ADVISORY COMMITTEE
ON
BANKRUPTCY RULES

Jackson Hole, WY
September 6-7, 2007

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of September 6-7, 2007
Jackson Hole, Wyoming

Agenda
(8/13/07)

Introductory Items

1. Approval of minutes of Marco Island meeting of March 29-30, 2007 (Judge Zilly)

2. Oral reports on meetings of other Rules Committees:

   (A) June 2007 meeting of the Committee on Rules of Practice and Procedure. (Judge Zilly and Professor Morris).

   Draft minutes of the Standing Committee meeting will be distributed separately.

   (B) April 2007 meeting of the Advisory Committee on Appellate Rules Committee. (Judge Zilly)
   (C) June 2007 meeting of the Committee on the Administration of the Bankruptcy System. (Judge Zilly and Judge Cox)
   (D) April 2007 meeting of Advisory Committee on Civil Rules. (Judge Wedoff)
   (E) April 2007 meeting of Advisory Committee on Evidence. (Judge Klein)
   (F) Bankruptcy CM/ECF Working Group. (Judge McFeeley)

Action Items

3. Report by the Subcommittee on Attorney Conduct and Health Care. (Judge Schell and Professor Morris)

   Bankruptcy Judge Marvin Isgur's suggestion (Comment 06-BK-011) to amend Rule 2007.2 to require a health care business debtor in a voluntary case to file a motion at the start of the case to seek a determination of whether a patient care ombudsman needs to be appointed.

4. Report by the Subcommittee on Consumer Issues. (Judge Wedoff and Professor Morris)

   (A) Proposed amendments to Rules 4004(a) and 7001 as regards objections to discharge under §§ 727(a)(8) and (9) and 1328(f) based on the insufficient lapse of time between a debtor's bankruptcy cases. The proposed amendments are in response to an informal comment from Bankruptcy Judge Neil Olack.

(B) Proposed amendment to Rule 5009 to provide additional notice to the debtor that the case may be closed without the entry of a discharge due to the debtor's failure to file the statement of completion of a personal financial management course. The proposal is in response to comments submitted by the National Bankruptcy Conference (Comment 06-BK-018) and the National Association of Consumer Bankruptcy Attorneys (Comment 06-BK-020).

(C) Proposals by Bankruptcy Judges Dennis Montali (Comment 06-BK-054) and Paul Mannes to resolve a split in the case law by allowing parties in interest to object to exemptions for a period after the conversion of a case to chapter 7. A copy of Judge Mannes' suggestion is attached.

(D) Possible amendment of the rules to establish a procedure to govern "automatic dismissals" under § 521(i) of the Code. This was prompted by a Comment 06-BK-011 by Bankruptcy Judge Marvin Isgur and Comment 06-BK-020 by the National Association of Consumer Bankruptcy Attorneys. The Reporter's compilation of decisions under this section is attached.

5. Report by the Subcommittee on Business Issues. (Judge Swain and Professor Morris)

(A) Proposed amendment to Rule 1017(a)(2) to set an earlier deadline for the filing of the list of creditors in involuntary cases, in order to facilitate timely noticing of the § 341 meeting of creditors in such cases. The proposal is in response to Comment 06-BK-057 submitted by Chief Deputy Clerk Margaret Grammar Gay of the Bankruptcy Court for the District of New Mexico.

(B) Report on further consideration of possible amendment to Rule 3015(f) to permit post-confirmation objections to chapter 13 plans by taxing authorities. The report reflects consideration of Comment 06-BK-015 submitted by the IRS and the Sense of Congress provision set out in § 716(e)(1) of BAPCPA.

6. Report by the Subcommittee on Technology and Cross Border Insolvency. (Judge McFeeley and Professor Morris)

(A) Proposed amendments to Rules 5009 and 9001 and new Rules 1004.2 and 5012, which were approved at the Seattle meeting and then were withdrawn with a direction to the Subcommittee to consider whether a more extensive set of rules should be adopted for chapter 15 cases.

(B) Possible amendments to Rule 1018 or Rule 7001(7) regarding whether any action brought seeking injunctive relief under §§ 1519(e) and 1521(e) is governed by Rule 7065. The proposal is in response to Comment 05-BR-037 submitted by the

Insolvency Law Committee of the Business Law Section of the State Bar of California on the Interim Rules.

7. Report of Subcommittee on Privacy, Public Access, and Appeals. (Judge Pauley and Professor Morris)

   (A) Possible amendment to either Rule 8003 or Rule 8005 to better coordinate the process governing appeals of interlocutory orders when the appellant also wishes to obtain a stay of the order pending resolution of the appeal. The proposal was submitted by Bankruptcy Judge Colleen Brown as Comment 06-BK-016.

   (B) Proposed amendment to either Rule 9023 or Rule 8002 to respond to an amendment to Civil Rule 59 which would extend the time to file motions that would effectively extend the appeal time in bankruptcy cases.

   (C) Possible amendment to Official Form 10 or Rule 3001 to restrict disclosure of highly personal information contained in the debtor's medical records by advising creditors holding health care claims to submit only the minimally necessary information. The proposal also was part of Comment 06-BK-016 submitted by Judge Brown.

8. Report of Subcommittee on Forms. (Judge Klein, Professor Morris, Mr. Myers)

   (A) Possible deletion of Rule 4008(b) or revision of proposed Form 27.

   (B) Possible refinement of the definition of "creditor" on the back of Official Form 10, the Proof of Claim.

   (C) Proposed revision of Form 16A (Caption Full) to require the filer to provide the debtor's "Employer Identification Number" (if one exists) rather than the "Employer's Identification Number."

   (D) Oral report on the status of the long-range review of the Bankruptcy Forms, including Judge Isgur's proposal (Comment 06-BK-011) to renumber the forms filed at the beginning of consumer cases.

9. Possible technical amendment to Rule 2016(c) to conform the rule to the amendments to section 110(h) of the Code by BAPCPA. Professor Morris.

Discussion Items

10. Possible amendment to Rule 1017(e) as a result of Bankruptcy Judge Wesley Steen's opinion on the application of section 704(b) of the Code in *In re Cadwallder*, 2007 WL

1864154 (Bankr. S.D. Tex. 2007). Copies of the opinion and Judge Steen's letter are attached. Professor Morris.

Information Items

11. Rules Docket.

12. *Bull Pen*: There are no amendments in the Bull Pen.

13. Next meeting reminder: March 27-28, 2008, at The Inn at Perry Cabin in St. Michaels, MD.

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CM/ECF Working Group
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March 14, 2007
Projects

ADVISORY COMMITTEE ON BANKRUPTCY RULES

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William H. Pauley III	D	New York (Southern)	2005	2008
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Laura Taylor Swain	D	New York (Southern)	2002	2008
Eugene R. Wedoff	B	Illinois (Northern)	2004	2007
Jeffrey W. Morris Reporter	ACAD	Ohio	1998	Open

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March 14, 2007
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March 14, 2007
Projects

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of March, 29-30, 2007
Marco Island, Florida

<u>Draft Minutes</u>

The following members attended the meeting:

District Judge Thomas S. Zilly, Chairman
Circuit Judge R. Guy Cole, Jr.
District Judge Irene M. Keeley
District Judge William H. Pauley, III
District Judge Richard A. Schell
District Judge Laura Taylor Swain
Bankruptcy Judge Christopher M. Klein
Bankruptcy Judge Mark B. McFeeley
Bankruptcy Judge Kenneth J. Meyers
Bankruptcy Judge Eugene R. Wedoff
Dean Lawrence Ponoroff
J. Michael Lamberth, Esquire
G. Eric Brunstad, Jr., Esquire
J. Christopher Kohn, Esquire
John Rao, Esquire

The following persons also attended the meeting:

Professor Jeffrey W. Morris, Reporter
Bankruptcy Judge A. Thomas Small, former chairman
District Judge James A. Teilborg, liaison from the Committee on Rules of Practice and Procedure (Standing Committee)
Bankruptcy Judge Jacqueline P. Cox, liaison from the Committee on the Administration of the Bankruptcy System (Bankruptcy Administration Committee)
Bankruptcy Judge Eric L. Frank, former member
Bankruptcy Judge James D. Walker, Jr., former member
Professor Alan N. Resnick, former reporter, former member
K. John Shaffer, Esquire, former member
Professor Daniel R. Coquillette, Reporter to the Standing Committee
Peter G. McCabe, Secretary of the Standing Committee
Clifford J. White, III, Director, Executive Office for U.S. Trustees (EOUST)
Donald F. Walton, Acting Deputy Director, EOUST
Mark A. Redmiles, National Civil Enforcement Coordinator, EOUST
Monique Bourque, Chief Information Officer, EOUST
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the U.S. Courts (Administrative Office)

James Ishida, Rules Committee Support Office, Administrative Office
James H. Wannamaker, Bankruptcy Judges Division, Administrative Office
Stephen "Scott" Myers, Bankruptcy Judges Division, Administrative Office
Robert J. Niemic, Federal Judicial Center (FJC)
Karl F. Kaufman, Sidley Austin, Washington, D.C.

The following persons were unable to attend the meeting:

Patricia S. Ketchum, advisor to the Committee

The following summary of matters discussed at the meeting should be read in conjunction with the memoranda and other written materials referred to, all of which are on file in the office of the Secretary of the Standing Committee. Votes and other action taken by the Committee and assignments by the Chairman appear in **bold**.

INTRODUCTORY MATTERS

The Chairman welcomed the members, advisers, staff, and guests to the meeting. He introduced Judge Cox, who replaced Bankruptcy Judge Dennis Montali as permanent liaison from the Bankruptcy Committee and Judge Teilborg, who replaced Circuit Judge Harris L. Hartz as liaison from the Standing Committee. He welcomed both liaisons. And he expressed the regrets of Ms. Ketchum who was unable to attend the meeting.

Agenda Item 1 (Approval of Minutes of Seattle meeting of September 14-15, 2006)

The Chairman requested a motion to approve the minutes from the Committee September 2006 meeting in Seattle. Motion was made and the **minutes were approved.**

Agenda Item 2 (Oral reports on Meetings of other Rules Committees)

2(A) January 2007 meeting of the Committee on Rules of Practice and Procedure, (Judge Zilly and Professor Morris).

The Chairman said that the Standing Committee had approved in principle the Committee's September 2006 recommendation to publish changes to the rules that would eliminate the separate document requirement in contested matters. Before publishing, however, the Standing Committee asked the Committee to consider stylistic changes to the proposed rules (existing Bankruptcy Rules 7052 and 9021 and new Bankruptcy Rule 7058). The Chairman said that Style Subcommittee considered the changes, and recommended the stylistic changes set out in Agenda Item 2(A). **Motion to approve all stylistic changes and to recommend publishing Rules 7052 and 9021, and new Rule 7058 carried without opposition.**

Draft minutes of the Standing Committee meeting were distributed at the meeting.

2(B) November 2006 meeting of the Advisory Committee on Appellate Rules Committee.

The Chairman said that the Appellate Rules Committee was working on changes to Appellate Rule 29. No current action items.

2(C) January 2007 meeting of the Committee on the Administration of the Bankruptcy System

Judge Klein said that the primary discussion was the Executive Office of the United States Trustee's request that the courts require the use of data-enabled "smart forms." He said that there was a robust discussion about policy concerns, but that no recommendation was made. He said the other major discussion related to diminished filings and the consequent effect on the judiciary budget.

2(D) September 2006 meeting of Advisory Committee on Civil Rules

Judge Walker reported that the primary focus concerned the new time computation template and applying the template to the Civil Rules. And the Chairman noted this Committee would be discussing the template an its application to the bankruptcy rules at Agenda Item 10.

2(E) November 2006 meeting of Advisory Committee on Evidence

Judge Klein said the primary focus of the Evidence Committee related to protecting attorney client privilege with respect to e-discovery. And he referred the Committee to Evidence Rule 502, which was published for comment last August

2(F) Bankruptcy CM/ECF Working Group

Judge McFeeley reported no noteworthy activity over the last period.

ACTION ITEMS

Agenda Item 3 (Comments concerning the Interim Rules, the published rules and Official Forms, and suggestions concerning rules and forms not published for comment)

The Chairman said that the high volume of material before the Committee limited the time available for discussion. Accordingly, he said, the Committee would only discuss changes recommended by the subcommittees to specific published forms and rules, unless a member requested otherwise. He said that the Committee would first vote on approving the rules and forms which received no comment or which the assigned subcommittee recommended that no change be made. He said each subcommittee would then discuss recommended changes to the rules and forms. He referred the Committee to several memos included at agenda item 3 which discussed the comments received on the published rules and forms as well as several suggestions concerning rules and forms now in effect.

3(A) "No comment" rules

The Chairman said that no comments had been received concerning the proposed changes to **Bankruptcy Rules 1005, 1009, 1015, 2007.1, 2015, 3003, 3019, 5001, and 9009, and proposed new Bankruptcy Rule 2015.2**, and he asked for a motion to approve the rules as published. **With the exception of Rule 3019, the Committee approved each of the "no comment" rules as published.**

Judge Frank questioned whether the last sentence of Rule 3019 was necessary. After various suggested changes, the Committee voted to eliminate the last sentence and added a change to line 16 of the rule as follows: after "Code" and before "shall" insert the words "is governed by Rule 9014. The request …". **The Committee approved Rule 3019 as modified.**

3(B) "No comment" forms

The Chairman said that there had been no comments concerning the proposed changes to Official Forms 3A, 3B, 10, 16A, 19A, 19B. **Motion to approve the "no comment" forms as published carried without opposition.**

The Committee later voted to replace Forms 19A and 19B with Form 19 (as set forth at Agenda Item 13), and as discussed at the post-meeting email vote described below.

3(C) "Comment rules" which the assigned subcommittee recommends be approved without change

The Chairman said that the assigned subcommittee had considered the comments made on the following rules and recommended that no change be made: Bankruptcy Rules 1006, 1017, 1020, 2003, 3016, 3017.1, 4006, 4007, 4008, and 8001, and 9006; and new Bankruptcy Rules 1021, 2007.2, 2015.1, and 5008. **Motion made to approve all rules (as modified below) made and carried.**

Judge Frank suggested a possible change to Rule 4008 depending on whether the Committee approved proposed Official Form 27 (Reaffirmation Agreement Coversheet). The Chairman suggested the Committee table the suggestion until the coversheet was discussed at Agenda Item 9. **A motion was made and carried to defer and consider Judge Frank's proposed change to Rule 4008 with Official Form 27. The Committee later voted to publish for comment proposed Official Form 27 (as discussed at Agenda Item 9(A)) and the proposed change to 4008(a) as discussed at the post-meeting email vote described below.**

Committee members suggested the following changes to Rule 2015.1: move "unless the court orders otherwise" from the beginning of the first sentence to the beginning to the second sentence (to line 4), and change "health" to "patient" at line 19. **Rule 2015.1 was approved with the suggested changes.**

The Committee later made two conforming changes to Rule 9006 as discussed at Agenda Item 5(b) below.

3(D) Comments or suggested changes to existing rules (not published for comment in August 2006)

The Chairman said that there had been several suggestions to existing rules that require further study. And he made the following referrals:

The Reporter said that comment **06-BK-057** suggested that **Rule 2003** be amended to establish different deadlines for 341 meetings in voluntary and involuntary cases. **Referred to the Subcommittee on Business Issues**.

The Reporter said that comment **06-BK-015** suggested that **Rule 3015** be amended to allow the IRS to object to a confirmed plan after the debtor files required tax returns. **Referred to the Subcommittee on Business Issues.**

In response to NBC comment **06-BK-017**, the Reporter suggested that a new subdivision could be added to **Rule 5009** directing court to notify debtor that case will be closed without entry of a discharge if Form 23 is not filed. **Referred to the Subcommittee on Consumer Issues**.

The Reporter recommended further study concerning a suggestion to amend **Rule 7065** made by the Business Law Section of the State Bar of California at comment **05-BK-037**. Referred to the **Subcommittee on Technology and Cross Border Insolvency.**

The Reporter said that Judge Colleen A. Brown's comment at **06-BK-016** suggested revisions to **Rule 8003(b) and Rule 8005. Referred to the Subcommittee on Privacy, Public Access, and Appeals**

There were no objections to the referrals.

3(E) Letter from Representatives John Conyers, Jr., and Linda T. Sanchez concerning Official Form 22, Rule 1017(e)(1), Rule 4002(b)(2), and Rule 9011.

The Chairman directed the members' attention to a March 22, 2007 letter received from Representatives Conyers and Sanchez, which was included in the materials at Agenda Item 3. He noted that the Representatives indicated that they were writing in part to respond to previous letters from Senators Grassley and Sessions. And he said that the various aspects of the letter would be discussed later in the meeting in the context of suggested changes to the rules and forms, and that a formal response would be made after the meeting.

Agenda Item 4 (Report by the Subcommittee on Attorney Conduct and Health Care)

4(A) Proposed changes to Rule 9011 and Official Form 1 regarding attorney conduct.

Judge Schell described proposed changes to Rule 9011 and Form 1 recommended by the Subcommittee on Attorney Conduct and Health Care. He said the proposed changes were

described in the Form 1 mockup and in two memos at Agenda Item 4, one dated January 10, 2007, as revised February 27, 2007 (the January 10 Memo) and the other dated March 22, 2007 (the March 22 Memo).

Judge Schell said that at the last Committee meeting, the subcommittee was asked to add language to the attorney signature box on Form 1 to warn consumer debtor attorneys of their obligations under § 704(b)(4)(D). He said the subcommittee recommended that the language set out at page 4 of January 10 Memo be added to Form 1 as shown in the Form 1 mockup in the materials. After discussion, **the Committee approved the proposed amendment to Form 1 with two changes: (1) add the word "also" after "signature" in the warning, and (2) move the entire warning to the bottom of the attorney signature box.**

Judge Schell described the Rule 9011changes recommended by the subcommittee, as set out in the March 22 Memo. He said the subcommittee initially considered the problem of differential burdens that § 707(b)(4)(D) appears to place on consumer debtor attorneys based on when and in what chapter the schedules are filed. He said that literally read, §707(b)(4)(D) may only apply in situations where the schedules are filed *with* the petition. Thus, if the schedules are filed with the petition, §707(b)(4)(D) and Rule 9011 are applicable, but if the schedules are filed after the petition, only Rule 9011 is applicable. Judge Schell said that the subcommittee also thought it was unclear whether the § 707(b)(4)(D) standard applies to chapter 7 cases that have been converted from chapter 11 or chapter 13.

To address the problem of differential burdens inherent in § 707(b)(4)(D), the subcommittee recommended amending Rule 9011 to apply the statutory standard to consumer debtor attorneys across all bankruptcy chapters. He said Rule 9011(b)(2)(A) as proposed at page 8 of the March 22 Memo was meant to achieve this goal.

Judge Schell said the subcommittee also considered whether it made sense to limit the § 707(b)(4)(D) standard to debtor attorneys in consumer cases. He said that it could be inferred that in enacting BAPCPA, Congress had found a need for better accuracy in all consumer filings. And he said that the letter from Representatives Conyers and Sanchez (at Agenda Item 3(E)) expressed concern about placing differential burdens on debtor and creditor attorneys. Finally, he referred the Committee to the recent case of In re Rivera, 342 B.R. 435 (Bankr. D.N.J. 2006), and a pending class action case in the Bankruptcy Court for the Southern District of Alabama as evidence that there may a problem with documentation of claims and lift stay motions that is not sufficiently deterred by the current system. Accordingly, to avoid singling out consumer debtor attorneys, and as an incentive to consumer creditor attorneys to more thoroughly investigate the documentation supporting claims and lift-stay motions, the subcommittee recommended proposed Rule 9011(b)(2)(B) as set out at page 8 of the March 22 Memo.

There was a lengthy discussion regarding the proposed changes to Rule 9011 and the Committee was unable to come to a resolution the first day when the matter was initially taken up. Several members strongly objected to any change to Rule 9011. Professor Resnick articulated some common reasons against the proposed changes. He said that prior FJC studies indicate that bankruptcy judges have not found a particular problem with respect to the consumer bar, and he argued that there was no reason to single them out now (either creditor or debtor

side). He also said the proposed changes introduce traps in federal practice by making Rule 9011 more inconsistent than necessary with Civil Rule 11. And finally, he noted that while the Committee historically might put a warning in the forms, the rules have never attempted to parrot the statute, but instead allow the statute to speak for itself.

Several members agreed that there was no evidentiary basis to single out the consumer bar for a special disciplinary standard and suggested that before this Committee approved such a change to Rule 9011, that the FJC should study the matter and determine whether there really is a problem.

But Mr. White said he thought a study was unnecessary. He said this issue has been on the Committee's agenda since at least April 2005, and he believes that there is no question that there have historically been inaccuracies in the schedules. He supported the changes and said the time to act was now.

And Judge McFeeley reiterated the subcommittee's main reasons for making the suggested changes. He said the statute was poorly worded and argued that it doesn't make sense to apply a different attorney review standard only if the schedules are filed with the petition. He suggested that at the least, the rule should be changed so that the §707(b)(4)(D) standard applies to all schedules whenever filed. And he thought it should address chapter 13 filings to eliminate traps that exist if no change is made.

Mr. Rao said his first position was that no change should be made. But, he said that if a change *is* made to Rule 9011, it should be uniform and the new standard should apply to creditor attorneys as well as debtor attorneys in consumer cases.

Judge Frank also opposed changing Rule 9011, in part because he thought the change was pointless. He said that there is no conduct addressed by § 707(b)(4)(D) that would not also already be a violation of existing Rule 9011. And he was very concerned about singling out the consumer debtor attorneys in any manner not required by the statute. He suggested slowing the process down.

Judge Wedoff initially supported the proposed changes for the reasons stated by the subcommittee. On the second day of the discussion, however, he changed his position. He said that in the course of the debate, he had become convinced that Rule 9011 currently imposes a higher standard on debtor attorneys than § 707(b)(4)(D). And if the § 707(b)(4)(D) standard was not as stringent as the standard already in Rule 9011, there was no reason to incorporate it into the rule.

Some members were skeptical that Congress would have intentionally made the §707(b)(4)(D) standard less stringent than existing Rule 9011, and Mr. Lamberth said that although he didn't know whether §707(b)(4)(D) was a lesser standard, he knew it was different, and that was basis for putting it in the rule. But Judge Swain said it was inappropriate to "fix" the problems with §707(b)(4)(D) by putting it into the rule and applying it more broadly than the statute already does. Rather, she said, no change should be made and that if Congress believed that the reach of § 707(b)(4)(D) should be expanded it should amend that statute.

After discussing the matter over two days, the Chairman asked for vote; **and the subcommittee's proposed changes to Rule 9011 were rejected with only one vote in favor of the changes.**

4(B) Comments on the proposed health care rules

The Reporter directed the Committee to the February 23 memo at Agenda Item 4 for a review of comments on the rules applicable to health care cases. He said the only recommended change was to amend Rule 6011(b) to add the state attorney general to the list of persons who get notice under the rule. **A motion to add the state attorney general to the list of persons who get notice under Rule 6011(b) was made and carried.**

Agenda Item 5 (Report by the Subcommittee on Consumer Issues)

5(A) Comments on the means test (Forms 22A, 22B, and 22C)

Judge Wedoff said that Subcommittee on Consumer Issues was recommending or asking the Committee to consider 24 potential changes to Forms 22A, 22B, and 22C. He directed the Committee's attention to his March 23 memo in the materials that summarized the proposed changes by issue and he noted that the proposed changes were highlighted in the annotated forms at Agenda Item 5. Finally, he told the Committee that a more detailed review of the comments was contained in the March 5, 2007 analysis contained in the materials, but explained that he would only be talking about comments to the extent that the subcommittee recommended changes.

A review of the Committee's actions by item number, as set out in the Judge Wedoff's March 23 Memo, and by line number in each version of Form 22 is set forth below.

1. Form 22C, Lines 7 and 9 (Form 22A, Lines 8 and 10; Form 22B, Lines 7 and 9)

The issue concerns the proper treatment of alimony and support payments. The current version of the forms treats alimony as current monthly income only when it is "regularly paid." However, § 101(10A)(A) of the Code counts as "current monthly income" all "income" received by the debtor, whether or not it is regularly paid. Section 101(10A)(B) defines an additional element of current monthly income: payments of household expenses of the debtor or the debtor's dependents made on a regular basis. **Because alimony and marital support are "income" to the recipient regardless of the regularity of the payments, the subcommittee recommended (1) that the instruction dealing with amounts paid on a regular basis be amended to delete the words "or spousal" and to instruct debtors not to include spousal support and (2) that the instruction for income from other sources be amended specifically to include spousal support payments.**

The Committee approved the proposed changes, with the addition of the words "paid for that purpose" after the word "support" in the first sentence of line 7 of Forms 22B and 22C and line 8 of 22A.

2. Headings for Form 22C, Part IV (Form 22A, Part V)

The issue is that the existing headings are inaccurate in limiting to "§ 707(b)(2)" the deductions from current monthly income included in the sections that they introduce. One of the included deductions—the one for charitable contributions—is not set out in § 707(b)(2) but rather is found in §1325(b)(3) (for Form 22C) and § 707(b)(1) (for Form 22A). To avoid this inaccuracy, **the subcommittee recommended that the headings be changed as follows: the heading for Part V of Form 22A and Part IV of Form 22C should be "CALCULATION OF DEDUCTIONS FROM INCOME," the heading for Subpart B should be "Additional Living Expense Deductions," and the heading for Subpart D should be "Total Deductions from Income."**

The Committee approved the proposed changes

3. Form 22C, Lines 24 and 44 (Form 22A, Lines 19 and 39)

The issue concerns references to the content of the IRS National Standards for living expenses. In order to conform more closely to the language used in the Internal Revenue Manual, **the subcommittee recommended changing the "clothing" reference in the instruction for applying the National Standards to "apparel and services," changing the "household supplies" reference to "housekeeping supplies," and the "food and apparel" reference to "food and clothing (apparel and services)."**

The Committee approved the proposed changes.

4. Form 22C, Lines 24, 25A, and 25B (Form 22A, Lines 19, 20A, and 20B)

The issue concerns use of the debtor's "household size" instead of "family size" in instructions for determining applicable deductions. In order to determine the proper National and Local Standard deductions for living expenses, a debtor must specify the number of persons for whom the deductions are applicable. The current forms refer to this number as the debtor's "family size," apparently because there are references to "family" in the Internal Revenue Manual and because § 707(b)(6) and (7) compare the debtor's income to the "median family income" reported by the Census Bureau. However, in making this comparison, § 707(b)(6) and (7) themselves use the number of persons in the debtor's "household," and the Bureau of Labor Statistics, which provides the basis for the IRS's National and Local Standard living expense deductions, measures expenses by household size. Accordingly, **the subcommittee recommended that "family size" be changed to "household size" in the lines for National and Local Standard deductions.**

The Committee approved the proposed changes.

5. Form 22C, Line 24 (Form 22A, Line 19)

The comments suggested that the means test form should instruct debtors how to determine the "gross monthly income" used to determine the proper National Standard deduction or require then to disclose the gross monthly income that they actually used. Because there is no clear indication in the Code as to how gross monthly income should be determined,

the subcommittee recommended against a definition and also recommended against a required disclosure of the amount of current monthly income, because of concerns that this would confuse debtors. However, **the subcommittee concluded that the source used by the debtor to determine gross monthly income should be disclosed, and therefore recommended adding a check-list setting out the most likely sources.**

The Committee approved the proposed changes.

6. Form 22C, Line 31 (Form 22A, Line 26)

The comments suggested changing the language of the form to correspond more closely to the language contained in the Internal Revenue Manual with respect to "other necessary expense" for employment expenses. **The subcommittee agreed and recommended changing the phrase "payroll deductions" to "deductions for employment", and changing "mandatory" to "involuntary."**

The Committee approved the proposed changes as modified by changing the word "non-mandatory" before "401(k) contributions" to "voluntary."

7. Form 22C, Lines 32, 34-37, 40-44 (Form 222A, Line 27, 29-32, 35-39)

The comments pointed out that the forms inconsistently use of the words "total average" to describe the debtors' expenses. Wherever there may be multiple expenditures within a given expense category, the subcommittee determined that the instruction should direct debtors to total these expenditures. Wherever the amount of the expenditure may vary from month to month, the subcommittee determined that the instruction should direct debtors to average the monthly expenditures. Accordingly, **the subcommittee recommended that the words "total" or "average" be added to several of the instructions for expense deductions.**

The Committee approved the proposed changes.

8. Form 22C, Line 33 (Form 22A, Line 28)

The comments noted that the category of court-ordered payments, as defined in the Internal Revenue Manual, encompasses payments ordered by an administrative agency as well as a court. **The subcommittee agreed, and recommended that the instructions be expanded to include agency-ordered payments**.

The Committee approved the proposed changes.

9. Form 22C, Line 36 (Form 22A, Line 31)

The comments noted that the Internal Revenue Manual limits health care expenses to those "required for the health and welfare of the family," but that the current instruction for Line 36 fails to include this limitation. **The subcommittee recommended that the instructions be amended to include the limitation to "required" expenses.**

The Committee approved the proposed changes.

10. Form 22C, Line 39 (Form 22A, Line 34)

The comments noted that the forms' instructions currently limit the debtor's deduction for health insurance, disability insurance, and health savings account expenses to amounts actually expended, but that § 707(b)(2)(A)(ii)(I), which provides for the deduction, does not contain this limitation. **The subcommittee recommended that the instructions be amended to allow the debtor, consistent with § 707(b)(2)(A)(ii)(I), to deduct "reasonably necessary" expenditures, without limitation to amounts actually expended. However, the subcommittee also recommended that the debtor be required to state actual expenditures when these differ from the amounts claimed as reasonably necessary.**

The Committee approved the proposed changes with one dissent.

11. Form 22C, Line 41 (Form 22A, Line 36)

The present instruction for the expense deduction for protection against family violence, provided for in §707(b)(2)(A)(ii)(I)), does not include the statutory limitation to "reasonably necessary expenses." **The subcommittee recommended that the instruction be amended to refer to "reasonably necessary expenses" that the debtor incurs for protection against family violence.**

The Committee approved the proposed changes.

12. Form 22C, Line 42 (Form 22A, Line 37)

Consistent with the comments and the language of § 707(b)(2)(A)(ii)(V), the subcommittee **recommended that the instructions be changed to require debtors to provide documentation only of the amount of their actual expenses and to permit debtors to "demonstrate" rather than "document" the reasonable and necessary character of those expenses.**

The Committee approved the proposed changes with the following modifications: add ", and you must" after the phrase "actual expenses."

13. Form 22C, Line 43 (Form 22A, Line 38)

The comments made two suggestions for this item, both of which the subcommittee recommends as being more consistent with the language of § 707(b)(2)(A)(ii)(IV). **First, the subcommittee recommended that the instruction be changed to refer to expenses "for attendance at . . . school" rather than the costs of "providing education." Second, the subcommittee recommended that the instructions require the debtor only to "explain" that additional expenses are reasonable and necessary rather than provide "documentation" of reasonableness and necessity.**

The Committee approved the proposed changes with the following modification: add "or secondary" after "elementary" and add ",and you must" after the phrase "actual expenses."

14. Form 22C, Line 44 (Form 22A, Line 39)

Consistent with the language of § 707(b)(2)(A)(ii)(I), **the subcommittee recommended that the instruction require the debtor only to "demonstrate" that additional expenses are reasonable and necessary rather than provide "documentation" of reasonableness and necessity.**

The Committee approved the proposed changes.

15. Form 22C, Line 45 (no change in Form 22A)

The Religious Liberty and Charitable Donation Clarification Act of 2006 amended §1325(b) to allow above-median income debtors the same charitable donation deduction that had previously been accorded only to below-median income debtors (capped at 15% of gross income). **To accommodate this change in the law, the subcommittee recommended that the instruction for deducting charitable contributions in Chapter 13 read as follows:**

> Enter the amount reasonably necessary for you to expend on charitable contributions in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2). **Do not include any amount in excess of 15% of your gross monthly income.**

The Committee approved the proposed changes with the following modification: add the words "each month" after the word "expend."

16. Form 22C, Line 47 (Form 22A, Line 42)

The comments suggested two distinct issues that are addressed by the subcommittee's recommendation. **First, in order to be consistent with the language of § 707(b)(2)(A)(iii)(I), the subcommittee recommended that instruction refer to amounts "scheduled as" contractually due. Second, to avoid duplication of deductions already allowed under the Local Standard for housing, the subcommittee recommended that escrow payments for taxes and insurance be excluded from the deduction for payments on secured claims, by limiting the deduction to payments of principal and interest.** The second recommendation was not unanimous.

Some members argued against eliminating the "taxes and insurance" component because, even though it would go against the Committee's general principal of avoiding double counting, it would not matter in most cases. Also, some members thought that many debtors would not have ready access to the documents that itemize the tax and insurance portion of their payments. And other members said that under the terms of most mortgage agreements, taxes and insurance *are* contractually due to the mortgagee, even if the mortgagee then must pay those amounts to the taxing authorities and the insurance company.

After additional discussion, **the Committee approved the subcommittee's "scheduled as" recommendation, but modified the rest of the line so that the debtor reports the Average Monthly Payment to the mortgagee (and uses the entire payment in the form's**

calculations), but then checks a box to report whether that payment includes "taxes and insurance."

17. Form 22C, Line 49 (Form 22A, Line 44)

The subcommittee rejected comments suggesting that anticipated attorney fees for Chapter 13 representation could be deducted as priority claims. To avoid confusion on this issue, **the subcommittee recommended an addition to the instructions for priority claim deductions, stating expressly that these should include only past due obligations.**

The Committee approved the proposed changes in principle. As approved, the 22C version of instruction should read:

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

18. Form 22C, Line 54 (no corresponding change in Form 22A)

Pursuant to § 1325(b)(3), certain child support payments, foster care payments, and disability payments for a dependent child are not to be included in calculating the disposable income required to be paid to unsecured creditors. Such payments would properly be included in Line 7 of Form 22C, and the instruction for excluding these items in Line 54 now makes reference to payments "included in Line 7." However, it is possible that a debtor might include such payments in another line of Part I of the form. To deal with that possibility, **the subcommittee recommended that the instruction be amended to state that the debtor should exclude support income "reported in Part I" rather than "included in Line 7."**

The Committee approved the proposed changes.

19. Form 22C, Line 55 (no corresponding change in Form 22A)

Section 541(b)(7) provides a deduction from disposable income in Chapter 13 for certain retirement plan deductions. To track the statutory language more closely, **the subcommittee recommended that the instruction for this deduction be amended to read as follows:** "Enter the monthly total of (a) all amounts withheld by your employer as wages or received by your employer as contributions for qualified retirement plans, as specified in § 541(b)(7) and (b) all required repayments of loans from retirement plans, as specified in § 362(b)(19)."

The Committee modified the subcommittee's recommendation so that the instruction now reads:

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

20. Form 22C, New Line 57 (no corresponding change in Form 22A)

In providing for use of the means test in calculating disposable income for above-median income debtors, § 1325(b)(3) provides for the use not only of § 707(b)(2)(A), the means test deductions, but also § 707(b)(2)(B), the provision allowing a debtor to rebut a presumption of abuse by showing, among other things, expenses arising from special circumstances. Form 22C currently has no provision allowing a debtor to deduct such expenses from disposable income. To address this issue, **the subcommittee recommended that Form 22C be amended to add a new Line 57 allowing the debtor to include any expenses arising from special circumstances as described in § 707(b)(2)(B).** The later line numbers would be adjusted accordingly. The subcommittee reasoned that the amendment would make the "Additional Expense Claims" line in Part VI of the current form unnecessary, and so **the subcommittee also recommended that current Part VI be eliminated.**

The Committee agreed with the addition of the new line 57, but amended the last sentence of the instruction "you must" after the word "and." The Committee disagreed that the adding the new line eliminated the need for Part VI because a different statutory section was involved (§ 707(b)(2)(A)(ii)(I)), **and accordingly recommended that existing Part VI remain in the form.**

21. Form 22A, Line 1 (and Rule 1007(b)(4))

The subcommittee concluded that two changes should be made to address the issue of debtors who claim that their debts are not primarily consumer debts, and so are not subject to any of the "abuse" provisions of § 707(b). **First, the subcommittee recommended that Rule 1007(b)(4) be amended by deleting the words "with primarily consumer debts."** This change would require all individual debtors to complete at least the first part of a means test form in chapter 7. **Second, the subcommittee recommended that Part I of Form 22A be amended with an expanded title—"Exclusions for Disabled Veterans and Non-Consumer Debtors," that the existing exclusion for veterans be renumbered as Line 1A, and that a new Line 1B be added with a check box allowing debtors to declare that their debts are not primarily consumer debts.** As with covered veterans, this declaration would result in the debtor not being required to complete the remainder of the form.

The subcommittee recommended these changes in response to concerns that a failure to file Form 22A could lead to automatic dismissal of a case filed by debtors who incorrectly asserted that they did not have primarily consumer debts. Section 707(b)(2)(C) provides that debtors subject to § 707(b) (individuals with primarily consumer debts) must file a statement of current monthly income and calculations that determine whether a presumption of abuse has arisen, "[a]s part of the schedule of current income and expenditures required under section 521." The statement of current income and expenditures is required by § 521(a)(1)(B)(2), and failure to file a document required under any provision of § 521(a)(1) results in automatic dismissal 45 days after the bankruptcy filing, pursuant to § 521(i)(1), unless on motion filed within that period the court extends the deadline for no more than an additional 45 days. Requiring Form 22A in all individual Chapter 7 cases is intended to eliminate this potential for dismissal, with the understanding that the debtor will have filed the required statement, even though it would have to be amended substantially in the event that the debtor was later determined to have primarily consumer debts.

The Committee approved the proposed changes.

22. Form 22A, Line 4; Form 22B, Line 3; Form 22C, Line 3.

In response to informal comments from forms vendors, the Administrative Office of the United States Courts suggested a modification to the instructions for reporting income from the operation of a business, profession, or farm, to deal with situations in which debtors operate more than one such entity. The modification states: "If you operate more than one business, profession or farm, enter aggregate numbers and provide details on an attachment." The Forms subcommittee recommends the modification.

The Committee approved the proposed change.

23. Form 22A, Line 17; Form 22C, Lines 13 and 19.

The Executive Office for United States Trustees suggested additions to the instructions dealing with the situation of married debtors filing separately from their spouses. In these situations, the Code (and hence the forms) require that for some purposes, all of the income of the non-filing spouse be counted, but that for other purposes, only part of the income of the non-filing spouse—the income regularly used to pay household expenses of the debtor or the debtor's dependents ("debtor expenses")—be counted. The forms deal with this situation by requiring a disclosure of all of the non-filing spouse's income (allowing use of that information where required), but then providing for an adjustment—deducting the income not used to pay debtor expenses (resulting in the lower income otherwise required). The UST amendment would direct the debtor to specify the uses to which the non-filing spouse put any income not used to pay debtor expenses. To accomplish this, the UST proposes the following content for Form 22A, Line 17:

17	**Marital adjustment.** If you checked the box at Line 2.c, enter on Line 17 the total of any income listed in Line 11, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. Specify in the lines below each use to which your spouse put the excluded Column B income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each use. If necessary, list additional uses on a separate page. If you did not check box at Line 2.c, enter zero.

a.		$
b.		$
c.		$

Total and enter on Line 17.

Similar changes would be made in Form 22C, Lines 13 and 19, but since Line 13 presents an optional adjustment (used only if the debtor contends that the full income of a non-filing spouse should not be used for calculating the applicable commitment period), the instruction would be somewhat more complex:

> If you are married, but are not filing jointly with your spouse, AND if you contend that calculation of the commitment period under § 1325(b)(4) does not require inclusion of the income of your spouse, enter the amount of the income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of you or your dependents and specify, in the lines below, each use to which your spouse put the excluded Column B income (such as

payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each use. If necessary, list additional uses on a separate page. If the conditions for entering a marital adjustment do not apply, enter zero.

The Committee approved the proposed changes with stylistic revisions as set forth in the handout provided by Judge Wedoff on Friday morning.

24. Form 22C, New Line (no corresponding change in Form 22A)

The subcommittee had a lengthy discussion of the best way to deal with the provision of § 1325(b)(2) which states that "the term 'disposable income' means current monthly income received by the debtor." Judge Lundin, in comment 06-BK-009, suggested that this language is a limitation on a debtor's disposable income, requiring a deduction of current monthly income that the debtor does not personally "receive." Two examples were offered to test the analysis. The first was the payment of tuition directly by a grandparent to a school for the education of the debtor's children. The second example was of the payment of the mortgage on the debtor's home by the debtor's non-filing spouse directly to the mortgage holder. Regarding the first payment, a number of subcommittee members believed that this payment perhaps should be excluded, but there was also general agreement that the payment to the mortgage company should not be excluded from disposable income. The subcommittee was split in the end, with a majority concluding that all payments should be included in the debtor's disposable income and thus no change should be made to the form.

After discussing the issue, the Committee voted to make no change to the forms regarding income not actually received by the debtor.

5(B) Additional comments on the consumer rules and proposed amendments.

The Reporter referred the Committee to the March 23 memo at Agenda Item 5B of the materials.

The Reporter first discussed the proposed change to Rule 1007(b)(4) as set out at page 5 of the March 23 memo, at line 60. He said the change, which Judge Wedoff had previously discussed at Item 21 of his means-test analysis, would require all individual debtors to complete the first part of the means-test form in chapter 7, and would prevent a trap that sometimes caught individuals who incorrectly asserted that their debts were not primarily consumer debts. **The Committee approved the change as set out in the memo.**

The Reporter next described proposed changes to Rule 1007(b)(7) and (c) at pages 5-7 of the March 23 memo and to the committee note at page 10 of the March 23 memo. By line number, the changes were at lines 76-77 and lines100-101. **The Committee approved the proposed changes to Rule 1007(b)(7) and (c) as set forth in the March 23 memo with the following change: at line 106, after "§ 1328(b)," add ", but the court may, at any time and in its discretion, enlarge the time to file the statement required by subdivision (b)(7)."**

The Committee also made two changes to Rule 9006 to account for the enlargement and reduction limitations that it approved in Rule 1007. Using the line numbers in the published rules, the Committee added at line 20, after the phrase "business case," the phrase "and the time to file the statement required under Rule 1007(b)(7)," and at line 27, after "Rules," added "1007(c) with respect to the time to file schedules and statements in a small business case and the time to file the statement required under Rule 1007(b)(7)." The Reporter prepared the changes distributed the revised version to the Committee the next day, **and the Committee approved the changes to Rule 9006(b)(3) and (c)(2) as set forth in the handout distributed at the meeting.**

The Reporter next discussed two versions of a proposed new Rule 1017.1 set out at pages 10-11 of the March 23 memo. He said the purpose of the new rule was to provide a deadline for court action pertaining to the debtor's certification that the failure to get prepetition credit counseling was due to § 109(h)(3) "exigent circumstances." Several members questioned whether the rule was needed, and there was disagreement about whether the proposed alternatives inappropriately "wrote out" a requirement under the statute that the court make an affirmative finding that debtor's certification is "satisfactory" in order for it to be effective. **Ultimately, the Committee voted to approve the second version of Rule 1017.1 in the March 23 memo with the modification that service of any motion challenging the debtor's certification also be made on the United States trustee.**

The Reporter said the subcommittee proposal to change to the Committee Note to Rule 1019 (described at the top of page 12 of the March 23 memo) was meant to explain that although Rule 1019 sets a deadline for § 707(b) and (c) motions after a case is converted to chapter 7 from another chapter, the deadline was not meant to imply that such motions were proper. **The Committee approved the change to the Rule 1019 note with the following change: substitute "permitted" for the phrase "appropriate or not appropriate."**

The Reporter reviewed proposed changes in the Committee Note for Rule 4002 at pages 16 and 17 of the March 23 memo. **The Committee approved the proposed changes including the bracketed language at the bottom of page 16 with the following substitution: replace the phrase "that there is no reason to" with "need not."**

The Reporter discussed several comments with respect to Rule 4003. Two comments opposed the expansion of the deadline to object to exemptions from 30 to 60 days. The subcommittee did not recommend reverting to 30 days, but did recommend amending the rule to provide notice of the objection to the debtor and anyone who may have filed the exemption in the case. The subcommittee also recommended a change to the note to make clear that the deadlines set forth in Rule 4003(b)(2) also apply to exemption objection made under (b)(3). After discussion, **the Committee approved the subcommittee recommendation to amend the rule at lines 13-15 and line 18 as set forth on page 18 of the March 23 memo. A majority of the Committee rejected the subcommittee's recommendation regarding the 60 days period, and therefore approved changing "60" on line 2 to "30", and the Committee amended the note by deleting the second paragraph and deleting the new underlined sentence in the fourth paragraph (at the top of page 20 of the March 23 memo).**

The Reporter said that the proposed changes to Rules 4004 and 7001 set out at pages 20-26 of the March 23 memo were meant to clarify that an objection to discharge based on insufficient lapse of time between cases need not be brought by complaint. The Committee generally agreed in concept, but referred the matter back to the subcommittee to determine whether to require such motions should be made within 60 days after the case is filed (the current limit for other types of discharge objections), or whether they should be allowed until the case is closed; and to suggest a procedure for the court to use when it raises the matter on its own. **Prior to referral, the Committee approved the following changes to the material printed in the March 23 memo:** with respect to **Rule 7001**: delete "(a)" at line 1; delete underlined material at line 10 in subdivision (4) and replace with "except when an objection to discharge is under §§ 727(a)(8), (a)(9), or 1328(f)"; and delete subparagraph (b) (all underlined material on lines 22-23; and with respect to **Rule 4004**: delete "the debtor is not eligible to receive" at line 44 and replace with "a motion is pending to deny the debtor"; and delete "if the debtor is not eligible for" at line 53 and replace with "a motion is pending to deny the debtor." **After the meeting, the Committee approved Rule 4004(c) as published, as described in the email vote below.**

The Reporter said that based on the comments, the subcommittee proposed changing Exhibit D of Form 1 so that a debtor must describe on the form any exigent circumstances that warrant a waiver of the requirement to participate in an approved credit counseling course before filing. He explained that the proposed change would eliminate the need for a separate motion. **The Committee approved the change to Exhibit D as distributed in a handout at the meeting on Friday with the following changes to the handout:** In the first sentence of the warning below the explanation lines, substitute "petition" for "case" and "counseling" for "briefing."

The Reporter said that the subcommittee recommended a suggestion from Judge Lundin to add language at the top of schedules I and J to explain that the income and expenses calculated on those forms might be different than the income and expenses calculated in Form 22A-C. **The Committee approved the warnings at the top of I and J as set out at page 28 of the March 23 memo except that the warning for J would read as follows:** "The average monthly income calculated on this form may differ from the deductions from income allowed on Form 22A or 22C."

The Reporter said that one of the comments pointed out that debtors still mistakenly file Official Form 23 (which certifies completion of a debtor education course) to evidence completion of prepetition credit counseling. Accordingly, the subcommittee recommended adding the word "postpetition" to the title of the form. **The Committee approved the change to Form 23 as shown in the materials except that first italicized sentence should read:** *"Every individual in a chapter 7, chapter 11 in which § 1141(d)(3) applies, or chapter 13 case must file this certification."*

Finally, the Reporter discussed a comment made by the National Association of Consumer Bankruptcy Attorneys that advocated a rules-based solution to the problem of automatic dismissals under § 521 of the Code. **The Committee agreed with the subcommittee that any action would be premature at this time.**

Agenda Item 6 (Report by the Subcommittee on Business Issues)

6(A)(1) Comments on the business rules and proposed amendments.

The Reporter referred the Committee to the February 26 memo at Agenda Item 6. He said that at issue 2 of the memo, the subcommittee recommended adding a line to the committee note for Rule 2002 to include a cross-reference to Rule 6004(g). **The Committee approved the proposed change to the committee note for Rule 2002.**

The Reporter said that issue 3 of the February 26 memo set out alternative recommendations by the subcommittee designed to make clear that the sale of personally identifiable information under Rule 6004 could be continued to allow for full participation by a privacy ombudsman. After discussion, the **Committee rejected a motion to change the rule, but approved a motion to change the note to Rule 6004 as proposed at page 6.**

The Reporter said that the subcommittee discussed a number of issues raised by the IRS. At issue 4 of the February 26 memo, the subcommittee considered whether to amend Rule 2002(g)(2) to ensure that a designated address filed by a governmental unit under Rule 5003(e) will be effective. The subcommittee recommended inserting § 342(f) and 5003(e) in rule as shown at page 7, and making change in committee note as shown on page 7. Mr. Kohn suggested an additional change at line 7 adding "or Rule 5003(e)" after 2002(g)(1). **The Committee approved the change to Rule 2002(g)(2) with Mr. Kohn's modification, and also approved the proposed changes to the note set out at page 7 of the February 26 memo except that the underlined sentence in the first paragraph will be deleted, and the first two words of the last sentence in the first paragraph will be changed from "it also" to "The subdivision."**

The Reporter said that at issue 5 of the memo, the subcommittee recommended revising Rule 3002(c)(1) to allow the IRS to request additional time to file claims based on § 1308 for cause shown. **After discussion, the Committee voted to approve the proposed changes to Rule 3002 and to the committee note as set out on page 9 of the February 26 memo.**

The Reporter said that at issue 6 of the memo, the subcommittee recommended revising the note to Rule 4002 to state that tax returns and transcripts are treated differently from the debtor's other financial documents. **The Committee approved the proposed change to the note for Rule 4002 as set out at page 10 of the February 26 memo.**

The Reporter said that at issue 7, the subcommittee recommend changing Rule 5003(e) to direct the clerk to keep a separate government address register for the notice required by § 505(b) of the Code. Mr. Brunstad suggested adding the word "separate" after "a" on line 16. Some members thought keeping a separate register was not required by the Code, and that simply posting a separate address in the same general register (as is done now) would be less confusing. But other members thought that a separate register, properly designated by the clerk, would reduce confusion. **The Committee voted to approve the subcommittee's amendment to 5003 as set forth on pages 11 and 12 of the February 26 memo, with the addition of the word**

"separate" at line 16. Members suggested a number of changes to the note, and **the Committee approved the note to Rule 5003 as set out at page 12 of the February 26 memo with the following changes**: Change the third line by deleting "a request" and substituting "requests;" substitute "each request" for "a request" at the end of the second to last line; and delete the last line.

The Reporter said that at issue 8 of the memo, the subcommittee considered whether to amend Rule 3007(a) as shown at page 14 to prevent the filing of an objection to a § 1308 tax claim until a tax return is filed. A thorough discussion of the proposal, which reflected the Sense of Congress expressed in § 716(e)(2) of BAPCPA, ensued. Committee members expressed concern as to tension with the Bankruptcy Code's provision for automatic allowance of claims in the absence of an objection, as well as concern as to how the rule would operate in the event that no tax return was required for a year within the § 1308 period. The Committee discussed the fact that the absence of § 1308 compliance would become clear upon the filing of a premature objection, and concluded after careful consideration that a rule precluding objections should not be adopted. **Accordingly, the Committee voted *against* making any change.**

The Reporter referred the Committee to a proposed change to Rule 2015.3(e) at page 3 of the March 23, 2007 Addendum. He said the proposed change was designed to eliminate a conflict with Rule 2003(a). **The Committee approved the change as set forth in the March 23 Addendum, except that 20 days at line 43 was changed to 14 days.**

6(A)(2) Comments on business forms.

The Reporter discussed several comments regarding Official Forms 25A, 25B and 25C described in the March 15, 2007 memo at Agenda Item 6. He said that the subcommittee rejected a number of the comments for reasons set forth in the memo, but that it agreed with a recommendation from the Commercial Law League to insert a new Article VII in the Plan (Form 25A) entitled "Means for Implementation of the Plan" as set out on page 3 of the March 15 memo. **The Committee approved insertion of the new Article VII in Form 25A, with the following substitution:** replace "§ 1125(a)(5)" with "§ 1123(a)(5)." **And the Committee voted to renumber the remaining articles in the Form 25A.**

The Reporter said that the EOUST had made two suggestions about Form 25C (Small Business Monthly Operating Report) that were not discussed in any of the memos: (1) adding a new "yes/no" question (#18) on the questionnaire part of Form 25C "Has anyone made an investment in your business this month?"; and (2) adding a new section in front of the "Income" section called "Summary of Cash on hand." **The Committee approved both changes.**

Agenda Item 7 (Report by the Subcommittee on Technology and Cross Border Insolvency)

Judge McFeeley said that there were a number of comments pertaining to cross border insolvencies and directed the Committee to the memos and handouts at Agenda Item 7 for the details. He said that the preliminary question was whether the Committee should wait for a year before making any of the changes suggested in the memos until the bench and bar develops more

experience with the new law. **After discussing the matter, the Committee voted to wait a year to consider the suggested chapter 15 related rule and forms changes (including Rule 5012 in the bullpen) with the following exception: The Committee approved changing the references to "foreign creditor" in all versions of Form 9 and the instructions to Form 9 to "creditor with a foreign" address, as illustrated in the materials.**

After the meeting, as described in the email vote below, the Committee approved the cross border amendments to Rules 1007(a)(4), 1010, 1011, 2002(p) and (q) as published, and Rule 2002(p)(3) as approved at the Seattle meeting.

Agenda Item 8 (Report of Subcommittee on Privacy, Public Access, and Appeals)

Judge Pauley said that the subcommittee was not proposing any changes to the rules based on the comments, but did suggest a possible change to the committee note for Rule 8001(f)(3) as set forth at page 3 of the February 23 memo at Agenda Item 8. **After discussion, the Committee voted to revise the committee note to Rule 8001(f)(3) as set forth on page 3 of the March February 23 memo. And after the meeting, as described in the email vote below, the Committee approved Rule 8003(d) as published.**

Agenda Item 9 (Report of Subcommittee on Forms)

9(A) (Comments on the Official Forms)

Judge Klein said that the subcommittee was recommending a number of changes to the Official Forms as described in the January 26 memo and as illustrated by the annotations to the forms found at Agenda Item 9. But, he said, only few changes required discussion. The first proposed discussion item was whether the Committee should recommend publishing the proposed reaffirmation agreement coversheet (Official Form 27) at page 205 of the materials. He explained that the subcommittee proposed the form as a compromise between members on the Committee that had previously suggested that director's form 240 be made an official form, and others that preferred that it remain a director's form for the time being. He said the subcommittee thought that the new form coversheet captured in one place all the required financial information the court must review when deciding whether to approve a reaffirmation agreement.

Judge Wedoff and Judge Frank suggested several changes to the proposed coversheet. After discussing the form and certain changes, the **Committee approved the coversheet in concept; agreed it should be an official form, and approved publication after it has been restyled by the Forms and Style Subcommittees and the following changes have been incorporated:** Number all questions. Insert a new question 2: "Describe collateral, if any, securing debt. ________." Question 8 would become "income for Schedule I, line 16: ______." Question 9 would be, "Explain any difference in the amounts set out in lines 7 and 8. _______." Line 10 would become "Debtor's monthly expenses at reaffirmation (without reaffirmed debt): ______." Line 11 would become "Current expenditures from Schedule J, line 18 (without reaffirmed debt): ______." Line 12 would be: "Explain any difference in the amounts set out on line 10 and 11. ________."

Judge Klein discussed Official Form 8 (Statement of Intention). He said that the proposed changes were in response to a comment from Judge Elizabeth Perris that most debtors were incorrectly filling out the current version of the form. Judge Klein noted that Bankruptcy Judges Advisory Group (BJAG) had provided their initial reactions to the proposed changes at its most recent meeting a few weeks ago. He said that despite negative comments from some members of the BJAG that the proposed changes make the form too complex, the subcommittee still thought they were an improvement over the current version. Accordingly, the subcommittee recommended publishing the revised Form 8 for comment.

Mr. Rao echoed some of the BJAG comments, and said he thought the existing version was probably better. Judge Frank also expressed reservations, but did not object to publishing the new version for comment. And he suggested several changes. **After discussing the matter, the Committee voted to publish proposed Form 8 at set forth at page 189 of the materials, with the following changes:** change "which" to "that" in the second "checkmark" line at the top of the form; change "applicable actions" to "applicable items" in the fourth column; delete "Property is not subject to § 521(a)(6)" in the fourth column; and replace with "Other. Explain ________," and delete the last bulleted paragraph at the bottom of page 1.

Judge Klein explained that proposed change to the "residential property box" on Official Form 1 (as set forth at page 179 of the materials) was made to facilitate the certification required of the debtor under § 362(l) of the Code. **The Committee approved changes as recommended.**

Judge Klein said that the subcommittee recommended the annotated changes to Official Forms 4, 6, and 7 set out at page 180-82 of the materials in response to a suggestion that filers would be more likely to make correct references to minor children if the instructions contained an example. **The Committee approved the recommended changes.**

The Committee also approved all of the technical/non-controversial recommendations to Official Forms 1, 6E and 6F, 6I, 6-Declaration, 22A, 22B, 22C, 24 and 25A, as set out at section 2 of the January 26 memo (pages 6-9).

9(B) (Automatic, statutory adjustments to certain dollar amounts) (Information item)

Mr. Wannamaker reported that the AO had updated Official Forms 1, 6C, 6E, 7, 10, 22A, and 22C with the new dollar amounts as required by law, and said that the new forms would be posted and effective on April 1, 2007.

9(C) (Proposed amendments to Director's Procedural Forms) (Information Item).

Mr. Wannamaker reported on a number of changes described in the January 26 memo at Agenda Item 9(C). The changes included: privacy amendments to the captions of Forms 13S, 15S, 132, 204, 205, 206, 207, 231A, 231B, 253, and 270; a revision of the bankruptcy subpoena

forms 254, 255, and 256 to conform with the amendment to Civil Rule 45; the abrogation of Forms 130A and 130B; and additional amendments to Forms 13S, 104, 202, 204, and 240.

Agenda Item 10 (Report of the ad hoc group on time computation and the discussion of time computation at the Standing Committee meeting)

The Chairman referred the Committee to the recommendations set out in the December 8 memo regarding time computation change to be made to the Bankruptcy Rules. The Chairman reminded the Committee that it had already approved the general template, and said that the Civil Rule version of the template (Civil Rule 6) was included in the materials. He said that the two issues for discussion were whether the Committee should proceed this year or wait, and, whenever it goes forward, what exceptions to the template should be implemented.

After discussion, the Committee recommended making the time-computation changes now.

10(A) Proposed amendments to template rule.

The Chairman said that Ad Hoc Group recommends adopting the template as presented in the materials. **After discussion, a motion to approve the template as set out in the materials carried without opposition.**

10(B) Timing and procedure for bankruptcy rule time-computation changes.

The Chairman said that the Ad Hoc Group recommends the global changes listed in the December 8, 2006 memo. Generally, two day time periods and periods of 30 days or more would be unchanged, and all other time periods less than 30 days would be changed to multiples of 7. **The Committee approved the Ad Hoc Group's recommendations.**

The Reporter said the Ad Hoc Group recommended excluding one category of rules from the general approach of changing 10-day periods to 14 days. He said that to facilitate the rapid disposition of bankruptcy appeals, the Ad Hoc Group recommended that 10-day periods that deal with noticing appeals (or serve a similar purpose) remain 10 days. Several members objected to any exclusions as being likely to turn into traps, and said that even at 14 days bankruptcy appeals would move much faster than civil appeals.

Professor Resnick said that the Committee had once before tried to change the appeal time period, but that there that there was so much negative response that it was changed back a year later. He said the response before was that most big deals don't close until after the appeal period runs so that the parties can be sure the deal won't be undone. And, for a lot of parties, an extra three days would be a big difference. Other members said that nowadays many deals close immediately and rely on the doctrine of mootness to prevent an appeal from undoing the deal. After additional discussion, **the Committee agreed (with 2 votes against) that all 10-day periods (even if related to appeals) will change to 14 days.**

Agenda Item 11 (Proposed amendments to the Bankruptcy Rules as a result of the restyling of the Civil Rules)

The Committee approved the changes to Rules 7012, 7022, 7023.1 and 9024 as set forth in the February 16 memo at Agenda Item 11 to reflect amendments to the civil rules made as part of the restyling of those rules.

Post meeting email vote

After the meeting, the Chairman requested an email vote on several published rules set forth below. He said, that although the relevant subcommittee had been asked to consider further changes to each of the rules, it was unclear from the minutes and his notes whether the Committee recommended approving the published versions of the rules (with further changes from the subcommittees to be considered at the next meeting) or if, instead, the Committee recommended continued use of the interim rule versions after December 2008. He also requested confirmation of the Committee's decision to replace Forms 19A and 19B with Form 19 (as set forth in Agenda Item 13).

Rule 1007(a)(4) as published with the following changes:
    Replace "administrators in foreign proceedings of the debtor" with "all persons or bodies authorized to administer foreign proceedings of the debtor" each place it appears.
Rule 1010 as published.
Rule 1011 as published.
Rule 2002(p)(1)-(2) as published plus Rule 2002(p)(3) from the bull pen (Agenda Item 13).
Rule 2002(q) as published with the following changes:
    Replace "administrators in foreign proceedings of the debtor" with "all persons or bodies authorized to administer foreign proceedings of the debtor" each place it appears.
Rule 4004(c) as published.
Rule 4008 as published.
Rule 4008(a) as follows for publication:
    (a) FILING OF REAFFIRMATION AGREEMENT. A reaffirmation agreement shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a) of the Code. The reaffirmation agreement shall be accompanied by a coversheet, prepared as prescribed by the appropriate Official Form. The court may . . ..
Rule 8003(d) as published.
Rule 9006(b)(3) and (c)(2), as set forth by the Reporter in his handout on Friday morning of the meeting.
Replacement of Officials Forms 19A and 19B with Form 19 as set forth in the bullpen (Agenda Item 13).

The Committee approved all suggested changes, with the following stylistic change to Rule 9006(b)(3): The caption would be changed to "Enlargement Otherwise Regulated" and the text would state "Enlargement of the time for taking action under Rules 1006(b)(2) . . . and 9033, shall be governed by the provisions of those rules."

Administrative Matters

The Chairman reminded the members that the next meeting will be held September 6-7, 2007, at the Teton Mountain Lodge, Jackson Hole, WY. A motion to adjourn carried without dissent, and the meeting was adjourned.

Respectfully submitted,

Stephen "Scott" Myers

Item 2 will be an oral report.

Draft minutes of the June 2007 meeting of the Standing Committee
will be distributed separately.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON ATTORNEY CONDUCT AND HEALTH CARE

RE: RULE 2007.2 – APPOINTMENT OF PATIENT CARE OMBUDSMAN

DATE: JULY 8, 2007

The Subcommittee on Attorney Conduct and Health Care met by teleconference to consider a proposal to amend the rules to require debtors to move for an order determining whether a patient care ombudsman should be appointed in every health care business bankruptcy case. After a lengthy discussion, the Subcommittee recommends that no change be made to the rules at this time.

Judge Marvin Isgur (Bankr. S.D. Tex.) submitted **Comment 06-BK-011** which includes a suggestion to amend Rule 2007.2 to require the debtor to file a motion at the start of the case to seek a determination of whether a patient care ombudsman needs to be appointed. Specifically, his proposal is to add a subdivision to the rule that would require a health care business debtor in a voluntary case to file a motion seeking an expedited determination of whether the appointment of a patient care ombudsman is necessary. Judge Isgur's concern is that the court may not find out that the case is one in which the appointment may be necessary until it is too late in the case to provide adequate notice and hold a hearing in the matter.

The statute, § 333 of the Code, requires the court to appoint a patient care ombudsman within 30 days of the commencement of the case unless the court concludes that the appointment is unnecessary in the specific case. Also, the petition includes a requirement that the debtor identify itself as a health care business, so the court should know in every instance at the time of

the filing of the petition whether it needs either to appoint the ombudsman or to make the determination that such an appointment is unnecessary. Thus, such an appointment should be automatic unless a party in interest moves for an order that no ombudsman be appointed. The court can enter such an order if it finds that the appointment is not necessary for the protection of patients under the facts of the case. Official Form 1, the Voluntary Petition, includes a checkbox in which the debtor must state the nature of the business, and the very first box is for health care businesses. If this box is checked, it would seem that the clerk's office could flag the file, send it to the judge with a note that it is a health care case, and the court can prepare an order to show cause why it should not direct the appointment of the ombudsman. The court conceivably also could simply wait until the 30th day after the commencement of the case and order the appointment.

Rule 2007.2 is set up to put the burden on persons who believe that no patient care ombudsman is necessary. That person can move for an order directing that no ombudsman be appointed. It seems that the purpose of § 333 is to have a patient care ombudsman appointed in every case unless an interested part can show that no such appointment is necessary. Therefore, if no one brings the matter to the court, the ombudsman should be appointed in each instance. Rule 2007.2(a) requires a party in interest to file such a motion not later than 20 days after the commencement of the case. If no such motion is filed in that time, the court still has ten days to order the appointment in compliance with the Code. Rule 2007.2(d) authorizes the filing of motions to terminate the appointment of an ombudsman, and Rule 2007.2(b) authorizes the filing of a motion to appoint an ombudsman after the court has previously found that the appointment is unnecessary. Conditions at the facility may have changed, so the rule recognizes that parties in

interest may need additional opportunities to raise the issue throughout the term of the case. This process is consistent with the Code, and it appears to be working. There are very few reported decisions under § 333 on the appointment of patient care ombudsmen. Several cases have concluded that the debtor is not a health care business, see, e.g., In re Medical Assoc. Of Pinellas, L.L.C., 360 B.R. 356 (Bankr. M.D. Fla. 2007)("The debtor in this case, Medical Associates of Pinellas, L.L.C. ("Debtor"), provides administrative support to a group of physicians and their practices, with any services to the public only ancillary to that primary function. Accordingly, for the reasons set forth below, the Court concludes that the Debtor is not a "health care business" and, therefore, there is no requirement in this case to appoint a patient care ombudsman." In the case, the debtor checked the "health care business" box on the petition, and the court then issued an order to show cause why a patient care ombudsman should not be appointed.) See also In re 7-Hills Radiology, L.L.C., 350 B.R. 902 (Bankr. D. Nev. 2006).

Another court determined that a professional corporation which provided medical care did not require the appointment of an ombudsman and so declined to reach the question of whether the debtor was a health care business. In re Total Woman Healthcare Center, P.C., 2006 WL 3708164 (Bankr. M.D. Ga., Dec. 16, 2006). See also In re Banes, 355 B.R. 532 (Bankr. M.D.N.C. 2006)(dentist did not qualify as a health care business, and even if she was, there was no need to appoint an ombudsman). In In re William L. Saber, M.D., P.C., 2007 WL 1466714 (Bankr. D. Colo., April 27, 2007), the debtor apparently checked the health care business box, but just one week after the commencement of the case, he moved for an order that a patient care ombudsman not be appointed. The court granted the motion.

These cases seem to suggest that the courts are not experiencing any problems with these

cases. Furthermore, the system in place with Rule 2007.2 is more consistent with the Code than a system that would require a debtor to file a motion for a determination as to whether the appointment of a patient care ombudsman is necessary. Additionally, the United States trustee monitors these cases, and it is the policy of the Program to move for the appointment of an ombudsman if it appears that the 30 day deadline in the Code is approaching and no party in interest is moving for an order that the ombudsman not be appointed. Therefore, the Subcommittee recommends no change to Rule 2007.2 which the Standing Committee has just approved for transmittal to the Judicial Conference. If further developments arise that demonstrate that the courts are not being made aware that pending cases involve health care businesses, the Subcommittee can reconsider the matter.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: CONSUMER SUBCOMMITTEE

RE: PENDING MATTERS

DATE: JULY 25, 2007

The Consumer Subcommittee met to address three issues that were referred to the Subcommittee at the meeting on Marco Island: (1) the procedure governing objections to discharge under §§ 727(a)(8) and (9) and 1328(f) which deny discharge to debtors who received a discharge in a prior case commenced within a stated time prior to the pending case; (2) a rule amendment to provide debtors with additional notice that their discharge may be withheld because they have not filed a statement of completion of the personal financial management course; and (3) a split in the case law regarding objections to exemptions in cases converted to chapter 7. The Subcommittee also discussed whether to establish a procedure to govern "automatic dismissals" under § 521(i) of the Code.

Objections to Discharge under §§ 727(a)(8) and (9) and 1328(f)

Sections 727(a)(8) and (9) and 1328(f) of the Code provide for denial of discharge to debtors who received a discharge in a prior case filed within a stated period prior to the pending case. These grounds for denial are similar to that specified in § 727(a)(1) (the debtor is not an individual) in that the evidence necessary to establish the grounds for the objection is generally available on the petition or in the schedules. Objections on other grounds are much more likely

to involve evidentiary hearings on disputed facts.[1] Therefore, the Advisory Committee concluded that objections to discharge in these cases should be treated as contested matters rather than as adversary proceedings. Two decisions remained as to the procedure that the rules should adopt to implement this decision. First, the Subcommittee was asked to consider whether to apply the same deadline of 60 days after the first date set for the § 341 meeting of creditors as set in Rule 4004(a)for other objections to discharge. Secondly, the Subcommittee considered whether the rules should expressly govern the court's authority to deny the discharge on its own motion under §§ 727(a)(8) and (9) and 1328(f) .

The Subcommittee concluded that the same deadline should apply to objections to discharge under these sections as applies to other discharge objections. The grounds for objection based on a prior discharge are at least as likely to be discovered within the first 60 days following the first date set for the § 341 meeting of creditors as are grounds for other objections. Secondly, the Subcommittee concluded that the language of § 105(a) is sufficient to authorize the courts to act, so that no amendment to the rules is necessary. Indeed, inserting an express authorization in the rules on this issue could generate confusion in other rules which would not include such a directive. Consequently, the Subcommittee recommends that Rules 4004(a) and 7001 be amended as set out below. The amendments provide that objections to discharge under §§ 727(a)(8) and (9) and 1328(f) are contested matters. Rule 7001 is amended to remove these

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[1] Section 727(a)(9) requires the court to determine whether the debtor's plan in a prior chapter 12 or 13 case paid at least 70% of the claims and was proposed by the debtor in good faith and represented the debtor's best efforts. Given the requirement that all of the debtor's disposable income be used to fund the plan, and given further that good faith is a prerequisite to confirmation, it seems that even under § 727(a)(9) the only factual issue would likely be the timing of the prior and current case.

actions from the list of adversary proceedings, and Rule 4004 is amended to extend the rule to objections to discharge in chapter 13 cases. Rule 4004 is also amended to include not filing the financial management certificate in a chapter 13 case, or in a chapter 11 case if required, as grounds for withholding the discharge.

RULE 7001. Scope of Rules of Part VII

1 (a) An adversary proceeding is governed by the rules of
2 this Part VII. The following are adversary proceedings:
3 (1) a proceeding to recover money or property, other than a
4 proceeding to compel the debtor to deliver property to the trustee,
5 or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or
6 Rule 6002;
7 (2) a proceeding to determine the validity, priority, or
8 extent of a lien or other interest in property, other than a
9 proceeding under Rule 4003(d);
10 (3) a proceeding to obtain approval under § 363(h) for the
11 sale of both the interest of the estate and of a co-owner in property;
12 (4) except as provided in subdivision (b), a proceeding to
13 object to or revoke a discharge;
14 (5) a proceeding to revoke an order of confirmation of a
15 chapter 11, chapter 12, or chapter 13 plan;
16 (6) a proceeding to determine the dischargeability of a debt;
17 (7) a proceeding to obtain an injunction or other equitable

18 relief, except when a chapter 9, chapter 11, chapter 12, or chapter

19 13 plan provides for the relief;

20 (8) a proceeding to subordinate any allowed claim or

21 interest, except when a chapter 9, chapter 11, chapter 12, or chapter

22 13 plan provides for the subordination;

23 (9) a proceeding to obtain a declaratory judgment relating

24 to any of the foregoing; or

25 (10) a proceeding to determine a claim or cause of action

26 removed under 28 U.S.C. § 1452.

27 (b) An objection to discharge under §§ 727(a)(8), (a)(9), or

28 1328(f), is commenced by motion and is governed by Rule 9014.

COMMITTEE NOTE

Subdivision (b) is added to the rule, and the text of the existing rule is redesignated as subdivision (a). Subdivision (b) and the amendment to subdivision (a)(4) direct that objections to discharge under § 727(a)(8) and (a)(9) and § 1328(f) be commenced by motion rather than by complaint as is the case for other objections to discharge. Objections to discharge on these grounds typically present issues more easily resolved than other objections to discharge, so there is less need for the more extensive procedures applicable to adversary proceedings. In appropriate cases, the court can order that all of the provisions of Part VII of the rules apply to these matters under Rule 904(c).

RULE 4004. Grant or Denial of Discharge[2]

[2] Comparison is to the version of Rule 4004 scheduled to take effect December 1, 2008 if approved by the Judicial Conference and the Supreme Court, and if Congress takes no action to the contrary.

(a) TIME FOR FILING COMPLAINT OR MOTION OBJECTING TO DISCHARGE; NOTICE OF TIME FIXED. In a chapter 7 ~~liquidation~~ case a complaint or motion objecting to the debtor's discharge under § 727(a) of the Code shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). In a chapter 11~~reorganization~~ case, the complaint shall be filed no later than the first date set for the hearing on confirmation. In a chapter 13 case, a motion objecting to a debtor's discharge under § 1328(f) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). At least 25 days' notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k), and to the trustee and the trustee's attorney.

* * * * *

(c) GRANT OF DISCHARGE.

(1) In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge unless:

(A) the debtor is not an individual;

(B) a complaint or motion objecting to the discharge has been filed and not decided in the debtor's favor;

23 (C) the debtor has filed a waiver under § 707(a)(10);

24 (D) a motion to dismiss the case under § 707 is pending;

25 (E) a motion to extend the time for filing a complaint

26 objecting to the discharge is pending;

27 (F) a motion to extend the time for filing a motion to

28 dismiss the case under Rule 1017(e) is pending;

29 (G) the debtor has not paid in full the filing fee

30 prescribed by 28 U.S.C. § 1930(a) and any other fee prescribed by

31 the Judicial Conference of the United States under 28 U.S.C.

32 § 1930(b) that is payable to the clerk upon the commencement of a

33 case under the Code, unless the court has waived the fees under 28

34 U.S.C. § 1930(f);

35 (H) the debtor has not filed with the court a statement of

36 completion of a course concerning personal financial management

37 as required by Rule 1007(b)(7);

38 (I) a motion to delay or postpone discharge under

39 § 727(a)(12) is pending;

40 (J) a motion to enlarge the time to file a reaffirmation

41 agreement under Rule 4008(a) is pending;

42 (K) a presumption has arisen under § 524(m) that a

43 reaffirmation agreement is an undue hardship; or

44 (L) a motion is pending to delay discharge because the

45 debtor has not filed with the court all tax documents required to be

46 filed under § 521(f).

47 * * * * *

48 (4) In a chapter 13 case, the court shall not grant a discharge if

49 the debtor has not filed with the court a statement of completion of

50 a course concerning personal financial management as required by

51 Rule 1007(b)(7), or if the debtor is not eligible for a discharge

52 under § 1328(f).

53 (5) In a chapter 11 case in which the debtor is an individual,

54 the court shall not grant a discharge if the debtor is required to but

55 has not filed with the court a statement of completion of a course

56 concerning personal financial management as required by Rule

57 1007(b)(7).

58 * * * * *

COMMITTEE NOTE

Subdivision (a) is amended to include a new deadline for the filing of motions to object to a debtor's discharge under §§ 727(a)(8), (a)(9), and 1328(f). These sections establish time limits on the issuance of discharges in successive bankruptcy cases by the same debtor. In connection with this amendment, Rule 7001 is amended to include a provision directing the use of motions rather than complaints to initiate objections to discharge based on these statutory grounds.

Subdivision (c)(1)(B) is amended to include motions objecting to discharge as a basis for withholding discharge and to

clarify that the filing of an objection to discharge is not a basis for withholding discharge if the objection has been resolved in the debtor's favor.

Subdivision (c)(4) is new. It directs the court to withhold the entry of the discharge if the debtor has not filed with the court a statement of completion of a course concerning personal financial management as required by Rule 1007(b)(7) or if the debtor is ineligible to receive a discharge under § 1328(f).

Subdivision (c)(5) is new. It directs the court to withhold the entry of the discharge if the debtor is required to but has not filed with the court a statement of completion of a course concerning personal financial management as required by Rule 1007(b)(7).

Notice of No Discharge for Failure to Complete Personal Financial Management Course

The Subcommittee studied several comments urging an amendment to the rules to provide additional protection for the discharge of debtors. In individual debtor cases, the debtor must complete a course in personal financial management to receive a discharge. The concern expressed in the comments was both that discharges should not be entered improperly in cases in which the debtor has not completed the necessary course, and that debtors should be warned that they have not completed the course prior to the time when the clerk would otherwise issue a notice that no discharge is being entered in the case. The debtor can reopen the case and submit the necessary form to obtain the discharge, but this requires the payment of an additional fee by the debtor and creates unnecessary additional work for the office of the clerk. The solution proposed by the Subcommittee is (1) to extend the deadline for filing the completion statement from 45 to 60 days from the first date set for the § 341 meeting of creditors, and (2) to require that if the debtor has not already filed the statement of completion of the personal financial management course, the clerk must send a notice to the debtor, 45 days after the first date set for

the § 341 meeting of creditors that the case may be closed without a discharge if the debtor does not timely file the completion statement. [The notice will advise the debtor that after such a closing a new fee will have to be paid to reopen the case to have the discharge subsequently entered.]

Rule 1007 Lists, Schedules, Statements, and Other Documents; Time Limits

1 * * * * *

2 (c) TIME LIMITS.

3 * * * * *

4 In a chapter 7 case, the debtor shall file the statement required by
5 subdivision (b)(7) within ~~45~~ 60 days after the first date set for the
6 meeting of creditors under § 341 of the Code, and in a chapter 11
7 or 13 case no later than the date when the last payment was made
8 by the debtor as required by the plan or the filing of a motion for a
9 discharge under § 1141(d)(5)(B) or § 1328(b) of the Code. The
10 court may, at any time and in its discretion, enlarge the time to file
11 the statement required by subdivision (b)(7).

12 * * * * *

COMMITTEE NOTE

Subdivision (c) is amended to provide additional time for individual debtors in chapter 7 to file the statement of completion

of a course in personal financial management. This change is made in conjunction with an amendment to Rule 5009, requiring the clerk to provide notice to debtors of the consequences of an untimely filing of the statement.

RULE 5009. Closing Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases

1 (a) If in a chapter 7, chapter 12, or chapter 13 case the
2 trustee has filed a final report and final account and has certified
3 that the estate has been fully administered, and if within 30 days no
4 objection has been filed by the United States trustee or a party in
5 interest, there shall be a presumption that the estate has been fully
6 administered.

7 (b) If an individual debtor in a chapter 7 or 13 case has not
8 filed the statement required by Rule 1007(b)(7) within 45 days
9 after the first date set for the meeting of creditors under § 341, the
10 clerk shall forthwith give the debtor notice that the case may be
11 closed without the entry of a discharge [and that any subsequent
12 reopening of the case may require the payment of an additional
13 filing fee].

COMMITTEE NOTE

Subdivision (b) is added to the rule to require the clerk to provide notice to an individual debtor in a chapter 7 and 13 case that the case may be closed without the entry of a discharge due to the failure of the debtor to file a timely statement of completion of

> a personal financial management course. The purpose of the notice is to provide the debtor with an opportunity to complete the course and file the appropriate document prior to the filing deadline. Timely filing of the document avoids the need for a motion to extend the time retroactively and avoids the potential for closing the case without discharge, with the potential for reopening with an additional filing fee. Timely filing also benefits the clerk's office by reducing the number of instances in which cases must be reopened.

Objections to Exemptions in Cases Converted to Chapter 7

The Subcommittee considered proposals from Bankruptcy Judges Montali and Mannes suggesting an amendment of Rule 1019 to provide creditors and the chapter 7 trustee with an opportunity to object to a debtor's claim of exemptions for a period of time after the conversion of a case to chapter 7. They point out that creditors and the trustee in chapter 13, and the creditors' committee in a chapter 11, have little incentive to object to a debtor's claim of exemptions. In those cases, the debtor's plan may propose a substantial repayment on the creditor claims. In that event, the creditors derive little or no benefit from objecting to the exemption claim. It would not increase their recovery, but it would increase their expenses in the bankruptcy proceeding. Upon conversion however, the significance of the debtor's exemptions becomes substantially greater. If a debtor claims an excessive exemption, that claim operates to remove assets from the reach of creditors unlike the way it operated in the prior chapter. The courts have addressed this issue in a number of cases. A 2005 decision describes the situation as follows:

> A substantial number of courts have held that the Rule 4003(b) deadline does not recommence upon the conversion of a chapter 13 case to chapter 7. This view has been referred to as the majority position. See In re Campbell, 313 B.R.

> 313, 318 (10th Cir. BAP 2004). Another line of jurisprudence holds that the deadline does recommence upon conversion. While termed the minority position, a large number of courts have nonetheless adopted this analysis.

In re Fonke, 321 B.R. 199, 201 (Bankr. N.D. Tex. 2005). This is an accurate description of the state of the law. Two circuit courts have held that no new deadline is created on conversion of the case from one chapter to another. See In re Smith, 235 F.3d 472 (9th Cir.2000) (conversion of case under chapter 11 to a case under chapter 7); In re Bell, 225 F.3d 203 (2nd Cir.2000) (conversion of chapter 11 case to a case under chapter 7. Another, the Eleventh Circuit, in an unpublished decision, affirmed a decision which held that no new objection period arose on the conversion of a case from chapter 13 to chapter 7. In re Ferretti, 230 B.R. 883 (Bankr. S.D.Fla.1999), subsequently aff'd, 268 F.3d 1065 (11th Cir.2001). The Eighth Circuit in In re Alexander, 236 F.3d 431 (8th Cir. 2001), permitted a chapter 7 trustee to object to an exemption in a case converted from chapter 7, but only after the chapter 13 trustee had already objected to the exemption. On the other hand, there are a number of decisions in which lower courts have sustained objections to exemptions first raised after conversion. See, e.g., In re Campbell, 313 B.R. 313 (10th Cir. BAP 2004); In re Hopkins, 317 B.R. 726, (Bankr. E.D. Mich. 2004); In re Fish, 261 B.R. 754 (Bankr. M.D. Fla.2001) (conversion of chapter 13 cases to chapter 7 cases); In re Koss, 319 B.R. 317 (Bankr. D.Mass.2005); In re Lang, 276 B.R. 716 (Bankr. S.D.Fla.2002); and In re Wolf, 244 B.R. 754 (Bankr. E.D.Mich.2000) (conversion of chapter 11 cases to chapter 7 cases).

While there may be a "majority rule" in place, the number of "minority jurisdictions" is quite large. At the very least, the courts are significantly split on this issue. The majority courts

generally hold that Rule 1019 sets out a series of matters for which the conversion of the case to another chapter generates a new deadline and they point out that the list does not include the time to object to an exemption. Thus, these courts conclude that no new time period begins to run upon the conversion of the case. A number of the minority jurisdiction decisions assert that there is ambiguity in the rules and the Code. They assert that the absence of a reference to the deadline to object to an exemption in Rule 1019 is not surprising because Rule 4003 already addresses the matter. Under Rule 4003, the trustee and creditors have 30 days from the conclusion of the meeting of creditors within which to object. Therefore, they hold, when the § 341 meeting is held in the converted case, a new deadline arises and timely objections can be raised.[3]

Judges Montali and Mannes suggest that the rules be amended to address what they see as an unfair opportunity for debtors to obtain the benefit of excessive exemptions. The debtor plays a game of "gotcha" by claiming a large exemption but also proposing a substantial repayment to creditors in a chapter 11, 12, or 13 case. When the case is converted, the debtor then argues that it is too late to object. The judges suggested this problem could be alleviated by creating a new opportunity for objecting to exemptions upon the conversion of the case to another chapter. They point out that other actions can be taken upon conversion of the case to another chapter, and these are already included in Rule 1019. They would add objections to exemptions to this list of actions for which a new deadline arises on conversion of the case.

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[3] The court in Fonke rejected the analyses of both the majority and minority decisions finding that both the rules and Code are ambiguous and concluding that the specific provision of § 522(c) protecting exempt property from prepetition claims prevails over the more general provision of § 348(a) which provides that the conversion of a case to another chapter constitutes an order for relief under the new chapter. On this basis, the court held that the debtor's claim of exemption is not be subject to objection in a converted case.

However, there are countervailing considerations. First, a debtor may have relied substantially on the status of property as exempt throughout the course of a Chapter 13 case. Undoing that determination two years later could result in significant harm to the debtor. Improvements could be made to property, other opportunities forgone, and other forms of reliance could have taken place which would result in an unjust burden on a debtor who originally claimed the exemption in good faith. Secondly, resolving exemption objections at the early stages of the case is preferable to making those determinations – which may involve time-sensitive valuation questions – two or three years later.

Notwithstanding these reasons for retaining the current process, it is true that under the majority rule creditors incur expenses to challenge exemptions that may never truly matter. Simply by challenging the exemption claim, the creditor also faces the risk of antagonizing the debtor who might respond by proposing less favorable modifications to the plan or may take other actions that create different expenses for the creditors.

The Subcommittee considered the matter at length and reviewed four alternative responses to the problem set out below. The Subcommittee ultimately concluded that Alternative I is preferable and that the rules should be amended to establish a new deadline for filing objections to exemptions when a case is converted to chapter 7 no later than one year after confirmation of a plan under chapter 11, 12, or 13.[4]

Alternative I – A new time to object to exemptions is established if the debtor converts a case to chapter 7 within one year of the confirmation of an initial plan.

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[4] A new objection period would not arise, however, if the case was originally filed under chapter 7 and the time to object to the exemptions had expired prior to the initial conversion from chapter 7.

Alternative II – A new time period is established to object to exemptions when the debtor converts a case to chapter 7.

Alternative III – No new objection period arises upon the conversion of the case. Parties in interest must object within 30 days after the conclusion of the § 341 meeting of creditors in the initial case.

Alternative IV – Parties in interest can object to exemptions in the converted case only upon a showing of cause to allow the objection.

The Subcommittee selected Alternative I to accommodate both the reasons stated by Judges Montali and Mannes and the countervailing considerations described in this memo. A debtor who has been living with and paying under a plan for a year is not likely engaging in strategic behavior to obtain the benefits of an excessive exemption claim. And the evidentiary problems will be reduced is objections are not allowed for longer times before conversion. The following is a proposed amendment to Rule 1019 intended to implement Alternative I. The amendment is set out in Rule 1019 as it would be revised by the amendment which is to be considered by the Judicial Conference this month.

Rule 1019. Conversion of Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to Chapter 7 Liquidation Case

1 When a chapter 11, chapter 12, or chapter 13 case has been

2 converted or reconverted to a chapter 7 case:

3 * * * * *

4 (2) *New Filing Periods.*

5 <u>(a)</u> A new time period for filing a motion under § 707(b) or

6 (c), a claim, a complaint objecting to discharge, or a complaint to

7 obtain a determination of dischargeability of any debt shall
8 commence under Rules 1017, 3002, 4004, or 4007, but a new time
9 period shall not commence if a chapter 7 case had been converted
10 to a chapter 11, 12, or 13 case and thereafter reconverted to a
11 chapter 7 case and the time for filing a motion under § 707(b) or
12 (c), a claim, a complaint objecting to discharge, or a complaint to
13 obtain a determination of the dischargeability of any debt, or any
14 extension thereof, expired in the original chapter 7 case.
15 (b) A new time period for filing an objection to a claim of
16 exemptions shall commence under Rule 4003(b) if the case was
17 converted no later than one year after the confirmation of a plan
18 under chapter 11, 12, or 13 provided that a new time period shall
19 not commence if a chapter 7 case had been converted to a chapter
20 11, 12, or 13 case and thereafter reconverted to a chapter 7 case
21 and the time to object to a claimed exemption had expired in the
22 original chapter 7 case.
23 * * * * *

24 COMMITTEE NOTE

25 Subdivision (2) is redesignated as subdivision (2)(a), and a
26 new subdivision (2)(b) is added to the rule. Subdivision (2)(b)
27 provides that a new time period to object to a claim of exemption
28 arises when a case is converted to chapter 7 from chapter 11, 12, or
29 13. The new time period arises, however, only if the conversion
30 occurs within one year after the confirmation of a plan in the case.
31 A new objection period also does not arise if the case was

32 previously pending under chapter 7 and the objection period had
33 expired in the prior chapter 7 case.
34

35 **Automatic Dismissals Under § 521**

36 Section 521(i)(1) of the Code provides that if an individual debtor fails to file all of the
37 information required by § 521(a)(1) within 45 days after the filing of the petition, the case is
38 "automatically dismissed." The Code does not indicate how this automatic dismissal occurs,
39 and the courts are now addressing the matter. Some courts have concluded that the statute is
40 unambiguous and that they have little or no role in the operation of the section. Other courts
41 have found ambiguity in the provision and concluded that "automatic" may not be quite so
42 "automatic" after all. The Committee received comments that the rules should address and
43 resolve the issue of "automatic" dismissals under § 521(a)(1) by establishing a national
44 procedure for the courts to follow. Given the significant split in the case law, however, it does
45 not seem prudent at this time for the Committee to adopt one position or another in this area.
46 Instead, the Subcommittee recommends that it continue to monitor the case law developments
47 under the section. If a consensus arises in the courts, adoption of a rule implementing that
48 consensus would be appropriate. It may also be proper for the Committee to consider one
49 alternative or another even in the absence of a consensus, but the Subcommittee believes that the
50 courts should first continue to consider the issue to see if the interpretational difficulties posed by
51 the statute can be resolved before a rules based solution should be proposed.

52 While the courts have employed several different analyses of the problem, the results fall
53 into two primary camps. On the one hand, many courts have held that the language of the statute
54 is unambiguous and concluded that cases are automatically dismissed if the debtor fails to file the

55 necessary documents or materials in a timely fashion. One of the earlier cases which has been

56 widely cited for this proposition is In re Fawson, 338 B.R. 505 (Bankr. D. Utah 2006). The court

57 noted that there is no discretion allowed under the statute if the debtor fails to file the necessary

58 documentation. See also In re Lovato, 343 B.R. 268 (Bankr. D.N.M. 2006); and In re Ott, 343

59 B.R. 264 (Bankr. D. Colo. 2006). Other courts have held that the Code is ambiguous and

60 concluded that they have discretion with regard to actions under § 521(i).

61 The Reporter will continue to monitor the developments and will report to the

62 Subcommittee periodically.

From: PAUL MANNES
To: Judge McFeeley
To: Christopher Klein
To: Eugene Wedoff
To: Kenneth Meyers
Cc: Thomas Zilly
Cc: Peter McCabe
Sent: May 30, 2007 12:34 PM
Subject: Rules

Dear Brethren -

My thought when I was involved in the Rules Process was that one purpose of the our work was to eliminate uncertainty when that could be accomplished without the appearance of "legislating." The corollary to that proposition espoused by Judge Ed Leavy was that just because one judge got it wrong was not a good enough reason to change a rule.

I have a high profile case filed under chapter 11, and after cratering, converted to chapter 7. The issue is whether conversion of a case creates a 30-day period for filing objections under 4003(b). While I sense a way to dodge the issue in this particular case, I know that the issue will rise again. The courts are divided - compare Smith, 235 F3d 472 with Campbell, 313 B R 313.

Could the Committee discuss whether:
(1) Rule 1019(2) is sufficiently lucid and no new period is created for filing objections to exemptions?
(2) Rule 4003(b) should be amended by noting that Rule 1019(2) has no application to the exemption process?
(3) In the light of Taylor v. Freeland and the often occurring disincentive to object to exemptions in a case under chapter 13, should Rule 1019(2) be changed to include objections to exemptions?

It annoys me that our rules that are designed to ease the process can be the source of a problem.

Thanks for listening to me. Paul

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: AUTOMATIC DISMISSAL OF CASES UNDER § 521(I)

DATE: August 7, 2007

The Committee has received a comment requesting that it consider a rules based solution to issues relating to the application of § 521(i) of the Code. That provision was included in the 2005 amendments to the Bankruptcy Code introduces the concept of an "automatic dismissal" of cases under § 521(i). The section provides:

> (i)(1) Subject to paragraphs (2) and (4) and notwithstanding section 707(a), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition.
>
> (2) Subject to paragraph (4) and with respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 5 days after such request.
>
> (3) Subject to paragraph (4) and upon request of the debtor made within 45 days after the date of the filing of the petition described in paragraph (1), the court may allow the debtor an additional period of not to exceed 45 days to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.
>
> (4) Notwithstanding any other provision of this subsection, on the motion of the trustee filed before the expiration of the applicable period of time specified in paragraph (1), (2), or (3), and after notice and a hearing, the court may decline to dismiss the case if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case.

Subsection (i)(1) provides for the automatic dismissal of a case, effective on the 46th day after the date of the filing of the petition if the debtor fails to "file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition." Section 521(a)(1) requires the debtor to file a list of creditors and the schedules of assets and liabilities, among other things. That section also requires, in the absence of a court order to the contrary, that the debtor file "copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer." 11 U.S.C. § 521(a)(1)(B)(iv). While the section requires debtors to file other information, the most significant application of § 521(i) has been in connection with the failure of debtors to file the payment advices. The courts have issued a number of decisions addressing the automatic dismissal of cases in which the debtor either did not file any payment advices or filed fewer than all of the payment advices for the 60 day period prior to the filing of the petition. The Consumer Subcommittee has considered the matter briefly and concluded that it is premature to recommend a rule to resolve the issues created by the automatic dismissal provision. The courts have not yet reached any consensus on the proper application of the provision, so the Subcommittee determined that the matter should be monitored to watch for the emergence of any consensus in the courts on the interpretation and application of the section.

The courts have followed two primary avenues in applying § 521(i). One group of decisions holds that the language of the statute is unambiguous and must be applied to implement the plain meaning of the statute as directed by the Supreme Court in a number of recent decisions construing the Bankruptcy Code. The leading decision espousing this position is In re Fawson, 338 B.R. 505 (Bankr. D. Utah 2006). In Fawson, the court held that the statute is unambiguous,

and if the debtor has failed to file any of the required materials within 45 days of the commencement of the case, the case is automatically dismissed. Judge Boulden states that

> Section 521(i)(1) is not ambiguous as Fawson argues. The section provides that the case is automatically dismissed on the 46th day if an individual debtor fails to file the § 521(a)(1) papers within 45 days of filing the petition. Automatic means "acting or operating in a manner essentially independent of external influence or control." Section 521(i)(1) does not contemplate any independent action by the Court or any other party-the case is merely dismissed by operation of the statute itself. There is no ambiguity.

338 B.R. at 510 (footnotes omitted). She rejected the argument that the existence of § 521(a)(2) interjects ambiguity into the matter. The debtor had argued that this provision anticipates that the court would have some discretion over the issuance of an order dismissing the case, but Judge Boulden concluded instead that this provision is likewise unambiguous and simply directs the court to act in a specific manner and subject to a specific deadline. Rather than creating ambiguity, she concluded that this provision provides even further direct and clear evidence of the intent of Congress. She also concluded that neither the potential for the debtor under subsection (i)(3) nor the trustee under (i)(4) to seek extensions of the time to file the documents or to maintain the case notwithstanding the failure to file the documents injects uncertainty into the provision. If the 45 days has expired without any action being taken under those subsections, the case is dismissed. Several courts have adopted essentially the same position. See, e.g., In re Lovato, 343 B.R. 268, 270 (Bankr. D.N.M. 2006) ("After the expiration of the time limits set forth in 11 U.S.C. § 521(i)(1), the Court is left with no discretion to allow the Debtor additional time within which to comply with the requirement for submission of payment advices."); In re Williams, 339 B.R. 794 (Bankr. M.D. Fla. 2006) (concluding that Court had no discretion to extend the time within which to file the documents required under 11 U.S.C. § 521(a) where

debtor did not request extension within the initial 45 day period"); In re Ott, 343 B.R. 264, 267-68 (Bankr. D. Colo. 2006) ("Because of the intended and express charge of Congress in enacting new provisions of section 521, bankruptcy courts cannot grant the type of relief here requested by the Debtor because the "excusable neglect" exception has been effectively legislated out of the hands of this Court. After the expiration of the specified period set forth in 11 U.S.C. § 521(i)(1), there are no exceptions, no excuses, only dismissal and the consequences that flow therefrom.") (footnotes omitted); In re Hall, 2007 WL 1231662 (Bankr. W.D. Tex., April 23, 2007) (court is without discretion to extend deadlines that have expired and case is dismissed); In re Calhoun, 359 B.R. 738 (Bankr. E.D. Mo. 2007) (court has no discretion to extend 45 day period and case is automatically dismissed).

Other courts, however, have held that the Code is not so inflexible in some circumstances. For example, in In re Parker, 351 B.R. 790 (Bankr. N.D. Ga. 2006), the debtor asserted that his case was automatically dismissed because he had failed to file the necessary payment advices. Serious questions existed as to whether any such advices had ever been given to the debtor, but the debtor wanted out of the case to prevent the trustee from selling some of the estate's assets. The court noted that the 2005 amendments to the Code were

> primarily designed to prevent abuse of the bankruptcy system so that parties were not allowed to receive the benefits of bankruptcy without performing the requisite duties. However, interpreting "automatic dismissal" to mean that a case ceases to be pending by the mere passage of time without a court order of dismissal does not further the purposes of the statute and may cause chaos and confusion since there is no readily ascertainable way to determine whether or not a case has been dismissed.

Id. at 801. The court noted also that § 521(a)(1)(B) authorizes the court to "order otherwise"

with regard to the need to file a variety of documents, including the payment advices. Notwithstanding that the court had not ordered otherwise at any time during the 45 days after the filing of the case, the court determined that the documents did not need to be filed which rendered the automatic dismissal provision "inoperable." Id. at 802. See also In re Withers, 2007 WL 628078 (Bankr. N.D. Cal., Feb. 26, 2007) (court relies on Parker to deny debtor's motion to dismiss case for failure to file required documents and instead orders that the debtor need not file the documents and thus is not subject to the automatic dismissal provision).

The circumstances of Parker – a debtor attempting to take advantage of the system only so long as it operates in his favor – demonstrate one of the potential shortcomings of a strictly applied automatic dismissal provision. The court in Parker also relied on the "purpose" of the 2005 amendments to the Code in concluding that Congress did not intend for those amendments to create a loophole for debtors to abuse the bankruptcy system. Rather, Congress had the opposite purpose in mind in its enactment of the amendments. This interpretation of the Code might also find some support in the Supreme Court's recent decision in Marrama v. Citizens Bank of Mass., 127 S.Ct. 1105 (2007), in which the Court concluded that a debtor's apparently unrestricted ability to convert a case to chapter 13 could be limited by the courts in appropriate circumstances to protect the integrity of the bankruptcy system.

Another factual circumstance that has arisen in the cases that has caused some courts to offer a different interpretation of the Code is the filing by the debtor of some, but not all, of the payment advices. In these cases, the debtor asserts that he or she does not have all of the advices, but also notes that the filed documents include the latest of the payment advices and sets out the year to date figures for the debtor's income. Facing this issue, several courts have concluded that

the incomplete set of payment advices nonetheless meets the requirements of the Code. In In re Tay-Kwamya, 367 B.R. 422 (Bankr. S.D.N.Y. 2007), the court held that the cumulative information on the latest pay stub provided the necessary information that the Code requires the debtor to file. Therefore, the court concluded that the case was not automatically dismissed. The court also noted that § 521(i)(4) provides the trustee with an opportunity to oppose the dismissal of a case at any time prior to the expiration of the applicable deadlines set out elsewhere in issues that can arise in § 521(i). This includes the deadline set out in § 521(i)(2) which permits any party in interest to request the court to issue a dismissal order. This request can be made at any time, so the time for the trustee to ask the court to keep the case open notwithstanding a failure of the debtor to file all of the required documents does not expire at the end of the 45 days after the commencement of the case. Thus, "automatic dismissal" may not be as "automatic" as some other courts have concluded. See also In re Luders, 356 B.R. 671 (Bankr. W.D. Va. 2006) (court holds that cumulative pay stub information is sufficient); In re Svigel, 2007 WL 1747117 (10th Cir. BAP, June 18, 2007) (case remanded to consider whether cumulative pay stub information is sufficient). But see In re Miller, 2007 WL 2007676 (Bankr. D. Utah, July 12, 2007) (the statute unambiguously requires the debtor to file all payment advices received from the debtor's employer or the case is automatically dismissed).

Even the ability of a court to vacate an automatic dismissal under § 521(i)(1) is the subject of conflict. In In re Adibi, 2007 WL 1556838 (Bankr. S.D. Tex., May 24, 2007), the court stated that it could not vacate an automatic dismissal ("Perhaps this case was dismissed automatically by statute on April 14 and perhaps it was not. If it was, then this Court has no authority to vacate that dismissal."). On the other hand, the court in In re Brickey, 363 B.R. 59

(Bankr. N.D.N.Y. 2007), held that § 521(i)(4) permits the court to "annul" an automatic dismissal of the case.

Once more, until more decisions are published on the issue, and greater attention is focused on specific provisions of the statute, no definitive answer can be given as to the operation of this section.

Even the timing of the dismissal of a case in which the debtor has failed to file the required documents can be confusing. In In re Spencer, 2006 WL 3820702 (Bankr. D.D.C., Dec. 22, 2006), the debtor had clearly failed to file the necessary documents. Upon the request of the United States trustee, the court held that it must grant the order of dismissal under § 521(i)(2), but it reserved its ruling on the effective date of that order. While the statute seems to anticipate that the dismissal is "automatically effective on the 46th day after the commencement of the case," the court gave several reasons why the order should instead be dated as of the time when that order is actually entered. The court noted that making the dismissal effective at the earlier date could create significant confusion and would require creditors to monitor the case to determine when dismissal effectively occurs so that they could resume collection efforts. The court did not resolve the matter at that time, instead requesting the parties to file memoranda with the court on the issue. Again, this demonstrates that a number of substantive matters must be resolved prior to the adoption of a rule to govern the issue.

The conflict in all of these cases demonstrates the need for the passage of time before a rules based solution to the problem is appropriate. While the rules might establish a safe harbor of information that would satisfy the requirements of the Code, this arguably would be a substantive matter that is beyond the authority of the rule making power. Similarly, setting the

time for when any such order is "effective" would put the Committee in the position of resolving substantive matters through the rules process. Instead, the rules should await a resolution of these disputed issues before attempting to institute a mechanism that would provide a process to govern the automatic dismissal of cases under § 521(i)(1) of the Code.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: AMENDMENTS TO RULES 1007(a)(2) AND 3015(f)

DATE: JULY 10, 2007

The Subcommittee on Business Issues met by teleconference on June 25, 2007 to address two matters that had been referred to it by the Advisory Committee. The first issue concerns the timing of the meeting of creditors in involuntary cases and was raised in a comment we received on the rules published in August 2006. The second issue also was raised in a comment submitted on the published rules. It concerns the Sense of Congress as expressed in § 716(e) of BAPCPA that Rule 3015 should be amended to provide taxing authorities with additional time to object to confirmation of a chapter 13 plan under certain circumstances.

Notice of the § 341 Meeting of Creditors in Involuntary Cases

This issue was raised in Comment 06-BK-057 submitted by Ms. Margaret Grammar Gay, Chief Deputy Clerk of the Bankruptcy Court for the District of New Mexico. In her comment, Ms. Gay suggested that Rule 2003 be amended to set different deadlines for holding the § 341 meeting of creditors in voluntary and involuntary cases. The Subcommittee concluded that the rules could be improved by amending Rule 1007(a)(2), but that the limited number of cases and the flexibility available to the courts to manage these matters demonstrates that there is no urgent need to make the change. Therefore, **the Subcommittee recommends that the amendment set out below be approved, but that the recommendation be withheld until a substantial package of rules amendments is ready for submission to the Standing Committee**.

Under Rule 2003(a), the § 341 meeting is to be held no fewer than twenty and no more than forty days after the order for relief. Rule 2002(a)(1) requires that the clerk give at least twenty day's notice of the § 341 meeting of creditors. Thus, the clerk's office is under some time pressure to send those notices as soon as possible after the commencement of a voluntary case. In an involuntary case, the notice also must be sent at least twenty days in advance of the meeting, which likewise must be held within twenty to forty days after the order for relief. Ms. Grammar Gay noted that the delay in receiving a full list of creditors creates a problem, particularly in involuntary cases. Under Rule 1007(c), the schedule of liabilities must be filed either with the petition or within fifteen days after the filing of a voluntary petition. In an

involuntary case, the schedule of liabilities must be filed by the debtor within fifteen days after the entry of the order for relief. Thus, in both voluntary and involuntary cases, a full schedule of creditors may not be filed until fifteen days after the filing of the petition. If this were always the case, the clerk would have problems in sending notices in a timely fashion under Rule 2002(a) to inform creditors of a § 341 meeting. The problem is resolved in voluntary cases, however, by Rule 1007(a)(1). Under that provision, the debtor must file "with the petition" the list of names and addresses of all the creditors in the case. This provides a mailing list for the clerk upon the commencement of the case. There is no corresponding obligation of a debtor in an involuntary case to file such a list with the petition. Rather, Rule 1007(a)(2) provides that the debtor has fifteen days after the entry of order for relief to file a list of the creditors.

The Subcommittee concluded that, rather than amending the rule governing the amount of notice required in an involuntary case, it would be better to amend Rule 1007(a)(2) to provide that the debtor must file the list of creditors within seven days after the entry of the order for relief. The filing under Rule 1007(a)(2) is simply a list of creditors. It does not require the debtor to include amounts or describe the nature of the obligations. That information would be included in the full schedules, which would not be due until fifteen days after the entry of the order for relief under Rule 1007(c). The rules require voluntary debtors to file the list with the petition. Certainly, debtors in involuntary cases face different problems than debtors filing voluntarily. Nevertheless, requiring the involuntary debtor to file the bare list within seven days after the entry of the order for relief does not seem too onerous. Moreover, it is essential if the Clerk's Office is to comply with the notice requirements of Rule 2002(a)(1).

The proposed amendment to Rule 1007(a)(2) is simply the deletion of the number fifteen and the insertion of the number seven to reduce the number of days in which the debtor in an involuntary case must file the appropriate list. The committee note states that the reason for the change would be to enable the Clerk to provide timely notice of the §341 meeting in involuntary cases. The proposed amendment is set out in the text of Rule 1007 as it would be revised by the amendments pending before the Judicial Conference this month.

RULE 1007. Lists, Schedules, Statements, and Other Documents; Time Limits

1 (a) CORPORATE OWNERSHIP STATEMENT, LIST OF

2 CREDITORS AND EQUITY SECURITY HOLDERS, AND

3 OTHER LISTS.

4 * * * * * *

5 (2) *Involuntary case*. In an involuntary case, the debtor shall

6 file within ~~15~~ 7 days after entry of the order for relief, a list

7 containing the name and address of each entity included or to be

8 included on Schedules D, E, F, G, and H as prescribed by the

Official Forms.

* * * * *

COMMITTEE NOTE

Subdivision (a)(2) is amended to shorten the time for a debtor to file a list of the entities included on the various schedules filed or to be filed in the case. This list provides the information necessary for the clerk to provide notice of the § 341 meeting of creditors in a timely manner.

Amendment to Rule 3015(f) to Permit Post-Confirmation Objections to Chapter 13 Plans

At the meeting at Marco Island, the Advisory Committee referred the issues relating to § 716(e)(1) of BAPCPA back to the Business Subcommittee for further consideration. In particular, the Subcommittee was tasked with determining whether there is a way in which the rules could be amended to further protect the interests of the governmental units with respect to post-confirmation tax return issues while not disrupting unduly the effect of confirmation of plans and avoiding any untoward adverse effects on other creditors and the debtor. **Upon further discussion and consideration, the Subcommittee recommends that no amendment be made to Rule 3015(f) because current law and administrative practice provide sufficient protection for governmental units before and after plan confirmation and because allowing objections to confirmation of a plan that was previously confirmed would introduce substantial uncertainty into the process.**

Section 716(e)(1) of BAPCPA, Pub. L. No. 109-8 (April 20, 2005), provides as follows:

(e) RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.--It is the sense of Congress that the Judicial Conference of the United States should, as soon as practicable after the date of enactment of this Act, propose amended Federal Rules of Bankruptcy Procedure that provide--

> (1) notwithstanding the provisions of Rule 3015(f), in cases under chapter 13 of title 11, United States Code, that an objection to the confirmation of a plan filed by a governmental unit on or before the date that is 60 days after the date on which the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code, shall be treated for all purposes as if such objection had been timely filed before such confirmation.

This provision prompted the Internal Revenue Service to submit a proposal for an amendment to Rule 3015(f). See Comment 06-BK-015, submitted by Deborah A. Butler on behalf of the Office of Chief Counsel, Internal Revenue Service (received on February 5, 2007). The recommendation of the Service was to allow a governmental unit to object to confirmation of a chapter 13 plan at any time up to 60 days after the filing of a tax return that is required under § 1308 of the Code.

Section 716(e)(1) sets out the sense of Congress with regard to Rule 3015(f). The provision essentially is intended to put additional force into the amendment to § 1308 of the Code. Section 1308 requires the debtor to file all returns that are due or past due, and if they are not filed, the trustee is authorized to hold open the § 341 meeting until those returns are filed. The extension of time to complete the meeting is not unlimited, however. The meeting can be held open only for 120 days after the date of the meeting or for 120 days after the date on which the return is last due. Section 716 would allow the governmental units to object to confirmation if these returns come in later in the case, even if the plan has already been confirmed.

The intended relationship between the concept of a retroactive post-confirmation objection and § 1325(a)(9) of the Code,[1] which provides that confirmation is conditioned on the filing by the debtor of all returns required by § 1308, is unclear. An argument exists that confirmation is possible even if these returns are not filed. Section 1325(a) provides that the court shall confirm plans if they meet the standards set out in that provision. The section does not, however, state that the court cannot confirm a plan if one or more of the standards are not met. See, e.g., In re Szostek, 886 F.2d 1405 (3d Cir. 1989)(provisions of § 1325(a) are not mandatory because the provision does not state that the court shall confirm the plan "only if" the standards are met as does § 1129), contra In re Barnes, 32 F.3d 405 (9th Cir. 1994)(provisions of § 1325(a) are mandatory). As the Barnes court noted, the creditor in Szostek did not object to confirmation of the plan.

Whether or not confirmation is even possible in the absence of compliance with § 1308, it was the sense of the Subcommittee that several existing pre-confirmation mechanisms provide substantial protection for governmental units that have not received the required tax

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[1] Section 716(e)(1) refers to § 1325(a)(7) of the Code. I believe that is just an incorrect reference and should be construed as a reference to § 1325(a)(9).

returns. Such a unit could simply object to confirmation of the proposed plan, and that objection would, in all likelihood, be sustained. This would prevent confirmation of the plan and would present a ground for dismissal or conversion of the case under § 1307(c)(5). Of course, if the governmental unit fails to object to confirmation, the plan might be confirmed, and in some circuits and districts, the plan would be effective.

Another pre-confirmation protection already in place for taxing authorities is the review of those plans by the chapter 13 trustee. The trustees review the status of each debtor's tax returns at the § 341 meeting and also take a position on the propriety of each plan. They will raise with the debtor the need to have complied with §§ 1308 and 1325(a)(9), and it is unlikely that a plan will be confirmed if the debtor has not filed the required tax returns. Moreover, taxing authorities currently receive notice of every bankruptcy case that is filed, so they are in a position to file objections to confirmation if the returns have not been filed. The prevailing practice is that, if a debtor has not filed the required returns, the court will continue the confirmation hearing for a definite time which allows the debtor to submit the returns. If the debtor still does not file the tax returns, the court will not confirm the plan, and the case will either be dismissed or converted. Thus, current practice appears to operate to protect the interests of the governmental units in a manner that is essentially consistent with the intent of § 716(e)(1) and the sense of Congress expressed in that provision.[2]

The Subcommittee was also concerned that amending the rule to permit retroactive objections to confirmation could have significantly negative consequences for the other creditors as well as the debtor. The creditors would have acted in reliance on the confirmed plan. They may have agreed to treatments of their claims or other matters relating to the property of the estate that they would not have agreed to if they knew that the plan could be undone later in the case. The existing provision in the Code for revocation of confirmation, § 1330, applies only if the confirmation order was procured by fraud, and requires action by the objecting party within 180 days after the date of the entry of the order of confirmation. Section 716(e)'s recommended amendment, on the other hand, would indefinitely extend this period for revoking confirmation of the plan. It would do so for only a single category of creditors, governmental units, and it would allow this even though the creditor/ governmental unit had an opportunity to object to confirmation in the first instance at the commencement of the case. While it can be argued that the governmental unit may not even have known of the case or the debtor's failure to file the returns[3], in that case, the debtor is not going to be able to discharge

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[2] BAPCPA also contained a provision that amended § 1324 of the Code by adding subsection (b) which calls for expedited confirmation hearings rather than delayed hearings. This provision suggests that Congress intended for chapter 13 cases to be administered relatively quickly, and permitting objections to confirmation to be filed much later in the case is arguably inconsistent with that provision.

[3] As noted, this is unlikely because the clerks notify the taxing authorities of every bankruptcy case filed in their district.

those tax obligations because they would not have been provided for by the plan. The sense of the Subcommittee was that existing provisions for post-confirmation claim amendments and for motions to convert or dismiss chapter 13 cases where confirmed plans are not longer feasible are sufficient to protect the interests of governmental units when a plan is confirmed before the § 1308 obligation has been addressed.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON TECHNOLOGY AND CROSS BORDER CASES

RE: AMENDMENTS TO IMPLEMENT CHAPTER 15 PROVISIONS

DATE: JULY 26, 2007

The Advisory Committee previously approved amendments to Rules 5009 and 9001 as well as new Rules 1004.2 and 5012 to implement portions of Chapter 15 of the Code. This approval was given at the September 2006 meeting in Seattle, but the Committee thereafter withdrew these amendments with a direction to the Subcommittee on Technology and Cross Border Cases to consider whether a more extensive set of rules should be adopted for chapter 15 cases.

The Subcommittee met by teleconference on June 13, 2007, and considered whether to adopt a more extensive set of chapter 15 rules and also considered the language of the rules previously approved by the Advisory Committee at the Seattle meeting. After deliberation, the Subcommittee concluded that the limited number of cases that have been filed under chapter 15 and the potential for widely different kinds and sizes of debtors who may file these cases did not justify a full set of rules that would apply only in chapter 15 cases. Rather, the Subcommittee concluded that these matters could be handled effectively on a case by case basis. For calendar year 2006, there were only 75 chapter 15 cases filed throughout the country, and 52 of these cases were filed in the Southern District of New York. Thus, the rest of the country had only 23 cases, and only the Eastern District of California had more than two cases (it had three). Thus, outside of the Southern District of New York, the cases are relatively rare. Within the Southern District,

the likelihood is that the counsel involved in the case are experienced in these matters and we have not had any indication that the bar finds the current rules inadequate.

The Subcommittee does recommend that the rules as previously approved be changed slightly. As to Rule 1004.2, the Subcommittee recommends two changes. First, the requirements for completing the petition would change slightly from the previously approved version. Instead of setting out whether the pending foreign proceedings are a foreign main proceeding or a foreign nonmain proceeding, the recommended rule asks the filer of the petition to state which country is the debtor's center of main interests and to list each country in which a foreign proceeding is pending. These questions are more factual in nature and present less of a legal conclusion than the identification of a particular proceeding being either a main or nonmain proceeding.[1]

The second change from the "Seattle" version of Rule 1004.2 appears in subdivision (b). The prior version included among the entities entitled to receive notice of a motion challenging the assertion of a particular country as the center of the debtor's main interests "each entity requesting special notice." The Advisory Committee adopted this part of the rule to ensure that persons who requested notice would be sure to receive the notice. The concept was based on the Local Rule and practice in the Western District of Washington, although every court allows interested parties to be added to notice lists. Upon further consideration, the Subcommittee concluded that this addition to the service list in subdivision (b) should be deleted. Persons seeking notice by entering appearances in the case would be covered in the notice requirement as

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[1] The Subcommittee recognizes that identifying a particular country as the center of the debtor's main interests likewise requires the filer to reach a legal conclusion, but that is not ultimate legal conclusion in the matter.

a person to whom the court directed that notice be given. They are already covered by the last part of the rule – notice shall be given to "such other entities as the court directs." Thus, there is no need to add the "special notice" reference. Furthermore, the Subcommittee was concerned that adding this language to Rule 1004.2 (and to Rules 5009 and 5012) would create confusion. Many other rules include a requirement that notice be given to "such other entities as the court directs," for inserting the "special notice" language in these rules and not in others could lead to confusion over notice requirements in the other rules. Therefore, and since there does not seem to be any problem currently with entities that want to receive notices actually getting those notices under the current version of the rules, the Subcommittee recommends that the reference to "special notice" in the proposed new rules and amended rule be deleted.

Two versions of Proposed Rule 1004.2 are set out below. The first version Option 1, is the one recommended by the Subcommittee. As noted above, it changes the version of Rule 1004.2 that was approved in Seattle in two ways. Option 2 is the version of the rule as it was approved in Seattle.

Option 1– Recommended by Subcommittee on Technology and Cross Border Cases

RULE 1004.2. Petition in Ancillary or Other Cross-Border Cases[2]

1 (a) CENTER OF MAIN INTEREST DESIGNATION. A

2 petition commencing a case under chapter 15 of the Code shall

[2]In addition to the adoption of Rule 1004.2, Official Form 1 would be amended to include a line on the form where the foreign representative indicates the county of the debtor's center of main interests. The Official Form would also be amended to include a line or lines on which the filer would set out the countries in which cases are pending.

3 state the country where the debtor has the center of its main
4 interests. The petition shall also identify each country in which an
5 insolvency proceeding is pending by or against the debtor.[3]
6 (b) MOTION. The United States trustee or a party in
7 interest may file a motion for a determination that the debtor's
8 center of main interests is other than as stated in the petition
9 commencing the chapter 15 case. The motion shall be filed not
10 later than 60 days after notice of the petition for recognition has
11 been given to the movant under Rule 2002(q)(1). The motion shall
12 be transmitted to the United States trustee and served on the
13 debtor, all persons or bodies authorized to administer foreign
14 proceedings of the debtor, all entities against whom provisional
15 relief is being sought under § 1519 of the Code, all parties to
16 litigation pending in the United States in which the debtor is a
17 party at the time of the filing of the petition, and such other entities
18 as the court may direct.

COMMITTEE NOTE

This rule is new. Subdivision (a) directs any entity that

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[3] This version of the rule differs from what was approved by the Advisory Committee at the Seattle meeting. The previously approved version is set out as Option 2. Subdivision (a) of Option 1 requires the filer of the petition to include the country where the debtor has the center of its main interests, and the countries where any cases are pending. That information will be enough to determine whether there is a foreign main case or a nonmain case pending as defined in § 1502 of the Code. The previously approved version (Option 2) essentially required the filer to state whether the foreign case was a foreign main or nonmain proceeding.

files a petition for recognition of a foreign proceeding under chapter 15 of the Code to set out on the petition the center of the debtor's main interests. The petition must also list each country in which a foreign insolvency proceeding is pending. This information will permit the court and parties in interest to determine if the foreign proceedings are a foreign main proceeding or a foreign nonmain proceeding according to the entity filing the petition.

Subdivision (b) sets a deadline for filing a motion to challenge the statement in the petition as to the country in which the debtor's center of main interest is located. The movant has 60 days from the time that notice is given to the creditor of the petition for recognition. The deadline provides an opportunity for parties in interest to challenge the statement in the petition, and it also provides repose for the court, the debtor, and parties in interest once the deadline passes that a fundamental aspect of the case is settled.

Option 2 – "Seattle Version"

RULE 1004.2. Petition in Ancillary or Other Cross-Border Cases[4]

1 (a) CENTER OF MAIN INTEREST DESIGNATION. A
2 petition commencing a case under chapter 15 of the Code shall
3 state whether the case pending in another country is a foreign main
4 proceeding or a foreign nonmain proceeding. The petition also
5 shall state the country where the debtor has the center of its main
6 interests.
7 (b) MOTION. The United States trustee or a party in

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[4]In addition to the adoption of Rule 1004.2, Official Form 1 would be amended to include a line on the form where the foreign representative indicates the county of the debtor's center of main interests. This would be set out either immediately under or next to the check boxes identifying whether the case is a foreign main case or a foreign nonmain case.

8 interest may file a motion for a determination that the debtor's

9 center of main interests is other than as stated in the petition

10 commencing the chapter 15 case. The motion shall be filed not

11 later than 60 days after notice of the petition for recognition has

12 been given to the movant under Rule 2002(q)(1). The motion shall

13 be transmitted to the United States trustee and served on the

14 debtor, all persons or bodies authorized to administer foreign

15 proceedings of the debtor, all entities against whom provisional

16 relief is being sought under § 1519 of the Code, all parties to

17 litigation pending in the United States in which the debtor is a

18 party at the time of the filing of the petition, each entity requesting

19 special notice, and such other entities as the court may direct.

COMMITTEE NOTE

This rule is new. Subdivision (a) directs any entity that files a petition for recognition of a foreign proceeding under chapter 15 of the Code to state on the petition whether the case for which recognition is sought is a foreign main proceeding or a foreign nonmain proceeding. The petition must also identify the country of the center of the debtor's main interests.

Subdivision (b) sets a deadline for filing a motion to challenge the statement in the petition as to the country in which the debtor's center of main interest is located. The movant has 60 days from the time that notice is given to the creditor of the petition for recognition. The deadline provides an opportunity for parties in interest to challenge the statement in the petition, and it also provides repose for the court, the debtor, and parties in interest once the deadline passes that a fundamental aspect of the case is settled.

Rules 5009, 5012, and 9001

The following rules, Rules 5009, 5012, nad 9001, were previously approved by the Advisory Committee and will be forwarded to the Standing Committee with recommendation that they be published for comment.

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

1 (a) CASES UNDER CHAPTERS 7, 12, AND 13. If in
2 a chapter 7, chapter 12, or chapter 13 case the trustee has filed a
3 final report and final account and has certified that the estate has
4 been fully administered, and if within 30 days no objection has
5 been filed by the United States trustee or a party in interest, there
6 shall be a presumption that the estate has been fully administered.
7 (b) CASES UNDER CHAPTER 15. A foreign
8 representative who has been recognized under § 1517 of the Code
9 shall file a final report when the purpose of the representative's
10 appearance in the court is completed. The report shall describe the
11 nature and results of the representative's activities in the United
12 States court. The foreign representative shall transmit the report to
13 the United States trustee, and serve it on the debtor, all persons or
14 bodies authorized to administer foreign proceedings of the debtor,
15 all parties to litigation pending in the United States in which the

16 debtor is a party at the time of the filing of the petition, and such

17 other entities as the court may direct. If within 30 days no

18 objection has been filed by the United States trustee or a party in

19 interest, there shall be a presumption that the case has been fully

20 administered.

COMMITTEE NOTE

The rule is amended to redesignate the former rule as subdivision (a) and adding a new subdivision (b) to the rule. Subdivision (b) requires a foreign representative in a chapter 15 case to file with the court a final report setting out the foreign representative's actions and results obtained in the United States case. It also requires the foreign representative to serve the report and provides interested parties with 30 days to object to the report. In the absence of a timely objection, a presumption arises that the case is fully administered, and the case can be closed under § 350.

RULE 5012. Agreements Concerning Coordination of Proceedings in Chapter 15 Cases

1 A party in interest seeking approval of the form of an

2 agreement concerning the coordination of proceedings under §§

3 1525-1527 of the Code shall seek such approval by motion. The

4 movant shall attach to the motion a copy of the proposed protocol

5 and, unless the court directs otherwise, give at least 30 days' notice

6 of any hearing on the motion by transmitting the motion to the

7 United States trustee, and serving it on the debtor, all persons or

8 bodies authorized to administer foreign proceedings of the debtor,

9 all entities against whom provisional relief is being sought under

10 § 1519 of the Code, all parties to litigation pending in the United

11 States in which the debtor is a party at the time of the filing of the

12 petition, and such other entities as the court may direct.

COMMITTEE NOTE

This rule is new. In chapter 15 cases, parties in interest may seek approval of an agreement, frequently referred to as a protocol, that will assist the court, foreign courts, and all parties in interest with the conduct of the case. The needs of the courts and the parties may vary greatly from case to case, so the rule does not attempt to limit the form or scope of a protocol. Rather, the rule simply requires any party in interest that wants the court to approve a particular protocol to give notice of the hearing on approval of the proposed protocol. These guidelines, or protocols drafted entirely by parties in interest in the case, can provide valuable assistance to the courts in the management of the case. Interested parties may find helpful the guidelines published by the American Law Institute and the International Insolvency Institute in crafting protocols to apply in a particular case.

RULE 9001. General Definitions

1 The definitions of words and phrases in §§ 101, ~~§~~ 902, ~~and §~~

2 1101, and 1502 and the rules of construction in § 102 of the Code

3 govern their use in these rules. In addition, the following words

4 and phrases used in these rules have the meanings indicated:

5 * * * * *

COMMITTEE NOTE

The rule is amended to add § 1502 of the Code to the list of definitional provisions in the Code that are applicable to the Rules. That section was added to the Code in 2005.

RULE 7065 and § 1519(e) of the Code

Section 1519 of the Code governs the court's authority to grant relief upon the filing of a petition for recognition of a foreign proceeding and prior to the entry of an order of recognition in the case. Among the relief available are orders staying actions affecting the debtor's assets, staying execution against the debtor's assets, and suspending the right to transfer assets, among other things. Subsection (e) provides that "The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section." This provision is derived from Article 19 of the Model Law on Cross Border Insolvency. That article includes a provision that would incorporate the notice and other requirements under the applicable domestic law governing injunctive relief. Section 1519(e) is the provision of the Code that includes that incorporation of the requirements for injunctive relief.

The Insolvency Law Committee of the Business Law Section of the California State Bar Association submitted Comment 05-BR-037 to the Interim Rules. In that comment, the Committee recommended that the Advisory Committee study the need to amend Rule 7065 to ensure that it is consistent with § 1519(e) of the Code. Rule 7065 incorporates Civil Rule 65 for adversary proceedings. By its reference to the standards for injunctive relief, § 1519(e) already arguably incorporates Bankruptcy Rule 7065 into the Code. Moreover, because Rule 7001(7) provides that any proceeding to obtain an injunction or other equitable relief (other than that kind of relief when provided in a plan) is an adversary proceeding, any action under § 1519(e) should be initiated as an adversary proceeding. If that is the case, then Rule 7065 would apply, and there would not seem to be any need to amend or add to the rules to address the matter.

If § 1519(e) is construed to permit a proceeding to be commenced as a contested matter, Rule 7065 would not apply. Rule 7065 is not included in the list of rules that apply in contested matters under Rule 9014(c) because Rule 7001(7) should preclude a party from seeking that kind of relief as a contested matter. Section 1519 allows for more relief that just those set out in subsections (a)(1), (2), (3) and (6), but relief under those subsections is injunctive in nature. Therefore, anyone requesting such relief should proceed under Rule 7001. This would bring Rule 7065 and Civil Rule 65 into play in every instance. Thus, it may not be necessary to amend the rules.

One case has addressed the application of a parallel provision of the Code. In In re Ho Seok Lee, 348 B.R. 799 (Bankr. W.D. Wash. 2006), the court construed § 1521(e) of the Code. That provision is nearly identical to § 1519(e). It provides that actions for injunctive and specific other relief set out in the section are governed by the standards, procedures, and limitations applicable to injunctions. The Lee court concluded that the provision does not require that an action for a permanent injunction against the commencement of a collection action be initiated as an adversary proceeding.[1] The court noted that the limited legislative history of the section indicates that there was no intent to change the law which previously was governed by § 304 of the Code. The courts under the prior law had concluded that Rule 1018 governed these actions and that rule specifically provides that Rule 7065 does not apply.[2] Rule 1018 states that

[1]The court noted that chapter 15 does not include a provision comparable to § 524 that would create an injunction against the commencement or continuation of any action to collect a discharged debt. In cases under other chapters of the Code, such an injunction is unnecessary because the Code provides the protection automatically through § 524.

[2] In re Rukavina, 227 B.R. 234 (Bankr. S.D.N.Y. 1998).

> The following rules in Part VII apply to all proceedings relating to a contested involuntary petition, to proceedings relating to a contested petition commencing a case ancillary to a foreign proceeding, and to all proceedings to vacate an order for relief: Rules 7005, 7008-7010, 7015, 7016, 7024-7026, 7028-7037, 7052, 7054, 7056, and 7062, except as otherwise provided in Part I of these rules and unless the court otherwise directs. The court may direct that other rules in Part VII shall also apply. For the purposes of this rule a reference in the Part VII rules to adversary proceedings shall be read as a reference to proceedings relating to a contested involuntary petition, or contested ancillary petition, or proceedings to vacate an order for relief. Reference in the Federal Rules of Civil Procedure to the complaint shall be read as a reference to the petition.

Rule 7065 is conspicuously absent from the list of rules, just as it is from the list of adversary proceeding rules that apply in contested matters according to Rule 9014(c).

The primary issue presented is whether §§ 1519(e) and 1521(e) are intended to overrule the decisions of the courts that permitted an entity to seek an award of injunctive relief under former § 304 of the Code by motion rather than by complaint. As the Lee court noted,

> In a House Report discussing 11 U.S.C. § 1521, it is stated that "[t]his section does not expand or reduce the scope of relief currently available in ancillary cases under sections 105 and 304." H.R. REP. NO. 109-31(I), at 116 (2005), *as reprinted in* 2005 U.S.C.C.A.N. 88, 178. Accordingly, it would arguably be inconsistent with the legislative history of this section to interpret 11 U.S.C. § 1521(e) broadly to conclude that it expands the procedural hurdles for seeking injunctive relief previously established under former 11 U.S.C. § 304.

348 B.R. at 802. The court there concluded that the reference in the Committee Report to the scope of relief includes the procedures applicable to that relief as set out in Rules 7001(7) and 7065. If that is a correct analysis, then the rules may create an ambiguity that should be resolved.

Specifically, Rule 7001(7) could be amended to exclude from its reach any action governed by Rule 1018.

After discussion, the Subcommittee concluded that another solution is preferable. It may be that the courts will interpret §§ 1519(e) and 1521(e) to require that any action for injunctive relief be governed by Rule 7065. If that is the case, then Rule 1018 arguably creates an ambiguity in the rules that should be resolved. The ambiguity could be resolved primarily through the Committee Note. Technical changes could be made to the rule, and the Committee Note could point out that the changes are intended to conform the rule to the addition of chapter 15 to the Code and to clarify that actions for injunctive relief in chapter 15 cases should proceed under Rule 7001 as adversary proceedings unless the action relates directly to a contest over the chapter 15 petition itself. Even if the courts do not adopt such an interpretation, the Subcommittee recommends that the rule be amended. A proposed revision of Rule 1018 follows. It makes Rule 7065 applicable to actions brought under §§ 1519(e) and 1521(e). This would override the determination of the court in Lee and the decisions under former § 304 and would require any entity seeking injunctive relief to commence an adversary proceeding.

Rule 1018. Contested Involuntary Petitions; Contested Petitions Commencing ~~Ancillary~~ Chapter 15 Cases; Proceedings to Vacate Order for Relief; Applicability of Rules in Part VII Governing Adversary Proceedings

1 The following rules in Part VII apply to all proceedings relating
2 to a contested involuntary petition, to proceedings relating to a
3 contested chapter 15 petition ~~commencing a case ancillary to a~~
4 ~~foreign proceeding~~, and to all proceedings to vacate an order for

5 relief: Rules 7005, 7008-7010, 7015, 7016, 7024-7026, 7028-
6 7037, 7052, 7054, 7056, and 7062, except as otherwise provided in
7 Part I of these rules and unless the court otherwise directs. The
8 court may direct that other rules in Part VII shall also apply. For
9 the purposes of this rule a reference in the Part VII rules to
10 adversary proceedings shall be read as a reference to proceedings
11 relating to a contested involuntary petition, or contested ~~ancillary~~
12 chapter 15 petition, or proceedings to vacate an order for relief.
13 Reference in the Federal Rules of Civil Procedure to the complaint
14 shall be read as a reference to the petition.

COMMITTEE NOTE

The rule is amended to conform the rule to the enactment of chapter 15 of the Code in 2005. As to chapter 15 cases, the rule applies to matters relating to a contested petition and not to all matters that arise in the case. Thus, proceedings governed by §§ 1519(e) and 1521(e) of the Code must comply with Rules 7001(7) and 7065 which require that actions for injunctive relief are adversary proceedings governed by Part VII of the rules. The rule thus does not adopt the conclusion of the court in In re Ho Seok Lee, 348 B.R. 799 (Bankr. W.D. Wash. 2006). The court, relying on a statement in the legislative history which stated that the 2005 amendments to the Bankruptcy Code were intended to adopt prior decisions under former § 304 of the Code, held that actions for injunctive relief in chapter 15 cases could be initiated by motion and proceed as contested matters. In Lee, the court held that an action to enjoin efforts to collect a debt in an amount in excess of that provided for in a plan approved in a foreign proceeding could be commenced by motion as a contested matter. Since that action for injunctive relief did not relate to a dispute over the propriety of the chapter 15 petition, however, it should have been commenced by complaint in accordance with Rule 7001(7) which provides that actions for injunctive relief are adversary proceedings.

7

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS AND APPEALS

RE: NEED TO AMEND RULES 8003 AND 8005 GOVERNING INTERLOCUTORY APPEALS; AMENDMENT OF RULE 9023 TO IMPLEMENT CHANGE IN CIVIL RULE 59; PRIVACY ISSUES RELATING TO HEALTH CARE CLAIMS

DATE: JULY 26, 2007

The Subcommittee on Privacy, Public Access and Appeals met by teleconference on June 21 to consider three matters. The first was an issue raised in a comment submitted by Bankruptcy Judge Colleen Brown of Vermont. See Comment 06-BK-016 submitted in response to the proposed rules amendments published in August 2006. In addition to offering comments on several matters related to those published amendments, Judge Brown suggested that the Committee consider amending either Rule 8003 or Rule 8005 to better coordinate the process governing appeals of interlocutory orders when the appellant also wishes to obtain a stay of the order pending resolution of the appeal. The second issue was whether Rule 9023 needs to be amended to respond to a proposed amendment to Civil Rule 59 which would extend the time to file motions that would effectively extend the appeal time in bankruptcy cases. The third issue, which also was raised by Judge Brown's Comment 06-BK-016, related to privacy concerns and the filing of proofs of claims.

Need to Amend Rules 8003 and 8005 Governing Interlocutory Appeals

The Subcommittee considered whether there is a need to amend Rule 8003 or 8005 to harmonize the procedures governing motions to stay the entry of judgments and motions for

leave to appeal interrogatory judgments and orders. **The Subcommittee concluded unanimously that no change should be made to the rules.**

Under 28 U.S.C. § 158(a), appeals of interlocutory orders may be taken to the district courts and bankruptcy appellate panels if the court to which the matter is being appealed grants leave.[1] Rule 8003 governs the process of leave to appeal. Subdivision (a) sets out the contents of a motion for leave to appeal and gives adverse parties 10 days (soon to become 14 days) to file an answer in opposition to the motion. Subdivision (b) then directs the clerk of the bankruptcy court to transmit the relevant documents to the clerk of the district court or the bankruptcy appellate panel. Thus, the motion for leave to appeal, the notice of appeal, and any answers to the motion move from the bankruptcy court to the appellate court for its consideration.

If the appellant wishes to have a stay of the judgment or order being appealed from, that party must move for that relief under Rule 8005. Rule 8005 recognizes that an order seeking a stay may be obtained either in the bankruptcy court or in the appellate court, be it a district court or a bankruptcy appellate panel. Under the rule, a stay motion "must ordinarily be presented to the bankruptcy judge in the first instance." Thus, as Judge Brown notes, when a party seeks leave to appeal an interlocutory order and also seeks a stay of the order pending the resolution of the appeal, those motions are presented to different courts. The bankruptcy court will address the stay issue, and the district court or BAP will consider the motion for leave to appeal. Judge Brown urges the Committee to consider proposing an amendment to the rules that would consolidate the motion to stay the order or judgment with the motion to leave to appeal so that

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[1] Interlocutory orders issued under 11 U.S.C. § 1121(d) (adjustment of exclusive time for debtor to file a plan) are appealable of right under 28 U.S.C. § 158(a)(2).

the bankruptcy court can act on each motion quickly. She notes that consolidating these actions in the bankruptcy court would likely expedite the process because the bankruptcy judge is obviously familiar with the matter and can reach a decision in a short time. She also notes that having the bankruptcy court decide both of these matters in the first instance does not diminish the district court's authority even if the bankruptcy court denies the motion for leave to appeal because the aggrieved party may appeal that denial to the district court.

Certainly it is true that the bankruptcy court is able to rule on a motion for leave to appeal more quickly than can the district court or BAP which has not been involved in the case until a party either files a notice of appeal or a motion for leave to file the appeal. Nevertheless, the Subcommittee believes that consolidating motions to stay a judgment or order with a motion for leave to appeal that judgment or order is not appropriate. A motion for leave to appeal is addressed to the court to which the movant seeks to appeal the interlocutory order or judgment. It is filed with the clerk of the bankruptcy court, but the documents are then transmitted to the clerk of the district court or BAP as the case may be. The motion does not ask the court that entered the order being appealed to take any action. Rather, the relief is being requested of the appellate court, and while the lower court might suggest that the appellate court should grant leave to allow the appeal (an such a suggestion might even be helpful to the appellate court), that determination is made by the appellate court. The potential for a direct appeal to the court of appeals under the new certification procedure is not involved in this situation. Instead, this is simply a matter of the appellate court determining under the standards the courts have adopted whether to allow the appeal of an order that is not final in the appellate sense. Thus, the Subcommittee recommends that no change should be made to the rules.

Amendment of Rule 9023 to Address the Proposed Amendment of Civil Rule 59

The Subcommittee next considered the need to amend Rule 9023 to reflect the proposed changes to Civil Rule 59. The conclusion of the Subcommittee was to offer two options to the Advisory Committee. Option 1 would include an amendment to Rule 9023. The rule would be amended to state that "except as provided in this rule and Rule 3008, Rule 59 of the Federal Rules of Civil Procedure applies in bankruptcy cases." The rule would then go on to provide that the deadlines set out in subdivisions (b), (d), and (e) of Rule 59 should be fourteen days rather than thirty days. Option 2 would be to amend Rule 8002 which would extend the appeal time to thirty days. This would set the same deadline for filing a notice of appeal in civil and bankruptcy cases.

OPTION 1 – Amendment to Rule 9023

RULE 9023. New Trials; Amendment of Judgments

1 (a) Rule 59 F.R.Civ.P. applies in cases under the Code,
2 except as provided in this rule and Rule 3008.
3 (b) A motion for a new trial and a motion to alter or amend
4 a judgment shall be filed no later than 14 days after the entry of
5 judgment.
6 (c) No later than 14 days after the entry of judgment, the
7 court, on its own, may order a new trial for any reason that would
8 justify granting one on a party's motion. After giving the parties
9 notice and an opportunity to be heard, the court may grant a timely
10 motion for a new trial for a reason not stated in the motion. In

11 either event, the court shall specify the reasons in its order.

COMMITTEE NOTE

The rule is amended to provide that motions that toll the running of the time to appeal must be made within 14 days of the entry of judgment. Rule 59 of the Federal Rules of Civil Procedure was amended to extend these deadlines to 30 days. This would be inconsistent with the 14-day deadline for filing a notice of appeal under Rule 8002. Therefore, this rule is amended to limit the deadlines to 14 days.

OPTION 2 – AMENDMENT TO RULE 8002

Rule 8002. Time for Filing Notice of Appeal[2]

1 (a) ~~FOURTEEN~~ THIRTY-DAY PERIOD. The notice of
2 appeal shall be filed with the clerk within ~~14~~ 30 days of the date of
3 the entry of the judgment, order, or decree appealed from. If a
4 timely notice of appeal is filed by a party, any other party may file
5 a notice of appeal within ~~14~~ 30 days of the date on which the first
6 notice of appeal was filed, or within the time otherwise prescribed
7 by this rule, whichever period last expires. A notice of appeal filed
8 after the announcement of a decision or order but before entry of
9 the judgment, order, or decree shall be treated as filed after such
10 entry and on the day thereof. If a notice of appeal is mistakenly
11 filed with the district court or the bankruptcy appellate panel, the

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[2] Incorporates amendments that are due to take effect on December 1, 2009, if the Judicial Conference and Supreme Court approve and if Congress takes no action otherwise.

12 clerk of the district court or the clerk of the bankruptcy appellate

13 panel shall note thereon the date on which it was received and

14 transmit it to the clerk and it shall be deemed filed with the clerk

15 on the date so noted.

16 * * * * *

COMMITTEE NOTE

Subdivision (a) is amended to extend the deadline for filing a notice of appeal from 14 to 30 days. This sets the same deadline for filing a notice of appeal in a bankruptcy case as applies in a civil case.

Privacy Issues for Health Care Claims

The final issue for discussion related to privacy concerns and the filing of proofs of claims. Bankruptcy Judge Colleen Brown (D. Vt.) submitted Comment 06-BK-016 which included a suggestion that the Committee consider amendments to the rules and forms to prevent the disclosure of personal information on proofs of claims and attached documentation provided to support those claims. Judge Brown noted in particular that claims filed by health care providers frequently include information about services and medical tests that essentially disclose the nature of the illness or condition of the patient. She suggests that such claims be subject to a restriction that would limit the claimant to indicating that the claim is for "medical services" and that the rules and forms direct these claimants to redact from these documents any personally identifying information such as social security numbers, and also not to file "any other information of a highly personal nature." She also suggests that the rules establish a procedure to allow the trustee or court to obtain any further necessary information from the claimant if any

questions exists as to the nature or amount of the claim.

A significant number of debtors have health care debts. While there is some disagreement over the extent of those claims, it is generally agreed that many debtors owe for medical care, hospitalization, and medicine. As Judge Brown notes, a description of the goods and services provided that support these claims could be unnecessarily embarrassing to the debtor. On the other hand, the creditor may have concerns that if the description of the transaction is insufficient, the trustee may object to the claim and the creditor will incur additional expense in order to prove the claim. Her suggestion would go beyond health care claims and would require any creditor with a claim that is of a "highly personal nature" to file a bare bones proof of claim. Moreover, if this is a requirement, then the creditor could be sanctioned if the creditor wrongfully includes such information in the filing. It is not clear how we can craft a rule that would be so general and still have it be effective.[3] It may be possible to write the rule in a more limited fashion and have it apply only to "health care claims." These would be claims arising out of the transfer of goods or services by a health care business. Those businesses are defined in § 101(27A). Rule 3001(c) could be amended to except claims filed by or on behalf of a creditor who provided goods or services that are set out in § 101(27A). A new subdivision titled "Health Care Claims" could be added to the end of the rule. That subdivision would provide that any entity filing a health care claim must state that the claim is a health care claim, the date of the transaction, and the amount of the claim. The claimant would then also be

[3] This is somewhat akin to the Committee's efforts in the past to revise Rule 2014(a). That rule requires the disclosure of a professional's "connections" with a variety of entities. The Committee attempted to refine the scope of the rule, but objection from the Judicial Conference resulted in the withdrawal of the proposed amendments to the rule.

required to provide all relevant supporting documentation to the trustee, but only on the written request of the trustee.

It is also possible that the existing HIPAA regulations sufficiently cover the matter. Those regulations include a description of the limits on the disclosure of health care information in the context of litigation. Not surprisingly, the information must be disclosed in response to a court order, but the regulations also include a requirement that the health care creditor limit the disclosure to the amount of information that is minimally necessary to meet the need presented. An amendment to the rules setting out a process for the limited disclosure of these claims could be identified in the Committee Note to the rule to be an example of a minimum communication under the relevant regulation. The description of the regulation is set out below. The bold, italic language is essentially taken from 45 C.F.R. 164.502(b).

> A covered entity may use or disclose protected health information as permitted or required by the Privacy Rule, see 45 CFR 164.502(a); and, subject to certain conditions the Rule typically permits uses and disclosures for litigation, whether for judicial or administrative proceedings, under particular provisions for judicial and administrative proceedings set forth at 45 CFR 164.512(e), or as part of the covered entity's health care operations, 45 CFR 164.506(a). Depending on the context, a covered entity's use or disclosure of protected health information in the course of litigation also may be permitted under a number of other provisions of the Rule, including uses or disclosures that are required by law (as when the court has ordered certain disclosures), that are for a proceeding before a health oversight agency (as in a contested licensing revocation), that are for payment purposes (as in a collection action on an unpaid claim), or that are with the individual's written authorization.
>
> Where a covered entity is a party to a legal proceeding, such as a plaintiff or defendant, the covered entity may use or disclose protected health information for purposes of the

> litigation as part of its health care operations. The definition of "health care operations" at 45 CFR 164.501 includes a covered entity's activities of conducting or arranging for legal services to the extent such activities are related to the covered entity's covered functions (i.e., those functions that make the entity a health plan, health care provider, or health care clearinghouse), including legal services related to an entity's treatment or payment functions. Thus, for example, a covered entity that is a defendant in a malpractice action or a plaintiff in a suit to obtain payment may use or disclose protected health information for such litigation as part of its health care operations. ***The covered entity, however, must make reasonable efforts to limit such uses and disclosures to the minimum necessary to accomplish the intended purpose.*** See 45 CFR 164.502(b), 164.514(d).
>
> Where the covered entity is not a party to the proceeding, the covered entity may disclose protected health information for the litigation in response to a court order, subpoena, discovery request, or other lawful process, provided the applicable requirements of 45 CFR 164.512(e) for disclosures for judicial and administrative proceedings are met.

This regulation governs covered entities involved in litigation. The filing of a proof of claim could be governed by the regulation, but that issue does not appear to have been addressed either in the regulations or by any courts.[4] Even if the regulation governs the filing of a proof of claim, it may still be appropriate to provide further support for the concept by amending the rules

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[4] 45 C.F.R. 164.512(e) provides that a covered health care entity may disclose otherwise private health care information only in limited circumstances. Those circumstances include responses to court orders and responses to subpoenas, discovery requests and other lawful processes, but only if the patient has been notified or the entity seeking the information has taken reasonable efforts to obtain an appropriate protective order. There is no mention of bankruptcy or proofs of claims in the regulations. For a recent decision discussing the application of this regulation in the context of a response to a subpoena, see Deitch v. City of Olympia, 2007 WL 1813852 (W.D. Wash., June 21, 2007).

and forms to address the matter directly.

The Subcommittee on Privacy, Public Access, and Appeals concluded that the first way to address the issue should be to see if Official Form 10 or the instructions to the form could be amended so that creditors holding health care claims could be advised to submit only the minimally necessary information. This would be an attempt to harmonize the Proof of Claim form with HIPAA regulations. This would be a matter for consideration first by the Forms Subcommittee. Depending on the solution, if any, suggested by the Forms Subcommittee, it may also be necessary to amend Rule 3001. Thus, the Subcommittee recommends referring this matter to the Forms Subcommittee for its consideration.

MEMO

DATE: 8/01/2007

TO: BANKRUPTCY RULES ADVISORY COMMITTEE

FROM: FORMS SUBCOMMITTEE

RE: REPORT AND RECOMMENDATIONS OF THE FORMS SUBCOMMITTEE

The Forms Subcommittee met by teleconference on June 18, 2007 to consider the following issues: (1) An amendment to proposed Official Form 27 to facilitate the reaffirming debtor's compliance with subpart (b) of Rule 4008; (2) a change in Official Form 16A to require the filer to provide the debtor's "Employer Identification Number" (if one exists) rather than the "Employer's Identification Number"; (3) refinement of the definition of "creditor" on the back of Official Form 10; and (4) the next step in the "Form Modernization Project" suggested by Judge Walker's letter presented to the Committee at the Seattle Meeting. The Forms Modernization Project will be the topic of a separate memorandum.

1. REPORT REGARDING RULE 4008 AND OFFICIAL FORM 27

Prior to the Marco Island meeting, members of the Bankruptcy Judges Advisory Group suggested a possible change to Director's Form 240 (the reaffirmation agreement form) that would increase compliance with Interim Rule 4008 and the proposed amendments to Rule 4008 which are scheduled to go into effect on December 1, 2008. The suggestion was to include in Form 240 a place for the debtor to report and explain any difference between total income and expenses on Schedules I and J, and the income and expenses reported at the time of reaffirmation, as required by Interim Rule 4008 and the proposed Rule 4008(b). This would avoid the need for the debtor to file a separate statement in addition to the form.

At Marco Island, the Advisory Committee recommended publishing for comment proposed Official Form 27, Reaffirmation Agreement Cover Sheet, and recommended publishing an amendment to Rule 4008(a) that would require that Official Form 27 be filed with every reaffirmation agreement. Among other things, Official Form 27 requires that the party who files the form and the reaffirmation agreement copy over the income and expenses reported on schedules I and J and explain any difference between those numbers and the amounts the debtor reports are available to pay under the reaffirmation agreement.

Although the primary purpose of Official Form 27 is to gather in one place all the financial information the bankruptcy judge must consider in approving a reaffirmation agreement, the Subcommittee agreed that the form could be modified to also satisfy the requirements of 4008(b) if it included a specific signature line for the debtor and joint debtor (if any), in addition to the filer's certification. An additional signature line is needed because the proposed new Official Form is designed to be filed by either party to the reaffirmation agreement. So the filer and the debtor are not necessarily one and the same.

The Subcommittee believes this approach is preferable to the BJAG suggestions of modifying Director's Form 240 in some manner because, if approved after publication, Official Form 27 will be filed with every reaffirmation agreement, whereas the use of Form 240 is optional in most courts.

The Subcommittee discussed whether the proposed modification could be included in the version of the form to be published in August of 2007. The consensus was that including a debtor's certification and other stylistic modifications was consistent with the Standing Committee's approval of publishing the proposed form for comment and would enable the Advisory Committee to have the benefit of any comments on the changes as well as the comments on the original proposal. **Accordingly, the Chairman of the Advisory Committee and the head of the Rules Committee Support Office agreed that the version of Form 27 published for comment in August 2007 could include following changes at line 10,**

10.	Debtor's monthly expenses at reaffirmation (without this reaffirmed debt):	$

and at the certification portion of the form:

FILER'S CERTIFICATION

I ____________________ hereby certify that the attached agreement is a true and correct copy of the reaffirmation agreement between the parties identified on this Reaffirmation Agreement Cover Sheet.

____
Signature

DEBTOR'S CERTIFICATION
[see Fed. R. Bankr. P. 4008(b)]

I certify that any explanation contained on lines 9 or 12 of this form is true and correct.

____
Signature (Debtor)

____
Signature (Joint Debtor, if any)

2. Employee Identification Number

Official Form 16A was designed to comply with Bankruptcy Rules 1005 and 9004(b) and is used as the caption in a number of forms. One piece of information required to be included by Rule 1005 is the debtor's "Employer Identification Number" (if any). There is a typographical error in the form, however, that instead asks for the "Employer's Identification Number." **The Subcommittee recommended that the typo be changed in the version of the form that is scheduled to into effect December 1, 2007. The Chairman of the Advisory Committee and the head of the Rules Committee Support**

Office agreed that change could be included in the version of the form being transmitted to the Judicial Conference with a recommended effective date of December 1, 2007.

3. Definition of "creditor" on the back of Form 10

The back of Official Form 10 contains a definition section which explains that a "creditor" is "any person, corporation, or other entity to whom the debtor owed a debt on the date the bankruptcy case was filed." The Administrative Office has received questions from the public about whether this definition means that the holder of a claim assigned after the petition date is not a "valid creditor."

The general response to such a question is that the statutory definition controls. And the form even contains a warning at the top stating that "[t]he instructions and definitions below are general explanations of the law 9 [and that] ... there may be exceptions to these general rules." However, the Subcommittee believes that definition "creditor" on the back of Form 10 could be improved. **After considering several variations, some of which, like the statutory definition, include bankruptcy terms such as "claims" and "order for relief", the Subcommittee recommended that the definition be changed as follows:**

Creditor
A creditor is the person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. § 101(10).

If approved by the Judicial Conference, a number of changes in Form 10 will take effect on December 1, 2007. **Rather than immediately amend the form again, the Subcommittee recommends that the revised definition of creditor be deferred until there are additional changes in the form.**

United States Bankruptcy Court
_______________ District of _______________

In re ______________________________, Case No. __________________
Debtor Chapter ____

REAFFIRMATION AGREEMENT
COVER SHEET

This form must be completed in its entirety and filed within the time set under Rule 4008. It may be filed by any party to the reaffirmation agreement. The filer also must attach a copy of the reaffirmation agreement to this cover sheet.

Debtor's Name and Address ____________________
____
____

Creditor's Name and Address ____________________
____
____

1. Amount of debt as of commencement of case: $ ____________

2. Describe collateral, if any, securing debt:
____
____

3. Amount of debt being reaffirmed: $ ____________

4. Repayment term of reaffirmation: ___ months.

5. Monthly payment under reaffirmation: $ ____________

6. Annual percentage rate under reaffirmation: $ ____________

7. Debtor's monthly income at reaffirmation: $ ____________

8. Income from Schedule I, line 16: $ ____________

9. Explain any difference in the amounts set out on lines 7 and 8:
____
____
____

10. Debtor's monthly expenses at reaffirmation (without this reaffirmed debt): $ ____________

11. Current expenditures from Schedule J, line 18: $ ____________

12. Explain any difference in the amounts set out on lines 10 and 11:
____
____
____

☐ Check this box if the amount on Line 10 of this form exceeds the amount on Line 7 of this Form. If these expenses exceed the income, a presumption of undue hardship arises.

☐ Check this box if the debtor was not represented by counsel during the course of negotiating this reaffirmation agreement.

FILER'S CERTIFICATION

I ____________________ hereby certify that the attached agreement is a true and correct copy of the reaffirmation agreement between the parties identified on this Reaffirmation Agreement Cover Sheet.

____
Signature

DEBTOR'S CERTIFICATION
[see Fed. R. Bankr. P. 4008(b)]

I certify that any explanation contained on lines 9 or 12 of this form is true and correct.

____
Signature (Debtor)

____
Signature (Joint Debtor, if any)

COMMITTEE NOTE

This form is new. It requires the disclosure of financial information necessary for the court to make its determination under § 524(m) of the Code as to whether the reaffirmation agreement creates a presumption of undue hardship.

The form includes two certifications. The person filing the form certifies that a true and correct copy of the reaffirmation agreement is attached. The debtor certifies any explanation of the difference between the income and expenses reported on schedules I and J and the income and expenses reported on this form. The debtor's certification is designed to implement the requirements of Bankruptcy Rule 4008(b).

Official Form 10 (12/07)

UNITED STATES BANKRUPTCY COURT ________________DISTRICT OF________________

PROOF OF CLAIM

Name of Debtor:

Case Number:

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):

Name and address where notices should be sent:

Telephone number:

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number:____________
(*If known*)

Filed on:__________________

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. **Amount of Claim as of Date Case Filed:** $__________________________

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

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

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. **Basis for Claim:** __________________________
(See instruction #2 on reverse side.)

3. **Last four digits of any number by which creditor identifies debtor:** ____________________

3a. Debtor may have scheduled account as: __________________
(See instruction #3a on reverse side.)

4. **Secured Claim** (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

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

Value of Property:$______________ **Annual Interest Rate**___%

Amount of arrearage and other charges as of time case filed included in secured claim,

if any: $________________ **Basis for perfection:** __________________

Amount of Secured Claim: $________________ **Amount Unsecured: $**________________

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

Specify the priority of the claim.

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

☐ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

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

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$______________

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. **Credits:** The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. **Documents:** Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.)*

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

If the documents are not available, please explain:

Date:

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

Items to be completed in Proof of Claim form

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

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

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

2. **Basis for Claim:**
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card.

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

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

4. **Secured Claim:**
Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

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

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

7. **Documents:**
Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:
The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

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

Creditor
A creditor is the person, corporation, or other entity owed a debt by the debtor on the date of the bankruptcy filing.

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

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

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

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

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

Redacted
A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social security, individual's tax identification, or financial account number, all but the initials of a minor's name and only the year of any person's date of birth.

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

INFORMATION

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

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

Creditor
A creditor is the person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. § 101(10).

MEMO

DATE: 8/01/2007

TO: BANKRUPTCY RULES ADVISORY COMMITTEE

FROM: FORMS SUBCOMMITTEE

RE: FORMS MODERNIZATION REPORT

At its June 18, 2007 teleconference, the Forms Subcommittee endorsed the idea first presented by Judge Walker at the Bankruptcy Rules Committee's September 15-16, 2006 meeting in Seattle, that there should be a formal undertaking to review and modernize the bankruptcy forms. Because the Subcommittee believes the project would likely transcend the jurisdiction of the Bankruptcy Rules Committee, it suggested a conference call with members of the AO to discuss next steps and the possibility of setting up a working group that would include outside interests.

On August 1, 2007, Judges Zilly, Klein and Walker participated in a conference call to consider next steps for modernizing the forms with staff from the AO, including Assistant Director Peter McCabe, Pat Ketchum, Jim Wannamaker, Scott Myers and Richard Goodier. After some discussion, there was a general consensus that a "Forms Modernization Working Group" should be established and that such a group should include, at a minimum, several bankruptcy judges and bankruptcy clerks. The group should also include someone from the Bankruptcy Committee, a chapter 7 trustee and a chapter 13 trustee, someone from automation and/or the CM/ECF working group, and possibly representatives from a bankruptcy administer office and from the EOUST.

The conference call participants identified two general and somewhat distinct issues implicated by modernizing the bankruptcy forms. First, over time the forms have become disorganized and unnecessarily repetitive. And a "one size fits all" approach with respect to individual and business cases may make the forms unnecessarily complicated for most users (i.e., consumer debtors). So an initial task might be to review the individual forms with an eye toward reorganization and elimination of repetitive information, and possibly the establishment of separate petition packages for consumer debtors, non-individual (always business) debtors, and individual business debtors. These reorganization tasks would likely be performed by bankruptcy professionals in the working group (i.e., the bankruptcy judges, clerks and trustees on the working group with assistance from AO staff).

The second issue raises policy and technological concern and relates to how the case information is collected and distributed. Likely, data currently provided in the forms will be collected through some sort of electronic interface. An example would be something like turbo tax, in which the user is asked a series of questions (name, address, do you own your home, is there a mortgage, etc.), and the answers are placed in a database. Once in the database, the user's answers could be used not only to easily populate standard (i.e., "official") forms, but could also generate single-use reports on the fly. The ability to create such single-use reports could be very helpful to bankruptcy judges and the clerk's office in the administration and review of bankruptcy cases. Such a database could also be used by the AO to refine the collection and review of bankruptcy date.

The mere creation of a database that contains all the data from every bankruptcy filing, however, raises policy concerns about access, privacy and, depending on who has access, fairness in the litigation process. The Bankruptcy Committee is currently struggling with these concerns in its consideration of the EOUST's request for mandatory implementation of "smart forms." (The "smart forms" model of electronic data input advocated by the EOUST might be an alternative to a "turbo tax" model, but the policy issue of what information is collected by the judiciary and whether it should be provided to litigants such as the EOUST, or to the public generally, is implicated by either method).

Any recommendation the Forms Modernization Working Group makes with respect to how form data is collected, and if such data is retained in a database, will need to be informed by committees that are already considering the policy issues implicated by such data collection. Accordingly, at a minimum, the working group should include someone from the Bankruptcy Committee, which has taken the lead in reviewing the EOUST request for "smart forms." Participants from other Committees, such CACM and the Committee on Information and Technology may also be appropriate.

Because the focus of this project is modernizing bankruptcy forms, but involvement of other committees is envisioned, the conference call participants agreed that Forms Modernization Working Group should be organized by the Bankruptcy Rules Committee and report to that committee. Participants agreed to continue the discussion at the Bankruptcy Rules Committee's fall meeting in Jackson Hole and to identify candidates for the working group with a goal of setting up the first working group meeting within six months. In addition, to facilitate the first working group meeting, Judges Walker and Klein agreed to take a "first shot" at reorganizing and simplifying Form 1, with assistance from Pat Ketchum, Jim Wannamaker and Scott Myers.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: TECHNICAL AMENDMENT TO RULE 2016(c)

DATE: JULY 31, 2007

The 2005 amendments to § 110 of the Bankruptcy Code included the requirement that a bankruptcy petition preparer file a declaration of compensation together with the petition, rather than within 10 days after the filing the petition. The 2005 amendments also inserted a new subparagraph (h)(1) in § 110 and redesignated former subparagraph (h)(1) as subparagraph (h)(2). The changes to § 110 make the 10-day filing deadline for the declaration in Rule 2016(c) and the rule's cross reference to § 110(h)(1) incorrect. Therefore, it is necessary to make a technical amendment to that rule to reflect the changes in the Code. In addition, the 10-day deadline for filing a supplemental statement will be changed to 14 days by the time computation amendments which were published for comment in August.

The proposed amendment is set out below. The changes are technical, and should not require publication for comment. Rather, I recommend that the Committee approve the changes and that the amendment be forwarded at the appropriate time to the Standing Committee for its approval and submission to the Judicial Conference and the Supreme Court.

RULE 2016. Compensation for Services Rendered and Reimbursement of Expenses

1 * * * * *

2 (c) DISCLOSURE OF COMPENSATION PAID OR

3 PROMISED TO BANKRUPTCY PETITION PREPARER. Every

4 bankruptcy petition preparer for a debtor shall file a declaration

5 under penalty of perjury together with the petition and transmit the

6 declaration to the United States trustee ~~within 10 days after the~~

7 ~~date of the filing of the petition, or at another time as the court may~~

8 ~~direct~~, as required by § 110(h)~~(1)~~ (2). The declaration must

9 disclose any fee, and the source of any fee, received from or on

10 behalf of the debtor within 12 months of the filing of the case and

11 all unpaid fees charged to the debtor. The declaration must

12 describe the services performed and documents prepared or caused

13 to be prepared by the bankruptcy petition preparer. A supplemental

14 statement shall be filed within ~~10~~ 14 days after any payment or

15 agreement not previously disclosed.

COMMITTEE NOTE

Subdivision (c) is amended to conform to a 2005 amendment to § 110(h) of the Bankruptcy Code, which now requires that the declaration be filed with the petition. The amendment to the rule corrects the cross reference to § 110(h)(1) of the Code, which was redesignated as subparagraph (h)(2) of the section by the 2005 amendment. In addition, the10-day period for filing a supplemental statement is extended to 14 days to conform to the proposed time computation amendments and the adjustment of most periods of less than 30 days to multiples of seven days.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: SECTION 704(b), RULE 1017(e) AND THE TIMING OF MOTIONS TO DISMISS FILED BY THE UNITED STATES TRUSTEE

DATE: JULY 26, 2007

The 2005 amendments to the Bankruptcy Code included the revision of subsection (b) of § 704. The new provision requires the United States trustee first to review all the materials filed by the debtor and to file a statement with the court "not later than 10 days after the date of the first meeting of creditors" indicating whether there is a presumed abuse under § 707(b) of the Code. The court must then provide a copy of that statement to all of the creditors during the next five days. If the presumption of abuse arises, the United States trustee must then either file a motion to dismiss the case or a statement indicating why no motion is being filed. This action must be taken not later than 30 days after the filing of the initial statement by the United States trustee.

Rule 1017 governs the dismissal or conversion of cases. Subdivision (e) provides that any party must file a motion to dismiss a case under § 707(b) within "60 days after the first date set for the meeting of creditors." The rule further provides that the party can obtain an extension of this deadline, for cause, by filing a motion for the extension before the time to file the motion has expired. These requirements apply to any party moving for dismissal under § 707(b) or moving for an extension of the deadline.

Section 704(b), on the other hand, applies only to the United States trustee. The

deadlines in Rule 1017(e) and § 704(b) may or may not be the same. Much depends on the timing of the filing of the statement by the United States trustee as well as the date of the § 341 meeting of creditors. The Code section is ambiguous. By stating simply that the deadline is "10 days after the date of the first meeting of creditors," the statute does not provide any guidance as to whether that 10 days begins to run on the date that the meeting is scheduled to be held, or commences when the meeting of creditors concludes. This could be two dramatically different time frames. The rule attempts to resolve the ambiguity by setting a more specific date from which to commence counting the period during which the United States trustee may act. Rule 1017(e) adopts the formulation used in Rules 4004(a) and 4007(c) to set the deadline for the United States trustee to file a motion to dismiss the case under § 707(b). Nevertheless, the rule expressly provides that it is subject to § 704(b)(2).

Bankruptcy Judge Wesley Steen (W.D. Tex.) recently issued an opinion on the issue of the deadline by which the United States trustee must file a motion to dismiss a case under § 707(b). In In re Cadwallader, 2007 WL 1864154 (Bankr. S. D. Tex., June 28, 2007), the § 341 meeting was initially scheduled for December 26, 2006. The meeting commenced on that date and was continued to January 9 2007. The meeting was again continued until January 23, 2007, and was concluded the following day, January 24. The United States trustee filed the § 704(b)(1)(A) statement on February 2, 2007. This was nine days after the conclusion of the meeting of creditors and was 37 days after the first date set for the meeting of creditors. The United States trustee then moved to dismiss the case under § 707(b) on February 26, 2007. Importantly, the

motion to dismiss was made within 60 days after the first date set for the meeting of creditors.[1]

Section 704(b)(2) provides that the United States trustee has 30 days from the date of the filing of the statement filed under subsection (b)(1)(A) to file a motion to dismiss the case. The section does not set a deadline for any other party who wishes to file a motion to dismiss the case under § 707(b). Rather, other parties must act by the deadline set by Rule 1017(e). Under the rule, the motion must be filed not later than 60 days after the first date set for the meeting of creditors in the case. The Advisory Committee recognized that this deadline could be too short in some instances (for example, the debtor could delay in providing the necessary documentation to make a determination of abuse), so the rule also provides for an enlargement of the time, for cause, if a request for the enlargement is made prior to the expiration of the 60 day period. The rule also states that it is subject to § 704(b). In particular, the Committee Note states that "The conforming amendments to subdivision (e) preserve the time limits already in place for § 707(b) motions, except to the extent that § 704(b)(2) sets the deadline for the United States trustee to act." (Emphasis added.) This is simply a recognition that the Code governs the rules, and not the contrary. Section 704(b)(2) seems quite clearly to set a deadline for the United States trustee to act, and the Advisory Committee did not believe that it could override that provision through the adoption of a deadline applicable to the United States trustee. Therefore, different deadlines may exist for the United States trustee and for other parties to file a motion to dismiss a case under § 707(b).

Judge Steen concludes in Cadwallader that § 704(b)(1) does not establish a deadline for

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[1] February 24, 2007, 60 days after the first date set for the meeting of creditors, fell on a Saturday. Therefore, the deadline was extended to Monday, February 26, 2007.

the United States trustee. Rather, he states that it establishes a duty for the trustee. The section provides that the United States trustee must file a statement not later than 10 days after the date of the first meeting of creditors as to whether there is a presumption of abuse based on the documents the debtor filed in the case. The statute is unclear as to what the "date" of the first meeting of creditors may be. Rule 1017(e) is silent on that issue. By deferring specifically to the Code, the rule takes no position on the meaning of "date" in § 704(b)(1). All that Rule 1017(e) provides is a deadline for entities other than the United States trustee. At most, the rule also may establish a deadline for the United States trustee, but only to the extent that § 704(b) does not otherwise establish a deadline. Judge Steen noted in his opinion that different deadlines can be calculated under the Code and the rule. This is correct, but there is nothing that the rules can do to resolve that matter, other than revising Rule 1017(e) to provide that whatever deadline exists for the United States trustee would govern § 707(b) motions by any other party. That would inject a greater degree of uncertainty into the rules than I believe the Advisory Committee would find acceptable.

The issue presented to the court in Cadwallader is a difficult one. While Judge Steen concluded that § 704(b)(1) does not set a deadline for the United States trustee to act, the court in In re Close, 353 B.R. 915 (Bankr. D. Kan. 2006) came to the opposite conclusion. There, the court held that the statute was unambiguous and requires the United States trustee to file the statement not later than 10 days after the first date set for the meeting of creditors. In another case, the court held that the United States trustee must file a statement during that 10 day period that sets out that the debtor's case either is or is not an abuse under the means test. In re Robertson, 2007 WL 1977154 (Bankr. D. Minn., July 3, 2007). The court in Robertson held that

the filing of the statement in a timely fashion is a prerequisite to a motion to dismiss under § 707(b). Thus, the failure to file the statement precluded the granting of the United States trustee's motion to dismiss the case.

These decisions are some of the very few decided thus far on this issue. They each take a somewhat different view of the Code, and it may take some time for the courts to resolve their differences on the matter. None of the cases, including Cadwallader, hold that Rule 1017(e) is improper. In fact, I think that each of the cases essentially recognize that the deadline in § 704(b) preempts any deadline that the rules might establish for the United States trustee. A conflict exists among the courts over the proper interpretation of § 704(b)(1), and I do not believe that the Advisory Committee needs to take any position on that issue. The differing views in the courts may create some problems for the United States trustee, and decisions of the appeals courts may ultimately resolve the matter. However, this is a matter for the courts, and I do not believe that the rules enabling authority would permit a rules based solution to this issue. Therefore, I would recommend that the Committee take no action on this matter at this time.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
515 RUSK AVENUE, RM 4505
HOUSTON, TEXAS 77002

WESLEY W. STEEN
United States Bankruptcy Judge

July 11, 2007

Mr. Peter McCabe
Secretary
Judicial Conference of the United States Committee on Rules
Rules_Comments@ao.uscourts.gov

Re: *In re Cadwallder*, 2007 WL 1864154 (Bankr. S.D. Tex. 2007) (copy attached)

Dear Mr. McCabe:

In the referenced opinion, I attempt to interpret Bankruptcy Code § 704(b), informed by *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 123 S.Ct. 748 (2003). In doing so, I am concerned about whether Bankruptcy Interim Rule 1017(e) correctly interprets § 704(b) and whether it is contrary to *Barnhart*.

Interim Rule 1017(e)(1) might be read to imply that § 704(b)(2) sets a deadline for the US Trustee to file a motion to dismiss under Bankruptcy Code § 707(b). For reasons set forth in the referenced opinion, I think that the Supreme Court in *Barnhart* suggests a different interpretation. I conclude that § 704(b)(1) is, to paraphrase the Supreme Court, intended to spur the US Trustee to action, not to limit his authority. I believe that § 704(b) is intended for the benefit of creditors and of the bankruptcy court, to let them know whether the US Trustee will prosecute a § 707(b) motion to dismiss or whether the creditors and court must consider undertaking that burden themselves if they want the issue decided.

Although I believe that § 704(b) does not set a deadline, if it does, then there is a different problem with the rule. Rule 1017(e), as currently drafted, could be interpreted as assuming that the § 704(b) deadline is always <u>earlier</u> than the Rule 1017(e) 60-day deadline. But that might not be the case if § 704(b) runs from the <u>end</u> of the creditors' meeting (as *Collier's* suggests and as must be the rule for reasonable practical application). If the § 704(b) deadline runs from the <u>conclusion</u> of the creditors' meeting, and if the conclusion of the meeting is more than 20 days after the "first date set," then the deadline for the US Trustee to file a § 707(b) motion could be later than the 60 day deadline established in Interim Rule 1017(e). If that is the situation, then it is not clear whether the 60-day deadline in Interim Rule 1017(e) was intended to apply to the US Trustee (supplementary to the §704 (b) deadline) or whether it was intended to apply only to creditors and to the court. That is, in the event of a continuance of the creditors' meeting for say, 30 days, it is not clear whether the deadline on the US Trustee's motion would be the § 704(b) deadline or the Rule 1017(e) 60-day deadline.

As I suggest in the opinion, I think that a single, clearly established deadline for motions to dismiss is in the interest of all parties and can only be achieved by reading the statute as I have suggested in the opinion. This result could be achieved by simply deleting from the interim rule any reference to § 704(b) as setting a deadline. But if the Committee disagrees with my interpretation, other work on the rule is called for.

I ask that the Committee consider these comments and consider revision of the rule.

Very truly yours,

Wesley W. Steen

ENTERED
06/28/2007

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:		
JASON A. CADWALLDER	§	CASE NO: 06-36424
Debtor(s)	§	
	§	CHAPTER 7

MEMORANDUM OPINION REGARDING METHOD OF FILING US TRUSTEE'S STATEMENT OF PRESUMED ABUSE AND TIMELINESS OF THE US TRUSTEE'S MOTION TO DISMISS (DOC # 11)

The United States Trustee filed a motion to dismiss Debtor's Chapter 7 bankruptcy case as an abuse of the Bankruptcy Code: § 707(b)(2) and (b)(3). Debtor asserted that the motion was not filed timely and properly, and the Court determined to address those issues prior to addressing the merits of the motion. The parties have submitted stipulated facts that are sufficient to decide those issues. For reason stated below, the Court concludes that the US Trustee's motion to dismiss is timely and may be prosecuted. Debtor's objections to the motion related to inadequacy of the US Trustee's statement under Bankruptcy Code § 704(b) are overruled, and the objection to the timeliness of the US Trustee's motion to dismiss is overruled.

I. BACKGROUND

A. Summary of the events and of Debtor's contentions

Bankruptcy Code § 704(b)(1)(A) requires the US Trustee to file a "statement" concerning whether the statutory presumption of bankruptcy abuse (a/k/a the "means test") applies in a chapter 7 case. Although the statutory presumption involves a complex mathematical analysis that challenges even the most astute and informed professionals, the statute seems to require the US Trustee to consider more than just the math since it requires the US Trustee to "review all materials filed by the debtor," not just Form B22 (which attempts to assist the implementation of the complex statutory language). The statement of the US Trustee's conclusions about presumed abuse must be filed within 10 days after the creditors' meeting. If the US Trustee states that the presumption applies, then § 704(b)(2) requires the US Trustee to determine whether the debtor's income exceeds the applicable median household income. If the US Trustee has determined that the presumption applies and that the debtor's income exceeds the applicable median, then the US Trustee must either (i) file a motion to dismiss the case or (ii) state why he will not file a motion to dismiss.

The meeting of creditors was continued twice in this case for Debtor to provide additional information. The US Trustee filed a § 704(b) statement on February 2, 2007: nine days after the conclusion of the creditors' meeting, thirty-seven days after the commencement of the meeting. The US Trustee made his statement by causing an entry to be made on the docket of this case. That entry stated the US Trustee was unable to determine from the documents filed by the

Debtor whether the presumption applied. Twenty-four days later, the US Trustee caused an entry to be made on the docket of this case stating that the US Trustee concluded that the presumption of abuse was triggered. On the same day, the US Trustee filed a motion to dismiss the case under § 707(b) as abusive of the Bankruptcy Code.

In his response to the US Trustee's motion to dismiss, Debtor asserted that the "statement" filed by the US Trustee does not satisfy the requirements of § 704(b) because only a docket entry was prepared, and no underlying "document" was prepared and filed. Later, in his memorandum of authorities, Debtor argues further that neither the "statement" nor the motion to dismiss was timely filed because the US Trustee filed the statement within 10 days after the conclusion of the creditor's meeting, not within 10 days from the commencement of the creditors' meeting. Finally, in his memorandum of authorities Debtor argues that the US Trustee's first docket entry is not adequate because it did not state whether the presumption of abuse arises, it merely stated that the US Trustee could not determine whether the presumption of abuse arises.

B. Docket Sheets in the Electronic Age

1. Explanation of the Electronic Docket: Documents, Images, and Entries

A "docket sheet" is an index of a case. It documents the history of the case in a list of "docket entries" organized chronologically. Traditionally, a docket entry records an event (such as a hearing or trial) or documents the filing of a pleading or other instrument such as the petition commencing the bankruptcy case, a notice generated by the Clerk, an order, a judgment, *etc.* Each docket entry is dated and generally is assigned a sequential number. Each docket entry includes a summary of the relevant event or document.

Prior to the computer age, dockets were created manually on paper, first by hand and then by typewriter. Documents were submitted to the court in paper form, a clerk handwrote (and then later in history typed) the requisite information on a sheet of paper, and the original document was fastened into a folder that was the "case file." The docket sheet was, mostly, an index of the paper file.

Federal courts now use an electronic system. CM/ECF was developed by the Administrative Office of US Courts to bring courts into the twentieth century. The system is designed to be paperless. There is no longer a case "file" with paper documents. The vast majority of documents never exist in paper form in the Clerk's office; they are produced by attorneys in electronic form and are submitted to the Clerk over the internet as computer files, "PDF documents" which are images.[1] When these PDF documents are submitted electronically

[1] "PDF" is computerese and makes sense to those of us who are geeky enough to pay attention to such things, even superficially. Computers communicate with each other with strings of symbols (collectively called a "computer file"). This string of symbols (the "computer file") means something only if interpreted by the right computer program. To allow the human user to distinguish one computer file from another (and thus designate the file on which the user wants to work) computer files are given names. By convention, file names consist of a combination of letters, numbers, and symbols, then a "dot" (the symbol for a period in conventional typing), and then a three letter "extension." The "extension" is important principally to the computer because it tells the operating system of the computer which program can read that file. "PDF" is the extension that indicates that the

to the Clerk, the attorney who submits them provides certain information from which the Clerk's computer generates a docket entry to index the file. The computer data submitted by the attorney and the docket entry are stored in the Clerk's computer. "Documents" prepared within the court, such as orders, notices, judgments, *etc.* are similarly prepared, transmitted, and docketed without any paper having been generated. Occasionally the Clerk receives paper documents, from *pro se* litigants for example. When paper documents are submitted to the Clerk, they are scanned and turned into PDF documents on the Clerk's computer. The Clerk then generates the electronic docket entry through which the PDF document is accessed. Some courts destroy the paper copies. Other courts keep them for varying periods, but only as a precaution. No courts use the paper documents; only the electronic computer images are used by the courts, the parties, and the public. The data that constitutes the electronic "case file" is stored on the Clerk's computer and is made available to the court staff and to the public in a form that can be read by human beings, but only by using compatible computers and programs. Federal courts discourage the filing of paper documents. In summary, clerks of court no longer maintain paper records of court cases; the electronic docket and the computer PDF files attached to the docket entries are the court's file.[2]

Attorneys receive service of these PDF documents electronically. Likewise, they can receive docket entries electronically. The parties have stipulated that electronic copies of the docket entries made by the US Trustee were sent to Debtor's counsel.

CM/ECF allows for creation of standardized docket entries by "radio button." A party, when properly authorized by the court, can cause the computer to create and to display a docket entry containing language (pre-authorized with respect to form and content) by the court. The CM/ECF system then serves the docket entry on specified parties. These "radio buttons" are used for a number of purposes, by a number of entities as authorized by the court. The process is used only when the matter is routine, the language of the docket entry is simple and short, and the need is simply to record an event or a statement of position. The process is used to reduce administrative costs and to simplify administration of estates. For example Chapter 7 trustees and Chapter 13 trustees use "radio buttons" to report that there are no assets to administer, that the § 341 Meeting of Creditors has been held and continued, that the creditors' meeting has been concluded, *etc.* The US Trustee has been authorized by the court to use a "radio button" to make the US Trustee's statement concerning whether the presumption of abuse arises under § 707(b), *etc.*

When a "radio button" is used to make these docket entries, the docket entry contains all of the information and is the only record in the electronic case file. There is no separate "document," and there need not be, because all of the information appropriate to the docket entry appears on the face of the electronic docket sheet. A separate PDF document would be superfluous and would waste judicial resources because it would require more computer time and would require greater computer storage capacity. Creation of a separate "document" would actually delay access to the information since a party who wanted to access the information would find it necessary first to look at the docket entry and then to access the document linked to

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computer file is readable by a computer program known as Adobe Acrobat, which is the program that must be used to produce and to read the computer files that are usable by CM/ECF .

[2] Rule 5005 of the Federal Rules of Bankruptcy Procedure (FRBP).

that docket entry. By putting the information in the docket entry itself, access to the information requires one less step.

The use of docket entries to record events and requirements in a case, without production of a separate computer imaged "document," is common and is increasing. Some courts (although not the Southern District of Texas, yet) routinely use the docket entries to memorialize orders. Some courts use these "docket orders" extensively for routine matters. In those cases, no separate written order is issued or created.

C. Facts Stipulated by the Parties

1. Case filing and docket sheet entries

Jason Cadwallder ("Debtor") filed a petition commencing this case under chapter 7 of the Bankruptcy Code on November 16, 2006. The first date set for the § 341 Meeting of Creditors was December 26, 2007.[3] The meeting commenced on that date and was continued to January 9, 2007.[4] Debtor appeared at the continued meeting. The docket entry from that January 9 meeting states that the meeting was further continued to January 23, "in the event requested documents are not provided *debtor to provide domestic support address to Trustee*"[5]

The docket sheet indicates that the meeting was concluded on January 24.[6]

2. The 10 day statement

On February 2, 2007, (thirty-seven days after the commencement of the creditors' meeting but 9 days after the conclusion of the creditors' meeting), the US Trustee caused to be entered on the docket the following information:

> Having reviewed the documents, if any, filed by the debtor and any additional documents provided to the United States Trustee, the United States Trustee is currently unable to determine whether the debtor's case would be presumed to be an abuse under Section 707(b) of the Bankruptcy Code. Filed by U.S. Trustee. (Hickman, Ellen) (Entered: 02/02/2007).[7]

3. The Supplemental Statement

On February 26, 2007, (the first business day that is 60 days after the commencement of the creditors' meeting, 33 days after the conclusion of the creditors' meeting) the US Trustee

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[3] Doc. # 23, Stipulated Fact #5.

[4] Doc. # 23, Stipulated Fact #6.

[5] Docket entry for January 9, 2007.

[6] Doc. # 23, Stipulated Fact #9. Debtor did not appear at the January 24 meeting because he satisfied all of the trustee's document requests prior to this date.

[7] Doc. # 23, Stipulated Fact #10.

caused the following docket entry to be made on the docket of this case (the"Supplemental Statement"):

> The United States Trustee previously filed a statement under section 704(b)(1)(A) [the docket entry at February 2, 2007] indicating an inability to determine whether this case would be presumed to be an abuse. The United States Trustee has reviewed all materials filed and submitted by the Debtor, including certain additional documents received after the filing of the United States Trustee's initial statement under section 704(b)(1)(A). Based on this review, the United States Trustee has determined that the Debtor's case is presumed to be an abuse under 11 U.S.C. section 707(b)(2). Filed by U.S. Trustee. (Hickman, Ellen) (Entered: 02/26/2007).[8]

No separate PDF file was submitted.

4. Motion to dismiss

The US Trustee filed his Motion to Dismiss on the same day that he filed the Supplemental Statement. That day was 24 days after the initial statement and 33 days after the conclusion of the creditors' meeting; it was the first business day that was 60 days after the commencement of the creditors' meeting.[9]

5. Summary of these dates

The following table summarizes these dates and stipulations:

Date	Deadline or Event
11/16/06	Debtor filed chapter 7 bankruptcy petition
12/26/06	"First date set" for creditors' meeting under § 341; meeting commenced; continued to January 9 for Debtor to supply more information
1/5/05	January 5 is ten days after 12/26/05; Debtor contends that the US Trustee's statement was due on this date
1/9/07	Docket sheet indicates that at this continued creditors' meeting, the trustee requested a "domestic support address" from Debtor; meeting was continued to 1/23, "in the event requested documents are not provided";[10] on some date prior to January 23, Debtor provided the additional data; the date that the information was provided is not stipulated;[11]

[8] Doc. # 23, Stipulated Fact #11.
[9] *Id.*
[10] Docket entry for January 9, 2007. See also stipulation 7 of stipulated facts in docket # 23.
[11] Doc. # 23, Stipulated Fact #8.

Date	Deadline or Event
	On some date between January 9 and January 24, Debtor provided the "domestic support address;" the date that the address was supplied is not stipulated.
1/24/07	The chapter 7 trustee caused a docket entry to be made indicating that the creditors' meeting was concluded.
2/2/07	This date is 9 days after the conclusion of the creditors' meeting; the US Trustee caused a docket entry to be made stating "the United States Trustee is currently unable to determine whether the debtor's case would be presumed to be an abuse under Section 707(b) of the Bankruptcy Code"
2/24/07	This is the date that is 60 days after the first date set for the meeting of creditors. However, February 24 was a Saturday. Therefore, any deadline for a filing due on February 24 is automatically extended to February 26 (FRBP 9006(a)).
2/26/07	Deadline for filing motions to dismiss under FRBP 1017(e), "[e]xcept as otherwise provided in § 704(b)(2)." US Trustee caused a docket entry to be made stating "The United States Trustee has reviewed all materials filed and submitted by the Debtor, including certain additional documents received after the filing of the United States Trustee's initial statement under section 704(b)(1)(A). Based on this review, the United States Trustee has determined that the Debtor's case is presumed to be an abuse under 11 U.S.C. section 707(b)(2);" in addition, US Trustee filed a motion to dismiss under § 707(b)(2) and (3).

II. DEBTOR'S ARGUMENT

Debtor argues that the US Trustee filed his motion to dismiss after the deadline. Debtor contends (i) that even if the docket entry constitutes a "statement" it was not timely because the 10 days should be measured from the first date set for the meeting of creditors and not from the conclusion of the meeting of creditors, (ii) that the docket entries made by the US Trustee are not "sufficient," a "document" is required, and (iii) that a statement of inability to determine whether the presumption of abuse arises is not an adequate "statement."

Debtor did not argue that the US Trustee's motion to dismiss was not filed timely under FRBP 1017(e), but the Court has tried to address that issue, as best it can with the authority available, in the following analysis.

III. CONCLUSIONS OF LAW

A. Statutory Interpretation

1. Bankruptcy Code § 704(b) provides:

> (1) With respect to a debtor who is an individual in a case under this chapter--
>
> > (A) the United States trustee… shall review all materials filed by the debtor and, not later than 10 days after the date of the first meeting of creditors, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b); and
> > (B) not later than 5 days after receiving a statement under subparagraph (A) the court shall provide a copy of the statement to all creditors.
>
> (2) The United States trustee… shall, not later than 30 days after the date of filing a statement under paragraph (1), either file a motion to dismiss or convert under section 707(b) or file a statement setting forth the reasons the United States trustee… does not consider such a motion to be appropriate, if the United States trustee… determines that the debtor's case should be presumed to be an abuse under section 707(b) and the product of the debtor's current monthly income, multiplied by 12 is not less than [applicable state median family income]…

2. Bankruptcy Code § 707(b) provides:

> (1) After notice and a hearing, the court, on its own motion or on motion by the United States trustee, trustee… or any party in interest may dismiss a case filed by an individual debtor… whose debts are primarily consumer debts… if… the granting of relief would be an abuse of the provisions of this chapter…
>
> (2)(A)(i) In considering under paragraph (1) whether the granting of relief would be an abuse… the court shall presume abuse exists if the debtor's current monthly income… multiplied by 60 is not less than the lesser of …

3. Threshold issue: Is the US Trustee's timely performance of his § 704(b) duties a prerequisite for him to file a motion to dismiss under § 707(b)?

Debtor asserts that the US Trustee's strict compliance with § 704(b) requirements to make a timely "statement" is a prerequisite for the US Trustee to file a motion to dismiss under § 707(b), and that the Court should deny a motion filed more than 30 days after the statement

because, in Debtor's view, the motion is not timely. Debtor argues that he is entitled to an early and clear statement of whether the availability of chapter 7 relief is challenged as an abuse of the Bankruptcy Code. Debtor analogizes the statutory requirement and deadline for the US Trustee to file a statement (and the statutory requirement and deadline for the US Trustee to file a motion to dismiss or a statement declining to file the motion) as analogous to the deadline for filing an objection to discharge or to dischargeability of a debt (which is set by FRBP 4004 and 4007 at 60 days after the first date set for the meeting of creditors).

Virtually all of the authority that the Court has seen to date (which is discussed below) seems to assume that § 704(b) establishes a deadline for US Trustee action and that a tardy motion is time-barred. The Court is very reluctant to swim upstream against the assumptions of so many learned writers. But for reasons set forth below, the Court believes that § 704(b) establishes a duty, but does not establish the penalty for failure to perform that duty, and therefore even if a US Trustee failed to comply strictly with his § 704(b) duties, his motion to dismiss would not (merely for that reason) be time-barred.

a. The establishment of a duty, even with an explicit deadline for performance of that duty, does not necessarily establish a penalty for failure to meet the deadline

The Supreme Court has held that an action by a government agency is valid, even if the action is performed after a statutory deadline, unless the statute provides otherwise.

> We accordingly read the 120-day provision as meant "to spur the Secretary to action, not to limit the scope of his authority," so that untimely action was still valid.... If a statute does not specify a consequence for noncompliance with statutory timing provisions, the federal courts will not in the ordinary course impose their own coercive sanction.[12]
>
> ...
>
> [A] statute directing official action needs more than a mandatory "shall" before the grant of power can sensibly be read to expire when the job is supposed to be done.[13]

Section 704(b) specifies no "consequence" for tardy action by the US Trustee. Therefore it is not clear why everyone assumes that a US Trustee motion is time barred if the time expires before "the job is supposed to be done." That assumption is not the common practice in bankruptcy. For example, Bankruptcy Code § 521(a)(1) requires a debtor to file certain information, such as bankruptcy schedules, statement of financial affairs, *etc.* FRBP 1007(c) sets the "time limits" for filing those documents, which in general is 15 days after the date that the petition was filed. So a debtor has a duty and a time limit for performance: 15 days. But there is no consequence if the debtor files the documents on the 16th day. It is clear that Congress knew how to set deadlines and how to establish consequences for failure to meet deadlines. Section 521(i) provides that if the debtor fails to file the material by the 45th day, the case is

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[12] *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 158-159, 123 S.Ct. 748 (2003) (citations omitted).
[13] *Id.* at 161.

automatically dismissed. But Congress did not specify consequences for a debtor's failure to file schedules on the 15th day; it is not until the 46th day that the case is dismissed by statute.

Since Congress did not specify "consequences" for the US Trustee's failure to meet the §704(b) deadlines, following *Barnhart* the Court understands that "ordinarily" there would be none. That is not to say that the US Trustee has no deadline for filing a motion to dismiss. As discussed below, the Court believes that it is not only appropriate, but essential, that the Federal Rules of Bankruptcy Procedure provide a uniform and clear deadline for filing these motions. That deadline seems to have been set at 60 days after the first date set for the meeting of creditors. In the case at bar, the US Trustee met that deadline and therefore his motion was timely.

b. Close reading of the statute supports the conclusion that the deadlines in § 704(b) are not fatal to a motion filed after the dates set out there

i. The language of the statute

Section 704(b) is titled "Duties of trustee." Prior to BAPCPA, it established certain duties for chapter 7 trustees. It was expanded by BAPCPA to establish duties for the US Trustee. Deadlines (such as deadlines for filing objections to discharge)[14] have generally been set by the Federal Rules of Bankruptcy Procedure, not by § 704 of the Code. There is no authority that the Court has been able to find that suggests that BAPCPA intended to change the purpose of that section. Section 704(b) does not establish any penalty or disadvantage that the US Trustee incurs by failing to file a timely statement or by not strictly meeting the requirement in § 704(b)(2) to file a motion to dismiss within 30 days after making the statement.

ii. Interpretation of § 704(b) as setting a deadline is not consistent with the application of other statutory provisions for the administration of a bankruptcy case

Congress did not limit prosecution of § 707(b) motions to the US Trustee. Section 707(b) gives to the court, on its own motion, and to all parties in interest the right to file a motion to dismiss for substantial abuse. Each of these three categories of potential movants[15] has an independent right. If strict compliance with § 704(b) were a prerequisite for the US Trustee to bring a § 707(b) motion to dismiss, then the statute must be intended as a penalty solely applicable to the US Trustee. There is no statutory authority to suggest that other parties in interest or the court could not bring a motion. And if they did, § 707(b) makes the application of the statutory presumption mandatory even if the US Trustee fails to make any statement at all. Debtor argues that § 704(b) deadlines were intended to give the Debtor an early and definitive statement of whether his case would be challenged as "abusive," but obviously that could not be Congress' objective since even if the US Trustee makes no statement, a debtor would not have that comfort until the deadline had run for creditors and the Court to bring their own motions. In any event, it is not likely that Congress would have established a standard (dismissal of bankruptcy cases for abuse) and then would have relegated enforcement of that standard to the

[14] *See* § 704(a)(6), FRBP 4004, 4007.

[15] The Court, the US Trustee, and creditors.

Court acting on its own motion if the US Trustee missed a deadline. Rules 4004 and 4007 set deadlines that are applicable to all parties and that run at the same time. There is no indication of any reason why Congress would have intended an earlier deadline to apply only to the US Trustee. If noncompliance with § 704(b) precluded the US Trustee from bringing a motion to dismiss, the effect would be to shift the burden to the Court or to creditors. The Court knows of no logic supporting that result.

Second, the requirement for a "statement" is remarkably informal. Even with the imprecision of BAPCPA, it is unlikely that a statement was intended to establish a deadline. The statute requires a statement, not a motion or a notice. The Clerk, not the US Trustee, must provide a copy of the statement to all creditors. The statute does not require "service" on the creditors, it does not require service on the debtor; it does not even require the Clerk to provide a copy to the debtor. The unusual limitations and the informality of the requirement to "provide a copy" imply that the statement is not intended to be a significant limitation on the ability to prosecute an action. Throughout the Code, when procedural due process and limitations are involved, the Code requires a motion, with "notice and a hearing." A requirement for a statement (instead of a more formal document) and a requirement to "provide a copy" (instead of "serving" a document) are, to the best of the Court's knowledge, unique. They suggests some purpose other than limitations and due process.[16]

The fact that the Clerk is required to provide a copy to creditors (but there is no requirement to provide a copy to the debtor, nor even a requirement to serve or to transmit a copy to creditors) suggests that the statement is intended to be for creditors' information and benefit. If the statement were intended to benefit someone else (such as the debtor) one would expect that the statute would require service on them or at least require that the court provide them with a copy.

It is therefore logical to conclude that creditors and the court, not the debtor, are the intended beneficiaries of the short deadlines for the US Trustee's statement. As noted, in addition to the US Trustee, the court and creditors are authorized to bring motions to dismiss for substantial abuse. By making a statement to the court and by requiring the court to provide a copy of the statement to creditors, the statute effects a mechanism for letting these alternative movants know whether they need to file their own motions. If the US Trustee will take on that burden, then there is no reason for these other parties to file their own motions.

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[16] The Court can find no similar provision for "providing a copy" in the Bankruptcy Code. The Federal Rules of Bankruptcy Procedure do include a number of provisions for "transmitting" copies, but each of these provisions are for the Clerk to provide a copy of various documents to the US Trustee. Several rules of the Federal Rules of Bankruptcy Procedure refer to "transmitting" copies of various pleadings or materials. Rule 1007(l) requires the Clerk of Court to transmit to the US Trustee a copy of every list, schedule, and statement filed under rule 1007. Rule 1009 requires the Clerk to transmit to the US Trustee any amendments to those documents. Rule 1019 requires the Clerk to transmit to the US Trustee copies of documents filed when chapter 11, chapter 12, and chapter 13 cases convert to chapter 11. Rule 2013 requires the Clerk to transmit a copy of fee summaries to the US Trustee. And Rule 3018 requires the Clerk to transmit a copy of a chapter 13 plan to parties in interest if the court requires it and requires the Clerk to provide a copy to the US Trustee. But the Court cannot find any other requirements for "providing" a copy, as § 704(b)(1)(B) requires. Regardless, it is notable that events with significance require service of pleadings, and that § 704(b)(1)(B) requires "providing" a copy, that the duty is on the clerk, and that the clerk is only required to provide a copy of the statement to the creditors.

That logic is supported by a reading of both statutory provisions, in their full breadth, in context. The statutory scheme contemplates that the debtor will file required documentation and that the US Trustee will examine that documentation within 10 days after the meeting of creditors. The US Trustee is then required to opine whether the mathematical analysis defined in § 707(b) results in a presumption of abuse or not. There is no requirement that the creditors accept the US Trustee's conclusion or that the Court accept that conclusion. Creditors could bring their own motions to dismiss, or the Court could initiate the proceeding on its own motion; if that occurred, § 707(b) provides that the presumption of abuse "shall" apply if the mathematical calculation so determines. Creditors and the Court are not bound by the US Trustee's conclusions. Apparently all that the US Trustee's statement does is to tell creditors that, in the US Trustees' opinion, the creditor will or will not be aided by the statutory mathematical analysis and to give them some preliminary indication about whether the US Trustee will pursue that issue or whether they must pursue it themselves if they want the issue pursued. It does not tell the debtor that no motion to dismiss will be filed or that the statutory presumption is definitively unavailable. Therefore, contrary to Debtor's argument, the 10 day notice cannot serve the function of giving definitive notice as FRBP 4004 and 4007 do.

Finally, it is reasonable to interpret § 704(b) as a duty rather than as a limitation because Congress made no provision for extension of the deadline. This statute is not known as a statute intended to enhance debtors' rights. It is not reasonable to think that Congress would have intentionally withheld from the court the authority to extend a deadline, especially a deadline that is so short.[17]

The leading treatise in the field, *Collier on Bankruptcy*, refers to § 704(b) requirements as a duty of the US Trustee, not as a deadline.

> Although section 704, prior to 2005, had been concerned with duties of chapter 7 trustees, the 2005 amendments added a new subsection (b) that sets forth duties of the United States trustee ... in cases of all individual debtors. These duties pertain to the determination of whether a chapter 7 case is an abuse as defined by section 707(b) and, in particular, the presumption of abuse under section 707(b)(2)...
>
> The first duty is to review the materials filed by each individual debtor, and not later than 10 days after the date of the meeting of creditors, file with the court a statement as to whether the case is presumed to be an abuse under section 707(b)....
>
> The Court is to provide a copy of the statement filed by the United States trustee to all creditors within five days after it is filed. Presumably, this is to give creditors an opportunity to file their own motions to dismiss under section 707(b)(2), if they are eligible to do so. However, it is likely that

[17] If one adopted the Debtor's analysis (including the argument that a "statement" is inadequate if it asserts that the US Trustee cannot make a determination because of insufficient information) it would be possible for a debtor to cause the US Trustee to breach the deadline simply by withholding information.

> most creditors will wait to see if the United States trustee files a motion, thereby saving them the expense.[18]

The statement required by § 704(b)(1) and the motion required by § 704(b)(2) work hand in glove. The time for filing the motion derives from the time for filing the statement. In all logic, they must both be considered as determining, for creditors, whether the US Trustee will bring a § 707(b) motion to dismiss or whether creditors or the Court must bring it.

The Court concludes that § 704(b) is a mandate for US Trustee action imposed for the benefit of the Court and other parties in interest, not a deadline.[19] Therefore, even if the US Trustee had not met the § 704(b) deadlines, the motion would not be time barred merely for that reason.

B. Limitations in the Federal Rules of Bankruptcy Procedure

Rule 1017(e)(1) of the Federal Rules of Bankruptcy Procedure provides:

> Except as otherwise provided in § 704(b)(2), a motion to dismiss a case for abuse under § 707(b) or (c) must be filed only within 60 days after the first date set for the meeting of creditors ... unless on request filed before the time has expired, the court for cause extends the time for filing the motion to dismiss.

The Advisory Committee note to that rule states:

> The conforming amendments to subdivision (e) preserve the time limits already in place for § 707(b) motions, except to the extent that § 704(b)(2) sets the deadline for the US Trustee to act.

This language is less than definitive. On first reading, it seems to imply that § 704(b)(2) sets a deadline, but if that is what is intended, the language is very unfortunate.

First, the rule and the Advisory Committee note refer only to § 704(b)(2) as potentially setting a deadline. That suggests that the Advisory Committee did not view § 704(b)(1) as an important element in the deadline. If that were correct, the US Trustee could be tardy in filing a statement under § 704(b)(1) but nevertheless file the motion within 30 days of the tardy 10 day statement and still satisfy § 704(b)(2) and rule 1017(e)(1).

Second, as explained in a long discussion below, there is a material dispute between the parties in the case at bar concerning whether the 10 days runs from the commencement or from the conclusion of the creditors' meeting. Rule 1017(e) states that the 60 day deadline for filing

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[18] 6 *Collier on Bankruptcy* ¶ 704.17 (15th rev. ed.).

[19] Three cases assume, without actually needing to reach the issue, that § 704(b) establishes a deadline. *In re Singletary*, 354 BR 455 (Bankr. S.D. Tex. 2006); *In re Vartran*, 2007 WL 640006 (Bankr, E.D. Cal. 2007); and *In re dePellegrini*, 2007 WL 1429037 (Bankr. S.D. Ohio 2007). The Court does not believe that the cases hold that § 704(b) establishes a deadline, but to the extent that they do, this Court respectfully disagrees.

motions to dismiss under § 707(b) run from the "first date set," but the language in the rule excepts § 704(b)(2). That leaves us with no definitive statement of when the deadline under § 704(b)(2) begins to run.

Collier on Bankruptcy interprets rule 1017(e) as recognizing § 704(b) as setting a deadline.[20] However, as noted below, *Collier* also takes the position that the deadline runs from the conclusion of the creditors' meeting, not the first date set for the creditors meeting. Therefore, if one accepts both of *Collier's* interpretations, the US Trustee's motion in this case is timely. The US Trustee's statement was filed 9 days after the conclusion of the creditors' meeting and the US Trustee's motion was filed 24 days after the statement.

If *Collier* is correct in both interpretations, however, there will be unanticipated consequences. Those who view § 704(b) as setting a deadline seem to assume that the deadline is shorter than the 60 day deadline established in Rule 1017(e). If the creditors' meeting were not concluded until more than 20 days after its commencement, the § 704(b) deadline would be longer than the Rule 1017(e) deadline. Take this example. Assume that the first date set for a creditors meeting is March 1. It would not be unusual for the debtor not to appear on that first date, and it would not be unusual for significant documentation to be missing or obviously incorrect. In such circumstances, trustees usually continue the meeting to another date. If the meeting were continued to a date that is 21 days later, the date of the continued meeting would be March 22. If the meeting were concluded on that date, the deadline for the US Trustee's statement would be due on April 1. The deadline for a US Trustee's motion to dismiss would be May 1. But the other deadlines in Rule 1017(e) would be 60 days after the first date set for the creditors' meeting, which is April 30. Any continuance of the 341 meeting for more than 22 days makes the disconnect even worse.

There is no doubt that it would be a very good thing to have a clear deadline for all parties to file a § 707(b) motion to dismiss. Interpreting § 704(b) as a duty rather than as a deadline allows for this. Rule 1017(e) establishes a clear and conspicuous deadline for all parties. It is easy to compute, definitive, and does not yield unanticipated results. The deadline for a motion to dismiss by any eligible movant is 60 days after the first date set for the creditors' meeting, unless a party in interest timely asks for an extension and the request is granted.

In the case at bar, the 60 day deadline was a Saturday, so the deadline was extended to Monday when the US Trustee filed his motion. Therefore the motion was timely under Rule 1017(e).

C. Even if the deadlines for the US Trustee's statements were somehow a prerequisite for the US Trustee's action, the US Trustee satisfied those deadlines in the case at bar.

Debtor contends that the reference to "date of the first meeting of creditors" is a reference to the date first set for the § 341 meeting of creditors. Under this interpretation, the deadline for

[20] 9 *Collier on Bankruptcy* ¶ 1017.07 (15th rev. ed.).

the 10-day statement would be January 5, 2007, and the deadline for the US Trustee's motion to dismiss would be February 4. The US Trustee contends that the ten-day period begins when the meeting is concluded, not the date that it was scheduled to commence or the date that it actually commenced. Under this interpretation, the deadline would be February 3 and the deadline for the US Trustee's motion to dismiss would be March 5. Both parties rely on the "plain meaning" of the words in the statute.

If the US Trustee is arguing that § 704(b) extends the Rule 1017(e) deadline, the Court rejects that argument. As noted, the Court concludes that § 704(b) establishes a duty, not a deadline. FRBP 1017(e) clearly establishes a 60 day deadline for any party to file a motion to dismiss under § 707(b): 60 days after the first date set for the meeting of creditors. As noted above, if § 704(b) were interpreted as setting a deadline, and if the § 704(b) deadline ran from the conclusion of the creditors meeting, the consequence might be that the § 704(b) deadline might be longer than the rule 1017(e) deadline.

1. "First" Meeting of Creditors

These competing contentions resurrect an argument over computation of the deadline for filing objections to discharge and to dischargeability of debts that raged until 1999. Rules 4004 and 4007 of the Federal Rules of Bankruptcy Procedure define those deadlines by reference to the meeting of creditors. Two sets of problems commonly arise: "resets" of creditors' meetings and "continuances" of creditors' meetings. Sometimes the clerk of court sends out a notice of a creditors meeting, and then the date must be changed for one reason or another; in that event, the Clerk usually sends out a second notice, resetting the date. Sometimes the meeting is "adjourned" or "continued" to subsequent dates because a debtor failed to appear for the meeting or because the trustee needs additional information from the debtor. Jurisprudence was split over whether the deadlines ran from the "first date set" or from a "reset" date and over whether a continuance extended the deadline.

In 1999, the Judicial Conference of the United States proposed, and Congress permitted the revision of the rules to define the deadline as 60 days after "the first date set for the meeting of creditors under § 341(a)."

For over a decade then, the difficulty of interpreting the concept "after ... the creditor's meeting" has been apparent. If Congress intended § 704(b) to establish a deadline, it is unfortunate that Congress did not provide language that tracks the 1999 revision of the rule, or provide language that clearly establishes another measure. Congress used precise language in other parts of the statute: §§ 521(a)(2)(B), 521(e)(2)(A)(i), 1308.

The word "first" in the statute is problematic. Although § 704(b) refers to "the first meeting of creditors" the statutory provision that defines the meeting, § 341(a), does not use the word "first." The statutory language is "meeting of creditors" and "a meeting of creditors." It does not refer to a "first" meeting of creditors. But there is no provision for a "second" or subsequent meeting of creditors. So what does "first" mean?

The meeting required by § 341 is an important event in a bankruptcy case, but the references to it in the Bankruptcy Code are not as precise as one might hope. The event (in both the statute and in common parlance) is referred to pretty much interchangeably as "the §341 meeting," the "first meeting of creditors," the "creditors' meeting," and the "meeting of creditors."[21] While the Code contains many deadlines triggered by the § 341 meeting, the syntax used is rarely identical. For example:

> "within 30 days after the first date set for the meeting of the creditors..."[22]
>
> "not later than 45 days after the first meeting of creditors..."[23]
>
> "not later than 7 days before the date first set for the first meeting of creditors..."[24]
>
> "not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a)."[25]
>
> "not earlier than 20 days and not later than 45 days after the date of the meeting of creditors under section 341(a)."[26]

The syntax "first date set" is the only one of these variations that is definitively interpreted in the jurisprudence and in common parlance. Since Congress did not use the words in that sequence, one cannot conclude that the plain language establishes that meaning. It might not exclude that interpretation, but it does not establish that interpretation. "First meeting" is used in general parlance as roughly equivalent of "creditors' meeting" and "341 meeting." Therefore, the function of "first" in § 704 is ambiguous, at best, and one cannot determine the "plain meaning." The Court concludes that the most reasonable interpretation is to recognize the essential equivalence of "first meeting of creditors" and "meeting of creditors" in general parlance. This interpretation would make the word "first" surplusage; and the Court recognizes that that would violate principles of statutory construction, but the Court is not aware of any better alternative.

2. "Date"

As the US Trustee notes, "the singular includes the plural," so the term "date" must be read as "dates" to include the entire period that that the § 341 meeting convenes.[27] Thus, if one then reads the statutory language to be

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[21] 6 *Collier on Bankruptcy* ¶ 704.17[1] (15th rev. ed.).
[22] 11 U.S.C. § 521(a)(2)(B).
[23] 11 U.S.C. § 521(a)(6).
[24] 11 U.S.C. § 521(e)(2)(A)(i).
[25] 11 U.S.C. § 1308(a).
[26] 11 U.S.C. § 1324(a).
[27] 11 U.S.C. § 102(7).

> not later than 10 days after the dates of the first meeting of creditors ...

and if one concludes that "first" is ambiguous at best, then one must conclude that the deadline refers to all dates of the first meeting of creditors and therefore includes continuances or resets.

The ten days in which the US Trustee must file his statement runs from the end of the creditors' meeting, not the commencement of the creditors' meeting. *Collier on Bankruptcy* agrees:

> The statement must be filed within 10 days after the date of the "first meeting of creditors." The "first meeting of creditors" is a term sometimes used in the past to refer to the section 341(a) meeting of creditors. The language is somewhat unclear, but logically it makes sense to read this deadline as running from the conclusion of the meeting of creditors, rather than the first date set for the meeting of creditors, which is specifically referenced in some other Code provisions enacted at the same time. Otherwise, if the debtor is unable to attend the meeting on the first date set, or provide all necessary documents, the United States trustee might not have all the materials necessary to make an accurate determination.[28]

3. Docket Entry as a "Statement"

Debtor argues that the docket entries by the US Trustee are not the "statements" required by the Code.

Section 704(b)(1) provides that:

> (A) the United States trustee. . . shall review all materials filed by the debtor and, not later than 10 days after the date of the first meeting of creditors, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b); and
>
> (B) not later than 5 days after receiving a statement under subparagraph (A), the court shall provide a copy of the statement to all creditors.[29]

a. Statement

"Statement" is not a defined term in the Bankruptcy Code, in the Federal Rules of Bankruptcy Procedure, or in the Local Rules. Black's Law Dictionary defines statement:

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[28] 6 *Collier on Bankruptcy* ¶ 704.17[2] (15th rev. ed.).
[29] 11 U.S.C. § 704(b)(1).

> In a general sense an allegation; a declaration of matters of fact. The term has come to be used of a variety of formal narratives of facts, required by law in various jurisdictions as the foundation of judicial or official proceedings and in a limited sense is a formal, exact, detailed presentation.
>
> An oral or written assertion, or nonverbal conduct of a person, if it is intended by him as an assertion. Fed. R. Evid. 801(a)...[30]

Nothing inherent in the term requires a statement to be written. Indeed, even if it were written, under current federal practice it would not exist in tangible form. It would be merely a series of symbols of computer code that must be interpreted and made visible to humans by a computer program, Adobe Acrobat. The requirement that the statement be "file[d] with the court" suggests that an oral statement will not suffice, and suggests that the need for documentation in some form that is preserved in the court's records. A docket entry is, like all current pleadings in bankruptcy court, not tangible, but is a series of electronic pulses that are interpreted by software and displayed to the user by plasma, LCD, or cathode ray tube technology.

b. Filing

Rule 5005 of the Federal Rules of Bankruptcy Procedure provides:

> **Rule 5005. Filing and Transmittal of Papers**
> ...
> **(2) Filing by electronic means.**
> A court may by local rule permit documents to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A document filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107 of the Code.[31]

Local Bankruptcy Rule 5005 provides:

> **Local Rule 5005. Filing of Papers.**
>
> (a) The Texas statewide procedures for electronic filing are adopted by this court and are published on the Court's website.
>
> (b) Except as expressly provided or unless permitted by the presiding Judge, the Court requires documents being filed to be

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[30] Black's Law Dictionary 1263 (5th ed. 1979).
[31] FRBP 5005(a).

> submitted, signed or verified by electronic means that comply with the procedures established by the Court. The notice of electronic filing that is automatically generated by the Court's electronic filing system constitutes service of the document on those registered as filing users of the system. [Amended by General Order 2007-1, effective 3-12-07].[32]

The Court's website provides as follows:

> **Statewide ECF Administrative Procedures.** The United States Bankruptcy Courts for the Northern, Southern, Eastern, and Western Districts of Texas (collectively, the "Texas Bankruptcy Courts") have each authorized the filing, signing and verification of documents by electronic means. The precise scope of documents authorized or required to be filed in an electronic format varies by district.[33]

To reduce costs, to improve timeliness of notices, and to simplify administration, the Bankruptcy Court for the Southern District of Texas has allowed the US Trustee to file the § 704 statement by choosing the correct "radio button" from the CM/ECF system developed by the Administrative Office of US Courts. The US Trustee's actions complied with the Court's requirements. The docket entry provided the same information that a linked image would have provided; it provided the information more efficiently and effectively, and it provided the information more timely. The Court concludes that a docket entry by the US Trustee satisfies the requirement for a "statement" by the US Trustee.

c. Service of the Statement

As noted, Debtor argues that the US Trustee's statements were not properly served. Section 704 requires the clerk of court to "provide a copy" of the US Trustee's statement to all creditors. The statute does not require that the statement be "served." It does not even require the Clerk to provide a copy to the debtor.

Therefore, Debtor's argument is rejected. First, Debtor does not have standing to complain that creditors were not provided a copy of the statement. Debtor actually received a copy, and (as far as the Debtor is concerned) that is more than the statute requires.

Second, the statute does not require service of the statement, it requires that the Court "provide a copy." In a sense, the Clerk "provided a copy" to creditors in the same manner that all information is available to creditors in a case. To look at a copy of a traditional document that is imaged, one must first access the docket sheet and then "click" on the link to the document. And, except for a "first look" by parties in interest in the case, a person accessing the document must pay a fee. In this case, anyone accessing the docket sheet (for which there is no

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[32] BLR 5005.

[33] Administrative Procedures for Electronic Filing, http://www.txs.uscourts.gov/attorneys/cmecf/bankruptcy/adminproc.pdf

charge) was provided a copy of the US Trustee's statement, which was on the face of the docket sheet. Thus the use of a "docket sheet statement" actually provides a copy to creditors faster, and at less expense both for the Court and for creditors.

d. Adequacy of the US Trustee's Initial Statement

Debtor argues that the US Trustee's initial statement, *i.e.* the statement of inability to determine whether the debtor's case would be presumed abusive, does not satisfy the requirement of § 704. The essence of Debtor's argument is that the US Trustee has only two options: state that the means test is satisfied or state that it is not.

But "whether" is not a binary connector. A number of famous writers allow for at least three possibilities, and Jonathan Swift uses the word to introduce four possibilities:

> Gregariousness is always the refuge of mediocrities, whether they swear by Soloviev or Kant or Marx. Only individuals seek the truth, and they shun those whose sole concern is not the truth.[34]
>
> The only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily, or mental or spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.[35]
>
> Every form of addiction is bad, no matter whether the narcotic be alcohol, morphine or idealism.[36]
>
> All national institutions of churches, whether Jewish, Christian, or Turkish, appear to me no other than human inventions, set up to terrify and enslave mankind, and monopolize power and profit.[37]
>
> "Off days" are a part of life, I guess, whether you're a cartoonist, a neurosurgeon, or an air-traffic controller.[38]
>
> I have been assured by a very knowing American of my acquaintance in London, that a young healthy child well nursed is at a year old a most delicious, nourishing, and wholesome food,

[34] Boris Pasternak, *Dr. Zhivago* (1957).
[35] John Stuart Mill, *On Liberty* 13 (1859).
[36] Carl Jung.
[37] Thomas Paine, *The Age of Reason*, Part I § I (1795).
[38] Gary Larson.

whether stewed, roasted, baked, or boiled, and I make no doubt
that it will equally serve in a fricassee, or a ragout.[39]

Courts generally avoid restricting "whether" to a binary choice. Thus words or phrases following "whether" in a statute will generally not limit the statute's meaning. *See Galbraith v. Gulf Oil Corp.*, 294 F. Supp. 817 (N.D. Ga. 1968) (statutory text stating "whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, or water" did not exclude commerce moved by pipeline). Therefore, it is reasonable to conclude that the choices available to the US Trustee are (i) the statutory presumption applies, (ii) the statutory presumption does not apply, and (iii) one cannot tell from the data available.

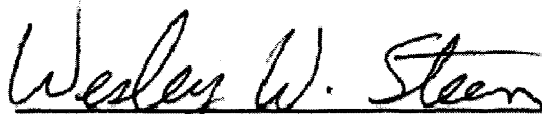
"Whether" must be interpreted in context, i.e., in context of the requirements of the statute and the alternatives that are possible. The statute requires the US Trustee to "review all materials filed by the debtor..." and then file a statement. The presumption of abuse is a mathematical calculation. If the debtor has not submitted adequate information, the US Trustee cannot make the calculation.[40] If the US Trustee cannot make the calculation, the US Trustee cannot make a statement. Requiring the US Trustee to make a statement that he cannot make would violate the maxim: The law does not require the impossible.

Therefore the Court concludes that a genuine and reasonable statement that the Trustee cannot make the computation without additional documentation is adequate for purposes of § 704(b). In this case the US Trustee made a definitive statement shortly thereafter. Other circumstances might yield different results. If there were proof that the US Trustee's statement of inability to make a determination was unreasonable, or dilatory, the Court might find estoppel or other relief for the debtor. That issue is not presented in this case.

IV. CONCLUSION

Debtor's objections to the US Trustee's motion to dismiss are overruled, so far as those objections relate to the matters addressed in this opinion are denied by separate order.

SIGNED 06/28/2007.



WESLEY W STEEN
United States Bankruptcy Judge

[39] Jonathan Swift, *A Modest Proposal* (1729).

[40] The stipulations on which this matter was submitted do not indicate that there is any dispute that the US Trustee needed and considered information provided after the 341 meeting, or even after the initial 10 day statement.

Bankruptcy Rules Tracking Docket (By Rule Number) 8/10/07

Active Items

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rules 1004.2 (new), 5009, 5012 (new), 9001 Chapter 15 rules	05-BK-B Judge Samuel Bufford 1/20/06 Committee proposal	3/06 - Referred to Subcommittee on Technology and Cross Border Insolvency 5/06 - Subcommittee discussed 6/06 - Subcommittee approved revised amendments 9/06 - Committee approved Rules 1004.2, 5009, 9001 for publication 9/06 - Committee approved Rule 5012 for publication as revision of amendment published 08/06 3/07 - Publication deferred for further study 6/07 - Subcommittee discussed 9/07 - Committee agenda	
Rule 1005 Include all names used by debtor for 8 years in caption; redact an individual's taxpayer ID number	Committee proposal and Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)	3/05 - Committee considered, referred to Subcommittee on Privacy, Public Access & Appeals 9/05 - Referred to Forms Subcomt. 3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 1006 Installment payments, waiver of filing fee	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08
Rule 1006 Payments to petition preparers	Judge Geraldine Mund 8/14/06	9/06 - Referred to Subcommittee on Consumer Matters 12/06 - Subcommittee considered 3/07 - Committee took no action	
Rule 1007(a),(b),(c) Required documents	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 9/05 - Amended by Committee 3/06 - Committee approved for publication with changes as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved as revised 4/07 - Committee approved Rule 1007(a)(4) as revised by email 6/07 - Standing Committee approved	12/1/08
Rule 1007(a) Creditors list in involuntary case	06-BK-057 Chief Deputy Clerk Margaret Grammar Gay	3/07 - Referred to Subcommittee on Business Matters 6/07 - Subcommittee discussed 9/07 - Committee agenda	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rules 1007(a), (c),(f),(h), 1011(b), 1019(5), 1020(a), 2002(a),(b),(o), (q), 2003(a),(d), 2006(c), 2007(b), 2007.2(a), 2008, 2015(a),(d), 2015.1(a),(b), 2015.2, 2015.3(b),(e), 2016(b),(c), 3001(e), 3015(b),(g), 3017(a),(f), 3019(b), 3020(e), 4001(a),(b),(c), 4002(b), 4004(a), 6003, 6004(b), (d),(g),(h), 6006(d), 6007(a), 7004(e), 7012(a), 8001(f), 8002(a),(b),(c), 8003(a),(c), 8006, 8009(a), 8015, 8017(a), 9006(d), 9027(e),(g), 9033(b),(c), Change deadlines of less than 30 days to multiples of 7 (except 2-day periods)	Committee proposal (Standing Committee's Time Computation Committee)	9/06 - Committee discussed time computation project, small groups to review deadlines in bankruptcy rules 12/06 - Ad hoc group of bankruptcy judges approved 3/07 - Committee approved for publication as revised 6/07 - Standing Committee approved for publication	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 1007(b)(7),(c) Extension of time to file statement on completion of financial management course	Judge Christopher Klein 8/8/06	9/06 - Referred to Subcommittee on Consumer Matters 12/06 - Subcommittee considered 3/07 - Committee included suggestion in Rule 1007(c) amendment 6/07 - Standing Committee approved	12/1/08
Rules 1007(c), 5009 Additional notice that case may be closed without discharge	Committee proposal	3/07 - Committee discussed, referred to Subcommittee on Consumer Matters 6/07 - Subcommittee discussed 9/07 - Committee agenda	
Rule 1009(b) Amended Statement of Intention	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 1010 Service of petition for recognition of foreign nonmain proceeding	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 4/07 - Committee approved by email 6/07 - Standing Committee approved	12/1/08
Rule 1010 Service of petition for recognition of all foreign proceedings	05-BK-B Judge Samuel Bufford 1/20/06	3/06 - Referred to Subcommittee on Technology and Cross Border Insolvency 5/06 - Subcommittee discussed 6/06 - Subcommittee approved revised amendments 9/06 - Committee approved for publication 3/07 - Committee deferred for further study 6/07 - Subcommittee discussed 9/07 - Committee agenda	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rules 1010(b) Rule 7007.1 applied in involuntary cases	Committee proposal	9/04 - Committee considered, referred to Reporter 3/05 - Committee considered, tabled to 9/05 9/05 - Referred to Business Subcommittee 3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 4/07 - Committee approved by email 6/07 - Standing Committee approved	12/1/08
Rule 1011(a) Who may contest petition for recognition of a foreign proceeding.	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 4/07 - Committee approved by email 6/07 - Standing Committee approved	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 1011(f) Rule 7007.1 applied to responses to involuntary and chapter 15 cases	Committee proposal	9/04 - Committee considered, referred to Reporter 3/05 - Committee considered, tabled to 9/05 9/05 - Referred to Business Subcommittee 3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 4/07 - Committee approved by email 6/07 - Standing Committee approved	12/1/08
Rule 1014 Clarifies that court may act *sua sponte* to dismiss or transfer a case	Joint Subcommittee on Venue and Chapter 11 Matters	8/04 - Approved by Joint Subcommittee 9/04 - Committee approved for publication 1/05 - Standing Committee approved for publication 8/05 - Published for public comment 3/06 - Committee approved 6/06 - Standing Committee approved 9/06 - Judicial Conference approved 4/07 - Supreme Court approved	12/1/07

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 1015(b) Cross reference to § 522(b)	Committee proposal (technical amendment) to implement BAPCPA	3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08
Rule 1017(e) Dismissal or conversion for abuse	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08
Rule 1017(e) application of § 704(b)	Judge Wesley Steen	9/07 - Committee agenda	
Rule 1017.1 (new) Sufficiency of Debtor's certification of exigent circumstances	Committee proposal	2/07 - Subcommittee on Consumer Issues approved 3/07 - Committee approved for publication 6/07 - Standing Committee approved for publication	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rules 1018, 7001(7) Is injunctive relief under §§ 1519(e), 1521(e) governed by Rule 7065?	05-BR-037 Insolvency Law Committee of the Business Law Section of State Bar of California	3/07 - Referred to Subcommittee on Technology and Cross Border Insolvency 6/07 - Subcommittee discussed 9/07 - Committee agenda	
Rule 1019(2) New filing periods in converted case	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved with revised Committee Note 6/07 - Standing Committee approved	12/1/08
Rule 1019(2) New filing period for objection to exemptions in converted case	06-BK-054 Judge Dennis Montali, Judge Paul Mannes	6/07 - Subcommittee on Consumer Matters discussed 9/07 - Committee agenda	
Rule 1020 Small business chapter 11 case	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 1021 (new) Health care business case	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08
Rule 2002(a),(b),(c), (f),(g),(p),(q) Additional notice requirements	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 9/05 - Amended by Committee 3/06 - Committee approved for publication with changes as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved as revised 4/07 - Committee approved Rule 2002(p),(q) as revised by email 6/07 - Standing Committee approved	12/1/08
Rule 2002(g)(5) Notice under § 342(g)(1)	National Bankruptcy Conference to implement BAPCPA	3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 2002(k) Notice to U.S. trustee of petition for recognition	Committee proposal to implement BAPCPA	3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08
Rule 2002 Determination of mailing address of a foreign creditor	05-BK-B Judge Samuel Bufford 1/20/06	3/06 - Referred to Subcommittee on Technology and Cross Border Insolvency 5/06 - Subcommittee discussed 6/06 - Subcommittee approved revised amendments 9/06 - Committee approved for publication 3/07 - Committee included in Rule 2002(p) amendment 6/07 - Standing Committee approved	12/1/08
Rule 2003(a) Meeting of creditors not convened	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 2007.1 Election of trustee in chapter 11 case	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08
Rule 2007.2 (new) Appointment of patient care ombudsman	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08
Rule 2007.2 Debtor required to seek determination of whether patient care ombudsman is required	06-BK-011 Judge Marvin Isgur 12/15/06	3/07 - Referred to Subcommittee on Health Care and Attorney Conduct 6/07 - Subcommittee discussed 9/07 - Committee agenda	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 2015 Notice by foreign representative	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08
Rule 2015(a)(6) Periodic financial reports by small business debtor	Business Subcommittee to implement BAPCPA	8/05 - Approved in principle by Committee as national rule 3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08
Rule 2015.1 (new) Patient care ombudsman	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved as revised 6/07 - Standing Committee approved	12/1/08

Suggestion	**Docket No., Source & Date**	**Status Pending Further Action**	**Tentative Effective Date**
Rule 2015.2 (new) Patient transfer in health care business case	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08
Rule 2015.3 (new) Periodic reports on related entities	Business Subcommittee to implement BAPCPA	8/05 - Approved in principle by Committee as national rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved as revised 6/07 - Standing Committee approved	12/1/08
Rule 2016(c) Conform to amendment to § 110(h)	Committee proposal	9/07 - Committee agenda	
Rule 3001, Official Form 10 Restrict disclosure of highly personal information (especially medical data) in proofs of claim	06-BK-016 Judge Colleen Brown.	3/07 - Referred to Subcommittee on Privacy, Public Access, and Appeals 6/07 - Subcommittee discussed 9/07 - Committee agenda	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 3002(c)(5) Timing issues for notice of newly discovered assets	04-BK-E Judge Dana L. Rasure for Bankruptcy Judges Advisory Group 11/15/04	3/05 - Committee considered, referred to Privacy Subcommittee 9/05 - Deferred pending further study of time periods 3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08
Rules 3002(c), 3003(c) Time for governmental unit and creditor with foreign address to file proof of claim	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved as revised 6/07 - Standing Committee approved	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 3007(b) Procedure for objection to claim - no affirmative relief at same time	Committee proposal	9/04 - Committee approved for publication 1/05 - Standing Committee approved for publication 8/05 - Published for public comment 3/06 - Committee approved 6/06 - Standing Committee approved 9/06 - Judicial Conference approved 4/07 - Supreme Court approved	12/1/07
Rule 3007(c)-(f) Omnibus objections to claims	Joint Subcommittee on Venue and Chapter 11 Matters	8/04 - Considered by Joint Subcommittee 9/04 - Approved in principle by Committee 1/05 - Revised by Joint Subcommittee. 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for public comment 3/06 - Committee approved with changes 6/06 - Standing Committee approved 9/06 - Judicial Conference approved 4/07 - Supreme Court approved	12/1/07
Rule 3015(f) Objections to confirmation by tax authorities	06-BK-015 Deborah A. Butler on behalf of the IRS, sense of Congress set out in BAPCPA § 716(e)(1)	3/07 - Referred to Subcommittee on Business Matters 6/07 - Subcommittee discussed 9/07 - Committee agenda	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 3016(b) Combined plan and disclosure statement	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08
Rule 3016(d) Forms for plan and disclosure statement	Business Subcommittee to implement BAPCPA	8/05 - Approved in principle by Committee as national rule 3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08
Rule 3017.1 Conditional approval of form disclosure statement	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 3019 Modification of confirmed plan	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved as revised 6/07 - Standing Committee approved	12/1/08
Rule 4001 Requirements for cash collateral motions, obtaining credit, and approval of certain agreements	Joint Subcommittee on Venue and Chapter 11 Matters	8/04 - Discussed by Joint Subcommittee. 9/04 - Discussed by Committee 1/05 - Approved by Joint Subcommittee 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for public comment 3/06 - Committee approved with changes 6/06 - Standing Committee approved 9/06 - Judicial Conference approved 4/07 - Supreme Court approved	12/1/07

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 4002 Debtor's obligation to provide tax returns, personal identification, and other documents	03-BK-D Lawrence A. Friedman 8/1/03 Interim Rule to implement BAPCPA	8/03 - Sent to chair and reporter 9/03 - Committee considered, referred to Consumer Subcomt. 1/04 - Consumer Subcommittee considered at focus group meeting 3/04 - Committee approved for publication 6/04 - Standing Committee approved for publication 8/04 - Published for public comment 3/05 - Committee approved (as modified) 4/05 - Committee deferred action 8/05 - Included in Interim Rules 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved with revised Committee Note 6/07 - Standing Committee approved	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 4003(b) Changes deadlines for objections to exemptions.	04-BK-B Judge Eugene R. Wedoff 2/17/04	3/04 - Sent to chair and reporter 9/04 - Committee considered, referred to Consumer Subcomt. 11/04 - Approved by Subcommittee 3/05 - Committee approved in part, referred to Consumer Subcomt. for further study 9/05 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved as revised 6/07 - Standing Committee approved	12/1/08
Rule 4003(b) Objection to exemption based on § 522(q)	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved as revised 6/07 - Standing Committee approved	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 4003(d) Lien holder's objection to avoidance notwithstanding the 30-day limit	04-BK-B Judge Eugene R. Wedoff 2/17/04	9/04 - Committee considered along with Rule 4003(b) amendment, referred to Consumer Subcommittee 3/05 - Committee considered, referred to Consumer Subcomt. 9/05 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08
Rule 4004(a), 7001 Application of sections 1328(f), 727(a)(8),(9)	Committee proposal 8/22/06	9/06 - Referred to Subcommittee on Consumer Matters 12/06 - Subcommittee discussed 3/07 - Committee discussed, referred to Subcommittee on Consumer Matters 6/07 - Subcommittee discussed 9/07 - Committee agenda	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 4004(c) Requirements for discharge	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 9/05 - Amended by Committee 3/06 - Committee approved for publication with changes as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee discussed 4/07 - Committee approved by email 6/07 - Standing Committee approved	12/1/08
Rule 4006 Notice that case closed without discharge	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 4007 Time to file dischargeability action	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 4008(a) Filing deadline for reaffirmation agreement	01-BK-E Bankruptcy Judges Advisory Group 11/30/01	1/02 - Referred to chair and reporter 3/02 - Committee considered, referred to subcommittee. 10/02 - Committee approved for publication 1/03 - Standing Committee approved for publication 8/03 - Published for public comment 3/04 - Committee approved 6/04 - Standing Committee approved 9/04 - Judicial Conference approved 4/05 -Withdrawn from Supreme Court at request of Committee and Executive Committee due to conflicting BAPCPA provisions 3/06 - Committee approved revised draft for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee discussed 4/07 - Committee approved by email 6/07 - Standing Committee approved	12/1/08
Rule 4008(a) Requires use of Official Form coversheet	Committee proposal	4/07 - Committee approved for publication 6/07 - Standing Committee approved for publication	12/1/09

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 4008(b) Debtor's § 524(k) statement in support of reaffirmation	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 4/07 - Committee approved by email 6/07 - Standing Committee approved	12/1/08
Rule 4008(b), Official Form 27 (new) Include debtor's § 524(k) statement in form	Bankruptcy Judges Advisory Group, Committee proposal	6/07 - Subcommittee on Forms discussed, included in version of new Form 27 for publication 9/07 - Committee agenda	12/1/08
Rule 5001(b) Holding court outside the district in an emergency	Committee Proposal	9/03 - Committee approved in principle; further action deferred 9/05 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 5003 Mailing addresses of certain tax authorities	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved as revised 6/07 - Standing Committee approved	12/1/08
Rule 5008 (new) Notice regarding presumption of abuse	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08
Rule 5012 (new) Communications with foreign courts	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee deferred for further study 6/07 - Subcommittee discussed 9/07 - Committee agenda	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 6003 (new) First day orders	Joint Subcommittee on Venue and Chapter 11 Matters	8/04 - Discussed by Joint Subcommittee 9/04 - Discussed by Committee 1/05 - Approved by Joint Subcommittee 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for public comment 3/06 - Committee approved with changes 6/06 - Standing Committee approved 9/06 - Judicial Conference approved 4/07 - Supreme Court approved	12/1/07
Rule 6004(g) Sale of personally identifiable information	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved with revised Committee Note 6/07 - Standing Committee approved	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 6006 Omnibus motions for assumption, rejection, or assignment	Joint Subcommittee on Venue and Chapter 11 Matters	8/04 - Considered by Joint Subcommittee 9/04 - Approved in principle by Committee 1/05 - Approved by Joint Subcommittee 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for public comment 3/06 - Committee approved with changes 6/06 - Standing Committee approved 9/06 - Judicial Conference approved 4/07 - Supreme Court approved	12/1/07
Rule 6011 (new) Disposal of patient records	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved as revised 6/07 - Standing Committee approved	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 7001 Objection to discharge by motion under §§ 727(a)(8),(a)(9) and 1328(f)	Committee proposal and Judge Neil Olack	2/07 - Subcommittee on Consumer Issues approved 3/07 - Committee discussed and referred to subcommittee 6/07 - Subcommittee discussed 9/07 - Committee agenda	
Rule 7007.1 Corporate ownership statement with initial filing	Committee proposal	9/04 - Committee approved as technical amendment without publication 1/05 - Standing Committee approved publication 8/05 - Published for public comment 3/06 - Committee approved 6/06 - Standing Committee approved 9/06 - Judicial Conference approved 4/07 - Supreme Court approved	12/1/07
Rules 7012, 7022, 7023.1, and 9024 Conforming amendments	Committee proposal in response to restyling of Civil Rules	2/05 - Restyled Civil Rules published for comment 9/05 - Committee discussed impact on Bankruptcy Rules 12/05 - Committee submitted comment on restyled Civil Rules 9/06 - Restyled Civil Rules approved by Judicial Conference 9/06 - Committee discussed need to amend Bankruptcy Rules 2/07 - Reporter drafted conforming amendments 3/07 - Committee approved as technical amendments 6/07 - Standing Committee approved as technical amendments	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 7052 Reference to entry of judgment under Civil Rule 58 deemed reference to entry under Rule 5003(a)	Committee proposal	9/06 - Committee approved for publication 1/07 - Standing Committee approved in principle 3/07 - Committee approved for publication as revised 6/07 - Standing Committee approved for publication	
Rule 7058 (new) Entry of judgment in adversary proceeding	Committee proposal	7/06 - Subcommittee on Privacy, Public Access and Appeals Subcommittee approved 9/06 - Committee approved for publication 1/07 - Standing Committee approved in principle 3/07 - Committee approved for publication as revised 6/07 - Standing Committee approved for publication	
Rule 8001 Direct appeals	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 9/05 - Amended by Committee 3/06 - Committee approved for publication with changes as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved with revised Committee Note 6/07 - Standing Committee approved	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rules 8002, 9023 Conform to amendment to Civil Rule 59	Committee proposal	3/07 - Referred to Subcommittee on Privacy, Public Access, and Appeals 6/07 - Subcommittee discussed 9/07 - Committee agenda	
Rules 8003(b), 8005 Stay of order appealed in an interlocutory appeal	06-BK-016 Judge Colleen Brown 2/7/07	2/07 - Considered by Subcommittee on privacy, Public access, and Appeals 3/07 - Referred to subcommittee 6/07 - Subcommittee discussed 9/07 - Committee agenda	12/1/08
Rule 8003(d) Authorization of direct appeal as leave to appeal	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 4/07 - Committee approved by email 6/07 - Standing Committee approved	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 9005.1 (new) Proposed Civil Rule 5.1 incorporated in the bankruptcy rules.	03-BK-F Judge Geraldine Mund 10/14/03	10/03 - Referred to reporter and chair 3/04 - Committee considered and approved 4/04 - Civil Rules Committee tabled proposed Rule 5.1 1/05 - Standing Committee approved proposed Rule 5.1 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for public comment 3/06 - Committee approved 6/06 - Standing Committee approved 9/06 - Judicial Conference approved 4/07 - Supreme Court approved	12/1/07
Rule 9006 Enlargement and reduction of time	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication with changes as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 4/07 - Committee approved as revised by email 6/07 - Standing Committee approved	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 9006 Template rule for time computation	Standing Committee's Time Computation Committee	9/06 - Committee discussed time computation project, small groups to review deadlines in bankruptcy rules 12/06 - Considered by ad hoc group of Committee members 1/07 - Discussed by Standing Committee 3/07 - Committee approved for publication 6/07 - Standing Committee approved for publication	
Rule 9009 Use of form plan and disclosure statement not mandatory	Business Subcommittee to implement BAPCPA	3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08
Rule 9011 Attorney conduct	05-BK-01, 05-BR-33 Senators Charles E. Grassley and Jeff Sessions 8/18/05, 3/13/06	3/06 - Referred to Attorney Conduct and Health Care Subcommittee 6/06 - Subcommittee discussed alternative approaches 9/06 - Committee approved alternative approaches, referred to subcommittee to recommend a single approach 12/06 - Subcommittee approved amendment 3/07 - Committee considered proposal and declined to approve	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 9021 Separate Document Requirement	04-BK- Judge David Adams	8/04 - Referred to Committee 9/04 - Committee considered, referred to Privacy, Public Access and Appeals Subcommittee 12/04 – Subcommittee discussed alternative approaches 3/05 - Committee approved in principle for contested matters, referred to Privacy, Public Access and Appeals Subcommittee 9/05 - Referred to Privacy, Public Access and Appeals Subcommittee 3/06 - Referred to Privacy, Public Access and Appeals Subcommittee 7/06 - Subcommittee approved alternative amendments 9/06 - Committee approved revised amendment for publication 1/07 - Standing Committee approved in principle 3/07 - Committee approved for publication as submitted 6/07 - Standing Committee approved for publication	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 9037 (new) Template privacy rule	E-Government Act § 205(c)(3)	9/04 - Committee considered and referred to Reporter, Judge Swain 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for public comment 3/06 - Committee approved with changes 6/06 - Standing Committee approved with changes 9/06 - Judicial Conference approved 4/07 - Supreme Court approved	12/1/07
New Rule Require electronic filers to use data-enabled forms	Donald Walton for EOUST	3/06 - Sent to chair and reporter 6/06 - Discussed by chair, reporter, Forms Subcommittee chair, and Mr. Walton 9/06 - Committee endorsed the concept and recommended treating as a technical standard under Rule 5005(a)(2) 10/07 - Considered by Automation Subcommittee of Bankruptcy Administration Committee 12/07 - Considered by Judicial Conference IT Committee 1/07 - Considered by Bankruptcy Administration Committee	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
New Rule Authority of bankruptcy courts to discipline attorneys	06-BK-F American Bar Association 8/24/06	9/05 - Referred to Subcommittee on Attorney Conduct and Health Care 3/06 - Committee took no action 12/06 - Subcommittee considered 3/07 - Committee considered proposal and declined to approve	
New Rule Automatic dismissal under § 521(i)	06-BK-011 Judge Marvin Isgur 06-BK-020 National Association of Consumer Bankruptcy Attorneys	6/07 - Subcommittee on Consumer Matters discussed 9/07 - Committee agenda	

Suggestion	**Docket No., Source & Date**	**Status Pending Further Action**	**Tentative Effective Date**
Official Forms 1, 1-Exh. D, 3A, 3B, 4, 5, 6, 7, 9, 10, 16A, 18, 19A, 19B, 21, 22A, 22B, 22C, 23, 24, Implement BAPCPA	Forms Subcommittee to implement BAPCPA	8/05 - Approved by Committee 8/05 - Approved by Standing Committee and Executive Committee as Official Forms 9/05 - Official Forms 1, 22A, and 22C amended by Committee 10/05 - Amended Official Forms approved by Standing Committee and Executive Committee 3/06 - Committee approved for publication with changes 5/06 - Committee approved (by email) publication of new Exh. D to Official Form 1 6/06 - Standing Committee approved for publication 8/06 - Published for comment 3/07 - Committee approved Forms 3A, 3B, 5, 16A, 18, 21, 25B, and 26 3/07 - Committee approved Forms 1, 1-Exh. D, 4, 6, 7, 9, 10, 22A, 22B, 22C, 23, 24, 25A, and 25C as revised 4/07 - Committee approved combining Forms 19A and 19B by email 6/07 - Standing Committee approved Forms 1, 3A, 3B, 4, 5, 6, 7, 9, 10, 16A, 18, 19, 21, 22A, 22B, 22C, 23, 24 6/07 - Standing Committee approved Form 1- Exh. D, transmission to Judicial Conference deferred 1 year	12/1/07

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Official Form 1 Add § 707(b)(4)(D) warning for debtor's attorney	Committee proposal to implement BAPCPA	9/06 - Committee approved for publication 12/06 - Attorney Conduct and Health Care Subcommittee discussed revised amendment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/07
Official Forms 1, 6C, 6E, 7, 10, 22A, and 22C Adjust dollar amounts every 3 years	11 U.S.C. § 104(b)	1/07 - Reviewed by Forms Subcommittee 2/07 - Administrative Office issued $$ amounts for 4/1/07 3/07 - Committee reviewed 4/07 - Revised forms effective	4/1/07
Official Form 8 Clarify that debtor must complete entire form	Judge Elizabeth L. Perris 8/3/06	9/06 - Referred to Subcommittee on Consumer Affairs 12/06 - Subcommittee considered revision 1/07 - Forms Subcommittee made further revisions 3/07 - Committee approved for publication 6/07 - Standing Committee approved for publication	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Official Form 10 Revised to clarify requirements for attachments	04-BK-A Glen K. Palman 2/19/04	3/04 - Referred to reporter, chair and Forms Subcommittee 9/04 - Discussed by Committee, referred to Forms Subcommittee 12/05 - Approved by Subcommittee 3/05 - Committee approved for publication 6/05 - Committee deferred action 9/05 - Referred to Forms Subcomt. 3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/07
Official Form 10 Revise in light of 11 U.S.C. § 1325	Committee proposal	8/06- Referred to Forms Subcommittee 8/06 - Subcommittee discussed 9/06 - Committee took no action 12/06 - Consumer Subcommittee considered 3/07 - Committee took no action	
Official Form 10 Refine definition of "creditor" on back of form	Committee proposal	6/07 - Subcommittee on Forms discussed 9/07 - Committee agenda	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Official Form 16A Require debtor's "Employer Identification Number", rather than"Employer's Identification Number"	Committee proposal	6/07 - Subcommittee on Forms discussed, included in 12/07 version of form 9/07 - Committee agenda	
Official Form 19A Form 19A not needed if petition preparers must use Form 19B	Debbie Lewis, deputy clerk FL-S bankruptcy court 4/06	8/06 - Referred to Forms Subcommittee 8/06 - Subcommittee discussed 9/06 - Committee approved new combined form for publication 4/07 - Committee approved combined form by email 6/07 - Standing Committee approved	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Official Forms 25A, 25B (new) Form plan and disclosure statement	Business Subcommittee to implement BAPCPA	9/05 - Model plan approved in principle 9/05 - Model plan and disclosure statement referred to Business Subcommittee 3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 1/07 - Forms Subcommittee approved technical amendments 3/07 - Committee approved Form 25A as revised 3/07 - Committee approved Form 25B 6/07 - Standing Committee approved Forms 25A, 25B	12/1/08
Official Form 25C (new) Periodic financial report by small business debtor	Business Subcommittee to implement BAPCPA	9/05 - Referred to Business Subcommittee 3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved as revised 6/07 - Standing Committee approved	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Official Form 26 (new) Periodic report on related entities	Business Subcommittee to implement BAPCPA	9/05 - Referred to Business Subcommittee 3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee approved 6/07 - Standing Committee approved	12/1/08
Official Form 27 (new) Cover sheet for reaffirmation or Form 240 as Official Form	Committee proposal	3/06 - Designation as Official Form referred to Forms Subcommittee 8/06 - Subcommittee discussed 9/06 - Committee tabled for 1 year 1/07 - Forms Subcommittee proposed cover sheet 3/07 - Committee approved for publication 6/07 - Standing Committee approved for publication	12/1/09
Official Forms Alternatives to paper-based format for forms	Judge James D. Walker, Jr. 5/24/06 Patricia Ketchum 6/9/07	9/06 - Committee will coordinate a study with the Administrative Office 8/07 - Discussion of how to organize the study	
Official Forms, Director's Forms Forms should be distributed as fillable PDFs	Chief Deputy Clerk Douglas Young, ALM 07-BK-B	6/06 - Fillable forms approved by Bankruptcy Admin. Comt. 3/06 - Fillable forms approved by this Committee 2/07 - AO begins converting bankruptcy forms 3/07 - Fillable Form 10 posted	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Director's Forms 13S, 15S, 18F, 18FH, 18J, 18JO, 18W, 18WH, 204, 205, 206, 207, 230A, 230B, 231A, 231B, 253, 270 Revised caption requires only last 4 digits of debtor's social-security number	Judiciary Privacy Policy and proposed Rule 9037	1/07 - Approved by Forms Subcommittee 3/07 - Committee reviewed 8/07 - Revised forms issued	7/1/07
Director's Forms 13S, 104, 202, 204 Technical amendments	Comments on the forms	1/07 - Approved by Forms Subcommittee 3/07 - Committee reviewed 8/07 - Revised Forms 13S, 104, 202, 204 issued	7/1/07
Director's Form 104 Adversary Proceeding Cover Sheet	Bankruptcy Administration Committee statistics initiative	9/06 - Committee reviewed 10/06 - Issued by Director of Administrative Office 1/07 - Forms Subcommittee approved technical amendment 3/07 - Committee reviewed 8/07 - Revised form issued	7/1/07
Director's Forms 130A, 130B Index cards for bankruptcy case, adversary proceeding	Staff proposal Paper cards no longer used in CM/ECF	1/07 - Approved by Forms Subcommittee 3/07 - Committee reviewed 8/07 - Forms abrogated	7/1/07

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Director's Form 202 Statement of Military Service	Committee proposal to implement Pub. L. 108-189 2/17/04	3/04 - Committee reviewed 8/06 - Issued by Director of Administrative Office 1/07 - Forms Subcommittee approved amendment 3/07 - Committee reviewed	7/1/07
Director's Form 240 Reaffirmation agreement	Forms Subcommittee to implement BAPCPA 06-BK-B Kelly Sweeney, CDC, CO bankruptcy court 5/5/06	9/05 - Referred to Forms Subcommittee 10/05 - Amended form issued by Director of Administrative Office 8/06 - Issued by Director of Administrative Office 8/06 - Subcommittee approved further revision 9/06 - Committee approved revised form 12/06 - Issued by Director of Administrative Office 1/07 - Forms Subcommittee approved amendments 2/07 - Amendments deferred	
Director's Forms 254, 255, and 256 Conforming amendments	AO proposal in response to Rule 45 amendment	12/06 - Civil Rule 45 amended 12/06 - Revised forms issued by Director of Administrative Office 1/07 - Forms Subcommittee reviewed 3/07 - Committee reviewed	12/1/06
Archive – Inactive Items			
New Rule Investment of estate funds	06-BK-E Baker & Hostetler LLP 8/25/06	9/06 - Referred to Subcommittee on Business Matters 12/06 - Revised B&H proposal 1/06 - Subcommittee discussed 3/07 - Withdrawn	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date