ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of December 8-9, 1994

Washington, D.C.

Minutes

The Advisory Committee on Bankruptcy Rules met in the Thurgood Marshall Federal Judiciary Building in Washington, D.C., December 8-9, 1994. The following members were present:

Bankruptcy Judge Paul Mannes, Chairman

District Judge Adrian G. Duplantier

District Judge Eduardo C. Robreno

Honorable Jane A. Restani, United States Court

of International Trade

Bankruptcy Judge Donald E. Cordova

Bankruptcy Judge Robert J. Kressel

Bankruptcy Judge James W. Meyers

R. Neal Batson, Esquire

Kenneth N. Klee, Esquire

J. Christopher Kohn, Esquire, United States

Department of Justice

Leonard M. Rosen, Esquire

Gerald K. Smith, Esquire

Henry J. Sommer, Esquire

Professor Charles J. Tabb

Professor Alan N. Resnick, Reporter

Circuit Judge Alice M. Batchelder was unable to attend. Joseph Patchan, Director Designee, represented the Executive Office for United States Trustees.

The following representatives of the Committee on Rules of Practice and Procedure also attended:

District Judge Alicemarie H. Stotler, Chair

District Judge Thomas S. Ellis, III, liaison to the Advisory Committee

Peter G. McCabe, Assistant Director, Administrative Office of the United States Courts, Secretary

The following additional persons attended all or part of the meeting: Perry Apelbaum, counsel, House Subcommittee on Economic and Commercial Law; James G. Whiddon, counsel, Senate Subcommittee on Courts and Administrative Practice; Richard G. Heltzel, Clerk, United States Bankruptcy Court for the Eastern District of California; Mark Van Allsburg, Clerk, United States Bankruptcy Court for the Western District of Michigan; Francis F. Szczebak, Patricia S. Channon, James H. Wannamaker, and John D. Howard, Bankruptcy Judges Division, Administrative Office of the United States Courts; Mary Louise Mitterhoff, Bankruptcy Court Administration Division, Administrative Office of the United States Courts; John K. Rabiej, Joseph F. Spaniol, Jr., Mark D. Shapiro, and Judith W. Krivit, Rules Committee Support Office, Administrative Office of the United States Courts; Elizabeth C. Wiggins, Federal Judicial Center; and several members of the public.

The following summary of matters discussed at the meeting should be read in conjunction with the various memoranda and other written materials referred to, all of which are on file in the office of the Secretary to the Committee on Rules of Practice and Procedure. Unless otherwise indicated, all memoranda referred to were included in the agenda book for the meeting.

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

INTRODUCTORY MATTERS

The Chairman introduced Bankruptcy Judges Cordova and Kressel, new members of the Committee, and Mr. Patchan, who has been designated to head the Executive Office for United States Trustees. (Mr. Patchan was a bankruptcy judge from 1969 to 1975 and a member of the Committee from 1969 to 1991.) The Chairman also welcomed to the meeting Judge Stotler, Judge Ellis, Mr. Apelbaum, and Mr. Whiddon.

The Chairman said he called the special meeting for the purpose of considering what immediate action is required as to the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms as a result of the enactment of the Bankruptcy Reform Act of 1994.

The Reporter stated that two provisions in the Reform Act affect the Bankruptcy Rules but do not require action by the committee. First, 28 U.S.C. § 2075 has been amended to make amendments to the Bankruptcy Rules effective on December 1 of the year in which they are promulgated by the Supreme Court. Second, Rule 7004 was amended to require, with certain exceptions, service by certified mail on insured depository institutions.

The Reporter suggested that, in view of the time required for completing the rules amendment process, the Committee consider proposing "suggested interim rules" for adoption as local court rules pending the promulgation of amendments to the Bankruptcy Rules. The same process was used when chapter 12 was added to the Bankruptcy Code in 1986. **A motion to request that the Standing Committee on Rules of Practice and Procedure expedite the consideration and approval of the amendments required by the Reform Act failed for lack of a second.** Mr. Rosen said the experience gained from using interim rules might assist in the formation of permanent rules. **The consensus of the Committee was to propose interim rules and to complete the full rules amendment process for permanent rules.**

RULES AMENDMENTS

Notices to Creditors. The Reporter stated that section 225 of the Reform Act amended section 342 of the Bankruptcy Code to provide that notices required to be given by a debtor to creditors must contain the name, address, and taxpayer identification number of the debtor, although failure to do so does not invalidate the notice. The Reporter discussed three alternative responses to the statutory change: 1) do nothing and let the statute speak for itself; 2) amend rule 2002(n) only to the extent required by section 342(c); or 3) amend Rule 1005 to require the information specified in section 342(c) in the caption of every notice, regardless of who gives the notice.

Mr. Klee outlined the history of the provision, which he said was prompted by creditors' desires to identify debtors in their databases more readily. Because it was argued that requiring the use of account numbers would be too burdensome, creditors agreed to the use of the debtor's name, address, and taxpayer identification number. Mr. Klee said the reference to invalidity of the notice was included in response to a court decision that a debt was not discharged because two digits in the debtor's Social Security were transposed in a notice. The amendment was restricted to notices by debtors because they have the necessary information. Mr. Klee said notices given by bankruptcy clerks were not considered.

Professor Tabb moved to accept the Reporter's draft amendment for the second alternative as set out in his memorandum of November 7, 1994. Several committee members questioned the need for putting the debtor's address in every caption. Professor Tabb agreed to a request to delete the phrase "The caption of" from the Reporter's draft. Mr. Sommer said the easiest place to put section 342(c) information is in the caption. The Reporter said including the information in the caption would recognize the legislative history, which stated that Congress intended for the caption of every bankruptcy notice to include the information. Professor Tabb returned to his original motion, without the deletion. **The motion to**

approve the original text of the Reporter's draft amendment carried by a vote of 13-0.

Election of Chapter 11 Trustee. The Reporter stated that section 211 of the Reform Act amended section 1104 of the Bankruptcy Code to permit creditors to elect a disinterested person to serve as trustee in a chapter 11 case if a timely request is made for an election. The Reporter said he assumed that the person elected must be approved by the court as "disinterested" and that the U.S. trustee should apply for the approval with full disclosure of the person's connections. Further, the Reporter said he believed the U.S. trustee should appoint a trustee under section 1104(d) (after consultation) as soon as practicable after the court orders the appointment of a chapter 11 trustee and that this trustee will serve unless and until another person is elected under new section 1104(b). Accordingly, the Reporter offered draft amendments to Rules 2007.1 and 2002(a).

The Committee discussed whether an elected trustee is subject to appointment by the U.S. trustee and court approval under section 1104(d). Several members said the U.S. trustee should not be required to appoint an elected trustee which the U.S. trustee believes is unqualified. Other members said the appointment is automatic but the U.S. trustee should inform the court of any factors (positive or negative) relative to the appointment. Mr. Klee noted that the debtor's exclusive right to file a plan and several other chapter 11 provisions are tied to the appointment of a trustee, not to the election of a trustee. Mr. Rosen said a court order approving the trustee is particularly important because millions of dollars may be turned over to a chapter 11 trustee. The Committee agreed by a straw vote that the person elected should be appointed by the U.S. trustee and approved by the court.

Judge Restani moved to approve the draft revision of Rule 2007.1 in the Reporter's memorandum of November 7, 1994, with the addition of the words "approval of" after the word "for" in lines 24 and 28. **The motion carried on a vote of 9-2.** Mr. Sommer moved to require notice of the request for election. The Reporter said this is unnecessary because creditors will get notice of the meeting of creditors (called for the election) within a few days. **The motion failed. The Committee agreed by consensus to delete the brackets and retain the bracketed language in section (b)(1) of the Reporter's draft.** Mr. Klee moved to insert the phrase "appoint the person elected to be trustee" after the word promptly in line 28. Mr. Smith said that if the Committee believes the U.S. trustee must appoint the person elected, then the rule should say so. **The motion carried with one dissenting vote.**

Mr. Klee moved to amend line 27 by inserting the phrase "or, for cause shown, any party in interest," after the word "trustee". The Reporter stated that, under the current rule, only the U.S. trustee can apply for court approval of an appointment of a chapter 11 trustee, but, if the U.S. trustee fails to act, a party could seek redress under Rule 2020. **The Committee agreed that the U.S. trustee should make the application.** Judge Restani said the word "only" in line 43 was too strong. **After a discussion of whether the word created a inference that Rule 2020 was inapplicable, the Committee voted unanimously to delete "only." A motion to insert the phrase "approved in accordance with" after the word "and" in line 37 was approved unanimously.**

The Committee approved the draft amendment to Rule 2002(a) in the Reporter's memorandum of November 7, 1994, by consensus.

Filing Proofs of Claim. Section 213(a) of the Reform Act amended section 502(b)(9) of the Bankruptcy

Code to specify that claims filed by governmental units are timely if they are filed within 180 days after the order for relief. The Reporter stated that the statutory change made the proposed amendment to Rule 3002(d), which has been published for comment by the bench, bar, and public, unnecessary.

The Committee discussed whether the 180-day limit was intended to apply to just chapter 7 cases or to cases in all chapters. Mr. Klee said the understanding in the proponents' negotiations with Congress was that the amendment would apply to all chapters. The Reporter stated that he prepared the draft amendment to Rule 3002 set out in his memorandum of November 7, 1994, on that assumption although the time for filing by governmental units could be fixed by the rule as long as it did not conflict with the statute.

Mr. Klee stated that all governmental units should be treated the same way in order to avoid discriminating against foreign governments. **A motion to delete the phrase "of the United States, a state, or a subdivision thereof" from lines 17-18 of the Reporter's draft and to substitute "of a governmental unit made" carried unanimously.**

Mr. Sommer moved to add the following language: "If the claim is tardily filed, the party filing the claim shall serve copies on the trustee and the debtor." He said chapter 13 trustees should be served so that they do not have to constantly check the claims dockets in thousands of cases which may remain pending for several years. Several Committee members questioned whether checking the dockets is an unreasonable burden. The Committee discussed whether the amendment should include sanctions for not serving the trustee and whether it is proper for the rules to impose such sanctions. **Professor Tabb's motion to table the matter until the next Committee meeting carried without dissent. Professor Tabb's motion to approve the remaining changes in Rule 3002 was passed unanimously.**

Small Business Cases. Section 217 of the Reform Act amended the Bankruptcy Code by adding a new definition of "small business" and making special provisions for chapter 11 cases in which the debtor is a small business. The Reporter presented drafts of a new Rule 1020, Election to be Considered a Small Business in a Chapter 11 Reorganization Case, and amendments to Rule 3017.

Judge Kressel suggested that all parties should receive notice if the court orders that no creditors' committee be appointed under section 1102(a)(3) in a small business case. Mr. Batson stated that the statute did not require notice and that new Rule 1020 should not do so, either. **His motion not to require the notice carried without dissent.**

The Committee discussed the form and timing of the debtor's election to be considered as a small business and the potential for abuse if the debtor made the election shortly before the 160-day deadline for any party to file a plan. The Reporter said he used a 100-day deadline for the election in his draft because that coincides with the end of a small business debtor's exclusivity period.

The Reporter stated that his draft would permit, but not require, the debtor to make the election on the petition. Mr. Kohn stated that making the election on the petition would allow the parties to proceed in a more informed manner and would avoid any mischief in the timing of the election. The Reporter said the debtor and its counsel might be unaware of the possibility of making the election at the time of filing but

that the judge could raise it at a status conference. Mr. Klee asked why the Reporter had not drafted a rule for chapter 11 status conferences. The Reporter stated that the statute was detailed and that no rule appeared to be needed.

Judge Restani moved to approve the Reporter's draft Rule 1020 after substituting "60 days" for "100 days" in line 4, substituting "a later" for "another" in line 5, and adding "for good cause shown" to the end of line 6. **The motion carried with one dissenting vote.** Mr. Klee proposed adding the following: "For cause shown, the court may allow the debtor to withdraw the election." **His motion failed by a vote of 4-8.**

Judge Kressel said the amendment to Rule 3017 should preserve the court's right to disapprove a conditionally-approved disclosure statement, even if no party objects. The Reporter agreed. **A motion to delete the last sentence of the draft carried with one dissenting vote.** Judge Duplantier suggested a separate Rule 3017.1 for small business cases. **The Committee agreed in a straw vote.**

Mr. Klee suggested deleting the word "unimpaired" on line 45 of the Reporter's draft or adding a reference to a convenience class of claims under section 1122(b) of the Bankruptcy Code. The Reporter said deleting the requirement for sending copies of the plan and disclosure statement to unimpaired classes was very controversial and indicated that not sending the documents to some impaired creditors would be more controversial. The Committee discussed whether a plan proponent can go directly to cramdown for a class when the debtor is insolvent. **Professor Tabb's motion to table the matter until the March meeting passed with one dissenting vote.**

Mr. Smith asked whether the Reporter referred to the debtor's "application" for conditional approval of the disclosure statement in line 109 in order to avoid the requirement of notice. The Reporter stated that he used "application" in an effort to be consistent with Rule 9013 and the streamlined process used for matters such as "first day" orders. Judge Duplantier asked why he did not refer to "ex parte motions" as in civil practice before the district court.

In response to a question about the use of "application" in the bankruptcy rules, Mr. Patchan said the drafters of the 1983 rules tried to restrict use of the word to administrative matters in an effort to be as consistent as possible with civil practice. He said the drafters avoided use of the phrase "ex parte" whenever possible because of its bad connotation in past bankruptcy practice and the policy against ex parte meetings.

The Reporter said he could substitute "ex parte motion" for the word "application" in the draft but that the change could lead to confusion until the Committee considers the use of "application" throughout the bankruptcy rules. **A motion to make the substitution in the draft and require notice pursuant to Rule 9013 failed for lack of a second.** Mr. Batson said requiring notice would defeat the goal of "fast tracking" small business cases. Judge Robreno said the rule should acknowledge that Congress permitted an ex parte process.

Judge Kressel moved to delete the phrase ", on application of the plan proponent," from line 109. **The Chairman ruled the motion out of order.** In response to a question about a deadline for a secured

creditor's section 1111(b) election in a small business case, the Reporter agreed to add a reference to Rule 3014 to the Committee Note. He said the creditor could not make the election by the time of the conditional approval of the disclosure statement because the creditor would not get a copy of the plan until later. **The Committee agreed that the Reporter would include the substance of his draft Rule 3017(f) in a separate small business rule**.

Appeals. The Reporter recommended that the Committee consider amending subsections (a), (b), and (e) of Rule 8001 to conform to the Reform Act's provisions for appeals as a matter of right from exclusivity orders and for the creation of Bankruptcy Appellate Panel (BAP) Services. The Reform Act reversed the statutory presumption that bankruptcy appeals will go to the district court and provided that, if a BAP is available in the district, bankruptcy appeals will go to it unless one of the parties elects to go to the district court.

The Reporter said it seems logical for the appellant to make the election in the Notice of Appeal. Judge Meyers stated, however, that the Notice of Appeals printed by some publishers contain references to the district court which could be viewed as an election -- albeit inadvertent -- to take the appeal to the district court. He said requiring that the election be made in a separate writing would avoid the potential problem. Judge Restani moved to approve the Reporter's draft revision to Rule 8001 after deleting the bracketed language on lines 38-40. **The motion carried on a vote of 12-0.**

After discussing whether Rule 8007 should be amended to provide in more detail for the transmittal of the record on appeal, the Committee agreed that the circuits could handle the matter or leave it to the bankruptcy clerks to resolve.

Jury Trials. The Reporter stated that former Rule 9015 was abrogated in 1987 to avoid any inference that the rule conferred a right to a jury trial in a bankruptcy case. Since then, the Supreme Court held in Granfinanciera, S.A. v. Norberg that a person who has not filed a proof of claim in the bankruptcy case is entitled to a jury trial under the Seventh Amendment in certain proceedings, such as fraudulent conveyances or preference actions. Further, the Reform Act provides that a bankruptcy judge may conduct a jury trial if specially designated by the district court to do so and if the parties expressly consent.

The Reporter presented a draft of a new Rule 9015 and an alternative which included issues arising in involuntary petitions and specified that the bankruptcy judge may determine whether there is a right to a jury trial when one is demanded. The Committee discussed whether the district court should give the bankruptcy judges a blanket designation to conduct jury trials or do so on a case-by-case basis and whether the bankruptcy judge may determine whether there is a right to a jury trial.

Judge Duplantier said there was no need for a separate, detailed bankruptcy rule on jury trials. He said the bankruptcy rule could state that when a right to a jury trial exists, the following civil rules apply: Civil Rule 38, part of Rule 39, and Rules 47-51. Consent to the bankruptcy judge's conducting the jury trial could be patterned on the procedure in Civil Rule 73(b) for the parties' filing a joint consent to a jury trial before a magistrate judge. Mr. Sommer said incorporating the civil rules to the maximum extent possible would permit use of the extensive body of case law developed under those rules.

Judge Meyers said a bankruptcy rule is needed on the form and timing of the demand for a jury trial. The Chairman stated that a bankruptcy rule is needed because the Civil Rule 81(a) provides that the Civil Rules do not apply to proceedings in bankruptcy unless specifically incorporated. **The Reporter agreed to present another draft of a rule on jury trials.**

Applicability of Rules in Alabama and North Carolina. Rule 9035 provides that the bankruptcy rules apply to cases in Alabama and North Carolina only to the extent that the rules are not inconsistent with the provisions of title 11 and title 28 effective in the case. The Reporter stated that the Reform Act contained provisions relating to bankruptcy administrators in those two states which will not be codified in either title 11 or title 28. For that reason he recommended amending Rule 9035 to apply the rules to the extent that they are not inconsistent with any federal statute effective in the case.

Mr. Klee questioned whether the amendment would constitute a substantive position on the constitutionality of the bankruptcy administrator program. The Reporter said the amendment made a change required by statute. **The proposed amendment was approved by an unanimous vote.**

LONG RANGE PLANNING COMMITTEE

Mr. Klee presented the report from the Long Range Planning Subcommittee. He distributed draft copies of two surveys developed with the help of Elizabeth Wiggins of the Federal Judicial Center to ascertain the views of the bankruptcy community on the scope, format, and organization of the Bankruptcy Rules. One version is to be mailed to a sample of bankruptcy attorneys and the other is to be sent to bankruptcy judges, bankruptcy clerks, U.S. trustees and their assistants, chapter 7 trustees, and chapter 13 trustees.

At Judge Ellis' request, Mr. Klee agreed to send the survey to chief district judges. At Mr. Kohn's suggestion, he agreed to include references to the bankruptcy rules and forms. At Judge Meyers' suggestion, Ms. Wiggins agreed to include questions on the scope, format, and organization of local bankruptcy rules. The two authors also agreed to send the survey to bankruptcy law professors and to delete the phrase "In your opinion" from the questions. **The Committee voted to continue the project.**

CHANGES TO OFFICIAL FORMS

Mr. Sommer presented the amendments to the Official Bankruptcy Forms approved by the Forms Subcommittee on December 7, 1994, and set out in the subcommittee's memorandum of December 8, 1994.

Official Form 1. Voluntary Petition. The Committee discussed the difference between being a small business and electing to be considered one, and whether there should be a check box for the election on the petition. **A motion was approved unanimously to have two "check box" lines on the petition**

worded as follows:

[ ] Debtor is a small business as defined in 11 U.S.C. § 101.

[ ] Debtor is and elects to be considered a small business.

(11 U.S.C. § 1121) (Optional)

At Mr. Klee's request, the Committee agreed to substitute the phrase "I have been authorized to file this petition on behalf of the debtor" for the phrase "the filing of this petition on behalf of the debtor has been authorized" in the first sentence of the corporate or partnership debtor declaration on page two. In order to make space for the Certification and Signature by Non-Attorney Bankruptcy Petition Preparer, the Committee agreed to move the reference to Exhibit "A" to the corporate or partnership debtor declaration by adding the following sentence: "If debtor is a corporation filing under chapter 11, Exhibit "A" is attached and made part of this petition."

In order to clarify a chapter 9 debtor's eligibility for relief, the Committee agreed, at Mr. Klee's request, to revise the Request for Relief on page two by inserting the phrase "is eligible for and" after the word "Debtor". The Committee also agreed to the following changes on page one of the Petition:

-- Move the Small Business section to the right-hand column on page one.

-- Insert the phrase "check one" after the phrases "TYPE OF DEBTOR" and "NATURE OF DEBT" in the left-hand column on page one.

Official Form 19. Certification and Signature of Non-Attorney Bankruptcy Petition Preparer. The Committee discussed at some length the Certification and Signature and its completion by preparers. **The Committee agreed to move the signature line and date to the bottom of the form. The Committee agreed to add the following warning below the signature: "A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result**

in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C.

§ 156".

Although the statute requires the disclosure of only the Social Security numbers of other individuals who prepared or assisted in preparing the document, the Committee agreed to require the disclosure of their names as well. The Committee agreed to add the phrase "of Bankruptcy Petition Preparer" under the line for the preparer's printed or typed name and to move the line above the preparer's Social Security number.

By acclamation, the Committee approved the Certification and Signature, as revised, as a new Official Form 19 and as a block on the second page of the Petition. The Committee also approved

the Petition as revised.

Official Form 3. Application and Order to Pay Filing Fee in Installment. The Committee approved the addition of the Certification and Signature of Non-Attorney Bankruptcy Petition Preparer to the Application and Order.

Official Form 6. Schedules. The Subcommittee proposed a number of amendments to Schedule E - Creditors Holding Unsecured Priority Claims. In order to reduce the need for future changes in the form, the Subcommittee recommended deleting the dollar amount of priorities because the amounts are subject to adjustment every three years under section 104 of the Bankruptcy Code, as amended by the Reform Act. The Subcommittee suggested deleting the references to subsections of section 507(a) of the Bankruptcy Code because the subsections are renumbered frequently by Congress.

In order to make it easier for debtors to complete the form accurately, the Committee decided to retain the dollar amounts, as amended by the Reform Act, in Schedule E but to include a footnote as follows: "Amounts are subject to adjustment on April 1, 1998, and every three years thereafter with respect to cases commenced on or after the date of adjustment." The Committee deleted the reference to omitting dollar amounts from the Committee Note. The Committee also decided to retain the references to subsections of section 507(a). Including the references will make it easier to complete the form and the subsections usually are renumbered only when Congress adds a new priority, which requires revising the form anyway. **The Committee agreed to add a reference to commissions owing to qualifying independent sales representatives to Schedule E and a Certification and Signature of Non-Attorney Bankruptcy Petition Preparer at the end of Form 6. The Committee approved the Schedules, as amended.**

Official Form 7. Statement of Financial Affairs. Mr. Sommer said the Subcommittee considered adding a question concerning single asset real estate but decided not to do so because secured creditors have other ways to determine the information. The only change recommended by the Subcommittee was the addition of a Certification and Signature of Non-Attorney Bankruptcy Petition Preparer. Mr. Klee suggested that the cover sheet state that municipalities need not complete the form. Ms. Channon said Rule 1007(b) clearly provides that chapter 9 debtors are not required to prepare and file the statement. **The Committee approved the revised Statement of Financial Affairs as proposed by the Subcommittee.**

Official Form 8. Individual Debtor's Statement of Intention. The only change recommended by the Subcommittee was the addition of a Certification and Signature of Non-Attorney Bankruptcy Petition Preparer. **The Committee approved the revision.**

Official Form 9. Notice of Commencement of Case under the Bankruptcy Code, Meeting of Creditors, and Fixing of Dates. The Committee approved the Subcommittee's recommendation to add references to dischargeability actions under section 523(a)(15) to Forms 9(A), 9(C), 9(E), 9(E) (Alt.), 9(G), and 9(H). The Subcommittee recommended including separate deadlines for filing claims for governmental units and all other creditors on Forms 9(C), 9(D), 9(E)(Alt.), 9(F)(Alt.), 9(G), 9(H), and 9(I). **The Committee agreed that the claims deadline box would read as follows:**

DEADLINE TO FILE A PROOF OF CLAIM

For all creditors (other than governmental units): For governmental units:

The Committee approved Official Form 9, as revised.

Official Form 10. Proof of Claim. The Committee agreed to add the following footnote to the dollar amounts in the priority section: **"Amounts are subject to adjustment on 4/1/98 and every three years thereafter with respect to cases commenced on or after the date of adjustment." The Committee agreed to the conforming changes recommended by the Subcommittee.**

Official Form 16. Captions. The Subcommittee recommended:

-- Revising Form 16A to include the debtor's address in furtherance of the debtor's duty under section 342(c) of the Code to include this information in every notice given by the debtor;

-- Noting on Form 16B that it may be used if section 342(c) is not applicable;

-- Revising Form 16C for use as the caption of a complaint in an adversary proceeding filed by the debtor; and

-- Redesignating former Form 16C as Form 16D for use as a caption in an adversary proceeding other than for a complaint filed by the debtor. **The Committee approved the four forms as recommended.**

Form 17. Notice of Appeal. Mr. Sommer said the draft Notice of Appeal approved by the Forms Subcommittee is consistent with the Committee's vote to require a separate Statement of Election. The Committee discussed whether the warning concerning the appellant's election to proceed in the district court should be included in the Notice of Appeal; if so, in what form; and whether a similar warning should be included for the appellee. **The Committee agreed to move the warning below the appellant's signature and revise it to read as follows: "If a Bankruptcy Appellate Panel is authorized to hear this appeal, each party has a right to have the appeal heard by the district court. The appellant may exercise this right only by filing a separate statement at the time of the filing of this notice of appeal." The Committee approved the Notice of Appeal as revised.**

Form 18. Discharge of Debtor. The Committee approved the addition of a reference to dischargeability actions under section 523(a)(15).

CHANGES TO DIRECTOR'S FORMS

The Committee approved conforming changes to the following forms issued by the Director of the Administrative Office under Rule 9009:

18J Discharge of Joint Debtors

18JO Discharge of Joint Debtor

242A Order Discharging Debtor After Completion of Chapter 13 Plan

200 Required Lists, Schedules, Statements and Fees

201 Notice to Individual Consumer Debtor

The Committee approved the following new Director's Forms:

280 Disclosure of Compensation of Bankruptcy Petition Preparer

13S Order and Notice with Respect to Conditionally Approving

Disclosure Statement and Plan in a Small Business Case

15S Order Finally Approving Disclosure Statement and Confirming Plan

281 Appearance of Child Support Creditor or Representative

After discussing the new Form 281, the Committee directed the Chairman to write the chairman of the Committee on the Administration of the Bankruptcy System to request that the Bankruptcy Committee consider whether section 304(g) of the Reform Act exempted child support creditors from payment of fees for filing motions for relief from the automatic stay and adversary proceedings.

INTERIM RULES

The Committee considered the interim rules drafted by the Reporter as both suggested interim local rules and, with appropriate stylistic changes, as proposed amendments to the national Bankruptcy Rules. (These drafts were not contained in the agenda materials.) The final draft of the proposed amendments covered by the interim rules will not be submitted until after the March 1995 meeting.

Interim Rule 1. Election of Trustee in Chapter 11 Reorganization Case. The Committee approved the interim rule as presented by the Reporter.

Interim Rule 2. Small Business Chapter 11 Reorganization Case. The Committee approved the interim rule as presented and deleted the second paragraph of the draft Committee Note.

Interim Rule 3. Appeals to the District Court [or Bankruptcy Appellate Panel]. The Committee concluded that, to the extent a rule is needed, the districts and circuits can develop their own. The Chairman will write the Ninth Circuit to suggest that it adopt an interim rule.

Interim Rule 3. Jury Trials. The Reporter presented a draft containing the alternative language he prepared that morning in response to the Committee's request on the previous day. Judge Kressel questioned the need for an interim rule on jury trials. The Chairman said he has received requests for such a rule from a number of bankruptcy judges.

The Reporter stated that, as requested by the Committee, he attempted to incorporate by reference the Civil Rules as much as possible. He also informed the Committee that Judge Stotler was unable to attend the meeting on that day, but had given him comments concerning his prior draft. The Reporter stated Judge Stotler's concerns that his prior draft, which combined the form and timing of the parties' consent into one provision, (and which required filing a written statement of consent before a deadline fixed by the court as the "only" method of giving consent), possibly should be changed so that: (1) parties would not be barred from making an oral stipulation on the record consenting to have the bankruptcy judge conduct the jury trial, (the statute does not require written consent), provided consent is given before the time deadline, and (2) the court would have flexibility to set the consent deadline by local rule (rather than by court order in the particular case). This flexibility is needed to enable the court to deal with logistics problems related to jury trials.

In response to Judge Stotler's comments, the Committee agreed to delete the word "only" from the consent subsection of the Reporter's draft. The Committee also agreed to leave the time period to local rule. The Reporter stated that leaving the period to local rule would enable the local courts, if they so desire, to provide by local rule that a judge may fix a different date in a particular case.

After a discussion focusing on the Reporter's draft, the Committee agreed to delete the separate paragraph on removed actions, to delete a separate sentence on removed actions, and to make several other stylistic changes. The Committee approved the following text by unanimous vote:

Interim Rule 3. Jury Trials

(a) APPLICABILITY OF CERTAIN FEDERAL RULES OF CIVIL PROCEDURE. Rules 38, 39, and 47-51 F.R.Civ.P., and Rule 81(c) F.R.Civ.P. as it applies to jury trials, apply in cases and proceedings, except that a demand made under Rule 38(b) F.R.Civ.P. shall be filed in accordance with Bankruptcy Rule 5005.

(b) CONSENT TO HAVE TRIAL CONDUCTED BY BANKRUPTCY JUDGE. If the right to a jury trial applies, a timely demand has been filed under Rule 38(b) F.R.Civ.P., and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) by jointly or separately filing a statement of consent no later than [insert period specified by local rule].

NOTE

This rule provides procedures relating to jury trials. The rule is not intended to expand or create any right to trial by jury where such right does not otherwise exist.

Judge Ellis asked whether the Advisory Committee would issue the suggested interim rules immediately. The Reporter stated that the original plan was to do so but that, since the standing committee is meeting in four weeks, Judge Mannes and Judge Stotler had agreed that the interim rules would be referred to the Standing Committee with a request for that committee's concurrence. He said the interim rules would be accompanied by a cover letter from Judge Mannes which states that the interim

rules are provided for consideration for use as local rules pending the adoption of national bankruptcy rules.

Respectfully submitted,

James H. Wannamaker, III