ADVISORY COMMITTEE
ON
BANKRUPTCY RULES

Charleston, SC
September 29-30, 2014

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ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of September 29-40, 2014
Charleston, S.C.

Introductory Items

1. Greetings and expression of appreciation for Judge Eugene Wedoff, Judge Elizabeth Perris, Michael St. Patrick Baxter, Esquire, and David Lander, Esquire. Welcome to Judge Stuart M. Bernstein, Judge Dennis R. Dow, Judge Benjamin Goldgar, Jeffery J. Hartley, Esquire, Thomas Moers Mayer, Esquire. (Judge Wedoff, Judge Ikuta, Professor Gibson)

2. Approval of minutes of Austin meeting of April 22-23, 2014. (Judge Wedoff)

   ● Draft minutes.

3. Oral reports on meetings of other committees:

   (A) May 2014 meeting of the Committee on Rules of Practice and Procedure. (Judge Wedoff, Professor Gibson and Professor McKenzie)

   ● Draft minutes of the May 2014 Standing Committee meeting.

   (B) Intercommittee - CM/ECF Subcommittee. (Judge Wedoff, Professor Gibson)

   ● Memo of September 2, 2014 by Professor Gibson.

   (C) June 2014 meeting of the Committee on the Administration of the Bankruptcy System. (Judge Wedoff, Judge Bernstein, Judge Smith)

   (D) Spring 2014 meeting of the Advisory Committee on Civil Rules and hearing on rules published for comment. (Judge Harris)

   (E) April 2014 meeting of the Advisory Committee on Appellate Rules. (Judge Jordan)

   (F) Bankruptcy Next Generation of CM/ECF Working Group. (Judge Perris)

Subcommittee Reports and Other Action Items

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

   (A) Suggestion 14-BK-B from CACM to amend various rules regarding redaction of private information in closed cases. (Judge Harris and Professor Gibson)

● Memo of August 19, 2014 by Professor Gibson.

(B) Report concerning Suggestion 12-BK-I by Judge John E. Waites (on behalf of the Bankruptcy Judges Advisory Group) to amend Rule 1006(b) to provide that courts may require a minimum initial payment with requests to pay filing fees in installments. (Judge Harris, Professor Gibson and Molly Johnson)

● Memo of August 21, 2014 by Professor Gibson.
● Memo of August 7, 2014 by Ms. Johnson.
● Appendix, Local Bankruptcy Court Procedures on Initial Installment Payments.

(C) Report concerning Suggestion 12-BK-M by Judge Scott W. Dales to amend Rule 2002(h) to mitigate the cost of giving notice to creditors who have not filed proofs of claim. Placed in dugout at fall 2013 meeting pending receipt of comments on the Chapter 13 Plan Form and related rules amendments. (Judge Harris and Professor McKenzie)

● Memo of August 20, 2014 by Professor McKenzie.

(D) Oral report concerning suggestion 11-BK-N by David Yen regarding fee waiver forms for fees other than filing fees. (Judge Harris and Professor Gibson).

(E) Oral report concerning suggestion 13-BK-G that Rule 1015(b) be changed to use the word "spouse"; approved at the spring 2014 meeting (revisions needed to Committee Note when a decision is made to go forward with recommended change). (Judge Harris and Professor Gibson).

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

(A) Suggestion 14-BK-A by Mike Bates Senior Company Counsel, Wells Fargo, to amend Rule 3002.1 to address notices related to home equity loans and lines of credit; additional proposed amendments to Rule 3002.1 including (i) suggestion to add procedures for objecting to notice of payment changes; (ii) suggestion for declaring mortgage current when no arrearage is provide for in the chapter 13 plan; (iii) suggestion to clarify whether court approved charges must be reported; and (iv) whether the claims docket should continue to be used for filing notices of fees and expenses. (Judge Harris and Professor Gibson)

● Memo of August 19, 2014, by Professor Gibson.

(B) Suggestion from the NACTT Mortgage Liaison Committee for proposed forms to implement Rule 3002.1(f) and (g). (Judge Harris and Professor Gibson)

- Memo of August 22, 2014, by Professor Gibson.

(C) Suggestion 14-BK-C from Professor Timothy Tarvin to amend Form 201A to provide pre-filing notice of the privilege against self-incrimination in consumer bankruptcy cases. (Professor McKenzie)

- Memo of August 19, 2014, by Professor McKenzie.

6. Report by the Subcommittee on Forms and the Forms Modernization Project. (Judge Perris, Professor Gibson, Mr. Myers, Ms. Healy)

(A) Report on the status of the Forms Modernization Project; clean up issues pertaining to the means test forms; proposed technical changes to previously approved individual debtor forms; renumbering modernized Official Forms 3A, 3B, 6I, 22A-1, 22A-1Supp, 22A-2, 22B, 22C-1, 22C-2, and renumbering proposed Official Form 112, *Debtor's Statement of Intention for Individuals Filing Under Chapter 7*, to 108.

- Memo of August 25, 2014, by Judge Perris.
- Memo of August 26, 2014, by Judge Wedoff.
- Memo of August 14, 2014, by Mr. Myers and Ms. Healy.

- Proposed Official Forms 103A, 103B, 106I, 108, 122A-1, 122A-1Supp, 122A-2, 122B, 122C-1, 122C-2; Committee Notes.

- Modernized Bankruptcy Forms Numbering Conversion Chart.

(B) Oral report regarding small business forms. (Judge Perris and Professor Gibson).

7. Report by the Subcommittee on Business Issues. (Judge Bernstein, Professor Gibson, Professor McKenzie)

(A) Recommendation concerning *Stern* amendments to Rules 7008, 7012, 7016, 9027, and 9033—previously approved by the Judicial Conference, but withdrawn from presentation to the Supreme Court in light of the pending *Arkison* matter. (Judge Bernstein and Professor McKenzie)

- Memo of August 20, 2014, by Professor McKenzie.

(B) Recommendation concerning suggestion 12-BK-I by Judge Stuart Bernstein, regarding Forms 9F and 9F(Alt.) and § 1141(d)(6)(a), that the forms be amended to deal with complaints to deny discharge for a debt "of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit." (Judge Bernstein and Professor Gibson)

- Memo of August 27, 2014, by Professor Gibson.
- Official Form 309.

(C) Suggestion by David Lander at Agenda Item 14 of the spring 2014 meeting agenda for a rule change to address limiting notice in large cases for motions that do not impact all creditors. (Judge Bernstein and Professor McKenzie)

- Memo of August 20, 2014, by Professor McKenzie.

(D) Suggestion by Judge Harris to update Bankruptcy Rule 1001 to track pending changes to Civ. Rule 1. (Professor Gibson)

- Memo of August 16, 2014 by Professor Gibson.

8. Report by the Subcommittee on Privacy, Public Access, and Appeals. (Judge Jordan, Professor Gibson, and Professor McKenzie)

(A) Suggestion 12-BK-H by Alan Resnick to amend Rule 8013 to allow an appellate body to treat a bankruptcy court's judgment, order or decree as proposed findings and conclusions if there is a constitutional issue in the bankruptcy court's ruling. (Judge Jordan and Professor McKenzie)

- Memo of August 19, 2014, by Professor McKenzie.

(B) Status report concerning issues pending in (1) the bullpen – amendments previously approved for publication to Rules 8002, 8006 (at the fall 2013 Advisory Committee meeting), and to 8023 (at the spring 2014 meeting); and (2) the dugout – consideration of Comments 12-BK–005, 12-BK-015, 12-BK040 regarding designation of the record in bankruptcy appeals. (Judge Jordan and Professor Gibson)

- Memo of August 17, 2014, by Professor Gibson.

9. Report by the Subcommittee on Technology and Cross Border Insolvency. (Mr. Baxter)

No Activity.

10. Report by the Subcommittee on Attorney Conduct and Health Care. (Judge Jonker and Professor McKenzie)

    (A) Status report concerning the Subcommittee's consideration of Suggestion 13-BK-C by the American Bankruptcy Institute's Task Force on National Ethics Standards to amend Rule 2014 to specify the relevant connections that must be described in the verified statement accompanying an application to employ professionals. (Judge Jonker and Professor McKenzie)

    ● Memo of August 21, 2014, by Professor McKenzie.

Information Items

11. Recommended revisions to proposed chapter 13 plan form. (Judge Wedoff)

    ● Memo of September 4, 2014 by Judge Wedoff.
    ● Redline version of Proposed Official Form 113.

12. Oral update on opinions interpreting section 109(h) of the Bankruptcy Code. (Professor Gibson)

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

14. *Bullpen.* (Mr. Myers): The following items have been approved for submission to the Committee on Practice and Procedure in the future:

    (A) Proposed revisions to Rule 8002(a)(5) in response to Comment 12-BK-033. *Approved at the fall 2013 Advisory Committee meeting) See Agenda Item 8(B);*

    (B) Proposed revisions to Rule 8006(b) in response to Comment 12-BK-033. *Approved at the fall 2013 Advisory Committee meeting. See Agenda Item 8(B);*

    (C) Proposed revisions to Rule 8023. *Approved at the spring 2014 Advisory Committee meeting. See Agenda Item 8(B);*

    (D) Suggestion 13-BK-G that Rule 1015(b) be changed to use the word "spouse"; Approved at the spring 2014 meeting (revisions needed to Committee Note when a decision is made to go forward with recommended change). *See Agenda Item 4(E).*

15. *Dugout*. Suggestions and issues deferred for future consideration.

(A) Recommendation concerning Suggestion 11-BK-N by David S. Yen for fee waiver forms addressing fees other than the chapter 7 filing fee. *See Agenda Item 4(D);*

(B) Suggestion 12-BK-M by Judge Scott Dales to amend Rule 2001(h) to mitigate the cost of giving notice to creditors who have not filed proof of claim. *Placed in dugout at fall 2013 meeting pending receipt of comments on the Chapter 13 Plan Form and related rules amendments, See Agenda Item 4(C);*

(C) Comments 12-BK–005, 12-BK-015, 12-BK040 regarding designation of the record in bankruptcy appeals. *See Agenda Item 8(B).*

16. Future meetings: Spring 2015 meeting, April 21-22 in Pasadena, California. Possible locations for the fall 2015 meeting.

17. New business.

18. Adjourn.

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Honorable Stuart M. Bernstein United States Bankruptcy Court Alexander Hamilton Custom House One Bowling Green, Room 729 New York, NY 10004-1408	**Honorable Dennis R. Dow (Starting 10.01.14)** United States Bankruptcy Court Charles Evans Whittaker United States Courthouse 400 East Ninth Street, Room 6562 Kansas City, MO 64106

Honorable A. Benjamin Goldgar (Starting 10.01.14) United States Bankruptcy Court Everett McKinley Dirksen United States Courthouse 219 South Dearborn Street, Room 638 Chicago, IL 60604	**Honorable Arthur I. Harris** United States Bankruptcy Court Howard M. Metzenbaum United States Courthouse 201 Superior Avenue, Room 148 Cleveland, OH 44114-1238
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Advisory Committee on Bankruptcy Rules

Subcommittee/Liaison Assignments, Effective August 7, 2014

Subcommittee on Consumer Issues Judge Arthur I. Harris, Chair Judge Sandra Segal Ikuta David A. Lander, Esq. Jill Michaux, Esq. Richardo I. Kilpatrick, Esq. Professor Edward R. Morrison James J. Waldron, *ex officio* Ramona D. Elliott, Esq., *EOUST liaison*	**Subcommittee on Business Issues** Judge Stuart M. Bernstein, Chair Judge Jean C. Hamilton Judge Robert James Jonker Judge Amul R. Thapar Matthew Troy, Esq. Michael St. Patrick Baxter, Esq. David A. Lander, Esq. Professor Edward R. Morrison James J. Waldron, *ex officio* Ramona D. Elliott, Esq., *EOUST liaison*
Subcommittee on Forms Judge Elizabeth L. Perris, Chair Judge Dennis R. Dow, Chair (eff.10.1.14) Judge Arthur I. Harris Matthew Troy, Esq. Jill Michaux, Esq. Richardo I. Kilpatrick, Esq. James J. Waldron, *ex officio* Ramona D. Elliott, Esq., *EOUST liaison* Patricia S. Ketchum, Esq., *Consultant*	**Forms Modernization Project** Judge Elizabeth L. Perris, Chair Judge Dennis R. Dow, Chair (eff.10.1.14) Judge Arthur I. Harris Matthew Troy, Esq. Richardo I. Kilpatrick, Esq. James J. Waldron, *ex officio* Ramona D. Elliott, Esq., *EOUST liaison* Patricia S. Ketchum, Esq., *Consultant*
Subcommittee on Privacy, Public Access and Appeals Judge Adalberto Jordan, Chair Judge Sandra Segal Ikuta Judge Amul R. Thapar Judge Elizabeth L. Perris Matthew Troy, Esq. Michael St. Patrick Baxter, Esq. David A. Lander, Esq. Ramona D. Elliott, Esq., *EOUST liaison*	**Subcommittee on Style** Judge Sandra Segal Ikuta, Chair Judge A. Benjamin Goldgar (eff. 10.1.14) Judge Amul R. Thapar Judge Arthur I. Harris Matthew Troy, Esq. David A. Lander, Esq. Michael St. Patrick Baxter, Esq.

August 7, 2014

Subcommittee on Attorney Conduct and Healthcare Judge Robert James Jonker, Chair Judge Amul R. Thapar Judge Jean C. Hamilton Judge Arthur I. Harris Jill Michaux, Esq. Ramona D. Elliott, Esq., *EOUST liaison*	**Subcommittee on Technology and Cross Border Insolvency** Michael St. Patrick Baxter, Esq., Chair Judge Sandra Segal Ikuta Judge Adalberto Jordan Judge Arthur I. Harris Professor Edward R. Morrison Ramona D. Elliott, Esq., *EOUST liaison*
Appellate Rules Liaison: Judge Adalberto Jordan ---------- **Civil Rules Liaison:** Judge Arthur I. Harris	**Evidence Rules Liaison:** Vacant (formally Judge Wizmur) ---------- **CM/ECF Working Group and CM/ECF Next Gen Liaison:** Judge Elizabeth L. Perris

August 7, 2014

TAB 2

DRAFT

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of April 22 - 23, 2014
Austin, Texas

The following members attended the meeting:

Bankruptcy Judge Eugene R. Wedoff, Chair
Circuit Judge Sandra Segal Ikuta
Circuit Judge Adalberto Jordan
District Judge Jean Hamilton
District Judge Robert James Jonker
District Judge Amul R. Thapar
Bankruptcy Judge Arthur I. Harris
Bankruptcy Judge Elizabeth L. Perris
Bankruptcy Judge Judith H. Wizmur
Professor Edward R. Morrison (by phone)
Michael St. Patrick Baxter, Esquire
Richardo I. Kilpatrick, Esquire
J. Christopher Kohn, Esquire
David A. Lander, Esquire
Jill Michaux, Esquire

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
Professor Troy A. McKenzie, assistant reporter
Roy T. Englert, Jr., Esq., liaison from the Committee on Rules of Practice and Procedure (Standing Committee)
Jonathan Rose, Secretary, Standing Committee, and Rules Committee Officer
Ramona D. Elliott, Deputy Director /General Counsel, Executive Office for U.S. Trustees (EOUST)
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
Benjamin Robinson, Deputy Rules Committee Officer and Counsel to the Rules Committees (by phone)
Scott Myers, Administrative Office
Bridget Healy, Administrative Office
Molly Johnson, Federal Judicial Center
Professor Nancy B. Rappaport, William S. Boyd School of Law, UNLV
Michael T. Bates, Senior Company Counsel, Wells Fargo
Margaret Burks, President, National Association of Chapter 13 Trustees
Jon M. Waage, Chapter 13 Trustee, Middle District of Florida
Raymond J. Obuchowski, National Association of Bankruptcy Trustees

Debra L. Miller, Chapter 13 Trustee, Northern District of Indiana
Patricia Ketchum, consultant to the Committee
Michael McCormick, McCalla Raymer LLC, Atlanta, GA
Daniel West, South & Assoc., St. Louis, MO
Anita Warner, Chase Mortgage Banking
Steve Turner, Barrett, Daffin, Frappier, Turner and Engel, Austin, TX

The following summary of matters discussed at the meeting of the Advisory Committee on Bankruptcy Rules (the Committee) was 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. An electronic copy of the agenda materials is available at http://www.uscourts.gov/RulesAndPolicies/rules/archives/agenda-books/committee-rules-bankruptcy-procedure.aspx.

Introductory Items

1. Greetings and expression of appreciation for Judge Judith H. Wizmur and Christopher Kohn.

The Chair welcomed the group and the participants introduced themselves. The Chair advised that Judge Wizmur and Christopher Kohn will be retiring. He recounted their work for the Committee, adding that Mr. Kohn served over 20 years on the Committee and that Judge Wizmur is retiring before the end of her term on the Committee. He stated that Judge Wizmur not only served as a bankruptcy judge in the District of New Jersey but that she was also very involved with her community, including her former law school, Rutgers School of Law. The Chair specifically noted Mr. Kohn's work in communicating with the many sections of the Department of Justice and his insightful and useful comments. He thanked them both for their commitment to the Committee. The Chair introduced Judge Sandra Ikuta as the next Chair of the Committee.

2. Approval of minutes of Minneapolis meeting of September 24 - 25, 2013.

The draft minutes from the meeting of September 24-25, 2013, were approved. The minutes were included at Tab 1 of the main agenda materials.

3. Oral reports on meetings of other committees:

(A) January 2014 meeting of the Committee on Rules of Practice and Procedure, including decision to table proposed amendments to Rules 7008, 7012, 7016, 9027, and 9033 (*Stern*-related rules).

The Chair reported on the actions taken at the January 2014 meeting of the Committee on Rules of Practice and Procedure (the Standing Committee), stating that the Advisory Committee presented a number of explanatory bankruptcy items. He also explained that the *Stern*-related rules were withdrawn before being presented to the Supreme Court despite approval by the Standing Committee and Judicial Conference. This decision was based on the Court's grant of certiorari last summer in *Executive Benefits Insurance Agency v. Arkison* (Docket No. 12-1200), which was heard by the Court in January. Depending on how the case is decided, the rules may come before the Committee again.

The Chair continued that an issue discussed by the Standing Committee was the elimination of the 3-day extension rule for electronic service and whether this should be eliminated for other types of service. The draft minutes of the January 3 - 4, 2013, Standing Committee meeting were included at Tab 2 of the main agenda materials.

(B) Intercommittee - CM/ECF Subcommittee.

The Chair explained that the issues of the elimination of the 3-day service extension and electronic signatures would be discussed by the Committee later in the meeting.

(C) January 2014 meeting of the Committee on the Administration of the Bankruptcy System.

Judge Erithe Smith could not attend the meeting so the report was presented by the Chair. He stated that there were several issues discussed at the Bankruptcy Committee meeting, including the waiver of reopening fees for individual chapter 11 cases, the fee associated with reopening a case to redact privacy-related information, and fee increases. The Chair advised that the issues of fees associated with reopening a case to redact information and fee increases would be discussed by the Committee later in the meeting.

(D) November 2013 meeting of the Advisory Committee on Civil Rules and hearings on rules published for comment.

Judge Arthur Harris stated that the Advisory Committee on Civil Rules (Civil Rules Committee) had meetings in November 2013 and April 2014, as well as several public hearings. At the April meeting in Portland, OR, the first half of the meeting was a symposium dedicated to Judge Mark R. Kravitz, and there were a number of presentations in his honor. The second half of the meeting was to discuss the published rules regarding discovery, as well as the statement of purpose in Civil Rule 1. There were over 2,300 comments received, and many people testified at the hearings. The Civil Rules Committee determined to make few changes from the proposals that were published in 2013. The major change was to withdraw amendments that would tighten presumptive numerical limits on some forms of discovery. The Chair advised that the Advisory Committee on Bankruptcy Rules is holding open the possibility of amending Rule 1001 to be

consistent with the proposed amendment of Civil Rule 1.

Judge Harris continued that the Civil Rules Committee approved the elimination of the civil forms as a result of several Supreme Court decisions. The forms will be retained for historic reference but will no longer be used in practice. The Chair noted that the differences between bankruptcy and civil forms were discussed at the Standing Committee meeting, and that the Standing Committee was aware that bankruptcy is a forms-driven practice. Judge Harris concluded his discussion of the Civil Rules Committee meeting by explaining that the Civil Rules Committee decided to narrow Rule 37(e) regarding penalties associated with electronically preserved records.

(E) October 2013 meeting (rescheduled to April 2014) of the Advisory Committee on Evidence.

Judge Harris reported that there was a meeting of the Advisory Committee on Evidence earlier this month preceded by a symposium on the use of technology in courts. The symposium materials will be published in the Fordham Law Review.

(F) October 2013 meeting of the Advisory Committee on Appellate Rules.

Judge Adalberto Jordan advised that the fall meeting of the Advisory Committee on Appellate Rules was canceled.

(G) Bankruptcy Next Generation of CM/ECF Working Group.

Judge Elizabeth Perris stated that she would provide the report as part of her Forms Modernization Project (FMP) report later in the Committee meeting.

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues.

(A) Recommendation concerning Suggestion 11-BK-N by David S. Yen for fee waiver forms addressing fees other than the chapter 7 filing fee.

Judge Harris discussed the subcommittee's recommendation regarding the suggestion to create additional forms for fee waivers for parties other than chapter 7 debtors. A memo dated March 10, 2014 was included in Tab 3A of the main agenda materials. He stated that the revised fee waiver guidelines were approved but not yet issued by the Judicial Conference, so the issue was premature. The revised guidelines do not provide guidance on fee waiver for parties other than chapter 7 debtors. The issue will be placed in the dugout for later consideration.

The Chair explained the Committee's use of baseball terminology to describe certain actions. The "bullpen" is an action that the Committee determined should go forward but at a later time, whereas the "dugout" is something that should be considered by the Committee, but other events must conclude before the issue can be considered.

(B) Recommendation concerning Suggestion 13-BK-G by Gary Streeting that Rule 1015(b) be changed to use the word "spouse" instead of "husband" and "wife."

Judge Harris discussed the next suggestion considered by the subcommittee, that Rule 1015(b) be amended to change the reference from "husband and wife" to "spouse." A memo dated March 24, 2014, was included at Tab 3B of the main agenda materials. Judge Harris explained that there are two such references in Rule 1015(b). The subcommittee recommended that the references be changed; however, there was a disagreement over the timing of the language change. Judge Harris explained that the first reference in Rule 1015(b) was to joint administration and that this language deviates from the language used in the relevant provision of the Bankruptcy Code. The second reference in Rule 1015(b) follows language in the Bankruptcy Code regarding exemptions and could involve state law. The subcommittee discussed the issue and decided that it was something for the Committee to determine.

Judge Harris stated that there are several options with regard to the timing of the change in language: first, the change could be made immediately to comply with Supreme Court precedent; second, leave the language as "husband and wife" and permit courts to interpret this as "spouse"; third, consider the possibility that the Supreme Court will make a change to the law in the near future; or fourth, add language to the Committee Note to explain that the gender neutral term was adopted to permit the recognition of same-sex marriages but that it was not a statement on the law.

A motion was made to change the reference from "husband and wife" to "spouse" in both instances in the rule. A grammar suggestion was made and will be considered by the Style Subcommittee. The motion was approved unanimously.

Next, members discussed the impact of the Supreme Court's ruling in *United States v. Windsor*, 570 U.S. 12 (2013), with several members noting that the ruling dealt with federal rights and the second change to Rule 1015 about exemptions may implicate state rights. Several members noted that the right to choose state exemptions was a federal right, while others voiced concern about changing the rules in a way that did not match the language in the Code.

Judge Harris suggested that the Committee Note option be used only if the change to Rule 1015 was made immediately. He pointed out that the issue may be more clearly established in a year, and it may make sense maintain it in the bullpen. A motion was made to approve the delay in the implementation of the language change. The motion passed 7-4. The Chair clarified that any change to the Committee Note will be held until the language is put into effect.

(C) Oral report concerning Suggestion 12-BK-I by Judge John E. Waites (on behalf of the Bankruptcy Judges Advisory Group) to amend Rule 1006(b) to provide that courts may require a minimum initial payment with requests to pay filing fees in installments.

Judge Harris advised the group that this issue has been under consideration for some time, and that at the Committee's request, the Federal Judicial Center (FJC) was completing a research study on installment payments. More time is needed to complete the study, and Molly Johnson (of the FJC) should be able to report on the conclusion of the study in at the fall 2014. Ms. Johnson provided some detail regarding the FJC study, noting that over 30 percent of bankruptcy courts require some minimum payment with applications to pay in installments.

(D) Oral report concerning Suggestion 12-BK-M by Judge Scott W. Dales to amend Rule 2002(h) to mitigate the cost of giving notice to creditors who have not filed proofs of claim.

Judge Harris explained that Rule 2002(h) currently applies in chapter 7 cases and permits a court to limit notice to certain parties. The suggestion was to apply a similar provision for chapter 13 cases. It has been suggested that the Committee review all noticing requirements in the rules to consider any needed changes, and the subcommittee proposed that this issue be given consideration as part of that review project which will take place over the next few years. The Committee agreed to place this item in the dugout.

5. Report by the Chapter 13 Plan Form Working Group, and, with respect to Rule 9009, the Forms Subcommittee.

(A) Recommendation regarding proposed chapter 13 plan form (Official Form 113), and proposed amendments to Bankruptcy Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009.

The Assistant Reporter led the discussion, referring to the memo dated April 2, 2014, at Tab 4A and the proposed Official Form 113 in the appendix. A revised Committee Note was circulated via email prior to the meeting. He stated that the plan form received a large number of comments, including many comments objecting to the idea of a national form. The Working Group deliberated on whether to abandon the plan form or propose it as an optional Director's Form, but concluded that the plan form should go forward as an Official Form to provide for greater uniformity in chapter 13 practice. The Working Group proposed a number of significant changes to the published plan form in response to the comments.

The Assistant Reporter summarized the options available to the Committee with regard to the next step for the plan form and related rule amendments: (1) approve the recommendation of

the Working Group to republish the form and seek final approval of the rules now in the hope that both the rules and form would go into effect in 2015; (2) end work on the form as an Official Form and instead approve it as a Director's Form but go forward with the rule amendments; (3) approve the form as a Director's Form but do not go forward with the rule amendments; or (4) go forward with the republication of the form as an Official Form and delay consideration of the final approval of the rule amendments, with a view to revisiting the adoption of both the rules and the form, and the issue of effective dates, in the spring of 2015 after additional public comments are received.

He provided some background to the development of the plan form. The Committee received suggestions to create a national form plan, and following the Supreme Court's decision in *United Student Aid Funds, Inc. v. Espinosa,* 130 S. Ct. 1367 (2010), a working group was formed to consider a plan form. The Working Group initially surveyed chapter 13 practice and surveyed bankruptcy judges regarding the content of any local forms and any needed rule amendments. A mini-conference held by the Working Group was attended by many judges, practitioners, representatives of large and small creditors, and representatives of debtors and trustees. The draft plan form was revised substantially based on the meeting, and after further revisions by the Working Group, the plan form was published in August 2013.

The Assistant Reporter reviewed the comments submitted on the plan form. The biggest concern was the impact on the freedom of debtors to propose chapter 13 plans and on the authority of bankruptcy judges to adjudicate and administer chapter 13 cases. For example, many comments were submitted regarding the plan form option (through checkboxes) for a debtor to make ongoing payments directly to secured creditors rather than through the "conduit" of a chapter 13 trustee. The comments from districts that require conduit payments expressed concern that the plan form would disrupt long-standing district practice. The Working Group considered these comments but affirmed its view that the form neither restricted a debtor's ability to propose a plan nor mandated that a court accept an option chosen by a debtor that is not permissible in that district. To clarify this point, an explicit warning was added to the revised form that the presence of an option on the form did not indicate that the option was appropriate for the debtor or permissible in the debtor's district.

Another set of concerns was the length and complexity of the form, the increased cost to debtors in the form of attorneys' fees to complete the form and the increased amount of time for courts to review the form. Again the Working Group considered these comments, but concluded that the length of the form was less of an issue given that parts of the form did not need to be reproduced if the debtor did not include information in a particular section. The Working Group decided to include a partially collapsed form showing the length of a typical plan form as part of the package of materials for republication. As for increased complexity, the Working Group considered that Debra Miller stated in her comment and testimony that the Northern District of Indiana adopted the draft plan form a year ago and that she has not seen confusion or increased litigation as a result.

Commenters voiced concern about whether it was advisable to limit local practices and nationalize the chapter 13 process as local practices were both valuable and inevitable. The Working Group debated these concerns, but continued to see value in encouraging more uniform chapter 13 procedures in that it will allow for the development of lower cost software programs and for better continuing legal education for chapter 13 attorneys. Also, more uniformity would encourage clarification of questions of law in chapter 13 cases, because judicial opinions would not relate solely to the specific local form used in a particular court. The plan form would not be incompatible with local variations; those types of variations could be set forth in the form rather than eliminated. The form is not intended to provide substantive rules regulating what may or may not be proposed in chapter 13 plans; rather it simply provides for the orderly presentation of information in those plans.

A final type of concern was the impact of the plan form on the overall chapter 13 practice and a perceived attempt by the Committee to nationalize the consumer bankruptcy bar. The bankruptcy judges in some districts opposed the plan form on this basis. The objections raised in these comments were considered seriously by the Working Group, but the Assistant Reporter noted that this was a small percentage of the total number of bankruptcy judges and that several comments pointedly disagreed with these comments. Other areas of practice within bankruptcy (chapter 7, for example) use national forms extensively and the bar has not been transformed in the manner discussed in these comments. However, in response to this type of concern, the Working Group revised the warning language on the first page of the plan to advise debtors that inclusion of certain language within the plan was not an indication that the option would be accepted in every court, as referenced above.

Following the description of the comments on the concept of a plan form, members discussed the appropriate next step. Two members voiced initial objection to republishing a national form although they supported the proposed rule amendments, while others argued that it was essential to adopt the form in connection with the proposed amendments.

The Assistant Reporter advised that one of the reasons for republication was to test whether the changes are more palatable to those objecting. The Working Group believed that republication of the revised form would give the Advisory Committee a sense of whether it has addressed the main concerns expressed in the public comments. Much of the opposition to the entire project may rest on opposition to particular aspects of the published plan form that have now been clarified or altered. Several members asked about the harm of the rule amendments going forward without the plan form, and other members explained that the rules substantially revise the rights of secured creditors, but that these revised rights were balanced by the plan form that provided consistent notice of any impact on creditors' rights.

A member asked two questions: (1) what issue the plan form would resolve, and (2) if the form permits variations in local practices, why is the plan form objectionable. The Chair

responded to the first question by explaining that bankruptcy was a form based-practice and that national forms streamline the process making it more efficient. Comfort with local practice was given as the answer to the second question.

Many members stated that republishing the plan form and holding back on the rule amendments makes the most sense, permitting the Committee to make a decision about the rule amendments once a final decision is made regarding the plan form. The Chair suggested that the Committee hold off on submitting the rule amendments for final approval until a final decision is made on the plan form or recommend that the rules be republished in August 2014. The Chair of the Standing Committee expressed his support for republishing both the rule amendments and the plan form.

A motion was made to republish the plan form and rule amendments with an intended effective date for both of December 2016. The motion passed unanimously. A second motion was proposed that the plan form and rule amendments be published with an invitation for public comment on whether they should be adopted only as a package. The motion carried but not on a unanimous vote. Two members dissented.

The Assistant Reporter next described some of the specific changes to the plan form, noting that a number of other smaller changes were made throughout the form, including the addition of the warning language discussed previously. First, the revised plan form provides for greater flexibility as to the manner in which a debtor funds a chapter 13 plan, including more options for the use of any tax refund. Second, Part 7 of the form, which sets forth the order of distribution of payments to creditors, was altered to be blank with the exception of the provision of payment of the trustee's fee. The revised Committee Note explains that the debtor may choose to leave the order of distribution to the trustee's direction. Third, the signature box in Part 10 was changed to provide that signatures by represented debtors are optional. The published version of the form required only debtors' attorneys and pro se debtors to sign the form. A motion was made to republish the version of the form included in the agenda materials, and the group voted in favor of republishing that version of the plan form.

Next, the Assistant Reporter discussed the related rule amendments. The comments received in response to the amendments to Rule 3002 focused mostly on the proposed amendments to Rule 3002(c). The published amendments included two changes: (1) to alter Rule 3002(a) to state that the holder of a secured claim must file a proof of claim in order to have an allowed claim and (2) to alter Rule 3002(c) to shorten the bar date to 60 days after the petition is filed with an additional 60 days to allow holders of mortgage claims to file the required supplemental documents. Many of the comments suggested that the additional time for mortgage creditors gave them unwarranted preferential treatment. The Working Group discussed these comments but determined that the proposal for an additional amount of time for mortgage holders was to permit the collection of supporting documents for mortgage claims that are required by the Bankruptcy Rules. The Working Group did not anticipate that these

documents would be a source of controversy in very many cases. There were comments submitted regarding the proposed amendments to Rule 3002(a) as well. In particular, a number of comments took issue with the inclusion of language stating that a secured creditor's lien is not void due only to the failure to file a proof of claim. The Working Group did not recommend any alteration of that language, which was taken directly from § 506(d) of the Bankruptcy Code. A comment was received from the IRS regarding security interests obtained through setoff. The IRS suggested that language be added to the rule in order to make explicit reference to setoff, but the Working Group decided to adhere to the language in the Code without further elaboration.

The Working Group recommended two changes to the language of Rule 3002(c). The first was a wording change to ensure consistency of terminology throughout the rule with respect to calculating the bar date and the second was a clarification that the exceptions to Rule 3002(c) apply to all cases included in the subdivision. A motion to approve these changes passed unanimously.

The members discussed whether a question should be appended to the republished rule regarding whether the rule will apply to a security interest that arose based upon setoff or whether it was appropriate for the Committee to determine the issue at the meeting. The Committee agreed to add language to the Committee Note to the effect that the rule change does not effect any change in current law regarding security interests and setoffs. A motion was made to add that language to the Committee Note, and the motion was approved unanimously.

The Assistant Reporter stated that the published version of Rule 3007(a) was not changed in response to public comments. Several comments were submitted but the majority of the comments were stylistic. The Reporter noted that one section of 3007(a), which was published in 2011 and approved at the fall 2013 meeting, was unrelated to the chapter 13 form. This section related to service of objections to claims and should be effective regardless of any decision on the plan form.

The Assistant Reporter explained that the published version of Rule 3012 was changed to clarify the treatment of governmental unit claims. After discussion, the Committee approved a change to Rule 3012(c) to clarify that a request to determine the amount of a claim of a governmental unit may be made only by motion or in a claim objection after a proof of claim is filed. A change to Rule 3012(b) was approved at the fall 2013 Committee meeting to require service in the manner provided in Rule 7004 for determinations of secured claims through plans but not for other types of claim objections.

The published version of Rule 3015(c) was revised to account for the possibility that an Official Form for a chapter 13 plan may not be adopted or may, at some point, no longer be an Official Form. The Working Group proposed language to the effect that if an official form is adopted it must be used. The reporters suggested changing the language to "if there is an Official Form plan for a plan filed in a chapter 13 case, that form must be used." A motion was

made to amend the language as suggested and the motion was approved unanimously. The Working Group proposed a revision to amended Rule 3015(f) to add "date set for any" prior to "confirmation hearing" based on comments received that confirmation hearings are not routinely held in each court. The additional language would make clear the date for filing an objection to confirmation even if a court later cancels the hearing if no objection is received. The language in amended Rule 3015(g) was revised to read "in accordance with Rule 3012" rather than "under Rule 3012" based on a comment from the IRS.

The Assistant Reporter continued that amended Rule 4003 was revised to make clear who must be served in a lien avoidance proceeding under § 522(f), as several commenters noted that the published language made it seem as if every party had to be served. A member suggested a grammatical change to be made prior to republication.

The Assistant Reporter continued, explaining that several commenters raised concerns about the amendment to Rule 5009(d), which would permit a debtor to request "an order determining that the lien on" property of the estate "had been satisfied." The final sentence of the published amendment provided that an "order entered under this subdivision is effective as a release of the lien." The concern of commenters was whether the terms "release" and "satisfied" were used appropriately as well as whether a bankruptcy court has the authority to enter this type of order. After discussion, the Committee decided to substitute the phrase "an order declaring that the secured claim has been satisfied and the lien has been released under the terms of a confirmed plan" for the first sentence of the rule and to remove the final sentence. A motion to accept these changes was approved unanimously. A second motion to add language requiring an adversary proceeding before issuance of the order was not approved.

The group next discussed Rule 7001. A member suggested that the language of the amended rule could be misinterpreted regarding proceedings under Rule 3012. After some discussion, the group determined to substitute "but not a proceeding under Rule 3012 or Rule 4003(d)" in amended Rule 7001(2). A motion to approve this language carried unanimously.

A motion was made to recommend the proposed amended rules for republication and the motion was approved unanimously.

(B) Joint recommendation from the Chapter 13 Working Group and the Forms Subcommittee regarding proposed amendments to Rule 9009.

The Assistant Reporter led the discussion regarding the amendments to Rule 9009, referring to his memo, dated April 2, 2014, included at Tab 4B of the main agenda materials. He stated that the comments filed suggested that revised Rule 9009 was too restrictive, including a comment from a bankruptcy software vendor with examples of variations that could occur with computer generated forms even if the language was the same. The Working Group and the Forms Subcommittee discussed these comments and determined that less restrictive language

was needed because a "pixel by pixel" reproduction of forms was not necessary. The group discussed the appropriate wording for the rule, and considered several suggestions, deciding on permitting "minor changes not affecting wording or the order of presenting information" on a form. Also, the five specified exceptions to the general rule were pared down to three and are given as examples of permissible "minor changes" to forms. A motion to approve the amended wording and to submit the rule for republication was approved unanimously.

6. Report by the Mortgage Claim Form Working Group.

(A) Recommendation concerning amending the Mortgage Proof of Claim Attachment to require inclusion of a loan history.

The Reporter addressed this item, referring to a memo dated March 20, 2014 and included at Tab 5 of the main agenda materials, and to the draft Official Form 410A, included in the appendix. The Reporter explained that the current version of this form is used in cases involving individual debtors by creditors with a security interest in the debtor's principal residence. It requires a statement of the principal and interest due as of the petition date, a statement of the prepetition fees, expenses and charges that remain unpaid, and a statement of the amount necessary to cure any default as of the petition date. The Working Group recommended publication of a revised form, Form 410A, that would replace the existing form with one that requires a mortgage claimant to provide a loan payment history in certain situations, as well as calculations of the total claim amount on the proof of claim and the amount of any arrearage.

The Reporter explained the history of the form. Several forms and rule changes regarding mortgages went into effect in December 2011. When the Committee initially considered the concept of this form, it discussed whether to require loan history, but there was concern that it was burdensome on both creditors and debtors to review all of the data regarding loan history as part of the form. When the 2011 forms were put out for publication, the Committee received a number of comments requesting the development of a loan history form. The main point of the comments was that debtors often made mortgage payments believing that the entire payment went to principal but that the payment may have been applied to interest, late fees, or other charges. The Committee determined to proceed with the 2011 forms and later analyze the experience with the forms to determine if a loan history was required.

The Reporter continued that in the fall of 2012 a mini-conference was held in Portland, OR, and the issues pertaining to the 2011 mortgage forms were discussed among a diverse set of participants, including judges, clerks, trustees, attorneys, and mortgage company representatives. There was agreement that a loan history was needed, but that it should be automated and uniform nationwide. The mini-conference also suggested that the form should reflect how the total claim amount was calculated. A mortgage form working group, consisting of members of the Committee, an invited bankruptcy judge, a chapter 13 trustee, and an attorney for a mortgage servicer and lender, was formed to consider the suggestions made at the mini-conference.

The Reporter stated that the proposed new form would replace the existing form, and she noted that a sample completed form was included in the appendix. The form includes the current monthly mortgage payment, a loan history (to be completed only if the mortgage is not completely current) that indicates how payments were applied, and a supplemental continuation page. The continuation page was sent separately to Committee members by email, but reflects the same information as is contained on the loan history section of Form 410A included in the materials.

The Chair thanked the Working Group. A member asked about the feasibility of all lenders, including smaller lenders, completing the form with automation, a goal of the working group. One of the Working Group members responded that the goal was to ensure that the program can be completed on the three main platforms used by servicers, including smaller banks, and that the Working Group believes that this can be achieved by the effective date of 2015.

A motion to make a small change to the heading of the additional page was approved unanimously. A second motion was made to amend the instructions to add that the amounts listed in Parts II and III of the form should be consistent with the proof of claim, and that an instruction be added to Part IV that there is no need to amend the filing if the amount changes after the date of the petition filing. This motion was also approved unanimously.

Finally a motion was to recommend publication of the form for comment in August 2014, along with its instructions and the sample form was passed unanimously.

7. Joint Report by the Subcommittees on Consumer Issues and Forms.

(A) Report concerning recommended revisions to the Committee Note describing proposed amendments to Rule 3002.1 that the Advisory Committee had recommended for publication this fall. Report addressing other issues regarding the ambiguity or uncertainty of Rule 3002.1.

Judge Harris reported on this issue. A memo dated March 17, 2014 on this topic was included at Tab 6A of the main agenda materials. At the fall 2013 meeting, the Committee approved for publication amendments to Rule 3002.1 to clarify that the requirements of the rule apply whenever a chapter 13 plan provides for continuing payments on the mortgage while the bankruptcy case is pending. That proposed amendment removes the reference to § 1322(b)(5) in subdivision (a) of Rule 3002.1 and makes the rule applicable if the plan provides for either the trustee or debtor to make contractual installment payments. The subcommittee recommended a further amendment to Rule 3002.1 to provide that the notice requirements of the rule cease to apply when an order terminating or annulling the automatic stay becomes effective with respect to the residence securing the claim unless the court orders otherwise, and a motion to approve

this recommendation was passed unanimously. At the direction of the Committee, the subcommittee proposed additional language for the Committee Note to encourage courts to be open to requests to continue the reporting requirements after stay relief is granted. A motion was made to adopt this language in the Committee Note, and the motion also passed unanimously.

Judge Harris continued by noting that there are other issues regarding home equity lines of credit (HELOCs) and a few other issues that will not be included for publication but are still under consideration. He suggests that they be placed in the dugout, and this suggestion was accepted. See Item 14, below.

(B) Recommendation concerning Suggestion 13-BK-K by Mike Bates, Senior Company Counsel, Wells Fargo, to amend line 3 of the Reaffirmation Agreement Coversheet to allow for the disclosure of the simple interest rate on the amount to be reaffirmed, as an alternative to disclosing the annual percentage rate (APR).

The Assistant Reporter led the discussion regarding amending the reaffirmation agreement cover sheet (Official Form 427). A memo on the topic dated March 26, 2014, was included at Tab 6B of the main agenda materials, and the form was included in the appendix. The Assistant Reporter explained that the current cover sheet form does not provide an option to disclose only the simple interest rate, which is permitted on the Director's Form used in connection with reaffirmation agreements. He provided the background from the Bankruptcy Code and explained that § 524(k)(3)(E) requires disclosure of the "Annual Percentage Rate," a defined term that means the annual percentage rate calculated under the Truth in Lending Act or, if that rate is not readily available or not applicable, the simple interest rate. A fair reading of the cover sheet form did not make it clear that in some circumstances either type of interest rate could be disclosed, and the form did not readily permit the entry of "N/A" to indicate that the annual percentage rate is not available or not applicable. The subcommittees discussed whether there is a reason for the discrepancy between the cover sheet form and the Director's Form and determined that it was not necessary to require disclosure of the annual percentage rate on the cover sheet form. The subcommittees recommended adding to the cover sheet form a reference to the Bankruptcy Code provision that authorizes the disclosure of the simple interest rate in some circumstances and adding an explanation regarding the change to the Committee Note.

The Chair explained the difference between Official Forms and Director's Forms; the Official Forms—issued by the Judicial Conference—are generally required to be used in the format in which they were adopted, but Director's Forms—issued by the Director of the AO—may be changed more readily. The Chair stated that the revised form can go into effect in 2015 without republication because it was published as part of the August 2013 publication package and because the change is merely a clarification. A motion was made to approve the change, and the motion was approved unanimously.

8. Report by the Subcommittee on Forms and the Forms Modernization Project.

(A) Report on the status of the Forms Modernization Project; review of comments and recommendation concerning the republished means-test forms, the modernized individual debtor forms; review and recommendation of the remaining modernized forms to be published including the case opening forms for non-individual debtors.

Judge Perris reported on the work of the FMP and referenced a memo on this work dated March 26, 2014, at Tab 7A of the main agenda materials. She provided some background to the FMP, stating that the group generally met two times a year but more recently had completed its work by phone, due to budget and time considerations. The goals of the project are to make the forms easier to understand and to take advantage of technology. An early decision was made to separate the individual from the non-individual forms because individuals need simpler language and there are more forms relevant only to individuals. The FMP used a form consultant to complete the modernization. The FMP forms have an appearance quite different from the current forms.

Other goals were to make the instructions more helpful by putting them where people completing the forms would look for them and to amend the forms to recognize that the different living arrangements that need to be accommodated. The technology aspect was also important, permitting authorized users to get the information as data in order to take advantage of more advanced technology available to courts through the Next Generation of CM/ECF (Next Gen) project. Judge Perris explained that Next Gen lags behind the development of the forms for many reasons, including funding and resources, so some of the technological benefits will not be seen immediately.

Next, Judge Perris provided an update on Next Gen. There are going to be several releases of Next Gen, and the first release will contain several improvements, including the judges' review packet and single-sign on. The implementation of Release 1 will require all courts to be on central servers. Under the current time proposal, the program will be tested by monitored live operation courts in late 2014 and will be available to all courts in early 2015. The delayed release of Next Gen may impact the effective dates of the modernized forms. The individual forms have already been delayed until December 2015 in order to match the effective dates of the non-individual forms, but there may be a further delay based on the delays in Next Gen. There is a possibility that the bulk of the modernized forms will need to have an effective date of December 2016.

Judge Perris stated that there are several groups of forms to be approved by the Committee. The first are two subsets of forms for which final approval is requested, with effective dates of either December 2014 or December 2015. The forms with a requested effective date of December 2014 are Official Forms 17A, 17B, 17C, 22A-1, 22A-1Supp, 22A-2, 22B, 22C-1, and 22C-2. There were no comments on Forms 17A, 17B and 17C, and the

effective date of December 2014 is to match the presumptive effective date of the revised Part VIII bankruptcy rules. The means test forms (Forms 22A-1 through 22C-2) were republished after the Committee made revisions to them in response to comments received after publication in 2012. The comments received on the republished means test forms were relatively modest and the changes proposed in response do not require republication. Judge Perris explained the reasoning behind the revised means test forms, noting that there were several changes made as a result of the most recent publication including moving URLs from the forms to the instructions, revising the instruction to contact the clerks' office to make clear that their personnel cannot provide legal advice, and revising the instructions regarding denying chapter 7 relief.

Judge Perris moved that Official Forms 17A, 17B, 17C, 22A-1, 22A-1Supp, 22A-2, 22B, 22C-1, and 22C-2 be submitted for final approval by the Standing Committee for an effective date of December 1, 2014. A suggestion was made for a small change to the language in the box on the top of forms 22A-2 and 22C-2. A motion was made to approve the suggestion and the motion was approved unanimously. A further suggestion was made to revise the warning language to state that the Bankruptcy Code and Rules prevail over any conflicting statement in the instructions. A motion was made to add this language, but the motion failed on a 6-7 vote. The Committee voted on the original motion to submit the forms for final approval, and the motion was approved unanimously.

Judge Perris continued with a discussion of the remaining published modernized forms, stating that the comments received were generally helpful, and that some changes were made in response to the comments. The remaining forms include proposed new Official Forms 101, 101A, 101B, 104, 105, 106Sum, 106A/B, 106C, 106D, 106E/F, 106G, 106H, 106Dec, 107, 112, 119, 121, 318, 423, and 427, as well as the Committee Notes and Instructions. The forms are set out in the appendix at pages 61 through 169. Some of the overall comments were very similar to those received on the forms published in 2012. They included the general objections to the idea of modernizing forms, a topic already discussed and rejected by this Committee and the Standing Committee. Another repeated issue was that the new forms will encourage pro se filings. Judge Perris noted that there are clear warnings in the instructions that bankruptcy is complex and that an attorney is advisable. A related comment was that the instructions provide legal advice, and revisions were made to emphasize that the instructions are not meant as legal advice. A final repeated comment expressed concern about the length of the forms. Judge Perris pointed out, however, that form length can be reduced if questions are not applicable or additional space to answer is not needed.

Judge Perris then discussed specific comments on the forms. Responsive changes to the petition (Form 101) and the eviction forms (Forms 101A and 101B) included the addition of instructional language for small business debtors, revisions to the statement of the penalty of perjury in Form 101, and clarifications in Forms 101A and 101B. Similarly, changes were made to the schedules (Forms 106A through 106Dec) in response to comments, including removing the dollar minimum for listing assets, revising the mileage question for vehicles, revising the

instruction to list creditors in alphabetical order, and adding a warning about making a false statement to Form 106Dec. The statement of financial affairs (Form 107) was modified in response to comments, and the instructions were revised. Minor changes to Forms 112, 119, 121, 318, 423, and 427 were made in response to comments.

Judge Perris moved to submit Official Forms 101, 101A, 101B, 104, 105, 106Sum, 106A/B, 106C, 106D, 106E/F, 106G, 106H, 106Dec, 107, 112, 119, 121, 318, 423, and 427, as well as the Committee Notes, to the Standing Committee for final approval for an effective date of December 1, 2015, or a later date if required by technological considerations. The motion was approved unanimously.

The final set of forms included proposed new Official Forms 106J, 106J-2, 201, 202, 204, 205, 206Sum, 206A/B, 206D, 206E/F, 206G, 206H, B207, 309A, 309B, 309C, 309D, 309E, 309F, 309G, 309H, 309I, 314, 410, 410S1, 410S2, 11A, 11B, 312, 313, 315, 416A, 416B, 416D and 424, as well as the Committee Notes and the Instructions for Non-Individual Debtors. Judge Perris advised that the non-individual forms were reviewed by the Committee at its fall 2013 meeting, and changes suggested at that meeting were made, along with a few additional changes to achieve consistency with the forms for individual debtors. Also included in the last group of forms were the creditor notices (Official Forms 309A – 309I); the caption forms (Official Forms 416A, B and D); the order and notices related to plans and disclosure statements (Official Forms 312-315); the power of attorney forms (Official Forms 11A and B), which will be abrogated; the proof of claim forms (Official Forms 410, 410S1, and 410S2); and the certification for direct appeal by all parties (Official Form 424). The chapter 15 petition form (Official Form 401) and mortgage form (Official Form 410A) were discussed and approved separately at the meeting.

Judge Perris explained a small revision needed for the non-individual petition form (Official Form 201): the addition of an instruction regarding small business debtors that had previously been added to the individual version of the petition form (Official Form 101). A motion to make the change was approved unanimously.

A motion was made to request approval to publish Official Forms 106J, 106J-2, 201, 202, 204, 205, 206Sum, 206A/B, 206D, 206E/F, 206G, 206H, B207, 309A, 309B, 309C, 309D, 309E, 309F, 309G, 309H, 309I, 314, 410, 410S1, 410S2, 11A, 11B, 312, 313, 315, 416A, 416B, 416D, 423, 424, the Committee Notes and the Instructions for Non-Individual Debtors. The motion was approved unanimously.

A motion was made to request that the Administrative Office increase the font sized used for the debtor name and case number on the creditor notice forms (Official Forms 309A – 309I). The preferred font size is 12 point to make the print easier for users to read. The motion passed unanimously.

(B) Oral report regarding the Advisory Committee's decision at the fall 2103 meeting to recommend Suggestion 13-BK-B by Judges Eric L. Frank and Bruce I. Fox to amend the Voluntary Petition to include checkboxes for the documents small business debtors are required to file under § 1116(1) of the Bankruptcy Code.

Judge Perris explained that an instruction was added to the voluntary petition forms (Official Forms 101 and 201) in response to this suggestion.

(C) Recommendation regarding proposed Official Form 106J-2 to be used in joint debtor cases where Debtor 1 and Debtor 2 maintain separate households

Scott Myers presented the topic, noting that a memo was included at Tab 7C of the main agenda materials, and that proposed Official Forms 106J and 106J-2 were included in the appendix. He explained that in calculating of the net income of jointly filing debtors who maintain separate households, there was a problem in obtaining the debtors' combined expenses. The changes made to Form 106J and the creation of Form 106J-2 were to accommodate this issue, and the instructions were changed as well. A motion to approve the publication of these two forms was approved unanimously.

(D) Recommendation to abrogate Official Forms 11A and 11B and reissue them as director's procedural forms.

Bridget Healy explained that the FMP recommended abrogating Official Forms 11A and 11B (the general power of attorney and special power of attorney forms) to permit parties to alter these forms to conform with state law, local practice, or the needs of the case. She advised that a memo on the topic was at Tab 7D of the main agenda materials and the proposed abrogated Forms 11A and 11B were included in the appendix. The request to publish these forms was approved as part of the overall approval of the request to publish forms included as part of the FMP discussion.

(E) Oral Report regarding effect of June 1, 2014 Fee Changes on Official Forms.

Mr. Myers reported on this issue, referring to a March 27, 2014 email from bankruptcy forms vendor included in the main agenda materials. He explained because the Judicial Conference approved Official Forms 3A and 3B as well as the fee increase, a decision was made that the fee amounts could be changed on the forms without formal amendment. To eliminate this problem in the future, a motion was made to remove the fee amount information from these forms as of December 1, 2014 and the motion was approved unanimously. This change will be submitted to the Standing Committee with a request that it be approved without publication.

9. Report by the Subcommittee on Business Issues.

(A) Recommendation concerning: (1) amendment to Rule 9006(f) published for comment in 2013; (2) recommendation by the inter-committee CM/ECF Subcommittee and endorsed by the Standing Rules Committee at its January 2014 meeting, to eliminate the three-day extension to time periods in cases of electronic service from Civ. Rule 6(d), Bankruptcy Rule 9006(f), Crim. Rule 45(c), and Appellate Rule 26(c); and (3) suggestion by member Edward Morrison to extend the elimination of the three day rule to all modes of service by eliminating Rule 9006(f).

Judge Wizmur stated that the Standing Committee's CM/ECF Subcommittee endorsed eliminating the 3-day extension rule for electronic service, and a memo on the topic dated March 15, 2014, was included in the materials at Tab 8A. The Business Subcommittee recommended amending Rule 9006(f) to match the change to Civil Rule 6(d), Appellate Rule 26(c) and Criminal Rule 45(c). The subcommittee also discussed extending the elimination of the 3-day rule to other forms of service, but decided against this course of action to maintain uniformity in how time is computed under the various federal rules. A motion to recommend publication of the amendment of Rule 9006(f) to eliminate the 3-day extension to time periods for electronic service was unanimously approved.

Judge Wizmur continued with a second amendment to Rule 9006(f) that was published in 2013. The amendment changed "after service" to "after being served" in the rule to match an amendment to Civil Rule 6(d) also published in 2013. No comments were submitted regarding the amendment. A motion was made to approve the amendment, and it passed unanimously. Judge Wizmur stated that the subcommittee's recommendation assumed that the Standing Committee will hold the amendment in abeyance pending the other amendment to Rule 9006(f) that will be published in August 2014 to allow both amendments to go to the Judicial Conference at the same time. In this case, the likely effective date for both amendments would be December 2016. The Committee agreed with this course of action.

(B) Recommendation concerning suggestion 13-BK-H by Dan Dooley, regarding Rule 2016 for special fee procedures.

Judge Wizmur stated that the Business Subcommittee considered a suggestion to change the procedure for reviewing professional fees in chapter 11 cases, citing the memo dated March 24, 2014, at Tab 8B of the main agenda materials. The suggestion included requiring attorneys to submit weekly reports regarding the work completed and amount billed to provide more visibility of attorneys' fees and to permit courts to have greater control of fees in chapter 11 cases. The subcommittee had practical concerns about the suggestion and determined not to pursue it.

(A) Recommendation concerning suggestion 12-BK-I by Judge Stuart Bernstein, that Forms 9F and 9F(Alt.) and § 1141(d)(6)(a), be amended to deal with complaints

to deny discharge for a debt "of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit."

Judge Wizmur discussed another issue considered by the Business Subcommittee regarding a potential inconsistency on Forms 9F and 9F(Alt), and referred to the memo of March 14, 2014, at Tab 8C. She detailed the potential inconsistency cited in the suggestion in comparing the language in § 1141(d)(6)(A) regarding exceptions from discharge and the language used in the forms. The suggestion argued that the language in the forms was overly broad in listing the deadline for dischargeability actions. In discussion, the Subcommittee noted that there are several interpretations of the language in § 1141 and that the language in the form may or may not be correct. Because of this, the Subcommittee recommended deferring any decision on this issue pending additional developments in case law. Judge Wizmur advised that the case that led to the suggestion was appealed and a decision was rendered after the memo was drafted. The district court agreed that the form language was too broad, but disagreed with the reasoning of the bankruptcy court regarding its interpretation of the language of § 1141, determining that there was no time limitation for either type of claim listed. The recommendation to place the issue in the dugout was accepted by the Committee.

(B) Recommendation concerning suggestion by member Edward Morrison to remove from Rule 2002(f)(7) the requirement to notice a confirmation order in a small business chapter 11 case.

The final issue considered by the Business Subcommittee was a suggestion to remove the requirement to provide notice of confirmation orders in small business cases as required by Rule 2002(f)(7). A memo on this issue, dated March 24, 2014, was included at Tab 8D of the main agenda materials. The subcommittee considered the issue and determined, based on a review of noticing practices in courts across the country, that this requirement does not cause problems and that not providing notice may cause greater problems. For this reason, the suggestion was rejected, but the Subcommittee determined that this rule should be included as part of the overall review of noticing practices.

10. Report by the Subcommittee on Privacy, Public Access, and Appeals.

(A) Suggestion based on *Peterson v. Somers Dublin Ltd.*, 729 F.3d 741, 745-46 (7th Cir. 2013) to consider whether the appellate rules should provide a deadline to certify a bankruptcy decision for direct appeal to the court of appeal.

Judge Jordan discussed an issue raised in *Peterson v. Somers Dublin Ltd.*, 729 F.3d 741, 745-46 (7th Cir. 2013) of whether the appellate rules should provide a deadline to certify a bankruptcy decision for direct appeal to the court of appeal. A memo dated March 10, 2014, was included at Tab 9A of the main agenda materials. The subcommittee recommended that no action be taken.

(B) Comment 12-BK-008 by the National Conference of Bankruptcy Judges that the appellate rules include a provision, similar to FRAP 41, for issuance of a mandate by the district court or bankruptcy appellate panel.

Judge Jordan continued with the second recommendation considered by the subcommittee that the appellate rules be amended to include a provision, similar to FRAP 41, for issuance of a mandate by the district court or bankruptcy appellate panel. A memo dated March 13, 2014, was included at Tab 9B of the main agenda materials. The Subcommittee concluded that the current procedure is not causing problems, and recommended no action on this issue.

(C) Comment 12-BK-008 by the National Conference of Bankruptcy Judges for further changes to proposed Rule 8023.

The Reporter discussed the third recommendation considered by the subcommittee concerning further changes to proposed Rule 8023, scheduled to go into effect December 1, 2014. A memo dated March 11, 2014, was included at Tab 9C of the main agenda materials. The subcommittee determined that it may be helpful at some point in the future to add a reference to Rule 9019 as a reminder to practitioners of the need to obtain court approval of certain settlements of appeals, and recommends adding this amendment to the bullpen. A motion was made to approve the suggestion to add the language regarding Rule 9019 and to place the suggestion in the bullpen. The motion was approved. Judge Jordan reported on the subcommittee's decision not to recommend an amendment to Rule 8023 to require court permission to dismiss an appeal of an action objecting to discharge.

Judge Jordan concluded the discussion by providing a report on: (1) whether the record before the bankruptcy court should be the record on appeal – made available electronically – with parties referring by number to the appropriate bankruptcy court docket entries in their appellate briefs; and (2) whether an amendment should be adopted to deal with an incomplete record due to failure of the parties to designate the record on appeal. He reported that the subcommittee determined to wait to take any action on this issue, given that not all courts are at the same point in terms of technology and that anything adopted now may become obsolete in the near future. If the Committee waits a few years, a better decision could be made on the issue. Judge Sutton suggested adding this issue to the agenda of Standing Committee's CM/ECF Subcommittee, and the Committee agreed.

11. Report by the Subcommittee on Technology and Cross Border Insolvency.

(A) Review of comments and recommendation concerning Rule 5005(a) electronic signature amendment

Mr. Baxter presented the issue, referring to the memo dated March 16, 2014 at Tab 10A of the main agenda materials. He explained the reasoning behind the amendment to Rule 5005(a) and stated that the rule was published with alternative provisions suggested by the Standing Committee's CM/ECF Subcommittee for ensuring the integrity of a scanned signature. Nineteen comments were submitted on the proposed amendment, and most of the commenters preferred alternative 1 in the proposal. The comments expressed no enthusiasm for the amendment, and there were seven comments opposed to the adoption of the amendment, including a comment from the Deputy Attorney General. Mr. Baxter advised that, in light of the comments, the Subcommittee on Technology and Cross Border Insolvency recommended proceeding no further with the published amendment.

(B) Recommendation concerning proposed Chapter 15 petition.

Mr. Baxter continued with a presentation regarding the new chapter 15 petition (Official Form 401). A memo on the subject dated March 25, 2014, was included at Tab 10B of the main agenda materials, and the proposed Official Form 401 was included in the appendix. The draft petition was presented to the Committee at the fall 2013 meeting. The draft petition, among other things, reflects the rule amendments set out below. Since the fall meeting, the subcommittee obtained input from outside reviewers with expertise in chapter 15 cases, made revisions to the form, and now recommended approval of the form for publication. The changes made since the fall 2013 meeting were outlined in the memo. A motion was made to approve publication of Official Form 401, and the motion was approved unanimously.

(C) Recommendation concerning Suggestion 13-BK-F, by Judge Barry Schermer to amend portions of the Bankruptcy Rules that apply to chapter 15 proceedings.

Mr. Baxter next discussed the related rule amendment recommendations, citing a memo dated March 25, 2014 at Tab 10C of the main agenda materials. The subcommittee recommended amendments for Rules 1010, 1011 and 2002, and a new Rule 1012.

Mr. Baxter explained that the amendments are needed to avoid inconsistencies and inefficiencies in the current rules governing chapter 15 cases. The proposed amendments are: (1) to remove the chapter 15-related provisions from Rules 1010 and 1011; (2) to create a new Rule 1012 to govern responses to a chapter 15 petition; and (3) to augment Rule 2002 to clarify the procedures for giving notice in a cross-border proceeding. The subcommittee's proposal would remove the chapter 15-related provisions from Rules 1010 and 1011 because the chapter 15 provisions were inappropriately included in those rules. Current 1010 requires a clerk to issue a summons for service when a petition for recognition of a foreign non-main proceeding is filed, but not when a petition for a foreign main proceeding is filed. However current Rule 1011, which governs responses to a petition for recognition in a foreign proceeding, appears to contemplate that service of a summons will occur in all cases. The amendments to Rules 1010 and 1011 would eliminate the requirement of issuing a summons after the filing of a petition for

recognition and procedures for objections and other responses to a petition would be governed by a new Rule 1012. The amendment to Rule 2002(q) is proposed because the rule currently requires service of at least 21 days' notice of a hearing on a recognition petition but the rule does not explicitly address when the court should set the hearing. The result may be an unnecessary delay between the petition's filing and the recognition hearing date contrary to the Bankruptcy Code's requirement of prompt adjudication of the petition. Current Rule 2002(q) does not address a request for provisional relief in advance of a recognition hearing, a common chapter 15 practice. The amendments to Rule 2002(q) would require a prompt hearing on a petition for recognition, indicate the contents of the hearing notice, and permit the court to combine a hearing on provisional relief with the recognition hearing.

The Chair noted that the petition would be effective prior to the effective date of the amended rules. Mr. Baxter explained that practitioners would be able to use the form even if the rules are not yet in effect. A motion was made to approve publication of the amended rules, and the motion passed unanimously.

12. Report by the Subcommittee on Attorney Conduct and Health Care.

(A) Suggestion 13-BK-C by the American Bankruptcy Institute's (ABI) Task Force on National Ethics Standards to amend Rule 2014 to specify the relevant connections that must be described in the verified statement accompanying an application to employ professionals.

Judge Robert Jonker reported on this issue to the Committee. He stated that the standard in Rule 2014 is broad and requires a retention application to disclosure "all connections" that the professional has with the debtor and various other parties. The suggestion from the ABI would refine and limit the rule to require instead the disclosure of "relevant connections." Because this proposal is similar to an amendment that was considered and approved by the Committee in the past but was eventually withdrawn, the subcommittee undertook to research the background of that earlier proposal. The subcommittee determined that a reform of Rule 2014 is worthy of further consideration, and that the principal question is the choice of the best model for drafting an amended rule. The subcommittee saw value in the comprehensive proposal from the ABI but wanted to evaluate whether there may be a simpler improvement to the rule. The subcommittee will continue to consider the issue. The Chair stated that the discussion makes it clear that the issue should continue to be considered.

(B) Suggestion 13-BK-J by attorney Neil Enmark regarding time for filing the statement required by Rule 2016(b).

Judge Jonker stated that the subcommittee decided that it needed time to determine if there is evidence of abuse in attorneys' filing (or failing to file) Rule 2016(b) statements before it makes a decision whether to go forward on the suggestion.

Discussion Items

13. Suggestion 14-BK-B by the Committee on Court Administration and Case Management to amend various rules to address redaction of private information in documents filed in closed cases.

The Chair stated that a letter dated February 5, 2014, from Judge Julie A. Robinson to Judge Jeffrey S. Sutton on this topic was distributed separately. The issue involves parties seeking to reopen cases in order to redact private information in filings made in cases that have been closed. Courts have treated these cases differently in terms of procedure and fees. Some courts do not require reopening of the case to complete the redaction and do not charge a fee, some require reopening and full payment of the reopening fee, and still other courts require reopening but charge a reduced fee. Another issue is the type of notice that must be provided regarding the redactions. The Chair assigned the issue to the Subcommittee on Consumer Issues.

14. Suggestion 14-BK-A by Mike Bates to amend Rule 3002.1 to address notice of payment changes for home equity loans and lines of credit.

The Chair reported that the current rule appears to require special notices from the servicer every month that there is a change in the interest rate. The suggestion would eliminate this requirement, particularly given that notice is given outside of bankruptcy regarding interest rate changes. He assigned the issue to the Joint Subcommittee on Consumer Issues and Forms.

15. Oral report concerning Suggestion by member David Lander for a rule change requiring particularized notices of motions that affect less than all creditors in large cases.

The Chair assigned this suggestion to the Subcommittee on Business Issues.

Information Items

16. Oral report on the status of bankruptcy-related legislation.

Mr. Baxter advised the Committee on proposed legislation regarding patents that contains provisions impacting bankruptcy cases. He explained that there is currently a provision in the Bankruptcy Code regarding intellectual property licensing agreements that includes a carve-out for trademark agreements. The proposed legislation would extend the protection in the Code to trademark licenses, requiring the holder of the license to maintain the standards of the license even after rejection of the agreement.

The Chair stated that there is no likelihood of any other bankruptcy-related legislation passing during this term of Congress. He noted that there has been no movement regarding

temporary bankruptcy judgeships despite the fact that many of temporary judgeships will be expiring in a few years.

17. Update on opinions interpreting section 109(h) of the Bankruptcy Code.

The Reporter explained that there are conflicting cases concerning whether a debtor must obtain debt counseling prior to filing a bankruptcy case or if it is sufficient to obtain the counseling on the same day but after the time of filing the petition. The recent conflicting cases are both in the Bankruptcy Court in the Northern District of Illinois.

18. *Bullpen*: The following items have been approved for submission to the Committee on Practice and Procedure in the future:

(A) Proposed revisions to Rule 8002(a)(5) in response to Comment 12-BK-033 (approved at the fall 2013 Advisory Committee meeting);

(B) Proposed revisions to Rule 8006(b) in response to Comment 12-BK-033 (approved at the fall 2013 Committee meeting);

(C) Suggestion 13-BK-G by Gary Streeting that Rule 1015(b) be changed to use the word "spouse" instead of "husband" and "wife," with a corresponding change in the Committee Note, to be considered by the Subcommittee on Consumer Issues.

(D) Proposal to amend Rule 8023 to add a reference to Rule 9019 as a reminder to practitioners of the need to obtain court approval of certain settlements of appeals.

19. *Dugout:* Suggestions and issues deferred for future consideration:

(A) Recommendation for conforming change to Rule 1001 to track proposed changes to Fed. R. Civ. Pro 1. Placed in dugout at fall 2013 Committee meeting pending final approval of proposed Fed. R. Civ. Pro. 1.

(B) Suggestion 11-BK-N by David S. Yen for fee waiver forms addressing fees other than the chapter 7 filing fee, to be considered by the Subcommittee on Consumer Issues after issuance of revised fee waiver guidelines by the Judicial Conference.

(C) Suggestion 12-BK-M by Judge Scott Dales to amend Rule 2001(h) to mitigate the cost of giving notice to creditors who have not filed proof of claim. The suggestion was placed in dugout at fall 2013 Committee meeting pending comments on Chapter 13 Plan Form and related rules amendments. (See Agenda Item 4(D) above).

(D) Oral report concerning Suggestion 12-BK-I by Judge John E. Waites (on behalf of the Bankruptcy Judges Advisory Group) to amend Rule 1006(b) to provide that courts may require a minimum initial payment with requests to pay filing fees in installments, to be considered by the Subcommittee on Consumer Issues following a report from Molly Johnson.

(E) Joint Consumer and Forms Subcommittees to consider additional amendments to Rule 3002.1 to deal with home equity lines of credit and other issues.

(F) Comments 12-BK–005, 12-BK-015, 12-BK040 regarding designation of the record in bankruptcy appeals. These were placed in dugout at fall 2013 Committee meeting pending possible consideration by the Standing Committee's CM/ECF Subcommittee. (See Agenda Item 10(D) above).

20. The Rules docket was provided at Tab 12 of the main agenda materials.

21. The fall 2014 meeting will be held on September 29-30, 2014 in Charleston, South Carolina.

Judge Ikuta stated that the likely location for the spring 2015 meeting is Pasadena, California.

22. New business – none.

23. The meeting was adjourned at 10:00 am (CT).

Respectfully submitted,

Bridget Healy

TAB 3A

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
Meeting of May 29–30, 2014
Washington, D.C.
Draft Minutes as of August 8, 2014

TABLE OF CONTENTS

ATTENDANCE

The mid-year meeting of the Judicial Conference Committee on Rules of Practice and Procedure was held in Washington, D.C., on Thursday and Friday, May 29 and 30, 2014. The following members participated in the meeting:

Judge Jeffrey S. Sutton, Chair
Dean C. Colson, Esquire
Roy T. Englert, Jr., Esquire
Gregory G. Garre, Esquire
Judge Neil M. Gorsuch
Judge Susan P. Graber
Chief Justice Wallace B. Jefferson
Dean David F. Levi
Judge Patrick J. Schiltz
Judge Amy J. St. Eve
Larry D. Thompson, Esquire
Judge Richard C. Wesley
Judge Jack Zouhary

Deputy Attorney General James M. Cole was unable to attend. Stuart Delery, Esq., Assistant Attorney General for the Civil Division, Elizabeth J. Shapiro, Esq., Theodore Hirt, Esq., Allison Stanton, Esq., Rachel Hines, Esq., and J. Christopher Kohn, Esq., represented the Department of Justice at various times throughout the meeting.

Professor R. Joseph Kimble, the committee's style consultant, participated. Judge Jeremy D. Fogel, Director of the Federal Judicial Center, also participated. Judge Michael A. Chagares, member of the Appellate Rules Committee and chair of the CM/ECF Subcommittee, also participated. Judge John G. Koeltl, member of the Civil Rules Committee and chair of that committee's Duke Subcommittee, participated in part of the meeting by telephone.

Providing support to the committee were:

Professor Daniel R. Coquillette	The committee's reporter
Jonathan C. Rose	The committee's secretary and Rules Committee Officer
Benjamin J. Robinson	Deputy Rules Officer
Julie Wilson	Rules Office Attorney
Andrea L. Kuperman	Chief Counsel to the Rules Committees
Tim Reagan	Senior Research Associate, Federal Judicial Center
Emery G. Lee, III	Senior Research Associate, Federal Judicial Center
Catherine Borden	Research Associate, Federal Judicial Center
Scott Myers	Attorney in the Bankruptcy Judges Division
Bridget M. Healy	Attorney in the Bankruptcy Judges Division
Frances F. Skillman	Rules Office Paralegal Specialist
Toni Loftin	Rules Office Administrative Specialist

Representing the advisory committees were:

Advisory Committee on Appellate Rules —
Judge Steven M. Colloton, Chair
Professor Catherine T. Struve, Reporter
Advisory Committee on Bankruptcy Rules —
Judge Eugene R. Wedoff, Chair
Professor S. Elizabeth Gibson, Reporter
Professor Troy A. McKenzie, Associate Reporter
Advisory Committee on Civil Rules —
Judge David G. Campbell, Chair
Professor Edward H. Cooper, Reporter
Professor Richard L. Marcus, Associate Reporter
Advisory Committee on Criminal Rules —
Judge Reena Raggi, Chair
Professor Sara Sun Beale, Reporter

Professor Nancy J. King, Associate Reporter
Advisory Committee on Evidence Rules —
Judge Sidney A. Fitzwater, Chair

Professor Daniel J. Capra, Reporter to the Evidence Rules Committee, was unable to attend.

INTRODUCTORY REMARKS

Judge Sutton opened the meeting by welcoming everyone and thanking the Rules Office staff for arranging the logistics of the meeting and the committee dinner. Judge Sutton reported that all of the rules proposals that were before the Supreme Court were approved in April, including the proposed amendment to Criminal Rule 12, which had been modified as agreed at the January Standing Committee meeting. The proposals to amend the Bankruptcy Rules to respond to *Stern v. Marshall* were withdrawn for the time being, while the committee waits to see what the Supreme Court does in *Executive Benefits Insurance Agency v. Arkison*, which may address an issue involved in the *Stern* proposals.

Judge Sutton also noted that the term of Chief Justice Wallace Jefferson, the committee's state court representative, was coming to a close. He said that Chief Justice Brent Dixon, of the Indiana Supreme Court, would succeed Chief Justice Jefferson as the state court representative. Judge Sutton thanked Chief Justice Jefferson for his wonderful service to the committee, described some of Justice Jefferson's outstanding contributions to the committee's work and some of his accomplishments outside the committee, and presented him with a plaque signed by Judge John Bates, Director of the Administrative Office, and by Chief Justice John G. Roberts. Chief Justice Jefferson expressed his thanks to the committee for a terrific experience and for doing such good work for the nation.

APPROVAL OF THE MINUTES OF THE LAST MEETING

The committee unanimously approved the minutes of the last meeting, held on January 9–10, 2014.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Campbell and Professors Cooper and Marcus presented the report of the advisory committee, as set out in Judge Campbell's memorandum and attachments of May 2, 2014 (Agenda Item 2).

Amendments for Final Approval

DUKE RULES PACKAGE
(FED. R. CIV. P. 1, 4, 16, 26, 30, 31, 33, 34, AND 37)

Judge Campbell reported that the Civil Rules Committee had a final proposed package of amendments to implement the ideas from the Civil Litigation Conference held at Duke Law School in May 2010 ("Duke Conference"). He noted that the Duke Conference was intended to look at the Civil Rules generally and whether they are working and what needs to be improved. The conclusion from that Conference, he said, was that the rules generally work well, but that improvement was needed in three areas: (1) proportionality; (2) cooperation among counsel; and (3) early, active judicial case management. The advisory committee had eventually narrowed the list of possible amendments to address these areas and had published its proposals for public comment in August 2013. Judge Campbell reported that there was great public interest in the proposals, with the public comment period generating over 2,300 comments and over 40 witnesses at each of three public hearings. Judge Campbell believed that the response of the bar and the public demonstrated the continuing vitality of the Rules Enabling Act process, and he stated that the comments the committee received were very helpful in refining the proposals. He also expressed gratitude to the reporters for their excellent work in reviewing and summarizing all of the testimony and comments.

Judge Campbell next explained that the advisory committee had made a number of changes to the published proposals to address issues raised during the public comment period. In addition, the advisory committee had decided not to recommend for final adoption the published proposals to place presumptive limits on certain types of discovery devices.

Judge Campbell and Professor Cooper reported that the advisory committee proposed a few changes to some committee note language that appeared in the Standing Committee agenda materials. First, the advisory committee proposed to take out some language in the committee note for Rule 26. The proposed revised committee note would remove the language in the committee note appearing in the agenda book at page 85, lines 277 to 289. The deleted matter provided additional background on the 2000 amendment to Rule 26 that had moved subject-matter discovery from party-controlled discovery to court-managed discovery. Professor Cooper explained that the deleted language was unnecessary. Second, a paragraph was added after line 262 on page 84 of the agenda materials, to encourage courts and parties to consider computer-assisted searches as a means of reducing the cost of producing electronically stored information, thereby addressing possible proportionality concerns that might arise in ESI-intensive cases.[1] Third, Judge Campbell reported

[1] The added language stated:

> The burden or expense of proposed discovery should be determined in a realistic way. This includes the burden or expense of producing electronically stored information. Computer-based methods of searching such information continue to develop, particularly for cases involving large volumes of electronically stored information. Courts and parties should be willing to consider the opportunities for reducing the burden or expense of discovery as reliable means of searching electronically stored

that the proposal to amend Rule 1, which will emphasize that the court and the parties bear responsibility for securing the just, speedy, and inexpensive resolution of the case, now includes some added committee note language that was not in the agenda materials. The added language would make it clear that the change was not intended to create a new source for sanctions motions. The proposed added language would state: "This amendment does not create a new or independent source of sanctions. Neither does it abridge the scope of any other of these rules."

A member commented that the Duke package is "awesome" and that the advisory committee had done a marvelous job. He added that the problems being addressed are intractable, difficult problems, complicated by the commitment to transsubstantivity. He said that the advisory committee had invited as much participation as possible and he believed the proposals could make a real difference in meeting the goals of Rule 1. He added that the committee would need to continue to evaluate the rules to make sure the system is working well. He congratulated Judge Koeltl (the chair of the Duke Subcommittee), Judge Campbell, Judge Sutton, and the reporters for putting together a great package. Other members added their gratitude and commended the good work and extraordinary effort.

A member asked whether a portion of the proposal to amend Rule 34(b)(2)(B)—that "The production must then be completed no later than the time for inspection stated in the request or another reasonable time stated in the response"—would allow a responding party to simply state that it would produce documents at a reasonable time without providing a specific date. Another member suggested a friendly amendment that would revise the proposal to state: "If production is not to be completed by the time for inspection stated in the request, then the response must identify another date by which production will occur." After conferring with the reporters, Judge Campbell reported that the idea was to make the provision in Rule 34(b)(2)(B) parallel Rule 34(b)(1)(B), which states that a request "must specify a reasonable *time* . . . for the inspection . . ." (emphasis added). For that reason, it was necessary to retain "time" in the proposed revision to Rule 34(b)(2)(B), instead of substituting "date." However, the advisory committee changed its proposal to refer to "specified" instead of "stated," to emphasize that it would not be sufficient to generally state that the production would occur at a reasonable time. He noted that the proposed advisory committee note already stated that "[w]hen it is necessary to make the production in stages the response should specify the beginning and end dates of the production." A motion was made to change "stated" to "specified" in the proposal, so that it would read: "The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response." The motion passed unanimously.

The Duke package of proposed amendments passed by a unanimous vote. Judge Sutton thanked Judge Koeltl for his tireless work on the Duke Conference and on this very promising set of proposed amendments, as well as Judge Campbell and the rest of his team.

The committee unanimously approved the Duke package of proposed amendments to

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information become available.

the Civil Rules, revised as stated above, to be submitted for final approval by the Judicial Conference.

FED. R. CIV. P. 37(e)

Judge Campbell reported on the proposed amendment to Rule 37(e), which is intended to give better guidance to courts and litigants on the consequences of failing to preserve information for use in litigation. He said that comments on the version that was published for public comment were extensive, and the advisory committee had substantially revised the rule to address issues raised by the comments. The subcommittee and the advisory committee decided that the following guiding principles should be implemented in the revised proposal: (1) It should resolve the circuit split on the culpability standard for imposing certain severe sanctions; (2) It should preserve ample trial court discretion to deal with the loss of information; (3) It should be limited to electronically stored information; and (4) It should not be a strict liability rule that would automatically impose serious sanctions if information is lost. Judge Campbell explained that the rule text and committee note had been revised after publication in line with these principles.[2]

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[2] Judge Campbell also noted that the advisory committee's final proposal revised the committee note that was included in the agenda materials for the Standing Committee's meeting. Specifically, the paragraphs on pages 322–23, lines 170–91 were revised as follows:

> Subdivision (e)(2) requires a finding that the party acted with the intent to deprive another party of the information's use in the litigation. This finding may be made by the court when ruling on a pretrial motion, when presiding at a bench trial, or when deciding whether to give an adverse inference instruction at trial. If a court were to conclude that the intent finding should be made by a jury, the court's instruction should make clear that the jury may infer from the loss of the information that it was unfavorable to the party that lost it only if the jury first finds that the party acted with the intent to deprive another party of the information's use in the litigation. If the jury does not make this finding, it may not infer from the loss that the information was unfavorable to the party that lost it.
>
> Subdivision (e)(2) does not include a requirement that the court find prejudice to the party deprived of the information. This is because the finding of intent required by the subdivision can support not only an inference that the lost information was unfavorable to the party that intentionally destroyed it, but also an inference that the opposing party was prejudiced by the loss of information that would have favored its position. Subdivision (e)(2) does not require any further finding of prejudice.
>
> Courts should exercise caution, however, in using the measures specified in (e)(2). Finding an intent to deprive another party of the lost information's use in the litigation does not require a court to adopt any of the measures listed in subdivision (e)(2). The remedy should fit the wrong, and the severe measures authorized by this subdivision should not be used when the information lost was relatively unimportant or lesser measures such as those specified in subdivision (e)(1) would be sufficient to redress the loss.
>
> ~~Subdivision (e)(2) does not include an express requirement that the court find prejudice to the party deprived of the information. The adverse inference permitted under this subdivision can itself satisfy the prejudice requirement: if a court or jury infers the lost information was unfavorable to the party that lost it, the same inference suggests that the opposing party was prejudiced by the loss.~~

The committee engaged in discussion on the proposal. After considering some suggestions and discussing them with the reporters, the advisory committee agreed to make a suggested change to delete "may" in line 9 on page 318 of the agenda materials, and to add "may" on line 10 before "order," and on line 13 after "litigation." Judge Campbell stated that he and the reporters agreed that this change adds more emphasis to the word "only" on line 12, underscoring the intent that (e)(2) measures are not available under (e)(1).

A member commented that, in looking at this proposal from multiple perspectives, it is going to be very helpful and is clearly needed. He added his congratulations to the advisory committee for their terrific work.

The committee unanimously approved the proposed amendment to Rule 37(e), revised as stated above, to be submitted for final approval by the Judicial Conference.

FORMS
(FED. R. CIV. P. 84 AND 4 AND APPENDIX OF FORMS)

Judge Campbell reported on the proposal to abrogate Rule 84 and the Appendix of Forms. He said that there were relatively few comments on this proposal and that the advisory committee remained persuaded after reading the comments that the forms are rarely used and that the best course is abrogation. Professor Cooper added that Forms 5 and 6 on waiver of service would be incorporated into Rule 4.

A member suggested that he thought the sense of the committee was that forms can be and are extremely important in helping lawyers and pro se litigants, but that the advisory committee should no longer bear responsibility for them. He added that he favored abrogation, but the advisory committee should continue to have a role in shaping the forms, perhaps by participating in a group at the Administrative Office (AO) that can handle the forms, helping to draft model forms, and/or having a right of first refusal on forms drafted by the AO. Judge Sutton agreed that forms are very useful and that this proposal is simply about getting them out of the Rules Enabling Act process. He added that there are many options in terms of how civil forms are handled if the abrogation goes into effect and suggested that the advisory committee consider what it thinks its role should be in shaping the forms going forward. He suggested that the advisory committee present its suggestion in that regard for discussion at the next Standing Committee meeting in January.

The committee unanimously approved the proposed amendments to abrogate Rule 84 and the Appendix of Forms, and to amend Rule 4 to incorporate Forms 5 and 6, to be submitted for final approval by the Judicial Conference.

~~In addition, there may be rare cases where a court concludes that a party's conduct is so reprehensible that serious measures should be imposed even in the absence of prejudice. In such rare cases, however, the court must still find the intent specified in subdivision (e)(2).~~

Judge Sutton congratulated and praised Judge Campbell, the reporters, and the subcommittee chairs for all their hard work and terrific leadership and insight in bringing the Duke proposals, the Rule 37(e) amendments, and the Rule 84 amendment to the Standing Committee. He added that all three sets of proposals were done through consensus, which is a credit to the chairs of the subcommittees and the chair of the advisory committee. He also said that many of these proposals started with former Civil Rules Committee and Standing Committee chairs Judge Lee H. Rosenthal and Judge Mark R. Kravitz. This package of amendments, he said, was a wonderful tribute to Judge Kravitz's memory. Judge Sutton added that the way to thank the chairs and reporters for all of their work on these proposals is to make sure they make a difference in practice. He said that in the near future, the Standing Committee should discuss these amendments in terms of broader reform, including pilot projects and judicial education efforts, to make sure that they are making a difference on the ground. Judge Campbell expressed his thanks to Judge Grimm, for his tireless efforts on Rule 37, and to Judge Sutton for all of his insight and time in overseeing the work on these proposals.

FED. R. CIV. P. 6(d)

Professor Cooper reported that the advisory committee had also published an amendment to Rule 6(d) that would revise the rule to provide that the three added days provided for actions taken after certain types of service apply only after being served, not after "service" more generally. Few comments were received and no changes were made after publication. Judge Campbell said that the advisory committee recommended approving this proposal, but not sending it on to the Judicial Conference yet, so that it can be presented together with another proposed amendment to Rule 6(d), which would remove the three added days for electronic service and which was being proposed for publication.

The committee unanimously approved the proposed amendment to Rule 6(d), to be submitted for final approval by the Judicial Conference at the appropriate time.

FED. R. CIV. P. 55(c)

Professor Cooper reported that the final proposal that was published for public comment in 2013 was a proposal to amend Rule 55(c) to make explicit that only a final default judgment could be set aside under Rule 60(b).

The committee unanimously approved the proposed amendment to Rule 55(c) to be submitted for final approval by the Judicial Conference.

Amendments for Publication

FED. R. CIV. P. 82

Professor Cooper reported that at its January 2014 meeting, the Standing Committee had approved for publication at a suitable time an amendment to Rule 82 to reflect enactment of a new

venue statute for civil actions in admiralty. Since January, further reflection had led the advisory committee to believe that a cross-reference in the rule to 28 U.S.C. § 1391 should be deleted and that the text should be further revised to reflect the language of new § 1390. The advisory committee renewed its recommendation to publish the proposal, as revised.

The committee unanimously approved publication of the proposed amendment to Rule 82.

FED. R. CIV. P. 4(m)

Professor Cooper reported on the recommendation to publish a clarifying amendment to Rule 4(m) to ensure that service abroad on a corporation is excluded from the time for service set by Rule 4(m).

The committee unanimously approved publication of the proposed amendment to Rule 4(m).

REPORT OF THE INTER-COMMITTEE CM/ECF SUBCOMMITTEE

Judge Chagares presented the report of the CM/ECF Subcommittee, as set out in his memorandum of May 5, 2014 (Agenda Item 3).

Amendments for Publication

FED. R. APP. P. 26(c), FED. R. BANKR. P. 9006, FED. R. CIV. P. 6, FED. R. CRIM. P. 45

Judge Chagares reported that the subcommittee had been working with the advisory committees for the Appellate, Bankruptcy, Civil, and Criminal Rules on proposals to remove the provisions in each set of rules that currently provide three extra days for acting after electronic service. Each advisory committee recommended an amendment to its set of rules for publication. The subcommittee had unanimously supported the recommendation of the advisory committees to publish these amendments for public comment. The amendments to eliminate the "three-day rule" as applied to electronic service would be to Appellate Rule 26(c), Bankruptcy Rule 9006, Civil Rule 6, and Criminal Rule 45.

Judge Sutton noted that a Standing Committee member had asked at the last Standing Committee meeting whether other types of service should be removed from the three-day rule. Judge Chagares said that question would take some study and for the time being the only recommendation of the subcommittee was to take electronic service out of the three-day rule. Judge Sutton added that the advisory committees would each study that question separately.

A member suggested removing "in" before "widespread skill" in the last sentence of the second paragraph of each of the draft committee notes. The reporters all agreed to make that change.

The committee unanimously approved publication of the proposed amendments to Appellate Rule 26(c), Bankruptcy Rule 9006, Civil Rule 6, and Criminal Rule 45, with the change to the committee notes described above.

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Raggi and Professors Beale and King presented the report of the advisory committee, as set out in Judge Raggi's memorandum and attachments of May 5, 2014 (Agenda Item 4).

Amendments for Publication

FED. R. CRIM. P. 4

Judge Raggi reported that the advisory committee recommended publication of an amendment to Rule 4 to address service of summons on organizational defendants who are abroad. The proposed amendment would: (1) specify that the court may take any action authorized by law if an organizational defendant fails to appear in response to a summons, filling a gap in the current rule; (2) for service of a summons on an organization within the United States, eliminate the requirement of a separate mailing to an organizational defendant when delivery has been made to an officer or to a managing or general agent, but require mailing when delivery has been made on an agent authorized by statute, if the statute requires mailing to the organization; and (3) authorize service on an organization at a place not within a judicial district of the United States, prescribing a non-exclusive list of methods for service.

A member suggested making it clearer in the proposed additional sentence in Rule 4(c)(2) that the reference to the summons under Rule 41(c)(3)(D) is to summons to an organization. Judge Raggi agreed to change the sentence to: "A summons to an organization under Rule 41(c)(3)(D) may also be served at a place not within a judicial district of the United States."

Another member asked about the phrase "authorized by law" in the proposed amendment to Rule 4(a), asking whether it clarifies what actions a judge can take if an organizational defendant fails to appear in response to a summons. The committee discussed whether to add "United States" before "law," and decided to include that addition in the version published for public comment, noting that including it would be more likely to elicit comments on whether it was helpful.

Another member suggested that, in the illustrative list of means of giving notice in proposed Rule 4(c)(3)(D)(ii), "stipulated by the parties" be changed to "agreement of the organization" or that the list add "agreed to by the party." Judge Raggi explained that a stipulation implied a certain level of formality and that the list was merely illustrative. She said she could not agree to this change without going back to the advisory committee. The member stated that his suggestion could just be considered the first comment of the public comment period.

The member also suggested that on page 492, line 58, in proposed Rule 4(c)(3)(D)(i),

"another agent" be changed to "an agent" to avoid implying that foreign law always authorizes officers and managing or general agents to receive notice. Judge Raggi agreed to accept that suggestion, noting that it reflected the advisory committee's intent.

The committee unanimously approved publication of the proposed amendment to Rule 4, revised as noted above.

FED. R. CRIM. P. 41

Judge Raggi reported that the advisory committee recommended publishing an amendment to Rule 41, to provide that in two specific circumstances a magistrate judge in a district where activities related to a crime may have occurred has authority to issue a warrant to use remote access to search electronic storage media and seize or copy electronically stored information even when the media or information is or may be located outside of the district. Judge Raggi explained that this proposal came about because the Department of Justice had encountered special difficulties with Rule 41's territorial venue provisions—which generally limit searches to locations within a district—as applied to investigating crimes involving electronic information.

The current limits on where a warrant application must be made make it difficult to secure a search warrant in two specific situations: First, when the location of the storage media or electronic information to be searched, copied, or seized is not known because the location has been disguised through the use of anonymizing software, and second, when a criminal scheme involves multiple computers located in many different districts, such as a "botnet" in which perpetrators obtain control over numerous computers of unsuspecting victims. Judge Raggi explained that proposed new subparagraph (b)(6)(A) addresses the first scenario. It would provide authority to issue a warrant to use remote electronic access to search electronic storage media and to seize or copy electronically stored information within or outside the district when the district in which the media or information is located has been concealed through technological means. Proposed (b)(6)(B) addresses the second scenario. It would eliminate the burden of attempting to secure multiple warrants in numerous districts and allow a single judge to issue a warrant to search, seize, or copy electronically stored information by remotely accessing multiple affected computers within or outside a district, but only in investigations of violations of 18 U.S.C. § 1030(a)(5), where the media to be searched are "protected computers" that have been "damaged without authorization" (terms defined in 18 U.S.C. § 1030(e)(2) & (8)) and are located in at least five different districts. Judge Raggi added that the proposed amendments affect only the district in which a warrant may be obtained and would not alter the requirements of the Fourth Amendment for obtaining warrants, including particularity and probable cause showings.

She noted that the proposal also includes a change to Rule 41(f)(1)(C), to ensure that notice that a search has been conducted will be provided for searches by remote access as well as physical searches. The rule now requires that notice of a physical search be provided "to the person from whom, or from whose premises, the property was taken" or left "at the place where the officer took the property." The proposed addition to the rule would require that when the search is by remote

access, reasonable efforts must be made to provide notice to the person whose information was seized or whose property was searched.

The committee unanimously approved publication of the proposed amendment to Rule 41.

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Judge Colloton and Professor Struve presented the report of the advisory committee, as set out in Judge Colloton's memorandum and attachments of May 8, 2014 (Agenda Item 5).

Amendments for Publication

Judge Colloton reported that the advisory committee had five proposals it recommended for publication. The first, the proposed amendment to Rule 26(c) to eliminate the three-day rule for electronic service, was already addressed during the CM/ECF Subcommittee's report.

INMATE FILING RULES
(FED. R. APP. P. 4(c)(1) AND 25(a)(2)(C), FORMS 1 AND 5, AND NEW FORM 7)

Judge Colloton reported that the advisory committee recommended publishing a set of amendments designed to clarify and improve the inmate-filing rules. The amendments to Rules (4)(c)(1) and 25(a)(2)(C) would make clear that prepayment of postage is required for an inmate to benefit from the inmate-filing provisions, but that the use of an institution's legal mail system is not. The amendments clarify that a document is timely filed if it is accompanied by evidence—a declaration, notarized statement, or other evidence such as a postmark and date stamp—showing that the document was deposited on or before the due date and that postage was prepaid. New Form 7 is a suggested form of declaration that would satisfy the rule. Forms 1 and 5 (suggested forms of notices of appeal) are revised to include a reference alerting filers to the existence of Form 7.

Professor Struve noted that a few stylistic changes had been made to the proposals in the Standing Committee's agenda materials. First, in Rule 4(c)(1)(B), on page 560, lines 3–4, "meets the requirements of" was changed to "satisfies." A similar change was made to Rule 25(a)(2)(C)(ii), on page 562, lines 9–10. In Rule 25(a)(2)(C)(i), subdivisions (a) and (b), on pages 561 and 562, would become bullet points. As a result, in Rule 25(a)(2)(C)(ii), the cross-reference to Rule 25(a)(2)(C)(i)(a) would refer only to Rule 25(a)(2)(C)(i).

A member noted that in Rule 4(c)(1)(A)(ii), the "it" on page 559, line 20, referred to the "notice" referenced quite a bit earlier in the rule. Judge Colloton agreed to make revisions to clarify the reference. In Rule 4(c)(1)(A)(ii), "it" was changed to "the notice." A corresponding change was made to Rule 25(a)(2)(C)(i), changing "it" to "the paper" on page 562, line 5. Finally, the advisory committee agreed to change "and" to "or" in Rule 25(a)(2)(C)(i), on page 562, line 4, and in Rule 4(c)(1)(A)(ii), page 559, line 20, so that evidence such as a postmark or a date stamp would suffice.

Professor Struve said that, at the suggestion of a committee member, the advisory committee would consider whether to change the references in Rule 4(c)(1)(B) and Rule 25(a)(2)(C)(ii) from "exercises its discretion to permit" to simply "permits." She said that the committee would also consider a member's suggestion that the rules need not suggest the option of getting a notarized statement when a declaration would suffice. She said these suggestions would be brought to the advisory committee for consideration as it works through the comments on the published draft.

The committee unanimously approved publication of the proposed amendments to Rules 4(c)(1) and 25(a)(2)(C), revised as noted above, and to Appellate Forms 1 and 5, and proposed new Form 7.

FED. R. APP. P. 4(a)(4)

Judge Colloton reported that the advisory committee recommended publishing a proposed amendment to Rule 4(a)(4) to address a circuit split on whether a motion filed outside a non-extendable deadline under Civil Rules 50, 52, or 59 counts as "timely" under Rule 4(a)(4) if a court has mistakenly ordered an "extension" of the deadline for filing the motion. The proposal is to adopt the majority approach, which is that postjudgment motions made outside the deadlines set by the Civil Rules are not "timely" under Rule 4(a)(4).

The committee unanimously approved publication of the proposed amendment to Rule 4(a)(4).

LENGTH LIMITS
(FED. R. APP. P. 5, 21, 27, 28.1, 32, 35, AND 40, AND FORM 6)

Judge Colloton reported that the advisory committee recommended publishing a set of proposals to address length limits. The proposed amendments to Rules 5, 21, 27, 35, and 40 would impose type-volume limits for documents prepared using a computer, and would maintain the page limits currently set out in the rules for documents prepared without the aid of a computer. They would also employ a conversion ratio of 250 words per page for these rules. The proposed amendments also shorten Rule 32's word limits for briefs to reflect the pre-1998 page limits multiplied by 250 words. The word limits set by Rule 28.1 for cross-appeals are correspondingly shortened. Finally, the proposals add a new Rule 32(f), setting out a list of items that can be excluded when computing a document's length.

A member asked why it was necessary to have line limits in addition to word limits. Judge Colloton agreed that the advisory committee would examine that question in the future, but he said that it would require careful consideration and the advisory committee recommended publishing the current proposals for now.

The committee unanimously approved publication of the proposed amendments to

Appellate Rules 5, 21, 27, 28.1, 32, 35, and 40, and to Form 6.

FED. R. APP. P. 29

Judge Colloton reported that the advisory committee recommended publishing an amendment to Rule 29, addressing amicus filings in connection with rehearing. The amendment would re-number the existing rule as Rule 29(a) and would add Rule 29(b) to set default rules for the treatment of amicus filings in connection with petitions for rehearing.

Judge Colloton noted that two stylistic changes were made to the version that appeared in the Standing Committee's agenda materials. First, on page 584, line 14, in proposed Rule 29(b)(2), "Rule 29(a)(2) applies" was changed to "Rule 29(a)(2) governs the need to seek leave." Second, on page 584, line 16, in proposed Rule 29(b)(3), "the" was changed to "a."

The committee discussed whether Rule 29(b)(2) should incorporate any of the language of Rule 29(a)(2). Some members noted that some appellate courts do not allow the filing of amicus briefs without leave of court, because a practice had developed of filing amicus briefs in order to force recusals. Judge Colloton agreed, on behalf of the advisory committee, to borrow some of the language from Rule 29(a)(2) for use in Rule 29(b)(2). The proposed amendment to Rule 29(b)(2) would read: "The United States or its officer or agency or a state 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." Judge Sutton noted that Rule 29(a), which allows filing amicus briefs by consent during initial consideration of a case on the merits, may be in tension with some circuits' practice, and suggested that the advisory committee consider whether it should be changed in the future. Judge Colloton agreed that the advisory committee would add Rule 29(a) to its agenda.

The committee unanimously approved publication of the proposed amendment to Rule 29, revised as stated above.

REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES

Judge Fitzwater presented the report of the advisory committee, as set out in his memorandum and attachment of April 10, 2014 (Agenda Item 6). Judge Fitzwater noted that the advisory committee had no action items to present.

Informational Items

Judge Fitzwater reported that, in connection with its spring meeting, the advisory committee had worked with the University of Maine School of Law to host a symposium on the challenges of electronic evidence. He said that no concrete rules proposals came out of the symposium, but that it set the stage for issues that the advisory committee will need to monitor going forward.

Judge Fitzwater said that the advisory committee is examining a possible amendment to Rule

803(16), the hearsay exception for "ancient documents," and that it will discuss the matter further at its fall meeting.

The Standing Committee's liaison to the Evidence Rules Committee commented that Judge Fitzwater's term as chair was drawing to a close and that he had greatly admired Judge Fitzwater's leadership. He expressed his personal gratitude for Judge Fitzwater's exceptional leadership and reported that Judge Bill Sessions would serve as the next chair. Judge Sutton echoed the praise and gratitude.

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Wedoff and Professors Gibson and McKenzie presented the report of the advisory committee, as set out in Judge Wedoff's memorandum and attachments of May 6, 2014 (Agenda Item 7).

Amendments for Final Approval

OFFICIAL FORMS 17A, 17B, AND 17C

Professor Gibson reported that an amendment to Form 17A and new Forms 17B and 17C had been published for comment in connection with the revision of the bankruptcy appellate rules. Form 17A and new Form 17B would implement the provisions of 28 U.S.C. § 158(c)(1) that permit an appellant and an appellee to elect to have an appeal heard by the district court in districts for which appeals to a bankruptcy appellate panel have been authorized. New Form 17C would be used by a party to certify compliance with the provisions of the bankruptcy appellate rules that prescribe limitations on brief length based on number of words or lines of text. Professor Gibson reported that no comments had been received, that the advisory committee had unanimously approved the proposals, and that the advisory committee recommended them to be approved and take effect in December of this year. Professor Gibson noted that there was a typographical error on page 702 of the agenda materials, and that the reference to "U.S.C. § 158(c)(1)" should say "28 U.S.C. § 158(c)(1)."

The committee unanimously approved the proposed amendments to Form 17A and new Forms 17B and 17C, with the revision stated above, for submission to the Judicial Conference for final approval.

OFFICIAL FORMS 3A AND 3B

Judge Wedoff reported that the advisory committee recommended amending Forms 3A and 3B to eliminate references to filing fees, because those amounts are subject to periodic changes by the Judicial Conference that can render the forms inaccurate. Judge Wedoff said that since the amendments were technical in nature, publication was not needed.

The committee unanimously approved the proposed amendments to Forms 3A and 3B for submission to the Judicial Conference for final approval without publication.

OFFICIAL FORMS 22A-1, 22A-1 SUPP, 22A-2, 22B, 22C-1, AND 22C-2

Judge Wedoff reported that the advisory committee recommended approval of the amendments to the modernized "means test" forms that were originally published in 2012 and then republished in 2013. Judge Wedoff said that the comments on the republished drafts were generally favorable, but that the advisory committee had made several changes after publication to take account of some of the suggestions made during the public comment period.

The committee unanimously approved the proposed amendments to Forms 22A-1, 22A-1 Supp, 22A-2, 22B, 22C-1, and 22C-2 for submission to the Judicial Conference for final approval.

MODERNIZED INDIVIDUAL FORMS
(OFFICIAL FORMS 101, 101A, 101B, 104, 105, 106SUM, 106A/B,
106C, 106D, 106E/F, 106G, 106H, 106DEC, 107, 112, 119, 121, 318, 423, AND 427)

Professor Gibson reported that the advisory committee recommended approving the modernized forms for individual-debtor cases that were published in 2013. She explained the process used by the subcommittee and the advisory committee to carefully review the comments and make changes as needed. She added that some of the comments had made suggestions outside the scope of the modernization project, and that the advisory committee had noted those for consideration at a later date. Professor Gibson said that the advisory committee recommended approving the forms, but making their effective date correspond with the non-individual modernized forms recommended for publication this summer, making the earliest possible effective date December 1, 2015.

The committee unanimously approved the proposed amendments to the modernized forms for individual-debtor cases for submission to the Judicial Conference for final approval at the appropriate time, likely in 2015.

Amendments for Publication

MODERNIZED FORMS FOR NON-INDIVIDUALS
(OFFICIAL FORMS 11A, 11B, 106J, 106J-2, 201, 202, 204, 205,
206SUM, 206A/B, 206D, 206E/F, 206G, 206H, 207, 309A, 309B, 309C, 309D, 309E)

Professor Gibson reported that the nearly final installment of the Forms Modernization Project consisted primarily of case-opening forms for non-individual cases, chapter 11-related forms, the proof of claim form and supplements, and orders and court notices for use in all types of cases. The advisory committee also sought to publish two revised individual debtor forms and the

abrogation of two official forms.

At the suggestion of a committee member, Judge Wedoff agreed to revise the instructions at the top of Form 106J-2 to make it clear that the form requests only expenses personally incurred, not those that overlap with the expenses reported on Form 106J.

The committee unanimously approved publication of the modernized forms for non-individuals, described above and with the revision described above.

CHAPTER 13 PLAN FORM AND RELATED AMENDMENTS
(OFFICIAL FORM 113 AND FED. R. BANKR. P. 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, AND 9009)

Judge Wedoff reported that the chapter 13 plan form had been published for comment in August 2013, that the advisory committee had revised the form in response to public comments, and that it now recommended republication in August 2014. Judge Wedoff noted that one improvement in the revised form is that it adds an instruction that clarifies that the form sets out options that may be appropriate in some cases, but the presence of an option on the form does not indicate that the option is appropriate in all circumstances or that it is permissible in all judicial districts. A member asked whether that should be done on all of the forms to avoid needing to tweak forms every time a decision changes the applicability of some aspect of a form. Judge Wedoff said that the advisory committee would consider whether it might be appropriate to amend Rule 9009 to state that the presence of an option on a form does not mean that it is always applicable. But he said that such an amendment should be pursued separately from the current proposal to amend the chapter 13 plan form.

Judge Wedoff explained that because of the significant changes to the proposed form, the advisory committee recommended republication. As to the related rule amendments that were published in 2013, Judge Wedoff said that republication was probably not necessary, but that the advisory committee recommended republication of the rule amendments so that they could remain part of the same package as the plan form. He said that republication of the rules would delay the package by a year because, under the Rules Enabling Act, the rules would not go into effect until at least 2016 if they are republished this year. But, he said, the advisory committee did not think it wise to put the rule amendments into effect without the related form that was the driving force behind the amendments. Professor McKenzie described the proposed rule amendments and the changes made after publication, most of which were minor. He said the request for comment would seek input as to whether the rule amendments should go into effect even if the advisory committee were to decide not to proceed with the plan form.

The committee unanimously approved publication of the revised chapter 13 plan form and related amendments to Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009.

FED. R. BANKR. P. 3002.1

Judge Wedoff reported that the advisory committee recommended proposed amendments to Rule 3002.1, which applies in chapter 13 cases and requires creditors whose claims are secured by a security interest in the debtor's principal residence to provide the debtor and trustee certain information about the mortgage while the bankruptcy case is pending. The proposed amendments would clarify when the rule applies and when its requirements cease.

The committee unanimously approved publication of the proposed amendment to Rule 3002.1.

OFFICIAL FORM 410A

Judge Wedoff reported that the advisory committee recommended publication of amendments to Official Form 410A (currently Form 10A), the Mortgage Proof of Claim Attachment that is required to be filed in an individual debtor case with the proof of claim of a creditor that asserts a security interest in the debtor's principal residence. The advisory committee recommended publication of a revised form that would replace the existing form with one that requires a mortgage claimant to provide a loan payment history and other information about the mortgage claim, including calculations of the claim and the arrearage amounts. Judge Wedoff noted that there was one typographical error in the draft in the Standing Committee's agenda materials. On page 1103, the reference to Rule 3001(c)(2)(A) should be to the Federal Rules of Bankruptcy Procedure, not the Federal Rules of Civil Procedure.

The committee unanimously approved publication of the proposed amendments to Official Form 410A, with the revision noted above.

CHAPTER 15 FORM AND RULES AMENDMENTS
(OFFICIAL FORM 401 AND FED. R. BANK. P. 1010, 1011, 1012, AND 2002)

Professor McKenzie reported that the advisory committee recommended publication of an official form for petitions under chapter 15, which covers cross-border insolvencies. The proposed form grew out of the work of the Forms Modernization Project. Professor McKenzie said that the advisory committee also recommended publishing amendments to the Bankruptcy Rules to improve procedures for international bankruptcy cases. The proposals would: (1) remove the chapter 15-related provisions from Rules 1010 and 1011; (2) create a new Rule 1012 to govern responses to a chapter 15 petition; and (3) augment Rule 2002 to clarify the procedures for giving notice in cross-border proceedings.

The committee unanimously approved publication of proposed Official Form 401, the proposed amendments to Rules 1010, 1011, and 2002, and proposed new Rule 1012.

Informational Items

Professor Gibson reported that the advisory committee had withdrawn its proposed amendment to Rule 5005, which was published in 2013 and which would have replaced local rules on electronic signatures and permitted the filing of a scanned signature page of a document bearing the signature of an individual who is not a registered user of the CM/ECF system. The amendment would have allowed the scanned signature to have the same force and effect as the original signature and would have removed any requirement of retaining the original document with the wet signature. Professor Gibson said that the advisory committee had been persuaded by the public comments that the amendment was not needed and could be problematic.

Judge Wedoff said that his term as chair of the advisory committee was coming to a close and that Judge Sandra Ikuta would be taking over as chair. He added that he had very much appreciated the opportunity to serve as chair.

Judge Sutton said that Judge Wedoff had done amazing work, together with the reporters and the subcommittees. He added that Judge Wedoff's enthusiasm was infectious and that he was a national treasure for the Bankruptcy Rules. Judge Sutton said the committee was grateful for Judge Wedoff's service and his leadership.

REPORT OF THE ADMINISTRATIVE OFFICE

Julie Wilson and Ben Robinson provided the report of the Administrative Office. Ms. Wilson said that the Rules Office had been watching legislation that would attempt to address issues related to patent assertion entities. She said that a bill did pass in the House in December, but that recent developments indicated that the legislation was not moving forward in the Senate for now. She said that the Rules Office would continue to monitor the legislation.

Judge Sutton thanked the Rules Office for all its great work on the preparations for the committee's meeting.

NEXT COMMITTEE MEETING

The committee will hold its next meeting on January 8–9, 2014, in Phoenix, Arizona.

Respectfully submitted,

Andrea L. Kuperman
Chief Counsel

Jonathan C. Rose
Secretary

TAB 3B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ELIZABETH GIBSON, REPORTER

SUBJECT: ITEMS ON CM/ECF SUBCOMMITTEE AGENDA

DATE: SEPTEMBER 2, 2014

In 2013 the Standing Committee created a Subcommittee on CM/ECF to consider the impact of electronic filing and transmission of documents on the various sets of federal rules. Its membership consists of members of each of the rules advisory committees and their reporters. Judge Michael Chagares (3rd Cir.) serves as the Subcommittee chair, and Professor Dan Capra is its reporter. Judge Wedoff and I have been representing this Committee on the CM/ECF Subcommittee.

There are three issues currently on the Subcommittee's agenda that each of the rules advisory committees has been asked to consider. One issue, prompted by possible action by the Civil Rules Committee, is whether there should be a national rule mandating the use of electronic filing, subject to certain exceptions. A related issue is whether to have a national rule allowing electronic service of documents after the summons and complaint without obtaining the consent of the person served. The third issue for consideration is whether each set of rules should contain a definitional rule that would provide that references to paper documents and physical transmission include electronically stored information and electronic transmission.

This memorandum briefly presents the issues for discussion. If the Committee is interested in pursuing any of them, the Chair will ask the Subcommittee on Technology and Cross Border Insolvency to consider the issue(s) further and make a recommendation at the spring 2015 meeting.

Required Electronic Filing

Civil Rule 5(d)(3) currently provides:

> *Electronic Filing, Signing, or Verification.* A court may, by local rule, *allow* papers to be filed, signed, or verified by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States. A local rule may require electronic filing only if reasonable exceptions are allowed. A paper filed electronically in compliance with a local rule is a written paper for purposes of these rules. (Emphasis added.)

Criminal Rule 49(e) is virtually identical.

Bankruptcy Rule 5005(a)(2) and Appellate Rule 25(a)(2)(D) differ from the criminal and civil rules by stating in the first sentence that local rules may "permit or require" documents to be filed, signed, or verified electronically. The remainder of the two rules is largely the same as the civil and criminal rules. For adversary proceedings in bankruptcy, Rule 7005 makes Civil Rule 5 applicable in its entirety.

At its fall 2014 meeting, the Civil Rules Committee will discuss whether to amend Rule 5(d)(3) to require electronic filing subject to certain exceptions, rather than leaving the issue to local rules. A preliminary draft for discussion states:

> *Electronic Filing, Signing, or Verification.* All filings must be made, signed, or verified by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States. Paper filing must be allowed for good cause, and may be allowed for other reasons by local rule.

An amendment of Rule 5 along these lines would be mostly symbolic. An Administrative Office survey found that all district courts have an e-filing rule and 85 districts require electronic filing.[1] A national rule could provide uniformity, but the current draft would still allow local rules to create exceptions.

[1] Despite the fact that the first sentence of Rule 5(d)(3) just authorizes local rules to allow electronic filing, the second sentence authorizes local rules to require it if there are reasonable exceptions.

Should the Civil Rules Committee propose an amendment of Rule 5(d)(3) to mandate electronic filing, this Committee would need to consider whether to propose a similar amendment to Rule 5005(a)(2), propose a different amendment to that rule, or leave that rule as it currently reads and amend Rule 7005 to exclude the incorporation of Rule 5(d)(3). The Committee's decision depends on whether it believes it would be beneficial to have a national rule that reflects the actual practice of mandatory electronic filing and, if so, whether it thinks that exceptions should still be subject to local rulemaking.

Electronic Service Without Consent

The Civil Rules Committee will also consider at its fall meeting whether to amend Rule 5(b)(2)(E) to eliminate the consent requirement for the use of electronic service and to amend Rule 5(d)(1) to allow the substitution of a notice of electronic filing for a certificate of service. As noted above, Rule 7005 adopts Civil Rule 5 for adversary proceedings, so any amendment to Rule 5 would become applicable in adversary proceedings unless the bankruptcy rule is amended to deviate from the civil rule.

The current preliminary draft of an amendment to Rule 5(b)(2)(E) would not mandate the use of electronic service by the serving party; alternative methods of service would remain in subparagraphs (A) – (D) and (F). The amendment being considered would instead eliminate the requirement that the party being served must consent in writing to the receipt of electronic service and replace it with "good cause" and local rule exemptions:

(b) Service: How Made.

* * * * *

(2) *Service in General.* A paper is served under this rule by:

* * * * *

(E) sending it by electronic means—unless the person shows good cause to be exempted from such service or is exempted from electronic service by local rule—in which event service is

complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served;

* * * * *

The thinking behind this proposal is that a party should generally not be permitted to prevent another party from taking advantage of the convenience of electronic service (even though consent now usually results from registration for CM/ECF), but that some exemptions should be allowed. As with the proposal for electronic filing, the national rule giving permission to serve electronically would be subject to local variations.

Along with the change to Rule 5(b)(2)(E), the Civil Rules Committee will also discuss the possibility of amending Rule 5(d)(1) regarding certificates of service. The Committee on Court Administration and Case Management has suggested to the Standing Committee that the various advisory committees consider rule amendments that would allow a notice of electronic filing to be used in place of a certificate of service. The Civil Rules Committee reporter has sketched out alternative revisions of Rule 5(d)(1) that would either (1) require a certificate of service only for a "party that was not served by means that provided a notice of electronic filing" or (2) continue to require the filing of a certificate of service but provide that "notice of electronic filing is a certificate of service on any party served through the court's transmission facilities." The reporter has raised a question about whether the rule should also require that a certificate of electronic service or notice of electronic filing be served on anyone who was served by conventional means.

The Advisory Committee recently dealt with the issue of electronic service when it proposed and approved the Part VIII rules governing bankruptcy appeals. Although those rules do not have general application in bankruptcy cases, the approach taken there may help inform the Committee's consideration of the possible amendment of Civil Rule 5. Rule 8011, which

will take effect on December 1 of this year, governs filing and service in bankruptcy appeals. Subdivsion (c)(1) provides that "[s]ervice must be made electronically, unless it is being made by or on an individual who is not represented by counsel or the court's governing rules permit or require service by mail or other means of delivery." The rule goes on to provide methods of service for unrepresented parties. Rule 8011(d) requires either an acknowledgment of service or a proof of service to be filed and does not refer to a notice of electronic filing. Only Rule 8004(a)(3), which addresses appeals by leave, recognizes that electronic service may eliminate the need for certificates of service. It states that a certificate of service must be filed with a notice of appeal and motion for leave to appeal "unless [those documents are] served electronically using the court's transmission equipment."

Electrons = Paper

The final issue that the CM/ECF Subcommittee raises for consideration is whether the various federal rules should be amended to have them more fully reflect the ubiquity of electronic filing and transmission of court documents. Each of the reporters on the Subcommittee compiled a list of their respective rules that have terms or provisions that might need updating to encompass e-filing and e-transmission. My list of Bankruptcy Rules consisted of hundreds of references to the terms "papers," "writing," "copies," "mail," and "deliver." The lists were similar for the civil, criminal, and appellate rules.

Discussions among the reporters led to the view that, rather than engaging in wholesale rewrites of most of the federal rules to make terms technology-neutral or e-friendly, adoption of a universal definitional rule for each set of rules would be preferable. Professor Capra drafted the following template for consideration by the advisory committees:

Rule ___. Information in Electronic Form and Action by Electronic Means

a) Information in Electronic Form: In these rules, [unless otherwise provided] a reference to information in written form includes electronically stored information.

b) Action by Electronic Means: In these rules, [unless otherwise provided] any action that can or must be completed by filing or sending paper may also be accomplished by electronic means [that are consistent with any technical standards established by the Judicial Conference of the United States].

This has been dubbed the "electrons = paper" rule.

The proposed template is just a beginning point. For any set of rules, consideration would have to be given to whether exceptions are needed for either provision—for example, for service of a summons and complaint—and whether in subdivision (b) terms in addition to "filing" and "sending" should be included. It should also be noted that Bankruptcy Rule 5005(a)(2) currently states, "A document filed by electronic means in compliance with a local rule constitutes a written paper for the purposes of applying these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107 of the Code." The other sets of rules have a similar provision. *See* Civil Rule 5(d)(3); Appellate Rule 25(a)(2)(D); Criminal Rule 49(e); *see also* Evidence Rule 101(b)(6).[2] The Advisory Committee may want to consider whether the current provision in Rule 5005(a)(2) is sufficient or whether it should be expanded as in subdivision (a) of the template to cover documents that are not filed and as in subdivision (b) to cover actions referred to in the rules.

[2] All of the cited rules other than the Evidence Rule are, like Bankruptcy Rule 5005(a)(2), limited to papers or documents filed electronically. Evidence Rule 101(b)(6) more broadly provides that "a reference to any kind of written material or any other medium includes electronically stored information."

TAB 4A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

SUBJECT: CACM SUGGESTION REGARDING REDACTION OF PRIVATE INFORMATION IN FILED DOCUMENTS

DATE: AUGUST 19, 2014

The Committee on Court Administration and Case Management ("CACM") has submitted a suggestion (14-BK-B) regarding the procedure for redacting personal identifiers in documents that have already been filed in bankruptcy cases. One of its recommendations concerns the procedure for redaction in closed cases. CACM is developing a recommendation to the Judicial Conference of the United States ("JCUS") that the judiciary's privacy policy provide that a closed bankruptcy case does not have to be reopened in order for the court to order the redaction of information described in Rule 9037, and it suggests that Bankruptcy Rule 5010 be amended to reflect that policy. CACM's second recommendation relates to both open and closed cases. It suggests that Rule 9037 be amended to require that notice be given to affected individuals of a request to redact a previously filed document.

The Subcommittee considered the CACM suggestion during its July 28 conference call. This memorandum reports on the Subcommittee's preliminary views about the suggestion and its plan for further development of a recommendation to the Advisory Committee.

The Suggestion

Rule 9037 (Privacy Protection for Filings Made with the Court) implements the policy adopted by the JCUS in 2001 to address privacy concerns resulting from public access to electronic documents. The rule generally prohibits documents filed with the court from

containing full social security or taxpayer identification numbers (only last four digits permitted), complete birth dates (only birth year permitted), names of minors (only initials permitted), or full financial account numbers (only last four digits permitted). The filing party has the responsibility for redacting the identifying information.

The CACM suggestion responds to situations in which creditors have belatedly sought to redact personal identifiers from documents—typically proofs of claims—that they previously filed without complying with Rule 9037. The scope of a request may be large. In the case of at least one creditor, the request extended to thousands of documents in numerous courts. Because courts have handled these requests in a variety of ways, CACM has undertaken to develop some national procedures for dealing with redaction requests. Recognizing that its proposed procedures have rule implications, CACM suggests the possible need for rule amendments on two topics: (1) whether closed cases must be reopened in order to redact filed documents; and (2) who should receive notice of a redaction request.

With respect to case reopening, CACM says that a majority of courts have not required a closed case to be reopened in this situation, based on the rationale that "redaction is administrative in nature rather than a substantive request." Suggestion at 2. Other courts have required the party seeking redaction to file a motion to reopen the case and to pay the specified reopening fee. Still other courts have required a motion to reopen but have waived the fee.[1]

[1] Illustrative of the different procedures used for a redaction request in a closed case are the following local bankruptcy rules: L.R. 9037-1(c) (Bankr. W.D.N.C.) (requiring reopening of closed case and payment of reopening fee); L.R. 9037(b) (Bankr. D. Nev.) (same); L.R. 9037-1 (Bankr. W.D. Pa.) (same); L.B.R. 9037-1(a) (Bankr. C.D. Cal.) (same); L.B.R. 9037-1(b) (Bankr. D. Haw.) (requiring reopening of closed case and, unless protected information relates to movant, payment of fee); L.B.R. 5010-1 (Bankr. W.D. Okla.) (not requiring reopening of closed case); L.B.R. 9037-1(b) (Bankr. D.N.H.) (not requiring reopening of closed case to redact proof of claim, but requiring it and payment of fee for other documents). *See also* In re: Standing Order Regarding Motions to Restrict Public Access in a Closed Case (Bankr. W.D. La.) (not requiring reopening for redaction of proof of claim and waiving reopening fee for other documents); Gen. Order No. 13-01. In re: Motions Regarding Privacy Information in Closed

These differences are significant because the reopening fee is substantial, the same as the initial filing fee in the particular chapter (currently $245 in chapter 7, $1167 in chapter 11, and $235 in chapter 13). Furthermore, because the AO counts a reopened case the same for statistical purposes as a new case, the variation in procedure among courts can skew caseload calculations.

CACM recommends that "both Judicial Conference policy and the rules be clarified to note that a reopening is not necessary to handle a redaction request." Suggestion at 2. It is developing a recommendation to that effect to the JCUS regarding the judiciary's privacy policy, and it requests that "the Rules Committee consider amending Federal Rule of Bankruptcy Procedure 5010 to make this clarification permanent by stating that requests to redact bankruptcy records do not require the reopening of a closed case." *Id.*

CACM and the Bankruptcy Committee intend to develop a proposal for the imposition of a redaction fee for both open and closed cases. They will seek to propose a fee amount that "take[s] into account the additional work required by the court and provide[s] [an] incentive to a filer to be careful when originally filing documents," but one not so substantial as to deter filers from seeking belated redaction. *Id.* at 2 n.3.

Regarding notice of a request to redact, CACM concludes that the debtor or any other individual whose personal identifiers have been revealed, along with the case trustee and U.S. trustee or bankruptcy administrator, should receive prompt notice that a request has been made to redact records. This procedure would be contrary to the practice of some courts, where a debtor does not learn of the prior failure of a creditor to comply with Rule 9037 until after the court allows the redactions to be made. CACM suggests amending Rule 9037 or another rule to

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Cases (Bankr. E.D. Okla.) (not requiring reopening of closed case); No. 13-GO-01. In re: Redaction of Personal Identifiers (Bankr. N.D. Okla.) (same).

impose a prompt notice requirement. In the meantime, pending a rule amendment, CACM voted to "clarify the judiciary's privacy policy on this issue." *Id.* at 3.

The Subcommittee's Consideration of the Suggestion

1. *Case reopening*. Section 350(b) of the Bankruptcy Code provides for the reopening of a closed case "to administer assets, to accord relief to the debtor, or for other cause." Rule 5010 implements this provision by authorizing the reopening of a case "on motion of the debtor or other party in interest pursuant to § 350(b)." It goes on to provide the circumstances under which a trustee should be appointed for a reopened case. The original Committee Note for the rule states, "Although a case has been closed[,] the court may sometimes act without reopening the case." It specifically mentions the authority under Rule 9024 to correct clerical errors and under Rule 7069 to enforce a judgment that the bankruptcy court determined to be non-dischargeable.

The existing Code and rule provisions do not make clear whether reopening is required in order to redact documents in a closed case. If § 350(b) is meant to provide the exclusive grounds for a court to take action in a case that has been closed, the need for redaction of personal identifiers could constitute "other cause" for reopening. On the other hand, the statute may allow the court to take action in a closed case without reopening if the action is more ministerial in nature than the statutory examples of administering assets and granting relief to the debtor. The Committee Note to Rule 5010 supports the view that reopening is not required for some judicial actions related to a closed case.

The Subcommittee thought that CACM provided a persuasive rationale for allowing redaction without the need for reopening, at least under the current fee structure. Requiring payment of a substantial reopening fee could deter creditors from seeking to remove personal

identifiers from the public record, especially when multiple documents are involved. The impact of reopening on caseload calculation is also significant.

The Subcommittee considered whether allowing redaction without reopening requires a rule amendment. Rule 5010 is not necessarily inconsistent with allowing redaction in a closed case. The rule merely authorizes reopening on motion of the debtor or other party in interest, but it does not specify when reopening is required. A clear statement in the judiciary's privacy policy that records in closed cases can be redacted without the need for reopening could be sufficient to clarify the issue.

The Subcommittee decided, however, that acceptance of CACM's suggestion for a rule change would give more prominent notice that reopening is not required and would thereby facilitate nationwide uniformity. Just as Rule 9037 was adopted to effectuate the judiciary's initial privacy policy, a rule amendment clarifying that reopening of closed cases is not required to redact records would effectuate CACM's proposed amendment to the policy.

The Subcommittee did question whether Rule 5010 (Reopening Cases) is the best location for such an amendment. An alternative location is Rule 9037, which is where most of the local rules specify whether case reopening is required in order to redact documents in a closed case. Because, as is discussed below, the Subcommittee decided to consider proposing an amendment to Rule 9037 to specify the procedure for seeking redaction of previously filed documents, it concluded that the issue of case reopening would be better addressed there.

2. *Notice of a request for redaction*. Devising a procedure for seeking permission to redact personal identifiers from filed documents requires carefully balancing competing interests. On the one hand, the procedure should avoid calling public attention to the existence of unredacted documents on file that improperly expose personal identifiers. On the other hand, the

interest in judicial transparency suggests the need for the public record to reveal the making of a request for redaction and the court's action on it. And the interest in the privacy of sensitive identifier information that Rule 9037 was adopted to protect supports informing persons whose information was improperly disclosed of the violation and the effort to correct it.

Local bankruptcy rules governing requests for redaction of previously filed documents vary in how they respond to the competing concerns. A majority of the districts that have local rules governing the redaction of filed documents appear to have devised procedures intended to protect the unredacted documents in question from further public exposure. Many of them require the filer who seeks belated redaction in either an open or closed case to file an *ex parte* motion, application, or proposed order. In some districts the request is for redaction. *See, e.g.*, L.R. 9037 (Bankr. D. Nev.); L.B.R. 9037-1 (Bankr. N.D.N.Y.); L.B.R. 9037-1 (N.D. Ohio); L.B.R. 9037-1 (Bankr. D. Me.). In others, it seeks a protective order or restriction on public access to the unredacted document on file until the redacted version is substituted. *See, e.g.,* L.R. 9037-1 (Bankr. W.D.N.C.); L.B.R. 9037-1 (Bankr. D. Haw.); L.B.R. 9037-1 (Bankr. D.N.H.); L.R. 9037 (N.D.N.Y.); L.B.R. 9037-1 (N.D. Fla.). Most of these rules are either silent about the need to provide notice to other parties—either before or after redaction—or they state explicitly that the court shall act without notice. *See, e.g.*, Rule 9037-1 (Bankr. N.D. Ill.) (motion to redact "should be filed without a notice of motion and without serving other parties"); L.B.R. 9037 (Bankr. S.D. Ill.) (court "may rule on such motion without notice or hearing"); B-9037-1 (Bankr. S.D. Ind.) (same); 13-GO-01. In re: Redaction of Personal Identifiers (Bankr. N.D. Okla.) (Notice of Redaction "will initially be restricted from public view and available only to the party filer and the Court until the redaction is complete").

The local rules of a few districts do require service on the debtor, trustee, U.S. trustee, or other individuals whose identifier information was revealed. *See, e.g.*, L.R. 9037-1 (Bankr. W.D. Pa.) (requiring attachment of a certificate of service demonstrating service of the request "upon the debtor and all persons whose personal identifiers were redacted"); L.B.R. 9037-1 (Bankr. C.D. Cal.) ("The motion must contain proof of service upon the debtor, debtor's counsel (if applicable), United States trustee, and the case trustee (if applicable).").

CACM's suggestion is for an amendment to Rule 9037 requiring that prompt notice of a request to redact be given to the debtor or any other individual whose personal identifiers have been revealed, the case trustee, if any, and the U.S. trustee or bankruptcy administrator. Members of the Subcommittee agreed that affected individuals are entitled to learn of the failure to redact and of the substitution of a redacted document for the original one. But there was a consensus that notice must be given in a way that does not publicly highlight the existence of an unredacted document.

The Subcommittee also concluded it wants to consider developing additional national procedures for the redaction of filed documents. Rule 9037 does not currently address what happens if documents are filed without redacting the required information (other than the provision in subdivision (g) for the waiver of the filer's protection of its own unredacted information). The Subcommittee plans to consider proposing an amendment to Rule 9037 that specifies how a party that seeks to redact a filed document should proceed—whether by motion, application, notice, or proposed order; what relief should be initially sought—restriction of access to the unredacted document or redaction itself; whether the request for redaction should be sought *ex parte* or filed under seal; and when and to whom notice must be given. The proposed new provision of Rule 9037 would also state that case reopening is not required for

redaction of personal identifier information that should have been redacted under subdivision (a) of the rule.

The Subcommittee will develop its proposed amendment in time for consideration at the spring 2015 meeting. In the meantime, it will seek to obtain copies of any recommendation that CACM makes to the JCUS for changes to the privacy policy.

TAB 4B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

RE: SUGGESTION FOR THE AMENDMENT OF RULE 1006(b) REGARDING THE PAYMENT OF THE FILING FEE IN INSTALLMENTS

DATE: AUGUST 21, 2014

The Subcommittee brings back to the Advisory Committee an issue that the Committee has been considering for the last two years. Bankruptcy Judge John Waites (D.S.C.) submitted suggestion 12-BK-I on behalf of the Bankruptcy Judges Advisory Group ("BJAG"). The suggestion proposes that Rule 1006(b) be amended to clarify that courts may require a debtor who applies to pay the filing fee in installments to make an initial installment payment with the petition and the application. BJAG further suggests that any requirement for an initial installment payment at the time of filing be limited to 25% of the total filing fee. The suggestion was referred to this Subcommittee for a recommendation.

The Subcommittee previously recommended that the Advisory Committee propose an amendment to Rule 1006(b) to provide that local rules may require that an initial installment payment of no more than 25% of the filing fee be paid at the time the petition and application are filed. At the fall 2012 meeting, the Committee decided to take no action on the Subcommittee's recommendation. It instead referred the suggestion back to the Subcommittee to undertake additional research to determine the scope of the problem that the suggestion seeks to address and the likelihood that requiring an initial installment at the time of filing will increase chapter 7 fee waiver requests.

The Federal Judicial Center ("FJC") has now carried out that research and reported its findings to the Subcommittee. Dr. Molly Johnson's report follows this memorandum in the agenda materials. **Based on the FJC's findings and Subcommittee members' reconsideration of the proper interpretation of Rule 1006(b), the Subcommittee now recommends that the Committee propose no amendment to the rule.**

Payment of the Filing Fee in Installments

The source of the authority for debtors to pay the bankruptcy filing fee in installments is 28 U.S.C. § 1930(a). It requires a party commencing a bankruptcy case to pay the fee specified by the statute, as well as any additional fees required by the Judicial Conference of the United States. The current fees due upon filing are:

- Chapter 7 -- $335
- Chapter 11 -- $1717
- Chapter 12 -- $275
- Chapter 13 -- $ 310

Section 1930(a) states that an "individual commencing a voluntary or joint case under title 11 may pay such fee in installments."

Bankruptcy Rule 1006(b) governs the payment of filing fees in installments. Subdivision (b)(1) requires the court to accept for filing an individual's voluntary petition if it is "accompanied by the debtor's signed application, prepared as prescribed by the appropriate Official Form, stating that the debtor is unable to pay the filing fee except in installments." The court must rule on the application before the meeting of creditors takes place. The number of installments may not exceed four, and the debtor generally must make the last payment no later

than 120 days after filing the petition. Rule 1006(b)(2). The Official Form used for applying to make installment payments is Form 3A (to be renumbered Form 103A).

Judge Waites explained the reasons for the suggestion. A number of districts by local rule or order now require applicants for installment payment to make an initial installment payment at the outset of the case. They do so because they have encountered difficulties in collecting filing fees when cases are dismissed before all installments have been paid. Other districts, however, have concluded that Rule 1006(b)—by stating that an individual's petition "shall be accepted for filing" if it is accompanied by the debtor's signed application—precludes them from requiring the petition to be accompanied by any payment. BJAG submits that Rule 1006(b) should be amended to eliminate the uncertainty by clearly authorizing courts to require a reasonable minimum payment (which it suggests is 25% of the filing fee) to accompany the application to pay in installments.

The FJC Research

As is described more fully in Molly Johnson's memorandum, the FJC reviewed bankruptcy court websites and contacted clerks of court to determine how many bankruptcy courts require applicants for installment payment to make an initial payment at the time of filing. For those districts that do require it, the FJC determined the amount of upfront payment required and the consequences of noncompliance. The FJC also examined the association between requiring an initial installment payment at filing and the court's rate of fee waiver applications.

The research revealed that just over one-third of the bankruptcy courts (33) require an installment payment at the time of filing the petition and the application to pay the filing fee in installments. The amount of the required initial payment ranges from $40 to $135, and for courts that specify the required payment as a percentage of the total fees due upon filing, the percentage

ranges from 25% to 50%. Many of the courts do not specify the consequences of failing to make the required payment. Of those that do, a few courts state that the application to pay in installments may or will be denied if the initial installment is not paid at filing. A greater number of courts provide for the possible dismissal of the case or rejection of the petition, by the clerk or by the court, with or without further notice.

The FJC researchers found a small, but statistically insignificant, increase in the rate of chapter 7 fee waiver applications in districts requiring an upfront installment payment. In 2013 the median percentage of non-business chapter 7 cases in which fee waiver applications were filed in upfront-installment districts was 5.37%, while in other districts it was 4.26%. The FJC found no material difference in the denial rates for fee waiver applications in the two types of districts.

The Subcommittee's Recommendation

The Subcommittee discussed the FJC research and gave further consideration to the suggestion during a conference call on August 11, 2014. Several members stated that they did not think that Rule 1006(b) is inconsistent with requiring an upfront installment payment. The rule requires a petition to be "accepted for filing if accompanied by the debtor's signed application" to pay the filing fee in installments. These Subcommittee members read the provision to mean that a court could not refuse to accept a petition because of the failure to make an initial installment payment, but they did not think that the rule prohibited requiring an upfront payment. Because the clerk would have to accept the petition, resulting in the commencement of a case, the appropriate action for a court to take for the failure of a debtor to make a required initial payment would be dismissal of the case pursuant to Rule 1017(b)(1). That provision allows the court, "after a hearing on notice to the debtor and the trustee," to dismiss a case for the

failure to pay any installment of the filing fee. The practice of some courts of refusing to file a petition or summarily dismissing a case because of the failure to make an installment payment at the time of filing is therefore inconsistent with Rules 1006(b)(1) and 1017(b)(1).

Without taking a position on whether Rule 1006(b)(1) permits a court to require an initial installment payment to be paid at the time of filing, other Subcommittee members stated that they did not see a need to recommend an amendment now. The Committee has not received any suggestions from debtors' attorneys for a rule amendment to limit or prohibit courts from requiring an upfront installment payment, so there is no indication from the debtor's point of view of a problem that needs to be addressed. Furthermore, because the FJC research did not find a significant increase in fee waiver applications resulting from the requirement of an upfront payment, it does not appear that the payment requirements are causing a significant problem for the court system.

The Subcommittee concluded that no further action should be taken on the suggestion. If the Committee agrees, the Subcommittee suggests that the Committee's views about the appropriate procedure for responding to the nonpayment of a required upfront installment payment be communicated to BJAG.

MEMORANDUM

TO: Subcommittee on Consumer Issues

FROM: Molly Johnson, Federal Judicial Center

RE: Research on Initial Installment Payment Requirements in Bankruptcy Courts

DATE: August 7, 2014

I. Background[1]

Statutory authority for allowing debtors to pay their filing fee in installments is found in 28 U.S.C. §1930(a), which states that an "individual commencing a voluntary or joint case under title 11 may pay such fee in installments." Bankruptcy Rule 1006(b)(1) provides that a voluntary petition of an individual "shall be accepted for filing if it is accompanied by the debtor's signed application, prepared as prescribed by the appropriate Official Form, stating that the debtor is unable to pay the filing fee except in installments." The Official Form used to apply for paying the fee in installments is Form B3A (formerly Form 3A). Form B3A notes the option of paying the first installment payment at the time the application is filed, but also allows the filer to specify a later date on which the first installment will be paid.

Some bankruptcy courts have begun requiring an upfront installment payment at the time of filing. They have taken this step because of concerns about debtors filing petitions to obtain the benefit of the automatic stay, with the case then being dismissed before all, or any, installment payments are collected. Others believe that the plain language of Rule 1006(b) does not permit courts to require an upfront installment payment.

In 2012, Bankruptcy Judge John Waites (D.S.C.), on behalf of the Bankruptcy Judges' Advisory Group ("BJAG"), submitted suggestion 12-BK-1, proposing that Rule 1006(b) be amended to provide that courts may require a debtor who applies to pay the filing fee in installments to make an initial installment payment at the time the application and petition are

[1] Much of the information in this section is based on a Memorandum to this Subcommittee from Reporter Elizabeth Gibson, June 22, 2013.

filed. The suggestion was referred to the Consumer Subcommittee, which ultimately recommended to the full Advisory Committee that Rule 1006(b) be amended to provide that courts may by local rule require that an initial installment payment of no more than 25% of the filing fee be paid at the time the petition and application are filed.

The Advisory Committee considered the issue at its September 2012 meeting. Some members of the Committee saw a benefit to modifying the national rule to allow collection of an initial installment payment, while others raised a concern that allowing collection of an initial installment payment could lead to an increase in fee waiver applications in Chapter 7 cases. All agreed that a clerk should not be authorized to reject a petition for failure to provide an initial installment payment, but that this issue should instead be handled by a post-filing hearing on dismissal of the case. After discussing these and other considerations, the Committee ultimately referred the suggestion back to the Subcommittee to conduct more research on the extent of local variation with respect to initial installment payments as well as whether there are data suggesting an association between requiring an upfront installment payment and rates of fee waiver applications. The Federal Judicial Center agreed to assist with this research, and our findings are presented in this memorandum.

II. Research Questions and Methodology

Our research addressed the following questions: 1) How many bankruptcy courts currently require an initial minimum installment payment at the time of filing?; 2) For those that require an initial payment, how much is it?; 3) For those that require an initial payment, what consequences do they specify for failure to make the payment?; and 4) Is there any association between requiring a minimum initial payment and the rate of fee waiver applications? We focused on Chapter 7 cases in our research, since that is the only chapter for which fee waivers are available.

We began by canvassing the websites of all bankruptcy courts to determine if they had a local rule, standing order, or other provision that specifically addressed installment payments and, if so, whether they required an initial payment at the time of filing. While some courts were very clear in this regard (e.g., they had a local rule that mentioned the timing of the first

installment payment), others were not clear, or their website had unclear or inconsistent information – for example, the rules and forms on the website did not appear to require an initial payment, but the court's Guide for Pro Se Debtors mentioned an upfront payment required at filing. In situations where the information about initial installment payments was not clear from the website, we contacted the Clerk of Court to clarify the court's procedure. Through this process, we were able to identify how many courts require an upfront payment, how much was required, and any consequences specified for failure to make an installment payment at the time of filing. In addition, we classified each court by whether it required an upfront payment or not for the purpose of determining whether there was an association between requiring the upfront payment and the court's rate of IFP applications.[2]

III. Findings

a) *How many bankruptcy courts require an installment payment at the time of filing?*

As of July 2014, 33 bankruptcy courts (35%) required a minimum installment to be paid at the time the petition and application to pay in installments are filed. This requirement is normally set forth in a local rule (most frequently 1006) or standing order. One additional court (Guam) began requiring an initial installment as of August 1st, 2014, when new local rules took effect. Information about each court's practices can be found in the Appendix to this report.

b) *For courts that require an initial installment payment at filing, what is the amount?*

Some courts specify a dollar amount for the initial installment payment, while others use a percentage of the total fee. The smallest dollar amount specified is $40 (NY-E), while the largest dollar amount is $135 (CA-S). Those that use a percentage specify 25% (NH, RI, DE, MD, OK-W, and WY), 33-1/3% (MA) or 50% (TX-W, IL-S, MN, and MO-E). California Southern previously required 50% to be paid at the time of filing, but lowered this to $135 when

[2] Although we classified the courts based on information from the Clerk's Offices, it is possible that information on the website that differed from the formal position of the court could affect debtors' behavior in terms of fee waiver applications. For example, if requiring an upfront payment does in fact drive up IFP applications for debtors who don't believe they can afford an initial payment, this could happen if debtors *believe* there is an upfront payment required (e.g., from a Pro Se Guide), even if that is not the formal position of the court.

the recent national filing fee increases took effect. Combining dollar amounts and percentages, the overall dollar value of the minimum payments required ranges from $40 to $167.50 (for Chapter 7 cases).

c) *For courts that require an initial installment payment at filing, what consequences are specified for debtors who fail to make this payment?*

Most courts that require an initial installment payment at filing do not specify the consequence of failing to make the payment, or the local rule more generally states that failure to make any installment payment timely may result in dismissal of the case. Some courts (e.g., AZ, CO, RI) refer the application to the court for review, or automatically issue an order giving the debtor a certain time period (e.g., 14 days) to make the initial payment. Others (e.g., TX-N, NE) indicate that an application to pay in installments that is not accompanied by the initial payment may or shall be denied.

Several courts specify that the petition will be rejected by the Clerk, or an order of dismissal entered by the Clerk, if the petition and application to pay in installments are not accompanied by the required initial installment payment. Administrative Order 480 in the Eastern District of New York states that "The Clerk is hereby authorized and directed to reject the filing of any voluntary petition accompanied by an application to pay the filing fee in installments, unless such filing is accompanied by a minimum initial payment of $40."[3] The district also has created a local form B3A by modifying Official Form B3A to remove the option of setting a date other than the filing date for the initial installment, and adding the language "(minimum initial payment of $40 required)".

Similarly, General Order 2012-3 in the Western District of Washington provides that the Clerk of Court is authorized to reject or dismiss a voluntary petition that is filed with a request to pay in installments but without the mandatory initial installment payment of $100 (for Chapter 7 cases). The General Order explains why the court has taken this and related measures:

[3] In the case of a bankruptcy petition filed electronically, Administrative Order 539 (NY-E) provides that if the fee is not paid in full at the time of filing, the Clerk is authorized and directed to send a notice to debtor and debtor's counsel indicating that the bankruptcy case may be dismissed if full payment is not made within 5 days. This Order does not make reference to applications to pay the filing fee in installments.

> "The Bankruptcy Court for the Western District of Washington is experiencing an increase in the number of cases in which the debtor opts to pay the filing fee in installments. Frequently, however, no filing fee is collected before the case is dismissed due to other deficiencies. The failure to collect a fee places an administrative burden on the court and trustees. In the situation of a repeat filer, with outstanding fees in a prior or pending bankruptcy case, this burden is compounded."[4]

The U.S. Bankruptcy Court in Guam instituted a similar procedure when its new local rules went into effect August 1, 2014. Revised Local Rule 1006-1 contains language identical to the language from the Western District of Washington that authorizes the Clerk of Court to reject or dismiss a petition filed without the necessary initial installment payment.

Finally, a General Order in the U.S. Bankruptcy Court for the District of Columbia authorizes the Clerk of Court to deny an application not accompanied by the required initial payment and to enter an order on behalf of the court directing the debtor to either pay the filing fee in full, submit an amended application to pay in installments along with the initial installment, or show cause why the case should not be dismissed.[5]

d) *Is there a relationship between requiring an upfront installment payment and a court's rate of fee waiver applications?*[6]

As mentioned earlier, one concern expressed by some Advisory Committee members about allowing courts to require a minimum initial payment when a debtor pays the filing fee in installments is that this practice might encourage Chapter 7 debtors to apply for a waiver of the filing fee in its entirety. Even if the court ultimately required such debtors to pay the filing fee in installments or as one lump sum, the debtor would have expended time and money in preparing the fee waiver application and the court would have spent time reviewing and ruling on it.

To examine the association between requiring an installment payment at the time of filing and the rate at which filing fee waiver applications are filed, we conducted searches of the bankruptcy courts' replication databases to identify motions and orders pertaining to Chapter 7

[4] In re: Minimum Filing Requirements, Initial Installment Payment, Rejection of Deficient Filings, and Additional Delegation to the Clerk of Court, General Order 2012-3, U.S. Bankruptcy Court, Western District of Washington (September 14, 2012).
[5] In re Clerk's Office Operations, Standing Order (eff. June 1, 2014), §6.
[6] Beth Wiggins of the Federal Judicial Center wrote this section and conducted the analyses on which it is based, with assistance from George Cort and Matthew Petruszak.

filing fee waivers in calendar years 2010, 2011, 2012, and 2013. Searching the replication databases was necessary because the needed information was not available in the AO centrally maintained data.[7] Such searches present their own challenges due to inter-district variation in the CM/ECF data dictionary, docketing conventions, and court policies, but should help minimize the impact of the known data-related problems. Our searches first used the standard data dictionary event type and subtype terms to identify motions and orders related to Chapter 7 fee waivers. Because of some anomalies in the compiled data, we conducted follow-up searches in 11 districts using district-specific codes. We excluded the Northern Mariana Islands, the Virgin Islands, and Guam from all our analyses because of the low number of cases and fee waiver applications in those locations.

Our initial analysis relied on the number of Chapter 7 fee waiver applications, the number of Chapter 7 cases, and the number of Chapter 7 non-business cases filed in each district in each study year, and whether the district required an upfront installment payment. This later classification was based on the work described above.

Table 1 shows for calendar year 2013 the percentage of Chapter 7 cases and the percentage of non-business Chapter 7 cases in which a fee waiver application was filed in districts requiring an upfront installment payment and districts not requiring such a payment. Overall, the mean/median percentage of Chapter 7 cases and non-business Chapter 7 cases involving a fee waiver application was higher for districts requiring an upfront installment payment than for districts that did not require such payment. The difference was small (about 1.1%) and was not statistically significant. However, given the low rate of Chapter 7 cases that involve a fee waiver application overall, some may think a one percent increase in the number of applications is of practical significance. Based on 2013 Chapter 7 filing levels, this difference would mean that about 28,000 compared to 23,000 fee waiver applications would be filed in the 58 districts that do not currently require an upfront payment, were they to require such a

[7] Most notably (1) the AO centrally maintained case data has a fee status field to indicate whether the filing fee was paid in full, by installments, or waived, but the field does not distinguish between requests and orders, nor does it maintain a history of what transpired with respect to the fee; (2) the AO centrally maintained transactions data does not distinguish applications to pay the filing fee in installments from applications for waiver of the filing fee, even though CM/ECF itself contains separate types/subtypes for these events; and (3) the AO centrally maintained case data and transaction data may not reflect early activity in the case because courts transmit "current records" typically at the end of the month; transmitted records may have already been updated thus overriding early fee activity by the time they are transmitted to the AO.

payment. This translates to an average of about 86 additional applications per district; the exact number per district, of course, would vary widely depending on the level of filings in the district.[8]

We conducted the same analysis for calendar years 2010 – 2012 and found essentially the same thing; the 2013 analysis is the most reliable because over time more districts have begun requiring an upfront fee during the time period studied and our classifications are based on the districts' current practices.

Table 1

Percentage of Cases Involving a Fee Waiver Application in Calendar Year 2013

	Percentage of Chapter 7 Cases		Percentage of Non-Business Chapter 7 Cases	
Upfront payment required?	**No**	**Yes**	**No**	**Yes**
Number of Courts	58	33	58	33
Mean Percentage	4.65%	5.74%	4.82%	5.98%
Median Percentage	4.00%	5.24%	4.26%	5.37%
Minimum Percentage	0.82%	0.67%	0.85%	0.69%
Maximum Percentage	13.59%	16.64%	13.87%	17.54%
Percentage at 25th Percentile	2.78%	2.81%	2.93%	3.04%
Percentage at 75th Percentile	5.86%	7.94%	6.07%	8.37%

We also explored the question of whether fee waiver requests in districts requiring an upfront payment were more likely to be denied. If requiring an upfront payment drives more debtors to file fee waiver requests even though they are not eligible for IFP status, we would assume that the rate of denial of these requests would be higher in the districts requiring upfront payments. For this analysis we relied on the fee status code for each of the cases involving a fee waiver application; this code is used to indicate whether a waiver has been granted, installment

[8] As indicated earlier in the section, the replication database searches also identified *orders* involving a Chapter 7 fee waiver. We used this information to examine the reliability of the analyses presented in Table 1 by identifying cases in which the searches found a fee waiver order but not a fee waiver application. This assumes that where an order exists, an application must also exist, even if it was not identified in the searches. A few such cases were identified but the number did not change the results in any major or meaningful way.

payments are being made, installments payments have been completed, or the fee was paid in a lump sum. For this analysis, the median percentage is more reliable than the mean percentage because of some data anomalies. Results are displayed in Table 2.

Table 2

Percentage of Denied Filing Fee Waiver Applications in Calendar Year 2013

Upfront payment required?	No	Yes
Number of Courts	58	33
Mean Percentage	29.33%	27.79%
Median Percentage	24.35%	25.34%
Minimum Percentage	7.41%	6.76%
Maximum Percentage	94.33%	76.00%
Percentage at 25th Percentile	15.69%	16.67%
Percentage at 75th Percentile	36.32%	32.82%

The analysis did not lend support to the notion that requiring an upfront payment resulted in more applications being denied. Rates of denial for fee waiver applications were roughly similar regardless of whether a court required an installment payment at the time of filing.

Previous research has established that many debtors who meet the quantitative standards for fee waiver eligibility do not apply for the waiver.[9] Considering together the analyses reported in this section, one possibility is that requiring an upfront installment payment leads more debtors who are eligible for a fee waiver to apply for the waiver rather than applying to pay in installments. It does not appear, however, that requiring an upfront installment increases frivolous fee waiver applications, which presumably would be denied at a higher rate.

IV. Conclusion

Court practices vary widely with respect to whether an upfront installment payment is required and, if so, the amount of that payment and how an application without the initial payment is handled. Rules and policies in this area are changing constantly, with most change in

[9] E.g., Beth Wiggins, Implementing and Evaluating the Chapter 7 Filing Fee Waiver Program: Report to the Committee on the Administration of the Bankruptcy System of the Judicial Conference of the United States (Federal Judicial Center, 1998).

the direction of requiring an initial payment when one wasn't previously required, or increasing the amount of the minimum payment. There appears to be a small (but not statistically significant) association between requiring an initial installment payment and the rate of fee waiver applications. At the same time, the rate of fee waivers granted appears to be roughly the same whether or not the court requires an initial installment, suggesting that there is not a relationship between requiring such an installment and filing rates of frivolous fee waiver applications.

APPENDIX
Local Bankruptcy Court Procedures on Initial[1] Installment Payments

Bankruptcy Court/ Local Rule or Procedure	Initial installment payment required?	How much?	Consequences for failure to pay initial installment?	Other notes
1st Circuit				
Maine L.R. 1006-1	No			
Massachusetts L.R. 1006-2(a); Standing Order 2012-03	Yes	1/3 of total fee	"Failure to make any payment timely shall result in dismissal of the case."	Standing order (12/12/12) increased minimum initial payment from $40 to 1/3
New Hampshire L.B.R. 1006-1	Yes	No less than ¼ of total fee at time petition filed		
Puerto Rico L.R. 1006-1(a) + (b)	Yes	$50	"The court may not grant a discharge in a chapter 7 case if the debtor has failed to pay either the filing fee or any other fees due upon filing the case…Failure to timely pay the filing fee will result in dismissal of the case."	
Rhode Island L.B.R. 1006(1)(c) +(d)	Yes	At least 25%	If application is non-conforming, presented to Court for consideration. If denied, debtor must immediately remit full filing fee. Failure to do so results in automatic dismissal of case.	

[1] For purposes of this table, "initial" refers to the time of filing of the petition and application to pay in installments.

Bankruptcy Court/ Local Rule or Procedure	Initial installment payment required?	How much?	Consequences for failure to pay initial installment?	Other notes
2nd Circuit				
Connecticut None	No (confirmed by Clerk of Court)			
New York – Eastern A.O. 480 (10/7/03)	Yes	$40	Clerk authorized and directed to reject petition accompanied by request to pay in installments unless filing is accompanied by minimum initial payment of $40.	National form (B3A) modified on website to require initial installment
New York-Northern None	No (confirmed by Financial Specialist)			
New York – Southern None	No (confirmed by Chief Deputy)			Debtor encouraged to pay at least administrative fee on day of filing or following day
New York – Western None	No (confirmed by Clerk of Court)			
Vermont L.B.R. 1006-1(b) and 5081-1(f)	No (confirmed by Clerk of Court)			
3rd Circuit				
Delaware L.B.R. 1006-1(b)	Yes	Minimum 25% of fee	May result in dismissal of case if order not complied with	
New Jersey None	No			
Pennsylvania-Eastern None	No			

Bankruptcy Court/ Local Rule or Procedure	Initial installment payment required?	How much?	Consequences for failure to pay initial installment?	Other notes
Pennsylvania-Middle L.R. 1006-1	No			
Pennsylvania-Western L.R. 1006-1	No			
Virgin Islands L.R. 1006-1	No			
4th Circuit				
Maryland L.B.R. 1006-1	Yes	25%		
North Carolina – Eastern L.B.R. 1006-1	No (confirmed by Clerk of Court)			
North Carolina – Middle L.B.R. 1006-1	No (confirmed by Clerk of Court)			
North Carolina – Western L.B.R. 1006-1	No (confirmed by Clerk of Court)			
South Carolina L.R. 1006-1; refers to website for specific amount	Yes	$95		
Virginia-Eastern L.R. 1006-1; local form 3A	Yes	$100		
Virginia-Western L.B.R. 1006-1 and 5080-1	No			
West Virginia – Northern L.B.R. 1006-1	No (confirmed by Clerk of Court)			Pro se debtor guide on website (p. 15) suggests initial installment due at filing

Bankruptcy Court/ Local Rule or Procedure	Initial installment payment required?	How much?	Consequences for failure to pay initial installment?	Other notes
West Virginia – Southern L.B.R. 5080-1, Note	No (confirmed by Clerk of Court)			
5th Circuit				
Texas – Eastern L.B.R. 1006(e)	Yes	$75		
Texas – Northern L.B.R. 1006-1(a) + (b) and TXN006	Yes	$50	Application presented without initial installment "shall be denied" per L.B.R. 1006-1(b)	
Texas-Southern None	No (confirmed by Clerk of Court)			
Texas-Western Standing Order (11/8/13)	Yes	50% of fee		
Louisiana-Eastern None (announcement on website)	Yes (confirmed by Clerk of Court)	$75; initial payment increased 6/1/14		Per Clerk – understand court cannot refuse filing for failure to pay initial installment, but most debtors do
Louisiana-Middle L.B.R. 1006-1(a)	Yes	$100		
Louisiana-Western L.B.R. 1006-1; *Guide to Practice* (p. 20)	Yes (confirmed by Clerk of Court)	$112		
Mississippi-Northern None	No			

Bankruptcy Court/ Local Rule or Procedure	Initial installment payment required?	How much?	Consequences for failure to pay initial installment?	Other notes
Mississippi-Southern None	No (confirmed by Clerk of Court)			
6th Circuit				
Kentucky-Eastern L.B.R. 1006-1(a)	No (confirmed by Operations Mgr.)			
Kentucky-Western L.B.R. 5080-1	No (confirmed by Clerk of Court)			
Michigan-Eastern None	No (confirmed by Clerk of Court)			
Michigan-Western L.B.R. 1006-1	No (confirmed by Clerk of Court)			
Ohio-Northern None	No (confirmed by Clerk of Court)			
Ohio-Southern None	No (confirmed by Clerk of Court)			
Tennessee-Eastern None	No (confirmed by Clerk of Court)			
Tennessee-Middle None	No (confirmed by Clerk of Court)			
Tennessee-Western None	No (confirmed by Clerk of Court)			
7th Circuit				
Illinois-Central None	No (confirmed by Clerk of Court)			

Bankruptcy Court/ Local Rule or Procedure	Initial installment payment required?	How much?	Consequences for failure to pay initial installment?	Other notes
Illinois-Northern L.B.R 1006-1(A)	No			
Illinois-Southern L.B.R. 1006 A	Yes	50% of filing fee due when petition is filed		
Indiana-Northern L.B.R. 1002-1	No (confirmed by Clerk of Court)			
Indiana-Southern L.B.R. 1006-1(b) + G.O. 14-0003	Yes	$84 (Ch 7)	"If any installment of the filing fee has not been paid, the court may dismiss the case without further notice."	
Wisconsin-Eastern None	No (confirmed by Clerk of Court)			
Wisconsin-Western None	No (confirmed by Operations Mgr.)			
8th Circuit				
Arkansas-Eastern Local form; G.O. 32	No			
Arkansas-Western Local form; G.O. 32	No			
Iowa-Northern L.B.R. 1006-1	No			
Iowa-Southern None	No (confirmed by Clerk of Court)			
Minnesota L.B.R. 1006-1(b)	Yes	Half of filing fee ($167.50)		
Missouri-Eastern L.B.R. 1006-1.A; Local form	Yes	50% of filing fee		

Bankruptcy Court/ Local Rule or Procedure	Initial installment payment required?	How much?	Consequences for failure to pay initial installment?	Other notes
Missouri-Western None	No (per Bcy. Processing Supervisor)			.
Nebraska G.O. 13-03	Yes	$75	Order says an initial payment of at least $75 must accompany application or application may be dismissed.	
North Dakota L.B.R. 2002-1 Notice and Service Req. List	Yes	$100		
South Dakota None	No (confirmed by Clerk of Court)			
9th Circuit				
Alaska None	No			"recommend-ed" to pay at least $50 with petition (per FAQ)
Arizona L.B.R. 1006(a)(2)	Yes	Minimum of $50 unless the court otherwise orders	Order entered requiring payment within 14 days or case dismissed	National form modified to add "minimum initial payment of $50 required"
California-Central L.B.R. 1006-1; local form B3A	No			
California-Eastern None	No			

Bankruptcy Court/ Local Rule or Procedure	Initial installment payment required?	How much?	Consequences for failure to pay initial installment?	Other notes
California-Northern None	Varies by division, per Admin. Mgr.[2]			
California-Southern Form C.S.D. 1006; L.B.R. 1006-3	Yes	$135 (recently lowered due to overall fee increase)	Debts not discharged until fee is paid; court may dismiss	Formerly required ½ of fee at filing
Guam None	No (confirmed by Clerk of Court's office)			Effective 8/1/14, new local bankruptcy rules require initial installment due at filing
Hawaii None	No (confirmed by Clerk of Court)			
Idaho L.B.R. 1006.1	No (confirmed by Chief Deputy)			
Montana L.B.R. 1006-1	Yes	At least $50	Clerk provides written notice that payment must be made within 14 days; if fail to pay, dismissed	Proposed revision to local rule would require ¼ of total fee at time of filing
Nevada L.B.R. 1006	No			
Oregon L.B.R. 1006-1(b); LBF 110	No for Chapter 7 (confirmed by Clerk of Court)			Initial installment is required in Chapters 11 and 13

[2] Oakland Division requires an initial payment but will accept the case without the fee and provide time (e.g., 5 days) for the first payment; San Francisco Division requests the initial payment, but will accept the case without the fee and provide time (e.g., 10 days) for first payment; San Jose division does not require an initial payment; Santa Rosa division does not require an initial payment (Email message to Molly T Johnson from Eric Cyman, 07/23/14).

Bankruptcy Court/ Local Rule or Procedure	Initial installment payment required?	How much?	Consequences for failure to pay initial installment?	Other notes
Washington-Eastern L.B.R. 1006-1(a)	Yes	$75		
Washington-Western L.B.R. 1006-1(b); L.B.F. 3; G.O. 2012-3	Yes	$100	Clerk authorized to reject petition if not accompanied by initial payment	
10th Circuit				
Colorado G.O. 2014-4(a) (new)	No			G.O. effective 7/1/14 requires first payment of $125 within 14 days of petition filing
Kansas L.B.R. 1006.1	No (confirmed by Clerk of Court)			
New Mexico L.B.R. 1006-1	No (confirmed by Clerk of Court)			
Oklahoma-Eastern L.B.R. 1006-1(A); G.O. 12-09	Yes	$75	Failure to make any payment may result in dismissal of case	
Oklahoma-Northern L.B.R. 1006-2	No (confirmed by Clerk of Court)			
Oklahoma-Western L.B.R. 1006-1.C	Yes	¼ of fee	Clerk gives notice of show cause hearing; case may be dismissed at hearing	
Utah L.B.R. 5080; memo from Clk. of Ct. 7/1/14	No			$100 due within 14 days of filing

Bankruptcy Court/ Local Rule or Procedure	Initial installment payment required?	How much?	Consequences for failure to pay initial installment?	Other notes
Wyoming L.B.R. 1006-1(B); L.B.F. H	Yes	Minimum of 25%	If any payment missed, case may be dismissed and may receive no discharge of debts	
11th Circuit				
Alabama-Middle L.B.R. 1006-1	Yes (standing practice, per Financial Administrator)	$50		Rule requires initial payment at filing in Ch.13 cases
Alabama-Northern L.B.R. 1006-1; 5080-1	No			25% of filing fee due within 30 days of petition
Alabama-Southern None	No			
Florida-Middle None	No			
Florida-Northern None	No (confirmed by Clerk of Court)			Court *encourages* initial payment at intake counter and in fee schedule
Florida-Southern L.B.R. 1006-1(A)(2)(b); L.F.3; Clerk's Notice 6/30/14	Yes	$167.50	Bankruptcy case may be dismissed, may not receive discharge	Prior to 6/30/14, initial installment was $50
Georgia-Middle L.B.R. 1006-1	No			
Georgia-Northern B.L.R. 1006-1; L.B.F. 3A; G.O. 16-2013	Yes	$75	If debtor unable to make initial payment at time of filing, order entered requiring this payment within 7 days	

Bankruptcy Court/ Local Rule or Procedure	Initial installment payment required?	How much?	Consequences for failure to pay initial installment?	Other notes
Georgia-Southern None	No			
District of Columbia Standing Order, In Re Clerk's Office Operations (6/1/14)	Yes (per Deputy in Charge)	$61	Clerk authorized to deny application not accompanied by initial payment and enter an order directing the debtor to either pay the filing fee in full, submit an amended application to pay in installments with the required initial payment, or show cause why case should not be dismissed	
Northern Mariana Islands None	No			

TAB 4C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

RE: PROJECT TO REVIEW NOTICING REQUIREMENTS IN THE BANKRUPTCY RULES (SUGGESTED AMENDMENT TO RULE 2002(h) TO PERMIT A COURT TO ELIMINATE CERTAIN NOTICES TO CREDITORS WHO HAVE NOT FILED PROOFS OF CLAIM IN CHAPTER 13 CASES)

DATE: AUGUST 20, 2014

Last year, the Subcommittee on Consumer Issues considered a suggestion (12-BK-M) from Judge Scott W. Dales (Bankr. W.D. Mich.) to mitigate the cost of notice in chapter 13 cases. The suggestion recommends amending Rule 2002(h) to permit a court in a chapter 13 case to curtail notice to creditors who do not file proofs of claim. The Advisory Committee decided to hold the suggestion in the dugout pending the public comment period on the chapter 13 plan form. The suggestion then returned to the Subcommittee for further consideration. The Subcommittee discussed the suggestion during a conference call on July 28, 2014.

The Subcommittee's earlier consideration of the suggestion raised the question whether Rule 2002(h) should be amended in isolation or whether the Advisory Committee should undertake a more comprehensive review of noticing requirements under the Bankruptcy Rules. After discussion of that question, the Subcommittee concluded that it would be preferable to consider the suggestion as part of a larger project to review and, perhaps, reconsider noticing in bankruptcy.

The Subcommittee's discussion was informed by the Business Subcommittee's consideration of another noticing-related suggestion.[1] Members of the Subcommittee agreed with the Business Subcommittee's evaluation of whether and how to pursue a noticing review project.

Accordingly, the Subcommittee recommends the formation of a noticing review working group.

[1] *See* Memorandum from Subcommittee on Business Issues to Advisory Committee on Bankruptcy Rules (August____, 2014).

TAB 5A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEES ON CONSUMER ISSUES AND FORMS

SUBJECT: SUGGESTION FOR AMENDMENT TO RULE 3002.1(b) REGARDING HELOC ACCOUNTS

DATE: AUGUST 19, 2014

Mike Bates, senior company counsel at Wells Fargo, has submitted Suggestion 14-BK-A, which proposes an amendment to Rule 3002.1 to create a special procedure for providing notice of payment changes under subdivision (b) of that rule with respect to home equity lines of credit ("HELOCs"). The problem of compliance with the rule for these types of loans was discussed at the September 2012 mini-conference on the new mortgage rules and forms, and Mr. Bates and chapter 13 trustee Debra Miller agreed to try to devise a workable procedure for reporting HELOC payment changes in chapter 13 cases. Mr. Bates's suggestion is the solution they arrived at with the input of other servicers.

The Subcommittees considered this suggestion during their joint conference call on July 28. While not endorsing the detailed procedure set forth in the suggestion, **the Subcommittees recommend that the Advisory Committee propose an amendment to Rule 3002.1 that will allow more flexibility in the application of the rule to HELOCs. They also recommend that the Committee propose a minor change to Official Form 410S1 (Notice of Mortgage Payment Change) that Mr. Bates suggested.**

Rule 3002.1(b) and HELOCs

Rule 3002.1(b), which took effect on December 1, 2011, requires creditors holding a claim secured by a security interest in the debtor's principal residence to keep the court, debtor,

debtor's attorney, and trustee informed of any changes in the ongoing mortgage payment amount during the course of a chapter 13 case in which the home mortgage payments are being maintained. Specifically, it requires the holder of the mortgage claim (hereafter referred to as "the servicer") to file and serve on the debtor, debtor's counsel, and the trustee "a notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment." The notice must be prepared as prescribed by Official Form 10S1 (to become Official Form 410S1), and the servicer must file and serve it no later than 21 days before payment in the new amount is due. The purpose of the provision is to allow chapter 13 debtors who want to remain current on their postpetition mortgage payments to know how much must be paid and to be able to challenge in the bankruptcy court any changes that are not properly claimed.

The problem that a servicer of a HELOC faces in complying with Rule 3002.1(b) is illustrated by *In re* Adkins, 477 B.R. 71 (Bankr. N.D. Ohio 2012). The servicer in that case sought an order excusing it from the requirements of Rule 3002.1(b) on that ground that compliance would be "'virtually impossible.'" *Id.* at 72. The bank explained that, because the loan was an open-ended revolving line of credit, its balance was constantly changing. The payment amount could change monthly due to interest rate adjustments, increased draws on the line of credit, or payments of principal in addition to the finance charges. These frequent adjustments in the payment amount, contended the servicer, would make it especially difficult to comply with the 21-day notice requirement. *Id.*

The *Adkins* court denied the servicer's Motion to Excuse Notice. Rule 3002.1(b) clearly applied, as the servicer conceded, and the court found no authority to waive its requirements. Judge Woods, although sympathetic with the servicer's position, pointed out that the rule

provides no leeway in its application. Unlike numerous other Bankruptcy Rules, Rule 3002.1(b) does not say "unless the court orders otherwise." *Id.* at 73.

The difficulties of compliance expressed by the servicer in *Adkins* were echoed by participants at the mini-conference, and there was a general consensus that Rule 3002.1(b) should be amended to deal more appropriately with HELOCs. There was not a consensus, however, on the proper solution. Among the suggestions at the mini-conference were (1) to eliminate the notice requirement for changes of no more than $25 and require an annual reconciliation; (2) in non-conduit districts, to allow the debtor to pay the minimum payment amount on the monthly statement sent by the servicer; (3) to allow debtors' attorneys and trustees to receive the notice electronically by means of CM/ECF; and (4) to send monthly statements to the trustee. In follow-up discussions by the Subcommittees, it was suggested that "unless the court orders otherwise" might be added to Rule 3002.1(b).

The Suggestion

The Bates suggestion includes some of the ideas discussed at the mini-conference. It would retain a notice requirement for HELOC payment changes but would reduce the burden on servicers by limiting who must receive notice in some situations and by making easier the means of providing notice. A summary of the suggestion follows.

The notice procedure would vary depending on whether the debtor would be making the HELOC payments directly (non-conduit) or the trustee would be making them (conduit).

Non-conduit: Instead of complying with the current requirements of Rule 3002.1(b), the servicer could inform the debtor of HELOC payment changes in the same way that it would provide notice to the debtor outside of bankruptcy (e.g., monthly statements). No notice would have to be given to the court, trustee, or debtor's attorney.

Conduit: The alternative HELOC procedure for these cases would allow the servicer to provide notice of payment changes to the trustee by sending the trustee each month an electronic file with the debtor's name, the case number, the last monthly payment amount, and the new monthly payment amount. Additional notice requirements would depend on the size of the payment change. For a change of $25 or less, the servicer could inform the debtor in the same way as outside of bankruptcy. No notice to the court or the debtor's attorney would be required. For changes exceeding $25, the servicer would have to comply with the current notice requirements of Rule 3002.1(b)—filing a Form 10S1 notice with the court and serving it on the debtor and the debtor's attorney. The electronic file would take the place of the Form 10S1 notice to the trustee.

The Subcommittees' Recommendation

The Subcommittees recognized that the suggested procedures for providing notice of HELOC payment changes would accomplish the underlying goal of Rule 3002.1(b) by keeping the person who is maintaining the mortgage payments apprised of the amount that has to be paid, and it would do so in a way that at least some servicers—those that participated in the drafting of the suggestion—apparently find more feasible than the current requirements. The Subcommittees, however, were concerned that the proposed amendment was unduly detailed and complex. To avoid having a national rule that reads like an IRS regulation, the Subcommittees concluded that it would be preferable to create flexibility in subdivision (b) by allowing the details of an alternative procedure to be developed by local rulemaking or court order. They propose allowing this flexibility by authorizing courts to deviate from the rule's requirements for reporting payment changes in the case of HELOCs only.

The Subcommittees recommend that the following amendment to Rule 3002.1(b) and accompanying Committee Note be proposed for publication:

Rule 3002.1 Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence

* * * * *

(b) NOTICE OF PAYMENT CHANGES. The holder of a claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment, no later than 21 days before a payment in the new amount is due. For claims arising from home equity lines of credit, this requirement may be modified by court order.

* * * * *

Committee Note

Subdivision (b) is amended to authorize courts to modify its requirements for claims arising from home equity lines of credit (HELOCs). Because payments on HELOCs may adjust frequently and in small amounts, the rule provides flexibility for courts to specify alternative procedures for keeping the person who is maintaining payments on the loan apprised of the current payment amount. Courts may specify alternative requirements for providing notice of changes in HELOC payment amounts by local rules or orders in individual cases.

As discussed elsewhere in the agenda materials, the Subcommittees continue to study the possibility of recommending other amendments to Rule 3002.1. So that any amendments that the Committee proposes to the rule can be presented as a package, the Subcommittees suggest that this amendment, if approved for publication by the Committee, be placed in the bullpen.

Proposed Amendment to Official Form 410S1

Mr. Bates also included a recommendation in his suggestion regarding the wording of the Official Form 10S1, which will be renumbered Official Form 410S1. The beginning of Part 2 asks, "Will the debtor's principal and interest payment change based on an adjustment to the interest rate in the debtor's variable-rate note?" He suggests that "in the debtor's variable-rate note" be changed to "on the debtor's variable-rate account" in order to be more inclusive. He points out that line of credit accounts are based on an agreement, but not on a note.

The Subcommittees agreed that this wording change should be made. Official Form 410S1 was published for public comment this summer. Because the proposed change is minor, the Subcommittees recommend that the proposed change be made to the form at the spring 2015 meeting when the Committee reviews any comments submitted in response to the publication. This change could then be noted in the report to the Standing Committee when final approval of Official Form 410S1 is sought.

TAB 5B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEES ON CONSUMER ISSUES AND FORMS

SUBJECT: PROPOSED FORMS TO IMPLEMENT RULE 3002.1(f) AND (g) AND OTHER RULE 3002.1 ISSUES

DATE: AUGUST 22, 2014

The NACTT Mortgage Liaison Committee has drafted two forms to implement the notice and response requirements of Rule 3002.1(f) and (g) and has provided them to the Committee for possible consideration as official forms. NACTT is the National Association of Chapter 13 Trustees. Its mortgage liaison committee, co-chaired by trustee Debra Miller, works with various mortgage servicers and their attorneys in an effort to arrive at best practices for handling home mortgages in chapter 13 cases. A subcommittee of the liaison committee drafted the Rule 3002.1(f) and (g) forms in order to promote greater uniformity, transparency, and accuracy in the procedure for a trustee's provision of notice of final cure payment and the mortgage servicer's response to the notice. After favorable review by the entire committee, which consists of some 150 trustees, servicers, and attorneys, Ms. Miller sent the forms to the Advisory Committee.

Whether forms should be promulgated for Rule 3002.1(f) and (g) is just one of the unresolved issues that were raised at the 2012 mini-conference and that have been assigned to these Subcommittees for consideration. The other issues that remain on the Subcommittees' joint agenda are the following:

- Should a procedure for objecting to a payment change be added to the rule?
- Should the rule provide an affirmative procedure for seeking a declaration at the end of a case that the mortgage is current?

- Should Rule 3002.1(c) be clarified regarding whether there is a need to report charges that the court has already approved?
- Should the claims docket continue to be used for filing notices of fees, expenses, and charges?

The Subcommittees considered the proposed forms and how to pursue the remaining issues during their joint conference call on July 28. Part I of this memorandum discusses the Subcommittees' recommendation regarding the proposed forms. Part II then reviews the other Rule 3002.1 issues and the Subcommittees' recommendation for how those issues might be further considered.

I. Proposed Forms to Implement Rule 3002.1(f) and (g)

Rule 3002.1 went into effect on December 1, 2011, along with amendments to Rule 3001(c). This rules package was adopted to provide more complete information about home mortgage claims and, in chapter 13 cases, to keep the debtor and trustee informed about changes in payment amounts and the assessment of fees and charges with respect to a home mortgage that is being maintained during the course of the plan. Subdivisions (f) - (h) of Rule 3002.1 set forth a procedure applicable at the end of a chapter 13 case to determine the status of the home mortgage before the debtor emerges from bankruptcy. It consists of three steps.

First, under subdivision (f), after the successful completion of the chapter 13 plan, the trustee files a notice "stating that the debtor has paid in full the amount required to cure any default on the [home mortgage] claim." This notice is served on the debtor, the home mortgage servicer, and the debtor's attorney. It also informs the servicer of its obligation to file a response to the notice. There is a provision for the debtor to file the notice if the trustee fails to do so. Subdivision (f) was written to require the trustee only to give notice that any mortgage default

has been cured, rather than stating that all mortgage payments to date have been paid, because in non-conduit districts the trustee does not have a record of postpetition mortgage payments that the debtor has made directly to the servicer. (In conduit districts, in contrast, the trustee makes the postpetition mortgage payments from funds the debtor pays the trustee.)

Second, under subdivision (g), the servicer files a response to the trustee's notice within 21 days after being served. The servicer indicates whether it agrees with the trustee's statement that the debtor has cured the mortgage default, and it also states whether the debtor is otherwise current on all mortgage payments. If the servicer contends that the debtor has not cured the default or is not current on the mortgage payments, the response must itemize any unpaid amounts. The servicer files this response as a supplement to its proof of claim.

Finally, subdivision (h) permits the trustee or debtor to move for a determination of whether the debtor has cured the default and paid all of the postpetition amounts. If this procedure is followed, a debtor who has made all of the required payments under the plan should not face the unpleasant surprise after bankruptcy of being informed that the mortgage is in default and that the servicer is commencing foreclosure proceedings.

Along with the package of mortgage rules, the Judicial Conference promulgated official forms drafted by the Advisory Committee to implement Rule 3001(c)(2)(A) (Mortgage Proof of Claim Attachment), Rule 3002.1(b) (Notice of Mortgage Payment Change), and Rule 3002.1(c) (Notice of Postpetition Mortgage Fees, Expenses, and Charges). No official forms, however, were adopted to implement Rule 3002.1(f) and (g).

The Advisory Committee convened a mini-conference on the new mortgage rules and forms in September 2012 to receive feedback on how they were working in practice and what adjustments or additions to them might be needed. The participants included bankruptcy judges,

clerks, debtors' attorneys, chapter 13 trustees, and mortgage servicers. Among the issues on which there was general agreement was the desirability of an official form for the trustee's notice under Rule 3002.1(f). It was suggested that an official form notice would provide uniformity and greater clarity in trustees' statements.

The NACTT committee has drafted two forms: a Notice of Final Cure to be filed by the chapter 13 trustee pursuant to Rule 3002.1(f) and a Response to the Notice of Final Cure to be filed by the servicer pursuant to Rule 3002.1(g). The Notice of Final Cure form would be filed by trustees in all districts, whether conduit or non-conduit. The form states that "the amount required to cure the prepetition default . . . has been paid in full and the Debtor has completed all payments under the plan." In conduit districts, the trustee would state the due date of the next mortgage payment so that the servicer could ascertain whether its system shows the same date. Consistent with subdivision (f), the notice does not require a statement that all postpetition payments have been made, but it does provide a space for the trustee in non-conduit districts to indicate the extent to which postpetition arrearages that the plan proposed to pay (via the trustee) have been paid. The NACTT committee concluded that the trustee should provide a complete disbursement history along with the notice in order to allow the servicer to compare the trustee's information with its own records to ensure that all payments were properly posted. The form calls for the disbursement history to be attached.

The Response to the Notice of Final Cure form calls for the servicer to indicate first whether it agrees or disagrees that the debtor has paid in full the amount necessary to cure any prepetition default. Then it requires the servicer to state whether it agrees or disagrees that the debtor is current with all postpetition payments. If the servicer disagrees, it must indicate the total amount unpaid as of the date of the response, broken down into (a) ongoing payments due

and (b) fees, charges, expenses, escrow, and costs outstanding. The NACTT committee concluded that, if the servicer states that the debtor is not current with all payments, it should provide a complete postpetition loan history. Doing so would provide the debtor and trustee with the basis for the servicer's calculations and might allow for the resolution of some disputes without the need for litigation. This history must be attached to the response.

The Subcommittees concluded that, while it might be useful to have forms for the trustee's notice under Rule 3002.1(f) and the servicer's response under (g), issuance of director's forms for this purpose would be preferable to the promulgation of official forms. The use of director's forms would not be mandatory, and they could be altered as needed to respond to the circumstances of particular cases or in particular districts. The NACTT liaison committee's proposed forms provide a good start on the development of such forms, but the Subcommittees believe that it is important to get input in their design from representative of consumer debtors' attorneys in addition to chapter 13 trustees and servicers.

The Subcommittees recommend that the Advisory Committee authorize the appointment of a small working group to draft proposed director's forms to implement Rule 3002.1(f) and (g). The Subcommittees suggest that the group be composed of a few of their members, along with a consumer debtors' attorney, a chapter 13 trustee, and a servicer representative. The working group would be asked to prepare forms that could be considered by the joint Subcommittees in time for them to make a recommendation at the spring 2015 Advisory Committee meeting.

II. Other Rule 3002.1 Issues

The issues listed at the beginning of the memorandum have been placed in the dugout for further consideration by the Subcommittees. They are discussed briefly below.

1. *Should a procedure for objecting to a payment change be added to the rule?* Rule 3002.1(e) provides a procedure for challenging a claimed fee, expense, or charge after the servicer gives notice of it under subdivision (c), but the rule does not provide a similar procedure for payment changes that are reported under subdivision (b). This gap was likely an oversight resulting from a focus on what had been the more troublesome issue of undisclosed postpetition fees and charges. Although the current rule does not preclude a debtor or trustee from bringing an action to challenge a reported payment change or prevent the promulgation of local rules to prescribe a procedure for doing so, the Subcommittees concluded that it might be beneficial to have a national procedure for raising and determining objections to payment changes. Participants at the mini-conference favored this addition.

The Subcommittees recommend that, if a working group is appointed, it be asked to consider this issue and make a recommendation to the Subcommittees of a procedure for challenging a claimed payment change. Among other things, the group should consider a time requirement for making an objection and the effect of an objection on the obligation to pay the new amount prior to the court's resolution of the issue.

2. *Should the rule provide an affirmative procedure for seeking a declaration at the end of a case that the mortgage is current?* Rule 3002.1(h) provides for the determination of "whether the debtor has cured the default and paid all required postpetition amounts." That is the final step in the end-of-case procedure that is initiated by the trustee's filing of a notice of final cure payment. While the rule does provide this method of obtaining a declaration that a mortgage is current, it is limited to cases in which there has been a default on the claim. If there was no prepetition or postpetition default, the trustee does not file a notice of final cure payment under subdivision (f), the servicer does not have to respond under (g) with a statement about

whether the debtor is current on all payments, and the determination procedure under (h) does not get triggered. The rule was drafted in this way in order to tie the required procedures to implementation of § 1322(b)(5) of the Code. There was concern that a broader provision authorizing the court to declare a mortgage current at the end of a chapter 13 case might be challenged as an impermissible modification of the mortgage holder's rights in violation of § 1322(b)(2).

Without reaching a decision on whether an additional or a different procedure is needed, the Subcommittees concluded that any working group that is appointed should be asked to consider this issue as well.

3. *Should Rule 3002.1(c) be clarified regarding whether there is a need to report charges that the court has already approved?* Participants at the mini-conference pointed out an inconsistency between Rule 3002.1(c) and Official Form 10S2 (Notice of Postpetition Fees, Expenses, and Charges), which implements the rule provision. The instructions to Part 1 of the form state, "Do not include . . . any amounts previously . . . ruled on by the bankruptcy court." Subdivision (c), however, requires the servicer to give notice of all postpetition fees, expenses, and charges without excepting ones already ruled on. This issue was discussed in *In re* Sheppard, 2012 WL 1344112 (Bankr. E.D. Va. Apr. 18, 2012). Noting the difference between the rule and the form, Judge Huennekens held that the form's instruction "best effectuates the ultimate goal of Rule 3002.1 to provide debtors with accurate information regarding postpetition obligations that await them at the conclusion of their bankruptcy case." *Id.* at *4. He explained that requiring servicers to file a notice for amounts already approved by the court would result in duplication and uncertainty. Accordingly, he concluded that there was no need for the servicer

to file notice of fees that had been included in a consent order resolving the servicer's motion for relief from the stay. *Id.*

Participants at the mini-conference came out the other way on the issue. They suggested that the instruction regarding amounts previously ruled on be deleted from Official Form 10S2 because giving notice of previously authorized fees would allow the trustee to determine if they had been paid.

The Subcommittees concluded that the ambiguity between the form and the rule should be eliminated, either by deleting the instruction from the form or adding the exception to the rule. The resolution depends on an assessment of whether the possible confusion caused by providing notice of approved fees is outweighed by the benefit of providing this information to the trustee. If the mini-conference suggestion of deleting the instruction is proposed, consideration could be given to providing space on Form 10S2 to indicate that a fee had previously been approved by the court.

The Subcommittees recommend that this issue be referred to the working group, if one is appointed.

4. *Should the claims docket continue to be used for filing notices of fees, expenses, and charges?* This is a technical issue that was thoroughly aired while the rule was being drafted. The Committee heard conflicting views from courts about whether the supplemental notices should be filed on the claims register or on the case docket. One of the reasons for choosing the claims register was that a creditor could make such a filing itself without the assistance of a lawyer.

The Subcommittees concluded that because courts and parties have now adjusted to the rule, no further action should be taken on this issue.

III. Conclusion

The Subcommittees recommend that the Advisory Committee approve the appointment of a small working group composed of a few members of the Committee, a consumer attorney, a chapter 13 trustee, and a servicer, and to direct the working group to:

a) Draft director's forms to implement Rule 3002.1(f) and (g);

b) Consider whether a procedure for challenging a payment change should be developed and, if so, recommend what it should be;

c) Consider whether Rule 3002.1(h) should be amended to provide an affirmative procedure for seeking a declaration at the end of a case that a mortgage is current and, if so, recommend what the procedure should be; and,

d) Make a recommendation regarding whether charges that are court approved should be included in or omitted from the required Notice of Postpetition Fees, Expenses, and Charges.

If appointed, the working group's recommendations will be submitted to the Subcommittees on Consumer Issues and Forms in time for the Subcommittees to make a recommendation at the spring 2015 meeting.

TAB 5C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEES ON CONSUMER ISSUES AND FORMS

RE: SUGGESTED CHANGE TO FORM B201A TO INCLUDE NOTICE OF AN INDIVIDUAL DEBTOR'S RIGHT TO THE PRIVILEGE AGAINST SELF-INCRIMINATION

DATE: AUGUST 19, 2014

This suggestion (14-BK-C) comes from Timothy R. Tarvin, Associate Professor of Law at the University of Arkansas, who is a former prosecutor and a former bankruptcy trustee. In a recently published law review article submitted with the suggestion, Prof. Tarvin observes that debtors—particularly pro se debtors—may not be aware that they will be called upon throughout the bankruptcy process to provide information that could incriminate them.[1] In order to protect debtors from unwittingly waiving their right to invoke the privilege against self-incrimination, he argues that an appropriate warning should be given to debtors before they file for bankruptcy.

The joint Subcommittees discussed the suggestion during a conference call on July 28, 2014. Although members of the Subcommittees appreciated the importance of the issue raised by the suggestion, the Subcommittees concluded that (i) neither the Constitution nor the Code requires a warning to debtors about their Fifth Amendment privilege; (ii) an appropriate warning that captured all of the complications of Fifth Amendment doctrine would be difficult to craft; and (iii) the problem identified by the suggestion is not sufficiently acute to call for adoption of a warning. **Accordingly, the Subcommittees recommend that the Advisory Committee take no further action on the suggestion.**

[1] Timothy R. Tarvin, *The Privilege Against Self-Incrimination in Bankruptcy and the Plight of the Debtor*, 44 Seton Hall L. Rev. 47 (2014).

The Suggestion

Prof. Tarvin urges the Advisory Committee to amend Form B201A (Notice to Individual Consumer Debtor) to include an express warning about the privilege against self-incrimination. He offers the following language for a new warning adapted from the notice given by the Department of Justice to respondents in civil penalty proceedings for possession of small amounts of controlled substances[2]:

> Notice to the individual consumer debtor of the right to invoke privileges, including the privilege against self-incrimination: Any statement given during the course of any proceedings or any documents filed in the proceedings may be used against the person in this or any other proceeding, including any criminal prosecution. Each individual debtor may be able to assert a privilege, such as the privilege against self-incrimination. Any petition, schedule, statement, or pleading required to be filed or contested by the debtor in a responsive pleading shall include a statement that the respondent admits, denies, does not have and is unable to obtain sufficient information to admit or deny each allegation, or that an answer to the allegation is protected by a privilege, including the privilege against self-incrimination. A statement of lack of information or a statement that the answer to the allegation is privileged shall have the effect of a denial.

To explain the need for this warning, Prof. Tarvin points to several places in the bankruptcy process in which a debtor must provide testimonial information that may be used against her. These include the § 341 meeting of creditors (where the debtor will be sworn and questioned under oath), the schedules filed in the case, and an examination under Rule 2004.

[2] Notice of Intent to Assess Civil Penalty, 28 C.F.R. 76.9(b)(2).

Prosecutions of debtors based on evidence provided by the debtor, although not a frequent occurrence, are not unheard of.[3]

Discussion

As an initial matter, it is settled that the Fifth Amendment privilege against self-incrimination protects debtors in bankruptcy. *See Arndstein v. McCarthy*, 254 U.S. 71, 72-73 (1920) (holding that the debtor was entitled to invoke the privilege when examined under § 21a of the Bankruptcy Act of 1898, the predecessor of Code §§ 341 and 343); *see also Kastigar v. United States*, 406 U.S. 441, 444-45 (1972) (observing that an individual may assert the privilege "in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory"). It is equally well settled, however, that a debtor is not entitled to be warned or otherwise advised about the privilege, the actions that may waive it, or the consequences of a waiver. *See, e.g.*, *United States v. Jackson*, 836 F.2d 324, 326 (7th Cir. 1987) (holding that the debtor was not entitled to *Miranda* warnings before a Rule 2004 examination). Warnings of that nature are required only when an individual is under custodial interrogation by the police. *See Minnesota v. Murphy*, 465 U.S. 420, 429-30 (1984) (limiting *Miranda* to instances of "formal arrest or restraint on freedom of movement of the degree associated with a formal arrest" (internal quotation marks omitted)). In other words, the warning urged by Prof. Tarvin is not required as a constitutional matter.

The Subcommittees weighed several considerations in deciding whether the warning proposed in the suggestion—even if not constitutionally required—is nevertheless advisable. At least three reasons could justify warning debtors about the privilege. First, as Prof. Tarvin notes,

[3] *See* Brian C. Behr & George M. Oliver, *You Have the Right to Remain Silent: But We Don't Have to Tell You That—And Your Silence Might Be Used Against You*, Am. Bankr. Inst. J., Mar. 2014, at 58 (reporting the number of bankruptcy-related criminal referrals by the U.S. Trustee Program).

a warning may be particularly important for the pro se debtor, who does not have the assistance of counsel for advice about whether and when to invoke the Fifth Amendment privilege. Second, current Form B201A includes warnings to alert debtors about the criminal consequences—including prosecution for perjury—of their actions in bankruptcy.[4] An additional warning regarding the debtor's Fifth Amendment rights would fit with those other warnings. Third, the Code contemplates that a debtor may invoke the privilege and expressly provides that a debtor may not be denied a discharge for properly invoking the privilege. 11 U.S.C. § 727(a)(6)(C).

But three significant considerations weigh against adopting the proposed warning. First, advice about the privilege—unless the warning is detailed and nuanced—could mislead the very pro se debtors that Prof. Tarvin seeks to protect. The law on the proper invocation of Fifth Amendment rights contains complications that are not mentioned in the proposed warning. For example, a pro se debtor might read the proposed warning and decide to make a blanket invocation of the privilege at the outset of the case. A blanket assertion of the privilege, however, would likely be found improper and could have dire consequences, including dismissal of the case. *See In re Connelly*, 59 B.R. 421 (Bankr. N.D. Ill. 1986) (rejecting debtor's blanket assertion of his Fifth Amendment privilege as improper). Even a proper invocation of the privilege could lead to adverse consequences for the debtor, including dismissal if the privilege hampers the trustee's ability to administer the bankruptcy case effectively. *See In re Peklo*, 201

[4] Part 3 of the current form states:

A person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury, either orally or in writing, in connection with a bankruptcy case is subject to a fine, imprisonment, or both. All information supplied by a debtor in connection with a bankruptcy case is subject to examination by the Attorney General acting through the Office of the United States Trustee, the Office of the United States Attorney, and other components and employees of the Department of Justice.

B.R. 331, 333-34 (Bankr. D. Conn. 1996) (finding that debtor's invocation of the Fifth Amendment privilege impaired the trustee's ability to administer the estate, thus providing cause under § 707(a) to dismiss debtor's chapter 7 case); *see also In re Abbas*, 2007 WL 4556665 at *8 (Bankr. E.D. Va. Dec. 20, 2007) (denying confirmation of debtor's chapter 13 plan for lack of good faith after debtor's invocation of the Fifth Amendment privilege). A warning that delves into these nuances would be long, complex, and may cross over into the provision of legal advice.

Second, the warnings about potential criminal consequences contained in current Form B201A are mandated by statute. There is no analogous statutory provision regarding the Fifth Amendment privilege. The Code requires the clerk to give individuals whose debts are primarily consumer debts notice about, among other things, (i) the consequences of fraudulently concealing assets or making a false statement under penalty of perjury and (ii) the Attorney General's power to examine all information supplied by the debtor in connection with a bankruptcy case. 11 U.S.C. § 342(b)(2).[5] Form B201A provides those warnings, which will be included in new Form B2010 (part of the instruction booklet for the modernized bankruptcy forms). In other words, the current warning language is not the product of an Advisory

[5] Section 342(b) reads in full:

Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give to such individual written notice containing—

(1) a brief description of—

(A) chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of those chapters; and

(B) the types of services available from credit counseling agencies; and

(2) statements specifying that—

(A) a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a case under this title shall be subject to fine, imprisonment, or both; and

(B) all information supplied by a debtor in connection with a case under this title is subject to examination by the Attorney General.

Committee policy to provide additional information to debtors about potential legal jeopardy from their actions in the bankruptcy process.

Third, and ultimately, whether to proceed with the suggestion turns on the extent of the problem Prof. Tarvin has identified. The Subcommittees found that the issue does appear regularly in the case law and in practitioner and academic works, but the number of reported cases involving the Fifth Amendment privilege in bankruptcy is not extensive. Moreover, it does not appear that the outcome in any published case in recent years would have been affected by the suggestion's proposed warning.

TAB 6

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

RE: FORMS MODERNIZATION PROJECT

DATE: August 25, 2014

A. Overview

The Bankruptcy Official Forms Modernization Project ("FMP") began its work in 2008. The project has been carried out by an ad hoc group composed of members of the Subcommittee, working in liaison with representatives of other relevant Judicial Conference committees.

As explained in earlier memoranda, the dual goals of the FMP are to improve the official bankruptcy forms and to improve the interface between the forms and available technology. The judiciary is in the process of developing "the next generation" of CM/ECF ("Next Gen"), and the modernized forms are being designed to use the enhanced technology that will become available through Next Gen.

The drafting phase is largely finished and publication of groups of modernized forms has gone on over several years, with a large group of forms published in August 2014. Only one small group of chapter 11 forms is left to be completed and published. Details regarding the status of the individual forms are on the attached chart.

The Advisory Committee has decided to implement the modernized forms in stages, which should allow for fuller testing of the technological features and a smoother transition. A small number of the modernized forms became effective on December 1, 2013: the fee waiver and installment fee forms (3A and 3B) and the income and expense forms (6I and 6J). The

appellate forms (17A, 17B, and 17C) and the revised means test forms (B22A-1, B22A-1Supp, B22A-2, B22B, B22C-1, and B22C-2) were published last summer, finalized, and approved by this committee at its meeting this spring for transmission to the Standing Committee. The Standing Committee subsequently approved those forms for transmission to the Judicial Conference of the United States ("JCUS"). If the JCUS approves the appellate and means test forms at its fall meeting, the forms will become effective on December 1, 2014.

The Standing Committee approved the bulk of the remaining individual forms published in August 2013 (106Sum, 106A/B, 106C, 106D, 106E/F, 106G, 106H, 106Dec., 107, 119, 121, 318, 423, 427), but will not transmit them to the JCUS until the Standing Committee gives final approval to the modernized non-individual forms that were published this summer. Transmittal is deferred because there will be separate case-opening forms for individual and non-individual cases rather than the current unified forms, and both groups of forms need to take effect on the same date. The non-individual forms were published earlier this summer. Assuming that publication will not cause reconsideration of the forms, both the remaining individual and the non-individual forms will become effective on December 1, 2015, or as soon thereafter as technologically possible.

Although delivery of Next Gen 1.1 to the bankruptcy courts will start in early 2015, it is unclear how quickly the courts will implement it. Next Gen 1.2 is scheduled to be delivered to the courts in mid-2015. Before the courts can "go live" on Next Gen, they will need to be on a centralized server and do testing, training, and other tasks. By the time the bulk of the forms are eligible to become effective in December 2015, it is expected that most courts will be live on Next Gen.

From a forms perspective, the major change in Next Gen will be the ability to store all forms information as data so that authorized users can produce customized reports containing the information they want from the forms, displayed in whatever format they choose. The use of centralized servers will not prevent local courts from extracting whatever forms data they want and displaying it in a customized format. Unfortunately, the extraction of data in a format and order created by a judiciary employee using a report-writing tool will be limited in versions 1.1 and 1.2 of Next Gen, because forms data must be turned into business objects before it can readily be used in a report. The technologists within the judiciary have advised that data from Schedules 106I and 106J will be captured as business objects, so people working in the judiciary will be able to prepare reports using that data. Those schedules, which contain information about an individual debtor's income and expenses, are frequently used by judges and clerks' office personnel in processing fee waivers, reaffirmation agreements, and chapter 13 plan confirmations. It is uncertain what additional forms data will be made into business objects, and when that will occur.

The District and Bankruptcy Next Gen Working Groups met in Washington, D.C. on July 31-August 1, 2014 to prioritize functionality for Next Gen releases beyond 1.2. At that time, they also discussed prioritization of reports. Although the ultimate objective is to identify the priority in which data elements should be turned into business objects for reporting, the methodology used to identify these data elements has generally been to specify the current CM/ECF reports, and/or new or enhanced reports described in Next Gen Functional Requirement Documents, that contain the most useful data elements. The Bankruptcy Next Gen Working Group reports that it has to contend with a limited pool of resources available for the creation of

business objects, and thus feels a necessity to make some choices. It reports that the Business Objects team is separate from the Next Gen development team and thus the Working Group is not prioritizing business objects creation against other potential Next Gen functionality, but simply directing the Business Objects team as to which business objects to create sooner rather than later.

The information on the published forms is frequently accessed by both judiciary and non-judiciary end users. Once the judiciary implements the report writing tool and the full data capture available through Next Gen, judges and clerks' staff will be able to use forms data to generate customized reports using any of the available data. It is unclear what, if any, access to forms data non-judiciary users will have in Next Gen. Providing such access will require development of both pertinent policies of the JCUS and pertinent technology in Next Gen. During that process the JCUS can address the concerns raised about data access. Currently, Next Gen is not scheduled to include technology that would allow non-judiciary users to access forms data in Next Gen.

B. Spring 2014 Advisory Committee Meeting

During the spring 2014 Advisory Committee meeting, there was an overview of the FMP status, a report on published and to-be-published forms, and the Advisory Committee took several significant actions. The following is a brief review of the modernized forms discussed and actions taken.

1. Forms Published in August 2013

Appellate Forms (Official Forms 17A, 17B, and 17C) were proposed in connection with the revision of the bankruptcy appellate rules. The Advisory Committee unanimously approved

the appellate forms and agreed to request that the Standing Committee approve them and forward them to the JCUS for approval, with the recommendation that they go into effect on December 1, 2014, the presumptive effective date of the revised Part VIII bankruptcy rules. These forms will be renumbered as Official Forms 417A, 417B, and 417C when the remaining modernized forms go into effect.

Means Test Forms (Official Forms 22A-1, 22A-1Supp, 22A-2, 22B, 22C-1, and 22C-2) are the modernized "means test" forms that were initially published in 2012 as part of the first phase of the Forms Modernization Project ("FMP"). The Advisory Committee revised these forms after their initial publication, and the Standing Committee republished them in 2013. In response to the republication, six comments were submitted. Overall, the comments were positive. Some minor changes were made in response to the comments, but the Committee did not believe that any of the changes required republication.

The Advisory Committee passed a motion that it request the Standing Committee to approve the means test forms and send them to the JCUS for approval, with an effective date of December 1, 2014. When the remaining modernized forms become effective, the means test forms will be renumbered Official Forms 122A-1, 122A-1Supp, 122A-2, 122B, 122C-1, and 122C-2.

Individual Forms (Official Forms 101, 101A, 101B, 104, 105, 106Sum, 106A/B, 106C, 106D, 106E/F, 106G, 106H, 106Dec, 107, 112 [to be renumbered 108], 119, 121, 318, 423, and 427) are the modernized forms for individual debtor cases. They are the product of the second phase of the FMP, and they include forms filed at the commencement of an individual

case (petition, schedules, and accompanying documents), the debtor's statement of financial affairs, and other documents required in individual debtor cases.

Twenty-five formal comments were submitted by the February 18, 2014, deadline, and one other letter was informally submitted to the Committee. The overall evaluation of the published forms was mixed—some of the comments were positive, some were negative, and many made constructive suggestions for specific changes to particular forms. The Advisory Committee made a number of changes suggested by the comments but concluded that the changes do not require republication.

The Advisory Committee passed a motion that it request that the Standing Committee approve Official Forms 101, 101A, 101B, 104, 105, 106Sum, 106A/B, 106C, 106D, 106E/F, 106G, 106H, 106Dec, 107, 112 [to be renumbered 108], 119, 121, 318, 423, and 427 with an effective date of December 1, 2015, or a later date if required by technological considerations.

2. Amendments for Which Final Approval Was Sought Without Publication. The Advisory Committee recommended that amendments to the filing fee installment and waiver forms, Official Forms 3A and 3B, to remove the actual filing fee from the form be approved and forwarded to the JCUS and that the amended forms become effective on December 1, 2014. Because the amendments are minor, technical changes, the Advisory Committee concluded that publication for comment is not required.

Filing fee amounts will continue to be stated in Director's Forms that are used by clerks' offices to provide information about bankruptcy to individual debtors (current Director's Forms 200 and 201). The proposed change will permit fee information provided to debtors to remain current without having to go through the formal forms amendment process.

3. Forms to be Published in August 2014

The Advisory Committee recommended that the Standing Committee approve publication of the almost-final installment of the modernized forms. The group of forms to be published consists primarily of case opening forms for non-individual cases, chapter 11 related forms, the proof of claim form and supplements, and orders and court notices for use in all types of cases. Also to be published are two revised individual debtor forms and the announcement of the proposed abrogation of two Official Forms. The specific forms to be abrogated and published are:

Abrogated Forms (Abrogated because there is no reason that the exact language of these forms needs to be used.)

11A	General Power of Attorney (Abrogated)
11B	Special Power of Attorney (Abrogated)

Revised Individual Forms (Changes to deal with joint cases where the spouses maintain separate households.)

106J	Schedule J: Your Expenses
106J-2	Schedule J-2: Expenses for Separate Household of Debtor 2

Non-Individual Case Initiation Forms

201	Voluntary Petition for Non-Individuals Filing for Bankruptcy
202	Declaration Under Penalty of Perjury for Non-Individual Debtors
204	Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders
205	Involuntary Petition Against a Non-Individual
206Sum	Summary of Assets and Liabilities for Non-Individuals
206A/B	Schedule A/B: Assets—Real and Personal Property
206D	Schedule D: Creditors Who Have Claims Secured by Property
206E/F	Schedule E/F: Creditors Who Have Unsecured Claims
206G	Schedule G: Executory Contracts and Unexpired Leases
206H	Schedule H: Codebtors
207	Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy

Notice Forms

309A	Notice of Chapter 7 Bankruptcy Case—No Proof of Claim Deadline (For Individuals or Joint Debtors)
309B	Notice of Chapter 7 Bankruptcy Case—Proof of Claim Deadline Set (For Individuals or Joint Debtors)
309C	Notice of Chapter 7 Bankruptcy Case—No Proof of Claim Deadline (For Corporations or Partnerships)
309D	Notice of Chapter 7 Bankruptcy Case—Proof of Claim Deadline Set (For Corporations or Partnerships)
309E	Notice of Chapter 11 Bankruptcy Case (For Individuals or Joint Debtors)
309F	Notice of Chapter 11 Bankruptcy Case (For Corporations or Partnerships)
309G	Notice of Chapter 12 Bankruptcy Case (For Individuals or Joint Debtors)
309H	Notice of Chapter 12 Bankruptcy Case (For Corporations or Partnerships)
309I	Notice of Chapter 13 Bankruptcy Case

Chapter 11 Forms

312	Order and Notice for Hearing on Disclosure Statement
313	Order Approving Disclosure Statement and Fixing Time for Filing Acceptances and Rejections of Plan, Combined With Notice Thereof
314	Class [ ] Ballot for Accepting or Rejecting Plan of Reorganization
315	Order Confirming Plan

Proof of Claim Forms

410	Proof of Claim
410S1	Notice of Mortgage Payment Change
410S2	Notice of Postpetition Mortgage Fees, Expenses, and Charges

Miscellaneous Forms

416A	Caption (Full)
416B	Caption (Short Title)
416D	Caption for Use in Adversary Proceeding
424	Certification to Court of Appeals by All Parties

If adopted, it is contemplated that the Advisory Committee will ask for an effective date of December 1, 2015, or as soon thereafter as available techology allows.

An instruction booklet for non-individuals was also included in the publication package, although there is no need to have the Standing Committee or the JCUS ultimately approve the instruction booklet.

C. FMP Progress Since the Spring 2014 Advisory Committee Meeting

1. Forms not yet published

In modernizing forms 25A, 25B, 25C, and 26, the Subcommittee on Forms and the FMP decided that it would be better to take the time necessary to consider substantive changes to the forms. Consequently, the non-individual forms submitted for publication in the 2014 group do not include those forms.

A drafting group completed the redrafting of forms 25A, 25B, 25C, and 26 after the Spring 2014 meeting. Because of the substantive character of some of the changes, the Subcommittee on Forms and the FMP recommend to the Advisory Committee that the draft forms be referred to the Subcommittee on Business Issues for further consideration.

A drafting group also created a revised version of Exhibit A to the petition. This exhibit must be completed if the chapter 11 debtor is required to file periodic reports with the Securities and Exchange Commission. The revised form was not included in the publication package this summer and further review is needed before recommending whether the draft Exhibit A should be published for comment. For this reason, it could also be referred to the Subcommittee on Business Issues for further consideration. In the meantime, existing Exhibit A could be renumbered as 201A and recommended for approval without publication.

2. Technical Changes and Renumbering of Certain Forms.

As set forth in greater detail in a separate memorandum at Tab 6, the Subcommittee on Forms and the FMP considered and recommends a number of technical changes to the modernized forms, as well as renumbering some of the forms to continue the principle that

ascertaining the number of the modernized forms be intuitive.

D. Future of the FMP

In order to complete the drafting phase of the FMP, there will be the need to assess and react to the comments received on the forms that have been recently published. In addition, the remaining chapter 11 forms (25A, 25B, 25C, 26 and Exhibit A to the petition) will need to be completed and published.

There are significant technological aspects of the FMP that are incomplete. One of the major purposes of the FMP was to improve the interface between the forms and available technology. To accomplish this, the forms were designed in a way that allowed information to be captured as data so that the judiciary end user, and if the JCUS so provided, others with a legitimate bankruptcy case-specific interest, would be able to create customized reports and look at data from multiple forms and/or in a different format or order than used by the person who provided the data.

Next Gen, which will have more robust data capacity and custom report tool-writing available, will begin to be implemented by early next year. Because of design and resource limitations, the original vision regarding the technology interface may need to be updated and revised. This will be an on-going project that will require continued involvement by the Advisory Committee.

E. Conclusion

The FMP is nearing completion of the drafting phase. The only action requested at this meeting is to refer the drafts of 201A, 25A, 25B, 25C, 26 and Exhibit A to the petition to the appropriate Subcommittee for review of the content of the forms, and to recommend approving

without publication the renumbering of existing Attachment A to the petition from 1A to 201A. Once the comments on the recently published forms are received and considered, the Advisory Committee may want to consider declaring the FMP complete and assigning to the appropriate Subcommittee the tasks related to finalizing the remaining four forms and realizing the potential technological benefits of the modernized forms.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS MODERNIZATION PROJECT AND FORMS SUBCOMMITTEE

RE: ERROR IN OFFICIAL FORM 22B

DATE: AUGUST 26, 2014

After the proposed means test forms were approved by the Standing Committee for implementation on December 1 of this year, an error in the form for chapter 11, Official Form 22B, became known. The amended version of the form, reflecting a suggestion from Henry Sommer, added a new Part 2 to the form, with new lines 12 through 14 that allow the deduction of income of a non-filing spouse of the debtor that was not regularly paid for the household expenses of the debtor or the debtor's dependents. This addition was an error, because the only non-filing spousal income that is ever reported in chapter 11 cases is income used to make such regular expense payments.

Means testing in chapters 7 and 13 has special statutory provisions that require the reporting of all non-filing spousal income, with a subsequent adjustment. In chapter 7, § 707(b)(7) provides an exclusion from the means test for below-median income debtors, but for this purpose (unless the debtor and non-filing spouse are divorced or living separately) it adds the current monthly income of a non-filing spouse to the current monthly income of the debtor. But only the debtor's current monthly income is used in determining the amount that would trigger a presumption of abuse, and in calculating the debtor's current monthly income, the only income of a non-filing spouse included under the definition of § 101(10A) is the spouse's regular payment of the debtor's household expenses. So for determining the presumption of abuse, the chapter 7 means-test form subtracts from the combined current monthly incomes any income of the non-filing spouse not contributed to the debtor's expenses.

Chapter 13 similarly combines the current monthly income of a non-filing spouse with the debtor's current monthly income, but only to determine the applicable commitment period under 1325(b)(4). The separate calculation of projected disposable income is based only on the debtor's current monthly income. So in calculating projected disposable income, the chapter 13 means-test form also subtracts from the combined incomes whatever income of the non-filing spouse is not contributed to the debtor's household expenses.

In contrast to chapters 7 and 13, chapter 11 has no provision counting the entire income of a non-filing spouse; only non-spousal income contributed to the debtor's expenses is ever included in the debtor's current monthly income. Accordingly, there was no need for Form 22B to contain a marital adjustment; non-contributed non-spousal income was never included in the first place.

When this error was discovered, it was decided that the Advisory Committee should not attempt to have the Standing Committee amend its report to the Judicial Conference to change Form

22B. There are not likely to be large numbers of individual chapter 11 cases with non-filing spouses, so filling out the form correctly will simply result in the unnecessary lines on the form having no effect. As a result, leaving the unnecessary lines in the form temporarily should have no harmful consequences. However, the Forms Modernization Project and the Forms Subcommittee recommend that when the completed set of bankruptcy forms is put into effect (no sooner than December 1, 2015), Part 2 of the proposed version of Form 22B should be removed.

MEMORANDUM

TO: Advisory Committee on Bankruptcy Rules

FROM: Subcommittee on Forms and the Forms Modernization Project

RE: Forms Renumbering and Technical Issues Regarding the Modernized Forms

DATE: August 14, 2014

On July 29, 2014, the Forms Subcommittee and the Forms Modernization Project held a joint conference call to consider several issues regarding the modernized means-test forms that are scheduled to go into effect on December 1, 2014. As a result of the call, the Forms Subcommittee recommends technical formatting changes to the means-test forms as described below, and incorporated into the attached versions of the means-test forms. The proposed formatting changes would be implemented when the means-test forms are renumbered and reissued along with the rest of the modernized forms that are on track to go into effect December 1, 2015. The Subcommittee also recommends extending the proposed recommendations to the rest of the modernized forms.

Attached to this memo, **and recommended for final approval without publication** when the rest of the modernized forms go into effect, are revised versions of the means-test forms; a renumbered version of the *Chapter 7 Debtor's Statement of Intention,* Official Form 108, recommended for final approval by the Standing Committee as Official Form 112 at the Standing Committee's May 2014 meeting; modernized Official Forms 3A, 3B, and 6I (currently in effect), and 17A, 17B and 17C (scheduled to go into effect December 1, 2014), renumbered respectively as Official Forms 103A, 103B, 106I, 417A, 417B, and 417C.

A. Renumbering the means-test forms, Official Form 8, and previously approved modernized forms.

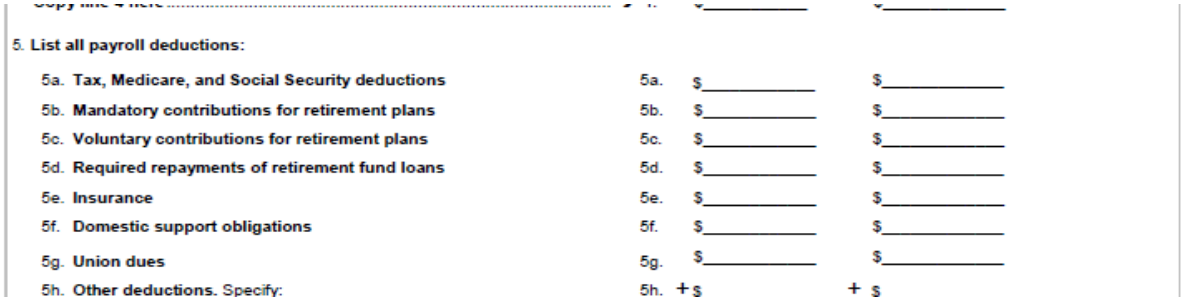
When the FMP first considered renumbering the modernized forms it attempted to start from scratch. Because means-test forms are filed early in the case, the proposed new numbers (108-1, 109-2, 109, 110-1 and 110-2) came right after the schedules and the statement of financial affairs. After reconsidering the issue several times, however, the Advisory Committee has adopted numbering system that more closely adheres to existing form numbering. By way of example, the petition, currently Official Form 1, will become Official Form 101 for individuals, and 201 for non-individuals. Likewise, the schedules will retaining their existing letter designations, or, in the case of combined schedules, such as 106A/B, both letters.

In suggestion 14-BK-D, Carl Barnes of Best Case software recommends extending this intuitive naming convention to the means-test forms by simply adding a "1" to the front of each form. **The Subcommittee agrees with the suggestion and recommends that when they are reissued as three-digit forms, the means-test forms become Official Forms 122A-1, 122A-1Supp, 122A-2, 122B, 122C-1 and 122C-2.**

As a result of renumbering the means-test forms, **the Subcommittee also recommends that the modernized version of Official Form 8, *Chapter 7 Debtor's Statement of Intention*, previously approved as Official Form 112 be renumbered as Official Form 108**. Finally, like the means-test forms, Official Forms 3A, 3B, 6I, 17A, 17B, and 17C have already been modernized and have or will go into effect by December 1, 2014. **The Subcommittee recommends that those forms be renumbered when the rest of the modernized forms go into effect as Official Forms 103A, 103B, 106I, 417A, 417B, and 417C.**

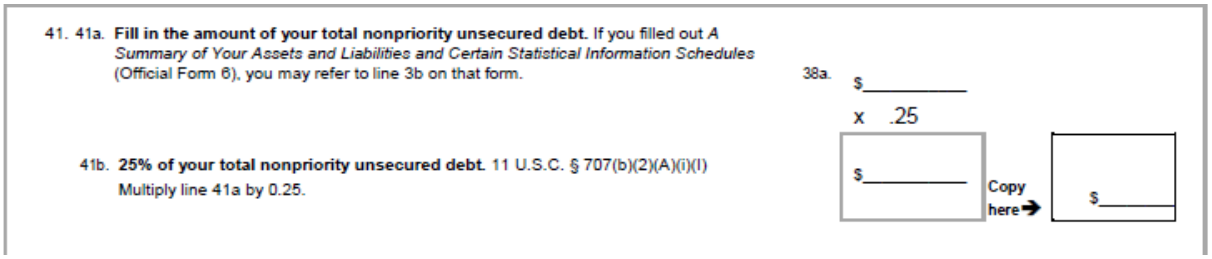
A. Remove repetitive line numbers; Replace "Copy line 'X' here" with "Copy here".

In the course of drafting schedules I and J, the FMP developed a convention of repeating the line number in front of the question next to the space for the answer, as in:



5. **List all payroll deductions:**			
5a. **Tax, Medicare, and Social Security deductions**	5a.	$_____	$_____
5b. **Mandatory contributions for retirement plans**	5b.	$_____	$_____
5c. **Voluntary contributions for retirement plans**	5c.	$_____	$_____
5d. **Required repayments of retirement fund loans**	5d.	$_____	$_____
5e. **Insurance**	5e.	$_____	$_____
5f. **Domestic support obligations**	5f.	$_____	$_____
5g. **Union dues**	5g.	$_____	$_____
5h. **Other deductions.** Specify:	5h.	+ $	+ $

This convention is helpful in long lists where the answer and question are separated by a significant amount of horizontal space and there no line leaders (i.e., 5e …… $___), but it clutters the form in other circumstances and also can lead to line-number mismatches when the forms are revised in the future. For example, prior to publishing Official Form 22A-2, line numbers were changed which resulted in line 38 and its subparts being updated to line 41. The repeated instance of 38a next to answer field, however, was not updated until it was noticed after publication, despite many reviews by FMP members, by commenters, and by advisory committee staff.



41. 41a. **Fill in the amount of your total nonpriority unsecured debt.** If you filled out *A Summary of Your Assets and Liabilities and Certain Statistical Information Schedules* (Official Form 6), you may refer to line 3b on that form. 38a. $_____

x .25

41b. **25% of your total nonpriority unsecured debt.** 11 U.S.C. § 707(b)(2)(A)(i)(I) Multiply line 41a by 0.25. $_____ Copy here → $_____

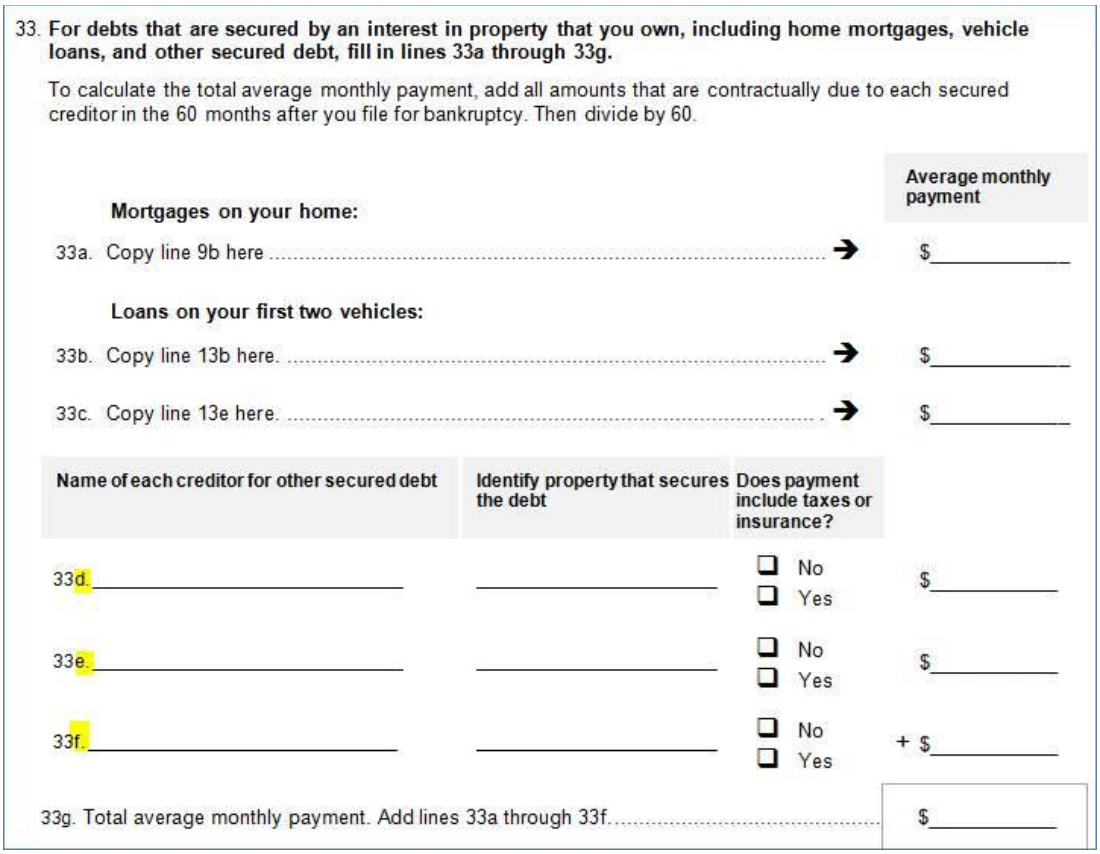
Repeating the line label next to the completion box is not necessary in this case because there is very little horizontal space between the question and the completion field. Line number labels are also often unnecessarily included in the "copy here" direction, such as at line number 39d of the published version of Official Form 22A-2:

The attached means-test forms have been revised by reducing the use of repeated line numbers, and by using the convention "Copy here" in place of "Copy line __ here." **The Subcommittee recommends that these conventions be adopted and applied to the rest of the modernized forms.**

B. Remove line number sub-designations for questions that require the user to report an unknown number of items.

Several lines allow the filer to list multiple detail lines and then total the detail. Many sections have been designed not to assign a letter-line-number to the detail. See, for example, line 9 from 22A-2:

Best Case and the NextGen implementation team report that this format works well for automated forms because adding additional unlabeled items does not affect subsequent numbering. Line 33 of Forms 22A-2 and 22C-2 illustrates the problem that can occur when user supplied fields are labeled:



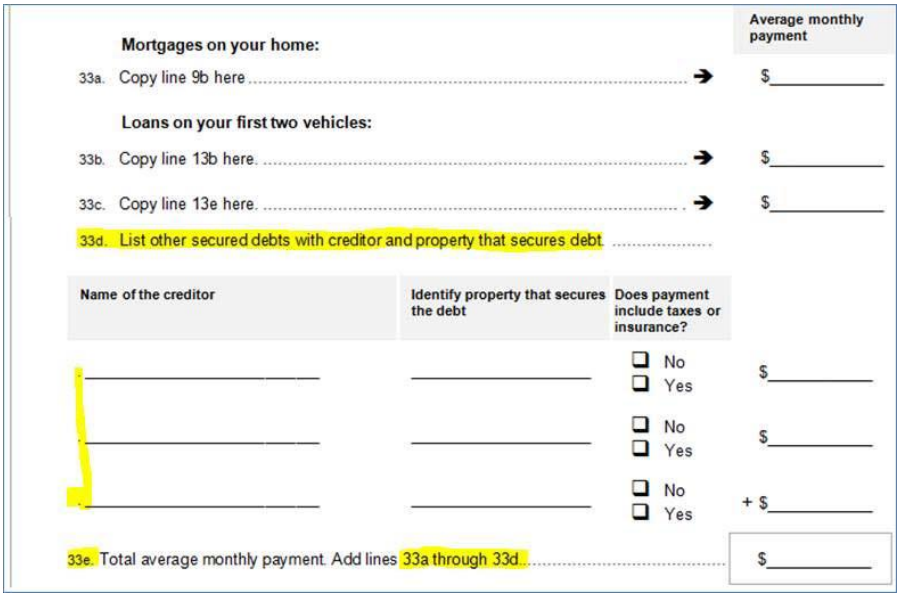
33. **For debts that are secured by an interest in property that you own, including home mortgages, vehicle loans, and other secured debt, fill in lines 33a through 33g.**

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

		Average monthly payment
Mortgages on your home:		
33a. Copy line 9b here	→	$
Loans on your first two vehicles:		
33b. Copy line 13b here.	→	$
33c. Copy line 13e here.	→	$

Name of each creditor for other secured debt	Identify property that secures the debt	Does payment include taxes or insurance?	
33d.		❑ No ❑ Yes	$
33e.		❑ No ❑ Yes	$
33f.		❑ No ❑ Yes	+ $
33g. Total average monthly payment. Add lines 33a through 33f.			$

In this case, any creditors added after 33f, if labeled, would change the designation of 33g, which is the total line. In the revised versions of the forms that are attached, this problem was addressed by removing the line designations for the lines that may need to be repeated.



		Average monthly payment
Mortgages on your home:		
33a. Copy line 9b here	→	$
Loans on your first two vehicles:		
33b. Copy line 13b here.	→	$
33c. Copy line 13e here.	→	$
33d. List other secured debts with creditor and property that secures debt.		

Name of the creditor	Identify property that secures the debt	Does payment include taxes or insurance?	
		❑ No ❑ Yes	$
		❑ No ❑ Yes	$
		❑ No ❑ Yes	+ $
33e. Total average monthly payment. Add lines 33a through 33d.			$

The following lines have been revised to remove detailed numbering: 22A-1, line 10; 22A-2, lines 3 and 33d-f; 22B, line 10; 22C-1, lines 10 and 13; 22C-2, lines 33 and 43. **The**

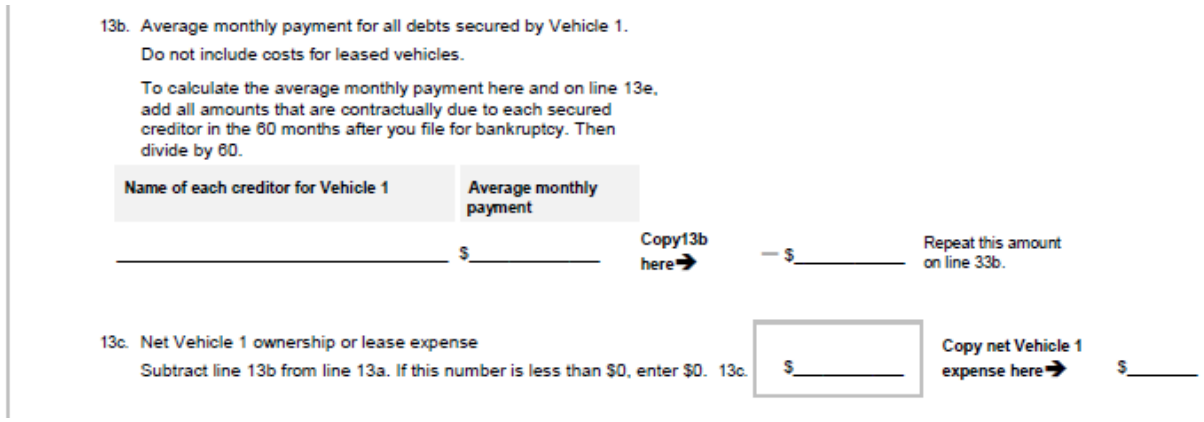
Subcommittee recommends approving the changes and adopting a convention of avoiding the use of line labels where the number of possible lines in the completed form is unknown.

C. Insurance and operating expenses.

Effective December 1, 2014 the subcategory of "Housing and Utilities" called "Non-mortgage housing and utilities" will be changed to "Insurance and operating expenses." This change was made at line 8 of 22A-2 and 22C-2. **The Subcommittee recommends that the same change be made at line 28 of those forms.**

D. Adding a total line for multiple creditors at lines 13b and 13e.

Lines 13b and 13e of Official Forms 22A-2 and 22C-2 ask the filer to report multiple liens (if any) on vehicles 1 and 2.



13b. Average monthly payment for all debts secured by Vehicle 1.
Do not include costs for leased vehicles.
To calculate the average monthly payment here and on line 13e, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Name of each creditor for Vehicle 1	Average monthly payment
_____	$_____

Copy13b here → + $_____ Repeat this amount on line 33b.

13c. Net Vehicle 1 ownership or lease expense
Subtract line 13b from line 13a. If this number is less than $0, enter $0. 13c. $_____ Copy net Vehicle 1 expense here → $_____

The form includes a line for only one creditor, however, because a single car lien is the most common, and because Rule 9009 allows forms vendors and the AO's NextGen developers to duplicate the entry for multiple leans. There is not, however, a line or directions for totaling multiple liens. Accordingly, the NextGen developers have suggested adding an unlabeled line for a second lienholder (which can be duplicated if needed) and a total line similar to the following mockup.

13. **Vehicle ownership or lease expense:** Using the IRS Local Standards, calculate the net ownership or lease expense for each vehicle below. You may not claim the expense if you do not make any loan or lease payments on the vehicle. In addition, you may not claim the expense for more than two vehicles.

Vehicle 1 Describe Vehicle 1: Honda Accord

13a. Ownership or leasing costs using IRS Local Standard — 13a. $ 350.00

13b. Average monthly payment for all debts secured by Vehicle 1.
Do not include costs for leased vehicles.
To calculate the average monthly payment here and on line 13e, add all amounts that are contractually due to each secured creditor in the 60 months after you filed for bankruptcy. Then divide by 60.

Name of each creditor for Vehicle 1	Average monthly payment
First Bank	$100.00
First Bank	$100.00

13b. Total average monthly payment $ 200.00 — Copy line 13b here → $ 200.00 — Repeat this amount on line 33b.

13c. Net Vehicle 1 ownership or lease expense
Subtract line 13b from line 13a. If this amount is less than $0, enter $0. — 13c. $ 150.00 — Copy net Vehicle 1 expense here .....→ $ 150.00

The Subcommittee recommends adopting the suggestion.

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____ (State)

Case number (If known) _____

❑ Check if this is an amended filing

Official Form B 103A

Application for Individuals to Pay the Filing Fee in Installments

12/15

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information.

Part 1: Specify Your Proposed Payment Timetable

1. Which chapter of the Bankruptcy Code are you choosing to file under?

❑ Chapter 7
❑ Chapter 11
❑ Chapter 12
❑ Chapter 13

2. You may apply to pay the filing fee in up to four installments. Fill in the amounts you propose to pay and the dates you plan to pay them. Be sure all dates are business days. Then add the payments you propose to pay.

You must propose to pay the entire fee no later than 120 days after you file this bankruptcy case. If the court approves your application, the court will set your final payment timetable.

	You propose to pay…	
	$_____	❑ With the filing of the petition ❑ On or before this date..... MM / DD / YYYY
	$_____	On or before this date..... _____ MM / DD / YYYY
	$_____	On or before this date..... _____ MM / DD / YYYY
+	$_____	On or before this date..... _____ MM / DD / YYYY
Total	$_____	◀ Your total must equal the entire fee for the chapter you checked in line 1.

Part 2: Sign Below

By signing here, you state that you are unable to pay the full filing fee at once, that you want to pay the fee in installments, and that you understand that:

- You must pay your entire filing fee before you make any more payments or transfer any more property to an attorney, bankruptcy petition preparer, or anyone else for services in connection with your bankruptcy case.
- You must pay the entire fee no later than 120 days after you first file for bankruptcy, unless the court later extends your deadline. Your debts will not be discharged until your entire fee is paid.
- If you do not make any payment when it is due, your bankruptcy case may be dismissed, and your rights in other bankruptcy proceedings may be affected.

✘ _____
Signature of Debtor 1

Date _____
MM / DD / YYYY

✘ _____
Signature of Debtor 2

Date _____
MM / DD / YYYY

✘ _____
Your attorney's name and signature, if you used one

Date _____
MM / DD / YYYY

Fill in this information to identify the case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number _____
(If known)

Chapter filing under:

- ❑ Chapter 7
- ❑ Chapter 11
- ❑ Chapter 12
- ❑ Chapter 13

Order Approving Payment of Filing Fee in Installments

After considering the *Application for Individuals to Pay the Filing Fee in Installments* (Official Form B 103A), the court orders that:

[ ] The debtor(s) may pay the filing fee in installments on the terms proposed in the application.

[ ] The debtor(s) must pay the filing fee according to the following terms:

	You must pay…	**On or before this date…**
	$_____	_____ Month / day / year
	$_____	_____ Month / day / year
	$_____	_____ Month / day / year
+	$_____	_____ Month / day / year
Total	$_____	

Until the filing fee is paid in full, the debtor(s) must not make any additional payment or transfer any additional property to an attorney or to anyone else for services in connection with this case.

_____ **By the court:** _____
Month / day / year United States Bankruptcy Judge

COMMITTEE NOTE

This form is derived from Official Form 3A, *Application for Individuals to Pay the Filing Fee in Installments*, and is updated to comport with the form numbering style developed as part of the Forms Modernization Project. Other stylistic changes were made throughout the form.

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____ (State)

Case number (If known) _____

❑ Check if this is an amended filing

Official Form B 103B

Application to Have the Chapter 7 Filing Fee Waived

12/15

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known).

Part 1: Tell the Court About Your Family and Your Family's Income

1. What is the size of your family?

Your family includes you, your spouse, and any dependents listed on *Schedule J: Current Expenditures of Individual Debtor(s)* (Official Form 106J).

Check all that apply:

❑ You
❑ Your spouse
❑ Your dependents _____ How many dependents?

_____ Total number of people

2. Fill in your family's average monthly income.

Include your spouse's income if your spouse is living with you, even if your spouse is not filing.

Do not include your spouse's income if you are separated and your spouse is not filing with you.

		That person's average monthly net income (take-home pay)
Add your income and your spouse's income. Include the value (if known) of any non-cash governmental assistance that you receive, such as food stamps (benefits under the Supplemental Nutrition Assistance Program) or housing subsidies. If you have already filled out *Schedule I: Your Income,* see line 10 of that schedule.	**You**	$_____
	Your spouse .... +	$_____
	Subtotal.....	$_____
Subtract any non-cash governmental assistance that you included above.	−	$_____
Your family's average monthly net income	Total.....	$_____

3. Do you receive non-cash governmental assistance?

❑ No
❑ Yes. Describe.....

Type of assistance

4. Do you expect your family's average monthly net income to increase or decrease by more than 10% during the next 6 months?

❑ No
❑ Yes. Explain. .....

5. Tell the court why you are unable to pay the filing fee in installments within 120 days. If you have some additional circumstances that cause you to not be able to pay your filing fee in installments, explain them.

Part 2: Tell the Court About Your Monthly Expenses

6. Estimate your average monthly expenses.
Include amounts paid by any government assistance that you reported on line 2.
If you have already filled out *Schedule J, Your Expenses,* copy line 22 from that form.
$_____

7. Do these expenses cover anyone who is not included in your family as reported in line 1?
❑ No
❑ Yes. Identify who .....

8. Does anyone other than you regularly pay any of these expenses?
If you have already filled out *Schedule I: Your Income*, copy the total from line 11.
❑ No
❑ Yes. How much do you regularly receive as contributions? $_____ monthly

9. Do you expect your average monthly expenses to increase or decrease by more than 10% during the next 6 months?
❑ No
❑ Yes. Explain .....

Part 3: Tell the Court About Your Property

If you have already filled out *Schedule A: Real Property (Official Form B 106A)* and *Schedule B: Personal Property (Official Form B 106B)*, attach copies to this application and go to Part 4.

10. How much cash do you have?
Examples: Money you have in your wallet, in your home, and on hand when you file this application
Cash: $_____

11. Bank accounts and other deposits of money?
Examples: Checking, savings, money market, or other financial accounts; certificates of deposit; shares in banks, credit unions, brokerage houses, and other similar institutions. If you have more than one account with the same institution, list each. Do not include 401(k) and IRA accounts.

	Institution name:	Amount:
Checking account:	_____	$_____
Savings account:	_____	$_____
Other financial accounts:	_____	$_____
Other financial accounts:	_____	**$**_____

12. Your home? (if you own it outright or are purchasing it)
Examples: House, condominium, manufactured home, or mobile home
_____ Number Street
_____ City State ZIP Code
Current value: $_____
Amount you owe on mortgage and liens: $_____

13. Other real estate?
_____ Number Street
_____ City State ZIP Code
Current value: $_____
Amount you owe on mortgage and liens: $_____

14. The vehicles you own?
Examples: Cars, vans, trucks, sports utility vehicles, motorcycles, tractors, boats

Make: _____
Model: _____
Year: _____
Mileage _____
Current value: $_____
Amount you owe on liens: $_____

Make: _____
Model: _____
Year: _____
Mileage _____
Current value: $_____
Amount you owe on liens: $_____

15. Other assets?

Do not include household items and clothing.

Describe the other assets:

Current value: $_____

Amount you owe on liens: $_____

16. Money or property due you?

Examples: Tax refunds, past due or lump sum alimony, spousal support, child support, maintenance, divorce or property settlements, Social Security benefits, Workers' compensation, personal injury recovery

Who owes you the money or property?	**How much is owed?**
_____	$_____
_____	$_____

Do you believe you will likely receive payment in the next 180 days?

- ❑ No
- ❑ Yes. Explain:

Part 4: Answer These Additional Questions

17. Have you paid anyone for services for this case, including filling out this application, the bankruptcy filing package, or the schedules?

- ❑ No
- ❑ Yes. **Whom did you pay?** *Check all that apply:*
  - ❑ An attorney
  - ❑ A bankruptcy petition preparer, paralegal, or typing service
  - ❑ Someone else _____

How much did you pay? $_____

18. Have you promised to pay or do you expect to pay someone for services for your bankruptcy case?

- ❑ No
- ❑ Yes. **Whom do you expect to pay?** *Check all that apply:*
  - ❑ An attorney
  - ❑ A bankruptcy petition preparer, paralegal, or typing service
  - ❑ Someone else _____

How much do you expect to pay? $_____

19. Has anyone paid someone on your behalf for services for this case?

- ❑ No
- ❑ Yes. **Who was paid on your behalf?** *Check all that apply:*
  - ❑ An attorney
  - ❑ A bankruptcy petition preparer, paralegal, or typing service
  - ❑ Someone else _____

Who paid? *Check all that apply:*

- ❑ Parent
- ❑ Brother or sister
- ❑ Friend
- ❑ Pastor or clergy
- ❑ Someone else _____

How much did someone else pay? $_____

20. Have you filed for bankruptcy within the last 8 years?

- ❑ No
- ❑ Yes. District _____ When _____ (MM/ DD/ YYYY) Case number _____
  District _____ When _____ (MM/ DD/ YYYY) Case number _____
  District _____ When _____ (MM/ DD/ YYYY) Case number _____

Part 5: Sign Below

By signing here under penalty of perjury, I declare that I cannot afford to pay the filing fee either in full or in installments. I also declare that the information I provided in this application is true and correct.

✘ _____ ✘ _____

Signature of Debtor 1 Signature of Debtor 2

Date _____ (MM / DD / YYYY) Date _____ (MM / DD / YYYY)

Fill in this information to identify the case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number _____
(If known)

Order on the Application to Have the Chapter 7 Filing Fee Waived

After considering the debtor's *Application to Have the Chapter 7 Filing Fee Waived* (Official Form B 103B), the court orders that the application is:

[ ] Granted. However, the court may order the debtor to pay the fee in the future if developments in administering the bankruptcy case show that the waiver was unwarranted.

[ ] Denied. The debtor must pay the filing fee according to the following terms:

	You must pay…	**On or before this date…**
	$_____	_____ Month / day / year
	$_____	_____ Month / day / year
	$_____	_____ Month / day / year
+	$_____	_____ Month / day / year
Total		

If the debtor would like to propose a different payment timetable, the debtor must file a motion promptly with a payment proposal. The debtor may use *Application for Individuals to Pay the Filing Fee in Installments* (Official Form B 103A) for this purpose. The court will consider it.

The debtor must pay the entire filing fee before making any more payments or transferring any more property to an attorney, bankruptcy petition preparer, or anyone else in connection with the bankruptcy case. The debtor must also pay the entire filing fee to receive a discharge. If the debtor does not make any payment when it is due, the bankruptcy case may be dismissed and the debtor's rights in future bankruptcy cases may be affected.

[ ] Scheduled for hearing.

A hearing to consider the debtor's application will be held

on _____ at _____ AM / PM at _____.
Month / day / year Address of courthouse

If the debtor does not appear at this hearing, the court may deny the application.

_____ **By the court:** _____
Month / day / year United States Bankruptcy Judge

COMMITTEE NOTE

This form is derived from Official Form 3B, *Application to Have the Chapter 7 Filing Fee Waived*, and is updated to comport with the form numbering style developed as part of the Forms Modernization Project. Other stylistic changes were made throughout the form.

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number _____
(If known)

Check if this is:

- ❑ An amended filing
- ❑ A supplement showing post-petition chapter 13 income as of the following date:

_____
MM / DD / YYYY

Official Form B 106I

Schedule I: Your Income

12/15

Be as complete and accurate as possible. If two married people are filing together (Debtor 1 and Debtor 2), both are equally responsible for supplying correct information. If you are married and not filing jointly, and your spouse is living with you, include information about your spouse. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Employment

1. **Fill in your employment information.**

   If you have more than one job, attach a separate page with information about additional employers.

   Include part-time, seasonal, or self-employed work.

   Occupation may Include student or homemaker, if it applies.

	Debtor 1	Debtor 2 or non-filing spouse
Employment status	❑ Employed ❑ Not employed	❑ Employed ❑ Not employed
Occupation	_____	_____
Employer's name	_____	_____
Employer's address	_____ Number Street _____ _____ City State ZIP Code	_____ Number Street _____ _____ City State ZIP Code
How long employed there?	_____	_____

Part 2: Give Details About Monthly Income

Estimate monthly income as of the date you file this form. If you have nothing to report for any line, write $0 in the space. Include your non-filing spouse unless you are separated.

If you or your non-filing spouse have more than one employer, combine the information for all employers for that person on the lines below. If you need more space, attach a separate sheet to this form.

		For Debtor 1	For Debtor 2 or non-filing spouse
2. **List monthly gross wages, salary, and commissions** (before all payroll deductions). If not paid monthly, calculate what the monthly wage would be.	2.	$_____	$_____
3. **Estimate and list monthly overtime pay.**	3.	+ $_____	+ $_____
4. **Calculate gross income.** Add line 2 + line 3.	4.	$_____	$_____

Debtor 1 _____ Case number (*if known*)_____
First Name Middle Name Last Name

		For Debtor 1	For Debtor 2 or non-filing spouse	
Copy line 4 here ➔	4.	$_____	$_____	
5. **List all payroll deductions:**				
5a. **Tax, Medicare, and Social Security deductions**	5a.	$_____	$_____	
5b. **Mandatory contributions for retirement plans**	5b.	$_____	$_____	
5c. **Voluntary contributions for retirement plans**	5c.	$_____	$_____	
5d. **Required repayments of retirement fund loans**	5d.	$_____	$_____	
5e. **Insurance**	5e.	$_____	$_____	
5f. **Domestic support obligations**	5f.	$_____	$_____	
5g. **Union dues**	5g.	$_____	$_____	
5h. **Other deductions.** Specify: _____	5h.	+ $_____	+ $_____	
6. **Add the payroll deductions**. Add lines 5a + 5b + 5c + 5d + 5e +5f + 5g +5h.	6.	$_____	$_____	
7. **Calculate total monthly take-home pay.** Subtract line 6 from line 4.	7.	$_____	$_____	
8. **List all other income regularly received:**				
8a. **Net income from rental property and from operating a business, profession, or farm** Attach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.	8a.	$_____	$_____	
8b. **Interest and dividends**	8b.	$_____	$_____	
8c. **Family support payments that you, a non-filing spouse, or a dependent regularly receive** Include alimony, spousal support, child support, maintenance, divorce settlement, and property settlement.	8c.	$_____	$_____	
8d. **Unemployment compensation**	8d.	$_____	$_____	
8e. **Social Security**	8e.	$_____	$_____	
8f. **Other government assistance that you regularly receive** Include cash assistance and the value (if known) of any non-cash assistance that you receive, such as food stamps (benefits under the Supplemental Nutrition Assistance Program) or housing subsidies. Specify: _____	8f.	$_____	$_____	
8g. **Pension or retirement income**	8g.	$_____	$_____	
8h. **Other monthly income.** Specify: _____	8h.	+ $_____	+ $_____	
9. **Add all other income**. Add lines 8a + 8b + 8c + 8d + 8e + 8f +8g + 8h.	9.	$_____	$_____	
10. **Calculate monthly income.** Add line 7 + line 9. Add the entries in line 10 for Debtor 1 and Debtor 2 or non-filing spouse.	10.	$_____ +	$_____ =	$_____

11. **State all other regular contributions to the expenses that you list in *Schedule J*.**
Include contributions from an unmarried partner, members of your household, your dependents, your roommates, and other friends or relatives**.**
Do not include any amounts already included in lines 2-10 or amounts that are not available to pay expenses listed in *Schedule J*.
Specify: _____ 11. + $_____

12. **Add the amount in the last column of line 10 to the amount in line 11.** The result is the combined monthly income.
Write that amount on the *Summary of Schedules* and *Statistical Summary of Certain Liabilities and Related Data,* if it applies 12. $_____
Combined monthly income

13. **Do you expect an increase or decrease within the year after you file this form?**
- ❑ No.
- ❑ Yes. Explain: _____

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number _____
(If known)

☐ Check if this is an amended filing

Official Form 106Sum

Summary of Your Assets and Liabilities and Certain Statistical Information 12/15

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. Fill out all of your schedules first; then complete the information on this form. If you are filing amended schedules after you file your original forms, you must fill out a new *Summary* and check the box at the top of this page.

Part 1: Summarize Your Assets

	Your assets Value of what you own
1. ***Schedule A/B: Property*** (Official Form 106A/B)	
1a. Copy line 55, Total real estate, from *Schedule A/B*	$ _____
1b. Copy line 62, Total personal property, from *Schedule A/B*	$ _____
1c. Copy line 63, Total of all property on *Schedule A/B*	$ _____

Part 2: Summarize Your Liabilities

	Your liabilities Amount you owe
2. *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 106D)	
2a. Copy the total you listed in Column A, *Amount of claim,* at the bottom of the last page of Part 1 of *Schedule D*	$ _____
3. *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 106E/F)	
3a. Copy the total claims from Part 1 (priority unsecured claims) from line 6e of *Schedule E/F*	$ _____
3b. Copy the total claims from Part 2 (nonpriority unsecured claims) from line 6j of *Schedule E/F*	+ $ _____
Your total liabilities	$ _____

Part 3: Summarize Your Income and Expenses

4. *Schedule I: Your Income* (Official Form 106I)	
Copy your combined monthly income from line 12 of *Schedule I*	$ _____
5. *Schedule J: Your Expenses* (Official Form 106J)	
Copy your monthly expenses from line 22, Column A, of *Schedule J*	$ _____

Debtor 1 _____ Case number (*if known*)_____
First Name Middle Name Last Name

Part 4: Answer These Questions for Administrative and Statistical Records

6. **Are you filing for bankruptcy under Chapters 7, 11, or 13?**

❑ No. You have nothing to report on this part of the form. Check this box and submit this form to the court with your other schedules.
❑ Yes

7. **What kind of debt do you have?**

❑ **Your debts are primarily consumer debts.** *Consumer debts* are those "incurred by an individual primarily for a personal, family, or household purpose." 11 U.S.C. § 101(8). Fill out lines 8-10 for statistical purposes. 28 U.S.C. § 159.

❑ **Your debts are not primarily consumer debts**. You have nothing to report on this part of the form. Check this box and submit this form to the court with your other schedules.

8. **From the *Statement of Your Current Monthly Income***: Copy your total current monthly income from Official Form 122A-1 Line 11; **OR**, Form 122B Line 11; **OR**, Form 122C-1 Line 14. $ _____

9. **Copy the following special categories of claims from Part 4, line 6 of *Schedule E/F***:

	Total claim
From Part 4 on *Schedule E/F*, copy the following:	
9a. Domestic support obligations (Copy line 6a.)	$_____
9b. Taxes and certain other debts you owe the government. (Copy line 6b.)	$_____
9c. Claims for death or personal injury while you were intoxicated. (Copy line 6c.)	$_____
9d. Student loans. (Copy line 6f.)	$_____
9e. Obligations arising out of a separation agreement or divorce that you did not report as priority claims. (Copy line 6g.)	$_____
9f. Debts to pension or profit-sharing plans, and other similar debts. (Copy line 6h.)	+ $_____
9g. **Total.** Add lines 9a through 9f.	$_____

COMMITTEE NOTE

The schedules to be used in cases of individual debtors are revised as part of the Forms Modernization Project, making them easier to read and, as a result, likely to generate more complete and accurate responses. The goals of the Forms Modernization Project include improving the interface between technology and the forms so as to increase efficiency and reduce the need to produce the same information in multiple formats. Therefore, many of the open-ended questions and multiple-part instructions have been replaced with more specific questions. The individual debtor schedules are also renumbered, starting with the number 106 and followed by the letter or name of the schedule to distinguish them from the versions to be used in non-individual cases.

Official Form 106Sum, *Summary of Your Assets and Liabilities and Certain Statistical Information*, replaces Official Form 6, *Summary of Schedules and Statistical Summary of Certain Liability and Related Data (28 U.S.C. § 159)*, in cases of individual debtors.

The form is renumbered and updated with cross-references indicating the line numbers of specific schedules from which the summary information is to be gathered. In addition, because most filings are now done electronically, the form no longer requires the debtor to indicate which schedules are attached or to state the number of sheets of paper used for the schedules.

Official Form 106A/B, *Schedule A/B: Property*, consolidates information about an individual debtor's real and personal property into a single form. It replaces Official Form 6A, *Real Property*, and Official Form 6B, *Personal Property*, in cases of individual debtors. In addition to specific questions about the assets, the form also includes open text fields for providing additional information regarding particular assets when appropriate.

The layout and categories of property on Official Form 106A/B have changed. Instead of dividing property interests into two categories (real or personal property), the new form uses seven categories likely to be more familiar to non-lawyers: real estate, vehicles, personal household items, financial assets, business-related property, farm- and commercial fishing-related property, and a catch-all category for property that was not listed elsewhere

in the form. The new form categories and the examples provided in many of the categories are designed to prompt debtors to be thorough and list all of their interests in property. The debtor may describe generally items of minimal value (such as children's clothes) by adding the value of the items and reporting the total.

Although a particular item of property may fit into more than one category, the instructions for the form explain that it should be listed only once.

In addition, because property that falls within a particular category may not be specifically elicited by the particular line items on the form, the debtor is asked in Parts 3–6 (lines 14, 35, 44, and 51) to specifically identify and value any other property in the category.

In Part 1, *Describe Each Residence, Building, Land, or Other Real Estate You Own or Have an Interest In*, the debtor is asked to state the "current value of the portion you own," and to also state whether ownership is shared with someone else. In addition, the debtor is asked for the nature of the ownership interest, if known by the debtor. Furthermore, instead of asking for an open-ended description of the property, the form guides the debtor in answering the description question by providing eight options from which to choose: single-family home, duplex or multi-unit building, condominium or cooperative, manufactured or mobile home, land, investment property, timeshare, and other.

Part 2, *Describe Your Vehicles*, also guides the debtor in answering the question, asking for the make, model, year, and mileage of the car or other vehicle. Because mileage is just a general indication of vehicle value, the debtor is not required to list the exact mileage, but instead is prompted to provide the approximate mileage.

Part 3, *Describe Your Personal and Household Items*, simplifies wording, updates categories, and uses more common terms. For example, "Wearing apparel" is changed to "Clothes" and examples include furs, which were previously grouped with jewelry. Firearms, on the other hand, which were previously grouped with sports and other hobbies, are now set out as a separate category. Additionally, because a new Part 6 has been added to separately describe-farm related property, Part 3 includes a category for "Non-farm animals."

Part 4, *Describe Your Financial Assets*, prompts a listing of the debtor's financial assets through several questions providing

separate space, after each listed type of account or deposit, for the institution or issuer name and the value of the debtor's interest in the asset. Two new categories of financial assets are added: "Bonds, mutual funds, or publicly traded stocks" and "Claims against third parties, whether or not you have filed a lawsuit or made a demand for payment."

Part 5, *Describe Any Business-Related Property You Own or Have an Interest In*, provides prompts for listing business-related property, such as accounts receivable, inventory, and machinery, and includes a direction to list business-related real estate in Part 1, to avoid listing real estate twice.

Part 6, *Describe Any Farm- and Commercial Fishing-Related Property You Own or Have an Interest In*, provides prompts for listing farm- or commercial fishing-related property, such as farm animals, crops, and feed. It also includes a direction to list any farm- or commercial fishing-related real estate in Part 1.

Part 7, *Describe All Property You Own or Have an Interest in That You Did Not List Above*, is a catch-all provision that allows the debtor to report property that is difficult to categorize.

Part 8, *List the Totals of Each Part of this Form*, tabulates the total value of the debtor's interest in the listed property. The tabulation includes two subtotals, one for real estate, which corresponds to the real property total that was reported on former Official Form 6A. The second subtotal is of Parts 2-7, which corresponds to the personal property total that was reported on former Official Form 6B.

Official Form 106C, *Schedule C: The Property You Claim as Exempt*, replaces Official Form 6C, *Property Claimed as Exempt*, in cases of individual debtors.

Part 1, *Identify the Property You Claim as Exempt*, includes a table to list the property the debtor seeks to exempt, the value of the property owned by the debtor, the amount of the claimed exemption, and the law that allows the exemption. The first column asks for a brief description of the exempt property, and it also asks for the line number where the property is listed on Schedule A/B. The second column asks for the value of the portion of the asset owned by the debtor, rather than the entire asset. The third column asks for the amount, rather than the value, of the exemption claim.

The form has also been changed in light of the Supreme Court's ruling in *Schwab v. Reilly,* 560 U.S. 770 (2010). Entries in the "amount of the exemption you claim" column may now be listed as either a dollar limited amount or as 100% of fair market value, up to any applicable statutory limit. For example, a debtor might claim 100% of fair market value for a home covered by an exemption capped at $15,000, and that limit would be applicable. This choice would impose no dollar limit where the exemption is unlimited in dollar amount, such as some exemptions for health aids, certain governmental benefits, and tax-exempt retirement funds.

Official Form 106D, *Schedule D: Creditors Who Hold Claims Secured by Property*, replaces Official Form 6D, *Creditors Holding Secured Claims*, in cases of individual debtors.

Part 1, *List Your Secured Claims*, now directs the debtor to list only the last four digits of the account number. Part 1 also adds four checkboxes with which to describe the nature of the lien: an agreement the debtor made (such as mortgage or secured car loan); statutory lien (such as tax lien, mechanic's lien); judgment lien from a lawsuit; and other.

The form adds Part 2, *List Others to Be Notified for a Debt That You Already Listed*. The debtor is instructed to use Part 2 if there is a need to notify someone about the bankruptcy filing other than the creditor for a debt listed in Part 1. For example, if a collection agency is trying to collect for a creditor listed in Part 1, the collection agency would be listed in Part 2.

Official Form 106E/F, *Schedule E/F: Creditors Who Have Unsecured Claims*, consolidates information about priority and nonpriority unsecured claims into a single form. It replaces Official Form 6E, *Creditors Holding Unsecured Priority Claims*, and Official Form 6F, *Creditors Holding Unsecured Nonpriority Claims*, in cases of individual debtors.

Although both priority and nonpriority unsecured claims are reported in Official Form 106E/F, the two types of claims are separately grouped so that the total for each type can be reported for case administration and statistical purposes. The form eliminates the question "consideration for claim" and instructs debtors to list claims in the alphabetical order of creditors as much as possible.

Part 1, *List All of Your PRIORITY Unsecured Claims*, includes four checkboxes for identifying the type of priority that

applies to the claim: domestic support obligations; taxes and certain other debts owed to the government; claims for death or personal injury while intoxicated; and "other." The first three categories are required to be separately reported for statistical purposes. If the debtor selects "other," the debtor must specify the basis of the priority, *e.g.*, wages or employee benefit plan contribution.

Part 2, *List All of Your NONPRIORITY Unsecured Claims*, contains four checkboxes, including three for types of claims that must be separately reported for statistical purposes: student loans; obligations arising out of a separation agreement or divorce not listed as priority claims; and debts to pension or profit-sharing plans and other similar debts. The remaining "other" checkbox treats claims not subject to separate reporting. If the debtor selects "other," the debtor must specify the basis of the claim.

Part 3, *List Others to Be Notified About a Debt That You Already Listed*, is new. The debtor is instructed to use Part 3 only if there is a need to give notice of the bankruptcy to someone other than a creditor listed in Parts 1 and 2. For example, if a collection agency is trying to collect for a creditor listed in Part 1, the collection agency would be listed in Part 3.

Finally, Part 4, *Add the Amounts for Each Type of Unsecured Claim*, requires the debtor to provide the total amounts of particular types of unsecured claims for statistical reporting purposes and the overall totals of the priority and nonpriority unsecured claims reported in this form.

Official Form 106G, *Schedule G: Executory Contracts and Unexpired Leases*, replaces Official Form 6G, *Executory Contracts and Unexpired Leases*, in cases of individual debtors.

The form is simplified. Instead of requiring the debtor to make multiple assertions about each potential executory contract or unexpired lease, the form simply requires the debtor to identify the name and address of the other party to the contract or lease, and to state what the contract or lease deals with. Definitions and examples of executory contracts and unexpired leases are included in the separate instructions for the form.

An additional page is provided in case the debtor has so many executory contracts and unexpired leases that the available page is not adequate. If the debtor needs to use the additional page, the debtor is required to fill in the entry number.

Official Form 106H, *Schedule H: Your Codebtors*, replaces Official Form 6H, *Codebtors*, in cases of individual debtors.

The form breaks out the questions about whether there are any codebters, and whether the debtor has lived with a spouse, former spouse, or legal equivalent in a community property state in the prior eight years. It also removes Alaska from the listed community property states. Finally, it asks the debtor to indicate where the debt is listed on Schedule D, Schedule E/F, or Schedule G, thereby eliminating the need to list the name and address of the creditor.

Official Form 106I, *Schedule I: Your Income*, replaces Official Form 6I, *Your Income*, in cases of individual debtors.

The form is one of an initial set of forms that were published as part of the Forms Modernization Project in 2012. **It is renumbered and internal cross references are updated to conform to the new numbering system now being introduced by the Forms Modernization Project.**

Official Form 106J, *Schedule J: Your Expenses*, replaces Official Form 6J, *Your Expenses*, in cases of individual debtors.

The form is one of an initial set of forms that were published as part of the Forms Modernization Project in 2012. It is renumbered and internal cross references are updated to conform to the new numbering system now being introduced by the Forms Modernization Project.

Official Form 106Dec, *Declaration About an Individual Debtor's Schedules*, replaces Official Form 6, *Declaration Concerning Debtor's Schedules*, in cases of individual debtors.

The form, which is to be signed by the debtor and filed with the debtor's schedules, deletes the Declaration and Signature of Bankruptcy Petition Preparer (BPP). Instead, the debtor is directed to complete and file Official Form 119, *Bankruptcy Petition Preparer's Notice, Declaration, and Signature*, if a BPP helped fill out the bankruptcy forms.

Because the form applies only to individual debtors, it no longer contains the Declaration Under Penalty of Perjury on Behalf of a Corporation or Partnership. It also deletes from the declaration the phrase "to the best of my knowledge, information,

and belief" in order to conform to the language of 28 U.S.C. § 1746. *See* Rule 1008.

Fill in this information to identify your case:

Debtor 1 ____________________
First Name Middle Name Last Name

Debtor 2 ____________________
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: ____________ District of ____________
(State)

Case number ____________________
(If known)

❑ Check if this is an amended filing

Official Form 108

Statement of Intention for Individuals Filing Under Chapter 7

12/15

If you are an individual filing under chapter 7, you must fill out this form if:

- **creditors have claims secured by your property, or**
- **you have leased personal property and the lease has not expired.**

You must file this form with the court within 30 days after you file your bankruptcy petition or by the date set for the meeting of creditors, whichever is earlier, unless the court extends the time for cause. You must also send copies to the creditors and lessors you list on the form.

If two married people are filing together in a joint case, both are equally responsible for supplying correct information. Both debtors must sign and date the form.

Be as complete and accurate as possible. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known).

Part 1: List Your Creditors Who Hold Secured Claims

1. **For any creditors that you listed in Part 1 of *Schedule D: Creditors Who Hold Claims Secured by Property* (Official Form 106D), fill in the information below.**

Identify the creditor and the property that is collateral	What do you intend to do with the property that secures a debt?	Did you claim the property as exempt on Schedule C?
Creditor's name: ____ Description of property securing debt:	❑ Surrender the property. ❑ Retain the property and redeem it. ❑ Retain the property and enter into a *Reaffirmation Agreement*. ❑ Retain the property and [explain]: __________	❑ No ❑ Yes
Creditor's name: ____ Description of property securing debt:	❑ Surrender the property. ❑ Retain the property and redeem it. ❑ Retain the property and enter into a *Reaffirmation Agreement*. ❑ Retain the property and [explain]: __________	❑ No ❑ Yes
Creditor's name: ____ Description of property securing debt:	❑ Surrender the property. ❑ Retain the property and redeem it. ❑ Retain the property and enter into a *Reaffirmation Agreement*. ❑ Retain the property and [explain]: __________	❑ No ❑ Yes
Creditor's name: ____ Description of property securing debt:	❑ Surrender the property. ❑ Retain the property and redeem it. ❑ Retain the property and enter into a *Reaffirmation Agreement*. ❑ Retain the property and [explain]: __________	❑ No ❑ Yes

Your name _____ Case number (*If known*)_____
First Name Middle Name Last Name

Part 2: List Your Unexpired Personal Property Leases

For any unexpired personal property lease that you listed in *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 106G), fill in the information below. Do not list real estate leases. *Unexpired leases* are leases that are still in effect; the lease period has not yet ended. You may assume an unexpired personal property lease if the trustee does not assume it. 11 U.S.C. § 365(p)(2).

Describe your unexpired personal property leases	Will the lease be assumed?
Lessor's name: Description of leased property:	❑ No ❑ Yes
Lessor's name: Description of leased property:	❑ No ❑ Yes
Lessor's name: Description of leased property:	❑ No ❑ Yes
Lessor's name: Description of leased property:	❑ No ❑ Yes
Lessor's name: Description of leased property:	❑ No ❑ Yes
Lessor's name: Description of leased property:	❑ No ❑ Yes
Lessor's name: Description of leased property:	❑ No ❑ Yes

Part 3: Sign Below

Under penalty of perjury, I declare that I have indicated my intention about any property of my estate that secures a debt and any personal property that is subject to an unexpired lease.

✘ _____
Signature of Debtor 1

Date _____
MM / DD / YYYY

✘ _____
Signature of Debtor 2

Date _____
MM / DD / YYYY

COMMITTEE NOTE[1]

Official Form 108, *Statement of Intention for Individuals Filing Under Chapter* 7, is revised in its entirety as part of the Forms Modernization Project, making it easier to read and, as a result, likely to generate more complete and accurate responses. In addition, the form is renumbered, and stylistic changes are made throughout the form.

The form is derived from former Official Form 8, *Chapter 7 - Individual Debtor's Statement of Intention*. The new form uses language likely to be understandable to non-lawyers. In addition, the instructions are more extensive, advising an individual Chapter 7 debtor that the form must be completed and filed within 30 days and that the debtor must deliver copies of the form to creditors and lessors listed on the form.

Part 1, *Your Creditors Who Hold Secured Claims*, refers to entering into a "Reaffirmation Agreement" rather than asking whether the debtor intends to "reaffirm the debt." In addition, the debtor is asked if the property is claimed as exempt on Schedule C (Official Form 106C).

Part 2, *List Your Unexpired Personal Property Leases*, defines unexpired leases and explains that a debtor may assume an unexpired personal property lease if the trustee does not assume it.

[1] Proposed Official Form 108 was recommended for final approval as Official Form 112 by the Committee on Rules of Practice and Procedure at its June 2014 meeting. The only change to the form as previously recommended is to update the form number to 108.

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____ (State)

Case number (If known) _____

Check one box only as directed in this form and in Form 122A-1Supp:

- ❑ 1. There is no presumption of abuse.
- ❑ 2. The calculation to determine if a presumption of abuse applies will be made under *Chapter 7 Means Test Calculation* (Official Form 122A–2).
- ❑ 3. The Means Test does not apply now because of qualified military service but it could apply later.

❑ Check if this is an amended filing

Official Form 122A–1

Chapter 7 Statement of Your Current Monthly Income

12/15

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known). If you believe that you are exempted from a presumption of abuse because you do not have primarily consumer debts or because of qualifying military service, complete and file *Statement of Exemption from Presumption of Abuse Under § 707(b)(2)* (Official Form 122A-1Supp) with this form.

Part 1: Calculate Your Current Monthly Income

1. **What is your marital and filing status?** Check one only.
   - ❑ **Not married.** Fill out Column A, lines 2-11.
   - ❑ **Married and your spouse is filing with you.** Fill out both Columns A and B, lines 2-11.
   - ❑ **Married and your spouse is NOT filing with you. You and your spouse are:**
     - ❑ **Living in the same household and are not legally separated.** Fill out both Columns A and B, lines 2-11.
     - ❑ **Living separately or are legally separated**. Fill out Column A, lines 2-11; do not fill out Column B. By checking this box, you declare under penalty of perjury that you and your spouse are legally separated under nonbankruptcy law that applies or that you and your spouse are living apart for reasons that do not include evading the Means Test requirements. 11 U.S.C. § 707(b)(7)(B).

Fill in the average monthly income that you received from all sources, derived during the 6 full months before you file this bankruptcy case. 11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result. Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write $0 in the space.

			Column A **Debtor 1**	Column B **Debtor 2 or non-filing spouse**
2. **Your gross wages, salary, tips, bonuses, overtime, and commissions** (before all payroll deductions).			$_____	$_____
3. **Alimony and maintenance payments.** Do not include payments from a spouse if Column B is filled in.			$_____	$_____
4. **All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support.** Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Include regular contributions from a spouse only if Column B is not filled in. Do not include payments you listed on line 3.			$_____	$_____
5. **Net income from operating a business, profession, or farm**				
Gross receipts (before all deductions)	$_____			
Ordinary and necessary operating expenses	− $_____			
Net monthly income from a business, profession, or farm	$_____	**Copy here→**	$_____	$_____
6. **Net income from rental and other real property**				
Gross receipts (before all deductions)	$_____			
Ordinary and necessary operating expenses	− $_____			
Net monthly income from rental or other real property	$_____	**Copy here→**	$_____	$_____
7. **Interest, dividends, and royalties**			$_____	$_____

Debtor 1 _____ Case number (*if known*)_____
First Name Middle Name Last Name

	Column A **Debtor 1**	*Column B* **Debtor 2 or non-filing spouse**	
8. **Unemployment compensation**	$_____	$_____	
Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here: ➔			
For you	$_____		
For your spouse	$_____		
9. **Pension or retirement income.** Do not include any amount received that was a benefit under the Social Security Act.	$_____	$_____	
10. **Income from all other sources not listed above.** Specify the source and amount. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, a crime against humanity, or international or domestic terrorism. If necessary, list other sources on a separate page and put the total below.			
_____	$_____	$_____	
_____	$_____	$_____	
Total amounts from separate pages, if any.	+ $_____	+ $_____	
11. **Calculate your total current monthly income.** Add lines 2 through 10 for each column. Then add the total for Column A to the total for Column B.	$_____ +	$_____ =	$_____ **Total current monthly income**

Part 2: Determine Whether the Means Test Applies to You

12. **Calculate your current monthly income for the year.** Follow these steps:

12a. Copy your total current monthly income from line 11. **Copy line 11 here** ➔ $_____

Multiply by 12 (the number of months in a year). x 12

12b. The result is your annual income for this part of the form. 12b. $_____

13. **Calculate the median family income that applies to you.** Follow these steps:

Fill in the state in which you live. _____

Fill in the number of people in your household. _____

Fill in the median family income for your state and size of household. 13. $_____

To find a list of applicable median income amounts, go online using the link specified in the separate instructions for this form. This list may also be available at the bankruptcy clerk's office.

14. **How do the lines compare?**

14a. ❑ Line 12b is less than or equal to line 13. On the top of page 1, check box 1, *There is no presumption of abuse.* Go to Part 3.

14b. ❑ Line 12b is more than line 13. On the top of page 1, check box 2, *The presumption of abuse is determined by Form 122A-2*. Go to Part 3 and fill out Form 122A–*2.*

Part 3: Sign Below

By signing here, I declare under penalty of perjury that the information on this statement and in any attachments is true and correct.

✘ _____ ✘ _____

Signature of Debtor 1 Signature of Debtor 2

Date _____ Date _____
MM / DD / YYYY MM / DD / YYYY

If you checked line 14a, do NOT fill out or file Form 122A–2.

If you checked line 14b, fill out Form 122A–2 and file it with this form.

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number _____
(If known)

❑ Check if this is an amended filing

Official Form 122A–1Supp

Statement of Exemption from Presumption of Abuse Under § 707(b)(2) 12/15

File this supplement together with *Chapter 7 Statement of Your Current Monthly Income* (Official Form 122A-1), if you believe that you are exempted from a presumption of abuse. Be as complete and accurate as possible. If two married people are filing together, and any of the exclusions in this statement applies to only one of you, the other person should complete a separate Form 122A-1 if you believe that this is required by 11 U.S.C. § 707(b)(2)(C).

Part 1: Identify the Kind of Debts You Have

1. **Are your debts primarily consumer debts?** *Consumer debts* are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." Make sure that your answer is consistent with the answer you gave at line 16 of the *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101).

   ❑ No. Go to Form 122A-1; on the top of page 1 of that form, check box 1, *There is no presumption of abuse,* and sign Part 3. Then submit this supplement with the signed Form 122A-1.

   ❑ Yes. Go to Part 2.

Part 2: Determine Whether Military Service Provisions Apply to You

2. **Are you a disabled veteran** (as defined in 38 U.S.C. § 3741(1))**?**

   ❑ No. Go to line 3.

   ❑ Yes. Did you incur debts mostly while you were on active duty or while you were performing a homeland defense activity? 10 U.S.C. § 101(d)(1)); 32 U.S.C. § 901(1).

      ❑ No. Go to line 3.

      ❑ Yes. Go to Form 122A-1; on the top of page 1 of that form, check box 1, *There is no presumption of abuse,* and sign Part 3. Then submit this supplement with the signed Form 122A-1.

3. **Are you or have you been a Reservist or member of the National Guard?**

   ❑ No. Complete Form 122A-1. Do not submit this supplement.

   ❑ Yes. Were you called to active duty or did you perform a homeland defense activity? 10 U.S.C. § 101(d)(1); 32 U.S.C. § 901(1).

      ❑ No. Complete Form 122A-1. Do not submit this supplement.

      ❑ Yes. Check any one of the following categories that applies:

         ❑ **I was called to active duty after September 11, 2001**, for at least 90 days and remain on active duty**.**

         ❑ **I was called to active duty after September 11, 2001,** for at least 90 days and was released from active duty on _____, which is fewer than 540 days before I file this bankruptcy case.

         ❑ **I am performing a homeland defense activity for at least 90 days.**

         ❑ **I performed a homeland defense activity for at least 90 days**, ending on _____, which is fewer than 540 days before I file this bankruptcy case.

If you checked one of the categories to the left, go to Form 122A-1. On the top of page 1 of Form 122A-1, check box 3, *The Means Test does not apply now,* and sign Part 3. Then submit this supplement with the signed Form 122A-1. You are not required to fill out the rest of Official Form 122A-1 during the exclusion period. The *exclusion period* means the time you are on active duty or are performing a homeland defense activity, and for 540 days afterward. 11 U.S.C. § 707(b)(2)(D)(ii).

If your exclusion period ends before your case is closed, you may have to file an amended form later.

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____ (State)

Case number _____
(If known)

Check the appropriate box as directed in lines 40 or 42:

According to the calculations required by this Statement:

❑ 1. There is no presumption of abuse.

❑ 2. There is a presumption of abuse.

❑ Check if this is an amended filing

Official Form 122A–2

Chapter 7 Means Test Calculation

12/15

To fill out this form, you will need your completed copy of *Chapter 7 Statement of Your Current Monthly Income* (Official Form 122A-1).

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

Part 1: Determine Your Adjusted Income

1. **Copy your total current monthly income.** ..... **Copy line 11 from Official Form 122A-1 here** ➔ ..... $_____

2. **Did you fill out Column B in Part 1 of Form 122A–1?**

   ❑ No. Fill in $0 for the total on line 3.

   ❑ Yes. Is your spouse filing with you?

      ❑ No. Go to line 3.

      ❑ Yes. Fill in $0 for the total on line 3.

3. **Adjust your current monthly income by subtracting any part of your spouse's income not used to pay for the household expenses of you or your dependents.** Follow these steps:

   On line 11, Column B of Form 122A–1, was any amount of the income you reported for your spouse NOT regularly used for the household expenses of you or your dependents?

   ❑ No. Fill in 0 for the total on line 3.

   ❑ Yes. Fill in the information below:

State each purpose for which the income was used For example, the income is used to pay your spouse's tax debt or to support people other than you or your dependents	**Fill in the amount you are subtracting from your spouse's income**
_____	$_____
_____	$_____
_____	+ $_____
Total.	$_____

Copy total here ..... ➔ − $_____

4. **Adjust your current monthly income.** Subtract the total on line 3 from line 1. $_____

Part 2: Calculate Your Deductions from Your Income

The Internal Revenue Service (IRS) issues National and Local Standards for certain expense amounts. Use these amounts to answer the questions in lines 6-15. To find the IRS standards, go online using the link specified in the separate instructions for this form. This information may also be available at the bankruptcy clerk's office.

Deduct the expense amounts set out in lines 6-15 regardless of your actual expense. In later parts of the form, you will use some of your actual expenses if they are higher than the standards. Do not deduct any amounts that you subtracted from your spouse's income in line 3 and do not deduct any operating expenses that you subtracted from income in lines 5 and 6 of Form 122A–1.

If your expenses differ from month to month, enter the average expense.

Whenever this part of the form refers to *you*, it means both you and your spouse if Column B of Form 122A–1 is filled in.

5. **The number of people used in determining your deductions from income**

   Fill in the number of people who could be claimed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support. This number may be different from the number of people in your household. ☐

National Standards You must use the IRS National Standards to answer the questions in lines 6-7.

6. **Food, clothing, and other items:** Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for food, clothing, and other items. $_____

7. **Out-of-pocket health care allowance:** Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for out-of-pocket health care. The number of people is split into two categories—people who are under 65 and people who are 65 or older—because older people have a higher IRS allowance for health care costs. If your actual expenses are higher than this IRS amount, you may deduct the additional amount on line 22.

People who are under 65 years of age

7a. Out-of-pocket health care allowance per person $_____

7b. Number of people who are under 65 X _____

7c. **Subtotal.** Multiply line 7a by line 7b. $_____ **Copy here** → $_____

People who are 65 years of age or older

7d. Out-of-pocket health care allowance per person $_____

7e. Number of people who are 65 or older X _____

7f. **Subtotal.** Multiply line 7d by line 7e. $_____ **Copy here** → + $_____

7g. **Total**. Add lines 7c and 7f..... $_____ **Copy total here** → $_____

Local Standards You must use the IRS Local Standards to answer the questions in lines 8-15.

Based on information from the IRS, the U.S. Trustee Program has divided the IRS Local Standard for housing for bankruptcy purposes into two parts:

- **Housing and utilities – Insurance and operating expenses**
- **Housing and utilities – Mortgage or rent expenses**

To answer the questions in lines 8-9, use the U.S. Trustee Program chart.

To find the chart, go online using the link specified in the separate instructions for this form. This chart may also be available at the bankruptcy clerk's office.

8. **Housing and utilities – Insurance and operating expenses:** Using the number of people you entered in line 5, fill in the dollar amount listed for your county for insurance and operating expenses. ..... $_____

9. **Housing and utilities – Mortgage or rent expenses:**

9a. Using the number of people you entered in line 5, fill in the dollar amount listed for your county for mortgage or rent expenses..... $_____

9b. Total average monthly payment for all mortgages and other debts secured by your home.

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Name of the creditor	Average monthly payment
_____	$_____
_____	$_____
_____	+ $_____
Total average monthly payment	$_____

Copy here → — $_____ Repeat this amount on line 33a.

9c. Net mortgage or rent expense.
Subtract line 9b (*total average monthly payment*) from line 9a (*mortgage or rent expense*). If this amount is less than $0, enter $0..... $_____ **Copy here** → $_____

10. **If you claim that the U.S. Trustee Program's division of the IRS Local Standard for housing is incorrect and affects the calculation of your monthly expenses, fill in any additional amount you claim.** $_____

Explain why: _____
_____

11. **Local transportation expenses:** Check the number of vehicles for which you claim an ownership or operating expense.

- ☐ 0. Go to line 14.
- ☐ 1. Go to line 12.
- ☐ 2 or more. Go to line 12.

12. **Vehicle operation expense:** Using the IRS Local Standards and the number of vehicles for which you claim the operating expenses, fill in the *Operating Costs* that apply for your Census region or metropolitan statistical area. $_____

13. **Vehicle ownership or lease expense:** Using the IRS Local Standards, calculate the net ownership or lease expense for each vehicle below. You may not claim the expense if you do not make any loan or lease payments on the vehicle. In addition, you may not claim the expense for more than two vehicles.

Vehicle 1 **Describe Vehicle 1:** _____
_____

13a. Ownership or leasing costs using IRS Local Standard. ..... $_____

13b. Average monthly payment for all debts secured by Vehicle 1.
Do not include costs for leased vehicles.

To calculate the average monthly payment here and on line 13e, add all amounts that are contractually due to each secured creditor in the 60 months after you filed for bankruptcy. Then divide by 60.

Name of each creditor for Vehicle 1	Average monthly payment
_____	$_____
_____ +	$_____
Total average monthly payment	$_____

Copy here → — $_____ Repeat this amount on line 33b.

13c. Net Vehicle 1 ownership or lease expense
Subtract line 13b from line 13a. If this amount is less than $0, enter $0. ..... $_____ **Copy net Vehicle 1 expense here** ..... → $_____

Vehicle 2 **Describe Vehicle 2:** _____
_____

13d. Ownership or leasing costs using IRS Local Standard. ..... $_____

13e. Average monthly payment for all debts secured by Vehicle 2.
Do not include costs for leased vehicles.

Name of each creditor for Vehicle 2	Average monthly payment
_____	$_____
_____ +	$_____
Total average monthly payment	$_____

Copy here → — $_____ Repeat this amount on line 33c.

13f. Net Vehicle 2 ownership or lease expense
Subtract line 13e from 13d. If this amount is less than $0, enter $0. ..... $_____ **Copy net Vehicle 2 expense here** ... → $_____

14. **Public transportation expense**: If you claimed 0 vehicles in line 11, using the IRS Local Standards, fill in the *Public Transportation* expense allowance regardless of whether you use public transportation. $_____

15. **Additional public transportation expense:** If you claimed 1 or more vehicles in line 11 and if you claim that you may also deduct a public transportation expense, you may fill in what you believe is the appropriate expense, but you may not claim more than the IRS Local Standard for *Public Transportation*. $_____

Other Necessary Expenses In addition to the expense deductions listed above, you are allowed your monthly expenses for the following IRS categories.

16. **Taxes:** The total monthly amount that you will actually owe for federal, state and local taxes, such as income taxes, self-employment taxes, social security taxes, and Medicare taxes. You may include the monthly amount withheld from your pay for these taxes. However, if you expect to receive a tax refund, you must divide the expected refund by 12 and subtract that number from the total monthly amount that is withheld to pay for taxes.
    Do not include real estate, sales, or use taxes. $_____

17. **Involuntary deductions:** The total monthly payroll deductions that your job requires, such as retirement contributions, union dues, and uniform costs.
    Do not include amounts that are not required by your job, such as voluntary 401(k) contributions or payroll savings. $_____

18. **Life insurance:** The total monthly premiums that you pay for your own term life insurance. If two married people are filing together, include payments that you make for your spouse's term life insurance. Do not include premiums for life insurance on your dependents, for a non-filing spouse's life insurance, or for any form of life insurance other than term. $_____

19. **Court-ordered payments:** The total monthly amount that you pay as required by the order of a court or administrative agency, such as spousal or child support payments.
    Do not include payments on past due obligations for spousal or child support. You will list these obligations in line 35. $_____

20. **Education:** The total monthly amount that you pay for education that is either required:
    - ■ as a condition for your job, or
    - ■ for your physically or mentally challenged dependent child if no public education is available for similar services. $_____

21. **Childcare:** The total monthly amount that you pay for childcare, such as babysitting, daycare, nursery, and preschool.
    Do not include payments for any elementary or secondary school education. $_____

22. **Additional health care expenses, excluding insurance costs:** The monthly amount that you pay for health care that is required for the health and welfare of you or your dependents and that is not reimbursed by insurance or paid by a health savings account. Include only the amount that is more than the total entered in line 7.
    Payments for health insurance or health savings accounts should be listed only in line 25. $_____

23. **Optional telephones and telephone services:** The total monthly amount that you pay for telecommunication services for you and your dependents, such as pagers, call waiting, caller identification, special long distance, 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 it is not reimbursed by your employer. + $_____
    Do not include payments for basic home telephone, internet and cell phone service. Do not include self-employment expenses, such as those reported on line 5 of Official Form 122A-1, or any amount you previously deducted.

24. **Add all of the expenses allowed under the IRS expense allowances.**
    Add lines 6 through 23. $_____

Additional Expense Deductions These are additional deductions allowed by the Means Test.
Note: Do not include any expense allowances listed in lines 6-24.

25. **Health insurance, disability insurance, and health savings account expenses.** The monthly expenses for health insurance, disability insurance, and health savings accounts that are reasonably necessary for yourself, your spouse, or your dependents.

Health insurance	$_____			
Disability insurance	$_____			
Health savings account	+ $_____			
Total	$_____	**Copy total here** ➔	$_____	

Do you actually spend this total amount?

- ❑ No. How much do you actually spend? $_____
- ❑ Yes

26. **Continued contributions to the care of household or family members.** The 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. $_____

27. **Protection against family violence.** The reasonably necessary monthly expenses that you incur to maintain the safety of you and your family under the Family Violence Prevention and Services Act or other federal laws that apply. $_____

By law, the court must keep the nature of these expenses confidential.

28. **Additional home energy costs.** Your home energy costs are included in your insurance and operating expenses on line 8.

If you believe that you have home energy costs that are more than the home energy costs included in expenses on line 8, then fill in the excess amount of home energy costs. $_____

You must give your case trustee documentation of your actual expenses, and you must show that the additional amount claimed is reasonable and necessary.

29. **Education expenses for dependent children who are younger than 18.** The monthly expenses (not more than $156.25* per child) that you pay for your dependent children who are younger than 18 years old to attend a private or public elementary or secondary school. $_____

You must give your case trustee documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in lines 6-23.

* Subject to adjustment on 4/01/16, and every 3 years after that for cases begun on or after the date of adjustment.

30. **Additional food and clothing expense.** The monthly amount by which your actual food and clothing expenses are higher than the combined food and clothing allowances in the IRS National Standards. That amount cannot be more than 5% of the food and clothing allowances in the IRS National Standards. $_____

To find a chart showing the maximum additional allowance, go online using the link specified in the separate instructions for this form. This chart may also be available at the bankruptcy clerk's office.

You must show that the additional amount claimed is reasonable and necessary.

31. **Continuing charitable contributions.** The amount that you will continue to contribute in the form of cash or financial instruments to a religious or charitable organization. 26 U.S.C. § 170(c)(1)-(2). + $_____

32. **Add all of the additional expense deductions.**
Add lines 25 through 31. $_____

Deductions for Debt Payment

33. **For debts that are secured by an interest in property that you own, including home mortgages, vehicle loans, and other secured debt, fill in lines 33a through 33e.**

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

		Average monthly payment
	Mortgages on your home:	
33a.	Copy line 9b here ➔	$_____
	Loans on your first two vehicles:	
33b.	Copy line 13b here. ➔	$_____
33c.	Copy line 13e here. ➔	$_____

33d. List other secured debts:

Name of each creditor for other secured debt	Identify property that secures the debt	Does payment include taxes or insurance?	
_____	_____	❑ No ❑ Yes	$_____
_____	_____	❑ No ❑ Yes	$_____
_____	_____	❑ No ❑ Yes	+ $_____

33e. Total average monthly payment. Add lines 33a through 33d. $_____ **Copy total here** ➔ $_____

34. **Are any debts that you listed in line 33 secured by your primary residence, a vehicle, or other property necessary for your support or the support of your dependents?**

❑ No. Go to line 35.

❑ Yes. State any amount that you must pay to a creditor, in addition to the payments listed in line 33, to keep possession of your property (called the *cure amount*). Next, divide by 60 and fill in the information below.

Name of the creditor	Identify property that secures the debt	Total cure amount		Monthly cure amount
_____	_____	$_____	÷ 60 =	$_____
_____	_____	$_____	÷ 60 =	$_____
_____	_____	$_____	÷ 60 =	+ $_____
			Total	$_____ **Copy total here** ➔ $_____

35. **Do you owe any priority claims such as a priority tax, child support, or alimony – that are past due as of the filing date of your bankruptcy case?** 11 U.S.C. § 507.

❑ No. Go to line 36.

❑ Yes. Fill in the total amount of all of these priority claims. Do not include current or ongoing priority claims, such as those you listed in line 19.

Total amount of all past-due priority claims $_____ ÷ 60 = $_____

36. **Are you eligible to file a case under Chapter 13?** 11 U.S.C. § 109(e).
For more information, go online using the link for *Bankruptcy Basics* specified in the separate instructions for this form. *Bankruptcy Basics* may also be available at the bankruptcy clerk's office.

❑ No. Go to line 37.

❑ Yes. Fill in the following information.

Projected monthly plan payment if you were filing under Chapter 13			$_____
Current multiplier for your district as stated on the list issued by the Administrative Office of the United States Courts (for districts in Alabama and North Carolina) or by the Executive Office for United States Trustees (for all other districts). To find a list of district multipliers that includes your district, go online using the link specified in the separate instructions for this form. This list may also be available at the bankruptcy clerk's office.	x	_____	
Average monthly administrative expense if you were filing under Chapter 13		$_____ **Copy total here** ➔	$_____

37. **Add all of the deductions for debt payment.**
Add lines 33e through 36. ..... $_____

Total Deductions from Income

38. **Add all of the allowed deductions.**

Copy line 24, *All of the expenses allowed under IRS expense allowances*		$_____
Copy line 32, *All of the additional expense deductions*		$_____
Copy line 37, *All of the deductions for debt payment*	+	$_____
Total deductions		$_____ **Copy total here** ..... ➔ $_____

Part 3: Determine Whether There Is a Presumption of Abuse

39. **Calculate monthly disposable income for 60 months**

39a.	Copy line 4, *adjusted current monthly income*		$_____
39b.	Copy line 38, *Total deductions*.	−	$_____
39c.	Monthly disposable income. 11 U.S.C. § 707(b)(2). Subtract line 39b from line 39a.	$_____ **Copy here** ➔	$_____
	For the next 60 months (5 years).....		x 60
39d.	**Total**. Multiply line 39c by 60.	$_____ **Copy here** ➔	$_____

40. **Find out whether there is a presumption of abuse.** Check the box that applies:

❑ **The line 39d is less than $7,475*.** On the top of page 1 of this form, check box 1, *There is no presumption of abuse.* Go to Part 5.

❑ **The line 39d is more than $12,475*.** On the top of page 1 of this form, check box 2, *There is a presumption of abuse.* You may fill out Part 4 if you claim special circumstances. Then go to Part 5.

❑ **The line 39d is at least $7,475*, but not more than $12,475*.** Go to line 41.

* Subject to adjustment on 4/01/16, and every 3 years after that for cases filed on or after the date of adjustment.

41. 41a. **Fill in the amount of your total nonpriority unsecured debt.** If you filled out *A Summary of Your Assets and Liabilities and Certain Statistical Information Schedules* (Official Form 106Sum), you may refer to line 3b on that form. . $_____

x .25

41b. **25% of your total nonpriority unsecured debt.** 11 U.S.C. § 707(b)(2)(A)(i)(I) Multiply line 41a by 0.25. ..... $_____ **Copy here** → $_____

42. **Determine whether the income you have left over after subtracting all allowed deductions is enough to pay 25% of your unsecured, nonpriority debt.**
Check the box that applies:

❑ **Line 39d is less than line 41b.** On the top of page 1 of this form, check box 1, *There is no presumption of abuse.* Go to Part 5.

❑ **Line 39d is equal to or more than line 41b.** On the top of page 1 of this form, check box 2, *There is a presumption of abuse.* You may fill out Part 4 if you claim special circumstances. Then go to Part 5.

Part 4: Give Details About Special Circumstances

43. **Do you have any special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative?** 11 U.S.C. § 707(b)(2)(B).

❑ No. Go to Part 5.

❑ Yes. Fill in the following information. All figures should reflect your average monthly expense or income adjustment for each item. You may include expenses you listed in line 25.

You must give a detailed explanation of the special circumstances that make the expenses or income adjustments necessary and reasonable. You must also give your case trustee documentation of your actual expenses or income adjustments.

Give a detailed explanation of the special circumstances	Average monthly expense or income adjustment
_____	$_____
_____	$_____
_____	$_____
_____	$_____

Part 5: Sign Below

By signing here, I declare under penalty of perjury that the information on this statement and in any attachments is true and correct.

✘ _____
Signature of Debtor 1

Date _____
MM / DD / YYYY

✘ _____
Signature of Debtor 2

Date _____
MM / DD / YYYY

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number _____
(If known)

❒ Check if this is an amended filing

Official Form 122B

Chapter 11 Statement of Your Current Monthly Income

12/15

You must file this form if you are an individual and are filing for bankruptcy under Chapter 11. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

Part 1: Calculate Your Current Monthly Income

1. **What is your marital and filing status?** Check one only.

   ❑ **Not married.** Fill out Column A, lines 2-11.

   ❑ **Married and your spouse is filing with you.** Fill out both Columns A and B, lines 2-11.

   ❑ **Married and your spouse is NOT filing with you.** Fill out Column A, lines 2-11.

Fill in the average monthly income that you received from all sources, derived during the 6 full months before you file this bankruptcy case. 11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result. Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write $0 in the space.

				Column A **Debtor 1**	Column B **Debtor 2**
2.	**Your gross wages, salary, tips, bonuses, overtime, and commissions** (before all payroll deductions).			$_____	$_____
3.	**Alimony and maintenance payments.** Do not include payments from a spouse if Column B is filled in.			$_____	$_____
4.	**All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support.** Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Include regular contributions from a spouse only if Column B is not filled in. Do not include payments you listed on line 3.			$_____	$_____
5.	**Net income from operating a business, profession, or farm**				
	Gross receipts (before all deductions)	$_____			
	Ordinary and necessary operating expenses	− $_____			
	Net monthly income from a business, profession, or farm	$_____	**Copy here➔**	$_____	$_____
6.	**Net income from rental and other real property**				
	Gross receipts (before all deductions)	$_____			
	Ordinary and necessary operating expenses	− $_____			
	Net monthly income from rental or other real property	$_____	**Copy here➔**	$_____	$_____

	Column A **Debtor 1**	*Column B* **Debtor 2**
7. **Interest, dividends, and royalties**	$_____	$_____
8. **Unemployment compensation**	$_____	$_____
Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here: ..... ↓		
For you ..... $_____		
For your spouse..... $_____		
9. **Pension or retirement income.** Do not include any amount received that was a benefit under the Social Security Act.	$_____	$_____
10. **Income from all other sources not listed above.** Specify the source and amount. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, a crime against humanity, or international or domestic terrorism.		
If necessary, list other sources on a separate page and put the total below.		
_____	$_____	$_____
_____	$_____	$_____
Total amounts from separate pages, if any.	+ $_____	+ $_____
11. **Calculate your total current monthly income.** Add lines 2 through 10 for each column. Then add the total for Column A to the total for Column B.	$_____ +	$_____ = $_____
		Total current monthly income

Part 2: Sign Below

By signing here, under penalty of perjury I declare that the information on this statement and in any attachments is true and correct.

✘ _____
Signature of Debtor 1

Date _____
MM / DD / YYYY

✘ _____
Signature of Debtor 2

Date _____
MM / DD / YYYY

Fill in this information to identify your case:

Debtor 1 _____ (First Name / Middle Name / Last Name)

Debtor 2 (Spouse, if filing) _____ (First Name / Middle Name / Last Name)

United States Bankruptcy Court for the: _____ District of _____ (State)

Case number (If known) _____

Check as directed in lines 17 and 21:

According to the calculations required by this Statement:

- ❑ 1. Disposable income is not determined under 11 U.S.C. § 1325(b)(3).
- ❑ 2. Disposable income is determined under 11 U.S.C. § 1325(b)(3).
- ❑ 3. The commitment period is 3 years.
- ❑ 4. The commitment period is 5 years.

❑ Check if this is an amended filing

Official Form 122C–1

Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period

12/15

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

Part 1: Calculate Your Average Monthly Income

1. **What is your marital and filing status?** Check one only.
   - ❑ **Not married.** Fill out Column A, lines 2-11.
   - ❑ **Married.** Fill out both Columns A and B, lines 2-11.

Fill in the average monthly income that you received from all sources, derived during the 6 full months before you file this bankruptcy case. 11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result. Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write $0 in the space.

	Column A **Debtor 1**	*Column B* **Debtor 2 or non-filing spouse**
2. **Your gross wages, salary, tips, bonuses, overtime, and commissions** (before all payroll deductions).	$_____	$_____
3. **Alimony and maintenance payments.** Do not include payments from a spouse.	$_____	$_____
4. **All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support.** Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Do not include payments from a spouse. Do not include payments you listed on line 3.	$_____	$_____
5. **Net income from operating a business, profession, or farm**		
Gross receipts (before all deductions) $_____		
Ordinary and necessary operating expenses − $_____		
Net monthly income from a business, profession, or farm $_____ **Copy here➔**	$_____	$_____
6. **Net income from rental and other real property**		
Gross receipts (before all deductions) $_____		
Ordinary and necessary operating expenses − $_____		
Net monthly income from rental or other real property $_____ **Copy here➔**	$_____	$_____

	Column A **Debtor 1**	*Column B* **Debtor 2 or non-filing spouse**
7. **Interest, dividends, and royalties**	$_____	$_____
8. **Unemployment compensation**	$_____	$_____
Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here: ➔		
For you	$_____	
For your spouse	$_____	
9. **Pension or retirement income.** Do not include any amount received that was a benefit under the Social Security Act.	$_____	$_____
10. **Income from all other sources not listed above.** Specify the source and amount. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, a crime against humanity, or international or domestic terrorism. If necessary, list other sources on a separate page and put the total below.		
_____	$_____	$_____
_____	$_____	$_____
Total amounts from separate pages, if any.	+ $_____	+ $_____
11. **Calculate your total average monthly income.** Add lines 2 through 10 for each column. Then add the total for Column A to the total for Column B.	$_____ +	$_____ = $_____
		Total average monthly income

Part 2: Determine How to Measure Your Deductions from Income

12. **Copy your total average monthly income from line 11.** ..... $_____

13. **Calculate the marital adjustment.** Check one:

- ❑ You are not married. Fill in 0 below.
- ❑ You are married and your spouse is filing with you. Fill in 0 below.
- ❑ You are married and your spouse is not filing with you.

Fill in the amount of the income listed in line 11, Column B, that was NOT regularly paid for the household expenses of you or your dependents, such as payment of the spouse's tax liability or the spouse's support of someone other than you or your dependents.

Below, specify the basis for excluding this income and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page.

If this adjustment does not apply, enter 0 below.

_____	$_____
_____	$_____
_____	+ $_____
Total	$_____ Copy here ➔ − _____

14. **Your current monthly income.** Subtract the total in line 13 from line 12. $ _____

15. **Calculate your current monthly income for the year.** Follow these steps:

15a. Copy line 14 here ➔ ..... $ _____

Multiply line 15a by 12 (the number of months in a year). **x** 12

15b. The result is your current monthly income for the year for this part of the form. ..... $_____

16. **Calculate the median family income that applies to you.** Follow these steps:

16a. Fill in the state in which you live. _____

16b. Fill in the number of people in your household. _____

16c. Fill in the median family income for your state and size of household. ..... $_____
To find a list of applicable median income amounts, go online using the link specified in the separate instructions for this form. This list may also be available at the bankruptcy clerk's office.

17. **How do the lines compare?**

17a. ❑ Line 15b is less than or equal to line 16c. On the top of page 1 of this form, check box 1, *Disposable income is not determined under 11 U.S.C. § 1325(b)(3)*. **Go to Part 3.** Do NOT fill out *Calculation of Disposable Income* (Official Form 122C–2).

17b. ❑ Line 15b is more than line 16c. On the top of page 1 of this form, check box 2, *Disposable income is determined under 11 U.S.C. § 1325(b)(3).* **Go to Part 3 and fill out Calculation of Disposable Income (Official Form 122C–2).** On line 39 of that form, copy your current monthly income from line 14 above.

Part 3: Calculate Your Commitment Period Under 11 U.S.C. §1325(b)(4)

18. **Copy your total average monthly income from line 11.** ..... $_____

19. **Deduct the marital adjustment if it applies.** If you are married, your spouse is not filing with you, and you contend that calculating the commitment period under 11 U.S.C. § 1325(b)(4) allows you to deduct part of your spouse's income, copy the amount from line 13.

19a. If the marital adjustment does not apply, fill in 0 on line 19a. ..... – $_____

19b. **Subtract line 19a from line 18.** $_____

20. **Calculate your current monthly income for the year.** Follow these steps:

20a. Copy line 19b.. ..... $_____

Multiply by 12 (the number of months in a year). x 12

20b. The result is your current monthly income for the year for this part of the form. $_____

20c. Copy the median family income for your state and size of household from line 16c..... $_____

21. **How do the lines compare?**

❑ Line 20b is less than line 20c. Unless otherwise ordered by the court, on the top of page 1 of this form, check box 3, *The commitment period is 3 years*. Go to Part 4.

❑ Line 20b is more than or equal to line 20c. Unless otherwise ordered by the court, on the top of page 1 of this form, check box 4, *The commitment period is 5 years*. Go to Part 4.

Part 4: Sign Below

By signing here, under penalty of perjury I declare that the information on this statement and in any attachments is true and correct.

✘ _____
Signature of Debtor 1

Date _____
MM / DD / YYYY

✘ _____
Signature of Debtor 2

Date _____
MM / DD / YYYY

If you checked 17a, do NOT fill out or file Form 122C–2.
If you checked 17b, fill out Form 122C–2 and file it with this form. On line 39 of that form, copy your current monthly income from line 14 above.

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

Debtor 2 _____
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
(State)

Case number _____
(If known)

❑ Check if this is an amended filing

Official Form 122C–2

Chapter 13 Calculation of Your Disposable Income

12/15

To fill out this form, you will need your completed copy of *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 122C–1).

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

Part 1: Calculate Your Deductions from Your Income

The Internal Revenue Service (IRS) issues National and Local Standards for certain expense amounts. Use these amounts to answer the questions in lines 6-15. To find the IRS standards, go online using the link specified in the separate instructions for this form. This information may also be available at the bankruptcy clerk's office.

Deduct the expense amounts set out in lines 6-15 regardless of your actual expense. In later parts of the form, you will use some of your actual expenses if they are higher than the standards. Do not include any operating expenses that you subtracted from income in lines 5 and 6 of Form 122C–1, and do not deduct any amounts that you subtracted from your spouse's income in line 13 of Form 122C–1.

If your expenses differ from month to month, enter the average expense.

Note: Line numbers 1-4 are not used in this form. These numbers apply to information required by a similar form used in chapter 7 cases.

5. **The number of people used in determining your deductions from income**
   Fill in the number of people who could be claimed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support. This number may be different from the number of people in your household. ☐

National Standards You must use the IRS National Standards to answer the questions in lines 6-7.

6. **Food, clothing, and other items:** Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for food, clothing, and other items. $_____

7. **Out-of-pocket health care allowance:** Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for out-of-pocket health care. The number of people is split into two categories–people who are under 65 and people who are 65 or older–because older people have a higher IRS allowance for health care costs. If your actual expenses are higher than this IRS amount, you may deduct the additional amount on line 22.

People who are under 65 years of age

7a. Out-of-pocket health care allowance per person $_____

7b. Number of people who are under 65 X _____

7c. Subtotal. Multiply line 7a by line 7b. $_____ **Copy here➔** $_____

People who are 65 years of age or older

7d. Out-of-pocket health care allowance per person $_____

7e. Number of people who are 65 or older X _____

7f. Subtotal. Multiply line 7d by line 7e. $_____ **Copy here➔** + $_____

7g. **Total**. Add lines 7c and 7f. ..... $_____ **Copy here➔** ..... $_____

Local Standards You must use the IRS Local Standards to answer the questions in lines 8-15.

Based on information from the IRS, the U.S. Trustee Program has divided the IRS Local Standard for housing for bankruptcy purposes into two parts:

- **Housing and utilities – Insurance and operating expenses**
- **Housing and utilities – Mortgage or rent expenses**

To answer the questions in lines 8-9, use the U.S. Trustee Program chart. To find the chart, go online using the link specified in the separate instructions for this form. This chart may also be available at the bankruptcy clerk's office.

8. **Housing and utilities – Insurance and operating expenses:** Using the number of people you entered in line 5, fill in the dollar amount listed for your county for insurance and operating expenses. $_____

9. **Housing and utilities – Mortgage or rent expenses:**

9a. Using the number of people you entered in line 5, fill in the dollar amount listed for your county for mortgage or rent expenses. $_____

9b. Total average monthly payment for all mortgages and other debts secured by your home.

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Next divide by 60.

Name of the creditor	Average monthly payment
_____	$_____
_____	$_____
_____	+ $_____

9b. Total average monthly payment $_____ **Copy here➔** — $_____ Repeat this amount on line 33a.

9c. Net mortgage or rent expense.

Subtract line 9b (*total average monthly payment*) from line 9a (*mortgage or rent expense*). If this number is less than $0, enter $0. $_____ **Copy here➔** ..... $_____

10. **If you claim that the U.S. Trustee Program's division of the IRS Local Standard for housing is incorrect and affects the calculation of your monthly expenses, fill in any additional amount you claim.** $_____

Explain why: _____

_____

11. **Local transportation expenses:** Check the number of vehicles for which you claim an ownership or operating expense.

- ❑ 0. Go to line 14.
- ❑ 1. Go to line 12.
- ❑ 2 or more. Go to line 12.

12. **Vehicle operation expense:** Using the IRS Local Standards and the number of vehicles for which you claim the operating expenses, fill in the *Operating Costs* that apply for your Census region or metropolitan statistical area. $_____

13. **Vehicle ownership or lease expense:** Using the IRS Local Standards, calculate the net ownership or lease expense for each vehicle below. You may not claim the expense if you do not make any loan or lease payments on the vehicle. In addition, you may not claim the expense for more than two vehicles.

Vehicle 1 **Describe Vehicle 1:** _____
_____

13a. Ownership or leasing costs using IRS Local Standard ..... $_____

13b. Average monthly payment for all debts secured by Vehicle 1.
Do not include costs for leased vehicles.

To calculate the average monthly payment here and on line 13e, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Name of each creditor for Vehicle 1	Average monthly payment
_____	$_____
_____	+ $_____
Total average monthly payment	$_____ **Copy here** ➔

— $_____ Repeat this amount on line 33b.

13c. Net Vehicle 1 ownership or lease expense
Subtract line 13b from line 13a. If this number is less than $0, enter $0. ..... $_____ **Copy net Vehicle 1 expense here** ➔ $_____

Vehicle 2 **Describe Vehicle 2:** _____
_____

13d. Ownership or leasing costs using IRS Local Standard $_____

13e. Average monthly payment for all debts secured by Vehicle 2.
Do not include costs for leased vehicles.

Name of each creditor for Vehicle 2	Average monthly payment
_____	$_____
_____	+ $_____
Total average monthly payment	$_____ **Copy here** ➔

— $_____ Repeat this amount on line 33c.

13f. Net Vehicle 2 ownership or lease expense
Subtract line 13e from 13d. If this number is less than $0, enter $0. $_____ **Copy net Vehicle 2 expense here** ➔ $_____

14. **Public transportation expense: If you claimed 0 vehicles in line 11, using the IRS Local Standards, fill in the *Public Transportation* expense allowance regardless of whether you use public transportation.** $_____

15. **Additional public transportation expense:** If you claimed 1 or more vehicles in line 11 and if you claim that you may also deduct a public transportation expense, you may fill in what you believe is the appropriate expense, but you may not claim more than the IRS Local Standard for *Public Transportation*. $_____

Other Necessary Expenses In addition to the expense deductions listed above, you are allowed your monthly expenses for the following IRS categories.

16. **Taxes:** The total monthly amount that you actually pay for federal, state and local taxes, such as income taxes, self-employment taxes, social security taxes, and Medicare taxes. You may include the monthly amount withheld from your pay for these taxes. However, if you expect to receive a tax refund, you must divide the expected refund by 12 and subtract that number from the total monthly amount that is withheld to pay for taxes. $_____

    Do not include real estate, sales, or use taxes.

17. **Involuntary deductions:** The total monthly payroll deductions that your job requires, such as retirement contributions, union dues, and uniform costs.

    Do not include amounts that are not required by your job, such as voluntary 401(k) contributions or payroll savings. $_____

18. **Life insurance:** The total monthly premiums that you pay for your own term life insurance. If two married people are filing together, include payments that you make for your spouse's term life insurance.

    Do not include premiums for life insurance on your dependents, for a non-filing spouse's life insurance, or for any form of life insurance other than term. $_____

19. **Court-ordered payments:** The total monthly amount that you pay as required by the order of a court or administrative agency, such as spousal or child support payments. $_____

    Do not include payments on past due obligations for spousal or child support. You will list these obligations in line 35.

20. **Education:** The total monthly amount that you pay for education that is either required:
    - as a condition for your job, or
    - for your physically or mentally challenged dependent child if no public education is available for similar services.

    $_____

21. **Childcare:** The total monthly amount that you pay for childcare, such as babysitting, daycare, nursery, and preschool. Do not include payments for any elementary or secondary school education. $_____

22. **Additional health care expenses, excluding insurance costs:** The monthly amount that you pay for health care that is required for the health and welfare of you or your dependents and that is not reimbursed by insurance or paid by a health savings account. Include only the amount that is more than the total entered in line 7. $_____

    Payments for health insurance or health savings accounts should be listed only in line 25.

23. **Optional telephones and telephone services:** The total monthly amount that you pay for telecommunication services for you and your dependents, such as pagers, call waiting, caller identification, special long distance, 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 it is not reimbursed by your employer. + $_____

    Do not include payments for basic home telephone, internet or cell phone service. Do not include self-employment expenses, such as those reported on line 5 of Form 122C-1, or any amount you previously deducted.

24. **Add all of the expenses allowed under the IRS expense allowances.** Add lines 6 through 23. $_____

Additional Expense Deductions These are additional deductions allowed by the Means Test.

Note: Do not include any expense allowances listed in lines 6-24.

25. **Health insurance, disability insurance, and health savings account expenses.** The monthly expenses for health insurance, disability insurance, and health savings accounts that are reasonably necessary for yourself, your spouse, or your dependents.

Health insurance	$_____		
Disability insurance	$_____		
Health savings account	+ $_____		
Total	$_____	**Copy total here➔**	$_____

Do you actually spend this total amount?

- ❑ No. How much do you actually spend? $_____
- ❑ Yes

26. **Continuing contributions to the care of household or family members.** The 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. $_____

27. **Protection against family violence.** The reasonably necessary monthly expenses that you incur to maintain the safety of you and your family under the Family Violence Prevention and Services Act or other federal laws that apply. $_____

    By law, the court must keep the nature of these expenses confidential.

28. **Additional home energy costs.** Your home energy costs are included in your insurance and operating expenses on line 8.

If you believe that you have home energy costs that are more than the home energy costs included in expenses on line 8, then fill in the excess amount of home energy costs. $_____

You must give your case trustee documentation of your actual expenses, and you must show that the additional amount claimed is reasonable and necessary.

29. **Education expenses for dependent children who are younger than 18.** The monthly expenses (not more than $156.25* per child) that you pay for your dependent children who are younger than 18 years old to attend a private or public elementary or secondary school. $_____

You must give your case trustee documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in lines 6-23.

* Subject to adjustment on 4/01/16, and every 3 years after that for cases begun on or after the date of adjustment.

30. **Additional food and clothing expense.** The monthly amount by which your actual food and clothing expenses are higher than the combined food and clothing allowances in the IRS National Standards. That amount cannot be more than 5% of the food and clothing allowances in the IRS National Standards. $_____

To find a chart showing the maximum additional allowance, go online using the link specified in the separate instructions for this form. This chart may also be available at the bankruptcy clerk's office.

You must show that the additional amount claimed is reasonable and necessary.

31. **Continuing charitable contributions.** The amount that you will continue to contribute in the form of cash or financial instruments to a religious or charitable organization. 11 U.S.C. § 548(d)3 and (4). + $_____

Do not include any amount more than 15% of your gross monthly income.

32. **Add all of the additional expense deductions.**
Add lines 25 through 31. $_____

Deductions for Debt Payment

33. **For debts that are secured by an interest in property that you own, including home mortgages, vehicle loans, and other secured debt, fill in lines 33a through 33e.**

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

	Average monthly payment
Mortgages on your home	
33a. Copy line 9b here ➔	$_____
Loans on your first two vehicles	
33b. Copy line 13b here. ➔	$_____
33c. Copy line 13e here. ➔	$_____

33d. List other secured debts:

Name of each creditor for other secured debt	Identify property that secures the debt	Does payment include taxes or insurance?	
_____	_____	❑ No ❑ Yes	$_____
_____	_____	❑ No ❑ Yes	$_____
_____	_____	❑ No ❑ Yes	+ $_____

33e. Total average monthly payment. Add lines 33a through 33d. $_____ **Copy total here** ➔ $_____

34. **Are any debts that you listed in line 33 secured by your primary residence, a vehicle, or other property necessary for your support or the support of your dependents?**

- ❑ No. Go to line 35.
- ❑ Yes. State any amount that you must pay to a creditor, in addition to the payments listed in line 33, to keep possession of your property (called the *cure amount*). Next, divide by 60 and fill in the information below.

Name of the creditor	Identify property that secures the debt	Total cure amount		Monthly cure amount
_____	_____	$_____	÷ 60 =	$_____
_____	_____	$_____	÷ 60 =	$_____
_____	_____	$_____	÷ 60 = +	$_____
			Total	$_____

Copy total here ➔ $_____

35. **Do you owe any priority claims—such as a priority tax, child support, or alimony— that are past due as of the filing date of your bankruptcy case?** 11 U.S.C. § 507.

- ❑ No. Go to line 36.
- ❑ Yes. Fill in the total amount of all of these priority claims. Do not include current or ongoing priority claims, such as those you listed in line 19.

Total amount of all past-due priority claims. ..... $_____ ÷ 60 $_____

36. **Projected monthly Chapter 13 plan payment** $_____

Current multiplier for your district as stated on the list issued by the Administrative Office of the United States Courts (for districts in Alabama and North Carolina) or by the Executive Office for United States Trustees (for all other districts).
To find a list of district multipliers that includes your district, go online using the link specified in the separate instructions for this form. This list may also be available at the bankruptcy clerk's office. x _____

Average monthly administrative expense $_____ **Copy total here** ➔ $_____

37. **Add all of the deductions for debt payment.** Add lines 33e through 36. $_____

Total Deductions from Income

38. **Add all of the allowed deductions.**

Copy line 24, *All of the expenses allowed under IRS expense allowances* ..... $_____

Copy line 32, *All of the additional expense deductions* ..... $_____

Copy line 37, *All of the deductions for debt payment* ..... + $_____

Total deductions ..... $_____ **Copy total here** ➔ $_____

Part 2: Determine Your Disposable Income Under 11 U.S.C. § 1325(b)(2)

39. **Copy your total current monthly income from line 14 of Form 122C-1, *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period*.** ..... $_____

40. **Fill in any reasonably necessary income you receive for support for dependent children.** The monthly average of any child support payments, foster care payments, or disability payments for a dependent child, reported in Part I of Form 122C-1, that you received in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child. $_____

41. **Fill in all qualified retirement deductions.** The monthly total of all amounts that your employer withheld from wages as contributions for qualified retirement plans, as specified in 11 U.S.C. § 541(b)(7) plus all required repayments of loans from retirement plans, as specified in 11 U.S.C. § 362(b)(19). $_____

42. **Total of all deductions allowed under 11 U.S.C. § 707(b)(2)(A)**. Copy line 38 here ..... → $_____

43. **Deduction for special circumstances.** If special circumstances justify additional expenses and you have no reasonable alternative, describe the special circumstances and their expenses. You must give your case trustee a detailed explanation of the special circumstances and documentation for the expenses.

Describe the special circumstances	Amount of expense
_____	$_____
_____	$_____
_____	+ $_____
Total	$_____ **Copy here** → + $_____

44. **Total adjustments.** Add lines 40 through 43. ..... → $_____ **Copy here** → − $_____

45. **Calculate your monthly disposable income under § 1325(b)(2).** Subtract line 44 from line 39. $_____

Part 3: Change in Income or Expenses

46. **Change in income or expenses.** If the income in Form 122C-1 or the expenses you reported in this form have changed or are virtually certain to change after the date you filed your bankruptcy petition and during the time your case will be open, fill in the information below. For example, if the wages reported increased after you filed your petition, check 122C-1 in the first column, enter line 2 in the second column, explain why the wages increased, fill in when the increase occurred, and fill in the amount of the increase.

Form	Line	Reason for change	Date of change	Increase or decrease?	Amount of change
☐ 122C–1 ☐ 122C–2	____	_____	_____	☐ Increase ☐ Decrease	$_____
☐ 122C–1 ☐ 122C–2	____	_____	_____	☐ Increase ☐ Decrease	$_____
☐ 122C–1 ☐ 122C–2	____	_____	_____	☐ Increase ☐ Decrease	$_____
☐ 122C–1 ☐ 122C–2	____	_____	_____	☐ Increase ☐ Decrease	$_____

Part 4: Sign Below

By signing here, under penalty of perjury you declare that the information on this statement and in any attachments is true and correct.

✘ _____
Signature of Debtor 1

Date _____
MM / DD / YYYY

✘ _____
Signature of Debtor 2

Date _____
MM / DD / YYYY

COMMITTEE NOTE

Official Forms 122A-1, 122A-1Supp, 122A-2, 122B, 122C-1, and 122C-2 are updated to comport with the form numbering style developed as part of the Forms Modernization Project. The forms are derived from Official Forms 22A-1, 22A-1Supp, 22A-2, 22B, 122C-1, and 22C-2.

Official Form 122B is also revised to remove former Part 2. This portion of the form provided for the exclusion of certain income of a debtor's non-filing spouse; since that income is not required to be reported, its exclusion is unnecessary.

Other stylistic changes were made throughout the forms.

[Caption as in Form 416A, 416B, or 416D, as appropriate]

NOTICE OF APPEAL AND STATEMENT OF ELECTION

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s):
   _____

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

   For appeals in an adversary proceeding.

   ❑ Plaintiff
   ❑ Defendant
   ❑ Other (describe) _____

   For appeals in a bankruptcy case and not in an adversary proceeding.

   ❑ Debtor
   ❑ Creditor
   ❑ Trustee
   ❑ Other (describe) _____

Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from: _____

2. State the date on which the judgment, order, or decree was entered: _____

Part 3: Identify the other parties to the 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 appeal heard by 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 28 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 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.

Part 5: Sign below

_____ Date: _____

Signature of attorney for appellant(s) (or appellant(s) if not represented by an attorney)

Name, address, and telephone number of attorney (or appellant(s) if not represented by an 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.

COMMITTEE NOTE

This form is derived from Official Form 17A, *Notice of Appeal and Statement of Election*, and is updated to comport with the form numbering style developed as part of the Forms Modernization Project. Other stylistic changes were made throughout the form.

[Caption as in Form 416A, 416B, or 416D, as appropriate]

OPTIONAL APPELLEE STATEMENT OF ELECTION TO PROCEED IN DISTRICT COURT

This form should be filed only if all of the following are true:

- this appeal is pending in a district served by a Bankruptcy Appellate Panel,
- the appellant(s) did not elect in the Notice of Appeal to proceed in the District Court rather than in the Bankruptcy Appellate Panel,
- no other appellee has filed a statement of election to proceed in the district court, and
- you elect to proceed in the District Court.

Part 1: Identify the appellee(s) electing to proceed in the District Court

1. Name(s) of appellee(s):
   _____

2. Position of appellee(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

   For appeals in an adversary proceeding.

   ❑ Plaintiff
   ❑ Defendant
   ❑ Other (describe) _____

   For appeals in a bankruptcy case and not in an adversary proceeding.

   ❑ Debtor
   ❑ Creditor
   ❑ Trustee
   ❑ Other (describe) _____

Part 2: Election to have this appeal heard by the District Court (applicable only in certain districts)

I (we) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Part 3: Sign below

_____ Date: _____
Signature of attorney for appellee(s) (or appellee(s) if not represented by an attorney)

Name, address, and telephone number of attorney (or appellee(s) if not represented by an attorney):
_____
_____
_____

COMMITTEE NOTE

This form is derived from Official Form 17B, *Optional Appellee Statement of Election to Proceed in District Court*, and is updated to comport with the form numbering style developed as part of the Forms Modernization Project. Other stylistic changes were made throughout the form.

[This certification must be appended to your brief if the length of your brief is calculated by maximum number of words or lines of text rather than number of pages.]

Certificate of Compliance With Rule 8015(a)(7)(B) or 8016(d)(2)

This brief complies with the type-volume limitation of Rule 8015(a)(7)(B) or 8016(d)(2) because:

- ❑ this brief contains [*state the number of*] words, excluding the parts of the brief exempted by Rule 8015(a)(7)(B)(iii) or 8016(d)(2)(D), or
- ❑ this brief uses a monospaced typeface having no more than 10½ characters per inch and contains [*state the number of*] lines of text, excluding the parts of the brief exempted by Rule 8015(a)(7)(B)(iii) or 8016(d)(2)(D).

_____ Date: _____
Signature

Print name of person signing certificate of compliance:
_____

COMMITTEE NOTE

This form is derived from Official Form 17C, *Certificate of Compliance With Rule 8015(a)(7)(B) or 8016(d)(2)*, and is updated to comport with the form numbering style developed as part of the Forms Modernization Project. Other stylistic changes were made throughout the form.

Modernized Official Forms Numbering Conversion Chart – Draft – 08252014

Current Form Number	Current Form Name	New Number	New Name	Status of Form
B 1	Voluntary Petition	B101	Voluntary Petition for Individuals Filing for Bankruptcy *(incorporates exhibits – carves out eviction judgment statement as new form B101AB)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
		B101A	Initial Statement About an Eviction Judgment Against You	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
		B101B	Statement About Payment of an Eviction Judgment Against You	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
		B201	Voluntary Petition for Non-Individuals Filing for Bankruptcy	Published, August, 2014
	Exhibit A	B201A	Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy Under Chapter 11	Drafting in progress; technical amendment to change to conforming number (from Exhibit A to 201A) to be effective with non-individual forms.
	Exhibit C	B101 B201	*Hazardous Property or Property That Needs Immediate Attention -- incorporated in Forms B101 and B201*	Not Applicable

Current Form Number	Current Form Name	New Number	New Name	Status of Form
	Exhibit D	B101	*Individual Debtor's Statement of Compliance with Credit Counseling Requirement – Incorporated in Form B101*	
	[Chapter 15 questions from Petition]	B401	Petition for Recognition of Foreign Proceeding	Published, August 2014
B 2	Declaration under Penalty of Perjury on Behalf of a Corporation or Partnership	B202	Declaration Under Penalty of Perjury On Behalf of a Corporation or Partnership *(For petition, schedules, SOFA, etc).*	Published, August 2014
B 3A	Application and Order to Pay Filing Fee in Installments	B103A	Application for Individuals to Pay the Filing Fee in Installments	Effective 12/1/2013, technical amendments requested effective 12/1/2014
B 3B	Application for Waiver of Chapter 7 Filing Fee	B103B	Application to Have the Chapter 7 Filing Fee Waived	Effective 12/1/2013, technical amendments requested effective 12/1/2014
B 4	List of Creditors Holding 20 Largest Unsecured Claims	B104	For Individual Chapter 11 Cases: The List of Creditors Who Have the 20 Largest Unsecured Claims Against You Who Are Not Insiders *(individuals)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
		B204	For Chapter 11 Cases: The List of Creditors Who Have the 20 Largest Unsecured Claims Against You Who Are Not Insiders *(non-individuals)*	Published, August 2014
B 5	Involuntary Petition	B105	Involuntary Petition Against an Individual	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
		B205	Involuntary Petition Against a Non-Individual	Published, August 2014
B6	Cover Sheet for Schedules	No coversheet created		
B6	Summary of Schedules (Includes	B106 --	A Summary of Your Assets and	Drafted, publication complete, approved by Standing

Current Form Number	Current Form Name	New Number	New Name	Status of Form
	Statistical Summary of Certain Liabilities)	Summary	Liabilities and Certain Statistical Information (*individuals)*	Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
		B206 -- Summary	A Summary of Your Assets and Liabilities (*non-individuals)*	Published, August 2014
B 6A	Schedule A - Real Property	B106A/B	Schedule A/B: Property (*combines real and personal property, individuals)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 6B	Schedule B - Personal Property	B206A/B	Schedule A/B: Property (*combines real and personal property, non-individuals)*	Published, August 2014
B 6C	Schedule C - Property Claimed as Exempt	B106C	Schedule C: The Property You Claim as Exempt (*individuals)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 6D	Schedule D - Creditors Holding Secured Claims	B106D	Schedule D: Creditors Who Hold Claims Secured By Property (*against individuals*)	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
		B206D	Schedule D: Creditors Who Hold Claims Secured By Property *(against non-individuals)*	Published, August 2014
B 6E	Schedule E - Creditors Holding Unsecured Priority Claims	B106E/F	Schedule E/F: Creditors Who Have Unsecured Claims *(against individuals, combines priority and non-priority)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 6F	Schedule F - Creditors Holding Unsecured Nonpriority Claims	B206E/F	Schedule E/F: Creditors Who Have Unsecured Claims (*against non-individuals, combines priority and non-priority)*	Published, August 2014
B 6G	Schedule G - Executory Contracts and Unexpired Leases	B106G	Schedule G: Executory Contracts and Unexpired Leases (*individuals)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the

Current Form Number	Current Form Name	New Number	New Name	Status of Form
				same status before being transmitted to JCUS
		B206G	Schedule G: Executory Contracts and Unexpired Leases (*non-individuals)*	Published, August 2014
B 6H	Schedule H - Codebtors	B106H	Schedule H: Your Codebtors (*individuals)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
		B206H	Schedule H: Your Codebtors (*non-individuals)*	Published, August 2014
B 6I	Schedule I - Current Income of Individual Debtor(s)	B106I	Schedule I: Your Income (*individuals – published as 6I)*	Effective, 12/1/2013
		B206I	To be a Director's Form	
B 6J	Schedule J - Current Expenditures of Individual Debtor(s)	B106J	Schedule J: Your Expenses (*individuals- published as 6J)* Effective, 12/1/13	Amendment published, August 2013.
		B106J-2	Schedule J-2: Expenses for Separate Household of Debtor 2	Published, August 2014.
		B206J	To be a Director's Form	
B 6	Declaration Concerning Debtor's Schedules	B106 -- Declaration	Declaration About an Individual Debtor's Schedules	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
		B202	Declaration Under Penalty of Perjury On Behalf of a Corporation or Partnership *(For petition, schedules, SOFA, etc)*	Published, August 2014
B 7	Statement of Financial Affairs	B107	Your Statement of Financial Affairs for Individuals Filing for Bankruptcy	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS

Current Form Number	Current Form Name	New Number	New Name	Status of Form
		B207	Statement of Your Financial Affairs *(non-Individuals)*	Published, August 2014
B 8	Chapter 7 Individual Debtor's Statement of Intention	B108	Statement of Intention for Individuals Filing Under Chapter 7	Drafted as form 112 (later renumbered), publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 9	Notice of Commencement of Case under the Bankruptcy Code, Meeting of Creditors, and Deadlines	No coversheet created.		
B 9A	Chapter 7 Individual or Joint Debtor No Asset Case	B309A	(For Individuals or Joint Debtors) Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline	Published, August 2014
B 9B	Chapter 7 Corporation/Partnership No Asset Case	B309C	(For Corporations or Partnerships) Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline Set	Published, August 2014
B 9C	Chapter 7 Individual or Joint Debtor Asset Case	B309B	(For Individuals or Joint Debtors) Notice of Chapter 7 Bankruptcy Case – Proof of Claim Deadline Set	Published, August 2014
B 9D	Chapter 7 Corporation/Partnership Asset Case (12/11)	B309D	(For Corporations or Partnerships) Notice of Chapter 7 Bankruptcy Case – Proof of Claim Deadline Set	Published, August 2014
B 9E	Chapter 11 Individual or Joint Debtor Case	B309E	(For Individuals or Joint Debtors) Notice of Chapter 11 Bankruptcy Case *(former Alt version combined with Form B309-E)*	Published, August 2014
B 9E(Alt.)	Chapter 11 Individual or Joint Debtor Case			
B 9F	Chapter 11 Corporation/Partnership Case	B309F	(For Corporations or Partnerships) Notice of Chapter 11 Bankruptcy Case *(former Alt version combined with Form B309-F)*	Published, August 2014
B 9F(Alt.)	Chapter 11 Corporation/Partnership Case			
B 9G	Chapter 12 Individual or Joint	B309G	(For Individuals or Joint Debtors)	Published, August 2014

Current Form Number	Current Form Name	New Number	New Name	Status of Form
	Debtor Family Farmer		Notice of Chapter 12 Bankruptcy Case	
B 9H	Chapter 12 Corporation/Partnership Family Farmer	B309H	(For Corporations or Partnerships) Notice of Chapter 12 Bankruptcy Case	Published, August 2014
B 9I	Chapter 13 Case	B309I	Notice of Chapter 13 Bankruptcy Case	Published, August 2014
B 10	Proof Of Claim	B410	Proof Of Claim	Published, August 2014
B 10A	Proof Of Claim, Attachment A	B410A	Proof Of Claim, Attachment A	Published, August 2014
B 10S1	Proof Of Claim, Supplement 1	B410S1	Proof Of Claim, Supplement 1	Published, August 2014
B 10S2	Proof Of Claim, Supplement 2	B410S2	Proof Of Claim, Supplement 2	Published, August 2014
B 11A	General Power of Attorney	B4110A	*Reissued as Director's Form*	Abrogation published, August 2014
B 11B	Special Power of Attorney	B4110B	*Reissued as Director's Form*	Abrogation published, August 2014
B 12	Order and Notice for Hearing on Disclosure Statement	B312	Same	Published, August 2014
B 13	Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof	B313	Same	Published, August 2014
B 14	Ballot for Accepting or Rejecting Plan	B314	Same	Published, August 2014
B 15	Order Confirming Plan	B315	Same	Published, August 2014
B 16A	Caption	B416A	Same	Published, August 2014
B 16B	Caption (Short Title)	B416B	Same	Published, August 2014
B 16C	[Abrogated]	N/A	Same	
B 16D	Caption for Use in Adversary Proceeding other than for a Complaint Filed by a Debtor	B416D	Same	Published, August 2014
B 17	Notice of Appeal under 28 U.S.C.	B417A	Notice Of Appeal And Statement Of	Drafted, publication complete, approved by Standing

Current Form Number	Current Form Name	New Number	New Name	Status of Form
	§158(a) or (b) from a Judgment, Order or Decree of a Bankruptcy Court		Election	Committee, waiting for approval by JCUS, projected effective date 12/1/2014
		B417B (new)	Optional Appellee Statement Of Election To Proceed In District Court	Drafted, publication complete, approved by Standing Committee, waiting for approval by JCUS, projected effective date 12/1/2014
		B417C (new)	Certificate of Compliance With Rule 8015(a)(7)(B) or 8016(d)(2)	Drafted, publication complete, approved by Standing Committee, waiting for approval by JCUS, projected effective date 12/1/2014
B 18	Discharge of Debtor	B318	Discharge of Debtor in a Chapter 7 Case	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 19	Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer	B119	Bankruptcy Petition Preparer's Notice, Declaration and Signature	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 20A	Notice of Motion or Objection	B420A	Notice of Motion or Objection	On hold until completion of the chapter 13 plan project.
B 20B	Notice of Objection to Claim	B420B	Notice of Objection to Claim	On hold until completion of the chapter 13 plan project.
B 21	Statement of Social Security Number	B121 *updated from B102*	Your Statement About Your Social Security Numbers	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 22A	Statement of Current Monthly Income and Means Test Calculation (Chapter 7)	B122A-1	Chapter 7 Statement of Your Current Monthly Income and Means-Test Calculation *(published as 22A-1)*	Drafted, publication and republication complete, approved by Standing Committee, waiting for approval by JCUS, projected effective date 12/1/2014
		B122-1Supp	Chapter 7 Means Test Exemption Attachment (*published as 22A-1Supp*)	Drafted, publication and republication complete, approved by Standing Committee, waiting for approval by JCUS, projected effective date 12/1/2014
		B122A-2	Chapter 7 Means Test Calculation *(published as 22A-2)*	Drafted, publication and republication complete, approved by Standing Committee, waiting for approval by JCUS, projected effective date 12/1/2014
B 22B	Statement of Current Monthly Income (Chapter 11)	B122B	Chapter 11 Statement of Your Current Monthly Income *(published as 22B)*	Drafted, publication and republication complete, approved by Standing Committee, waiting for approval by JCUS, projected effective date 12/1/2014

Current Form Number	Current Form Name	New Number	New Name	Status of Form
B 22C	Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Chapter 13)	B122C-1	Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period *(published as 22C-1)*	Drafted, publication and republication complete, approved by Standing Committee, waiting for approval by JCUS, projected effective date 12/1/2014
		B122-2	Chapter 13 Calculation of Your Disposable Income *(published as 22C-2)*	Drafted, publication and republication complete, approved by Standing Committee, waiting for approval by JCUS, projected effective date 12/1/2014
B 23	Debtor's Certification of Completion of Instructional Course Concerning Financial Management	B423	Certification About a Financial Management Course *(was B 113)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 24	Certification to Court of Appeals	B424	Same	Published, August 2014
B 25A	Plan of Reorganization in Small Business Case under Chapter 11	B425A	Same	Drafting in progress
B 25B	Disclosure Statement in Small Business Case under Chapter 11	B425B	Same	Drafting in progress
B 25C	Small Business Monthly Operating Report	B425C	Same	Drafting in progress
B 26	Periodic Report Regarding Value, Operations and Profitability of Entities in Which the Debtor's Estate Holds a Substantial or Controlling Interest	B426	Same	Drafting in progress
B 27	Reaffirmation Agreement Cover Sheet	B427	Cover Sheet for Reaffirmation Agreement	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
DIRECTOR FORMS				
B 13S	Order Conditionally Approving Disclosure Statement, Fixing Time for Filing Acceptances or Rejections of Plan, and Fixing the Time for Filing Objections to the Disclosure Statement and to the Confirmation of the Plan,	B1300S		Drafting in progress

Current Form Number	Current Form Name	New Number	New Name	Status of Form
	Combined with Notice Thereof and of the Hearing on Final Approval of the Disclosure Statement and the Hearing on Confirmation of the Plan			
B 15S	Order Finally Approving Disclosure Statement and Confirming Plan	B1500S		Drafting in progress
B 18F	Discharge of Debtor After Completion of Chapter 12 Plan	B1800F		Drafting in progress
B 18FH	Discharge of Debtor Before Completion of Chapter 12 Plan	B1800FH		Drafting in progress
B 18J	Discharge of Joint Debtors (Chapter 7)	B318	Order of Discharge *(combined with Forms 18 and 18JO)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 18JO	Discharge of One Joint Debtor (Chapter 7)	B318	Order of Discharge *(combined with Forms 18 and 18J)*	Drafted, publication complete, approved by Standing Committee, waiting for non-individual forms to reach the same status before being transmitted to JCUS
B 18RI	Discharge of Individual Debtor in a Chapter 11 Case	B1800RI		Drafting in progress
B 18W	Discharge of Debtor After Completion of Chapter 13 Plan	B1800W		Drafting in progress
B 18WH	Order Discharging Debtor Before Completion of Chapter 13 Plan	B1800WH		Drafting in progress
B 104	Adversary Proceeding Cover Sheet	B1040		Drafting in progress
B 131	Exemplification Certificate	B1310		Drafting in progress
B 132	Application for Search of Bankruptcy Records	B1320		Drafting in progress
B 133	Claims Register	B1330		Drafting in progress
B 200	Required Lists, Schedules, Statements and Fees	B2000		Drafting in progress
B 201A	Notice to Individual Consumer Debtor	B2010	Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy *Does this need to be a stand-alone*	

Current Form Number	Current Form Name	New Number	New Name	Status of Form
			form anymore. It is incorporated into the instruction booklet for individual debtors	
B 201B	Certification of Notice to Individual Consumer Debtor(s)	B101	Not needed because certification is in petition	
B 202	Statement of Military Service	B2020		Drafting in progress
B 203	Disclosure of Compensation of Attorney for Debtor	B2030	Attorney's Disclosure of Compensation	Drafting in progress
B 204	Notice of Need to File Proof of Claim Due to Recovery of Assets	B2040		Drafting in progress
B 205	Notice to Creditors and Other Parties in Interest	B2050		Drafting in progress
B 206	Certificate of Commencement of Case	B2060		Drafting in progress
B 207	Certificate of Retention of Debtor In Possession	B2070		Drafting in progress
B 210A	Transfer of Claim Other Than for Security	B2100A		Drafting in progress
B 210B	Notice of Transfer of Claim Other Than for Security	B2100B		Drafting in progress
B 230A	Order Confirming Chapter 12 Plan	B2300A		Drafting in progress
B 230B	Order Confirming Chapter 13 Plan	B2300B		Drafting in progress
B 231A	Order Fixing Time to Object to Proposed Modification of Confirmed Chapter 12 Plan	B2310A		Drafting in progress
B 231B	Order Fixing Time to Object to Proposed Modification of Confirmed Chapter 13 Plan	B2310B		Drafting in progress
B 240A	Reaffirmation Documents	B2400A		Drafting in progress
B 240B	Motion for Approval of Reaffirmation Agreement	B2400B		Drafting in progress
B 240C	Order on Reaffirmation Agreement	B2400C		Drafting in progress

Current Form Number	Current Form Name	New Number	New Name	Status of Form
B 240A/B ALT	Reaffirmation Agreement	B2400A/B ALT		Drafting in progress
B 240C ALT	Order on Reaffirmation Agreement	B2400C ALT		Drafting in progress
B 250A	Summons in an Adversary Proceeding	B2500A		Drafting in progress
B 250B	Summons and Notice of Pretrial Conference in an Adversary Proceeding	B2500B		Drafting in progress
B 250C	Summons and Notice of Trial in an Adversary Proceeding	B2500C		Drafting in progress
B 250D	Third-Party Summons	B2500D		Drafting in progress
B 250E	Summons to Debtor in Involuntary Case	B2500E		Drafting in progress
B 250F	Summons in a Chapter 15 Case Seeking Recognition of a Foreign Nonmain Proceeding	B2500F		Drafting in progress
B 253	Order for Relief in an Involuntary Case	B2530		Drafting in progress
B 254	Subpoena for Rule 2004 Examination	B2540		Drafting in progress
B 255	Subpoena in an Adversary Proceeding	B2550		Drafting in progress
B 256	Subpoena in a Case Under the Bankruptcy Code	B2560		Drafting in progress
B 260	Entry of Default	B2600		Drafting in progress
B 261A	Judgment by Default	B2610A		Drafting in progress
B 261B	Judgment by Default	B2610B		Drafting in progress
B 261C	Judgment in an Adversary Proceeding	B2610C		Drafting in progress
B 262	Notice of Entry of Judgment	B2620		Drafting in progress

Current Form Number	Current Form Name	New Number	New Name	Status of Form
B 263	Bill of Costs	B2630		Drafting in progress
B 264	Writ of Execution to the United States Marshal	B2640		Drafting in progress
B 265	Certification of Judgment for Registration in Another District	B2650		Drafting in progress
B 270	Notice of Filing of Final Report of Trustee, of Hearing on Applications for Compensation [and of Hearing on Abandonment of Property by the Trustee]	B2700		Drafting in progress
B 271	Final Decree	B2710		Drafting in progress
B 280	Disclosure of Compensation of Bankruptcy Petition Preparer	B2800	Disclosure of Compensation of Bankruptcy Petition Preparer	Drafting in progress
B 281	Appearance of Child Support Creditor or Representative	B2810		Drafting in progress
B 283	Chapter 13 Debtor's Certifications Regarding Domestic Support Obligations and Section 522(q)	B2830		Drafting in progress

TAB 7A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: EFFECT OF *EXECUTIVE BENEFITS INSURANCE AGENCY V. ARKISON* ON RULEMAKING RESPONSES TO *STERN V. MARSHALL*

DATE: AUGUST 20, 2014

The Subcommittee on Business Issues was tasked with assessing the Advisory Committee's proposed post-*Stern v. Marshall* rule amendments in light of the Supreme Court's decision in *Executive Benefits Insurance Agency v. Arkison*, 134 S. Ct. 2165 (June 9, 2014). The Subcommittee discussed the effect of *Arkison* during a July 1, 2014, conference call.

The Advisory Committee published amendments to Rules 7008, 7012, 7016, 9027, and 9033 in 2012 in response to *Stern*. These proposed amendments would alter the Bankruptcy Rules in three respects. First, the terms "core" and "non-core" would be removed from Rules 7008, 7012, 9027, and 9033 to avoid possible confusion in light of *Stern*. Second, parties in bankruptcy proceedings would need to state whether they do or do not consent to entry of final orders or judgment by the bankruptcy judge. Third, Rule 7016, which governs pretrial procedures, would be amended to direct bankruptcy courts to decide the proper treatment of proceedings.

In 2013, the Advisory Committee, the Standing Committee, and the Judicial Conference approved final adoption of these rule amendments, but the amendments were withdrawn before their submission to the Supreme Court. That withdrawal was prompted by the Court's grant of certiorari last year in *Arkison*, because one of the questions presented in the case was whether parties may consent to a bankruptcy judge's final adjudication of *Stern* claims. The grant of

certiorari in *Arkison* raised the possibility of a conflict—or at least serious tension—between the Court's eventual resolution of the case and the basic structure of the proposed rule amendments, which direct parties to make a clear statement as to consent.

In the event, the Court did not reach the consent question in *Arkison*. Instead, the opinion for a unanimous Court resolves the statutory question whether courts are authorized to treat *Stern* claims as "non-core" proceedings regardless of the enumeration of those claims as "core" proceedings under 28 U.S.C. § 157(b). *Arkison* expressly leaves the consent question for another day. That day may come soon, because the Court has granted certiorari to review the Seventh Circuit's decision in *Wellness*, a case that presents the consent question. *Wellness Int'l Network, Ltd. v. Sharif*, 727 F.3d 751 (7th Cir. 2013), *cert. granted*, 134 S. Ct. 2901 (July 1, 2014) (No. 13-935).

Because the consent question is pending and unresolved, the concern that led to the withdrawal of the post-*Stern* rule amendments remains. The Subcommittee concluded that it would be awkward to send the Supreme Court rule amendments that direct parties to make a statement regarding consent when the Court has expressed strong interest in addressing the role of party consent after *Stern*. **Given the grant of certiorari in *Wellness*, the Subcommittee recommends that the Advisory Committee continue to hold the package of rule amendments.**

TAB 7B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

SUBJECT: SUGGESTION REGARDING OFFICIAL FORMS 9F AND 9F (ALT) AND § 1141(d)(6)(A)

DATE: AUGUST 27, 2014

Prior to his membership on the Advisory Committee, Judge Stuart Bernstein submitted suggestion 13-BK-I, which proposes an amendment to the explanatory text of Official Forms 9F and 9F (Alt) regarding the need to commence a dischargeability action under § 1141(d)(6)(A) by the deadline stated on the form. As part of the Forms Modernization Project, these forms will be merged into a single form and renumbered Official Form 309F.[1] At the spring 2014 meeting, the Advisory Committee accepted this Subcommittee's recommendation to place the suggestion in the dugout to await further judicial consideration of the meaning of § 1141(d)(6)(A). During its conference call on July 1, the Subcommittee considered whether to proceed with the suggestion. **It now recommends that the Committee propose an amendment to Official Form 309F in light of the ambiguities in § 1141(d)(6)(A).**

The Suggestion

Official Forms 9F and 9F (Alt) are used for providing notice to creditors in a chapter 11 corporate or partnership case of the case's commencement, the date of the meeting of creditors, the deadline for filing a proof of claim, the deadline for filing a complaint to determine the

[1] The proposed modernized form was published for comment this summer. It contains the same statement that is the subject of the suggestion, although that language has been moved to line 8 of the form, rather than appearing as an Explanation.

dischargeability of certain debts, and the existence of the automatic stay.[2] The reverse side of each form provides "Explanations" of terms and procedures relevant to the subjects of the form. Judge Bernstein's suggestion relates to the explanation about the "Discharge of Debts," which states:

> 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.

(Emphasis added.)

Judge Bernstein suggested that the emphasized sentence be narrowed to refer only to debts owed to a domestic governmental unit. Under his proposal, the sentence would read, "If you believe that you hold a debt owed to a domestic governmental unit that 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 suggestion is based on Judge Bernstein's interpretation of § 1141(d)(6)(A) in United States *ex rel.* Minge v. Hawker Beechcraft Corp. (*In re* Hawker Beechcraft, Inc.), 493 B.R. 696 (Bankr. S.D.N.Y. 2013). On appeal the district court reversed the decision in part, based on a different interpretation of § 1141(d)(6)(A). 2014 U.S. Dist. LEXIS 42425 (S.D.N.Y. Mar. 27, 2014). Both interpretations are discussed below.

[2] The only difference between the two forms is that Form 9F states that notice of the deadline for filing a proof of claim will be sent at a later time, whereas Form 9F (Alt) provides space for two dates to be inserted (one for governmental units and one for all other creditors).

The Relevant Code and Rule Provisions

Section 1141(d) of the Code governs the scope of the discharge in a chapter 11 case. It distinguishes between debtors that are individuals and other debtors, including corporations and partnerships. It excepts from the discharge of an individual debtor "any debt that is excepted from discharge under section 523." § 1141(d)(2). Those exceptions are not generally applicable, however, to chapter 11 debtors that are corporations or partnerships. Instead, as a general matter, those debtors are discharged from "any debt that arose before the date of [the] confirmation [of a plan]." § 1141(d)(1).

In 2005 Congress added § 1141(d)(6), which does except some types of debts from the discharge of a chapter 11 corporate debtor. In addition to certain tax debts, the provision states that the confirmation of a corporate debtor's chapter 11 plan does not discharge the debtor

> from any debt—
>
> > (A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar state statute . . . .

The latter statutory reference is to the False Claims Act ("FCA"), 31 U.S.C. § 3729 *et seq*.

The Code provisions referred to in § 1141(d)(6)(A)—Paragraphs (2)(A) and (2)(B) of § 523(a) of the Code—except from discharge debts for money, property, services, or credit obtained by false pretenses, false representations, or actual fraud, or obtained by the use of a materially false written statement about the debtor's financial condition that the creditor reasonably relied upon and that the debtor made with intent to defraud. Although on its face

§ 523 governs only the discharge of individual debtors,[3] by virtue of § 1141(d)(6)(A), its coverage is partially extended to corporate debtors in chapter 11 cases.

Section 523(c)(1) provides special procedural rules applicable to debts of a kind specified in § 523(a)(2), (4), and (6). Generally, an action to determine the dischargeability of a debt may be brought at any time, even after the bankruptcy case has concluded. Rule 4007(b) provides that a "complaint other than under § 523(c) may be filed at any time." Section 523(c)(1), however, provides "the debtor shall be discharged from a debt of a kind specified paragraph (2), (4), or (6) unless, on request of the creditor to whom such debt is owed, the court determines such debt to be excepted from discharge" under one of the specified provisions. Rule 4007(c) implements this provision by requiring that "a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a)."

Ambiguities in § 1141(d)(6)(A) and Competing Interpretations

The *Hawker Beechcraft* litigation demonstrates that § 1141(d)(6)(A) is ambiguous in at least two respects:

1. Does the phrase "of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a)" apply both to debts owed to a domestic governmental unit and to debts "owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar state statute" or just to the former?
2. Does the procedure specified by § 523(c)(1) apply to a debt excepted from discharge by § 1141(d)(6)(A) because it is of a kind specified by § 523(a)(2)(A) or (B)?

[3] Section 523(a) begins, "A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt . . . ."

In *Hawker Beechcraft* Judge Bernstein concluded that § 1141(d)(6)(A) covers the following types of debts: (1) debts owed to a domestic governmental unit that fall within § 523(a)(2)(A) or (B), and (2) debts owed to a person as the result of an FCA action. 493 B.R. at 710. Critical to the result in the case was Judge Bernstein's determination that the language—"specified in paragraph (2)(A) or (2)(B) of section 523(a)"—applies only to debts owed to domestic governmental units and not to debts owed to persons. He relied on the grammar and syntax of § 1141(d)(6)(A) to conclude that the reference to § 523(a)(2) does not apply to the second kind of debts listed. He noted that the two phrases are separated by a comma and a coordinating conjunction, thus suggesting that they are independent and that both modify the word "debt" in the introductory clause. He further relied on the parallel use of "owed to" in the two phrases. Finally, he observed that the House report discussing the 2005 addition of § 1141(d)(6)(A) supported his interpretation. It explained:

> "Section 708 amends section 1141(d) of the Bankruptcy Code to except from discharge in a corporate chapter 11 case a debt specified in subsections 523(a)(2)(A) or (B) of the Bankruptcy Code owed to a domestic governmental unit. *In addition*, it excepts from discharge a debt owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 of the United States Code or any similar state statute."

Id. (quoting H.R. Rep. No. 109-31 at 102 (2005)) (emphasis added in opinion).

On appeal the district court agreed with this interpretation based on much the same analysis. 2014 U.S. Dist. LEXIS 42425 at *17-20.

If the *Hawker Beechcraft* courts' interpretation is correct, Official Forms 9F and 9F (Alt) and new Official Form 309F are overly broad in stating that an action to determine the dischargeability of a claim under § 1141(d)(6)(A) must be commenced by the stated deadline. The type of debt described in that provision that is owed to a "person" would not be subject to

any deadline because it would not have to be one meeting the requirements of § 523(a)(2)(A) or (B).

The Subcommittee, however, considered another interpretation of § 1141(d)(6)(A) that is consistent with the forms' Explanation. Under this interpretation, the controlling parallel structure of the provision follows "any debt—(A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a)." The two types of nondischargeable debts would then be ones meeting that introductory requirement and also one that is either (1) "owed to a domestic governmental unit," or (2) "owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar state statute." Under this interpretation, the comma before "or" would serve, not to separate two independent provisions, but to make clear that the requirement that the debt arise from an FCA action does not apply to debts owed to governmental units.

Depending on how the other ambiguity in § 1141(d)(6)(A) is resolved, however, the first ambiguity may not be of significance to the work of the Committee. The district court in *Hawker Beechcraft* held that, even though one part of § 1141(d)(6)(A) incorporates by reference § 523(a)(2)(A) and (B), the provision does not incorporate § 523(c)(1), nor does that procedural provision apply on its own to the discharge of debts of a chapter 11 corporate debtor. Thus, according to Judge Castel's reading, there is no time limit for seeking a determination of nondischargeability under either part of § 1141(d)(6)(A). If this interpretation is correct, the entire explanatory sentence in Official Forms 9F and 9F (Alt) and new Form 309F—"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."—is incorrect.

Judge Castel first relied on the fact that § 1141(d)(6)(A) refers only to the two paragraphs of § 523(a) and does not refer to or indicate any intent to incorporate the procedural provision of § 523(c)(1). Thus, he concluded, the provision is "self-executing." 2014 U.S. Dist. LEXIS 42425 at *21. He further concluded that § 523(c)(1) does not apply to chapter 11 corporate debtors of its own force. He read the reference to "the debtor" in subsection (c)(1) as referring back to subsection (a)'s reference to "an individual debtor." *Id.* at *30. Finally, he distinguished cases in which § 523(c)(1) was applied to the discharge of chapters 12 and 13 debtors. Chapter 13 cases are inapposite, he said, because they are limited to individual debtors. Thus he concluded, "not only section 523(c)(1) but all of section 523 indisputably applies to Chapter 13 debtors." *Id.* at *35. And he concluded that chapter 12 cases are distinguishable because the discharge provision under that chapter, § 1228, does not distinguish between individual and corporate debtors as § 1141 does. *Id.* at * 37-39. Judge Castel concluded that Official Form 9F does not require a different interpretation of § 1141(d)(6)(A), because an "Official Form cannot trump the statutory directives of the Bankruptcy Code." *Id.* at *39.

Key to the district court's decision therefore were two determinations: the statutory incorporation of § 523(a)(2) does not also incorporate § 523(c)(1), and § 523(c)(1) applies only to debtors described in § 523(a). These conclusions have implications for Code provisions other than § 1141(d)(6)(A). Although the discharge in a chapter 13 case necessarily involves an individual debtor, § 523 does not apply to that chapter of its own accord in most cases. By its terms, § 523(a) applies to a discharge under § 1328(b) (the hardship discharge), but not to a normal discharge under § 1328(a). It is only because of the incorporation by reference in § 1328(a)(1) and (2) that parts of § 523(a) are made generally applicable to chapter 13.

The district court's reasoning in *Hawker Beechcraft* should lead therefore to the conclusion that § 1328(a) does not incorporate § 523(c)(1)—since the text of § 1328(a) does not mention § 523(c)—and that § 523(c)(1) does not apply to chapter 13 debtors who do not receive a hardship discharge—since such debtors are not included in § 523(a). Thus, despite his attempt to distinguish chapter 13, Judge Castel's reasoning suggests that there should be no deadline for seeking a determination of nondischargeability under § 1328(a).

A similar argument can be made regarding chapter 12. Section 523(a) does apply to a discharge under § 1228(a) and (b), but only with respect to individual debtors. It does not apply of its own accord to corporate chapter 12 debtors. The exceptions to discharge under § 523(a) apply to such debtors only by virtue of the incorporation by reference of that provision in § 1228(a)(2) and (c)(2). Under the logic recited above, that incorporation does not also incorporate § 523(c)(1), and § 523(c)(1) does not apply to corporate chapter 12 debtors since they are outside the scope of § 523(a).

The Subcommittee's Recommendation

The Subcommittee considered a range of options for how the Advisory Committee might respond to Judge Bernstein's suggestion. They included the following:

1. Removing the suggestion from the dugout and taking no further action on it;
2. Retaining the suggestion in the dugout until the issues regarding § 1141(d)(6)(A) receive further judicial consideration;
3. Revising the wording of the statement in Official Form 309F to reflect the uncertainty regarding the meaning of § 1141(d)(6)(A);
4. Revising the wording of the statement in Official Form 309F as proposed in Judge Bernstein's suggestion;

5. Removing the statement, along with the Deadline to File a Complaint to Determine Dischargeability of Certain Debts, to reflect Judge Castel's interpretation; and
6. Making the revision described in option 5 not only to Official Form 309F, but also to Official Forms 309H (Chapter 12 Corporation/Partnership Family Farmer or Family Fisherman) and 309I (Chapter 13 Case).

The Subcommittee recognized that the bankruptcy court and district court opinions in *Hawker Beechcraft* call into question the accuracy of the statement on Form 309F that a creditor seeking an exception to discharge under § 1141(d)(6)(A) must file a complaint by the stated deadline. Accordingly, members did not favor leaving the current wording of the form unchanged. On the other hand, the two opinions in *Hawker Beechcraft* are the only known judicial interpretations of § 1141(d)(6)(A), and no appeal was taken in the case to the Second Circuit. The Subcommittee was not ready to embrace either reading of the provision. The Subcommittee therefore concluded that the best course at this time is to revise the statement in Form 309F so that it does not take a position on if or when the § 523(c) procedure applies to claims described by § 1141(d)(6)(A). That approach would allow further judicial development of the issue without retaining in the form a possibly incorrect statement of the law. Because no court has called into question the similar statements in the forms that will become Official Forms 309H and 309I, the Subcommittee concluded that there is no need to propose amendments to them at this time.

The Subcommittee therefore recommends that line 8 of proposed Official Form 309F be amended as follows:

> If § 523(c) applies to your claim and you seek to have it excepted from discharge, ~~Y~~you must start a judicial proceeding by filing a

complaint by the deadline stated below ~~if you want to have a debt excepted from discharge under 11 U.S.C. § 1141(d)(6)(A)~~.

Committee Note[4]

Line 8 previously stated that a creditor seeking to have a debt excepted from discharge under § 1141(d)(6)(A) must file a complaint by the stated deadline. That statement has been revised in light of ambiguities in § 1141(d)(6)(A) regarding its relationship with § 523. Specifically, the provision is unclear about whether not only a debt "owed to a domestic governmental unit" but also a debt "owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute" must be of the type described by § 523(a)(2)(A) and (B). The provision is also unclear about whether the procedural requirements of § 523(c)(1) apply, given that § 1141(d)(6)(A) specifically refers to § 523(a) but not to § 523(c). Rather than take a position on the proper interpretation of § 1141 (d)(6)(A), the form leaves open the question of whether and to what extent § 523(c) is incorporated, and directs creditors to commence a dischargeability proceeding by the Rule 4007(c) deadline stated on the form only if § 523(c) is applicable.

[4] This Committee Note would be used if Official Form 309F goes into effect in December 2015 as it was published and is then amended a year later. If instead the proposed amendment is incorporated into Form 309F in spring 2015 and sent to the Standing Committee as revised (either with or without republication), the text of the Committee Note could be added to the existing Committee Note for Form 309F as an explanation of how the new form differs from Forms 9F and 9F (Alt).

Information to identify the case:

Debtor 1 _____ (First Name / Middle Name / Last Name)
Last 4 digits of Social Security number or ITIN ___ ___ ___ ___
EIN __ __ - __ __ __ __ __ __ __

Debtor 2 (Spouse, if filing) _____ (First Name / Middle Name / Last Name)
Last 4 digits of Social Security number or ITIN ___ ___ ___ ___
EIN __ __ - __ __ __ __ __ __ __

United States Bankruptcy Court for the: _____ District of _____ (State)

Case number: _____

[Date case filed for chapter 7 _____ MM / DD / YYYY OR

[Date case filed in chapter _____ _____ MM / DD / YYYY

Date case converted to chapter 7 _____] MM / DD / YYYY

Official Form 309A (For Individuals or Joint Debtors)

Notice of Chapter 7 Bankruptcy Case — No Proof of Claim Deadline 12/15

For the debtors listed above, a case has been filed under chapter 7 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors, debtors, and trustees. Read it carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtors or the debtors' property. For example, while the stay is in effect, creditors cannot sue, garnish wages, assert a deficiency, repossess property, or otherwise try to collect from the debtors. Creditors cannot demand repayment from debtors by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although debtors can ask the court to extend or impose a stay.

The debtors are seeking a discharge. Creditors who assert that the debtors are not entitled to a discharge of any debts or who want to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadlines specified in this notice. (See line 9 for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at www.pacer.gov).

The staff of the bankruptcy clerk's office cannot give legal advice.

To help creditors correctly identify debtors, debtors submit full Social Security or Individual Taxpayer Identification Numbers, which may appear on a version of this notice. However, the full numbers must not appear on any document filed with the court.

Do not file this notice with any proof of claim or other filing in the case. Do not include more than the last four digits of a Social Security or Individual Taxpayer Identification Number in any document, including attachments, that you file with the court.

	About Debtor 1:	About Debtor 2:
1. **Debtor's full name**		
2. **All other names used in the last 8 years**		
3. **Address**		**If Debtor 2 lives at a different address:**
4. **Debtor's attorney** Name and address		Contact phone _____ Email _____
5. **Bankruptcy trustee** Name and address		Contact phone _____ Email _____

For more information, see page 2 ▶

6. Bankruptcy clerk's office Documents in this case may be filed at this address. You may inspect all records filed in this case at this office or online at www.pacer.com.		Hours open _____ Contact phone _____
7. Meeting of creditors Debtors must attend the meeting to be questioned under oath. In a joint case, both spouses must attend. Creditors may attend, but are not required to do so.	_____ at _____ Date Time The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.	Location:
8. Presumption of abuse If the presumption of abuse arises, you may have the right to file a motion to dismiss the case under 11 U.S.C. § 707(b). Debtors may rebut the presumption by showing special circumstances.	[The presumption of abuse does not arise.] [The presumption of abuse arises.] [Insufficient information has been filed to permit the clerk to determine whether the presumption of abuse arises. If more complete information is filed and shows that the presumption has arisen, the clerk will notify creditors.]	
9. Deadlines The bankruptcy clerk's office must receive these documents and any required filing fee by the following deadlines.	**File by the deadline to object to discharge or to challenge whether certain debts are dischargeable:** **You must file a complaint**: if you assert that the debtor is not entitled to receive a discharge of any debts under any of the subdivisions of 11 U.S.C. § 727(a)(2) through (7), or if you want to have a debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6). **You must file a motion** if you assert that the discharge should be denied under § 727(a)(8) or (9).	**Filing deadline:** _____
	Deadline to object to exemptions: The law permits debtors to keep certain property as exempt. If you believe that the law does not authorize an exemption claimed, you may file an objection.	**Filing deadline**: 30 days after the *conclusion* of the meeting of creditors
10. Proof of claim Please do not file a proof of claim unless you receive a notice to do so.	No property appears to be available to pay creditors. Therefore, please do not file a proof of claim now. If it later appears that assets are available to pay creditors, the clerk will send you another notice telling you that you may file a proof of claim and stating the deadline.	
11. Creditors with a foreign address	If you are a creditor receiving a notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.	
12. Exempt property	The law allows debtors to keep certain property as exempt. Fully exempt property will not be sold and distributed to creditors. Debtors must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office or online at www.pacer.gov. If you believe that the law does not authorize an exemption that the debtors claim, you may file an objection. The bankruptcy clerk's office must receive the objection by the deadline to object to exemptions in line 9.	

TAB 7C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: PROJECT TO REVIEW NOTICING REQUIREMENT IN THE BANKRUPTCY RULES (SUGGESTION REGARDING NOTICE OF MOTIONS THAT AFFECT FEWER THAN ALL CREDITORS IN LARGE BUSINESS CASES)

DATE: AUGUST 20, 2014

Advisory Committee member David Lander has suggested an amendment to the Bankruptcy Rules to address the ability to limit notice in a large case when a motion does not affect all creditors. This suggestion is one of several recently addressed to the Advisory Committee—by way of formal suggestions or in comments to published rule amendments—that urge changes in the scope or manner of notice in bankruptcy cases.[1] At the spring 2014 meeting of the Advisory Committee, the Chair assigned Mr. Lander's suggestion to the Subcommittee on Business Issues, with the understanding that the suggestion should be considered in light of a possible broader project to reconsider noticing requirements across the Bankruptcy Rules. The Subcommittee discussed the suggestion during a conference call on July 1, 2014.

[1] *See, e.g.*, suggestion 12-BK-M by Judge Scott W. Dales (Bankr. W.D. Mich.) (limiting notice in chapter 13 cases when a creditor has not filed a proof of claim); suggestion 12-BK-B by bankruptcy court clerk Matthew T. Loughney (M.D. Tenn.) on behalf of the Administrative Office's Bankruptcy Noticing Working Group (requiring notice of the entry of an order confirming a chapter 13 plan); suggestion by Advisory Committee member Edward Morrison (eliminating notice of the entry of a confirmation order in small-business chapter 11 cases); comment 12-BK-040 by the Bankruptcy Clerks Advisory Group on proposed amendment to Rule 9027 (removing the requirement to serve notice by mail); suggestion 14-BK-E by the National Bankruptcy Conference (recommending amendments to the Bankruptcy Rules governing service of process in individual debtor cases).

Rather than assess the suggestion as a separate item, the Subcommittee discussed it as a piece of a more comprehensive review of noticing procedures in bankruptcy cases. Members of the Subcommittee took note of concerns about the cost and effectiveness of the noticing requirements in bankruptcy—concerns raised by courts and lawyers across a variety of bankruptcy cases. The Subcommittee recognized, however, that this could prove to be a large, multi-year project, which would require a significant commitment of resources at a time when the Advisory Committee has undertaken a number of major projects that are nearing completion. For that reason, the Subcommittee concluded that an investigation of the concerns about noticing should be pursued as an initial step before launching an overhaul of noticing requirements in the Bankruptcy Rules.

The Subcommittee further concluded that a working group is the appropriate vehicle for a review of noticing requirements, because a working group could draw members from across a number of Subcommittees and (if need be) from outside the Advisory Committee. It may also be easier for a working group to coordinate with other bodies with an interest in noticing requirements—such as the Administrative Office's Bankruptcy Noticing Working Group and the Bankruptcy Clerks Advisory Group. These groups also may have undertaken some of the preliminary work to compile the current noticing requirements in the Bankruptcy Rules. Other groups outside the courts (e.g., NACBA, NACTT, NABT) will have an interest in these issues as well. At the outset of the project, the noticing working group could be limited to members of the Advisory Committee before reaching out more broadly.

Accordingly, the Subcommittee recommends the formation of a noticing review working group. The Subcommittee anticipates that the working group's efforts would proceed in stages. The first two tasks for a noticing review working group would be to examine (i)

whether there is a need for a comprehensive project on noticing and, if so, (ii) how to go about the project. These initial tasks will likely require a survey of noticing requirements under the Bankruptcy Code and Bankruptcy Rules, with specific attention to whether certain kinds of cases (e.g., chapter 13 cases or particular types of business cases) are more or less the subject of concern. The goal at the outset would be to determine if in fact there is a need to make any significant changes in noticing requirements.

If the project proceeds past this initial stage, later stages would require the working group to develop governing principles for noticing policy under the Bankruptcy Rules. The final stage would involve drafting a package of rule amendments. It is possible, of course, that the initial stages of the project will reveal that noticing does not present a significant problem. It is also possible that the working group will determine that noticing presents problems in only a limited category of cases. If so, the task of addressing those concerns could be assigned to the relevant Subcommittee instead of a continuing working group.

TAB 7D

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

SUBJECT: POSSIBLE REVISION OF RULE 1001

DATE: AUGUST 16, 2014

At the spring 2014 meeting of the Advisory Committee, Judge Art Harris reported on the spring meeting of the Advisory Committee on Civil Rules. He stated that the Civil Committee had given final approval to an amendment to Fed. R. Civ. P. 1, which is intended to emphasize the need for cooperation among parties to a civil action or proceeding. Judge Wedoff requested this Subcommittee to consider whether the parallel bankruptcy rule, Rule 1001, should be similarly revised. The Subcommittee considered the matter during its July 1 conference call, and for the reasons discussed below, **it recommends that an amendment be proposed to Rule 1001 that would parallel the language of the proposed amendment to Civil Rule 1.**

Civil Rule 1

Rule 1 governs the scope and purpose of the Federal Rules of Civil Procedure. The second sentence of the two-sentence rule currently reads, "[These rules] should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding."

The proposed amendment to Rule 1 was included in a package of civil rule amendments that were an outgrowth of a conference on civil litigation that the Civil Rules Committee held at Duke Law School in May 2010. As explained by the chair of that committee, conference participants generally agreed that "the disposition of civil actions could be improved, reducing cost and delay, by advancing cooperation among the parties, proportionality in the use of

available procedures, and early and active judicial case management." Report of Advisory Committee on Civil Rules to the Committee on Rules of Practice and Procedure at 3 (May 2, 2014).

To advance cooperation among the parties, Rule 1 would be amended as follows: "[These rules] should be construed, ~~and~~ administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." The Committee Note explains that "Rule 1 is amended to emphasize that just as the court should construe and administer these rules to secure the just, speedy, and inexpensive determination of every action, so the parties share the responsibility to employ the rules in the same way." The Standing Committee gave its final approval to the amendment at its May 2014 meeting. If it is approved by the Judicial Conference and the Supreme Court, the amended rule will go into effect on December 1, 2015, barring contrary action by Congress.

Bankruptcy Rule 1001

Rule 1001 governs the scope of the Bankruptcy Rules and Official Forms and specifies the short titles for both. Its final sentence is similar but not identical to the final sentence of Rule 1. It provides that "These rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding." It differs from the current civil rule in the following ways: (1) it follows the Bankruptcy Rules convention of using "shall" rather than "should"; (2) it refers only to how the rules should be "construed" rather than "construed and administered"; and (3) it substitutes the bankruptcy term "case" for "action."

The difference in the wording of the mandate ("construed" versus "construed and administered") has existed since Rule 1 was amended in 1993 to add "and administered." The 1993 Committee Note to Rule 1 explained that the language was added to the civil rule

> to recognize the affirmative duty of the court to exercise the authority conferred by these rules to ensure that civil litigation is resolved not only fairly, but also without undue cost or delay. As officers of the court, attorneys share this responsibility with the judge to whom the case is assigned.

Rule 1001 was never amended to include the additional language. At the March 1992 meeting, the Advisory Committee discussed the reporter's recommendation that Rule 1001 be amended to add "and administered" in order to avoid any negative inference that might arise from wording differences between the civil and bankruptcy rules, but the proposal was rejected. According to the minutes of that meeting, the Committee first rejected a motion to table the proposed amendment until after the civil rule amendment went into effect. There was then some debate about the merits of the proposed amendment. One member noted that delay is the biggest problem in bankruptcy, but another member opposed the amendment because he did not think that the new language added anything significant to the existing rule. The chair then expressed concern about requiring bankruptcy judges to "administer" cases. The amendment eventually failed for lack of a motion by a Committee member.

Consideration by the Subcommittee

The Subcommittee concluded that there is value in keeping Rule 1001 consistent with Civil Rule 1. The goal of the Rule 1 amendment—encouraging cooperation among the parties in order to avoid unnecessary costs and delay—is equally desirable in bankruptcy cases. Moreover, deviation from the civil rule's language could give rise to a negative inference that the bankruptcy rules differ from the civil rules in encouraging cooperation. The other rule amendments that are included in the Duke Rules Package—to Civil Rules 4(m), 16, 26, 30, 31, 33, 34, 36, and 37—will automatically become part of the Bankruptcy Rules because Part VII makes those civil rules applicable in adversary proceedings. The Subcommittee saw no reason

to exclude from the Bankruptcy Rules this one relatively uncontroversial part of the Duke Rules Package.

The Subcommittee could identify no adverse consequences of amending Rule 1001 to include the proposed new language of Civil Rule 1. It also concluded that the language of the 1993 amendment ("administer") should also be included so that the mandates of the two rules will be the same.

Recommendation

The Subcommittee recommends that the following amendment to Rule 1001 be proposed for publication:

Rule 1001. Scope of Rules and Forms; Short Title

The Bankruptcy Rules and Forms govern procedure in cases under title 11 of the United States Code. The rules shall be cited as the Federal Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms. These rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding.

Committee Note

The last sentence of the rule is amended to incorporate the changes to Rule 1 F.R. Civ. P. made in 1993 and 2015.

The word "administered" is added to recognize the affirmative duty of the court to exercise the authority conferred by these rules to ensure that bankruptcy cases and the proceedings within them are resolved not only fairly, but also without undue cost or delay. As officers of the court, attorneys share this responsibility with the judge to whom the case is assigned.

The addition of the phrase "employed by the court and the parties" emphasizes that parties share in the duty of using the rules to secure the just, speedy, and inexpensive determination of every case and proceeding. Achievement of this goal depends upon cooperative and proportional use of procedure by lawyers and parties.

This amendment does not create a new or independent source of sanctions. Nor does it abridge the scope of any other of these rules.

TAB 8A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS, AND APPEALS

RE: SUGGESTED AMENDMENT TO THE BANKRUPTCY RULES IN LIGHT OF *STERN V. MARSHALL*

DATE: AUGUST 19, 2014

Following the Supreme Court's decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011), Professor Alan N. Resnick submitted a suggestion (12-BK-H) for responsive changes to the Bankruptcy Rules. Professor Resnick's suggestion urges that the Bankruptcy Rules should explicitly state that a district court has the discretion, on appeal, to treat a bankruptcy judge's decision as proposed findings of fact and conclusions of law if the bankruptcy judge entered the decision as a final order or judgment but did not have the power under Article III to do so. His suggestion would also give the parties an opportunity to file objections (and responses to objections) to the bankruptcy judge's decision when the district court decides to treat it as proposed findings and conclusions. In the alternative, a party could elect to have its appellate brief deemed as objections or responses.

The Subcommittee considered the suggestion in 2012. At that time, a larger package of *Stern*-related rule amendments was being published for public comment. Adhering to the cautious approach taken by the Advisory Committee on *Stern*-related issues, the Subcommittee recommended delaying further consideration of Prof. Resnick's suggestion until after publication of that package of rule amendments. Ultimately, the *Stern* amendments were approved for final adoption by the Advisory Committee, the Standing Committee, and the Judicial Conference. But the amendments were withdrawn before submission to the Supreme Court once the Court

granted certiorari in *Executive Benefits Insurance Agency v. Arkison*. Following the Court's decision in *Arkison*, 134 S. Ct. 2165 (June 9, 2014), Prof. Resnick's suggestion returned to the Subcommittee for further consideration. The Subcommittee discussed the suggestion during a conference call on July 1, 2014.

This memorandum recapitulates Prof. Resnick's suggestion and then sets out considerations weighed by the Subcommittee. Although one part of the suggestion comports with the Court's decision in *Arkison*, that decision is unlikely to be the Court's last word on *Stern*-related issues in light of the Court's grant of certiorari in another post-*Stern* case, *Wellness Int'l Network, Ltd. v. Sharif*, 727 F.3d 751 (7th Cir. 2013), *cert. granted*, 134 S. Ct. 2901 (July 1, 2014) (No. 13-935). Moreover, the problem the suggestion raises—the treatment of *Stern* claims on appeal—is one that does not appear to have caused much confusion or concern in the district courts. **Accordingly, the Subcommittee recommends awaiting further developments before acting on the suggestion.**

Professor Resnick's Suggestion

The suggestion would amend current Rule 8013, which addresses the weight accorded to a bankruptcy judge's findings of fact, by adding a new subsection.[1] The amended rule would provide as follows:

> RULE 8013. DISPOSITION OF APPEAL; WEIGHT ACCORDED BANKRUPTCY JUDGE'S FINDINGS OF FACT; TREATMENT OF JUDGMENT, ORDER, OR DECREE AS PROPOSED FINDINGS AND CONCLUSIONS

[1] There is no equivalent to current Rule 8013 in the revamped Part VIII rules slated to take effect this December. The most logical place to include a provision along the lines of the suggestion would be Rule 9033(d), which addresses the standard of review by a district court receiving a bankruptcy judge's proposed findings of fact and conclusions of law. In the alternative (or perhaps in addition), a new rule 8029 could be added to Part VIII.

(a) Disposition; Weight Accorded Findings of Fact. On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. 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 court to judge the credibility of the witnesses.

(b) Treatment as Proposed Findings and Conclusions. If the appeal is to the district court and the district court determines that the bankruptcy judge did not have the power consistent with Article III of the Constitution to enter the judgment, order, or decree, the district court may treat the judgment, order, or decree as proposed findings of fact and conclusions of law. In that event, Rule 9033(b), (c), and (d) shall apply, except that the district court shall set a time for serving and filing written objections under Rule 9033(b). Any party may elect to have its appellate brief treated as objections or responses to the proposed findings and conclusions.

Professor Resnick identifies four reasons for his suggestion. First, the proposed amendment would make clear that a district court does not need to remand a proceeding to a bankruptcy court and await the formal issuance of proposed findings and conclusions in order to treat the bankruptcy court's decision accordingly. Second, the suggestion would comport with *Stern* itself, in which the district court treated the bankruptcy judge's decision, entered as a final judgment, as proposed findings and conclusions. Third, the proposal would set a uniform national procedure in place of piecemeal development of practices in each district regarding the

treatment on appeal of *Stern* claims. Fourth, the proposal would ensure that the parties have an opportunity to object, or respond to objections, to the bankruptcy judge's decision.

Discussion

A. Arkison *and Appellate Review of* Stern *Claims*

Under *Arkison*, a *Stern* claim may be treated as a non-core proceeding even if it is designated as a core proceeding in 28 U.S.C. § 157(b). Relying on a severability provision in the Judicial Code, the Court explained:

> The plain text of this severability provision closes the so-called "gap" created by *Stern* claims. When a court identifies a claim as a *Stern* claim, it has necessarily "held invalid" the "application" of § 157(b)—*i.e.*, the "core" label and its attendant procedures—to the litigant's claim. In that circumstance, the statute instructs that "the remainder of th[e] Act ... is not affected thereby." That remainder includes § 157(c), which governs non-core proceedings. . . . If the claim satisfies the criteria of § 157(c)(1), the bankruptcy court simply treats the claims as non-core: The bankruptcy court should hear the proceeding and submit proposed findings of fact and conclusions of law to the district court for *de novo* review and entry of judgment.

Arkison, 134 S. Ct. at 2173 (citations omitted).

Similarly, the Court explained that a district court's ultimate treatment of a proceeding—and not the label applied—is what matters for Article III purposes. The bankruptcy court in *Arkison* had entered summary judgment and had not submitted proposed findings and conclusions. Nevertheless, because the district court had reviewed the bankruptcy court's decision *de novo*, the Supreme Court did not require a remand for the bankruptcy court to issue

proposed findings and conclusions. The Court concluded that the district court's "*de novo* review and entry of its own valid final judgment cured any error" in the bankruptcy court's treatment of the *Stern* claim. *Id.* at 2175.

The Subcommittee views the teaching of *Arkison* to be twofold. First, a bankruptcy court confronting a *Stern* claim has the statutory authority to treat the proceeding as "non-core" regardless of its enumeration as "core" in the statute. Second, even if a bankruptcy court's entry of a final order or judgment on a *Stern* claim violates Article III, the problem can be resolved on appeal by the district court's entry of its own judgment after plenary review.

B. Considerations Weighed by the Subcommittee

An amendment to the Bankruptcy Rules along the lines of Professor Resnick's suggestion (at least the first part of it) would appear to be consistent with *Arkison*. The first part of the suggestion—an explicit statement that a district court may treat as proposed findings and conclusions a bankruptcy court's judgment that would run afoul of Article III—would simply codify *Arkison*. The rest of the suggestion would go further and give greater clarity to the procedural steps a district court should follow in those circumstances. In particular, the provision of a procedure for parties to object to specific findings and conclusions (as Rule 9033 directs) may be a helpful guide to district courts considering *Stern* claims on appeal.

Nevertheless, the Subcommittee found two concerns to weigh against pursuing the suggestion at this time. The first is the limited scope of *Arkison* itself. It seems likely that the Court will soon try to resolve the question left open in *Arkison*—whether parties may consent to final adjudication by a bankruptcy judge. The Court's grant of certiorari in *Wellness* includes the consent question presented in the case. It would be prudent to delay further rulemaking on *Stern*

issues while *Wellness* is pending. That prudential concern is amplified by an implicit assumption in the second part of Prof. Resnick's suggestion—that is, the part that seeks to fill the procedural gap by directing the application of Rule 9033(b), (c), and (d). Those parts of Rule 9033 deal with objections to a bankruptcy judge's proposed findings of fact and conclusions of law. Crucially, Rule 9033(d) directs the district court to make a *de novo* review of "any portion of the bankruptcy judge's findings of fact or conclusions of law to which specific written objection has been made in accordance with this rule." Although Rule 9033(d) goes on to provide that the "district judge may accept, reject, or modify the proposed findings of fact or conclusions of law," a district court is entitled, under the rule, to consider a failure to make a timely objection as a waiver of the right to *de novo* review.[2] If, however, the Court eventually declares that parties cannot consent to a bankruptcy judge's final adjudication of a *Stern* claim, it would seem to follow that parties cannot waive or forfeit *de novo* review of the claim in the district court. In other words, a rule amendment that assumes party conduct can affect the standard of review of a *Stern* claim may conflict with the Court's eventual treatment of the consent issue.

Second, the gap in the rules that Prof. Resnick's suggestion highlights does not appear to have caused significant concern in the district courts. Since the time of the Subcommittee's initial consideration of this suggestion, the case law has not shown evidence of confusion about the treatment of *Stern* claims by district courts. Indeed, the potential for confusion has been limited further by district courts' amending their standing orders of reference in bankruptcy cases to deal with *Stern* claims. To be sure, as Prof. Resnick states in his suggestion, a patchwork of

[2] Rule 9033(d) is adapted from Civil Rule 72(b), which governs the review of magistrate judges' reports and recommendations. *See* Rule 9033(d) advisory committee's note (1987). In *Thomas v. Arn*, 474 U.S. 140, 150-54 (1985), the Supreme Court held that a district court is permitted, but not required, to treat a party's failure to make a timely objection to a magistrate's report and recommendation as a waiver of *de novo* review by the district court.

local responses to *Stern* is not ideal. But to the extent that district courts are using the same vehicle (the standing order of reference) in a similar manner, the lack of uniformity raises limited concern in the interim.

TAB 8B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS, AND APPEALS

SUBJECT: ISSUES PENDING IN THE BULLPEN AND DUGOUT

DATE: AUGUST 17, 2014

The Advisory Committee voted at the fall 2013 and spring 2014 meetings to defer taking further action on several matters that were reported by the Subcommittee:

- It approved three items recommended by the Subcommittee but chose to hold them in the bullpen rather than seek the Standing Committee's immediate approval for publication.
- The Committee chose not to take any action on another issue but to place it in the dugout pending possible consideration of the issue by the Standing Committee's CM/ECF Subcommittee.

All of these matters arose out of suggestions made in public comments following publication of the proposed revision of the Part VIII Bankruptcy Rules, which will go into effect on December 1 of this year.

During a conference call on July 1, the Subcommittee considered whether to recommend that the Committee proceed with any of these pending matters at the fall 2014 meeting. **The Subcommittee recommends that they remain in their current hold status.**

Proposed Amendments in the Bullpen

Currently in the bullpen are three sets of proposed amendments to the revised bankruptcy appellate rules:

1. **Rule 8002 (Time for Filing Notice of Appeal)**—An amendment is proposed to subdivision (a) that would add a new paragraph (5) to clarify the effect of the separate-document requirement of F.R. Civ. P. 58(a) (made applicable in adversary proceedings by Rule 7058) on the entry of a judgment, order, or decree for the purpose of determining the time for filing a notice of appeal. The Subcommittee recommended this amendment in response to a suggestion made by Judge Christopher Klein (Bankr. E.D. Cal.) in his comment on Rule 8002. The Advisory Committee approved the amendment for publication at the fall 2013 meeting.
2. **Rule 8006 (Certifying a Direct Appeal to the Court of Appeals)**—Subdivision (c) would be amended to provide authority for the court to file a statement on the merits of a certification for direct review in the court of appeals when the certification is made jointly by all of the parties to the appeal. It would be a counterpart to subdivision (e)(2), which allows a party to file a similar statement when the court certifies direct review on the court's own motion. This amendment was proposed in response to a comment by Judge Klein and was approved for publication at the fall 2013 Advisory Committee meeting.
3. **Rule 8023 (Voluntary Dismissal)**—The rule would be amended by adding a cross-reference to Rule 9019 to provide a reminder that, when dismissal of an appeal is sought as the result of a settlement by the parties, Rule 9019 may require approval of the settlement by the bankruptcy court. The Subcommittee proposed the amendment in response to a comment by the National Conference of Bankruptcy Judges, and the Advisory Committee approved it for publication at the spring 2014 meeting.

The Advisory Committee placed the three proposed amendments in the bullpen in order to allow the revised Part VIII rules to go into effect before seeking publication of any amendments to them. The Committee's reasoning for delaying publication was twofold. First, members thought that it would be confusing to publish amendments to rules that were not yet in effect. Second, the Committee sought to follow the advice of the chair of the Standing Committee to publish rules in related bundles, rather than piecemeal. Because experience under the new appellate rules may reveal other needed revisions, the Committee accepted the Subcommittee's recommendation to delay publication until after the revised Part VIII rules take effect and there is a sufficient period of experience with them to determine whether any additional amendments are needed.

The revised Part VIII rules will not take effect until the end of this year. The Subcommittee concluded that the three proposed amendments should remain in the bullpen until there has been at least a year's experience with the revised rules. It therefore recommends that the proposed amendments remain on hold until 2016, when the Subcommittee will determine whether to recommend seeking their publication for public comment.

Matters in the Dugout

In response to the publication of the proposed revision of the Part VIII rules, the Committee received three comments that suggested that designation of the record no longer be required and that the record in the bankruptcy court be the record on appeal. *See* Comments 12-BK-005—Judge Robert J. Kressel (Bankr. D. Minn.); 12-BK-015—Judge Barry S. Schermer (Bankr. E.D. Mo.); 12-BK-040—Bankruptcy Clerks Advisory Group. The comments noted that the 8th Cir. BAP has such a rule and that parties in that court refer to the appropriate bankruptcy court docket entries in their briefs, and BAP judges access the bankruptcy court record

electronically. The commenters suggested that proposed Rule 8009 be amended to incorporate or accommodate that practice.

Upon the Subcommittee's recommendation, the Advisory Committee at the fall 2013 meeting placed these suggestions in the dugout pending possible consideration of the issue by the Standing Committee's CM/ECF Subcommittee. At the spring 2014 meeting, the Committee retained the suggestions in the dugout, reasoning that the use of electronic records on appeal is a matter that should be pursued more broadly than just in the context of bankruptcy appeals and that the CM/ECF Subcommittee, with a membership drawn from all of the rules advisory committees, was better positioned to pursue to issue.

During its July 1 conference call, the Subcommittee concluded that the situation had not changed materially since the spring meeting. The CM/ECF Subcommittee did not take up the issue during its May meeting, but the life of that Subcommittee has been extended. Because there does not seem to be any urgency to the issue—since courts are adapting their procedures to the availability of CM/ECF as they see fit—this Subcommittee recommends that the issue remain in the dugout and that it be reviewed again by the Subcommittee next summer.

TAB 9

No Report

TAB 10A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON ATTORNEY CONDUCT AND HEALTHCARE

RE: SUGGESTION TO AMEND RULE 2014

DATE: AUGUST 21, 2014

This memorandum discusses the status of the pending suggestion (13-BK-C) submitted by the American Bankruptcy Institute's Task Force on National Ethics Standards. The ABI Task Force recommends substantial changes to Rule 2014, which governs an application to retain a professional. The current version of the rule requires the disclosure of "all of the person's connections" with a broad category of entities: the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. The ABI proposal would, among other things, clarify and limit the "all . . . connections" language in Rule 2014. The Subcommittee on Attorney Conduct and Healthcare discussed the suggestion during conference calls on July 12, 2013, and January 31, 2014. The sense of the Subcommittee after those conference calls was that it would be valuable to continue further exploration of an amendment to Rule 2014 but that a more limited approach would be preferable to the ABI Task Force's comprehensive proposal.

The Subcommittee gave further consideration to the suggestion during an August 6, 2014, conference call. The Subcommittee reviewed a discussion draft of an amended Rule 2014 based on the more limited approach suggested during previous deliberations. The discussion draft borrows some language from the Advisory Committee's proposed amendment to Rule 2014 that was published in 2000 and later withdrawn.

Previous Proposals to Amend Rule 2014

During its January conference call, the Subcommittee reviewed the Advisory Committee's prior consideration of an amendment to Rule 2014, including an amendment that was published for public comment in August 2000. That amendment, as altered after critical public comments, would have adopted a two-tiered requirement for disclosure by a professional. The amendment retained an expansive disclosure obligation for the professional's connections with the debtor. Specifically, the amendment required disclosure of "any interest in, relationship to, or connection the person has with the debtor." With respect to connections with other entities, however, the amendment adopted a more limited disclosure obligation tied to the Code's "disinterested person" standard.[1] The amended rule would have required the professional to disclose "any interest, connection, or relationship the person has that may cause the court or a party in interest reasonably to question whether the person is disinterested under § 101." This

[1] At the time of the rule amendment's publication, the Code defined "disinterested person" as a person that:

> (A) is not a creditor, an equity security holder, or an insider;
> (B) is not and was not an investment banker for any outstanding security of the debtor;
> (C) has not been, within three years before the date of the filing of the petition, an investment banker for a security of the debtor, or an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the debtor;
> (D) is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor or of an investment banker specified in subparagraph (B) or (C) of this paragraph; and
> (E) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor or an investment banker specified in subparagraph (B) or (C) of this paragraph, or for any other reason.

11 U.S.C. § 101(14). This definition was revised effective in 2006. Section 101(14) now defines a disinterested person as a person that:

> (A) is not a creditor, an equity security holder, or an insider;
> (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
> (C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

version of the amendment was approved for final adoption by the Advisory Committee and, over the dissenting votes of two members, by the Standing Committee. Ultimately, however, the amendment was withdrawn when it became clear that it faced significant opposition in the Judicial Conference.[2] The Advisory Committee considered another version of an amended Rule 2014 that would have required more expansive disclosures for connections to creditors as well as connections to the debtor, but the Committee voted unanimously to table that proposal at the spring 2002 meeting.[3]

The opposition to the amendment arose principally from concern that the proposal improperly limited the role of the courts and the U.S. Trustee in deciding what information is relevant to a professional's retention. Even after the Advisory Committee made post-publication changes to the August 2000 proposal, opponents criticized the amendment for allowing the professional—and not the court—to be the arbiter of what connections matter when evaluating a retention application.

The Subcommittee's Consideration of an Amendment to Rule 2014

In light of the history of the August 2000 amendment, members of the Subcommittee expressed interest in an amendment to Rule 2014 that would (i) curb excessive disclosures in retention applications, (ii) make more limited changes to the rule than the ABI Task Force's proposal, and (iii) guard against the principal objection to the Advisory Committee's previous published amendment (i.e., preserve the role of the court in determining what information is relevant for a retention application). Based on these concerns, the Subcommittee discussed language for an amended Rule 2014. The language discussed by the Subcommittee retains much

[2] *See* Memorandum from Jeff Morris to Advisory Committee on Bankruptcy Rules (February 25, 2002).

[3] *See* Minutes of Advisory Committee meeting at 5-6 (March 21-22, 2002).

of the current Rule 2014 but with three significant changes. First, it retains the "all . . . connections" standard of the current rule but permits a court to order more limited disclosures for cause shown. Second, it expressly imposes a duty to supplement disclosures (a feature of the Advisory Committee's withdrawn proposal and the ABI Task Force's proposal). Third, it includes stylistic changes in the organization of the rule, which is currently set out in long, unbroken paragraphs.

This draft of an amended rule, which is set out at the end of this memorandum, does not include some of the features of the withdrawn amendment or the ABI Task Force's proposal. For example, it does not include changes to current Rule 2014(b), which governs the treatment of members or associates of law partnerships. It also does not alter the requirements for service of a retention application. Those adjustments, although perhaps worthy of consideration, fall outside the heartland of concern about the current rule.

Although the Subcommittee has given the subject a good deal of consideration, it is not yet ready to make a recommendation to the Advisory Committee regarding an amendment to Rule 2014. Three issues were raised during the Subcommittee's deliberations. The first is whether the discussion draft would also leave too much discretion about the level of disclosure in the hands of the professional. Members of the Subcommittee discussed alternative formulations of the draft language. Given the U.S. Trustee Program's concern on this point, the Subcommittee will give additional thought to it before an amendment to the rule is pursued. The second is whether the approach contemplated by the Subcommittee—a broad disclosure standard that can be limited by a court for cause shown—would open the door to inconsistencies in disclosures, especially if some courts adopted local rules making more limited disclosure the

default. The Subcommittee added language to the discussion draft to tighten the exception by permitting a court to order the more limited disclosure in a particular case only.

The third concern about amending Rule 2014 is whether the lingering dissatisfaction with the rule actually reflects current problems. On the one hand, the Subcommittee took note that the ABI Task Force's extensive work on Rule 2014 (which was endorsed by the ABA Business Bankruptcy Committee) was prompted by longstanding criticisms about the breadth of the current rule. Members of the Subcommittee recounted the view of many bankruptcy professionals that the rule is a potential trap, which in turn leads professionals to make protective (and excessive) "telephone book" disclosures in retention applications, particularly in large cases. On the other hand, the Subcommittee questioned whether those concerns remain substantial. Members of the Subcommittee discussed whether there were many recent cases of professionals' running afoul of the rule and whether the voluminous disclosures that can be generated by the current rule may nevertheless serve a useful purpose.

The Subcommittee intends to discuss the draft amendment with judges and others knowledgeable about Rule 2014. Based on the feedback received from those sources, the Subcommittee will report to the Advisory Committee a recommendation about the ABI Task Force's suggestion. The discussion draft of amended Rule 2014, which reflects the Subcommittee's consideration of the proposal to date, is attached to this memorandum.

Rule 2014. Employment of Professional Persons

(a) APPLICATION FOR ~~AND~~ ORDER ~~OF~~ APPROVING EMPLOYMENT. An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals pursuant to §327, §1103, or §1114 of the Code shall be made only on application of the trustee or committee. The application shall be filed and, unless the case is a chapter 9 ~~municipality~~ case, a copy of the application shall be transmitted by the applicant to the United States trustee. The application shall state:

(1) the specific facts showing the necessity for the employment~~,~~;

(2) the name of the person to be employed~~,~~ and the reasons for the selection~~,~~;

(3) the professional services to be rendered~~,~~;

(4) any proposed arrangement for compensation~~,~~; and,

(5) except as provided in subdivision (c), to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

(b) STATEMENT OF PROFESSIONAL. The application shall be accompanied by a verified statement of the person to be employed setting forth:

(1) the person's eligibility under the Code for employment for the purposes set forth in the application;

(2) any interest that the person holds or represents that is adverse to the estate; and

(3) except as provided in subdivision (c), the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

(c) DISCLOSURE OF CONNECTIONS. For cause shown in a particular case, the court may order that the disclosure required under subdivisions (a)(5) and (b)(3) be limited to any interest, relationship, or connection the person has that may cause the court or a party in interest reasonably to question whether the person is disinterested under § 101.

(d) SUPPLEMENTAL STATEMENT OF PROFESSIONAL. Within 14 days after becoming aware of any undisclosed matter that is required to be disclosed under Rule 2014(b) or (c), if applicable, a person employed under this rule shall file a supplemental statement and, unless the case is a chapter 9 case, transmit a copy to the United States trustee.

(e) SERVICES RENDERED BY MEMBER OR ASSOCIATE OF FIRM OF ATTORNEYS OR ACCOUNTANTS. If, under the Code and this rule, a law partnership or corporation is employed as an attorney, or an accounting partnership or corporation is employed as an accountant, or if a named attorney or accountant is employed, any partner, member, or regular associate of the partnership, corporation, or individual may act as attorney or accountant so employed, without further order of the court.

TAB 11

MEMORANDUM

TO: Advisory Committee on Bankruptcy Rules

FROM: Chapter 13 Working Group

RE: Recommended changes in the proposed plan form

DATE: August 1, 2014

The Chapter 13 Working Group held a conference call on August 29 to consider a number of proposed changes in the published plan form. The proposed changes resulted from discussions with the Kansas bankruptcy judges, who had opposed the form as published in 2013, and other interested parties. The working group has proposed the following changes, which are reported here simply for information purposes, since a final recommendation regarding the form will not be made until the working group is able to consider all the comments received in connection with the current publication. Each of the changes discussed here is identified by paragraph number on the attached redlined draft.

1. Part 1: *new warning of the effect of local rules; statement of income status*. Working group recommends that debtors be warned that failure to comply with local rules or rulings may result in denial of confirmation. The Kansas judges suggested that debtors state in the form whether their income is above or below the applicable median, since this could determine the basis for objection based on projected disposable income. The working group agreed that since this additional information might be helpful and would add little space to the form, it should be included. This income information would not be a plan term, and so it would be included in the Part 1 notices. The debtors would be instructed to complete the statement of income status in the initial direction (1A) and the statement itself (1B) would be at the end of Part 1.

2. Section 2.3: *changes to treatment of tax refunds*. A Chapter 13 trustee suggested that earned income tax credits not be excluded from turned-over federal tax refunds in the second check box of § 2.3, but rather be excludable by the debtor in the third check box. Often, the trustee said, the earned income tax refund will need to be turned over, either because it's disposable income or because it's needed to make the plan feasible, and it would be better for full turnover to be a choice rather than requiring the debtor to include earned income tax refunds as an additional payment in § 2.4. The working group agreed, but also concluded that the choice for full payment of income

tax refunds should be applicable to state refunds as well as federal. The group also concluded that the third option should leave open the question of submitting tax returns.

3. Section 3.1: *emphasize that the plan may treat secured claim by maintaining current payments even if there is no default to be cured.* Some trustees questioned whether the plan clearly provided a place for debtors simply to maintain payments on secured claims for which they were current in their payments prepetition. While § 3.1 provides for maintenance of current payments, the working group agreed that this option should be emphasized by placing the words "if any" after "cure of default" in the section's heading (3A) and after "Amount of arrearage" in the detail column (3B).

4. Section 3.1: *changes to the initial text after the second check box.* The text after the second check box seemed unclear (for example, in calling for payment "under the plan"). It reads

> The debtor(s) will maintain the contractual installment payments on the claims listed below, with any changes required by the applicable contract, and cure any default in payments on the secured claims listed below. The allowed claim for any arrearage amount will be paid under the plan, with interest, if any, at the rate stated.

The working group agreed that the form should place maintenance and cure in separate sentences and specify that the trustee will make payments on any arrearages:

> The debtor(s) will maintain the current contractual installment payments on the secured claims listed below, with any changes required by the applicable contract. These payments will be disbursed either by the trustee or directly by the debtor, as specified below. Any existing arrearage resulting from a default in payments on a listed claim will be paid in full through disbursements by the trustee, with interest, if any, at the rate stated.

5. Section 3.2: *slight wording and typography change.* In dealing with claims subject to stripdown, the section now says that for "secured claims listed below, the debtor(s) state that the value of secured claim should be as stated below in the column headed *Amount of secured* claim." The working group concluded that it would avoid repetition to use "set out" rather than "stated below" and in the reference to the column heading, and that the word "claim" should be italicized.

6. Section 3.2: *use "value of the secured claim" consistently; remove reference to "controlling amount".* Judge Rebecca Connelly, a former Chapter 13 trustee, suggested that the term "controlling amount of the claim" is unclear. Consistent with Rule 3012, the working group determined that the term "value of the secured claim" be used consistently.

7. Section 3.2: *remove third line for creditor claim.* The working group proposes to follow the general standard of the form, setting out two item lines, with a direction to insert additional lines as needed.

8. Section 3.3: *add a sentence providing for the debtor's choice of disbursing agent.* The working group suggests this additional sentence to point out the option given in the relevant column, consistent with § 3.1.

9. Section 3.5: *specifying the effectiveness of consent to stay termination on surrender.* Creditors pointed out the Committee Note appears to suggest that the consent to stay termination at confirmation, specified in the form, actually effectuates termination of the stay. They suggested placing express language to this effect in the form, eliminating the need for a stay relief motion. The working group determined, to the contrary, that the language of the Committee Note should be altered to be more consistent with the existing form provision, since there is a question about whether the form itself can affect termination of the stay.

10. Part 4: *change in title.* The Kansas judges suggested that filing fees are not priority claims under the Code, so that a separate line for filing fee payment would be appropriate. The working group determined, however, that filing fees are not commonly paid through chapter 13 plans and that rather than change the form to incorporate them, it would be best to leave payment of filing fees as a matter to be addressed in Part 9. The only change that the working group proposes for Part 4 is in the title; "Trustee's Fees" would be changed simply to "Fees" so that attorneys' fees were also covered.

11. Section 5.1: *eliminate unneeded section.* Section 5.1 of the form unnecessarily says that the other sections of Part 5 will be effective. The working group proposes to eliminate this section.

12. Section 5.3: *add a sentence providing for the debtor's choice of disbursing agent.* The working group suggests this additional sentence to point out the option given in the relevant column, consistent with § 3.1.

13. Section 5.3: *replace "paid under the plan".* As in Suggestion 4, the working group proposes the clearer statement, "paid in full and disbursed by the trustee."

14. Section 6.1: *distinguish current payments from arrearage payments and specify disbursement.* The working group proposes a change to give specific instructions for payments on executory contracts and unexpired leases, similar to the instructions for mortgage payments in § 3.1.

15. Section 6.1: *expand the heading for property description to include executory contracts.* In this section, which deals with both executory contracts and unexpired leases, the current heading for description is limited to "property." The working group proposes that the heading be expanded to require a description any executory contract as well as leased property.

16. Section 7.1: *remove trustee fees as an item of disbursement by the trustee.* Chapter 13 trustees have informed us that, effective in October, the Executive Office for U.S. Trustees will allow all standing trustees to deduct their percentage fees at the time they receive payments from debtors, rather than at the time of monthly disbursements. Accordingly, the working group proposes removal of trustee fees as an item of monthly disbursements.

17. Section 8.1: *slight wording change.* Section 1327(b) of the Code uses the word "vests" rather than "revests," and in all other instances the form uses "will" rather than "shall," so the working group recommends changing "shall revest" to "will vest."

18. Section 8.1: *make "entry of discharge" rather than case closing the standard choice for vesting of property in the debtor.* The working group suggests this change because under § 362(c)(2)(C) the automatic stay terminates as to personal actions against the debtor at the time of discharge. The stay does not terminate against in rem actions until the property is no longer property of the estate, but discharge is ordinarily the debtor's appropriate protection against in rem actions. If a creditor has a right to take action against property of the debtor based on a non-discharged debt, there is no apparent reason to delay that action until case closing. However, if a debtor wanted to specify case closing as the time for vesting, that option would be available through the third check box.

19. Exhibit heading: *make the heading shorter and more accurate.* The heading for the Exhibit now has the unnecessary introductory words "Chapter 13 Plan," and it states that the exhibit provides an "Estimated Total Amounts" of trustee payments. The main purpose of the exhibit, however, is to provide an estimate of the single, total amount that the trustee will pay out through the plan, so that, as a check of feasibility, this amount can be compared to the estimate of debtor payments to the trustee. Accordingly, the working group proposes that the be changed to "Exhibit: Total Amount of Es-

timated Trustee Payments."

20. Exhibit, line (e): *make titles consistent.* The working group proposes making line (e) consistent with the revised language of the section to which it refers.

21. Exhibit, line (j): *remove the limitation to arrearages.* A plan might provide for a trustee to make current payments on an executory contract or unexpired lease, and the working group recommends that such payments be included in the list of trustee disbursements under the plan.

Draft 9-5-2014

Debtor _____

United States Bankruptcy Court for the:_____
[Bankruptcy district]

Case number: _____

❑ Check if this is an amended plan

Official Form 113

Chapter 13 Plan

12/16

Part 1: Notices

To Debtors: **This form sets out options that may be appropriate in some cases, but the presence of an option on the form does not indicate that the option is appropriate in your circumstances or that it is permissible in your judicial district. Plans that do not comply with local rules and judicial rulings may not be confirmable.** 1

In the following notice to creditors and statement regarding your income status, you must check each box that applies. 1A

To Creditors: **Your rights may be affected by this plan. Your claim may be reduced, modified, or eliminated.**

You should read this plan carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation at least 7 days before the date set for the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court. The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. See Bankruptcy Rule 3015. In addition, you may need to file a timely proof of claim in order to be paid under any plan.

The following matters may be of particular importance to you. ***Boxes must be checked by debtor(s) if applicable.***

❑ **The plan seeks to limit the amount of a secured claim, as set out in Part 3, Section 3.2, which may result in a partial payment or no payment at all to the secured creditor.**

❑ **The plan requests the avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest as set out in Part 3, Section 3.4.**

❑ **The plan sets out nonstandard provisions in Part 9.**

Income status of debtor(s), as stated on Official Form 122-C1 1B

Check one.

❑ The current monthly income of the debtor(s) is less than the applicable median income specified in 11 U.S.C. § 1325(b)(4)(A).

❑ The current monthly income of the debtor(s) is **not** less than the applicable median income specified in 11 U.S.C. § 1325(b)(4)(A).

Part 2: Plan Payments and Length of Plan

2.1 Debtor(s) will make regular payments to the trustee as follows:

$ _____ per_____ for _____ months

[and $ _____ per_____ for _____ months.] *Insert additional lines if needed.*

If fewer than 60 months of payments are specified, additional monthly payments will be made to the extent necessary to make the payments to creditors specified in Parts 3 through 6 of this plan.

2.2 Regular payments to the trustee will be made from future earnings in the following manner:

Check all that apply.

- ❑ Debtor(s) will make payments pursuant to a payroll deduction order.
- ❑ Debtor(s) will make payments directly to the trustee.
- ❑ Other (specify method of payment):_____.

2.3 ~~Federal income~~ Income tax refunds.

Check one.

- ❑ Debtor(s) will retain any ~~federal~~ income tax refunds received during the plan term.
- ❑ Debtor(s) will supply the trustee with a copy of each income tax return filed during the plan term within 14 days of filing the return and will turn over to the trustee all ~~federal~~ income tax refunds~~, other than earned income tax credits,~~ received during the plan term.
- ❑ Debtor(s) will ~~supply the trustee with federal tax returns filed during the plan term and will turn over to the trustee a portion of any federal income tax refunds received during the plan term as specified below~~ treat income refunds as follows:

2

_____

_____

2.4 Additional payments.

Check one.

- ❑ **None.** *If "None" is checked, the rest of § 2.4 need not be completed or reproduced.*
- ❑ Debtor(s) will make additional payment(s) to the trustee from other sources, as specified below. Describe the source, estimated amount, and date of each anticipated payment.

_____

_____

2.5 The total amount of estimated payments to the trustee provided for in §§ 2.1 and 2.4 is $ _____.

Part 3: Treatment of Secured Claims

3.1 Maintenance of payments and cure of ~~any~~ default, if any.

3A

Check one.

- ❑ **None.** *If "None" is checked, the rest of § 3.1 need not be completed or reproduced.*
- ❑ The debtor(s) will maintain the current contractual installment payments on the secured claims listed below, with any changes required by the applicable contract~~, and cure any default in payments on the secured claims listed below. The allowed claim for any arrearage amount will be paid under the plan~~. These payments will be disbursed either by the trustee or directly by the debtor, as specified below. Any existing arrearage on a listed claim will be paid in full through disbursements by the trustee, with interest, if any, at the rate stated. Unless otherwise ordered by the court, the amounts listed on a proof of claim or modification of a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) control over any contrary amounts listed below as to the current installment payment and arrearage. If relief from the automatic stay is ordered as to any item of collateral listed in this paragraph, then, unless otherwise ordered by the court, all payments under this paragraph as to that collateral will cease and all secured claims based on that collateral will no longer be treated by the plan. The final column includes only payments disbursed by the trustee rather than by the debtor.

4

Name of creditor	Collateral	Current installment payment (including escrow)	Amount of arrearage, if any	Interest rate on arrearage (if applicable)	Monthly plan payment on arrearage	Estimated total payments by trustee
			3B			
_____	_____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	_____%	$_____	$_____

_____ _____ $_____ $_____ _____% $_____ $_____

Disbursed by:
- ❑ Trustee
- ❑ Debtor(s)

Insert additional claims as needed.

3.2 Request for valuation of security and claim modification. *Check one.*

❑ **None.** *If "None" is checked, the rest of § 3.2 need not be completed or reproduced.*

The remainder of this paragraph will be effective only if the applicable box in Part 1 of this plan is checked.

❑ The debtor(s) request that the court determine the value of the secured claims listed below. For each non-governmental secured claim listed below, the debtor(s) state that the value of the secured claim should be as ~~stated below~~ set out in the column headed *Amount of secured claim*. For secured claims of governmental units, unless otherwise ordered by the court, the ~~amounts~~ value of a secured claim listed in a proof~~s~~ of claim filed in accordance with the Bankruptcy Rules control~~s~~ over any contrary amount listed below. For each listed ~~secured~~ claim, the ~~controlling amount~~ value of the secured claim will be paid in full ~~under the plan~~ with interest at the rate stated below. 5 6

The portion of any allowed claim that exceeds the amount of the secured claim will be treated as an unsecured claim under Part 5 of this plan. If the amount of a creditor's secured claim is listed below as having no value, the creditor's allowed claim will be treated in its entirety as an unsecured claim under Part 5 of this plan. Unless otherwise ordered by the court, the amount of the creditor's total claim listed on the proof of claim controls over any contrary amounts listed in this paragraph.

The holder of any claim listed below as having value in the column headed *Amount of secured claim* will retain the lien until the earlier of:

(a) payment of the underlying debt determined under nonbankruptcy law, or

(b) discharge under 11 U.S.C. § 1328, at which time the lien will terminate and be released by the creditor. See Bankruptcy Rule 3015.

Name of creditor	Estimated amount of creditor's total claim	Collateral	Value of collateral	Amount of claims senior to creditor's claim	Amount of secured claim	Interest rate	Monthly payment to creditor	Estimated total of monthly payments
_____	$_____	_____	$_____	$_____	$_____	___%	$_____	$_____
_____	$_____	_____	$_____	$_____	$_____	___%	$_____	$_____
_____	$_____	_____	$_____	$_____	$_____	___%	$_____	$_____

7

Insert additional claims as needed.

3.3 Secured claims excluded from 11 U.S.C. § 506.

Check one.

❑ **None.** *If "None" is checked, the rest of § 3.3 need not be completed or reproduced.*

❑ The claims listed below were either:

(1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor(s), or

(2) incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value.

These claims will be paid in full under the plan with interest at the rate stated below. These payments will be disbursed either by the trustee or directly by the debtor, as specified below. Unless otherwise ordered by the court, the claim amount stated on a proof of claim or modification of a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) controls over any contrary amount listed below. The final column includes only payments disbursed by the trustee rather than by the debtor. 8

Name of creditor	Collateral	Amount of claim	Interest rate	Monthly plan payment	Estimated total payments by trustee
_____	_____	$_____	_____%	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____
_____	_____	$_____	_____%	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____

Insert additional claims as needed.

3.4 Lien avoidance.

Check one.

❑ **None.** *If "None" is checked, the rest of § 3.4 need not be completed or reproduced.*

The remainder of this paragraph will be effective only if the applicable box on Part 1 of this plan is checked.

❑ The judicial liens or nonpossessory, nonpurchase money security interests securing the claims listed below impair exemptions to which the debtor(s) would have been entitled under 11 U.S.C. § 522(b). A judicial lien or security interest securing a claim listed below will be avoided to the extent that it impairs such exemptions upon entry of the order confirming the plan. The amount of the judicial lien or security interest that is avoided will be treated as an unsecured claim in Part 5. The amount, if any, of the judicial lien or security interest that is not avoided will be paid in full as a secured claim under the plan. See 11 U.S.C. § 522(f) and Bankruptcy Rule 4003(d). *If more than one lien is to be avoided, provide the information separately for each lien.*

Information regarding judicial lien or security interest	Calculation of lien avoidance		Treatment of remaining secured claim
Name of creditor _____	a. Amount of lien	$_____	**Amount of secured claim after avoidance** (line a minus line f) $_____
	b. Amount of all other liens	$_____	
Collateral _____	c. Value of claimed exemptions	+ $_____	**Interest rate** (if applicable) _____ %
	d. Total of adding lines a, b, and c	$_____	
Lien identification (such as judgment date, date of lien recording, book and page number) _____ _____	e. Value of debtor's interest in property	− $_____	**Monthly plan payment** $_____
	f. Subtract line e from line d.	$_____	**Estimated total payments on secured claim** $_____

Extent of exemption impairment
(*Check applicable box*):

❑ **Line f is equal to or greater than line a**.
The entire lien is avoided. *(Do not complete the next column.)*

❑ **Line f is less than line a.**
A portion of the lien is avoided. (*Complete the next column.)*

Insert additional claims as needed.

3.5 Surrender of collateral.

Check one.

❑ **None.** *If "None" is checked, the rest of § 3.5 need not be completed or reproduced.*

❑ The debtor(s) elect to surrender to each creditor listed below the collateral that secures the creditor's claim. The debtor(s) consent to termination of the stay under 11 U.S.C. § 362(a) and § 1301 with respect to the collateral, upon confirmation of the plan. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in Part 5 below.

9

Name of creditor	Collateral
_____	_____
_____	_____

Insert additional claims as needed.

Part 4: Treatment of ~~Trustee's~~ Fees and Priority Claims

10

4.1 General

Trustee's fees and all allowed priority claims other than those treated in § 4.6 will be paid in full without interest.

4.2 Trustee's fees

Trustee's fees are estimated to be _____% of plan payments; and during the plan term, they are estimated to total $_____.

4.3 Attorney's fees

The balance of the fees owed to the attorney for the debtor(s) is estimated to be $_____.

4.4 Priority claims other than attorney's fees and those treated in § 4.5.

Check one.

❑ **None.** *If "None" is checked, the rest of § 4.4 need not be completed or reproduced.*

❑ The debtor estimates the total amount of other priority claims to be _____.

4.5 Domestic support obligations assigned or owed to a governmental unit and paid less than full amount.

Check one.

❑ **None**. *If "None" is checked, the rest of § 4.5 need not be completed or reproduced.*

❑ The allowed priority claims listed below are based on a domestic support obligation that has been assigned to or is owed to a governmental unit and will be paid less than the full amount of the claim under 11 U.S.C. § 1322(a)(4), but not less than the amount that would have been paid on such claim if the estate of the debtor were liquidated under chapter 7, see 11 U.S.C. § 1325(a)(4).

Name of creditor	Amount of claim to be paid
_____	$_____
_____	$_____

Insert additional claims as needed.

Part 5: Treatment of Nonpriority Unsecured Claims

~~5.1 General~~

~~Nonpriority unsecured claims will be paid to the extent allowed as specified in this Part.~~

11

5.1 Nonpriority unsecured claims not separately classified.

Allowed nonpriority unsecured claims that are not separately classified will be paid, pro rata. If more than one option is checked, the option providing the largest payment will be effective. *Check all that apply.*

- ❑ The sum of $_____.
- ❑ _____% of the total amount of these claims.
- ❑ The funds remaining after disbursements have been made to all other creditors provided for in this plan.

If the estate of the debtor(s) were liquidated under chapter 7, nonpriority unsecured claims would be paid approximately $_____. Regardless of the options checked above, payments on allowed nonpriority unsecured claims will be made in at least this amount.

5.2 Interest on allowed nonpriority unsecured claims not separately classified. *Check one.*

- ❑ **None.** *If "None" is checked, the rest of § 5.3 need not be completed or reproduced.*
- ❑ Interest on allowed nonpriority unsecured claims that are not separately classified will be paid at an annual percentage rate of ____ % under 11 U.S.C. §1325(a)(4), and is estimated to total $ _____.

5.3 Maintenance of payments and cure of any default on nonpriority unsecured claims. *Check one.*

- ❑ **None.** *If "None" is checked, the rest of § 5.4 need not be completed or reproduced.*
- ❑ The debtor(s) will maintain the contractual installment payments and cure any default in payments on the unsecured claims listed below on which the last payment is due after the final plan payment. These payments will be disbursed either by the trustee or directly by the debtor, as specified below. The allowed claim for the arrearage amount will be paid ~~under the plan~~ in full and disbursed by the trustee. The final column includes only payments disbursed by the trustee rather than by the debtor.

12

13

Name of creditor	Current installment payment	Amount of arrearage to be paid	Estimated total payments by trustee
_____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	$_____
_____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	$_____

Insert additional claims as needed.

5.4 Other separately classified nonpriority unsecured claims. *Check one.*

- ❑ **None.** *If "None" is checked, the rest of § 5.5 need not be completed or reproduced.*
- ❑ The nonpriority unsecured allowed claims listed below are separately classified and will be treated as follows:

Name of creditor	Basis for separate classification and treatment	Amount to be paid on the claim	Interest rate (if applicable)	Estimated total amount of payments
_____	_____	$_____	_____%	$_____
_____	_____	$_____	_____%	$_____

Insert additional claims as needed.

Part 6: Executory Contracts and Unexpired Leases

6.1 The executory contracts and unexpired leases listed below are assumed and will be treated as specified. All other executory contracts and unexpired leases are rejected. *Check one.*

❑ **None.** *If "None" is checked, the rest of § 6.1 need not be completed or reproduced.*

❑ **Assumed items.** Current installment payments will be disbursed either by the trustee or directly by the debtor, as specified below, subject to any contrary court order or rule. Arrearage payments will be disbursed by the trustee. The final column includes only payments disbursed by the trustee rather than by the debtor.

14

15

Name of creditor	~~Property description~~ Description of leased property or executory contract	Treatment (Refer to other plan section if applicable)	Current installment payment	Amount of arrearage to be paid	Estimated total payments by trustee
_____	_____	_____ _____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	$_____
_____	_____	_____ _____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	$_____

Insert additional contracts or leases as needed.

Part 7: Order of Distribution of Trustee Payments

7.1 The trustee will make the monthly payments required in Parts 3 through 6 in the following order, with payments other than those listed to be made in the order determined by the trustee:

16

~~a. Trustee's fees _____~~

a. _____

b. _____ *Insert additional lines if needed.*

Part 8: Vesting of Property of the Estate

8.1 Property of the estate ~~shall revest~~ will vest in the debtor(s) upon

Check the applicable box:

- ❑ plan confirmation.
- ❑ ~~closing of the case~~ entry of discharge.
- ❑ other: _____.

Part 9: Nonstandard Plan Provisions

❑ **None.** *If "None" is checked, the rest of Part 9 need not be completed or reproduced.*

Under Bankruptcy Rule 3015(c), nonstandard provisions are required to be set forth below.

These plan provisions will be effective only if the applicable box in Part 1 of this plan is checked.

_____

_____

_____

_____

_____

Part 10: Signatures

✘ _____ Date_____

Signature of Attorney for Debtor(s)

✘ _____ Date_____

✘ _____ Date_____

Signature(s) of Debtor(s) (required if not represented by an attorney; otherwise optional)

~~Chapter 13 Plan~~ Exhibit: ~~Estimated~~ Total Amount~~s~~ of Estimated Trustee Payments 19

The trustee will make the following estimated payments on allowed claims in the order set forth in Section 7.1:

a.	**Maintenance and cure payments on secured claims** (*Part 3, Section 3.1 total*):		$_____
b.	**Modified secured claims** (*Part 3, Section 3.2 total*):		$_____
c.	**Secured claims excluded from 11 U.S.C. § 506** (*Part 3, Section 3.3 total*):		$_____
d.	**Judicial liens or security interests partially avoided** (*Part 3, Section 3.4 total*):		$_____
e.	~~Fees administrative~~ **and** ~~other~~ **priority claims** (*Part 4 total*):		$_____ 20
f.	**Nonpriority unsecured claims** (*Part 5, Section 5.2 total*):		$_____
g.	**Interest on allowed unsecured claims** (*Part 5, Section 5.3 total*)		$_____
h.	**Maintenance and cure payments on unsecured claims** (*Part 5, Section 5.4 total*)		$_____
i.	**Separately classified unsecured claims** (*Part 5, Section 5.5 total*)		$_____
j.	Trustee ~~Arrearage~~ **payments on executory contracts and unexpired leases** *(Part 6, Section 6.1 total)*	+	$_____ 21

Total of lines a through j..... $_____