County Superior Court seeking damages including attorney's fees. In its First Claim for Relief in the Complaint, Appellant realleged the first 18 paragraphs of the Complaint, including Paragraphs 1, 7 and 10. Finally, in its Prayer for Relief, Appellant requested a judgment for damages "including principal, accrued and accruing interest, costs, and attorney's fees." In these circumstances, the Debtor cannot have been surprised that Appellant was asserting a claim for attorney's fees in the Complaint.

The Debtor expressed no such surprise. Indeed, in his Answer to the Complaint, the Debtor included a claim for an award of reasonable attorney's fees in his prayer for relief (without stating such a claim in any other part of the Answer). The Promissory Note, Guarantee and Replacement Guarantee do not provide for any right to attorney's fees for the Debtor. However, in an action based on such agreements, California Civil Code § 1717(a) provides reciprocal rights to attorney's fees for the prevailing party. Cal. Civ. Code § 1717(a);[7] Kachlon v.

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[7] Cal. Civ. Code § 1717(a) provides:

> In an action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not,

(continued...)

Markowitz, 85 Cal. Rptr. 532, 556 (Cal. Ct. App. 2008) (affirming the statute makes "unilateral attorney fee clauses reciprocal"); Brittalia Ventures v. Stuke Nursery Co., Inc., 62 Cal. Rptr. 3d 467, 477 (Cal. Ct. App. 2007) (statute "prevents the oppressive use of one-sided attorney fee provisions"). We conclude that it is unlikely that the Debtor would assert a right to reasonable attorney's fees in these circumstances without being aware that Appellant was seeking attorney's fees against him, based on provisions of the Promissory Note and the Replacement Guarantee.

In addition, in his opposition to the Fee Motion and at the hearing on the Fee Motion, the Debtor made several arguments opposing the fee award requested by Appellant, including unreasonableness of the amount requested, but never asserted that he did not receive notice of Appellant's claim for attorney's fees from the Complaint.

There are few case authorities that deal with the adequacy of pleadings to assert a claim for attorney's fees for purposes of Rule 7008(b). The Debtor cites Garcia v. Odom (In re Odom), 113 B.R. 623 (Bankr. C.D. Cal. 1990). In Odom, the bankruptcy court deemed the plaintiffs' claim for attorney's fees insufficient under Rule 7008(b) because it only was included in the plaintiffs' prayer for relief, rather than in the body of the complaint. See also Hartford Police F.C.U. v. DeMaio (In re DeMaio), 158 B.R. 890, 891-93 (Bankr. D. Conn. 1993).

In Ramsey v. Countrywide Home Loans, Inc. (In re Ramsey),

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[7](...continued)
shall be entitled to reasonable attorney's fees in addition to other costs.

424 B.R. 217 (Bankr. N.D. Miss. 2009), the plaintiff relied on an even more problematic basis to assert his attorney's fee claim: he requested an award of attorney's fees in final argument at the trial in conjunction with a motion for leave to amend his complaint accordingly, where the complaint did not include any request or claim for attorney's fees at all. The bankruptcy court denied his motion and his plea for attorney's fees based on Rule 7008(b). Id. at 226.

This case is distinguishable from both Odom and Ramsey because Appellant's claim for attorney's fees is stated in the preamble and referenced in the body of the Complaint as well as in the Prayer for Relief. Supporting factual allegations are included in various paragraphs in the body of the Complaint.

The Debtor also argues that Appellant's Complaint is deficient in that Appellant's claim for attorney's fees is not pled with sufficient specificity under Civil Rule 9(g), citing United Indus., Inc. v. Simon-Hartley, Ltd., 91 F.3d 762 (5th Cir. 1996); Maidmore Realty Co., Inc. v. Maidmore Realty Co., Inc., 474 F.2d 840 (3d Cir. 1973); and Botosan v. Fitzhugh, 13 F. Supp. 2d 1047 (S.D. Cal. 1998). These authorities stand for the general proposition that claims for attorney's fees are claims for "special damages" that must be specifically pleaded under Civil Rule 9(g).[8] Under Rule 7009, all of Civil Rule 9 applies in adversary proceedings in bankruptcy.

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[8] Civil Rule 9(g) provides: "If an item of special damage is claimed, it must be specifically stated." The Ninth Circuit has not yet specifically addressed whether claims for attorney's fees are items of special damage.

The Debtor did not refer to either Civil Rule 9(g) or Rule 7009 in his opposition to the Fee Motion or at the hearing on the Fee Motion. Ordinarily, we do not consider arguments that were neither raised nor addressed before the bankruptcy court. See Cooper Indus., Inc. v. Aviall Servs., Inc., 543 U.S. 157, 168-69 (2004). However, we can consider an argument not raised specifically before the bankruptcy court as a matter of discretion, and we will do so here. See, e.g., Hi Tech Communications Corp. v. Poughkeepsie Bus. Park, LLC (In re Wheatfield Bus. Park, LLC), 308 B.R. 463, 466 (9th Cir BAP 2004) (recognizing discretion to consider argument raised for first time on appeal if issue is matter of law and either does not depend on the factual record or the pertinent record has been fully developed).

What the authorities cited above seem to be saying about claims for attorney's fees as special damages is that the claimant can receive no more than it pleads for specifically. In other words, if an attorney's fee claim is asserted generally in a complaint, the prevailing claimant will be entitled to the reasonable fees generated in prosecuting that complaint, but will not be entitled to a further award for fees generated in related proceedings, for example. See Maidmore Realty Co., Inc., 474 F.2d at 843. The Debtor raised the substance of this argument before the bankruptcy court in opposing Appellant's request for attorney's fees to the extent it included fees generated in prosecuting Appellant's action in the Marin County Superior Court against the Debtor, among other things. This is an argument that can be renewed on remand, but it does not preclude Appellant from

asserting the general claim for attorney's fees in the Adversary Proceeding that is articulated in the Complaint.

We ultimately conclude that the Complaint, from its preamble through the Prayer for Relief, included adequate information and supporting factual allegations to provide the Debtor with notice that Appellant was asserting a claim for attorney's fees against the Debtor in the Adversary Proceeding based on the provisions of the Promissory Note and the Replacement Guarantee. Rule 7008(b) requires no more, and the bankruptcy court erred in concluding that it did.

CONCLUSION

For the foregoing reasons, we VACATE the bankruptcy court's dismissal of Appellant's Fee Motion and REMAND for the bankruptcy court to determine an appropriate fee award to Appellant as the prevailing party in the Adversary Proceeding.

TAB-20-22

Interim Rule 1007-I and Official Form 22A
Bankruptcy-related legislation
Opinions interpreting 11 U.S.C. § 521(i)

Items 20 - 22 will be oral reports.

TAB-23-A

Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits

* * * * *

(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS REQUIRED.

* * * * *

(7) Unless an approved provider of an instructional course concerning personal financial management has notified the court that a debtor has completed the course after filing the petition:

(A) An individual debtor in a chapter 7 or chapter 13 case shall file a statement of completion of the ~~a~~ course ~~concerning personal financial management~~, prepared as prescribed by the appropriate Official Form~~.~~; and

(B) An individual debtor in a chapter 11 case shall file the statement ~~in a chapter 11 case in which~~ if § 1141(d)(3) applies.

COMMITTEE NOTE

Subdivision (b)(7) is amended to relieve an individual debtor of the obligation to file a statement of completion of a personal financial management course if the course provider has already notified the court that the debtor has completed the course. Course providers approved under § 111 of the Code [may] have the capability of filing this notification electronically with the court immediately upon the debtor's completion of the course. If the provider does not notify the court, the debtor must file the statement, prepared as prescribed by the appropriate Official Form, within the time period specified by subdivision (c).

TAB-23-B

Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits

* * * * *

(c) TIME LIMITS. In a voluntary case, the schedules, statements, and other documents required by subdivision (b)(1), (4), (5), and (6) shall be filed with the petition or within 14 days thereafter, except as otherwise provided in subdivisions (d), (e), (f), and (g) of this rule. In an involuntary case, ~~the list in subdivision (a)(2), and~~ the schedules, statements, and other documents required by subdivision (b)(1) shall be filed by the debtor within 14 days ~~of~~ after the entry of the order for relief. * * *

* *

COMMITTEE NOTE

In subdivision (c), the time limit for a debtor in an involuntary case to file the list required by subdivision (a)(2) is deleted as unnecessary. Subdivision (a)(2) provides that the list must be filed within seven days after the entry of the order for relief. The other change to subdivision (c) is stylistic.

TAB-23-C

Rule 8007.1 Indicative Ruling on Motion for Relief Barred by Pending Appeal; Remand by Court in Which Appeal is Pending

(a) RELIEF PENDING APPEAL. If a timely motion is made for relief that the bankruptcy court lacks authority to grant because of an appeal that has been docketed and is pending, the bankruptcy court may:

(1) defer consideration of the motion;

(2) deny the motion; or

(3) state either that the court would grant the motion if the court in which the appeal is pending remands for that purpose or that the motion raises a substantial issue.

(b) NOTICE TO COURT IN WHICH THE APPEAL IS PENDING. If the bankruptcy court states that it would grant the motion, or that the motion raises a substantial issue, the movant shall promptly notify the clerk of the court in which the appeal is pending.

(c) REMAND AFTER INDICATIVE RULING. If the bankruptcy court states that it would grant the motion or that the motion raises a substantial issue, the court in which the appeal is pending may remand for further proceedings. Upon remand, the court in which the appeal is pending retains jurisdiction unless it expressly dismisses the appeal. If the appeal is not dismissed, the parties shall promptly notify the clerk of that court when the

bankruptcy court has decided the motion on remand.

COMMITTEE NOTE

This new rule is an adaptation of Rule 62.1 F.R.Civ.P. and Rule 12.1 F.R.App.P. It provides a procedure for issuance of an indicative ruling when a bankruptcy court determines that, because of a pending appeal, the court lacks jurisdiction to grant a motion for relief that the court concludes is meritorious or raises a substantial issue. The rule, however, does not attempt to define the circumstances in which an appeal limits or defeats the bankruptcy court's authority to act in the face of a pending appeal. (Rule 8002(b) identifies motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before the last such motion is resolved. In these circumstances, the bankruptcy court has authority to grant the motion without resorting to the indicative ruling procedure.)

The court in which a bankruptcy appeal is pending, upon notification that the bankruptcy court has issued an indicative ruling, may remand to the bankruptcy court for a ruling on the motion for relief. The appellate court may also remand all proceedings, thereby terminating the initial appeal, if it expressly states that it is dismissing the appeal. It should do so, however, only when the appellant has stated clearly its intention to abandon the appeal. Otherwise, the appellate court may remand for the purpose of a ruling on the motion, while retaining jurisdiction to proceed with the appeal after the bankruptcy court rules, provided that the appeal is not then moot and any party wishes to proceed.

Rule 9024. Relief from Judgment or Order

Rule 60 F.R.Civ.P. applies in cases under the Code except that (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one-year limitation prescribed in Rule 60(b), (2) a complaint to revoke a

discharge in a chapter 7 liquidation case may be filed only within the time allowed by § 727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by § 1144, § 1230, or § 1330. If the court lacks authority to grant a motion under this rule because an appeal has been docketed and is pending, the court may take any of the actions specified in Rule 8007.1(a).

COMMITTEE NOTE

This rule is amended to include a cross-reference to Rule 8007.1. That rule governs the issuance of an indicative ruling when relief is sought in the bankruptcy court, but that court lacks authority to grant the relief sought because an appeal has been docketed and is pending.

TAB-23-D

Rule 9006. Computing and Extending Time; Time for Motion Papers

* * * * *

(d) ~~FOR~~ MOTIONS ~~S~~ PAPERS—~~AFFIDAVITS~~. A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than seven 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~~ any written response may be served not later than one day before the hearing, unless the court permits ~~them~~ it to be served at some other time.

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COMMITTEE NOTE

The title of this rule is amended to draw attention to the fact that it prescribes time limits for the service of motion papers. These time periods apply unless another Bankruptcy Rule or a court order, including a local rule, prescribes different time periods. Rules 9013 and 9014 should also be consulted regarding motion practice. Rule 9013 governs the form of motions and the parties who must be served. Rule 9014 prescribes the procedures applicable to contested matters, including the method of serving motions commencing contested matters and subsequent papers.

Subdivision (d) is amended to apply to any written response to a motion, rather than just to opposing affidavits. The caption of the subdivision is amended to reflect this change.

Rule 9013. Motions: Form and Service

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party within the time determined by Rule 9006(d) on the trustee or debtor in possession and on those entities specified by these rules or, if service is not required or the entities to be served are not specified by these rules, the moving party shall serve the entities the court directs.

COMMITTEE NOTE

A cross-reference to Rule 9006(d) is added to this rule to call attention to the time limits for the service of motions, supporting affidavits, and written oppositions to motions. Rule 9006(d) prescribes time limits that apply unless other limits are fixed by these rules, a court order, or a local rule.

Rule 9014. Contested Matters

* * * * *

(b) SERVICE. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined by Rule 9006(d). Any paper served after the motion shall be served in the manner provided by Rule 5(b) F.R. Civ. P., and any written opposition to the motion

shall be served within the time period prescribed by Rule 9006(d).

* * * * *

COMMITTEE NOTE

A cross-reference to Rule 9006(d) is added to subdivision (b) to call attention to the time limits for the service of motions, supporting affidavits, and written oppositions to motions. Rule 9006(d) prescribes time limits that apply unless other limits are fixed by these rules, a court order, or a local rule.

TAB-23-E

B1 (Official Form 1) (12/11) (02.11 draft)

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 8 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all):	Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all):
Street Address of Debtor (No. and Street, City, and State): ZIP CODE	Street Address of Joint Debtor (No. and Street, City, and 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): ZIP CODE	Mailing Address of Joint Debtor (if different from street address): ZIP CODE
Location of Principal Assets of Business Debtor (if different from street address above): ZIP CODE	

Type of Debtor (Form of Organization) (Check one box.)	Nature of Business (Check one box.)	Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box.)
☐ Individual (includes Joint Debtors) *See Exhibit D on page 2 of this form.* ☐ Corporation (includes LLC and LLP) ☐ Partnership ☐ Other (If debtor is not one of the above entities, check this box and state type of entity below.)	☐ Health Care Business ☐ Single Asset Real Estate as defined in 11 U.S.C. § 101(51B) ☐ Railroad ☐ Stockbroker ☐ Commodity Broker ☐ Clearing Bank ☐ Other	☐ Chapter 7 ☐ Chapter 9 ☐ Chapter 11 ☐ Chapter 12 ☐ Chapter 13 ☐ Chapter 15 Petition for Recognition of a Foreign Main Proceeding ☐ Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding

Chapter 15 Debtors	Tax-Exempt Entity (Check box, if applicable.)	Nature of Debts (Check one box.)
Country of debtor's center of main interests: _____ Each country in which a foreign proceeding by, regarding, or against debtor is pending: _____	☐ Debtor is a tax-exempt organization under title 26 of the United States Code (the Internal Revenue Code).	☐ Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." ☐ Debts are primarily business debts.

Filing Fee (Check one box.)	Chapter 11 Debtors
☐ 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 3A. ☐ Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.	**Check one box:** ☐ Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). ☐ Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). **Check if:** ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than $2,190,000. - **Check all applicable boxes:** ☐ A plan is being filed with this petition. ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).

Statistical/Administrative Information

THIS SPACE IS FOR COURT USE 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.

Estimated Number of Creditors									
☐ 1-49	☐ 50-99	☐ 100-199	☐ 200-999	☐ 1,000-5,000	☐ 5,001-10,000	☐ 10,001-25,000	☐ 25,001-50,000	☐ 50,001-100,000	☐ Over 100,000

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	☐ $100,000,001 to $500 million	☐ $500,000,001 to $1 billion	☐ More than $1 billion

Estimated Liabilities									
☐ $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	☐ $100,000,001 to $500 million	☐ $500,000,001 to $1 billion	☐ More than $1 billion

Voluntary Petition *(This page must be completed and filed in every case.)*	Name of Debtor(s):	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet.)		
Location Where Filed:	Case Number:	Date Filed:
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:

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. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b).

X _____

Signature of Attorney for Debtor(s) (Date)

Exhibit C

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition.

☐ No.

Exhibit D

(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)

☐ Exhibit D completed and signed by the debtor is attached and made a part of this petition.

If this is a joint petition:

☐ Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.

Information Regarding the Debtor - 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.

☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.

Certification by a Debtor Who Resides as a Tenant of Residential Property

(Check all applicable boxes.)

☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)

_____

(Name of landlord that obtained judgment)

_____

(Address of landlord)

☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and

☐ Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.

☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).

Voluntary Petition
(This page must be completed and filed in every case.)

Name of Debtor(s):

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.
[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).

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 a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only **one** box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.

☐ Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X _____
(Signature of Foreign Representative)

_____
(Printed Name of Foreign Representative)

_____
Date

Signature of Attorney*

X _____
Signature of Attorney for Debtor(s)

_____
Printed Name of Attorney for Debtor(s)

_____
Firm Name

_____
Address

_____

_____

_____
Telephone Number

_____
Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

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 the 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 Non-Attorney Bankruptcy Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

_____
Printed Name and title, if any, of Bankruptcy Petition Preparer

_____
Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

_____
Address

_____

X _____

_____
Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

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.

TAB-23-F

B9A (Official Form 9A) (Chapter 7 Individual or Joint Debtor No Asset Case) (12/11) (02.11draft)

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_____(date).]

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:
	Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):	Bankruptcy Trustee (name and address):
Attorney for Debtor(s) (name and address): Telephone number:	Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Presumption of Abuse under 11 U.S.C. § 707(b)

See "Presumption of Abuse" on the reverse side.

Depending on the documents filed with the petition, one of the following statements will appear.

The presumption of abuse does not arise.

Or

The presumption of abuse arises.

Or

Insufficient information has been filed to date to permit the clerk to make any determination concerning the presumption of abuse. If more complete information, when filed, shows that the presumption has arisen, creditors will be notified.

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to Object to Debtor's Discharge or to Challenge 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:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So.

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Do Not File a Proof of Claim at This Time" on the reverse side.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

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.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally 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. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Presumption of Abuse	If the presumption of abuse arises, creditors may have the right to file a motion to dismiss the case under § 707(b) of the Bankruptcy Code. The debtor may rebut the presumption by showing special circumstances.
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~~ specified in a notice filed with the court.
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. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
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), or (6), you must file a complaint -- or a motion if you assert the discharge should be denied under § 727(a)(8) or (a)(9) -- in the bankruptcy clerk's office by the "Deadline to Object to Debtor's Discharge or to Challenge the Dischargeability of Certain Debts" listed on the front of this form. The bankruptcy clerk's office must receive the complaint or motion and any 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 objections 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.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

B9B (Official Form 9B) (Chapter 7 Corporation/Partnership No Asset Case) (12/11) (02.11 draft)

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 _____(date).]

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: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the debtor(s) in the last 8 years (include trade names): 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:

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So.

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Do Not File a Proof of Claim at This Time" on the reverse side.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

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.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally 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. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
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~~ specified in a notice filed with the court.
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. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the 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 and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

B9C (Official Form 9C) (Chapter 7 Individual or Joint Debtor Asset Case) (12/11) (02.11 draft)

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 _____(date).]

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: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):	Bankruptcy Trustee (name and address):
Attorney for Debtor(s) (name and address): Telephone number:	Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Presumption of Abuse under 11 U.S.C. § 707(b)

See "Presumption of Abuse" on the reverse side.

Depending on the documents filed with the petition, one of the following statements will appear.

The presumption of abuse does not arise.

Or

The presumption of abuse arises.

Or

Insufficient information has been filed to date to permit the clerk to make any determination concerning the presumption of abuse. If more complete information, when filed, shows that the presumption has arisen, creditors will be notified.

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:

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to Object to Debtor's Discharge or to Challenge 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:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office:	**For the Court:**
Telephone number:	Clerk of the Bankruptcy Court:
Hours Open:	Date:

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.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally 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. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
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~~ specified in a notice filed with the court.
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. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. 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 from other assets 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. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
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), or (6), you must file a complaint -- or a motion if you assert the discharge should be denied under § 727(a)(8) or (a)(9) -- in the bankruptcy clerk's office by the "Deadline to Object to Debtor's Discharge or to Challenge the Dischargeability of Certain Debts" listed on the front of this form. The bankruptcy clerk's office must receive the complaint or motion and any 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 objections by the "Deadline to Object to Exemptions" listed on the front side.
Presumption of Abuse	If the presumption of abuse arises, creditors may have the right to file a motion to dismiss the case under § 707(b) of the Bankruptcy Code. The debtor may rebut the presumption by showing special circumstances.
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.
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.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

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 _____(date).]

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: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include trade names):	Bankruptcy Trustee (name and address):
Attorney for Debtor(s) (name and address): Telephone number:	Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Deadline to File a Proof of Claim

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

For all creditors (except a governmental unit): For a governmental unit:

Creditor with a Foreign Address:
A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: Telephone number:	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

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.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally 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. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
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~~ specified in a notice filed with the court.
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. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. 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 from other assets 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. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
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.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

B9E (Official Form 9E) (Chapter 11 Individual or Joint Debtor Case) (12/11) (07 11 draft)

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 _____ (date).]

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: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):	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.

Creditor with a Foreign Address:
A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

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:
In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

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.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally 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. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
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~~ specified in a notice filed with the court. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
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 filed 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 and may be unable to vote on a plan. 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. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadline for filing claims will be set in a later court order and will apply to all creditors unless the order provides otherwise. If notice of the order setting the deadline is sent to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
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). Unless the court orders otherwise, however, the discharge will not be effective until completion of all payments under the plan. 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), 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 any 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 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.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

B9E ALT (Official Form 9E ALT) (Chapter 11 Individual or Joint Debtor Case) (12/11) (02.11 draft)

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_____(date).]

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: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):	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:

Creditor with a Foreign Address:
A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

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:
In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

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.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally 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. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
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~~ specified in a notice filed with the court. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
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 filed 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 and may be unable to vote on a plan. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
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). Unless the court orders otherwise, however, the discharge will not be effective until completion of all payments under the plan. 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), 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 any 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 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.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

B9F (Official Form 9F) (Chapter 11 Corporation/Partnership Case) (12/11) (02.11 draft)

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_____(date).]

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: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include trade names):	Attorney for Debtor(s) (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.

Creditor with a Foreign Address:
A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Creditors May Not Take Certain Actions:
In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

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.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally 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. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
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~~ specified in a notice filed with the court. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
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 filed 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 and may be unable to vote on a plan. 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. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadline for filing claims will be set in a later court order and will apply to all creditors unless the order provides otherwise. If notice of the order setting the deadline is sent to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
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 § 1141 (d) (6) (A), 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 any 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 and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer To Other Side For Important Deadlines and Notices	

B9F ALT (Official Form 9F ALT) (Chapter 11 Corporation/Partnership Case) (12/11) (02.11 draft)

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 _____(date).]

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: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include trade names):	Attorney for Debtor(s) (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:

Creditor with a Foreign Address:
A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Creditors May Not Take Certain Actions:
In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

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.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally 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. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
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~~ specified in a notice filed with the court. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
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 filed 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 Proof of Claim" listed on the front side, or you might not be paid any money on your claim and may be unable to vote on a plan. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
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 § 1141 (d) (6) (A), 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 any 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 and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

B9G (Official Form 9G) (Chapter 12 Individual or Joint Debtor Family Farmer or Family Fisherman) (12/11) (02.11 draft)

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_____(date).]

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:
	Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):	Bankruptcy Trustee (name and address):
Attorney for Debtor(s) (name and address): Telephone number:	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:

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

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:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, the debtor's property, and certain codebtors. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

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 and family fishermen 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.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally 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. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay.
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~~ specified in a notice filed with the court.
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. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. 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 from other assets 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. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
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 any 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.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

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 _____(date).]

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: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include trade names):	Bankruptcy Trustee (name and address):
Attorney for Debtor(s) (name and address): Telephone number:	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:

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

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:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

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 and family fishermen 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.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally 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. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay.
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~~ specified in a notice filed with the court.
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. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. 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 from other assets 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. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
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 any 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 and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

B9I (Official Form 9I) (Chapter 13 Case) (12/11) (02.11 draft)

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 _____ (date).]

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: Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):	Bankruptcy Trustee (name and address):
Attorney for Debtor(s) (name and address): Telephone number:	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 (except as otherwise provided in Fed . R. Bankr. P. 3002(c)(1)):

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to Object to Debtor's Discharge or to Challenge 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:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, the debtor's property, and certain codebtors. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court:
Hours Open:	Date:

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.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally 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. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to exceed or impose a stay.
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~~ specified in a notice filed with the court.
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. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. 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 from other assets 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. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. **Filing Deadline for a Creditor with a Foreign Address:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
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 a discharge under Bankruptcy Code § 1328(f), you must file a motion objecting to discharge in the bankruptcy clerk's office by the "Deadline to Object to Debtor's Discharge or to Challenge the Dischargeability of Certain Debts" listed on the front of this form. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2) or (4), you must file a complaint in the bankruptcy clerk's office by the same deadline. The bankruptcy clerk's office must receive the motion or the complaint and any 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.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

TAB-23-G-H

Official Forms 22A and 22C

The amendment to Official Form 22C to implement the Supreme Court's decision in *Hamilton v. Lanning* and the amendment to Official Forms 22A and 22C to permit deduction of certain business cell phone expenses are set out at Item 6D.

TAB-23-I

B 23 (Official Form 23) (12/12) (02.11 draft)

UNITED STATES BANKRUPTCY COURT

_____ District Of _____

In re _____, Debtor

Case No. _____

Chapter _____

DEBTOR'S CERTIFICATION OF COMPLETION OF POSTPETITION INSTRUCTIONAL COURSE CONCERNING PERSONAL FINANCIAL MANAGEMENT

This form should not be filed if an approved provider of a postpetition instructional course concerning personal financial management has already notified the court of the debtor's completion of the course. Otherwise, every ~~Every~~ individual debtor in a chapter 7 or chapter 13 case or in a chapter 11 case in which § 1141(d)(3) applies~~, or chapter 13 case~~ must file this certification. If a joint petition is filed and this certification is required, each spouse must complete and file a separate certification. Complete one of the following statements and file by the deadline stated below:

☐ I, _____, the debtor in the above-styled case, hereby
(Printed Name of Debtor)
certify that on _____ (Date), I completed an instructional course in personal financial management provided by _____, an approved personal financial
(Name of Provider)
management provider.

Certificate No. (if any):_____.

☐ I, _____, the debtor in the above-styled case, hereby
(Printed Name of Debtor)
certify that no personal financial management course is required because of *[Check the appropriate box.]*:

☐ Incapacity or disability, as defined in 11 U.S.C. § 109(h);

☐ Active military duty in a military combat zone; or

☐ Residence in a district in which the United States trustee (or bankruptcy administrator) has determined that the approved instructional courses are not adequate at this time to serve the additional individuals who would otherwise be required to complete such courses.

Signature of Debtor: _____

Date: _____

Instructions: Use this form only to certify whether you completed a course in personal financial management and only if your course provider has not already notified the court of your completion of the course. (Fed. R. Bankr. P. 1007(b)(7).) Do NOT use this form to file the certificate given to you by your prepetition credit counseling provider and do NOT include with the petition when filing your case.

Filing Deadlines: In a chapter 7 case, file within 60 days of the first date set for the meeting of creditors under § 341 of the Bankruptcy Code. In a chapter 11 or 13 case, file no later than the last payment made by the debtor as required by the plan or the filing of a motion for a discharge under § 1141(d)(5)(B) or § 1328(b) of the Code. (See Fed. R. Bankr. P. 1007(c).)

COMMITTEE NOTE

The form is amended to reflect the amendment of Rule 1007(b)(7). As amended, that rule allows an approved provider of a personal financial management course to notify the court directly of the debtor's completion of the course. That notification relieves the debtor of the obligation to file this form.

TAB-24

Bankruptcy Rules Tracking Docket (By Rule or Form Number) 3/11/11

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 1004.2 (new), Chapter 15 rule	Suggestion 05-BK-B Judge Samuel Bufford 1/20/06 Committee proposal	3/06 - Referred to Subcommittee on Technology and Cross Border Insolvency 5/06 - Subcommittee discussed 6/06 - Subcommittee approved revised rule 9/06 - Committee approved for publication 3/07 - Publication deferred for further study 6/07 - Subcommittee discussed 9/07 - Committee approved for publication, held in bull pen 2/08 - Subcommittee discussed 3/08 - Committee approved for publication 6/08 - Standing Committee approved publication 8/08 - Published for public comment 1/09 - Subcommittee drafted revised rule 3/09 - Committee approved revised rule for republication 6/09 - Standing Committee approved republication 8/09 - Republished for public comment 4/10 - Committee approved 6/10 - Standing Committee approved 9/10 - Judicial Conference approved	12/1/11

Rule 1007(c) Conform to deadline in (a)(2) to file a list of creditors in an involuntary case	Committee proposal Suggestion 10-BK-L Susan Ivancsics, Court Services Admin, Northern District of Indiana	9/10 - Committee approved as technical amendment, Reporter to draft Committee Note 4/11 - Held in the Bullpen	12/1/12
Rule 1007(b)(7) Allow financial management course provider to file Form 23	Suggestion 09-BK-I Dana C. McWay on behalf of the Next Generation Bankruptcy CM/ECF Clerk's Office Functional Requirements Group	4/10 - Committee considered, referred to Subcommittee on Consumer Issues 8/10 - Subcommittee considered 9/10 - Committee approved 4/11 - Held in the Bullpen	12/1/13
Rule 1014 Cases filed in different districts by a debtor and certain affiliates	Suggestion 10-BK-J Judge Linda Riegle	4/11- Committee agenda	
Rule 2003 Procedure for holding open § 341 meetings to give chapter 13 debtors more time to file tax returns	Suggestion 08-BK-L Judge Keith Lundin	1/09 - Subcommittee on Consumer Issues discussed 3/09 - Committee approved for publication 6/09 - Standing Committee approved for publication 8/09 - Published for public comment 2/10 - Consumer Subcommittee considered comments 4/10 - Committee approved 6/10 - Standing Committee approved 9/10 - Judicial Conference approved	12/1/11
Rule 2015(a)(3) Correct reference to 11 U.S.C. § 704(a)(8).	William Redden, Clerk Eastern District of Virginia	3/11 - Referred to Chair and Reporter	

Rule 2019 Repeal the rule as unnecessary	Suggestion 07-BK-G Loan Syndication and Trading Association, Securities Industry and Financial Markets Association	3/08 - Committee discussed, Chair directed the Assistant Reporter to prepare a review of the case law on Rule 2019 10/08 - Committee discussed, referred to Subcommittee on Business Issues 12/08, 2/09 - Subcommittee prepared revised rule 3/09 - Committee approved revised rule for publication 6/09 - Standing Committee approved for publication 8/09 - Published for public comment 2/10 - Public hearing 2/10 - Business Subcommittee considered comments 4/10 - Committee approved revised amendments 6/10 - Standing Committee approved 9/10 - Judicial Conference approved	12/1/11

Rules 3001(c), 3002.1 (new) Disclosure of postpetition mortgage fees, changes in payment amount, procedure after debtor has completed chapter 13 plan payments	Committee proposal	5/08 - Subcommittee on Consumer Issues discussed 10/08 - Committee considered 12/08 - Consumer Subcommittee prepared revised rules 3/09 - Committee approved revised rules for publication 6/09 - Standing Committee approved for publication 8/09 - Published for public comment 2/10 - Public hearing 2/10 - Consumer Subcommittee considered comments 4/10 - Committee approved revised amendments 6/10 - Standing Committee approved 9/10 - Judicial Conference approved	12/1/11

Rule 3001, Official Form 10 Facilitate identification of stale claims and inadequately documented claims filed after bulk transfer of consumer debts	Suggestion 08-BK-J Judge A. Thomas Small	1/09 - Subcommittee on Consumer Issues discussed 3/09 - Committee approved amendment to Rule 3001(c)(1) for publication with mortgage amendments to Rules 3001, 3002.1 (see above); certification approved, added to pending amendments to Form 10 6/09 - Standing Committee approved for publication 8/09 - Published for public comment 2/10 - Public hearing 2/10 - Consumer Subcommittee considered comments 4/10 - Committee approved republication of revised Rule 3001 and publication of Form 10 with certification 6/10 - Standing Committee approved publication 8/10 - Published for public comment 2/11 - Public hearing 2/11 - Subcommittee considered comments 4/11 - Committee agenda	12/1/12 Rule 3001 12/1/11 Form 10
Rule 3001(c) Discrepancy between the rule and paragraph 7 of instructions for Form 10	Comment 10-BK-02 Linda Spaight AO US Courts, BCAD	3/11 – Forms Subcommittee considered 4/11 - Committee Agenda	12/1/12

Rule 3007(a) Disposition of objections to claims by negative notice	Suggestion 09-BK-H Judge Margaret Dee McGarrity on behalf of the Bankruptcy Judges Advisory Group	1/10 - Subcommittee on Consumer Issues considered 4/10 - Committee discussed, referred to Subcommittee on Consumer issues 8/10 - Subcommittee considered 9/10 - Committee discussed, referred to Subcommittee on Consumer issues 12/10 - Subcommittee considered 4/11 - Committee agenda	12/1/13
Rule 3007(a) Clarify service requirements for objections to claims	Suggestion (09-BK-N) Judge Michael E. Romero on behalf of the Bankruptcy Judges Advisory Group	4/10 - Committee discussed, referred to Subcommittee on Consumer issues 8/10 - Subcommittee considered 9/10 - Committee discussed, referred to Subcommittee on Consumer issues 12/10 - Subcommittee considered 4/11 - Committee agenda	12/1/13
Rule 4004(c)(1)(J) Hearing on reaffrmation agreement	Suggestion 10-BK-K Judge Paul Mannes	4/11 - Committee agenda	

Rules 4004(d), 7001(4) Classification of proceedings to object to or revoke discharge as adversary proceedings; objections to revoke discharge in gap period	Suggestion 08-BK-E Judge Frank Easterbrook Zedan v. Habas, 529 F.3d 398 (7th Cir. 2008)	10/08 - Committee considered, Rule 4004 gap period issues referred to Subcommittee on Consumer Issues, no further action on classification 12/08, 1/09 - Subcommittee prepared revised gap period rule 3/09 - Committee approved revised gap rule for publication 6/09 - Standing Committee approved for publication 8/09 - Published for public comment 2/10 - Comments considered by Consumer Subcommittee 4/10 - Committee approved Rule 4004 gap period amendment 6/10 - Standing Committee approved 9/10 - Judicial Conference approved	12/1/11
Rule 5009(b) Conform rule to amendment to Rule 1007(b)(7)	Committee Proposal (technical amendment)	12/10 - Considered by Consumer Subcommittee 4/11 - Committee agenda	12/1/13
Rule 6003 Issuance of orders during 20-day cooling off period	Suggestion 08-BK-D Bankruptcy Judges Advisory Group	3/08 - Committee discussed 8/08 - Subcommittee on Attorney Conduct and Health Care discussed 10/08 - Committee approved for publication 1/09 - Standing Committee approved for publication 8/09 - Published for public comment 4/10 - Committee approved 6/10 - Standing Committee approved 9/10 - Judicial Conference approved	12/1/11

Rules 7054(b) Time provisions	Committee proposal	10/09 - Committee approved changing 5 days to 7 days, deferred 1-day provision 11/09 - BJAG recommended changing 1 day to 7 days 2/10 - Subcommittee on Business Issues considered 4/10 - Committee approved for publication 6/10 - Standing Committee approved for publication 8/10 - Published for public comment 2/11 - One comment 4/11 - Committee agenda	12/1/12
Rule 7054 Finding that there is a gap in the procedure for requesting allowance of attorney's fees in adversary proceedings	Charlie Y, Inc., v. Carey B.A.P. 9th Cir. (Mar. 4, 2011)	4/11 - Committee agenda	
Rule 7056, Civil Rule 56 Timing of summary judgment motions in contested matters and adversary proceedings after civil rule amended	Judge Wedoff	3/09 - Committee discussed 10/09 - Committee considered, referred to Subcommittee on Consumer Issues 2/10 - Note in newsletters for bankruptcy judges and clerks 3/10 - Subcommittee considered 4/10 - Committee approved for publication 6/10 Standing Committee approved publication 8/10 - Published for public comment 2/11 - No comments 4/11 - Committee agenda	12/1/12

Rules 8001 - 8020 Revise Part VIII of the rules to more closely follow the Appellate Rules	Eric Brunstad	3/08 - Referred to Privacy, Public Access and Appeals Subcommittee 5/08 - Subcommittee discussed 8/08 - Subcommittee discussed 10/08 - Committee discussed 3/09 - Open meeting of Subcommittee on Privacy, Public Access, and Appeals 3/09 - Committee discussed 6/09 - Subcommittee discussed comments at open meeting 9/09 - Subcommittee discussed comments at 2nd open meeting 10/09 - Report to committee 12/09 - Revised draft incorporated comments at 2nd open meeting 2/10 - Subcommittee considered 4/10 - Committee received progress report 8/10, 9/10 - Subcommittee calls 9/10 - Report on Committee agenda 12/10, 2/11 - Subcommittee calls 4/11 - Joint meeting with Appellate Rules Committee	
Rule 8006 Premature filing of appellant's designation of items in the record on appeal	John Shaffer	12/07 - Subcommittee on Privacy, Public Access, and Appeals discussed 2/08 - Considered by subcommittee 3/08 - Committee took no action with the understanding that the issue could be addressed as part of a comprehensive review of the Part VIII rules	

Rules 8007.1 (new), 9023, 9024 Indicative rulings	Committee proposal	8/08 - Subcommittee on Privacy, Public Access, and Appeals discussed 10/08 - Committee tentatively approved new Rule 8007.1 and Rule 9024 amendment for publication 3/09 - Rules 8007.1 and 9024 assigned to the Bull Pen	
Rule 9006(d) Delete as superfluous, not properly located in the Rules, and may create confusion	Suggestion 10-BK-D Judge Raymond T. Lyons	8/10 - Considered by the Subcommittee on Business Issues 9/10 - Committee approved amendments to Rules 9006, 9013, 9014 4/11 - Held in the Bullpen	12/1/13
Rules 9013, 9014 Include the respondent's name in caption of certain types of motions	Suggestion 09-BK-J Judge William Stone, Jr.	4/10 – Committee considered, referred to Subcommittee on Consumer issues 8/10 - Subcommittee considered 9/10 - Committee considered, no further action	
New Rule Automatic dismissal under § 521(i)	Suggestion 06-BK-011 Judge Marvin Isgur Suggestion 06-BK-020 National Association of Consumer Bankruptcy Attorneys	6/07 - Subcommittee on Consumer Issues discussed 9/07 - Committee discussed 2/08 - Considered by Consumer Subcommittee 3/08 - Committee discussed 10/08, 3/09, 10/09 - Committee discussed, Reporter to continue monitoring 4/10 - Committee report 9/10 - Committee report 4/11 - Committee report	

New Rule and Form Applications for allowance of administrative expenses	Suggestion 09-BK-J Judge William Stone, Jr.	4/10 - Committee considered, referred to Subcommittee on Business Issues 8/10 - Subcommittee considered 9/10 - Committee discussed, referred to Business Subcommittee 3/11 - Subcommittee discussed 4/11 - Committee agenda	
New Rule Reports by trusts under § 524(g)	Suggestion 10-BK-H Institute for Legal Reform, an affiliate of the U.S. Chamber of Commerce	3/11 - Business Subcommittee discussed 4/11 - Committee agenda	
New Rule Provide more clarity in the selection for creditors' committees and to discourage unethical behavior by counsel	Judge Thomas W. Waldrep, Jr.	4/11 - Committee agenda	
New Rule Publication of notice of the sale of estate assets	Suggestion 10-BK-F Douglas M. Neistat	3/11 - Business Subcommittee discussed 4/11 - Committee agenda	
New Rule Admission to practice and local counsel requirements for governmental entities	Suggestion 10-BK-M States' Association of Bankruptcy Attorneys	4/11 - Committee agenda	

New Rule Eliminate unneeded regular mailings in bankruptcy cases	David Andersen	4/11 - Committee agenda	
All Official Forms Add a bar code indicating the form number	Suggestion 10-BK-E Scooter LeMay IT Director, Middle District of Alabama	2/11 - Forms Subcommittee considered 4/11 - Committee agenda	
Official Form 1 Conform to Rule 1004.2 (technical amendment)	Committee Proposal	7/10 - Subcommittee on Forms considered 8/10 - Committee approved, referred to Forms Subcommittee for final review 2/11 - Subcommittee reviewed 4/11 - Held in the Bullpen	12/1/11
Official Form 6C Extent of claimed exemption, Schwab v. Reilly	Judge Eugene Wedoff	7/09 - Subcommittee on Consumer Issues considered 10/09 - Committee discussed 4/10 - Committee discussed 6/10 - Supreme Court decision 8/10 - Consumer and Forms Subcommittees considered 9/10 - Committee considered, referred to Consumer, Forms Subcommittees 10/10 - Subcommittees considered 4/11 - Committee agenda	12/1/12
Official Form 7 Revise definition of an "insider"	Suggestion 10-BK-I Aaron Cahn	2/11- Subcommittee on Forms considered 4/11 - Committee agenda	

Official Form 9(A - I) Conform to Rule 2003(e) amendment, fix typos	Committee Proposal	7/10 - Subcommittee on Forms considered 9/10 - Committee approved as technical amendment, referred to Forms Subcommittee for final review 2/11 - Subcommittees reviewed 4/11 - Held in the Bullpen	12/1/11
Official Form 10, Rule 3001 Inconsistency on attachment of original papers, highlight the word "redacted"	Committee proposal Suggestion 10-BK-C Terese Buthod, Clerk, Eastern District of Oklahoma	7/09 - Subcommittee on Forms considered 10/09 - Committee considered 3/10 - Forms Subcommittee considered 4/10 - Committee approved for publication 6/10 - Standing Committee approved for publication 8/10 - Published for public comment 2/11 - Forms Subcommittee considered comments 4/11 - Committee agenda	12/1/11
Official Form 10, Rule 3001 Revise Form 10 certification to deter stale claims	Suggestion 08-BK-J Judge A. Thomas Small Committee proposal	1/09 - Subcommittee on Consumer Issues discussed 3/09 - Committee approved revised certification, added to pending amendments to Form 10 (see above)	12/1/11
Official Form 10 Use of pronouns	Committee proposal	10/09 - Referred to Subcommittee on Forms and included in pending amendments to Form 10 (see above)	12/1/11
Official Form 10 Interest rate for secured tax claims	Christopher Kohn	7/09 - Subcommittee on Forms considered 10/09 - Committee approved variable interest rate language to be included in revised Form 10 (see above)	12/1/11

Official Form 10 Space for claim identifier	Suggestion 09-BK-K George Stevenson, chapter 13 trustee	7/09 - Subcommittee on Forms considered 3/10 - Subcommittee on Consumer Issues considered revised suggestion 4/10 - Committee approved for publication as part of Form 10 amendments (see above)	12/1/11
Official Form 10 Add space for a date stamp	Suggestion 10-BK-B Rena Myers, case administrator, Eastern District of Tennessee	3/10 - Subcommittee on Consumer Issues considered revised suggestion 4/10 - Committee approved for publication as part of Form 10 amendments (see above)	12/1/11
Official Forms 10 (Attach. A), 10 (Suppl. l) 10 (Suppl. 2) New forms to address problems related to home mortgage claims	Suggestion 08-BK-K Judges Isgur, Magner, and Bohm	3/09 - Committee discussed, referred to Subcommittee on Forms 8/09 - Court posts revised forms after public comment 7/09 - Subcommittee considered 10/09 - Committee discussed, referred to Forms subcommittee 12/09 - Judge Isgur testified 3/10 - Subcommittee considered draft forms 4/10 - Committee approved for publication 6/10 - Standing Committee approved for publication 8/10 - Published for public comment 2/11 - Public hearing 2/11 - Subcommittee considered 4/11 - Committee agenda	12/1/11

Official Forms 22A, 22C Deducting IRS car ownership expense for a car owned outright, Ransom v. FIA Card Servs.	Mark Redmiles, EOUST	2/11 - Forms Subcommittee considered 4/11 - Committee agenda	12/1/12
Official Forms 22A, 22C Deducting telecommunications expenses by debtor who is not self-employed	William J. Neild Comment 09-BK-032	4/10 - Committee discussed, referred to Subcommittee on Consumer Issues 8/10 - Subcommittee considered 9/10 - Committee discussed, referred to Forms Subcommittee 2/11- Subcommittee considered 4/11 - Committee approved, referred to Forms Subcommittee for final review 2/11 - Subcommittee reviewed 4/11 - Held in the Bullpen	12/1/12
Official Form 22A, Interim Rule 1007-I Exclusion from means test for Reservists and members of National Guard - Pub. L. 110-438 - expires 3 years from 12.19.08	Carl Barnes, Best Case		
Official Form 22C Calculation of projected disposable income under § 1325(b)(1), Hamilton v. Lanning	Judge Eugene Wedoff	4/10 - Committee discussed 6/10 - Supreme Court decision 8/10 - Consumer and Forms Subcommittees considered 9/10 - Committee approved, referred to Consumer, Forms Subcommittees for final review 2/11- Subcommittees reviewed 4/11 - Held in the Bullpen	12/1/12

Official Form 23 Conform to amendment to Rule 1007(b)(7)	Committee Proposal	9/10 - Committee discussed, referred to Forms Subcommittee for final review 2/11- Subcommittee reviewed 4/11 - Held in the Bullpen	12/1/13
Official Form 25A Change effective date from 11 business days after entry of confirmation	Committee proposal	10/09 - Referred to Subcommittee on Business Issues 2/10 - Subcommittee considered 4/10 - Committee approved for publication 6/10 - Standing Committee approved for publication 8/10 - Published for public comment 2/11 - No comments 4/11 - Committee agenda	12/1/11
New Form Form chapter 13 plan	Suggestion 10-BK-G Judge Margaret Mahoney Comment 10-BK-M States' Association of Bankruptcy Attorneys (SABA)	2/11 - Consumer and Forms Subcommittees discussed 4/11 - Committee agenda	
New Form Create an Official Form or rule for corporate and partnership debtors filing schedules of current income and expenditures	Debbie Lewis Deputy Clerk, Southern District of Florida	7/10 - Subcommittee on Business issues considered 9/10 - Committee considered, no further action	
Director'sForm 240A/B(Alt.) Conform to Bankruptcy Technical Corrections Act of 2010	Committee Proposal	2/11 - Forms Subcommittee reviewed 4/11 - Held in Bullpen	12/1/11

Official Forms Alternatives to paper-based format for forms; renumber Official Forms	Judge James D. Walker, Jr. Comment 06-BK-011 Judge Marvin Isgur Patricia Ketchum	9/06 - Committee will coordinate a study with the Administrative Office 8/07 - Discussion of how to organize the study 9/07 - Committee discussed and authorized chair to create group 1/08 - Organizational meeting for Forms Modernization Project 2008 /2009/2010 - Forms Modernization Project continues work, meetings in January, June 9/10 - Statement of Financial Affairs drafting session 9/10 - Progress report on agenda 10/10 - Form 22 drafting session 4/11 – Progress report on agenda	

TAB 25-27

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April 2012						
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May 2012						
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March 2012

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4	5	6	7	8	9	10
11 Daylight Savings Begins Spring Forward.	12	13	14	15	16	17 St. Patrick's Day
18	19	20 Spring Begins	21	22	23	24
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						U.S. Federal Holidays are in Red.

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