COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

TO: Honorable Jeffrey S. Sutton, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Honorable Sandra Segal Ikuta, Chair
Advisory Committee on Bankruptcy Rules

DATE: December 10, 2015

RE: Report of the Advisory Committee on Bankruptcy Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met in Washington, D.C., on October 1, 2015. The draft minutes of that meeting are attached.

At the meeting the Committee approved conforming amendments to one rule and minor amendments to three official forms. It seeks the Standing Committee's approval of these amendments without publication. The Committee also voted to recommend that amendments to one rule be published for public comment in August 2016. These matters are discussed in Part II of this report, along with a request for a limited delegation of authority to the Committee to make minor changes to official forms, subject to subsequent approval by the Standing Committee and the Judicial Conference.

Part III presents four information items. The first concerns the Judicial Conference's submission to the Supreme Court of the "*Stern* amendments," which address how a party gives its consent to a bankruptcy court's adjudication of adversary proceedings. The Committee reconsidered these previously approved, but withdrawn, amendments at the fall meeting in light of the Supreme Court's decision in *Wellness International Network v. Sharif*, 135 S. Ct. 1932

(2015). The Standing Committee and the Judicial Conference, acting on an expedited basis, accepted the Committee's recommendation that the amendments be resubmitted to the Court.

The next item provides an update on the Committee's continuing deliberations about a proposed official form for chapter 13 plans and related rule amendments.

The final information items concern two matters on the Committee's agenda that are the subject of continuing deliberations. The first concerns whether Rule 4003(c) (Exemptions) impermissibly imposes the burden of proof on a party that objects to a claimed exemption, even though some state laws place the burden on the debtor. The other matter relates to Rule 9037 (Privacy Protections for Filings Made with the Court) and how to implement a procedure for redacting previously filed documents that improperly contain personal identifiers.

II. Action Items

A. Items for Final Approval without Publication

The Committee requests that the Standing Committee approve the following rule and form amendments without publishing them for public comment due to their conforming or limited nature. The Committee recommends that the amended forms take effect on December 1, 2016. The rule and forms in this group appear in Appendix A.

Action Item 1. Rule 1015(b) (Cases Involving Two or More Related Debtors). Rule 1015(b) provides for the joint administration of bankruptcy cases in which the debtors are closely related. Among the debtors covered by the rule are "a husband and wife." The provision also implements a statutory requirement that a husband and wife with jointly administered cases choose the same exemption scheme—either federal bankruptcy exemptions, if permitted, or state exemptions.

After the decision in *United States v. Windsor*, 133 S. Ct. 2675 (2013), which held § 3 of the Defense of Marriage Act ("DOMA") unconstitutional, the Committee received a suggestion that Rule 1015(b) be amended to substitute the word "spouses" for "husband and wife" in order to include joint bankruptcy cases of same-sex couples. The Committee considered the suggestion at its spring 2014 meeting. It concluded that the first reference to "husband and wife" in Rule 1015(b) falls squarely within the holding of *Windsor*. Section 302 of the Bankruptcy Code, unlike the language of Rule 1015(b), authorizes the filing of a joint petition under a chapter by "an individual that may be a debtor under such chapter and such individual's spouse." The rule's use of the more restrictive term "husband and wife" could be justified only by reliance on § 3 of DOMA, which amended the Dictionary Act to provide that "the word 'spouse' refers only to a person of the opposite sex who is a husband or wife." 1 U.S.C. § 7. *Windsor*'s invalidation of the DOMA provision removed support for the rule's deviation from the statutory language.

The other reference to "husband and wife" in Rule 1015(b), however, is consistent with the statutory language. The rule implements § 522(b)(1) of the Code, which imposes a restriction on the choice of exemptions in cases in which the debtors are a "husband and wife." While some of the Court's reasoning in *Windsor* could be read to suggest that same-sex married couples in bankruptcy should not have a greater choice of exemptions than husbands and wives have, the decision is not directly on point. The Committee voted at the spring 2014 meeting to propose the substitution of "spouses" for both references to "husband and wife" in Rule 1015(b), but to await further clarification of the law on same-sex marriages before presenting the amendment to the Standing Committee.

At this fall's meeting, the Committee revisited the issue in light of the decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015),which held that the right to marry is a fundamental right under the Fourteenth Amendment and that same-sex couples may not be deprived of that right. *Id.* at 2599. The Court further held that the Equal Protection Clause prevents states from denying same-sex couples the benefits of civil marriage on the same terms as opposite-sex couples. *Id.* at 2604. The Committee concluded that the decision supported the proposed amendments to Rule 1015(b) to eliminate language suggesting that only opposite-sex married couples may file a joint bankruptcy petition under § 303 and that same-sex married couples are subject to different rules regarding their choice of exemptions. Because the Committee viewed the proposed changes as conforming amendments, it voted unanimously to seek approval of them without publication for public comment.

Action Item 2. Official Forms 20A (Notice of Motion or Objection) and 20B (Notice of Objection to Claim). These official forms were overlooked by the Forms Modernization Project, and thus they were not included with the large group of modernized and renumbered forms that went into effect on December 1, 2015. The Committee recommends that these forms be renumbered and that a minor wording change be made to them.

Under the new numbering convention, the forms should be designated as Official Forms 420A and 420B. In addition, the Committee noted that both forms state that the recipient of the notice must "mail" a copy of any response to the movant's or objector's attorney. To encompass other permissible methods of service, the Committee recommends that "mail" be changed to "send," as indicated on the proposed forms in Appendix A.

Action Item 3. Official Form 410S2 (Notice of Postpetition Fees, Expenses, and Charges). Rule 3002.1(c) requires a home mortgage creditor in a chapter 13 case to give notice of any fees, expenses, or charges that are assessed during the course of the case to the debtor, debtor's counsel, and the trustee. This information assists a debtor who wants to maintain mortgage payments while in bankruptcy to make payments in a sufficient amount to emerge from bankruptcy current on the mortgage. Official Form 410S2 implements the rule provision. The Committee became aware of a possible inconsistency between the rule and the form. The instructions to Part 1 of the form state, "Do not include . . . any amounts previously . . . ruled on by the bankruptcy court." Rule 3002.1(c), however, requires the creditor to give notice of all

postpetition fees, expenses, and charges without excepting ones already ruled on. This issue was discussed in *In re Sheppard*, 2012 WL 1344112 (Bankr. E.D. Va. Apr. 18, 2012). Noting the difference between the rule and the form's instruction, the court held that the form's instruction "best effectuates the ultimate goal of Rule 3002.1 to provide debtors with accurate information regarding postpetition obligations that await them at the conclusion of their bankruptcy case." *Id.* at *4. The court explained that requiring creditors to file a notice for amounts already approved by the court would result in duplication and uncertainty. Accordingly, it concluded that there was no need for the creditor to file notice of fees that had been included in a consent order resolving the creditor's motion for relief from the stay. *Id.*

Participants at a mini-conference the Committee held in 2012 came out the other way on the issue. They suggested that the instruction regarding amounts previously ruled on be deleted from Official Form 410S2 because giving notice of previously authorized fees would allow the trustee to determine if they had been paid.

The Committee concluded that the inconsistency between the form and the rule should be eliminated by deleting the instruction from the form. In order to prevent confusion or the risk of double payments, the proposed amendment adds an instruction to Form 410S2 that requires the creditor to indicate if a fee has previously been approved by the court. Because this is a minor conforming amendment, the Committee recommends that the proposed change be approved without publication.

B. Item for Publication in August 2016

The Committee requests that the Standing Committee approve the following rule amendments for publication for public comment.

Action Item 4. Rule 3002.1(b) (Notice of Payment Changes) and (e) (Determination of Fees, Expenses, or Charges). As discussed in Action Item 3, Rule 3002.1 prescribes several noticing requirements for home mortgage creditors in chapter 13 cases. The rule was enacted to ensure that chapter 13 debtors who maintain mortgage payments over the life of the plan, as permitted by Bankruptcy Code § 1322(b)(5), will have the information they or trustees need to make correct payments. Rule 3002.1(b) requires chapter 13 mortgage creditors to file a notice of any change in the mortgage payment amount at least 21 days before payment is due. Unlike subdivision (e) of the rule, which governs notices of claimed postpetition fees, expenses, and charges, subdivision (b) does not provide a procedure for challenging payment changes that are noticed. Based on concerns expressed at the Committee's 2012 mini-conference on the mortgage rules, the Committee concluded that it would be beneficial to have a national procedure for raising and determining objections to payment changes.

The Committee's proposed amendment to Rule 3002.1(b) would allow a party in interest to file a motion for a determination of the validity of a payment amount change. Although the

rule does not set a deadline for such a motion, it does provide that if a motion is not filed within 21 days after the notice is served, the payment change goes into effect. If a payment change is later determined to be inconsistent with the underlying agreement or governing law, the court can order that payment adjustments be made to reflect any overpayments that have occurred.

The Committee also proposes an amendment to Rule 3001.2(b) that is intended to provide more flexibility in the application of the provision to home equity lines of credit ("HELOCs"). The problem that a HELOC creditor faces in complying with Rule 3002.1(b) is illustrated by *In re Adkins*, 477 B.R. 71 (Bankr. N.D. Ohio 2012). The creditor in that case sought an order excusing it from the requirements of Rule 3002.1(b) on that ground that compliance would be "'virtually impossible.'" *Id.* at 72. The bank explained that, because the loan was an open-ended revolving line of credit, its balance was constantly changing. The payment amount could change monthly due to interest rate adjustments, increased draws on the line of credit, or payments of principal in addition to the finance charges. These frequent adjustments in the payment amount, contended the creditor, would make it especially difficult to comply with the 21-day notice requirement. *Id.*

The *Adkins* court denied the creditor's Motion to Excuse Notice. Rule 3002.1(b) clearly applied, as the creditor conceded, and the court found no authority to waive its requirements. The judge, although sympathetic with the creditor's position, pointed out that the rule provides no leeway in its application. Unlike numerous other bankruptcy rules, Rule 3002.1(b) does not say "unless the court orders otherwise." *Id.* at 73.

The difficulties of compliance expressed by the creditor in *Adkins* were echoed by participants at the mini-conference, and there was a general consensus that Rule 3002.1(b) should be amended to deal more appropriately with HELOCs.

The Subcommittees on Consumer Issues and on Forms considered a proposal for the reporting of HELOC payment changes that a chapter 13 trustee and a representative of a HELOC creditor submitted to the Committee. The proposed provision would have imposed different requirements based on the amount of the payment change and whether the debtor or the trustee was making the mortgage payments, but the Subcommittees decided that a simpler approach would be preferable. They therefore recommended and the Committee approved at the fall 2014 meeting a proposed amendment to Rule 3002.1(b) that authorizes courts to modify the requirements of the provision for HELOCs. This would allow the details of an alternative procedure to be developed by local rulemaking or court order.

Finally, the Committee proposes a wording change to Rule 3002.1(e). Rather than providing that only a debtor or trustee may object to the assessment of a fee, expense, or charge, the amended rule would expand the category of objectors to any party in interest. This change would parallel the language of the proposed amendment to subdivision (b) and would authorize a

United States trustee or bankruptcy administrator to challenge the validity of a claimed postpetition assessment.

C. Request for a Limited Delegation of Authority

Action Item 5. Non-substantive, Technical, or Conforming Amendments to Official Forms. December 1, 2015 marked the culmination of the Forms Modernization Project. The Project was begun in 2008, and by the 2015 effective date, virtually all official bankruptcy forms had been replaced by nearly 70 completely new official forms. Given the large scope of the project, it is almost inevitable that minor issues will arise regarding the wording, formatting, or other aspects of the content of some of the new forms. Indeed, as detailed below, several issues have already arisen since the Judicial Conference approved the new forms in September.

Currently, if a necessary change is sufficiently minor or technical, the Committee will propose that it be approved without publication, as in Action Items 2 and 3 of this report. Even without publication, this process is lengthy. Approval of the change has to be considered and approved by the Committee, the Standing Committee, and the Judicial Conference, a process that can take from several months to more than a year.

The Committee suggests that it would be preferable to set up a process that would allow the Committee to make needed noncontroversial and technical changes to the official bankruptcy forms, subject to retroactive notice and request for approval by the Standing Committee and the Judicial Conference. It therefore recommends that the Standing Committee request the Judicial Conference to delegate this limited authority to the Committee.

There is some precedent for this request. At its May 2015 meeting, the Standing Committee authorized the Committee to correct typographical and other minor errors in the modernized forms before they were submitted to the Judicial Conference. And the Judicial Conference on several occasions has authorized a Conference committee to make non-substantive, technical, and conforming amendments to policies it has approved.[1]

The Committee recognizes that a request for this authority needs to provide assurance to the Standing Committee and the Judicial Conference that the authority, if granted, would be exercised in a narrow set of circumstances and only for changes that do not affect the substance

[1] *See, e.g.,* JCUS - MAR 15, at 13 (the Conference authorized the Bankruptcy Committee to make "non-substantive, technical and conforming changes" to guidance for producing tax information); JCUS - SEP 14, at 9 (the Conference authorized the Court Administration and Case Management Committee (CACM) to make "non-substantive, technical or conforming amendments" to policy guidance regarding requests to redact bankruptcy records already filed); JCUS - SEP 14, at 11 (the Conference authorized CACM to make "non-substantive, technical, or conforming changes" to the Bankruptcy Noticing Center Appropriate Use Policy); JCUS - MAR 14, at 14 (the Conference, on CACM's recommendation, authorized the AO to make "non-substantive, technical and conforming revisions" to the Records Disposition Schedules).

of a form or the rights or obligations of any entities. To this end, it includes examples of the types of amendments that would be made if authorized. They would generally fall into three categories: (1) the correction of typos and punctuation; (2) reformatting to facilitate data capture by CM/ECF; and (3) non-controversial conforming amendments needed to implement changes in the rules (such as renumbering statutory provisions), to Judicial Conference policies (such as changes in fee amounts), or statutes (such as when a temporary benefit sunsets).

Under the proposed procedure, the Committee would immediately implement minor changes it determines are non-substantive, technical, and conforming, and the Standing Committee and the Judicial Conference would be notified and asked to approve the changes at their next regular meetings. Should any change not be subsequently approved by the Standing Committee any the Judicial Conference, the prior version of the form would be restored.

The first category of changes—correction of typos and punctuation—will be the most common. The new forms were developed over the course of seven years, and there have been thousands of revisions over that time frame, including changes to line numbers, form names, and cross-references across and within forms. It is perhaps inevitable that as the forms are being implemented and put into use, new typos and inaccurate cross-references will be discovered that will need to be fixed. Since September 2015, four such changes have been identified:

- Official Form 106E/F – Line number references in the instruction at the top of Part 2 need to be changed from "4.3 followed by 4.4" to "4.4 followed by 4.5."
- Official Form 119 – The reference to "Part 3" at the top of page 1 needs to be changed to "Part 2."
- Official Form 206 Summary – Cross-references to line numbers 6a and 6b of Official Form 206E/F need to be changed to 5a and 5b.
- Official Form 423 – The reference near the top of the form to §1141(d)(3) needs to be changed from "does not apply" to "applies."

The second category—reformatting to facilitate data capture—will likely be less common, but this situation has come up several times over the past several years as CM/ECF developers create and test the next generation CM/ECF database ("NextGen") that will store the information collected on the forms. For example, as originally promulgated in 2014, the means-test forms used by individual debtors required a detailed breakdown of any net income received by the debtor from operating a business. The forms did not, however, clearly indicate how the information should be provided in the rare situation where each of two joint debtors received income from separately owned businesses. NextGen developers reported the problem shortly after the forms were approved by the Judicial Conference in 2014. The problem was addressed through a pro forma update to the means-test forms that was approved by the Committee, the

Standing Committee and the Judicial Conference this year as a technical change that went into effect December 1, 2015.[2]

The final category—changes in the rules, Judicial Conference policy, or statutory changes requiring noncontroversial adjustments that become effective before official forms can be conformed in the ordinary course—is somewhat rare, but there is one pending example of a needed change.

- Official Form 424 – At the top of page 2, the form incorrectly refers to Rule 8001(f)(3)(C). As a result of the recent reorganization of the bankruptcy appellate rules, the correct reference should be to Rule 8006(f)(1).

An example of a Judicial Conference policy change that required expedited technical changes to official bankruptcy forms was an increase in the amount of filing fees proposed by the Committee on Court Administration and Case Management ("CACM") and approved by the Judicial Conference at its March 2014 session to become effective two and a half months later on June 1, 2014. Because filing fees are listed on some official bankruptcy forms, there was a need to get the Executive Committee of the Judicial Conference to approve revision of the forms to reflect the new amounts.

The Committee expects that expedited form changes associated with statutory changes will be very rare. There is one upcoming example of a situation of a possible change to the Bankruptcy Code where it would be helpful to expedite a form change, subject to subsequent approval. After the Bankruptcy Abuse and Consumer Protection Act of 2005 made it more difficult for individuals to qualify for chapter 7 relief, Congress enacted the National Guard and Reservists Debt Relief Act of 2008, Pub. L. No. 110-438, 122 Stat. 5000, to reward National Guard members and Reservists for their service. The law became effective on December 19, 2008. The Act was scheduled to expire in 2011, but was extended on the eve of expiration, and it is now due to sunset on December 19, 2015.

The Act creates an exception to the means test's presumption for members of the National Guard and Reserves who, after September 11, 2001, served on active duty or in a homeland defense activity for at least 90 days. Official Form 122A-1Supp includes language that implements the exemption, and that form will need to be amended if the Act expires.

Because taking away benefits from service members is controversial, the decision to allow this benefit to sunset may be changed at the last minute, and so the Committee has not started the process of obtaining approval for a corresponding change to the form. If the benefit

[2] At the time this problem was discovered, NextGen development was still at least a year away from implementation in the courts, so it was possible to make the needed change through the current one-year approval process for technical changes. Once NextGen is adopted, similar changes will need to be made much more quickly.

does sunset as scheduled, it would be helpful for the Committee to have the authority to make the appropriate technical changes to the form to address the expiration of this benefit, subject to retroactive approval by the Standing Committee and the Judicial Conference. Having the authority in the future to make uncontroversial technical changes such as this, subject to retroactive approval, would minimize the adverse effects of leaving a form unchanged and inconsistent with the law until the current approval process has time to run its course.

The Committee unanimously recommends that the Standing Committee seek Judicial Conference delegation to the Committee of the authority to make non-substantive, technical, and conforming changes to official bankruptcy forms, with any such changes subject to retroactive notice and request for approval by the Standing Committee and Judicial Conference.

III. Information Items

A. *Stern* amendments resubmitted to the Supreme Court

In 2011, the Committee began considering whether the Bankruptcy Rules needed to be amended in response to the Supreme Court's decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011). The holding in *Stern*—that the bankruptcy court lacked authority under Article III to hear and enter a final judgment on a state-law counterclaim by the estate against a creditor who had filed a claim against the estate—arguably created ambiguity concerning the meaning of the terms "core" and "non-core" in 28 U.S.C. § 157. The Committee therefore decided to propose amendments to Bankruptcy Rules 7008(a) and 7012(b) that would eliminate the distinction between core and non-core proceedings and would require parties in all adversary proceedings to state in their pleadings whether they do or do not consent to entry of a final judgment or order by the bankruptcy judge. The Committee also proposed related amendments to Rules 7016 (Pre-Trial Procedures), 9027(a) and (e) (Removal), and 9033 (Proposed Findings of Fact and Conclusions of Law).

The Committee's proposed amendments addressing the *Stern* issue were published for comment in August 2012, and were given final approval by the Standing Committee in June 2013 and by the Judicial Conference in September 2013. The Judicial Conference withdrew the amendments from the Supreme Court, however, given the Supreme Court's decision to hear *Executive Benefits Insurance Agency v. Arkison*, 134 S. Ct. 2165 (2014), a case raising issues that, among other things, implicated the effect of the parties' express or implied consent to a bankruptcy court entering final judgment on *Stern* claims. Although the Supreme Court decided *Arkison* without reaching the consent issue, it subsequently heard and decided *Wellness International Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015). In *Wellness*, the Supreme Court held that "Article III permits bankruptcy courts to decide *Stern* claims submitted to them by consent." *Id.* at 1949.

In light of the foregoing, the Committee reconsidered the originally proposed *Stern* amendments (as well as potential alternative amendments) at its fall 2015 meeting. It determined that the original amendments (as approved by the Standing Committee and Judicial Conference in 2013) offered the best proposal to address the *Stern/Wellness* issue, and it voted to ask the Judicial Conference to resubmit the proposed amendments to the Supreme Court on an expedited basis. First the Standing Committee and then the Judicial Conference considered this request in October 2015 and approved the resubmission of the proposed *Stern* amendments to the Supreme Court. If approved by the Supreme Court, the amendments will go into effect on December 1, 2016.

B. Chapter 13 plan form and opt-out proposal – update

The Committee began considering the possibility of creating a chapter 13 plan official form at its spring 2011 meeting. At that meeting, the Committee discussed Suggestions 10-BK-G and 10-BK-M, which proposed the promulgation of a national plan form, and the Committee approved the creation of a working group to pursue the suggestions. A proposed chapter 13 plan form and proposed amendments to nine related rules were published for public comment in August 2013. Because the Committee made significant changes to the form in response to comments it received, the revised form and rules were published again in August 2014.

At last spring's Committee meeting, in response to comments that were submitted after republication, the Committee discussed a number of options relating to the chapter 13 national form and associated rules. No member favored completely abandoning the project, and no one favored proceeding with the proposed amendments to the nine rules without also proposing a national plan form. Although there was widespread agreement regarding the benefit of having a national plan form, Committee members generally did not want to proceed with a mandatory official form in the face of substantial opposition by bankruptcy judges and other bankruptcy constituencies. Accordingly, the Committee was generally inclined to explore the possibility of a compromise along the lines suggested by a group of commenters, led by Bankruptcy Judges Marvin Isgur and Roger Efremsky ("the compromise group"). After a full discussion, the Committee voted unanimously to give further consideration to pursuing a proposal that would involve promulgating a national plan form and related rules, but would allow districts to opt out of the use of the Official Form if certain conditions were met.

Following the spring meeting, the Committee's Forms Subcommittee and the Consumer Subcommittee worked together to: (i) study and refine an opt-out proposal, (ii) obtain further input from a broad spectrum of the bankruptcy community, and (iii) consider the detailed substantive comments submitted on the republished Official Form and related rules. The Subcommittees also corresponded with the compromise group and other bankruptcy constituencies throughout this process. The Subcommittees reached the following conclusions:

- The opt-out proposal could be implemented primarily by further amending Rule 3015 (Filing, Objection to Confirmation, and Modification of a Plan in a Chapter 12 or a

Chapter 13 Case).[3] As published in 2014, Rule 3015 included amendments to subdivision (c) that required the use of the Official Form for a chapter 13 plan and declared ineffective any nonstandard provisions that were not placed in the section specified for such provisions or that were not identified as the Official Form required. To allow for an opt-out, proposed subdivision (c)(1) would now allow use of either the Official Form or a Local Form meeting the rule's requirements. The Local Forms would have to satisfy the requirements that the debtor identify any nonstandard provisions and place them in a section specified for such provisions. A definition of "nonstandard provision" has been added to the end of subdivision (c)(1). A proposed new Rule 3015.1 would specify the requirements that a Local Form would have to meet. The Subcommittees shared their proposed approach to implement the opt-out proposal, including the proposed revisions to Rule 3015, new Rule 3015.1, and a minor related change to Rule 3002, with the compromise group, and the reaction was favorable.

- The Subcommittees extensively reviewed all 138 comments submitted after republication of the proposed plan form (Official Form 113) and the related rules. Based on this review, the Subcommittees proposed a number of technical changes to the plan form and to Rules 3002, 3007, 3015, and the Committee Note to Rule 7001. No additional changes were proposed for Rules 2002, 3012, 4003, 5009, and 9009.

- The Subcommittees also considered the concerns expressed by the National Association of Consumer Bankruptcy Attorneys and some members of Congress regarding the publication process relating to the proposed plan form and the related rules. They also discussed and identified ways to continue productive discussions regarding the opt-out proposal with various bankruptcy constituencies, including the National Association of Consumer Bankruptcy Attorneys, the National Association of Chapter 13 Trustees, and the National Conference of Bankruptcy Judges.

The Subcommittees ultimately recommended that the Committee approve proposed Official Form 113 and the related revisions to Rules 2002, 3002, 3007, 3012, 4003, 5009, 7001, and 9009, but defer submission of those items to the Standing Committee. This deferral would allow the Committee to further consider the opt-out proposal and the necessity, timing, and scope of any republication. More specifically, the Committee could consider the opt-out proposal (proposed revisions to Rules 3015 and 3002, and new Rule 3015.1) and the republication issue at its spring 2016 meeting. The Committee approved this approach at its fall 2015 meeting.

[3] The only proposed change to Official Form 113 related to the compromise is the revision of Part 1 to require that the debtor indicate whether three types of provisions are included or are not included in the plan. Previously, the form required checking boxes only if those provisions were included.

C. Rule 4003(c) (Exemptions – Burden of Proof) – under consideration

Under section 522 of the Bankruptcy Code, an individual debtor may claim certain property interests as exempt from her bankruptcy estate. Bankruptcy Rule 4003(c), in turn, places the burden of proof in any litigation concerning a debtor's claimed exemptions on the party objecting to the exemptions. The Committee received a suggestion from Chief Judge Christopher M. Klein, U.S. Bankruptcy Court for the Eastern District of California, questioning the validity of Bankruptcy Rule 4003(c). Chief Judge Klein asserts that, based on the Supreme Court's decision in *Raleigh v. Illinois Department of Revenue*, 530 U.S. 15 (2000), Rule 4003(c) alters a substantive right of litigants in violation of the Rules Enabling Act. The *Raleigh* decision involved the burden of proof on claims objections in bankruptcy cases, and the Supreme Court held, "[T]he burden of proof is an essential element of the claim itself; one who asserts a claim is entitled to the burden of proof that normally comes with it." *Id.* at 21. Notably, the *Raleigh* decision did not involve the interpretation of a federal bankruptcy rule; the bankruptcy rules do not address the burden of proof in claims litigation.

Based on the Committee's preliminary review, the primary issue in this matter concerns the interplay of the *Raleigh* decision and the Rules Enabling Act. Although the Supreme Court has consistently held, both before and after *Raleigh*, that the burden of proof is a substantive element of a claim, those decisions generally arise in a choice of law context. Based on research to date, it appears that none of the decisions discusses the Rules Enabling Act. This distinction is highly relevant because the Supreme Court has expressly noted that the meaning of the terms "substance" and "procedure" can "shift[] depending on the particular problem for which it is used." Hanna v. Plumer, 380 U.S. 460, 471 (1965). Accordingly, an argument exists that the Supreme Court's characterization of the burden of proof as substantive in the choice of law context does not necessarily prevent it from being procedural for purposes of the Rules Enabling Act. This analysis is just one of the several important questions underlying the issue.

The Committee is currently reviewing this matter, performing an extensive review of Supreme Court jurisprudence, as well as the legislative history to section 522 and the adoption of the federal bankruptcy rules following the enactment of the 1978 Bankruptcy Code. It plans to further deliberate on this matter at its spring 2016 meeting.

D. Rule 9037 (Privacy Protection for Filings with the Court) – redaction of previously filed documents – under consideration

CACM submitted a suggestion (14-BK-B) to the Committee regarding the procedure for redacting personal identifiers in documents that have already been filed in bankruptcy cases. It suggests that Rule 9037 (Privacy Protection for Filings Made with the Court) be amended to require that notice be given to affected individuals of a request to redact a previously filed document. This amendment would reflect the recent addition of § 325.70 to the *Guide to Judiciary Policy,* Vol. 10 (Public Access and Records) by the Judicial Conference of the United States, which states in part that "the court should require the . . . party [requesting redaction] to

promptly serve the request on the debtor, any individual whose personal identifiers have been exposed, the case trustee (if any), and the U.S. trustee (or bankruptcy administrator where applicable)."

The Committee began its consideration of this suggestion in 2014, and its research has included a survey of bankruptcy clerks' offices to determine how these matters currently are handled. The Committee reviewed the survey results at its fall 2015 meeting. A working group of the Committee's Consumer Subcommittee is further studying the matter and exploring potential amendments to Rule 9037. This working group is considering, among other things, the procedures for requesting a redaction, whether a closed case must be re-opened to facilitate a requested redaction, the timing of any redaction, the manner of redaction, and how to restrict public access to unredacted portions of the document while the redaction request is pending. The Consumer Subcommittee anticipates making a recommendation to the Committee at its spring 2016 meeting.

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APPENDIX A

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Appendix A

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 1015. Consolidation or Joint Administration of Cases Pending in Same Court

* * * * *

(b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) ~~a husband and wife~~spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of ~~a husband and wife~~spouses shall, if one spouse has elected the exemptions under § 522(b)(2) of the

* New material is underlined in red; matter to be omitted is lined through.

Code and the other has elected the exemptions under § 522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by § 522(b)(2).

* * * * *

Committee Note

Subdivision (b) is amended to replace "a husband and wife" with "spouses" in light of the Supreme Court's decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

Because this amendment is made to conform to the Supreme Court's decision in *Obergefell v. Hodges*, final approval is sought without publication.

United States Bankruptcy Court

_____ District of _____

In re *[Set forth here all names including married, maiden, and trade names used by debtor within last 8 years.]* Debtor Address _____ _____ Last four digits of Social Security or Individual Tax-payer Identification (ITIN) No(s).,(if any): _____ Employer's Tax Identification (EIN) No(s).(if any): _____ _____	)	Case No. _____ Chapter _____

NOTICE OF [MOTION TO] [OBJECTION TO]

_____has filed papers with the court to [relief sought in motion or objection].

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to [relief sought in motion or objection], or if you want the court to consider your views on the [motion] [objection], then on or before (date), you or your attorney must:

[File with the court a written request for a hearing {*or, if the court requires a written response*, an answer, explaining your position} at:

{address of the bankruptcy clerk's office}

If you mail your {request}{response} to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

You must also ~~mail~~send a copy to:

{movant's attorney's name and address}

{names and addresses of others to be served}]

[Attend the hearing scheduled to be held on (date), (year) , at ____ a.m./p.m. in Courtroom____, United States Bankruptcy Court, {address}.]

[Other steps required to oppose a motion or objection under local rule or court order.]

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Date: _____

Signature: _____
Name:
Address

Committee Note

Form 420A replaces Official Form 20A, *Notice of Motion or Objection*. It is renumbered to conform to the forms numbering scheme adopted as part of the Forms Modernization Project. It is also amended to reflect that a responding party may serve its request or response on the movant's attorney by means other than mailing.

Because this amendment consists of a minor wording change and renumbering to conform to the current forms numbering system, final approval is sought without publication.

United States Bankruptcy Court

_____ District of _____

In re *[Set forth here all names including married, maiden, and trade names used by debtor within last 8 years.]* Debtor Address _____ _____ Last four digits of Social Security or Individual Tax-payer Identification (ITIN) No(s).,(if any): _____ Employer's Tax Identification (EIN) No(s).(if any): _____	Case No. _____ Chapter _____

NOTICE OF OBJECTION TO CLAIM

_____ has filed an objection to your claim in this bankruptcy case.

Your claim may be reduced, modified, or eliminated. You should read these papers carefully and discuss them with your attorney, if you have one.

If you do not want the court to eliminate or change your claim, then on or before (date), you or your lawyer must:

{If required by local rule or court order.}

[File with the court a written response to the objection, explaining your position, at:

{address of the bankruptcy clerk's office}

If you mail your response to the court for filing, you must mail it early enough so that the court will **receive** it on or before the date stated above.

You must also ~~mail~~send a copy to:

{objector's attorney's name and address}

{names and addresses of others to be served}]

Attend the hearing on the objection, scheduled to be held on (date), (year) , at ___ a.m./p.m. in Courtroom____, United States Bankruptcy Court, {address}.

If you or your attorney do not take these steps, the court may decide that you do not oppose the objection to your claim.

Date: _____

Signature: _____
Name:
Address:

Committee Note

Form 420B replaces Official Form 20B, *Notice of Objection to Claim*. It is renumbered to conform to the forms numbering scheme adopted as part of the Forms Modernization Project. It is also amended to reflect that the claimant may serve its response on the objector's attorney by means other than mailing.

Because this amendment consists of a minor wording change and renumbering to conform to the current forms numbering system, final approval is sought without publication.

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 _____
(Spouse, if filing)

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

Case number _____

Official Form 410S2

Notice of Postpetition Mortgage Fees, Expenses, and Charges **12/16**

If the debtor's plan provides for payment of postpetition contractual installments on your claim secured by a security interest in the debtor's principal residence, you must use this form to give notice of any fees, expenses, and charges incurred after the bankruptcy filing that you assert are recoverable against the debtor or against the debtor's principal residence.

File this form as a supplement to your proof of claim. See Bankruptcy Rule 3002.1.

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

Last 4 digits of any number you use to identify the debtor's account: ____ ____ ____ ____

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

q No

q Yes. Date of the last notice: ____/____/_____

Part 1: Itemize Postpetition Fees, Expenses, and Charges

Itemize the fees, expenses, and charges incurred on the debtor's mortgage account after the petition was filed. Do not include any escrow account disbursements or any amounts previously itemized in a notice filed in this case~~or ruled on by the bankruptcy court~~.
If the court has previously approved an amount, indicate that approval in parentheses after the date the amount was incurred.

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

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

Part 2: Sign Here

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number.

Check the appropriate box.

q I am the creditor.

q I am the creditor's authorized agent.

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

û _____ Date ____/_____/_____
Signature

Print: _____ Title _____
First Name Middle Name Last Name

Company _____

Address _____
Number Street

_____
City State ZIP Code

Contact phone (_____) _____– _____ Email _____

Committee Note

Official Form 410S2 is amended to eliminate a possible inconsistency with Rule 3002.1(c). The instructions to Part 1 are revised to omit the statement that fees, expenses, and charges that have been ruled on by the court should not be listed. Instead, such an assessment that has not been reported on a previously filed Form 410S2 should be listed, and it should be noted in the column labeled "Dates incurred" that the court has previously approved the fee, expense, or charge.

Because this amendment is made to conform to Rule 3002.1(c), final approval is sought without publication.

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APPENDIX B

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Appendix B

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

For Publication for Public Comment

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

* * * * *

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

* New material is underlined in red; matter to be omitted is lined through.

in the payment amount is required to maintain payments in accordance with § 1322(b)(5) of the Code. If no motion is filed within 21 days after service of the notice, the change goes into effect, unless the court orders otherwise.

* * * * *

(e) DETERMINATION OF FEES, EXPENSES, OR CHARGES. On motion of ~~the debtor or trustee~~a party in interest filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.

* * * * *

Committee Note

Subdivision (b) is amended in two respects. First, it is amended to authorize courts to modify its requirements for claims arising from home equity lines of credit (HELOCs). Because payments on HELOCs may adjust

frequently and in small amounts, the rule provides flexibility for courts to specify alternative procedures for keeping the person who is maintaining payments on the loan apprised of the current payment amount. Courts may specify alternative requirements for providing notice of changes in HELOC payment amounts by local rules or orders in individual cases.

Second, subdivision (b) is amended to acknowledge the right of the trustee, debtor, or other party in interest, such as the United States trustee, to object to a change in a home-mortgage payment amount after receiving notice of the change under this subdivision. The amended rule does not set a deadline for filing a motion for a determination of the validity of the payment change, but it provides as a general matter—subject to a contrary court order—that if no motion has been filed within 21 days after service of the notice on the debtor, the debtor's attorney, and the trustee, the announced change goes into effect. If there is a later motion and a determination that the payment change was not required to maintain payments under § 1322(b)(5), appropriate adjustments will have to be made to reflect any overpayments. If, however, a motion is made during the time specified in subdivision (b), leading to a suspension of the payment change, a determination that the payment change was valid will require the debtor to cure the resulting default in order to be current on the mortgage at the end of the bankruptcy case.

Subdivision (e) is amended to allow parties in interest in addition to the debtor or trustee, such as the United States trustee, to seek a determination regarding the validity of any claimed fee, expense, or charge.

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TAB 8B

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ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of October 1, 2015
Washington D.C.

The following members attended the meeting:

Circuit Judge Sandra Segal Ikuta, Chair
Circuit Judge Adalberto Jordan
District Judge Jean Hamilton
District Judge Robert James Jonker
District Judge Amul R. Thapar
Bankruptcy Judge Stuart M. Bernstein
Bankruptcy Judge Dennis Dow
Bankruptcy Judge A. Benjamin Goldgar
Bankruptcy Judge Arthur I. Harris
Diana Erbsen, Esquire
Jeffrey Hartley, Esquire
Richardo I. Kilpatrick, Esquire
Jill Michaux, Esquire
Thomas Moers Mayer, Esquire
Professor Edward R. Morrison

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
Professor Michelle Harner, assistant reporter
Circuit Judge Jeffrey S. Sutton, Chair of the Committee on Rules of Practice and Procedure (Standing Committee)
Professor Daniel Coquillette, reporter to the Standing Committee
Rebecca Womeldorf, Secretary, Standing Committee and Rules Committee Officer
Bankruptcy Judge Roger Efremsky
Bankruptcy Judge Martin Isgur
Bankruptcy Judge Eugene R. Wedoff
Roy T. Englert, Jr., Esq., liaison from the Standing Committee
Molly Johnson, Senior Research Associate, Federal Judicial Center
Ramona D. Elliot, Esq., Deputy Director/General Counsel, Executive Office for U.S. Trustees
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
Bridget Healy, Esq., Administrative Office
Scott Myers, Esq., Administrative Office
James Wannamaker, Esq., consultant to the Committee
Derek Webb, Administrative Office
Michael T. Bates, Lindquist & Vennum, LLP, Minneapolis, Minnesota
John Crane, John M. Crane, P.C., Port Chester, New York
Sims Crawford, Chapter 13 Trustee, Northern District of Alabama

Marcy Ford, Trott Law Firm, Farmington Hills, Michigan
Michael McCormick, McCalla Rayner, LLC, Roswell, Georgia
Raymond J. Obuchowski, National Association of Bankruptcy Trustees
Lance Olson, RCO Legal, Bellevue, Washington
Jon M. Waage, Chapter 13 Trustee, Middle District of Florida
Nancy Whaley, National Association of Chapter 13 Trustees
Daniel A. West, SouthLaw, P.C., St. Louis, Missouri

Discussion Agenda

1. Introductions.

Judge Sandra Ikuta started the meeting at 9:00 am. She introduced assistant reporter Professor Michelle Harner, who was appointed in July 2015. Professor Harner spoke briefly. Judge Ikuta noted the re-appointments to the Committee, and thanked Judge Arthur Harris for his work in reviewing the forms. She completed her remarks by welcoming Judge Eugene Wedoff and Jon Waage, who both served as consultants for the Committee's work on the chapter 13 plan form. The members and visitors introduced themselves.

2. Approval of minutes of spring 2015 meeting.

The minutes were approved with minor edits.

3. Oral reports on meetings of other committees.

(A) May 28-29, 2015 meeting of the Committee on Rules of Practice and Procedure.

All of the bankruptcy action items were approved, including the chapter 15 items, the 3-day rule change, the various issues related to mortgage reporting, and the final approval of the modernized forms. The modernized forms were approved by the Judicial Conference on September 17, 2015, and are set to go into effect on December 1, 2015. Two rule amendments were published in August 2015: Rules 1006(b) and 1001.

(B) June 11-12, 2015 meeting of the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee).

The Bankruptcy Committee concurred in a recommendation from the Committee on Court Administration and Case Management (CACM) to amend the preamble of the miscellaneous fee schedule regarding Bankruptcy Appellate Panel services. Also, the Bankruptcy Committee approved a request for the Federal Judicial Center (FJC) to study the impact of Chapter 9 cases on the bankruptcy system. Finally, the Bankruptcy Committee

recommended that the Administrative Office (AO) develop procedures regarding interpretation services.

4. Report by the Subcommittee on Consumer Issues.

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

Judge Harris reported that this was an information item. Jim Waldron surveyed clerks' offices to determine how these matters are handled. The results showed that courts are divided as to notice to affected parties. Most courts do not require the reopening of a closed case to request a redaction. Since submitting the suggestion to the Committee, CACM made a separate request to the Judicial Conference for a specific fee for redaction requests, thus permitting redactions without requiring case reopening. As part of the request to the Judicial Conference, CACM included language regarding the potential impact and notice to affected parties. CACM's recommendation was approved by the Judicial Conference.

Judge Harris noted that the subcommittee has a small group working on the issue; they will consider privacy issues, appropriate notice, and developing a simple procedure for courts and parties. They plan to have a draft amendment ready for consideration for the spring 2016 meeting.

(B) Suggestion 15-BK-E to amend Rule 4003(c) to change the burden of proof where state law provides the rule of decision.

Judge Harris explained that the suggestion is to amend Rule 4003(c) to accommodate the decision in *Raleigh v. Illinois Department of Revenue*, 530 U.S. 15 (2000). The primary issue is the burden of proof in litigation involving a debtor's entitlement to a claimed exemption under section 522 of the Bankruptcy Code. Specifically, the suggestion asserts that the language of Bankruptcy Rule 4003(c), which places the burden of proof on the party objecting to the claimed exemption, alters the substantive rights of the parties in violation of the Rules Enabling Act. Judge Harris advised that the issue would remain under consideration by the subcommittee.

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

(A) Discussion regarding proposed chapter 13 plan form (Official Form 113), and related proposed amendments to certain bankruptcy rules.

Judge Dennis Dow explained the subcommittee's process, discussion, and final recommendation regarding the chapter 13 plan and related rules. He reminded the group that the plan form and rules were published twice; after the second publication, the Committee received a compromise proposal from a group of bankruptcy judges and others that suggested permitting districts to opt out of using the national plan form if certain conditions were met. The subcommittees consulted with Judge Wedoff and Mr. Waage, as a former Committee member and Chapter 13 trustee, respectively, regarding the compromise proposal and related matters.

The subcommittees reviewed the comments on the published form and rules (these comments were included in the spring 2015 Committee meeting agenda materials), evaluated the compromise proposal, and considered the impact on the related rule amendments. The subcommittees also sought input from Judge Marvin Isgur and Judge Roger Efremsky as representatives of the group that submitted the compromise proposal.

The subcommittees' recommendation included revisions to Rule 3015 that would permit a district to opt out of using a national plan form and impose specific requirements for opting out. The subcommittees included in the agenda materials a proposed amended version of 3015 and a proposed new Rule 3015.1, along with proposed changes to the form itself, including language regarding the location of non-standard provisions to address the problem at issue in *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367 (2010).

Judge Dow advised that subcommittee members would continue to share the revisions with the bankruptcy community in an effort to ensure that all interested parties are aware of the revised plan and rules. He reached out to the National Association of Chapter 13 Trustees (NACTT), the National Conference of Bankruptcy Judges (NCBJ), the American Bankruptcy Institute (ABI), the National Bankruptcy Conference (NBC), and the National Association of Consumer Bankruptcy Attorneys (NACBA). In doing this, he also asked for recommendations from these groups as to others who could be notified.

Judge Isgur and Judge Efremsky noted their individual support for the revised form and rules. They also indicated that they had surveyed members of the group that submitted the compromise proposal, and that such survey showed a lack of controversy over the revised form and rules. In addition, they reached out to the NACBA and the NACTT in both submitting the compromise proposal earlier in the year and in consideration of the revised plan form and rules. Judge Dow advised that while the majority of the subcommittee supported the recommendation to approve the plan form and related rules, there were a few members who objected.

Professor Gibson spoke briefly about the issue of republication. She stated that if a decision were made to republish, it would likely be to publish the revised Rule 3015 and new Rule 3015.1 rather than the plan form and other related rules. The subcommittee recommended postponing a decision on republication until the spring 2016 meeting. Judge Dow advised that the Rules Committee Support Office was contacted by two members of Congress, who expressed concern about the publication process for any revised plan or rules.

The specific recommendations of the subcommittee for approval were: (1) to approve the final version of Official Form 113 and the related rules other than Rules 3015 and 3015.1, with the understanding that the form and rules would not go forward to the Standing Committee at this time, and (2) to defer the final decision regarding republication until the spring 2016 meeting. Judge Ikuta advised that nothing would prevent the Committee from revisiting the plan form or related rules at a later time. She noted the Committee's consensus that the proposed amendments to the rules and the national plan form were a package, and neither would go forward without the other.

A motion was made to approve Official Form 113, Rules 2002, 3002, 3007, 3012, 4003, 5009, 7001, and 9009, pending submission to the Standing Committee. It passed with one opposition. Proposed amended Rule 3007 was referred to the Business Subcommittee for consideration of an issue with the language in the version of the rule in the agenda materials. Amended Rule 3015 and new rule 3015.1 will continue to be considered by the Forms Subcommittee for a recommendation at the spring 2016 meeting.

(B) Report concerning the development of forms for subsections (f) and (g) of Rule 3002.1 - Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence, and additional amendments to the rule.

Professor Gibson explained that these issues relate to the mortgage form and rule amendments that went into effect in 2011. The issues were raised as part of a 2012 mini-conference on mortgage issues.

First, there are two proposed new Director's Forms: Form 4100N, Notice of Final Cure Payment (to implement Rule 3002.1 (f)); and Form 4100R, Response to Notice of Final Cure Payment (to implement Rule 3002.1(g)). The forms provide a vehicle for reporting information regarding the cure of arrearages, and were reviewed by the NACTT. Both proposed forms were included in the agenda materials. Currently courts have various requirements for reporting this information, and uniformity would be helpful, although the subcommittee determined that the forms did not need to be official forms. As these forms are issued by the Director of the Administrative Office and their use is not mandatory, approval of the Standing Committee and the Judicial Conference is not necessary, and the forms could be issued on December 1, 2015 along with other forms scheduled to go into effect this year. On motion, the Committee recommended that the Administrative Office issue the forms effective December 1, 2015.

Second was a proposed amendment to Rule 3002.1(b), the section of the rule that requires notice of post-petition changes to a mortgage payment. Rule 3002.1(e) provides a procedure for challenging a claimed fee, expense, or charge after the servicer gives notice of it under subdivision (c), but the rule does not provide a similar procedure for payment changes that are reported under subdivision (b). The proposed amendment would suspend the change in payment from going into effect if the debtor or trustee challenges the change within 21 days after the notice is served. If approved, it would be published in August 2016, along with a prior amendment to the same subsection that the Committee approved for publication at the fall 2014 meeting. That amendment regarding home equity lines of credit was held in abeyance so that it could be submitted with any additional amendments to the rule that the Committee decided to propose. Issues were raised with shifting the burden of persuasion to the objecting party and with limiting objections to the debtor or the trustee. The group discussed whether other parties in interest have standing to object without a change in the proposed language.

A motion was made to approve the version of the amended rule in the agenda materials with the clarification that parties in interest (in addition to the debtor and trustee) may object, and the motion passed. The amendment will go forward for publication and the outstanding issues can be considered, if needed, following the publication period.

The final issue was an amendment to Official Form 410S2 regarding notice of post-petition fees and charges. The proposed amendment deletes an instruction to Form 410S2 not to report fees and charges already approved by the court and adds an instruction that requires the creditor to indicate if a fee has previously been approved by the court to avoid double-payments. The recommendation was to seek approval without publication as a conforming amendment. The motion to approve the recommendation was approved.

6. Report by the Subcommittee on Forms.

(A) Recommendation to request that the Judicial Conference delegate to the Advisory Committee the authority to make non-substantive, technical, conforming changes to Official Bankruptcy Forms as needed.

The Forms Subcommittee recommended that the Committee approve a request to the Judicial Conference to delegate authority to the Committee to make non-substantive, technical, and conforming changes to the Official Forms as needed. The types of changes include: typos and erroneous cross-references, amendments to conform to a change in the law, a change in fee amounts that appear on the forms, or a technical change to accommodate a requirement of the Next Generation of CM/ECF (Next Gen). Scott Myers provided several examples of these changes, including proofreading edits. Judge Sutton suggested that a process be developed to provide notice to the Judicial Conference and the Standing Committee. Judge Ikuta suggested that the subcommittee's recommendation be changed to permit the Committee to implement these types of changes immediately, with retroactive notice and request for approval to the Standing Committee and Judicial Conference. A motion was made to approve the amended recommendation, and the motion was approved.

(B) Report regarding suggestion for Notice of Change of Address Form (Suggestion 15-BK-D) submitted by Russell C. Simon, Chapter 13 Standing Trustee, on behalf of National Association of Chapter 13 Trustees.

The suggestion, from a subcommittee of the NACTT, was to create a form to provide notice of changes of address. Professor Harner reported that there are several options for implementing the suggestion, including a new Official Form, a new Director's Form, an amendment of Form 410, or an amendment to the instructions for Form 410. Samples of these options were included with the agenda materials. The subcommittee determined that it did not have enough information or data to make a decision as to how to best approach this issue, and it instructed the assistant reporter to conduct a survey of courts to determine how the matter is currently handled along with an analysis of any technological issues with implementing a new form or method of indicating a change of address. Nancy Whaley (NACTT) stated that a form would be helpful for chapter 13 cases as chapter 13 trustees are under pressure about the amount of money contributed to the registrars of courts, and that correct changes of address would likely help.

7. Report by the Subcommittee on Business Issues.

(A) Recommendation regarding *Stern* amendments to Rules 7008, 7012, 7016, 9027, 9033, previously approved by the Judicial Conference in September 2013, but withdrawn from Supreme Court consideration pending decisions in *Executive Benefits Insurance Agency v. Arkison*, 134 S. Ct. 2165 (2014) and *Wellness International Network, Ltd. v. Sharif*, 35 S. Ct. 1932 (2015); recommendation regarding *Stern*-related Suggestions 11BK-K and 15-BK-F.

The rule amendments were previously approved by the Committee but were withdrawn from consideration by the Supreme Court following the Supreme Court's grant of certiorari in *Executive Benefits Ins. Agency v. Arkison*, 134 S.Ct. 2165 (2014). Later the Court held in *Wellness International Network, Ltd. v. Sharif*, 35 S.Ct. 1932 (2015 that parties could consent to a bankruptcy court's adjudication of proceedings that would otherwise be outside the scope of its constitutional authority. The subcommittee considered whether the original proposed rule amendments should be resubmitted or if any amendments were required based on the Court's decisions. The rule amendments, which were included in the agenda book, were published for public comment in August 2012. They were given final approval by the Standing Committee in June 2013 and by the Judicial Conference in September 2013.

After deliberations, the subcommittee recommended that the Committee ask that the Judicial Conference resubmit the original amended rules to the Supreme Court. In making its recommendation, the subcommittee considered three possible approaches for amending the Bankruptcy Rules to authorize bankruptcy courts, with the parties' consent, to adjudicate proceedings that would otherwise require Article III adjudication: (1) the pending amendments; (2) the magistrate judge model; and (3) the Seventh Amendment model. The subcommittee determined that the alternative models had practical issues as well as possible concerns regarding knowing and voluntary waivers.

A motion to approve the subcommittee's recommendation to request that the Judicial Conference resubmit the amended rules to the Supreme Court was approved. Judge Sutton stated that he would give consideration as to the best process for the approval of the amended rules.

(B) Suggestion regarding rule amendment for district court treatment of bankruptcy court judgment as proposed findings and conclusions (Suggestion 12-BK-H).

In response to the suggestion that proposed a rule amendment to address the situation in which a district judge treats a judgment or order entered by a bankruptcy judge as proposed findings of fact and conclusions of law, the subcommittee recommended amendments to the title of Rule 9033 and subsection (a) of the rule. The subcommittee concluded that *Arkison* provides legal support for the validity of the approach contained in the suggestion. After the agenda materials were published, a Committee member submitted a suggestion to change the amendment slightly to incorporate references to the other sections of the rule. The group discussed the suggested amendments, and several edits and other revisions were proposed. The Committee decided to return the issue to the subcommittee for further discussion.

(C) Report on work plan for bankruptcy rules noticing project.

The Advisory Committee has received several comments that relate to noticing issues in bankruptcy cases. Professor Harner proposed a work plan for considering general notice issues, and the specific suggestions related to noticing, including Suggestions 12-BK-M, 12-BK-B, 15-BK-H, and Comment BK-2014-0001-0062.

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

(A) Recommendation concerning pending amendments to the Federal Rules of Appellate Procedure (FRAP) and whether to publish similar amendments to the Federal Rules of Bankruptcy Procedure.

The recently revised bankruptcy appellate rules (the Part VIII Rules), are modeled on many FRAP provisions. Because the Part VIII rules track FRAP wording rather than incorporate FRAP by reference, the pending FRAP amendments will not automatically apply to bankruptcy appeals in district courts and bankruptcy appellate panels.

The prospect of changes to FRAP required the subcommittee to determine which of the FRAP provisions proposed for amendment have parallels in the Part VIII rules and whether those bankruptcy rules should be similarly amended. One of the main issues considered by the subcommittee was the change in the length limit rules in FRAP. The subcommittee will continue to consider these issues and make any suggested amendments at the spring 2016 meeting. Professor Gibson reminded the group that any changes to the bankruptcy rules would go into effect in 2018.

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

(A) Proposed amendment to Rule 5005(a)(2) to address proposed amendments to Civil Rule 5(d).

Professor Gibson reported that at the spring 2015 meeting the Committee voted to propose for publication an amendment to Rule 5005(a)(2) that would conform to the proposed amendment to Civil Rule 5(d). Because the language of the proposed amendment to Civil Rule 5(d) was still under discussion at that time, the Committee authorized the chair and the reporter to participate in inter-committee negotiations over the language of the proposed Rule 5(d) amendment and to incorporate into the proposed amendment to Rule 5005(a)(2) language that was acceptable to the advisory committees. The Civil Rules Committee subsequently decided not to seek publication of amendments to Rule 5 in order to give the other advisory committees more time to consider any similar amendments they want to propose. The main concern raised by the advisory committees was the impact on pro se filers of a change in Civil Rule 5.

The proposed amendments to Civil Rule 5, as well as a possible amendment to Criminal Rule 49, are still under consideration. The subcommittee discussed how any amendment to the Civil Rule would impact Bankruptcy Rule 5005. The potential versions of Civil Rule 5 were included in the agenda materials. The subcommittee preferred the more recent version of the Civil Rule 5 amendment. No concerns were raised with regard to the specific amendments being considered by the Civil Rules Committee.

In addition to the filing amendments, the Civil Rules Committee is considering an amendment to permit notice via a court's electronic filing system. The Criminal Rules Committee is considering a similar amendment to Criminal Rule 49. The proposed amendment to Rule 5(b)(2)(E) would eliminate the consent requirement for the use of electronic service of documents filed after the original complaint, and the proposed versions of the amendments were included in the agenda materials. Members of the subcommittee expressed a preference for the second version of the Civil Rule amendment, which would eliminate the consent requirement only for service through the CM/ECF system.

A final issue is to allow the Notice of Electronic Filing (NEF) to take the place of a certificate of service. This was original proposed by CACM and is under consideration by the Civil Rules Committee. The proposed Civil Rule amendment to Civil Rule 5(d), if approved, would become applicable in adversary proceedings pursuant to Rule 7005. Rule 9014, however, does not incorporate Rule 5(d). No concerns were raised by the Committee in its prior consideration of the proposed amendment.

Judge Sutton recommended that the Civil, Criminal, and Bankruptcy Committee reporters meet to develop a consensus recommendation for the Standing Committee.

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

(A) Recommendation concerning the subcommittee's consideration of Suggestion 13-BK-C by the American Bankruptcy Institute's Task Force on National Ethics Standards to amend Rule 2014 (Employment of Professional Persons).

The subcommittee determined to take no further action on this suggestion to amend the requirement that an application to hire a professional list all of the professional's connections with specified persons. Judge Jonker explained the history of the Committee's consideration of this issue. The subcommittee considered various alternatives in reviewing the suggestion, and determined that there were good points in the suggestion. Some of these could be implemented through training and educational programs rather than a rule change.

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

Mr. Myers advised that legislation granting an exception from the means test requirements for service members and certain homeland security members is set to expire in December 2015. It has been renewed in the past; however, if not, an amendment to the means test forms (Official Forms 122) will be required.

12. Future meetings.

The spring 2016 meeting will be held March 31-April 1, 2016 in Denver, Colorado.

13. New business.

A suggestion was submitted within the past few weeks for consideration of several amendments, including one regarding social security numbers. The Privacy, Public Access and Appeals subcommittee will consider these issues.

Consent Agenda

The Chair and Reporters proposed several items for study and consideration prior to the Advisory Committee's meeting for approval by acclamation at the meeting if no objection was raised. Judge Ikuta advised that no comments were received on the items listed on the consent agenda. A motion was made to approve the items on the consent agenda and the motion was approved. The items are detailed below.

1. Subcommittee on Consumer Issues.

(A) Suggestion 13-BK-G to amend Fed. R. Bankr. P. 1015(b)

The subcommittee recommended amending Rule 1015(b) to eliminate language suggesting that only opposite-sex married couples may file a joint bankruptcy petition under §303 or that single-sex married couples are subject to different rules regarding their choice of exemptions, per Suggestion 13-BK-G. The suggestion was previously approved at the spring 2014 meeting, but held pending a decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). The subcommittee also recommended that the Standing Committee approve the amendment without publication.

(B) Suggestion 14-BK-G regarding inclusion of the debtor's full social security number on the version of the meeting of creditor's notice that is sent to the creditors listed in the debtor's schedules.

The subcommittee recommended that the Committee not consider the issue, given its thorough consideration of a similar suggestion in 2012. The subcommittee will engage in some additional informal outreach to certain creditors to inquire whether they are reliant on full social security numbers and report back at the spring 2016 meeting.

2. Subcommittee on Forms.

(A) Suggestion 15-BK-A by Derek S. Tarson recommending that bankruptcy schedules be made gender neutral in light of *United States v. Windsor*, 570 U.S. 12 (2013).

The subcommittee determined that because the amended Official Forms that take effect December 1, 2015 address Mr. Tarson's concerns, it recommended no further action on this matter.

(B) Suggestion 15-BK-B by Bankruptcy Judge Martin Teel Jr. proposing revisions Director's Form 263, Bill of Costs.

The subcommittee agreed with the proposal to amend Director's Form 263, and an amended version of the form was included in the agenda materials. The subcommittee recommended that the Director of the Administrative Office adopt the changes as set forth in the revised Director's Form 263 and the related instructions.

(C) Recommendation to renumber Official Forms 20A, Notice of Motion or Objection, and 20B, Notice of Objection to Claim.

The subcommittee recommended that the forms be renumbered, a minor wording change be made, and that the Committee propose the forms for final approval without publication.

3. Subcommittee on Business Issues.

(A) Possible changes to Official Forms 25A-C, and 26, and Exhibit A to Official Form 201 (renumbered as Official Form 201A at the spring 2015 meeting, and on track to go into effect December 1, 2015).

The subcommittee recommended no further revisions to Official Form 201A (formerly Exhibit A), and will consider possible changes to Official Forms 25A-C, and 26 with recommendations at the spring 2016 meeting.

4. Privacy, Public Access, and Appeals.

(A) Suggestion regarding amendment of Rule 8018 (Serving and Filing Briefs; Appendices) (Suggestion 15-BK-C).

The subcommittee determined that Bankruptcy Rules 8018(a)(1) and 8010(c) adequately provide that the briefing schedule set forth in Rule 8018(a) is triggered only upon the transmission of the complete record by the clerk, unless otherwise ordered by the court. Accordingly, the subcommittee recommended no action on this matter at this time.

(B) Recommendation concerning timing of publication of deferred recommendations to revise Rules 8002(a)(5) and 8006(b) in response to Comment 12-BK-033 (approved at the fall 2013 Advisory Committee meeting), and Rule 8023 (approved at the spring Advisory Committee meeting); and concerning Comments 12-BK-005, 12-BK-015, and 12-BK-040 regarding designation of the record in bankruptcy appeals.

As to the three previously approved amendments, revisions to Rules 8002(a)(5) and 8006(b) in response to Comment 12-BK-033 (approved at the fall 2013 Advisory Committee meeting), and Rule 8023 (approved at the spring Advisory Committee meeting), the subcommittee recommended that they be submitted to the Standing Committee in June 2016, with a request that they be published with the Part VIII amendments that will be proposed to conform to the FRAP amendments. With regards to Comments 12-BK-005, 12-BK-015, and 12-BK-040 regarding designation of the record in bankruptcy appeals, the subcommittee initially referred the matters to the Standing Committee's CM/ECF Subcommittee. Given that the CM/ECF Subcommittee took no action on the comments and is now disbanded, the subcommittee recommended no further action on the comments.

Following the vote to approve the matters on the consent agenda, the meeting was adjourned at 2:40 pm.

Respectfully submitted,

Michelle Harner, assistant reporter