ADVISORY COMMITTEE
ON
BANKRUPTCY RULES

Washington, D.C.
November 14, 2016

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ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of November 14

Washington, D.C.

Discussion Agenda

1. Greetings and introductions. (Judge Ikuta)

   Welcome to new members and other updates.

2. Approval of minutes of Denver, Colorado meeting of March 31, 2016. (Judge Ikuta)

   Tab 2: Draft minutes.

3. Oral reports on meetings of other committees:

   (A) June 6, 2016 meeting of the Committee on Rules of Practice and Procedure. (Judge Ikuta, Professor Gibson, Professor Harner)

   Tab 3A: Draft minutes of Standing Committee meeting.

   (B) April 14, 2016 and November 3-4, 2016 meetings of the Advisory Committee on Civil Rules. (Judge Goldgar)

   (C) October 18, 2016 meeting of the Advisory Committee on Appellate Rules. (Judge Pepper)

   (D) June 2016 meeting of the Committee on the Administration of the Bankruptcy System. (Judge Bernstein, Judge Smith)

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Forms. (Judge Dow, Professor Gibson, Professor Harner, Mr. Myers, Ms. Healy)

   (A) Report and recommendation regarding Rule 3015.1 and amended Rule 3015 (establishing procedures by which districts can opt out of using the proposed chapter 13 plan form (Official Form 113)), and minor changes to the version of Official Form 113 that was recommended for final approval at the Committee's

fall 2015 meeting. (Judge Dow, Professor Gibson)

Tab 4A: Memo of October 24, 2016, by Professor Gibson including summary of comments.
-Proposed Rules 3015 and 3015.1
-Official Form 113

5. Report by the Subcommittee on Business Issues. (Judge Bernstein, Professor Gibson, Professor Harner)

(A) Report on noticing issues in bankruptcy cases (Judge Bernstein and Professor Harner)

Tab 5A: Memo of October 21, 2016, by Professor Harner
- September 27, 2016 Research Memorandum
-Appendix A listing affected suggestions and comments
-Appendix B listing service-by-mail rules

6. Report by the Subcommittee on Privacy, Public Access, and Appeals. (Judge Ambro, Professor Gibson)

(A) Recommendation for a conforming technical amendment to Rule 8011 (Filing and Service; Signature) in light of proposed electronic filing and service amendments to Federal Rule of Appellate Procedure 25.

Tab 6A: Memo of October 14, 2016, by Professor Gibson (includes proposed Rule 8011)

(B) Recommendation for further study regarding Suggestion 16-BK-E (Judge A. Benjamin Goldgar) indicating a need for procedure similar to FRAP 41(c) (the issuance of a mandate) to clarify when jurisdiction revests in bankruptcy court after an appeal.

Tab 6B: Memo of October 19, 2016, by Professor Gibson

Information Items

7. Items Retained for Further Consideration.

(A) Suggestion 12-BK-B by the Bankruptcy Noticing Working Group to include Chapter 13 confirmation orders in Rule 2002(f)(7) and Suggestion 12-BK-M by Judge Scott Dales to amend Rule 2002(h) to mitigate the cost of giving notice to creditors who have not filed a proof of claim. *The Business Subcommittee considered the suggestions and referred them to the Consumer Subcommittee.*

(B) Suggestion 16-BK-D from Judge A. Benjamin Goldgar concerning Rule 4001(c) and its application to chapter 13 cases. *The Business Subcommittee considered the suggestion and referred it to the Consumer Subcommittee.*

(C) Suggestion 16-BK-C from Judge A. Benjamin Goldgar concerning the process for abandoning property of the estate under 11 U.S.C. § 554, and Rule 6007. *The Business Subcommittee retained this matter for further consideration.*

8. Coordination Items.

Tab 8A: Memo of October 21, 2016, by Mr. Myers

9. Report on Referrals to Other Committees

At the spring 2016 meeting, the Committee referred items of interest to two other Committees.

Tab 9A: Letter dated September 27, 2016, to the Bankruptcy Committee concerning Suggestion 15-BK-D from the National Association of Chapter 13 Trustees for a Notice of Change of Address form.

Tab 9B: Letter dated October 25 to the Court Administration Committee concerning private dockets.

10. Questionnaire on the Five-Year Review of Committee Jurisdiction and Structure

Tab 10A: – Memorandum of October 3, 2016 from Director James C. Duff
– Jurisdictional Statements
– 2012 Committee Questionnaire (example)
– 2017 Committee Questionnaire (to be completed)

11. Future meetings: The spring 2017 meeting will be in Nashville, TN, on April 6-7. The fall 2017 meeting will be in Washington, D.C. *(Members are invited to suggest possible dates for the fall meeting).*

12. New business.

13. Adjourn.

Proposed Consent Agenda

The Chair and Reporters have proposed the following items for study and consideration prior to the Advisory Committee's meeting**. Absent any objection, all recommendations will be approved by acclamation at the meeting.** Any of these matters may be moved to the Discussion Agenda if a member or liaison feels that discussion or debate is required prior to Committee action. Requests to move an item to the Discussion Agenda must be brought to attention of the Chair by noon, Eastern Time, on **Monday, November 7, 2016.**

1. Not assigned to a subcommittee.

   (A) Recommendation of no action regarding Suggestion 13-BK-J from Neil Enmark to require that the Rule 2016(b) statement (Disclosure of Compensation Paid or Promised to Attorney for Debtor) be filed with the petition instead of within 14 days after the petition is filed.

   Tab Consent 1A: Memo of October 14, 2016, by Professor Gibson with attachment.

   (B) Recommendation to approve Suggestion 14-BK-F from Judge Martin Teel for technical amendment to Rule 7004(a)(1).

   Tab Consent 1B: Memo of October 21, 2016, by Professor Harner.

2. Subcommittee on Consumer Issues.

   (A) Recommendation of no action regarding suggestion 15-BK-I from "Sai" (concerning various suggestions in dealing with pro se filers and redaction of social security numbers).

   Tab Consent 2A: Memo of October 19, 2016, by Professor Gibson.

(B) Recommendation to approve Suggestion 16-BK-B from Judge Teel to amend question number 11 on Official Form 101 (Individual Debtor Petition) with proposed December 1, 2017 effective date.

Tab Consent 2B: Memo of October 19, 2016, by Professor Gibson.
-Official Form 101

3. Subcommittee on Business Issues.

(A) Recommendation of no action regarding Suggestion 16-BK-G that Rule 7004(e) provide at least 14 days for service of summons and complaint.

Tab Consent 3A: Memo of October 14, 2016, by Professor Gibson

4. Subcommittee on Privacy, Public Access, and Appeals.

(A) Recommendation of no action regarding Suggestion 16-BK-F (Judge Geraldine Mund) to eliminate the requirement of a request for permission to take a direct appeal when the court certifies the appeal.

Tab Consent 4A: Memo of October 19, 2016, by Professor Gibson

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ADVISORY COMMITTEE ON BANKRUPTCY RULES

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Reporter, Advisory Committee on Bankruptcy Rules	**Professor S. Elizabeth Gibson** University of North Carolina at Chapel Hill 5073 Van Hecke-Wettach Hall C.B. #3380 Chapel Hill, NC 27599-3380
Associate Reporter, Advisory Committee on Bankruptcy Rules	**Professor Michelle M. Harner** University of Maryland Francis King Carey School of Law 500 West Baltimore Street Baltimore, MD 21201
Members, Advisory Committee on Bankruptcy Rules	**Honorable Thomas L. Ambro** United States Court of Appeals J. Caleb Boggs Federal Building 844 North King Street, Unit 32 Wilmington, DE 19801-3519 **Honorable Stuart M. Bernstein** United States Bankruptcy Court Alexander Hamilton Custom House One Bowling Green, Room 729 New York, NY 10004-1408 **Honorable Dennis R. Dow** United States Bankruptcy Court Charles Evans Whittaker United States Courthouse 400 East Ninth Street, Room 6562 Kansas City, MO 64106 **Diana L. Erbsen** U. S. Department of Justice 950 Pennsylvania Avenue, N.W. Room 4607 Washington, D.C. 20530

Members, Advisory Committee on Bankruptcy Rules *(cont'd)*	**Honorable A. Benjamin Goldgar** United States Bankruptcy Court Everett McKinley Dirksen United States Courthouse 219 South Dearborn Street, Room 638 Chicago, IL 60604 **Honorable Jean C. Hamilton** United States District Court Thomas F. Eagleton United States Courthouse 111 South Tenth Street, Room 16N St. Louis, MO 63102-1116 **Jeffery J. Hartley, Esq.** Helmsing Leach Post Office Box 2767 Mobile, AL 36652 **Honorable Melvin S. Hoffman** Chief Judge United States Bankruptcy Court John W. McCormack Post Office and Court House 5 Post Office Square, Room 1150 Boston, MA 02109-3945 **Richardo I. Kilpatrick, Esq.** Kilpatrick & Associates, P.C. 903 N. Opdyke Road, Suite C Auburn Hills, MI 48326 **Thomas Moers Mayer, Esq.** Kramer Levin Naftalis & Frankel LLP 1177 Avenue of the Americas New York, NY 10036 **Jill A. Michaux, Esq.** Neis & Michaux, P.A. 534 S. Kansas Avenue, Suite 825 Topeka, KS 66603-3446

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Liaison Member, Advisory Committee on Bankruptcy Rules	**Honorable Susan P. Graber** *(Standing)* United States Court of Appeals Pioneer Courthouse 700 S.W. Sixth Avenue, Suite 211 Portland, OR 97204
Liaison Member, Committee on the Administration of the Bankruptcy System	**Honorable Erithe A. Smith** United States Bankruptcy Court Ronald Reagan Federal Building and United States Courthouse 411 West Fourth Street, Room 5040 Santa Ana, CA 92701

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	Judge Pamela Pepper	***(Bankruptcy)***
Liaison for the Advisory Committee on Bankruptcy Rules	**Judge Susan P. Graber**	***(Standing)***
Liaisons for the Advisory Committee on Civil Rules	**Judge A. Benjamin Goldgar**	***(Bankruptcy)***
	Peter D. Keisler, Esq.	***(Standing)***
Liaison for the Advisory Committee on Criminal Rules	**Judge Amy J. St. Eve**	***(Standing)***
Liaisons for the Advisory Committee on Evidence Rules	**Judge James C. Dever III**	***(Criminal)***
	Judge Solomon Oliver, Jr.	***(Civil)***
	Judge Richard C. Wesley	***(Standing)***

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Advisory Committee on Bankruptcy Rules

Members	Position	District/Circuit	Start Date	End Date
Sandra S. Ikuta			Member: 2010	----
Chair	C	Ninth Circuit	Chair: 2014	2017
Thomas L. Ambro	C	Third Circuit	2016	2019
Stuart M. Bernstein	B	New York (Southern)	2014	2017
Dennis R. Dow	B	Missouri (Western)	2014	2017
Diana L. Erbsen*	DOJ	Washington, DC	----	Open
Benjamin A. Goldgar	B	Illinois (Northern)	2014	2017
Jean C. Hamilton	D	Missouri (Eastern)	2011	2017
Jeffery J. Hartley	ESQ	Alabama	2014	2017
Melvin S. Hoffman	B	Massachusetts	2016	2019
Richardo I. Kilpatrick	ESQ	Michigan	2011	2017
Thomas M. Mayer	ESQ	New York	2014	2017
Jill A. Michaux	ESQ	Kansas	2012	2018
Pamela Pepper	D	Wisconsin (Eastern)	2016	2019
David Arthur Skeel	ACAD	Pennsylvania	2016	2019
Amul R. Thapar	D	Kentucky (Eastern)	2013	2019
S. Elizabeth Gibson				
Reporter	ACAD	North Carolina	2008	Open
Michelle M. Harner				
Associate Reporter	ACAD	Maryland	2015	2020

Principal Staff: Rebecca Womeldorf 202-502-1820

Scott Myers 202-502-1913

* Ex-officio

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Advisory Committee on Bankruptcy Rules

Subcommittee/Liaison Assignments, Effective October 1, 2016

Subcommittee on Consumer Issues Judge A. Benjamin Goldgar, Chair Judge Dennis R. Dow Jeff J. Hartley, Esq. Richardo I. Kilpatrick, Esq. Jill Michaux, Esq. Judge Pamela Pepper Ramona D. Elliott, Esq., *EOUST liaison* Kenneth S. Gardner, *ex officio*	**Subcommittee on Business Issues** Judge Stuart M. Bernstein, Chair Judge Thomas Ambro Judge Jean C. Hamilton Jeff J. Hartley, Esq. Judge Melvin Hoffman Tom Mayer, Esq. Professor David Skeel Judge Amul R. Thapar Ramona D. Elliott, Esq., *EOUST liaison* Kenneth S. Gardner, *ex officio*
Subcommittee on Forms Judge Dennis R. Dow, Chair Judge A. Benjamin Goldgar Judge Melvin Hoffman Richardo I. Kilpatrick, Esq. Jill Michaux, Esq. Ramona D. Elliott, Esq., *EOUST liaison* Diana Erbsen, Esq., *ex officio* Kenneth S. Gardner, *ex officio*	**Ad Hoc Subcommittee on Rule 3002.1 (joint project of Consumer & Forms)** Judge A. Benjamin Goldgar – Chair Judge Dennis R. Dow Judge Melvin Hoffman Richardo I. Kilpatrick, Esq Jill Michaux, Esq. Ramona D. Elliott, Esq., *EOUST liaison* Kenneth S. Gardner, *ex officio*
Subcommittee on Privacy, Public Access and Appeals Judge Thomas Ambro, Chair Judge A. Benjamin Goldgar Judge Jean C. Hamilton Tom Mayer, Esq. Judge Pamela Pepper Ramona D. Elliott, Esq., *EOUST liaison* Diana Erbsen, Esq., *ex officio*	**Subcommittee on Technology and Cross Border Insolvency** Judge Jean C. Hamilton, Chair Judge Melvin Hoffman Professor David Skeel Ramona D. Elliott, Esq., *EOUST liaison*
Civil Rules Liaison: Judge Benjamin Goldgar	**Appellate Rules Liaison:** Judge Pamela Pepper

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TAB 2

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ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of March 31, 2016
Denver, Colorado

The following members attended the meeting:

Circuit Judge Sandra Segal Ikuta, Chair
Circuit Judge Adalberto Jordan
District Judge Jean Hamilton
District Judge Robert J. 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 Martin Isgur
Bankruptcy Judge Eugene R. Wedoff
Ramona D. Elliot, Esq., Deputy Director/General Counsel, Executive Office for U.S. Trustee
Roy T. Englert, Jr., Esq., liaison from the Standing Committee
Kenneth Gardner, Clerk, U.S. Bankruptcy Court for the District of Colorado
Molly Johnson, Senior Research Associate, Federal Judicial Center
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
Bridget Healy, Esq., Administrative Office
Scott Myers, Esq., Administrative Office
Michael T. Bates, Lindquist & Vennum, LLP, Minneapolis, Minnesota
Edward Boltz, Law Offices of John T. Orcutt, National Association of Consumer Bankruptcy Attorneys
Michael Delmonico, Ford Motor Credit Company
Michael McCormick, McCalla Rayner, LLC, Roswell, Georgia

Jon M. Waage, Chapter 13 Trustee, Middle District of Florida
Nancy Whaley, National Association of Chapter 13 Trustees
Alice Whitten, Wells Fargo

Discussion Agenda

1. Greetings.

Judge Sandra Ikuta opened the meeting by welcoming everyone to Denver. Participants and visitors introduced themselves. Judge Ikuta noted that Consent Agenda Item 3A had been moved from the consent agenda to the discussion agenda and would be addressed after Discussion Agenda Item 6C.

2. Approval of the minutes from the Fall 2015 Meeting.

The minutes were approved with one edit.

3. Oral reports on meetings of other committees:

(A) January 7, 2016 meeting of the Committee on Rules of Practice and Procedure (Standing Committee).

Professor Michelle Harner provided this report to the Committee. For bankruptcy, the proposed rule amendments following the Supreme Court's decision in *Stern v. Marshall*, 564 U.S. 462 (2011) (the *Stern* amendments) were approved. There was a report on private information in court documents based on a study conducted by the Federal Judicial Center (FJC); the study suggested, among other things, that bankruptcy had improved its record of preventing disclosure of private information in documents. Also, there was a discussion regarding coordination of efforts regarding similar rules among the rules committees, and the use of parallel language where possible.

Judge Ikuta stated that the Committee will discuss coordination efforts regarding rule changes at the meeting. Judge Jeffrey Sutton added that the Judicial Conference approved the Committee's requests for retroactive approval of technical form changes.

(B) November 5, 2015 meeting of the Advisory Committee on Civil Rules.

Judge Arthur Harris reported that there are several amendments under consideration by the Civil Rules Committee that may impact the Committee. Two examples are the amendments to Rule 5 and the class action rules. There are several pilot projects under consideration that may have some impact on bankruptcy. There may be some bankruptcy districts included as part of the pilot projects, although this is yet to be decided.

(C) December 10-11, 2015 meeting of the Committee on the Administration

of the Bankruptcy System (the Bankruptcy Committee).

Judge Erithe Smith reported on the issues considered by the Bankruptcy Committee that could impact the work of the Committee. The Bankruptcy Committee considered fees related to searches for records held by the National Archives and Records Administration (NARA). The suggested fee for a record search is $10, with an additional fee for actual document retrieval. The Bankruptcy Committee supports this fee as it allows for a more focused document search and an overall better cost for the consumer.

Cost containment is still being discussed by the Bankruptcy Committee, in particular, the consolidation of bankruptcy courts. The concept is to pair bankruptcy courts for a three-year term as a pilot project for study to determine whether there are enough similarities among the courts to permit them to work together on a more permanent basis. The program will be studied by the FJC.

Subcommittee Reports and Other Action Items

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.

Tab 4A: Memo of March 3, 2016 by Professor Gibson.
-Proposed Rule 9037(h).

This suggestion is from the Court Administration and Case Management Committee (CACM), and is an effort to solve a problem with personally identifiable information on court dockets. Judge Harris noted that although there are solutions to this problem, the bigger issue is preventing the information from getting on the dockets in the first place. As noted, the FJC study was presented to the Standing Committee at its January meeting regarding documents with personally identifiable information.

The subcommittee's discussions focused on potentially adding a new subdivision (h) to Rule 9037. It determined, however, that any amendment to the bankruptcy privacy rule should be coordinated with possible amendments to the appellate, civil, and criminal versions of the privacy rule and that it may make sense for the Committee to wait to publish until other rules committees have had a chance to consider possible amendments. Professor Elizabeth Gibson suggested that the Committee hold its recommended amendment at the Committee level until such time that the other rules committees are ready with any amendments, and Judge Sutton agreed with this proposal.

Judge Harris detailed the proposed amendments as set forth in the agenda book. A suggestion was made to remove the "under seal" language because the CM/ECF system automatically restricts these types of motions from the public, making the proposed language redundant. The group discussed this issue, and the language "motion to redact" as a replacement

for "under seal" was accepted as an amendment. A motion was passed to approve the proposed amendment, including the revised language, and to hold the amendment until the issue has been considered by the other rules committees. Professor Gibson advised the Committee about several stylistic suggestions from the reporter for the Civil Rules Committee, and the Committee agreed that the language approved at this meeting is subject to change as the other rules committees move forward in their discussions, and that it will be discussed at the Committee's fall meeting.

(B) Suggestion 15-BK-E to amend or eliminate Rule 4003(c), which currently allocates the burden of proof in exemption litigation.

Tab 4 B: Memo of March 4, 2016 by Professor Harner.
-Supplemental Memorandum of February 11, 2016.

Judge Harris introduced Suggestion 15-BK-E, noting that the Committee had discussed this matter on a preliminary basis at its fall 2015 meeting. Professor Harner then explained the structure of Rule 4003(c), which allocates the burden of proof to the objecting party in exemption litigation, and the general issues raised by Suggestion 15-BK-E. The primary issue posed by the suggestion is whether the federal bankruptcy rules or the law governing the rule of decision controls the burden of proof in exemption litigation. Under the Supreme Court's holding in *Hanna v. Plumer*, 380 U.S. 460 (1965), a federal rule promulgated under the Rules Enabling Act is valid so long as it is within Congress's Article I power and is within the scope of the Rules Enabling Act. Considering the parameters of the Rules Enabling Act, and because several states characterize the burden of proof as being procedural, Rule 4003(c) meets the Rules Enabling Act test. The basic test for whether a rule is within the scope of the Rules Enabling Act is whether the rule "really regulates procedure." Because there is a strong argument that Rule 4003(c) does really regulate procedure, the subcommittee concluded that there is no need to amend Rule 4003(c) at this time. Although the recommendation is to take no action, the issue deserves monitoring as more case law develops.

The Committee discussed this suggestion and adopted the subcommittee's recommendation to take no action at this time, but to continue to monitor the matter.

5. Report by the Subcommittee on Forms.

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

Tab 5A: Memo of March 7, 2016 by Professor Gibson.
-Proposed Rules 3015 and 3015.1.

Judge Dow provided a brief history of the Chapter 13 plan project. Following the two rounds of publication, a compromise regarding the plan was reached involving an opt-out procedure for the official plan form. In evaluating and implementing the compromise, the subcommittee gathered informal input from relevant chapter 13 constituencies. The opt-out

proposal would require the use of a national form for chapter 13 plans unless a district promulgated its own form that met the requirements specified in a new rule. At the fall 2015 meeting, the Committee approved proposed Official Form 113 and the related amendments to Rules 2002, 3002, 3007,[1] 3012, 4003, 5009, 7001, and 9009, but agreed to defer submitting those items to the Standing Committee. The deferral was to allow the Committee to further consider the opt-out proposal and the necessity, timing, and scope of any republication.

The subcommittee considered these issues and reached out to the relevant groups regarding the proposed amendments to Rule 3015 and new Rule 3015.1, as well as the republication issue. Several groups supported publication of the rules implementing the opt-out proposal. Based on its review, the subcommittee recommended that the Committee approve the publication of the amendment to Rule 3015 and new Rule 3015.1. The rules will implement the opt-out proposal. The subcommittee also recommended the approval of a shortened comment period that would permit for an effective date of December 2017 for the chapter 13 plan form and all related rules. Judge Isgur spoke briefly regarding his support (and his knowledge of general support among his colleagues) for this proposal.

A motion was made to approve the recommendation to publish Rules 3015 and 3015.1 on a shortened comment period, starting in July 2016, with one public hearing, and a proposed effective date of December 2017. 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.

Tab 5B: Memo of March 3, 2016 by Professor Harner.
-Appendices A and B.

Professor Harner advised that the subcommittee recommends no action at this time. Based on research completed by Professor Harner and Jim Waldron, there is no indication of need for this rule change. Mr. Waldron surveyed the clerks of court, and Professor Harner examined the issue of unclaimed funds. Although unclaimed funds are an issue for the courts, it is not necessarily something for the Committee to resolve through the rule-making process. Also, many courts have local forms for changes of address, and it wasn't clear that the existence the local forms impacted the unclaimed funds problem. A suggestion was made to refer the issue to the Bankruptcy Committee.

6. Report by the Subcommittee on Business Issues.

(A) Recommendation regarding proposed amendments to Official Forms 25A, 25B, 25C, and 26 (including renumbering the forms as 425A, 425B, 425C, and 426).

[1] At the fall meeting, the Committee approved the amendments to Rule 3007 subject to further review by the Subcommittee on Business Issues. As discussed at item 6D, the Business Subcommittee recommends the approval of the published version of the amended rule.

Tab 6A: Memo of March 3, 2016 regarding Official Forms 425A, 425B, and 425C by Professor Harner.
Memo of March 3, 2016 regarding Official Form 426 by Professor Harner.
-Proposed Official Forms 425A, 425B, 425C, and 426.

Forms 425A, 425B, and 425C (formerly Forms 25A, 25B, and 25C) are used in small business cases. Official Forms 425A and 425B set forth an illustrative form plan of reorganization and disclosure statement, respectively, for small business debtors under chapter 11 of the Bankruptcy Code. Official Form 425C is the monthly operating report for small business debtors, which must be filed with the court and served on the U.S. Trustee under section 1107(a) of the Bankruptcy Code. The forms were revised to match the style of the forms modernization project, along with several substantive changes the subcommittee identified several places where Official Forms 425A, 425B, and 425C were inconsistent with the Bankruptcy Code, required additional information to explain fully the debtor's disclosure obligations, or contained duplicative questions. The subcommittee's working group received significant input on Form 425C from the Executive Office of the U.S. Trustee.

Form 426 (formerly Form 26) is used by chapter 11 debtors to disclose certain information regarding entities in which the debtors hold substantial or controlling interests, as mandated by Rule 2015.3. The subcommittee's working group updated the form to match the format used by the forms modernization project, clarified some of the questions, and revised the required exhibits.

The subcommittee recommended that the Committee approve Official Forms 425A, 425B, 425C, and 426 for publication with two minor edits, and a motion to approve the recommendation was passed.

(B) Suggestion 12-BK-H regarding a new rule allowing a district court to treat a bankruptcy court judgment as proposed findings of fact and conclusions of law.

Tab 6B: Memo of March 4, 2016 with proposed Rule 8018.1 by Professor Gibson.

The subcommittee is proposing a simplified version of the original proposed amendment to Rule 9033, now new Rule 8018.1. The original proposal was considered at the fall 2015 meeting and returned to the subcommittee for further discussion. The rule was changed from an amendment to Rule 9033 to new Rule 8018.1 based on a suggestion at the fall meeting to place the rule within the bankruptcy appellate rules (the Part VIII Rules). The case citation to *Executive Benefits Insurance Agency v. Arkison*, 134 S. Ct. 2165 (2014) was retained in the committee note to explain the basis for the rule. The revised amendment is recommended for publication.

An issue was raised as to whether the rule was necessary, given that it repeats the holding in *Arkison*. Several members commented that the rule is helpful. Professor Gibson noted that the citation to *Arkison* is a reminder to future committee members that if the case is overruled,

the rule must be re-visited. An issue was raised whether the rule should also address circuit court bankruptcy appeals as well.

A motion was made to approve the rule as presented for publication and the motion was approved.

(C) Report on preliminary research on noticing issues in bankruptcy cases.

Tab 6C: Memo of March 4, 2016 by Professor Harner including consideration of Suggestions 12-BK-M, 12-BK-B, 15-BK-H, and Comment BK-2014 0001-0062 (includes Appendices A, B, and C).
-Appendix D (Memo to reporters and attachment).

Professor Harner completed preliminary research on various noticing issues, and provided a chart of all bankruptcy rule noticing provisions. Unlike other rules, the bankruptcy rules are fairly onerous in terms of noticing responsibilities. Several specific suggestions regarding noticing have been submitted. The subcommittee considered whether to complete a review of all noticing in the bankruptcy rules. The general view was that the burdens and costs often associated with noticing under the current rules may be reduced by the continued use of electronic noticing. The rules committees in general are considering changing electronic noticing as a coordinated effort, and it makes sense to wait to see these changes prior to making any changes to the rules regarding noticing in bankruptcy. The subcommittee will continue to monitor the work of the other committees, and any changes in technology that impact noticing. In addition, the subcommittee indicated that it will review the specific suggestions and comments received to date concerning noticing issues in bankruptcy cases and report back to the full Committee with any specific recommendations.

(D) Recommendation to remove a previously approved amendment to Rule 3007(a) from the chapter-13-plan-form package of rule amendments and that it be reconsidered in connection with the Advisory Committee's noticing project.

This issue was moved from the consent agenda to the discussion agenda. The subcommittee recommends approving Rule 3007(a)(2) with subparagraph (b) deleted (as originally proposed prior to the fall 2015 meeting), and to leave any remaining issues with the rule for consideration as part of the noticing project.

A motion was made to approve the recommendation to include the originally published version of Rule 3007(a) as part of the chapter 13 package, and the motion was approved.

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

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

Tab 7A: Memo of March 7, 2016 by Professor Gibson.

-Proposed Rules 8002, 8011, 8013, 8015, 8016, 8017, 8022.
-Appendix to Part VIII Rules length limits.
-Proposed Official Form 417A (Notice of Appeal).
-Proposed Official Form 417C (Certificate of Compliance with Type-Volume Limit, Typeface Requirements and Type-Style Requirements).
-Proposed Director's Form 4170 (Inmate Filer's Declaration).

Several amendments were needed to parallel the amended Federal Rules of Appellate Procedure that will likely go into effect in December 2016. When the Committee revised the Part VIII rules, the decision was made to maintain consistency with the Appellate Rules. The proposed amendments to Rules 8002, 8011, 8013, 8015, 8016, 8017, and 8022 are necessary to maintain the same language. The proposed amendments include the length limits adopted by the Appellate Rules Committee.

In addition, the subcommittee recommends the publication of amendments to Official Forms 417A and 417C and a new appendix to the Part VIII rules that sets out all of the Part VIII document-length limits. Finally, it proposes a Director's form for an inmate filer's declaration, to be promulgated when the other rule and form amendments go into effect (likely December 2018).

Professor Gibson noted several small edits to the proposed amended rules. Also, the proposed amendments to Rule 8017 are meant to go forward on the same publication schedule as the proposed amended Appellate Rules, however, the Appellate Committee is reconsidering the language of the amendment. The subcommittee's recommendation is to track the Appellate Committee's language when it is finalized. Once the changes are adopted by the Appellate Committee, this Committee can decide whether to adopt the proposed language.

Professor Gibson also explained that two amendments to the Appellate Rules were approved for publication by the Appellate Rules Committee but the subcommittee recommends that the Committee not adopt them. The first is a rule for staying the mandate, which is inapplicable to the Part VIII rules. The second was the timing for reply briefs, and the Part VIII rules already deviate from the Appellate Rules in this respect.

A motion was made to approve the recommendation to publish the Part VIII rules, along with the amended Official Forms, and proposed Director's Form. The motion was approved.

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

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

The Civil Rules Committee will consider amendments to Civil Rule 5(d) at its meeting this spring. Professor Harner noted that the Criminal and Appellate Rules Committees also were considering amendments to their respective companion rules on electronic filing and service. The Committee would continue to monitor developments with respect to these companion rules.

Professor Gibson explained that the Committee previously approved amendments to Rule 5005(a)(2) that would track the current proposed amendments to Civil Rule 5(d). The Committee discussed the potential value to submitting the amendments to Rule 5005(a)(2) to the Standing Committee for publication on the same schedule as that pursued by the Civil Rules Committee for Civil Rule 5(d) and authorized Professor Gibson to do so with any necessary non-substantive conforming changes.

9. Coordination with Other Committees.

Judge Ikuta advised that the topic is on the agenda to promote more coordination and communication between the five advisory committees, as well as the Standing Committee, regarding potential rule amendments. There should be a heavy presumption in favor of parallel language. An example is the current electronic service rule provisions, for which the Criminal Rules Committee is going a different course for specific reasons. Professor Gibson stated that generally, one committee should lead the way on each issue. She noted the amendments regarding redaction as a good example of the need for coordination. Professor Harner created a chart with rule amendment cross-references for bankruptcy. Rebecca Womeldorf commented on the role of the Rules Committee Support Office (RCSO) in terms of coordination. The RCSO could provide alerts when a suggestion or possible rule amendment seems to impact more than one of the advisory committees, including other Judicial Conference committees.

Information Items

10. Future meetings: Fall 2016 in Washington D.C.

The Committee members will consider the list of hub cities for the spring 2017 meetings, and make a decision regarding location.

11. Deferred Recommendations.

The following previously approved recommendations will be included in the report of this meeting and submitted to the Standing Committee at its next meeting:

- Recommendation to publish amendment to line 8 of Official Form 309F. *Approved at fall 2015 Advisory Committee meeting.*

-Recommendation to publish amendments to Rules 8002 (Time for Filing Notice of Appeal), 8006 (Certifying a Direct Appeal to the Court of Appeal), and 8023 (Voluntary Dismissal). *All approved at fall 2015 Advisory Committee meeting.*

The following recommendations for final approval, all approved at the fall 2015 Advisory Committee meeting, will be bundled with the proposed amendments to Rules 3015 and 3015.1 at Discussion Agenda 5 and submitted to the Standing Committee in the future.

-Chapter 13 Plan Form (Official Form 113) and associated Rules 2002, 3002, 3012, 4003,

5009, 7001, and 9009.

12. New business.

There is one new suggestion regarding Form 101, and the matter was referred to the Forms Subcommittee.

13. Adjourn.

Proposed Consent Agenda

The Chair and Reporters proposed the following items for study and consideration prior to the Advisory Committee's meeting. Other than item 3A, none of the matters were moved to the Discussion Agenda. On motion, the items on the Consent Agenda were approved.

1. Subcommittee on Consumer Issues.

(A) Recommendation of no action regarding Suggestion 14-BK-G to remove Social Security Number from mailed or electronically distributed 341 notices.

Tab Consent 1A: Memo of March 7, 2016 by Professor Gibson.

(B) Report on comments concerning proposed amendment to Rule 1006(b) (payment of filing fees in installments) and recommendation to approve the amendment.

Tab Consent 1B: Memo regarding Rules 1001 and 1006(b) of March 3, 2016 by Professors Gibson and Harner.
-Proposed Rule 1006(b).

2. Subcommittee on Forms.

(A) Recommendation to approve technical changes to Official Bankruptcy Forms 106E/F, 119, 201, 206 Summary, 206E/F, 309A, 309I, 423, and 424.

Tab Consent 2A: Memo of February 29, 2016 by Ms. Healy and Mr. Myers.

(B) Recommendation of no action regarding suggestion 15-BK-J (seeking clarification of proposed amendments to Rule 9009).

Tab Consent 2B: Memo of March 2, 2016 by Professor Gibson.

(C) Recommendation of no action regarding suggestion 16-BK-A concerning NAICS code on Official Form 201.

Tab Consent 2C: Memo of March 2, 2016 by Professor Gibson.

3. Subcommittee on Business Issues.

(A) Recommendation to remove a previously approved amendment to Rule 3007(a) from the chapter-13-plan-form package of rule amendments and that it be reconsidered in connection with the Advisory Committee's noticing project.

Tab Consent 3A: Memo of March 3, 2016 by Professor Gibson.

(B) Report on comments and recommendation concerning proposed amendment to Rule 1001(scope of rules and forms) and recommendation to approve the amendment.

Consent Tab 3B: Memo regarding Rules 1001 and 1006(b) of March 3, 2016 by Professors Gibson and Harner.
-Proposed Rule 1001.

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TAB 3A

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MINUTES
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
Meeting of June 6, 2016 | Washington, D.C.

TABLE OF CONTENTS

ATTENDANCE

The Judicial Conference on Rules of Practice and Procedure held its fall meeting in Washington, D.C., on June 6, 2016. The following members participated in the meeting:

Judge Jeffrey S. Sutton, Chair
Associate Justice Brent E. Dickson
Roy T. Englert, Jr., Esq.
Daniel C. Girard, Esq.
Judge Neil M. Gorsuch
Judge Susan P. Graber
Professor William K. Kelley
Judge Patrick J. Schiltz
Judge Amy St. Eve
Judge Richard C. Wesley
Judge Jack Zouhary

The following attended on behalf of the advisory committees:

Advisory Committee on Appellate Rules –
Judge Steven M. Colloton, Chair
Professor Gregory E. Maggs, Reporter

Advisory Committee on Bankruptcy Rules –
Judge Sandra Segal Ikuta, Chair
Professor S. Elizabeth Gibson, Reporter
Professor Michelle M. Harner, Associate Reporter

Advisory Committee on Civil Rules –
Judge John D. Bates, Chair
Professor Edward H. Cooper, Reporter
Professor Richard L. Marcus, Associate Reporter

Advisory Committee on Criminal Rules –
Judge Donald W. Molloy, Chair
Professor Sara Sun Beale, Reporter
Professor Nancy J. King, Associate Reporter

Advisory Committee on Evidence Rules –
Judge William K. Sessions III, Chair
Professor Daniel J. Capra, Reporter

The Honorable Sally Quillian Yates, Deputy Attorney General, represented the Department of Justice, along with Diana Erbsen, Joshua Gardner, Elizabeth J. Shapiro, and Natalia Sorgente.

Other meeting attendees included: Judge David G. Campbell; Judge Robert M. Dow; Judge Paul W. Grimm; Sean Marlaire, staff to the Court Administration and Case Management Committee (CACM); Professor Bryan A. Garner, Style Consultant; Professor R. Joseph Kimble, Style Consultant; and Professor Joseph F. Spaniol, Jr., Consultant.

Providing support to the Committee:

Professor Daniel R. Coquillette	Reporter, Standing Committee
Rebecca A. Womeldorf	Secretary, Standing Committee
Julie Wilson	Attorney Advisor, RCSO
Scott Myers	Attorney Advisor, RCSO
Bridget M. Healy	Attorney Advisor, RCSO
Shelly Cox	Administrative Specialist
Hon. Jeremy D. Fogel	Director, FJC
Emery G. Lee	Senior Research Associate, FJC
Tim Reagan	Senior Research Associate, FJC
Derek A. Webb	Law Clerk, Standing Committee
Amelia G. Yowell	Supreme Court Fellow, AO

INTRODUCTORY REMARKS

Judge Sutton called the meeting to order. He first acknowledged a number of imminent departures from the Standing Committee effective October 1, 2016: Justice Brent Dickson, Roy Englert, Judge Neil Gorsuch, and Judge Patrick Schiltz are ending their terms as members of the Standing Committee and Judge Steve Colloton is ending his term as Chair of the Appellate Rules Advisory Committee, a position that will be assumed by Judge Gorsuch. Judge Sutton offered remarks on the contributions each has made to the Committee over the years and warmly thanked them for their service.

Judge Sutton recognized three individuals for reaching milestones of service to the Committee. Rick Marcus has served for twenty years as the Associate Reporter to the Advisory Committee on Civil Rules. Dan Capra has served for twenty years as the Reporter to the Advisory Committee on Evidence Rules. And Joe Spaniol has served twenty-five years as a style consultant to the Standing Committee.

Finally, Dan Coquillette took a moment to thank Judge Sutton, whose tenure as Chair of the Standing Committee comes to an end October 1, 2016.

APPROVAL OF THE MINUTES OF THE LAST MEETING

Upon a motion by a member, seconded by another, and by voice vote: **The Standing Committee approved the minutes of the January 7, 2016 meeting.**

VISIT OF CHIEF JUSTICE ROBERTS

Chief Justice Roberts and Jeffrey Minear, the Counselor to the Chief Justice, visited the Standing Committee. Chief Justice Roberts made some brief remarks. He thanked the members of the Committee for their service and acknowledged, as an alumnus of the Appellate Rules Committee himself, that such service could be a significant commitment of time. And he congratulated the Committee on the new discovery rules that went into effect on December 1, 2015, rule amendments he highlighted in his 2015 Year-End Report on the Federal Judiciary.

REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES

Judge Sessions and Professor Capra provided the report on behalf of the Advisory Committee on Evidence Rules, which met on April 29, 2016, in Washington, D.C. Judge Sessions presented two action items and a number of information items.

Action Items

RULE 803(16) – The first matter for final approval was an amendment to Rule 803(16), the ancient documents exception to the hearsay rule, to limit its application to documents prepared before January 1, 1998. The version of Rule 803(16) published for comment would have eliminated the exception entirely. After hearing from many lawyers who continue to rely on the ancient documents exception, the Advisory Committee decided against eliminating the exception. Instead, the Advisory Committee revised its proposal to provide a cutoff date for the application of the exception. The Advisory Committee decided against leaving the exception in its current form because, unlike certain "ancient" hard copy documents, the retention of electronically-stored information beyond twenty years does not by itself suggest reliability. Judge Sessions acknowledged that any cutoff date will have a degree of arbitrariness, but also observed that electronically-stored information (known as "ESI") first started to explode around 1998 and that the ancient documents exception itself set an arbitrary time period of twenty years for its applicability.

Upon a motion by a member, seconded by another, and by voice vote: **The Standing Committee unanimously approved the proposed amendment to Rule 803(16), as amended after publication, for submission to the Judicial Conference for final approval.**

RULE 902 (13) & (14) – The second matter for final approval was an amendment to Rule 902 to add two new subdivisions ((13) and (14)) that would allow for the authentication of certain electronic evidence through certification by a qualified person without requiring that person to testify in person. The first provision would allow self-authentication of machine-generated information upon a submission of a certification prepared by a qualified person. The second provision would provide a similar certification procedure for a copy of data taken from an electronic device, medium, or file. The proposals for new Rules 902(13) and 902(14) would have the same effect as current Rules 902(11) and 902(12), which permit a foundation witness to establish the authenticity of business records by way of certification. One Committee member suggested providing instructions on the application of the rule with the inclusion of examples in the Committee Note. After discussion, Professor Capra agreed to do that.

Upon a motion by a member, seconded by another, and by voice vote: **The Standing Committee unanimously approved the proposed amendments to Rule 902 (13) and (14) for submission to the Judicial Conference for final approval.**

Information Items

Judge Sessions highlighted several information items on behalf of the Advisory Committee.

GUIDE FOR AUTHENTICATING ELECTRONIC EVIDENCE – The Standing Committee discussed the use and dissemination of the draft Guide for Authenticating Electronic Evidence. Written by Judge Grimm, Gregory Joseph, and Professor Capra, the manual would be for the use of the bench and bar and can be amended as necessary to keep pace with technological advances. The manual will be published by the Federal Judicial Center (FJC). The manual is not an official publication of the Advisory Committee itself. The members of the Standing Committee discussed the manual, noting its great value to judges and practitioners who regularly deal with the issue of authenticating electronic evidence, and expressed deep gratitude to its three authors for their work creating it and to the FJC for its assistance with publication.

POSSIBLE AMENDMENTS TO THE NOTICE PROVISIONS IN THE EVIDENCE RULES – The Advisory Committee has been considering ways to amend and make more uniform several notice provisions throughout the Federal Rules of Evidence. For the notice provision of Rule 807(b), the Residual Exception to the hearsay rule, the Advisory Committee is inclined to add a good cause exception to excuse lack of timely notice of the intent to offer statements covered under this exception. The Advisory Committee is also inclined to require that notice under 807(b) be written and not just oral. For the notice provision of Rule 404(b), the Advisory Committee is inclined to remove the requirement that the defendant in a criminal case must first specifically request that the government provide notice of their intent to offer evidence of previous crimes or other bad acts against the defendant. The Advisory Committee concluded that this requirement in Rule 404 was an unnecessary trap for the unwary lawyer and differs from most local rules. Finally, the Advisory Committee has concluded that the notice provisions in Rules 412, 413, 414, and 415 should not be changed through the Rules Enabling Act process as those rules were congressionally enacted and, in any event, are rarely used.

RESIDUAL EXCEPTION: RULE 807 – Judge Sessions reported on the symposium held in connection with the Advisory Committee's fall 2015 Chicago meeting regarding the potential elimination of the categorical hearsay exceptions (excited utterance, dying declaration, etc.) in favor of expanding the residual hearsay exception. The lawyers who testified before the Advisory Committee unanimously opposed the elimination of the hearsay exceptions. The Advisory Committee agrees that the exceptions should not be eliminated. But the Advisory Committee continues to consider expansion of the residual exception to allow the admission of reliable hearsay even absent "exceptional circumstances." The Advisory Committee included a working draft of amended Rule 807 in the agenda materials. It is planning a symposium in the fall to continue to discuss possible amendments to Rule 807, to be held at Pepperdine School of Law.

TESTIFYING WITNESS'S PRIOR INCONSISTENT STATEMENT: RULE 801(D)(1)(A) – The Advisory Committee is considering an expansion beyond what Rule 801(d)(1)(A) currently allows, which

are prior inconsistent statements made under oath during a formal proceeding. The Advisory Committee has rejected the idea of expanding the rule to cover all prior inconsistent statements, but continues to consider inclusion of prior inconsistent statements that have been video recorded.

EXCITED UTTERANCES: RULE 803(2) – The Advisory Committee considered four separate proposals to amend or eliminate Rule 803(2) on the grounds that "excited utterances" are not necessarily reliable. It determined not to take up any of the suggestions given the impact on other rules, as well as an FJC report regarding various social science studies on Rule 803(2) which provided some empirical support for the proposition that immediacy and excitedness tend to guarantee reliability.

CONVERTING CATEGORICAL HEARSAY EXCEPTIONS INTO GUIDELINES – At the suggestion of Judge Milton Shadur, the Advisory Committee considered reconstituting the categorical hearsay exceptions as standards or guidelines rather than binding rules. The Advisory Committee ultimately decided against doing so.

CONSIDERATION OF A POSSIBLE AMENDMENT TO RULE 803(22) – At the suggestion of Judge Graber, the Advisory Committee considered eliminating two exceptions to Rule 803(22): convictions from nolo contendere pleas and misdemeanor convictions. The Advisory Committee concluded that retaining each of these exceptions was warranted.

RULE 704(B) – Similarly, the Advisory Committee determined not to proceed with suggestions to eliminate Rule 704(b) or to create a specific rule regarding electronic communication and hearsay.

IMPLICATIONS OF *CRAWFORD* – The Advisory Committee continues to monitor case law developments after the Supreme Court's decision in *Crawford v. Washington*, in which the Court held that the admission of "testimonial" hearsay violates the accused's right to confrontation unless the accused has an opportunity to confront and cross-examine the declarant.

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Judge Colloton and Professor Maggs provided the report on behalf of the Advisory Committee on Appellate Rules, which met on April 5, 2016, in Denver, Colorado. Judge Colloton advised that Judge Gorsuch will be the new chair of the Advisory Committee as of October 2016.

Judge Colloton reported that the Advisory Committee had four action items in the form of four sets of proposed amendments to be published this upcoming summer for which it sought the approval of the Standing Committee.

Action Items

CONFORMING AMENDMENTS TO RULES 8, 11, AND 39(E)(3) – The first set of amendments recommended for publication were amendments to Rules 8(a)(1)(B), 8(a)(2)(E), 8(b), 11(g), and 39(e)(3) to conform to the amendment to Rule of Civil Procedure 62 by revising any clauses that use the antiquated term "supersedeas bond." The language would be changed to "bond or other

security" as appropriate in each of the rules. Judge Colloton noted that the Civil Rules Committee would discuss the amendment to Rule 62 later in the meeting. He added that the Style Consultants suggested a minor edit to proposed Rule 8(b) (adding the word "a" before "stipulation" on line 16) after the publication of the agenda book materials, and that the Advisory Committee accepted the edit. The Standing Committee discussed the phrase "surety or other security provider" and whether "security provider" contained within it the term "surety" and made minor edits to the proposed amendments.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for publication for public comment the proposed conforming amendments to Rules 8(a)(1)(B), 8(a)(2)(E), 8(b), 11(g), and 39(e)(3), contingent on the Standing Committee's approval of the proposed amendment to Civil Rule 62 later in the meeting.**

LIMITATIONS ON THE FILING OF AMICUS BRIEFS BY PARTY CONSENT: RULE 29(A) – The proposed amendment to Rule 29(a) would allow a court to prohibit or strike the filing of an amicus brief based on party consent where the filing of the brief might cause a judge's disqualification. This amendment would ensure that local rules that forbid the filing of an amicus brief when the filing could cause the recusal of one or more judges would be consistent with Rule 29(a). Professor Coquillette observed that, as important as preserving room for local rules may be, congressional committees in the past have responded to the proliferation of local rules by urging the Rules Committee to allow them only if they respond to distinctive geographic, demographic, or economic realities that prevail in the different circuits. Judge Colloton explained that this proposed amendment is particularly relevant to the rehearing en banc process which traditionally has been decentralized and subject to local variations. He further explained that the Advisory Committee discussed and rejected expanding the exception to other types of amicus filings. The Advisory Committee made minor stylistic edits to the proposed amended rule.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for publication for public comment the proposed amendment to Rule 29(a)**.

APPELLATE FORM 4 – Litigants seeking permission to proceed in forma pauperis are currently required by Appellate Form 4 to provide the last four digits of their Social Security number. Given the potential security and privacy concerns associated with Social Security numbers, and the consensus of the clerks of court that the last four digits of a Social Security number are not needed for any purpose, the Advisory Committee proposes to amend Form 4 by deleting this question.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved for publication for public comment the proposed amendment to Appellate Form 4**.

REVISION OF APPELLATE RULE 25 TO ADDRESS ELECTRONIC FILING, SIGNATURES, SERVICE, AND PROOF OF SERVICE – In conjunction with the publication of the proposed amendment to Civil Rule 5, and in an effort to achieve an optimal degree of uniformity, the Advisory Committee

proposes to amend Appellate Rule 25 to address electronic filing, signatures, service, and proof of service. The proposed revision generally requires all parties represented by counsel to file electronically. The Standing Committee discussed the use of "person" versus "party" throughout the proposed amended rule, as well as the use of these phrases in the companion Criminal and Civil Rules. One minor stylistic amendment was proposed. The Standing Committee decided to hold over the vote to approve publication of the proposed amendment to Rule 25 until the discussion regarding Civil Rule 5.

Information Item

Judge Colloton discussed whether Appellate Rules 26.1 and 29(c) should be amended to require additional disclosures to provide further information for judges in determining whether to recuse themselves. It is an issue that the Advisory Committee will consider at its fall meeting.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Bates and Professors Cooper and Marcus provided the report on behalf of the Advisory Committee on Civil Rules, which met on April 14, 2016, in Palm Beach, Florida. The Advisory Committee had four action items in the form of three sets of proposed amendments to be published this upcoming summer and the pilot project proposal.

Action Items

RULE 5 – The Advisory Committees for Civil, Appellate, Bankruptcy, and Criminal Rules have recently worked together to create uniform provisions for electronic filing and service across the four sets of rules to achieve an optimal degree of uniformity. Professor Cooper explained that the Advisory Committee for Criminal Rules wisely decided to create their own stand-alone rule, proposed Criminal Rule 49.

With regard to filing, the proposed amendment to Rule 5 requires a party represented by an attorney to file electronically unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule. It allows unrepresented parties to file electronically if permitted by court order or local rule. And it provides that an unrepresented party may be required to file electronically only by court order or by a local rule that includes reasonable exceptions. Under the amended rule, a paper filed electronically would constitute a written paper for purposes of the rules.

With regard to service, the amended rule provides that a paper is served by sending it to a registered user by filing it with the court's electronic filing system or by sending it by other electronic means if that person consents in writing. In addition, service is complete upon filing via the court's electronic filing system. Rule 5(b)(3), which allows electronic service only if a local rule authorizes it, would be abrogated to avoid inconsistency with the amended rule.

The Standing Committee discussed the use of the terms "person" and "party" throughout Rule 5 and across other sets of rules and agreed to consider this issue further after the meeting.

Upon motion, seconded by a member, and on a voice vote: **The Committee unanimously approved the proposed amendments to Civil Rule 5 for publication for public comment**.

Upon motion, seconded by a member, and on a voice vote: **The Committee unanimously approved for publication for public comment the proposed amendment to Appellate Rule 25 that conforms to the amended Civil Rule 5**.

RULE 23 – Judge Bates detailed six proposed changes to Rule 23, many of which concern settlements in class action lawsuits. Rule 23(c)(2)(B) extends notice consideration to a class proposed to be certified for settlement. Rule 23(e) applies the settlement procedural requirements to a class proposed to be certified for purposes of settlement. Rule 23(e)(1) spells out what information parties should give the courts prior to notice and under what circumstances courts should give notice to the parties. Rule 23(e)(2) lays out general standards for approval of the proposed settlement. Rule 23(e)(5) concerns class action objections, requiring objectors to state to whom the objection applies, requiring court approval for any payment for withdrawing an objection or dismissing an appeal, and providing that the indicative ruling procedure be used if an objector seeks approval of a payment for dismissing an appeal after the appeal has already been docketed. Finally, Rule 23(f) specifies that an order to give notice based on a likelihood of certification under Rule 23(e)(1) is not appealable and extends to 45 days the amount of time for an appeal if the United States is a party. Judge Robert Dow, the chair of the Rule 23 Subcommittee, explained the outreach efforts by the subcommittee and stated that many of the proposed changes would provide more flexibility for judges and practitioners. The Rule 23 Subcommittee, under Judge Dow's leadership and with research support from Professor Marcus, has devoted years to generating these proposed amendments, organized multiple conferences around the country with class action practitioners, and considered many other possible amendments.

Upon motion, seconded by a member, and on a voice vote: **The Committee unanimously approved the proposed package of amendments to Civil Rule 23 for publication for public comment**.

RULE 62 – Judge Bates reported that a subcommittee composed of members of the Appellate and Civil Rules Committees and chaired by Judge Scott Matheson laid the groundwork for amendments to Rule 62. The proposed amendment includes three changes to the rule. First, Rule 62(a) extends the automatic stay from 14 days to 30 days in order to eliminate the "gap" between the 14-day automatic stay and the 28 days allowed for various post-judgment motions. Second, it recognizes the court's authority to dissolve the automatic stay or replace it with a court-ordered stay for a longer duration. Third, Rule 62(b) clarifies that security other than a bond may be posted. Another organizational change is a proposed new subsection (d) that would include language from current subsections (a) and (c). Judge Bates added that the word "automatic" would be removed from the heading of Rule 62(c) and that conforming edits will be made to the proposed rule to accommodate changes made to the companion Appellate Rules. Professor Cooper stated that Rule 65.1 would be conformed to Appellate Rules 8, 11, and 39 after the conclusion of the meeting.

Upon motion, seconded by a member, and on a voice vote: **The Committee unanimously approved the proposed amendments to Civil Rule 62 for publication for public comment**. **It also approved granting to the Civil Rules Advisory Committee the authority to make amendments to Rule 65.1 to conform it to Appellate Rules 8, 11, and 39 with the goal of seeking approval of the Standing Committee in time to publish them simultaneously in August 2016. Finally, with the amendment to Civil Rule 62 officially approved for publication, it also approved for publication the proposed amendments to Appellate Rules 8(a)(1)(B), 8(a)(2)(E), 8(b), 11(g), and 39(e)(3) which all conform to the amended Civil Rule 62**.

PILOT PROJECTS – Judge Campbell provided the report of the Pilot Projects Subcommittee, which included participants from the Standing Committee, CACM, and the FJC. The Subcommittee has collected and reviewed a lot of information, including working with focus groups of lawyers with experience with these types of discovery regimes. As a result of this work, the Advisory Committee seeks approval to forward the Mandatory Initial Discovery Pilot Project and Expedited Procedures Pilot Project to the Judicial Conference for approval. The first project would test a system of mandatory initial discovery requests to be adopted in each participating court. The second would test the effectiveness of court-wide adoption of practices that, under the current rules, have proved effective in reducing cost and delay.

Judge Campbell proceeded to detail each pilot project and asked for comments and suggestions on the proposals. For the first pilot project, Judge Campbell explained the proposed procedures. The Standing Committee then discussed whether or not all judges in a district would be required to participate in the pilot project, how to choose the districts that should participate, and how to measure the results of the pilot studies. Judge Bates noted the Advisory Committee's strong support of the project. Several Standing Committee members voiced their support as well.

For the second pilot project, many of the procedures are already available, and the purpose of the pilot project is to use education and training to achieve greater use of available procedures. Judge Campbell advised the Committee that CACM has created a case dashboard that will be available to judges via CM/ECF, and that judges will be able to use this tool to monitor the progress of their cases. The pilot would require a bench/bar meeting each year to monitor progress.

Upon motion, seconded by a member, and on a voice vote: **The Committee unanimously approved the recommendation to the Judicial Conference of the (i) Mandatory Initial Discovery Pilot Project and (ii) Expedited Procedures Pilot Project, with delegated authority for the Advisory Committee and the Pilot Projects Subcommittee to make refinements to the projects as discussed by the Committee.**

Information Items

EDUCATIONAL EFFORTS REGARDING 2015 CIVIL RULES PACKAGE – Judge Bates outlined some of the efforts undertaken by the Advisory Committee and the FJC to educate the bench and the bar about the 2015 discovery reforms of the Rules of Civil Procedure. Among other efforts, he mentioned the production of several short videos, a 90-minute webinar, plenary sessions at

workshops for district court judges and magistrate judges, segments on the discovery reforms at several circuit court conferences, and other programs sponsored by the American Bar Association.

Judge Bates advised that a subcommittee has been formed, chaired by Judge Ericksen, to consider possible amendments to Rule 30(b)(6). Professor Cooper stated that the Advisory Committee is considering amending Rule 81(c) in light of a concern that it may not adequately protect against forfeiture of the right to a jury trial after a case has been removed from state court.

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Molloy and Professors Beale and King provided the report for the Advisory Committee on Criminal Rules, which met on April 18, 2016, in Washington, D.C. He reported that the Advisory Committee had three action items in the form of three proposed amendments to be published this upcoming summer for which it sought the approval of the Standing Committee.

Action Items

RULE 49 – Judge Molloy explained the proposed new stand-alone rule governing electronic service and filing in criminal cases. The Advisory Committee determined to have a stand-alone rule for criminal cases rather than to continue the past practice of incorporating Civil Rule 5 by reference. The proposed amendments to Rule 49 track the general order of Civil Rule 5 rule and much of its language. Unlike the civil rule, Rule 49's discussion of electronic filing and service comes before nonelectronic filing and service in the new criminal rule. Both rules provide that an unrepresented party must file nonelectronically unless allowed to file electronically by court order or local rule. But one substantive difference between the two rules is that, under Civil Rule 5, an unrepresented party may be required to file electronically by court order or local rule. A second substantive difference is that all nonparties must file and serve nonelectronically in the absence of a contrary court order or local rule. This conforms to the current architecture of CM/ECF which only allows the government and the defendant to file electronically in a criminal case. Third, proposed Rule 49 contains language borrowed from Civil Rule 11(a) regarding signatures.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved the proposed amendments to Rules 49 for publication for public comment.**

RULE 45(C) – The proposed amendment to Rule 45(c) is a conforming amendment. It replaces the reference to Civil Rule 5 with a reference to Rule 49(a)(4)(C),(D), and (E).

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved the proposed amendment to Rules 45(c) for publication for public comment.**

RULE 12.4 – The proposed amendment to Rule 12.4, changes the required disclosures for statements under Rule 12.4 regarding organizational victims. It permits a court, upon the showing of good cause, to relieve the government of the burden of filing a statement identifying any organizational victim. The proposed amendments reflect changes to the Code of Judicial Conduct and require a party to file the Rule 12.4(a) statement within 28 days after the defendant's initial appearance. The Standing Committee briefly discussed similar potential changes to the Appellate Rules regarding disclosure of organizational victims. And the Advisory Committee discussed removing the word "supplemental" from the title and body of Rule 12.4(b) in order to avoid potential confusion.

Upon motion, seconded by a member, and on a voice vote: **The Standing Committee unanimously approved the proposed amendments to Rule 12.4 for publication for public comment.**

Information Items

Judge Molloy reviewed several of the pending items under consideration by the Advisory Committee. The Cooperator Subcommittee continues to consider the problem of risk of harm to cooperating defendants and the kinds of procedural protections that might alleviate this problem. The Subcommittee includes representatives from the Advisory Committee, Standing Committee, CACM, and the Department of Justice. The Advisory Committee has formed subcommittees to consider suggested amendments to Criminal Rule 16 dealing with discovery in complex criminal cases and Rule 5 of the Rules Governing Section 2255 Proceedings regarding petitioner reply briefs. And in response to an op-ed by Judge Jon Newman, the Advisory Committee will consider the wisdom of reducing the number of peremptory challenges in federal trials.

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Sandra Ikuta and Professors Gibson and Harner presented the report on behalf of the Advisory Committee on Bankruptcy Rules, which met on March 31, 2016, in Denver, Colorado. The Advisory Committee had nine action items, and sought final approval for three of the items: Rule 1001; Rule 1006, and technical changes to certain official forms.

Action Items

RULE 1001 – The first item was a request for final approval of Rule 1001, dubbed the "civility rule" by Judge Ikuta, which was published in August 2015 to track changes to Civil Rule 1. Judge Ikuta explained that the Advisory Committee considered the comments submitted, but made no changes to the published version of the amended rule.

Upon a motion by a member, seconded by another, and by voice vote: **The Committee unanimously approved the proposed amendments to Rule 1001 for submission to the Judicial Conference for final approval.**

RULE 1006 – The second item was a proposed change to Rule 1006(b), also published for comment in August 2015. The rule explains how a person filing a petition in bankruptcy can pay

the filing fee in installments, as allowed by statute. The proposed amendment clarified that courts may not refuse to accept petitions or summarily dismiss a case because the petitioner failed to make an initial installment payment at the time of filing (even if such a payment was required by local rule). Judge Ikuta said that the Advisory Committee considered the comments submitted, but made no changes to the published version of the amended rule.

Upon a motion by a member, seconded by another, and by voice vote: **The Committee unanimously approved the proposed amendments to Rule 1006 for submission to the Judicial Conference for final approval.**

TECHNICAL CHANGES TO OFFICIAL FORMS – Judge Ikuta next described the Advisory Committee's recommendation for retroactive approval of technical changes to nine official forms. She explained that the Judicial Conference at its March 2016 meeting approved a new process for making technical amendments to official bankruptcy forms. Under the new process, the Advisory Committee makes the technical changes, subject to retroactive approval by the Committee and report to the Judicial Conference. Judge Sutton thanked Judge Ikuta for developing the new streamlined approval process for technical changes to official bankruptcy forms.

Upon a motion by a member, seconded by another, and by voice vote: **The Committee unanimously approved the proposed technical changes to Official Forms 106E/F, 119, 201, 206, 206E/F, 309A, 309I, 423, and 424, for submission to the Judicial Conference for final approval.**

Judge Ikuta reported that the Advisory Committee had six additional action items in the form of six sets of proposed amendments to be published this upcoming summer for which it sought the approval of the Committee.

Before focusing on these specific recommendations, however, Judge Ikuta first suggested that the Committee adopt a procedure for more systematically coordinating publication and approval of amendments that affect multiple rules across different advisory committees. The chair recommended that the Rules Committee Support Office lead the coordination effort over the next year and that the Committee then evaluate whether further refinement of the process is needed. Judge Ikuta next explained and sought approval for a package of conforming amendments:

RULE 5005(A)(2) – Judge Ikuta said that the proposed amendments to Rule 5005(a)(2) would make the rule consistent with the proposed amendment to Civil Rule 5(d)(3).

RULES 8002(C), 8011(A)(2)(C), OFFICIAL FORM 417A, RULE 8002(B), RULES 8013, 8015, 8016, 8022, OFFICIAL FORM 417C, PART VIII APPENDIX, AND RULE 8017 – Judge Ikuta next discussed proposed changes to Rules 8002(c), 8011(a)(2)(C), and Official Form 417A; Rule 8002(b) (regarding timeliness of tolling motions); Rules 8013, 8015, 8016, 8022, Official Form 417C, and Part VIII Appendix (regarding length limits), and Rule 8017 (regarding amicus filings). The rule and form changes were proposed to conform to pending and proposed changes to the Federal Rules of Appellate Procedure.

RULE 8002(A)(5) – The new subdivision (a)(5) to Rule 8002 includes a provision similar to FRAP 4(a)(7) specifying when a judgment or order is "entered" for purposes of appeal.

Upon a motion by a member, seconded by another, and by voice vote: **The Committee unanimously approved the package of conforming amendments to Rules 5005(a)(2), 8002(C), 8011(a)(2)(C), Official Form 417C, Part VIII Appendix, Rule 8017, and Rule 8002(a)(5) for publication for public comment.**

RULES 3015 AND 3015.1 – Judge Ikuta explained that the Advisory Committee published the first version of the plan form and nine related rule amendments in August 2013. The Advisory Committee received a lot of comments, made significant changes, and republished in 2014. During the second publication, the Advisory Committee again received many comments, including one comment signed by 144 bankruptcy judges who opposed a national official form for chapter 13 plans. Late in the second comment period, the Advisory Committee received a comment proposing that districts be allowed to opt out of the national plan if their local plan form met certain requirements. Many of the bankruptcy judges who opposed a national plan form supported the "opt-out" proposal.

At its fall 2015 meeting, the Advisory Committee approved the national plan form and related rule amendments, but voted to defer submitting those items for final approval pending further consideration of the opt-out proposal. The Advisory Committee reached out to bankruptcy interest groups, made refinements to the opt-out proposal, and received support from most interested parties, including many of the 144 opposing judges.

The proposed amendment to Rule 3015 and new Rule 3015.1 would implement the opt-out provision. Rule 3015 would require that the national chapter 13 plan form be used unless a district adopts a local district-wide form plan that complies with requirements set forth in proposed new Rule 3015.1. The Advisory Committee determined that a third publication period would allow for full vetting of the opt-out proposal, but it recommended a shortened three-month public comment period because of the narrow focus of the proposed change. To avoid confusion, the Advisory Committee recommended that opt-out rules be published in July 2016, a month earlier than the rules and forms to be published in August 2016.

Upon a motion by a member, seconded by another, and by voice vote: **The Committee unanimously approved the proposed amendments to Rule 3015 and 3015.1 for publication for public comment.**

RULE 8006 – The Advisory Committee proposed to amend subdivision (c) of Rule 8006 to allow a bankruptcy court, bankruptcy appellate panel, or district court to file a statement in support of or against a direct appeal certification filed by the parties.

Upon a motion by a member, seconded by another, and by voice vote: **The Committee unanimously approved the proposed amendment to Rule 8006 for publication for public comment.**

RULE 8018.1 –This new rule would help guide district courts in light of the Supreme Court's *Stern v. Marshall* trilogy of cases (*Stern, Arkison* and *Wellness*). Proposed Rule 8018.1 would address a situation where the bankruptcy court has mistakenly decided a *Stern* claim by allowing the district court to treat the bankruptcy court's erroneous final judgment as proposed findings of fact and conclusions of law to be decided de novo without having to remand the case to the bankruptcy court.

Upon a motion by a member, seconded by another, and by voice vote: **The Committee unanimously approved the proposed Rule 8018.1 for publication for public comment.**

RULE 8023 – The proposed amendment to Rule 8023 would add a cross-reference to Rule 9019 to remind the parties that when they enter a settlement and move to dismiss an appeal, they may first need to obtain the bankruptcy court's approval of the settlement first.

Upon a motion by a member, seconded by another, and by voice vote: **The Committee unanimously approved the proposed amendment to Rule 8023 for publication for public comment.**

OFFICIAL FORM 309F – Judge Ikuta said that the Advisory Committee recommended publication of amendments to five official bankruptcy forms. The first of the five forms was a proposed amendment to Official Form 309F. The form currently requires that a creditor who wants to assert that certain corporate and partnership debts are not dischargeable must file a complaint by a specific deadline. A recent district court decision evaluated the relevant statutory provisions and concluded that the form is incorrect and that no deadline should be imposed. The Advisory Committee agreed that the statute is ambiguous, and therefore proposed that Official Form 309F be amended to avoid taking a position.

Upon a motion by a member, seconded by another, and by voice vote: **The Committee unanimously approved the proposed amendment to Official Form 309F for publication for public comment.**

OFFICIAL FORMS 25A, 25B, 25C, AND 26 – Four forms, Official Forms 25A, 25B, 25C (the small business debtor forms), and 26 (Periodic Report Regarding Value, Operations, and Profitability) were renumbered as 425A, 425B, 425C and 426 to conform with the remainder of the Forms Modernization Project, and revised to be easier to understand and more consistent with the Bankruptcy Code.

Upon a motion by a member, seconded by another, and by voice vote: **The Committee unanimously approved the proposed amendment to Official Forms 25A, 25B, 25C, 26 for publication for public comment.**

Information Items

Judge Ikuta, Professor Elizabeth Gibson, and Professor Michelle Harner discussed the Advisory Committee's two information items. The first item was about the status of the Advisory Committee's proposal to add a new subdivision (h) to Rule 9037 in response to a suggestion

from CACM. Judge Ikuta and Professor Gibson explained that although the Advisory Committee approved an amendment, it decided to delay its recommendation for publication until the Advisory Committees for Appellate, Criminal and Civil Rules can decide whether to add a similar procedure to their privacy rules. Professor Harner summarized the second information item regarding the Advisory Committee's decision not to recommend any changes at this time to Rule 4003(c) in response to a suggestion.

REPORT OF THE ADMINISTRATIVE OFFICE

STRATEGIC PLAN FOR THE FEDERAL JUDICIARY – Rebecca Womeldorf discussed the Executive Committee's *Strategic Plan for the Federal Judiciary* which lays out various goals and priorities for the federal judiciary. She invited members to review this report and offer any input or feedback that they might have to her or Judge Sutton for inclusion in communications back to the Executive Committee.

LEGISLATIVE REPORT – There are bills currently pending in the House of Representatives and Senate intended to prevent proposed Criminal Rule 41 from becoming effective. Members of the Rules Committee have discussed this proposed rule with various members of Congress to respond to their concerns and explain the purpose and limited scope of the proposed rule.

CONCLUDING REMARKS

Judge Sutton thanked the Reporters for all their impressive work and Rebecca Womeldorf and the Rules Committee Support Office for helping to coordinate the meeting. Professor Coquillette thanked Judge Sutton again for all of his work as Chair of the Standing Committee over the past four years. Judge Sutton concluded the meeting. The Standing Committee will next meet in Phoenix, Arizona, on January 3–4, 2017.

Respectfully submitted,

Rebecca A. Womeldorf
Secretary, Standing Committee

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

SUBJECT: COMMENTS ON RULES 3015 AND 3015.1; MINOR CHANGES TO OFFICIAL FORM 113 AND ITS COMMITTEE NOTE

DATE: OCTOBER 24, 2016

After over five years of deliberations, the Committee has before it a recommendation for final action on the chapter 13 plan form project. Specifically, the Subcommittee recommends that the Committee give final approval to amendments to Rule 3015 and to new Rule 3015.1 and that it approve minor changes to the national plan form—Official Form 113—and its Committee Note.

This memorandum begins in Part I with a recitation of the history of the project—for the benefit of the Committee's new members and to refresh the memories of everyone else. Part II then discusses the comments that were submitted following the July publication of Rules 3015 and 3015.1 and the changes that the Subcommittee recommends be made in response to those comments. Part III addresses minor formatting and technical changes proposed to be made to the versions of Form 113 and its Committee Note that were approved at the Committee's fall 2015 meeting. The memorandum ends with a summary of the Subcommittee's recommendations and an explanation of the remaining steps to implementation.

Part I. History of the Chapter 13 Plan Form Project

The Committee began considering the possibility of creating a chapter 13 plan Official Form at the 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. Approximately 150 comments were submitted. Because the Committee made significant changes to the form in response to comments, the revised form and rules were published again in August 2014.

At the spring 2015 meeting, the Committee considered the approximately 120 comments that were submitted after republication, many of which—including the joint comments of 144 bankruptcy judges—were strongly opposed to the adoption of a mandatory national form for chapter 13 plans. 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").[1] 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.

[1] Members of this group are Bankruptcy Judges Isgur, Efremsky, and Rebecca Connelly; chapter 13 trustees and past or present officers of the National Association of Chapter 13 Trustees George Stevenson, Rick Yarnell, and David Peake; and creditors' attorneys Michael Bates (Wells Fargo Bank), Alane Becket (Becket & Lee, LLP), and Karen Cordry (National Association of Attorneys General).

During the summer of 2015, the Forms Subcommittee, joined by former Committee chair Judge Gene Wedoff and chapter 13 trustee Jon Waage, considered how best to implement an opt-out proposal and how to respond to the substantive and stylistic comments that were submitted on the plan form and Rules 3002, 3015, and 9009 (the rules most closely associated with the opt-out proposal). The Consumer Subcommittee considered the comments submitted on Rules 2002, 3007, 3012, 4003, 5009, and 7001.

The Forms Subcommittee shared its proposed revisions of Official Form 113 and Rules 3002 and 3015 with members of the compromise group, some members of the consumer debtor bar, and some chapter 13 trustees. Prior to the fall 2015 meeting, the Committee received correspondence from the president of the National Association of Consumer Bankruptcy Attorneys ("NACBA") and from Representative John Conyers, Jr., the Ranking Member on the House Committee on the Judiciary, and Representative Hank Johnson, Ranking Member on the Subcommittee on Regulatory Reform, Commercial and Antitrust Law. They expressed concern that no representatives of consumer debtors had been involved in drafting the initial proposal from the compromise group and that the Advisory Committee might approve a version of that opt-out approach without publishing it for public comment.

At the fall 2015 meeting, the Committee gave approval to proposed Official Form 113 and related amendments to Rules 2002, 3002, 3007, 3012, 4003, 5009, 7001, and 9009, but it voted to defer submitting those items to the Standing Committee. This deferral was to allow the Committee to further consider the opt-out proposal and the necessity, timing, and scope of any republication. It directed the Forms Subcommittee to continue to obtain feedback on the opt-out proposal from a broad range of bankruptcy constituencies and to make a recommendation at the spring 2016 meeting regarding the need for additional publication.

The Subcommittee reached out to all relevant groups and invited them to provide feedback on the opt-out proposal, as set out in proposed Rules 3015 and 3015.1, as well as on whether they perceived a need for further publication. The following groups provided comments to the Subcommittee in response: National Bankruptcy Conference ("NBC"), National Conference of Bankruptcy Judges ("NCBJ"), National Association of Consumer Bankruptcy Attorneys ("NACBA"), the American Bankruptcy Institute's Consumer Committee, a large number of chapter 13 trustees whose comments were collected by the National Association of Chapter 13 Trustees, and an informal mortgage servicer group. While the bulk of the comments received were directed at the plan form itself, rather than at the opt-out proposal, three groups (NBC, NCBJ, and the mortgage servicers) and seven individual trustees did express support for allowing districts to opt out of a national plan form. In addition, Bankruptcy Judge Marvin Isgur (S.D. Tex.) circulated the opt-out proposal to the 144 bankruptcy judges who had submitted a letter in 2014 opposing a national plan form, and he reported that there was general acceptance of Rules 3015 and 3015.1 among the group.

The response of NACBA to the Subcommittee's outreach was relatively brief. The president of the organization said that he could not speak for the thousands of NACBA members, and he urged the Committee to publish the proposals that were being considered. He asserted that "adoption of the 'compromise' proposal without providing a new comment period would not comply with the law and [would] subject such to litigation and added controversy." NCBJ also advised that the opt-out proposal be published for public comment.

At the spring 2016 meeting, the Committee unanimously approved the Forms Subcommittee's recommendation that the amendments to Rule 3015 and proposed new Rule 3015.1 be published for public comment. The Committee also unanimously agreed that the

Committee should seek to publish Rules 3015 and 3015.1 on a truncated schedule. According to § 440.20.40(d) of the Guide to Judiciary Policy, "The Standing Committee may shorten the public comment period or eliminate public hearings if it determines that the administration of justice requires a proposed rule change to be expedited and that appropriate notice to the public can still be provided and public comment obtained." Because of the two prior publications and the narrow focus of the revised rules, the Committee believed that the usual 6-month comment period should be shortened so that an entire year could be eliminated from the period leading up to the effective date of the Committee's proposed rules and form.

The Standing Committee accepted the Committee's recommendation, and Rules 3015 and 3015.1 were published for public comment on July 1, 2016. The comment period ended on October 3. Eighteen written comments were submitted. In addition, five witnesses testified at a Committee hearing conducted telephonically on September 27; they also submitted their written testimony, which was posted along with the written comments.

Part II. The Comments and the Subcommittee's Proposed Changes

General Comments

BK-2016-0001-0003 – **Jeanette Hines** – Sees no problem with the proposal.

BK-2016-0001-0004 – **Ryan W. Johnson** (Clerk, Bankr. N.D.W.Va.) – By allowing various types of relief to be sought in the plan, the rules may create statistical coding problems for the clerk's office.

BK-2016-0001-0006 – **Judge Marvin Isgur** (Bankr. S.D. Tex.) – Strongly supports adoption of the two rules. They will enhance uniformity while also allowing flexibility in each district.

BK-2016-0001-0009 – **Bankruptcy Judges Roger Efremsky and Marvin Isgu**r (joint prepared testimony) – The rules should be adopted. The adoption of a mandatory national plan would cause problems, but the adoption of Rule 3015 and 3015.1 provides a compromise that reduces the confusion caused by multiple plans within a single district.

BK-2016-0001-0011 – **K. Michael Fitzgerald** (chapter 13 trustee) – The proposed rules should be adopted. They represent a creative and well-conceived resolution of the debate over a

national plan form. They allow districts to continue to use conforming plans that are already working well.

BK-2016-0001-0012 – **James "Ike" Shulman** (prepared testimony) – Opposes Rule 3015.1 because it permits local plans that curtail debtors' rights or impose unjustified burdens on debtors or debtors' attorneys. The national plan form should be adopted and made mandatory instead. It provides a better balance between debtors and creditors.

BK-2016-0001-0013 – **Norma Hammes** (prepared testimony) – Opposes an opt-out provision for local plan forms. A review of local plans shows that many required provisions and procedures substantially abridge debtors' bankruptcy rights and enlarge creditors' rights in violation of 28 U.S.C. § 2075 and Rule 9029. Although debtors have a statutory right to propose a plan, in some districts only certain provisions are allowed, and plans with any nonstandard provisions won't be confirmed. Model plans should just provide structure for the provisions, not mandate content.

BK-2016-0001-0014 – **Jenny L. Doling** (prepared testimony) – Opposes Rule 3015.1 because even districts with a single plan may have different rules regarding its implementation. Orders confirming plans take a debtor's estimate of the percentage payout to unsecured creditors and convert it into a fixed amount over a fixed term. Nonstandard provisions are stricken by the chapter 13 trustee. There should be a remedy to enforce compliance with the requirements of Rule 3015.1.

BK-2016-0001-0015 – **National Conference of Bankruptcy Judges** – Supports proposed Rules 3015 and 3015.1 if certain changes are made.

BK-2016-0001-0017 – **Bankruptcy Judge Robert F. Grant (on behalf of N.D. Ind. Bankruptcy Judges)** – Unanimously oppose Rules 3015(c) and (e) and Rule 3015.1. Mandating the use of a form chapter 13 plan, whether national or local, exceeds rulemaking authority.

BK-2016-0001-0019 – **Marlene Martel (Ford Motor Credit Company)** – Opt-out proposal is a reasonable compromise.

BK-2016-0001-0020 – **Norma Hammes (on behalf of National Association of Consumer Bankruptcy Attorneys)** – The rules would give an official imprimatur to local plans, which in some cases do not allow debtors to include provisions that are consistent with the Bankruptcy Code. The right of the debtor to propose his or her plan as desired must be preserved. The opt-out proposal should be rejected.

The Subcommittee recommends that no changes be made to the published rules in response to these comments. The Committee has previously decided that promulgation of a form for chapter 13 plans and related rules comes within rulemaking authority, and although it initially sought to propose a mandatory national plan form, the significant opposition expressed to it led it

to propose the opt-out procedure instead. If there are some judges who are denying confirmation of plans that are permissible under the Bankruptcy Code and rules, the remedy is to appeal. Actions taken contrary to the law cannot be redressed by a rule provision.

With respect to Mr. Johnson's concern that combining requests for relief in a chapter 13 plan may cause statistical coding problems for the clerk's office, the Subcommittee believes that this issue can be addressed by a technical CM/ECF fix by the Administrative Office.

Rule 3015(c)

> (c) ~~DATING. Every proposed plan and any modification thereof shall be dated.~~ FORM OF CHAPTER 13 PLAN. If there is an Official Form for a plan filed in a chapter 13 case, that form must be used unless a Local Form has been adopted in compliance with Rule 3015.1. With either the Official Form or a Local Form, a nonstandard provision is effective only if it is included in a section of the form designated for nonstandard provisions and is also identified in accordance with any other requirements of the form. As used in this rule and the Official Form or a Local Form, "nonstandard provision" means a provision not otherwise included in the Official or Local Form or deviating from it.

BK-2016-0001-0015 – National Conference of Bankruptcy Judges – Rule 3015(c) (incorrectly placed nonstandard provisions are void) should be deleted because it exceeds rulemaking authority and is inconsistent with the Supreme Court's *Espinosa* decision.

BK-2016-0001-0017 – Bankruptcy Judge Robert F. Grant (on behalf of N.D. Ind. Bankruptcy Judges) – Unanimously oppose Rule 3015(c). Mandating the use of a form chapter 13 plan, whether national or local, exceeds rulemaking authority. These rules attempt to override § 1325 by imposing additional confirmation requirements.

The Subcommittee recommends no changes to the published rules in response to these comments. The issues raised have previously been considered and rejected by the Committee. The rules prescribe the use of a form, just like many other rules, and the plan's provision regarding the ineffectiveness of improperly placed provisions will be binding on the parties upon confirmation.

Rule 3015(d)

> (d) NOTICE ~~AND COPIES~~. If the plan ~~The plan or a summary of the plan shall be~~ is not included with the ~~each~~ notice of the hearing on confirmation mailed under ~~pursuant to~~ Rule 2002, the debtor shall serve the plan on the trustee and all creditors when it is filed with the court. ~~If required by the court, the debtor shall furnish a sufficient number of copies to enable the clerk to include a copy of the plan with the notice of the hearing.~~

BK-2016-0001-0004 – **Ryan W. Johnson** (Clerk, Bankr. N.D.W.Va.) – Plans are mailed to creditors, not served. Rule 3015(d) should therefore direct the debtor to mail the plan if the clerk's office does not.

BK-2016-0001-0007 – **Shmuel Klein** – Rule 3015(d) should allow notice by ECF if creditor has so elected.

BK-2016-0001-0008 – **Eva Roeber** (chair, Bankruptcy Noticing Working Group) – Rule 3015(d) should impose the cost of sending the plan to parties on the debtor, not the court. Debtors should be allowed to send a plan summary rather than the entire plan, so long as any nonstandard provisions are pointed out. Substitute "give notice of" for "serve" because formal service is not generally required.

The Subcommittee recommends no changes to the published rules in response to these comments. The term "serve" is not limited to service under Rule 7004 (Process; Service of Summons; Complaint). Pleadings after the complaint and other papers are "served" under Rule 7005 (Service and Filing of Pleadings and Other Papers). The Subcommittee also disagrees with the comment that the rule should allow a plan summary to be served, rather than the plan itself, because doing so would undermine the effectiveness of warning and notice provisions in the plan form.

The Subcommittee recommends that the comments about who should serve the plan and the method that should be used be included in the Committee's noticing project.

Rule 3015(f)

> (f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH IN THE ABSENCE OF AN OBJECTION. An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity

designated by the court, and shall be transmitted to the United States trustee, ~~before confirmation of the plan~~ at least seven days before the date set for the hearing on confirmation, unless the court orders otherwise. An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

BK-2016-0001-0005 – **Thomas Dickenson** – Rule 3015(f) is problematic. The requirement that an objection to confirmation be made at least 7 days before the 341 meeting will be difficult for many creditors to satisfy. Because the 341 meeting can be held as early as 21 days after the order for relief, this rule could require a creditor to object within 14 days after the case commences. That time frame is unreasonable.

BK-2016-0001-0007 – **Shmuel Klein** – The time allowed under Rule 3015(f) for filing an objection is too short. It should extend until 14 days after the plan is filed.

BK-2016-0001-0010 – **Ellie Bertwell** (Aderant CompuLaw) – Supports Rule 3015(f) now that it is qualified by "unless the court orders otherwise." With that change from an earlier version, the rule is clear that local bankruptcy courts may set a different deadline.

The Subcommittee recommends no changes to the published rules in response to these comments. Mr. Dickenson misstates the deadline. Generally, an objection must be made at least seven days before the confirmation hearing, not the meeting of creditors. Under Code § 1324(b), a confirmation hearing may be held not earlier that 20 days after the meeting of creditors, "unless the court determines that it would be in the best interests of the creditors and the estate to hold such hearing at an earlier date and there is no objection to such earlier date." If there are districts that are holding confirmation hearings at the time of the meeting of creditors or the deadline is otherwise perceived as being too short, courts would have authority under the Rule 3015(f) to adjust the deadline for objections.

Rule 3015(g)(1)

(g) EFFECT OF CONFIRMATION. Upon the confirmation of a chapter 12 or chapter 13 plan:

(1) any determination in the plan made under Rule 3012 about the amount of a secured claim is binding on the holder of the claim, even if the holder

files a contrary proof of claim or the debtor schedules that claim, and regardless of whether an objection to the claim has been filed;

BK-2016-0001-0007 – **Shmuel Klein** – Rule 3015(g)(1) should be reworded as follows: "The secured claim amount stated in the confirmed plan is binding on the holder of the claim, even if the holder files a contrary proof of claim or the debtor schedules that claim, and regardless of whether an objection to the claim has been filed; and".

BK-2016-0001-0015 – **National Conference of Bankruptcy Judges** – Rule 3015(g)(1) should be deleted because it is not a procedural rule.

BK-2016-0001-0016 – **Michael Zevitz** (USFN) – Rule 3015(g)(1) may result in a flood of objections by creditors based solely on minor discrepancies in arrearage amounts. The rule should state that the proof of claim controls as to arrearage amounts.

The Subcommittee recommends a change to the Committee Note in response to Mr. Zevitz's comment. To clarify that the plan controls as to the amount of a secured claim based on the value of the collateral, but the proof of claim controls as to any ongoing payment amounts and arrearages, the Subcommittee recommends that the following underlined language be added to the Committee Note:

> Subdivision (g)(1) provides that the amount of a secured claim under § 506(a) may be determined through a chapter 12 or chapter 13 plan in accordance with Rule 3012. That determination, unlike the amount of any current installment payments or arrearages, controls over a contrary proof of claim, without the need for a claim objection under Rule 3007, and over the schedule submitted by the debtor under § 521(a).

The Subcommittee saw no reason to change the wording of Rule 3015(g)(1), and it believes that a rule that prescribes how the amount of a secured claim may be determined is procedural.

Rule 3015(g)(2)

> (g) EFFECT OF CONFIRMATION. Upon the confirmation of a chapter 12 or chapter 13 plan:
>
> * * * * *
>
> (2) any request in the plan to terminate the stay imposed by § 362(a), § 1201(a), or § 1301(a) is granted.

BK-2016-0001-0004 – **Ryan W. Johnson** (Clerk, Bankr. N.D.W.Va.) – It is unclear whether a request for relief from the stay in a plan regarding surrendered collateral requires a motion and the payment of a filing fee. Also the proposed rules may create procedures regarding relief from the stay that are inconsistent with the statutory requirements of § 362(d) and (e).

BK-2016-0001-0015 – **National Conference of Bankruptcy Judges** – Rule (g)(2) should be deleted because it is unnecessary. Plan provisions do not request relief. No rule is necessary to give effect to the plan provision if the plan is confirmed.

The Subcommittee recommends no changes to the published rules in response to these comments. A debtor's request by means of a plan provision to terminate the stay is not a motion; thus no additional filing fee should be required. It is also not governed by § 362(e), which provides for lifting the stay "with respect to the party in interest making such request." That wording cannot sensibly be applied to a debtor who acquiesces in the termination of the stay as to surrendered property. The rule provides a streamlined procedure for allowing the stay to be lifted without the need for a creditor to file a motion when the debtor proposes to surrender collateral.

Rule 3015(h)

> ~~(g)~~(h) MODIFICATION OF PLAN AFTER CONFIRMATION. A request to modify a plan ~~pursuant to~~ under § 1229 or § 1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. ~~If required by the court, the proponent shall furnish a sufficient number of copies of the proposed modification, or a summary thereof, to enable the clerk to include a copy with each notice.~~ Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.

BK-2016-0001-0008 – **Eva Roeber** (chair, Bankruptcy Noticing Working Group) – Rule 3015(h) should impose the cost of sending the proposed modification or summary to parties on the debtor, not the court.

The Subcommittee recommends no changes to the published rules in response to this comment. It recommends that the comment about who should serve the modification or summary be included in the Committee's noticing project.

Rule 3015.1 – General Comments

BK-2016-0001-0020 – **Norma Hammes (on behalf of National Association of Consumer Bankruptcy Attorneys)** – Districts should have until June 1, 2018 to adopt a local plan form if they opt out. The Committee Notes to the rules should include various reminders: local plan forms should be short and easy to read; they should not include statements of the law or excessive notices to creditors; they should not include worksheets that impose a formula for calculating disposable income and the best interest of creditors test; they must be reviewed for compliance with §§ 1321, 1322, and 1325(a) and (b).

The Subcommittee recommends no changes to the published rule in response to this comment. All districts are aware of the possible need to promulgate a local plan form if they do not want to use Official Form 113, and many districts have already begun that process. An effective date of December 1, 2017, should provide sufficient time for complying with the rules. There is no need for the Committee Note to provide detailed instructions about local plan forms that go beyond the requirements of the rule.

Rule 3015.1(a)

> Notwithstanding Rule 9029(a)(1), a district may require that a Local Form for a plan filed in a chapter 13 case be used instead of an Official Form adopted for that purpose if the following conditions are satisfied:
>
> (a) a single Local Form is adopted for the district after public notice and an opportunity for public comment;

BK-2016-0001-0020 – Norma Hammes (on behalf of National Association of Consumer Bankruptcy Attorneys) – Rule 3015.1(a) should specify requirements for the notice and comment procedure for adopting a local plan form and should require notice and comment for making a decision to opt out. Rule 9029 should apply. The Committee Note should provide that there is an expectation that members of the consumer bankruptcy bar will be solicited to participate in the local form development process.

The Subcommittee recommends no changes to the published rules in response to this comment. Rule 9029 applies to the promulgation of local rules and is silent about local forms. Each district should be allowed to decide the appropriate promulgation process for itself so long as that process is open and allows public input.

Rule 3015.1(c)

> Notwithstanding Rule 9029(a)(1), a district may require that a Local Form for a plan filed in a chapter 13 case be used instead of an Official Form adopted for that purpose if the following conditions are satisfied:
>
> * * * * *
>
> (c) the Local Form includes an initial paragraph for the debtor to indicate that the plan does or does not:
>
> (1) contain any nonstandard provision;
>
> (2) limit the amount of a secured claim based on a valuation of the collateral for the claim; or
>
> (3) avoid a security interest or lien;

BK-2016-0001-0019 – Marlene Martel (Ford Motor Credit Company) – Rule 3015.1(c) should require a local form to have a checkbox to indicate an amended plan and which sections have been changed.

The Subcommittee recommends no changes to the published rules in response to this comment. Although such a checkbox is a useful feature of Official Form 113, it is not so essential that local forms should be required to include it.

Rule 3015.1(c)(2)

BK-2016-0001-0018 – **Steven Thomas** (Kay Casto & Chaney PLLC) – Rules should specify that plans with a provision limiting the amount of a secured claim must be served on the affected creditor in the manner provided by Rule 7004.

The Subcommittee recommends no changes to the published rules in response to this comment. The proposed amendment to Rule 3012(b) requires this type of service.

Rule 3015.1(c)(3)

BK-2016-0001-0007 – **Shmuel Klein** – Rule 3015.1(c)(3) should be stricken because plans frequently reclassify secured claims as unsecured.

The Subcommittee recommends no changes to the published rules in response to this comment. The avoidance of a creditor's lien is sufficiently significant that requiring clear notice is appropriate.

Rule 3015.1(d)

> Notwithstanding Rule 9029(a)(1), a district may require that a Local Form for a plan filed in a chapter 13 case be used instead of an Official Form adopted for that purpose if the following conditions are satisfied:
>
> * * * * *
>
> (d) the Local Form contains separate paragraphs for:
>
> (1) curing any default and maintaining payments on a claim secured by the debtor's principal residence;
>
> (2) paying a domestic-support obligation;
>
> (3) paying a claim described in the final paragraph of § 1325(a) of the Bankruptcy Code; and
>
> (4) surrendering property that secures a claim with a request that the stay be terminated as to the surrendered collateral;

BK-2016-0001-0007 – **Shmuel Klein** – Rule 3015.1(d) should have additional paragraphs to allow for the separate treatment of student loans and to state that creditors are subject to Code § 524(i).

BK-2016-0001-0019 – **Marlene Martel (Ford Motor Credit Company)** – Rule 3015.1(d) should require a separate paragraph for the treatment of claims secured by personal property, for

the treatment of nonpriority unsecured claims, and for the treatment of executory contracts and unexpired leases.

BK-2016-0001-0020 – Norma Hammes (on behalf of National Association of Consumer Bankruptcy Attorneys) – Rule 3015.1(d) should include as a mandatory plan provision the debtor's right to seek a determination of the amount of a secured claim and to avoid a lien under § 522(f) in the plan. It should also provide the debtor options for specifying the dividend on general unsecured claims and all of the revesting options permitted by § 1322(b)(9).

The Subcommittee recommends no changes to the published rules themselves in response to these comments. Districts are free to include any of the aforementioned provisions in a local plan, and, if they do not, debtors may include them in the section for nonstandard provisions. If the Committee recommends the opt-out approach, it should not attempt to impose the national plan form on districts by means of the requirements of Rule 3015.1(d).

The Subcommittee does recommend a change to the Committee Note to Rule 3015.1 in response to NACBA's comment advocating the addition of a requirement regarding a debtor's right to seek a determination of the amount of a secured claim and to avoid a lien under § 522(f) in the plan. Because, as amended, Rules 3012(b) and 4003(d) would give the debtor this right, the Subcommittee recommends that the Committee Note state so explicitly by adding the following underlined language:

> The rule requires that a Local Form begin with a paragraph for the debtor to call attention to the fact that the plan contains a nonstandard provision~~,~~; limits the amount of a secured claim based on a valuation of the collateral, as authorized by Rule 3012(b); or avoids a lien, as authorized by Rule 4003(d).

Rule 3015.1(d)(2)

BK-2016-0001-0015 – National Conference of Bankruptcy Judges – Rule 3015.1(d)(2) should be removed because there is no reason for this issue to be provided for separately.

The Subcommittee recommends no changes to the published rules in response to this comment. Even if it is not essential for domestic support obligations to be addressed in a

separate paragraph, it would be helpful to certain creditors (former spouses, state agencies) to be able to easily find such a provision in a plan. Separate treatment of this type of claim was proposed by the compromise group.

Rule 3015.1(d)(3)

BK-2016-0001-0015 – National Conference of Bankruptcy Judges – Rule 3015.1(d)(3) should be removed because there is no reason for this issue to be provided for separately.

The Subcommittee recommends no changes to the published rules in response to this comment. Even if it is not essential for "hanging paragraph" claims to be addressed in a separate paragraph, it would be helpful to certain creditors (car lenders, other secured creditors) to be able to easily find such a provision in a plan. Separate treatment of this type of claim was proposed by the compromise group.

Rule 3015.1(d)(4)

BK-2016-0001-0004 – Ryan W. Johnson (Clerk, Bankr. N.D.W.Va.) – It is unclear whether a request for relief from the stay in a plan regarding surrendered collateral requires a motion and the payment of a filing fee. Also the proposed rules may create procedures regarding relief from the stay that are inconsistent with the statutory requirements of § 362(d) and (e).

BK-2016-0001-0015 – National Conference of Bankruptcy Judges – The requirement that a local plan have a provision for requesting relief from the stay for surrendered collateral should be deleted; it exceeds rulemaking authority.

BK-2016-0001-0019 – Marlene Martel (Ford Motor Credit Company) – Rule 3015.1(d)(4) should specify the statutory sections under which the stay may be terminated.

BK-2016-0001-0020 – Norma Hammes (on behalf of National Association of Consumer Bankruptcy Attorneys) – Rule 3015.1(d)(5) [sic] should not require that a debtor request that the stay be terminated if collateral is surrendered. This requirement is not imposed by the Code. Section 362(e) and Rule 7004 will be triggered.

The Subcommittee recommends that a change be made to Rule 3015.1(d)(4) in response to Ms. Martel's comment. It proposes that statutory references be added to make clear that the stay terminates with respect to codebtors as well as with respect to the surrendered property. As amended, the provision would read: "surrendering property that secures a claim with a request that the stay under §§ 362(a) and 1301(a) be terminated as to the surrendered collateral; and".

Debtors are not required to ask for termination of the stay with respect to surrendered collateral. They can provide otherwise in a nonstandard provision at the end of the plan. The Subcommittee recommends that an addition be made to the Committee Note to clarify the purpose of the section for nonstandard provisions. Borrowing from the Committee Note to Official Form 113, the Subcommittee proposes that the following underlined language be added to the last paragraph of the Committee Note to Rule 3015.1 so that it reads as follows:

> [new paragraph] The last paragraph of a Local Form must be for the inclusion of any nonstandard provisions, as defined by Rule 3015(c), and must include a statement that nonstandard provisions placed elsewhere in the plan are void. This part gives the debtor the opportunity to propose provisions that are not otherwise in, or that deviate from, the Local Form. The form must also require a certification by the debtor's attorney or unrepresented debtor that there are no nonstandard provisions other than those placed in the final paragraph.

The Subcommittee does not recommend that any other changes to the published rules be made in response to these comments for the reasons discussed above regarding Rule 3015(g)(2).

Rule 3015.1(e)

> Notwithstanding Rule 9029(a)(1), a district may require that a Local Form for a plan filed in a chapter 13 case be used instead of an Official Form adopted for that purpose if the following conditions are satisfied:
>
> * * * * *
>
> (e) the Local Form contains a final paragraph for:
>
> (1) the placement of nonstandard provisions, as defined in Rule 3015(c), along with a statement that any nonstandard provision placed elsewhere in the plan is void; and

(2) certification by the debtor's attorney or by an unrepresented debtor that the plan contains no nonstandard provision other than those set out in the final paragraph.

BK-2016-0001-0012 – James "Ike" Shulman (prepared testimony) – If Rule 3015.1 is adopted, it should contain language providing that the inclusion of certain nonstandard provisions should not cause undue delay of confirmation.

The Subcommittee recommends no changes to the published rules in response to this comment. The comment concerns practices that may occur in certain districts that are not properly addressed by a national rule. Code § 1324(b) provides a deadline for confirmation hearings ("not later than 45 days after the date of the meeting of creditors under section 341(a)").

Rule 3015.1(e)(1)

BK-2016-0001-0015 – National Conference of Bankruptcy Judges – Rule 3015.1(e)(1) should be deleted because it exceeds rulemaking authority.

BK-2016-0001-0017 – Bankruptcy Judge Robert F. Grant (on behalf of N.D. Ind. Bankruptcy Judges) – Rule 3015(e)(1) is contrary to § 1327 and *United Student Aid Funds, Inc. v. Espinosa* because it declares certain plan provisions ineffective.

The Subcommittee recommends no changes to the published rules in response to these comments for the reasons discussed above regarding Rule 3015(c).

Part III. Minor Changes to Official Form 113 and Its Committee Note

The Committee approved the national plan form—Official Form 113—and its Committee Note at its fall 2015 meeting. In preparation for sending them forward to the Standing Committee along with the related rules package, AO staff members, Forms Subcommittee chair, Judge Dennis Dow, and the reporter gave the form and note a final review. They propose making several changes to the version of the form and note that were approved last fall. For that reason, clean and change versions of Official Form 113 and its Committee Note are attached, and the Committee will be asked to give its approval to the revised form and Committee Note.

The red font that was used in the fall 2015 versions of the form and note to highlight changes or discussion points has been removed, and a number of technical and formatting changes have been made. Beyond that, the changes to the form fall into two primary categories: the caption and signature block were updated to conform to the modernized form convention, and inconsistent references to debtor, debtors, and debtor(s) throughout the form were updated to "debtor(s)." The Committee Note was revised to discuss some of the changes to the form that were approved by the Committee last fall, and an explanation of Part 8 was revised to make it consistent with the definition of nonstandard provisions in proposed Rule 3015(c).

Part IV. Summary of Recommendations and Next Steps

In response to the comments that were submitted following the July publication of Rules 3015 and 3015.1, the Subcommittee recommends that four changes be made to the rules and their Committee Notes and that the Committee give them final approval as modified. The four proposed changes are indicated in blue in the text of the rules that follow this memorandum. They consist of the following:

- the addition of "unlike the amount of any current installment payments or arrearages" in the paragraph of the Committee Note that discusses Rule 3015(g);
- the addition of "under §§ 362(a) and 1301(a)" in line 25 of Rule 3015.1;
- the addition of "as authorized by Rule 3012(b)" and "as authorized by Rule 4003(d)" in what is now the penultimate paragraph of the Rule 3015.1 Committee Note: and
- the addition of "This part gives the debtor the opportunity to propose provisions that are not otherwise in, or that deviate from, the Local Form." to the final paragraph of the Rule 3015.1 Committee Note.

In addition, the Committee is asked to give final approval to the non-substantive changes made to the attached versions of Official Form 113 and its Committee Note.

If the Committee gives final approval to these rules, form, and notes at this meeting, the entire chapter 13 plan form package—Official Form 113 and Rules 2002, 3002, 3007, 3012, 3015, 3015.1, 4003, 5009, 7001, and 9009—will be presented to the Standing Committee at its January 2017 meeting with the request that it be approved with a proposed effective date of December 1, 2017. To achieve that effective date, the Judicial Conference will have to give its approval to the form and rules at its March 2017 meeting, and the Supreme Court will have to agree to give the rules package an expedited review that would allow the rules to be submitted to Congress by May 1, 2017. If the Supreme Court declines to review the rules outside the normal rules-promulgation cycle, the effective date of the form and rules will be December 1, 2018.

Rule 3015. Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 ~~Family Farmer's Debt Adjustment~~ or a Chapter 13 ~~Individual's Debt Adjustment~~ Case

(a) FILING A CHAPTER 12 PLAN. The debtor may file a chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within the time prescribed by § 1221 of the Code.

(b) FILING A CHAPTER 13 PLAN. The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.

(c) ~~DATING. Every proposed plan and any modification thereof shall be dated.~~ FORM OF CHAPTER 13 PLAN. If there is an Official Form for a plan filed in a chapter 13 case, that form must be used unless a Local Form has been adopted in compliance with Rule 3015.1. With either the Official Form or a Local Form, a nonstandard provision is effective only if it is included in a section of the form designated for nonstandard provisions and is also identified in accordance with any other requirements of the form. As used in this rule and the Official Form or a Local Form, "nonstandard provision" means a provision not otherwise included in the Official or Local Form or deviating from it.

(d) NOTICE ~~AND COPIES~~. If the plan ~~The plan or a summary of the plan shall be~~ is not included with the ~~each~~ notice of the hearing on confirmation mailed under ~~pursuant to~~ Rule 2002, the debtor shall serve the plan on the trustee and all creditors when it is filed with the court.

~~If required by the court, the debtor shall furnish a sufficient number of copies to enable the clerk to include a copy of the plan with the notice of the hearing.~~

(e) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall forthwith transmit to the United States trustee a copy of the plan and any modification thereof filed under ~~pursuant to~~ subdivision (a) or (b) of this rule.

(f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH IN THE ABSENCE OF AN OBJECTION. An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, ~~before confirmation of the plan~~ at least seven days before the date set for the hearing on confirmation, unless the court orders otherwise. An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the

court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

(g) EFFECT OF CONFIRMATION. Upon the confirmation of a chapter 12 or chapter 13 plan:

(1) any determination in the plan made under Rule 3012 about the amount of a secured claim is binding on the holder of the claim, even if the holder files a contrary proof of claim or the debtor schedules that claim, and regardless of whether an objection to the claim has been filed; and

(2) any request in the plan to terminate the stay imposed by § 362(a), § 1201(a), or § 1301(a) is granted.

~~(g)~~(h) MODIFICATION OF PLAN AFTER CONFIRMATION. A request to modify a plan ~~pursuant to~~ under § 1229 or § 1329 of the Code shall identify the proponent and shall be filed together with the proposed

modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. ~~If required by the court, the proponent shall furnish a sufficient number of copies of the proposed modification, or a summary thereof, to enable the clerk to include a copy with each notice.~~ Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.

Committee Note

This rule is amended and reorganized.

Subdivision (c) is amended to require use of an Official Form if one is adopted for chapter 13 plans unless a Local Form has been adopted consistent with Rule 3015.1. Subdivision (c) also provides that nonstandard provisions in a chapter 13 plan must be set out in the section of the Official or Local Form specifically designated for such provisions and must be identified in the manner required by the Official or Local Form.

Subdivision (d) is amended to ensure that the trustee and creditors are served with the plan before confirmation. Service may be made either at the time the plan is filed or with the notice under Rule 2002 of the hearing to consider confirmation of the plan.

Subdivision (f) is amended to require service of an objection to confirmation at least seven days before the hearing to consider confirmation of a plan, unless the court orders otherwise.

Subdivision (g) is amended to set out two effects of confirmation. Subdivision (g)(1) provides that the amount of a secured claim under § 506(a) may be determined through a chapter 12 or chapter 13 plan in accordance with Rule 3012. That determination, unlike the amount of any current installment payments or arrearages, controls over a contrary proof of claim, without the need for a claim objection under Rule 3007, and over the schedule submitted by the debtor under § 521(a). The amount of a secured claim of a governmental unit, however, may not be determined through a chapter 12 or chapter 13 plan under

Rule 3012. Subdivision (g)(2) provides for termination of the automatic stay under §§ 362, 1201, and 1301 as requested in the plan.

Subdivision (h) was formerly subdivision (g). It is redesignated and is amended to reflect that often the party proposing a plan modification is responsible for serving the proposed modification on other parties. The option to serve a summary of the proposed modification has been retained. Unless required by another rule, service under this subdivision does not need to be made in the manner provided for service of a summons and complaint by Rule 7004.

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Rule 3015.1. Requirements for a Local Form for Plans Filed in a Chapter 13 Case

Notwithstanding Rule 9029(a)(1), a district may require that a Local Form for a plan filed in a chapter 13 case be used instead of an Official Form adopted for that purpose if the following conditions are satisfied:

(a) a single Local Form is adopted for the district after public notice and an opportunity for public comment;

(b) each paragraph is numbered and labeled in boldface type with a heading stating the general subject matter of the paragraph;

(c) ~~t~~the Local Form includes an initial paragraph for the debtor to indicate that the plan does or does not:

(1) contain any nonstandard provision;

(2) limit the amount of a secured claim based on a valuation of the collateral for the claim; or

(3) avoid a security interest or lien;

(d) the Local Form contains separate paragraphs for:

(1) curing any default and maintaining payments on a claim secured by the debtor's principal residence;

(2) paying a domestic-support obligation;

(3) paying a claim described in the final paragraph of § 1325(a) of the Bankruptcy Code; and

(4) surrendering property that secures a claim with a request that the stay under §§ 362(a) and 1301(a) be terminated as to the surrendered collateral; and

(e) the Local Form contains a final paragraph for:

(1) the placement of nonstandard provisions, as defined in Rule 3015(c), along with a statement that any nonstandard provision placed elsewhere in the plan is void; and

(2) certification by the debtor's attorney or by an unrepresented debtor that the plan contains no

nonstandard provision other than those set out in the final paragraph.

Committee Note

This rule is new. It sets out features required for all Local Forms for plans in chapter 13 cases. If a Local Form does not comply with this rule, it may not be used in lieu of the Official Chapter13 Plan Form. *See* Rule 3015(c).

Under the rule only one Local Form may be adopted in a district. The rule does not specify the method of adoption, but it does require that adoption of a Local Form be preceded by a public notice and comment period.

To promote consistency among Local Forms and clarity of content of chapter 13 plans, the rule prescribes several formatting and disclosure requirements. Paragraphs in such a form must be numbered and labeled in bold type, and the form must contain separate paragraphs for the cure and maintenance of home mortgages, payment of domestic support obligations, treatment of secured claims covered by the "hanging paragraph" of § 1325(a), and surrender of property securing a claim. Whether those portions of the Local Form are used in a given chapter 13 case will depend on the debtor's individual circumstances.

The rule requires that a Local Form begin with a paragraph for the debtor to call attention to the fact

that the plan contains a nonstandard provision~~,~~; limits the amount of a secured claim based on a valuation of the collateral, as authorized by Rule 3012(b); or avoids a lien, as authorized by Rule 4003(d).

[new paragraph]The last paragraph of a Local Form must be for the inclusion of any nonstandard provisions, as defined by Rule 3015(c), and must include a statement that nonstandard provisions placed elsewhere in the plan are void. This part gives the debtor the opportunity to propose provisions that are not otherwise in, or that deviate from, the Local Form. The form must also require a certification by the debtor's attorney or unrepresented debtor that there are no nonstandard provisions other than those placed in the final paragraph.

Draft ~~August 28, 2015~~October 7, 2016

~~Debtor~~ _____

~~United States Bankruptcy Court for the:~~ _____

_____ ~~[Bankruptcy district]~~

~~Case number:~~ _____

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

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

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

Case number _____
(If known)

❑ Check if this is an amended plan, and list below the sections of the plan that have been changed.

❑ ~~Check if this is an amended plan, and list below the sections of the plan that have been changed.~~

_____

_____

_____

Official Form 113

Chapter 13 Plan

12/~~16~~17

Part 1: Notices

To Debtors: **This form sets out options that may be appropriate in some cases, but the presence of an option on the form does not indicate that the option is appropriate in your circumstances or that it is permissible in your judicial district. Plans that do not comply with local rules and judicial rulings may not be confirmable.**

In the following notice to creditors, you must check each box that applies.

To Creditors: **Your rights may be affected by this plan. Your claim may be reduced, modified, or eliminated.**

You should read this plan carefully and discuss it with your attorney if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation at least 7 days before the date set for the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court. The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. See Bankruptcy Rule 3015. In addition, you may need to file a timely proof of claim in order to be paid under any plan.

The following matters may be of particular importance. ***Debtors must check one box on each line to state whether or not the plan includes each of the following items. If an item is checked as "Not Included" or if both boxes are checked, the provision will be ineffective if set out later in the plan.***

1.1	**A limit on the amount of a secured claim, set out in Section 3.2, which may result in a partial**	❑ **Included**	❑ **Not included**

	payment or no payment at all to the secured creditor		
1.2	**Avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest, set out in Section 3.4**	❑ **Included**	❑ **Not included**
1.3	**Nonstandard provisions, set out in Part 8**	❑ **Included**	❑ **Not included**

Part 2: Plan Payments and Length of Plan

2.1 Debtor(s) will make regular payments to the trustee as follows:

$ _____ per_____ for _____ months

[and $ _____ per_____ for _____ months.] *Insert additional lines if needed.*

If fewer than 60 months of payments are specified, additional monthly payments will be made to the extent necessary to make the payments to creditors specified in ~~Parts 3 through 6 of~~ this plan.

2.2 Regular payments to the trustee will be made from future income in the following manner:

Check all that apply.

❑ Debtor(s) will make payments pursuant to a payroll deduction order.

❑ Debtor(s) will make payments directly to the trustee.

❑ Other (specify method of payment):_____.

2.3 Income tax refunds.

Check one.

❑ Debtor(s) will retain any income tax refunds received during the plan term.

❑ Debtor(s) will supply the trustee with a copy of each income tax return filed during the plan term within 14 days of filing the return and will turn over to the trustee all income tax refunds received during the plan term.

❑ Debtor(s) will treat income tax refunds as follows:

_____

_____

2.4 Additional payments.

Check one.

❑ **None.** *If "None" is checked, the rest of § 2.4 need not be completed or reproduced.*

❑ Debtor(s) will make additional payment(s) to the trustee from other sources, as specified below. Describe the source, estimated amount, and date of each anticipated payment.

_____

_____

2.5 The total amount of estimated payments to the trustee provided for in §§ 2.1 and 2.4 is $ _____.

Part 3: Treatment of Secured Claims

3.1 Maintenance of payments and cure of default, if any.

Check one.

❑ **None.** *If "None" is checked, the rest of § 3.1 need not be completed or reproduced.*

❑ The debtor(s) will maintain the current contractual installment payments on the secured claims listed below, with any changes required by the applicable contract and noticed in conformity with any applicable rules. These payments will be disbursed either by the trustee or directly by the debtor~~,~~(s), as specified below. Any existing arrearage on a listed claim will be paid in full through disbursements by the trustee, with interest, if any, at the rate stated. Unless otherwise ordered by the court, the amounts listed on a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) control over any contrary amounts listed below as to the current installment payment and arrearage. In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling. If relief from the automatic stay is ordered as to any item of collateral listed in this paragraph, then, unless otherwise ordered by the court, all payments under this paragraph as to that collateral will cease, and all secured claims based on that collateral will no longer be treated by the plan. The final column includes only payments disbursed by the trustee rather than by the debtor~~,~~(s).

Name of creditor	Collateral	Current installment payment (including escrow)	Amount of arrearage~~,~~ (if any)	Interest rate on arrearage (if applicable)	Monthly plan payment on arrearage	Estimated total payments by trustee
_____	_____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	_____%	$_____	$_____
_____	_____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	_____%	$_____	$_____

Insert additional claims as needed.

3.2 Request for valuation of security, payment of fully secured claims, and modification of undersecured claims. *Check one.*

❑ **None.** *If "None" is checked, the rest of § 3.2 need not be completed or reproduced.*

The remainder of this paragraph will be effective only if the applicable box in Part 1 of this plan is checked.

❑ The debtor(s) request that the court determine the value of the secured claims listed below. For each non-governmental secured claim listed below, the debtor(s) state that the value of the secured claim should be as set out in the column headed *Amount of secured claim*. For secured claims of governmental units, unless otherwise ordered by the court, the value of a secured claim listed in a proof of claim filed in accordance with the Bankruptcy Rules controls over any contrary amount listed below. For each listed claim, the value of the secured claim will be paid in full with interest at the rate stated below.

The portion of any allowed claim that exceeds the amount of the secured claim will be treated as an unsecured claim under Part 5 of this plan. If the amount of a creditor's secured claim is listed below as having no value, the creditor's allowed claim will be treated in its entirety as an unsecured claim under Part 5 of this plan. Unless otherwise ordered by the court, the amount of the creditor's total claim listed on the proof of claim controls over any contrary amounts listed in this paragraph.

The holder of any claim listed below as having value in the column headed *Amount of secured claim* will retain the lien on the property interest of the debtor(s) or the estate(s) until the earlier of:

(a) payment of the underlying debt determined under nonbankruptcy law, or

(b) discharge of the underlying debt under 11 U.S.C. § 1328, at which time the lien will terminate and be released by the creditor. ~~See Bankruptcy Rule 3015.~~

Name of creditor	Estimated amount of creditor's total claim	Collateral	Value of collateral	Amount of claims senior to creditor's claim	Amount of secured claim	Interest rate	Monthly payment to creditor	Estimated total of monthly payments
_____	$_____	_____	$_____	$_____	$_____	___%	$_____	$_____
_____	$_____	_____	$_____	$_____	$_____	___%	$_____	$_____

Insert additional claims as needed.

3.3 Secured claims excluded from 11 U.S.C. § 506.

Check one.

☐ **None.** *If "None" is checked, the rest of § 3.3 need not be completed or reproduced.*

☐ The claims listed below were either:

(1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor(s), or

(2) incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value.

These claims will be paid in full under the plan with interest at the rate stated below. These payments will be disbursed either by the trustee or directly by the debtor, as specified below. Unless otherwise ordered by the court, the claim amount stated on a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) controls over any contrary amount listed below. In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling. The final column includes only payments disbursed by the trustee rather than by the debtor.

Name of creditor	Collateral	Amount of claim	Interest rate	Monthly plan payment	Estimated total payments by trustee
_____	_____	$_____	_____%	$_____ Disbursed by: ☐ Trustee ☐ Debtor(s)	$_____
_____	_____	$_____	_____%	$_____ Disbursed by: ☐ Trustee ☐ Debtor(s)	$_____

Insert additional claims as needed.

3.4 Lien avoidance.

Check one.

☐ **None.** *If "None" is checked, the rest of § 3.4 need not be completed or reproduced.*

The remainder of this paragraph will be effective only if the applicable box in Part 1 of this plan is checked.

☐ The judicial liens or nonpossessory, nonpurchase money security interests securing the claims listed below impair exemptions to which the debtor(s) would have been entitled under 11 U.S.C. § 522(b). Unless otherwise ordered by the court, a judicial lien or security interest securing a claim listed below will be avoided to the extent that it impairs such exemptions upon entry of the order confirming the plan. The amount of the judicial lien or security interest that is avoided will be treated as an unsecured claim in Part 5 to the extent allowed. The amount, if any, of the judicial lien or security interest that is not avoided will be paid in full as a secured claim under the plan. See 11 U.S.C. § 522(f) and Bankruptcy Rule 4003(d). *If more than one lien is to be avoided, provide the information separately for each lien.*

Information regarding judicial lien or security interest	**Calculation of lien avoidance**		**Treatment of remaining secured claim**
Name of creditor _____	a. Amount of lien	$_____	**Amount of secured claim after avoidance** (line a minus line f) $_____
	b. Amount of all other liens	$_____	
Collateral _____	c. Value of claimed exemptions	+ $_____	**Interest rate** (if applicable) _____ %
	d. Total of adding lines a, b, and c	$_____	
Lien identification (such as judgment date, date of lien recording, book and page number) _____ _____	e. Value of ~~debtor's~~debtor(s)' interest in property	− $_____	**Monthly payment on secured claim** $_____
	f. Subtract line e from line d.	$_____	**Estimated total payments on secured claim** $_____
	Extent of exemption impairment (*Check applicable box*): ☐ **Line f is equal to or greater than line a.** The entire lien is avoided. *(Do not complete the next column.)* ☐ **Line f is less than line a.** A portion of the lien is avoided. (*Complete the next column.)*		

Insert additional claims as needed.

3.5 Surrender of collateral.

Check one.

☐ **None.** *If "None" is checked, the rest of § 3.5 need not be completed or reproduced.*

☐ The debtor(s) elect to surrender to each creditor listed below the collateral that secures the creditor's claim. The debtor(s) request that upon confirmation of this plan the stay under 11 U.S.C. § 362(a) be terminated as to the collateral only and that the stay under § 1301 be terminated in all respects. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in Part 5 below.

Name of creditor	**Collateral**
_____	_____
_____	_____

Insert additional claims as needed.

Part 4: Treatment of Fees and Priority Claims

4.1 General

Trustee's fees and all allowed priority claims, including domestic support obligations other than those treated in § 4.5, will be paid in full without postpetition interest.

4.2 Trustee's fees

Trustee's fees are governed by statute and may change during the course of the case but are estimated to be _____% of plan payments; and during the plan term, they are estimated to total $_____.

4.3 Attorney's fees

The balance of the fees owed to the attorney for the debtor(s) is estimated to be $_____.

4.4 Priority claims other than attorney's fees and those treated in § 4.5.

Check one.

❑ **None.** *If "None" is checked, the rest of § 4.4 need not be completed or reproduced.*

❑ The debtor ~~estimates~~(s) estimate the total amount of other priority claims to be _____.

4.5 Domestic support obligations assigned or owed to a governmental unit and paid less than full amount.

Check one.

❑ **None**. *If "None" is checked, the rest of § 4.5 need not be completed or reproduced.*

❑ The allowed priority claims listed below are based on a domestic support obligation that has been assigned to or is owed to a governmental unit and will be paid less than the full amount of the claim under 11 U.S.C. § 1322(a)(4). *This plan provision requires that payments in § 2.1 be for a term of 60 months; see* 11 U.S.C. § 1322(a)(4).

Name of creditor	Amount of claim to be paid
_____	$_____
_____	$_____

~~*Insert additional claims as needed.*~~
Insert additional claims as needed.

Part 5: Treatment of Nonpriority Unsecured Claims

5.1 Nonpriority unsecured claims not separately classified.

Allowed nonpriority unsecured claims that are not separately classified will be paid, pro rata. If more than one option is checked, the option providing the largest payment will be effective. *Check all that apply.*

❑ The sum of $_____.

❑ _____% of the total amount of these claims, an estimated payment of $_____.

❑ The funds remaining after disbursements have been made to all other creditors provided for in this plan.

If the estate of the debtor(s) were liquidated under chapter 7, nonpriority unsecured claims would be paid approximately $_____. Regardless of the options checked above, payments on allowed nonpriority unsecured claims will be made in at least this amount.

5.2 Maintenance of payments and cure of any default on nonpriority unsecured claims. *Check one.*

❑ **None.** *If "None" is checked, the rest of § 5.2 need not be completed or reproduced.*

❑ The debtor(s) will maintain the contractual installment payments and cure any default in payments on the unsecured claims listed below on which the last payment is due after the final plan payment. These payments will be disbursed either by the trustee or directly by the debtor~~,~~(s), as specified below. The claim for the arrearage amount will be paid in full as specified below and disbursed by the trustee. The final column includes only payments disbursed by the trustee rather than by the debtor~~,~~(s).

Name of creditor	Current installment payment	Amount of arrearage to be paid	Estimated total payments by trustee
_____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	$_____
_____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	$_____

Insert additional claims as needed.

5.3 Other separately classified nonpriority unsecured claims. *Check one.*

❑ **None.** *If "None" is checked, the rest of § 5.3 need not be completed or reproduced.*

❑ The nonpriority unsecured allowed claims listed below are separately classified and will be treated as follows

Name of creditor	Basis for separate classification and treatment	Amount to be paid on the claim	Interest rate (if applicable)	Estimated total amount of payments
_____	_____	$_____	_____%	$_____
_____	_____	$_____	_____%	$_____

Insert additional claims as needed.

Part 6: Executory Contracts and Unexpired Leases

6.1 The executory contracts and unexpired leases listed below are assumed and will be treated as specified. All other executory contracts and unexpired leases are rejected. *Check one.*

❑ **None.** *If "None" is checked, the rest of § 6.1 need not be completed or reproduced.*

❑ **Assumed items.** Current installment payments will be disbursed either by the trustee or directly by the debtor~~,~~(s), as specified below, subject to any contrary court order or rule. Arrearage payments will be disbursed by the trustee. The final column includes only payments disbursed by the trustee rather than by the debtor~~,~~(s).

Name of creditor	Description of leased property or executory contract	Current installment payment	Amount of arrearage to be paid	Treatment of arrearage (Refer to other plan section if applicable)	Estimated total payments by trustee
_____	_____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	_____	$_____
_____	_____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	_____	$_____

Insert additional contracts or leases as needed.

Part 7: Vesting of Property of the Estate

7.1 Property of the estate will vest in the debtor(s) upon

Check the applicable box:

❑ plan confirmation.

❑ entry of discharge.

❑ other: _____.

Part 8: Nonstandard Plan Provisions

8.1 Check "None" or List Nonstandard Plan Provisions

❑ **None.** *If "None" is checked, the rest of Part 8 need not be completed or reproduced.*

Under Bankruptcy Rule 3015(c), nonstandard provisions must be set forth below. A nonstandard provision is a provision not otherwise included in the Official Form or deviating from it. Nonstandard provisions set out elsewhere in this plan are ineffective.

The following plan provisions will be effective only if there is a check in the box "Included" in § 1.3.

_____

_____

_____

_____

_____

Part 9: ~~Signatures10:~~Signature(s):

~~X~~ _____ ~~Date~~ _____

~~Signature~~9.1 Signatures of ~~Attorney for~~ Debtor(s)

~~X~~ _____ ~~Date~~ _____

~~X~~ _____ ~~Date~~ _____

~~Signature(s) of~~ and Debtor(s) ~~(required if not represented by an attorney; otherwise optional)~~' Attorney

If the Debtor(s) do not have an attorney, the Debtor(s) must sign below; otherwise the Debtor(s) signatures are optional. The attorney for the Debtor(s), if any, must sign below.

X _____ X _____

Signature of Debtor 1 Signature of Debtor 2

Executed on _____ Executed on _____

MM / DD / YYYY MM / DD / YYYY

X _____ Date _____

Signature of Attorney for Debtor(s) MM / DD / YYYY

By filing this document, the ~~Attorney for~~ Debtor(s)~~)~~, if not represented by an attorney, or the Attorney for Debtor(s) ~~themselves, if not represented by an attorney,~~ also certify(ies) that the wording and order of the provisions in this Chapter 13 plan are identical to those contained in Official Form 113, other than any nonstandard provisions included in Part 8.

Exhibit: Total Amount of Estimated Trustee Payments

The following are the estimated payments that the plan requires the trustee to disburse. If there is any difference between the amounts set out below and the actual plan terms, the plan terms control.

a.	**Maintenance and cure payments on secured claims** (*Part 3, Section 3.1 total*)		$_____
b.	**Modified secured claims** (*Part 3, Section 3.2 total*)		$_____
c.	**Secured claims excluded from 11 U.S.C. § 506** (*Part 3, Section 3.3 total*)		$_____
d.	**Judicial liens or security interests partially avoided** (*Part 3, Section 3.4 total*)		$_____
e.	**Fees and priority claims** (*Part 4 total*)		$_____
f.	**Nonpriority unsecured claims** (*Part 5, Section 5.1, highest stated amount*)		$_____
g.	**Maintenance and cure payments on unsecured claims** (*Part 5, Section 5.2 total*)		$_____
h.	**Separately classified unsecured claims** (*Part 5, Section 5.3 total*)		$_____
i.	**Trustee payments on executory contracts and unexpired leases** *(Part 6, Section 6.1 total)*		$_____
j.	**Nonstandard payments** *(Part 8, total)*	+	$_____
	Total of lines a through j		$_____

Committee Note

Official Form 113 is new and is the required plan form in all chapter 13 cases, except to the extent that Rule 3015(c~~)(1~~) permits the use of a Local Form. Except as permitted by Rule 9009, alterations to the Official Form are not permitted. As the form explains, spaces for responses may be expanded or collapsed as appropriate, and sections that are inapplicable do not need to be reproduced. Portions of the form provide multiple options for provisions of a debtor's plan, but some of those options may not be appropriate in a given debtor's situation or may not be allowed in the court presiding over the case. Debtors are advised to refer to applicable local rulings. Nothing in the Official Form requires confirmation of a plan containing provisions inconsistent with applicable law.

Part 1. This part sets out warnings to both debtors and creditors. For creditors, if the plan includes one or more of the provisions listed in this part, the appropriate boxes must be checked. For example, if Part 8 of the plan proposes a provision not included in, or contrary to, the Official Form, that nonstandard provision will be ineffective if the appropriate check box in Part 1 is not selected.

Part 2. This part states the proposed periodic plan payments, the estimated total plan payments, and sources of funding for the plan. Section 2.1 allows the debtor or debtors to propose periodic payments in other than monthly intervals. For example, if the debtor receives a paycheck every week and wishes to make plan payments from each check, that should be indicated in § 2.1. If the debtor proposes to make payments according to different "steps," the amounts and intervals of those payments should also be indicated in § 2.1. Section 2.2 provides for the manner in which the debtor will make regular payments to the trustee. If the debtor selects the option of making payments pursuant to a payroll deduction order, that selection serves as a request by the debtor for entry of the order. Whether to enter a payroll deduction order is determined by the court. See Code § 1325(c). If the debtor selects the option of making payments other than by direct payments to the trustee or by a payroll deduction order, the alternative method (*e.g.*, a designated third party electronic funds transfer program) must be specified. Section 2.3 provides

for the treatment of any income tax refunds received during the plan term.

Part 3. This part provides for the treatment of secured claims.

The Official Form contains no provision for proposing preconfirmation adequate protection payments to secured creditors, leaving that subject to local rules, orders, forms, custom, and practice. A Director's Form for notice of and order on proposed adequate protection payments has been created and may be used for that purpose.

Section 3.1 provides for the treatment of claims under Code § 1322(b)(5) (maintaining current payments and curing any arrearage). For the claim of a secured creditor listed in § 3.1, an estimated arrearage amount should be given. A contrary arrearage or current installment payment amount listed on the creditor's timely filed proof of claim, unless contested by objection or motion, will control over the amount given in the plan.

In § 3.2, the plan may propose to determine under Code § 506(a) the value of a secured claim. For example, the plan could seek to reduce the secured portion of a creditor's claim to the value of the collateral securing it. For the secured claim of a non-governmental creditor, that determination would be binding upon confirmation of the plan. For the secured claim of a governmental unit, however, a contrary valuation listed on the creditor's proof of claim, unless contested by objection or motion, would control over the valuation given in the plan. *See* Bankruptcy Rule 3012. Bankruptcy Rule 3002 contemplates that a debtor, the trustee, or another entity may file a proof of claim if the creditor does not do so in a timely manner. *See* Bankruptcy Rules 3004 and 3005. Section 3.2 will not be effective unless the appropriate check box in Part 1 is selected.

Section 3.3 deals with secured claims that under the so-called "hanging paragraph" of § 1325(a)(5) may not be bifurcated into secured and unsecured portions under Code § 506(a), but it allows for the proposal of an interest rate other than the contract rate to be applied to payments on such a claim. A contrary claim amount listed on the creditor's timely filed proof of claim, unless contested by

objection or motion, will control over the amount given in the plan. If appropriate, a claim may be treated under § 3.1 instead of § 3.3.

In § 3.4, the plan may propose to avoid certain judicial liens or security interests encumbering exempt property in accordance with Code § 522(f). This section includes space for the calculation of the amount of the judicial lien or security interest that is avoided. A plan proposing avoidance in § 3.4 must be served in the manner provided by Bankruptcy Rule 7004 for service of a summons and complaint. *See* Bankruptcy Rule 4003. Section 3.4 will not be effective unless the appropriate check box in Part 1 is selected.

Section 3.5 provides for elections to surrender collateral and requests for termination of the stay under § 362(a) and § 1301 with respect to the collateral surrendered. Termination will be effective upon confirmation of the plan.

Part 4. This part provides for the treatment of trustee's fees and claims entitled to priority status. Section 4.1 provides that trustee's fees and all allowed priority claims (other than those domestic support obligations treated in § 4.5) will be paid in full. In § 4.2, the plan lists an estimate of the trustee's fees. Although the estimate may indicate whether the plan will be feasible, it does not affect the trustee's entitlement to fees as determined by statute. In § 4.3, the form requests a statement of the balance of attorney's fees owed. Additional details about payments of attorney's fees, including information about their timing and approval, are left to the requirements of local practice. In § 4.4, the plan calls for an estimated amount of other priority claims. A contrary amount listed on the creditor's proof of claim, unless changed by court order in response to an objection or motion, will control over the amount given in § 4.4. In § 4.5, the plan may propose to pay less than the full amount of a domestic support obligation that has been assigned to, or is owed to, a governmental unit, but not less than the amount that claim would have received in a chapter 7 liquidation. *See* ~~§~~§§ 1322(a)(4) and 1325(a)(4) of the Code. This plan provision requires that the plan payments be for a term of 60 months. *See* § 1322(a)(4).

Part 5. This part provides for the treatment of unsecured claims that are not entitled to priority status. In § 5.1, the plan may propose to pay nonpriority unsecured claims in accordance with several options. One or more options may be selected. For example, the plan could propose simply to pay unsecured creditors any funds remaining after disbursements to other creditors, or it could also provide that a defined percentage of the total amount of unsecured claims will be paid. In § 5.2, the plan may propose to cure any arrearages and maintain periodic payments on long-term, nonpriority unsecured debts pursuant to § 1322(b)(5) of the Code. In § 5.3, the plan may provide for the separate classification of nonpriority unsecured claims (such as co-debtor claims) as permitted under Code § 1322(b)(1).

Part 6. This part provides for executory contracts and unexpired leases. An executory contract or unexpired lease is rejected unless it is listed in this part. If the plan proposes neither to assume nor reject an executory contract or unexpired lease, that treatment would have to be set forth as a nonstandard provision in Part 8.

The Official Form contains no provision on the order of distribution of payments under the plan, leaving that to local rules, orders, custom, and practice. If the debtor desires to propose a specific order of distribution, it must be contained in Part 8.

Part 7. This part defines when property of the estate will revest in the debtor or debtors. One choice must be selected—upon plan confirmation, upon entry of discharge the case, or upon some other specified event. This plan provision is subject to a contrary court order under Code § 1327(b).

Part 8. This part gives the debtor or debtors the opportunity to propose provisions that are not otherwise in, or are contrary to, the Official Form. All such nonstandard provisions must be set forth in this part and nowhere else in the plan. This part will not be effective unless the appropriate check box in Part 1 is selected. *See* Bankruptcy Rule 3015.~~(c).~~

Part 9. The plan must be signed by the attorney for the debtor or debtors. If the debtor or debtors are not

represented by an attorney, they must sign the plan, but the signature of represented debtors is optional. In addition to the certifications set forth in Rule 9011(b), the signature constitutes a certification that the wording and order of Official Form 113 have not been altered, other than by including any nonstandard provision in Part 8.

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Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

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

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

Case number _____
(If known)

❑ Check if this is an amended plan, and list below the sections of the plan that have been changed.

_____

_____

Official Form 113
Chapter 13 Plan

12/17

Part 1: Notices

To Debtors: **This form sets out options that may be appropriate in some cases, but the presence of an option on the form does not indicate that the option is appropriate in your circumstances or that it is permissible in your judicial district. Plans that do not comply with local rules and judicial rulings may not be confirmable.**

In the following notice to creditors, you must check each box that applies.

To Creditors: **Your rights may be affected by this plan. Your claim may be reduced, modified, or eliminated.**

You should read this plan carefully and discuss it with your attorney if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation at least 7 days before the date set for the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court. The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. See Bankruptcy Rule 3015. In addition, you may need to file a timely proof of claim in order to be paid under any plan.

The following matters may be of particular importance. ***Debtors must check one box on each line to state whether or not the plan includes each of the following items. If an item is checked as "Not Included" or if both boxes are checked, the provision will be ineffective if set out later in the plan.***

1.1	**A limit on the amount of a secured claim, set out in Section 3.2, which may result in a partial payment or no payment at all to the secured creditor**	❑ **Included**	❑ **Not included**
1.2	**Avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest, set out in Section 3.4**	❑ **Included**	❑ **Not included**
1.3	**Nonstandard provisions, set out in Part 8**	❑ **Included**	❑ **Not included**

Part 2: Plan Payments and Length of Plan

2.1 Debtor(s) will make regular payments to the trustee as follows:

$ _____ per_____ for _____ months

[and $ _____ per_____ for _____ months.] *Insert additional lines if needed.*

If fewer than 60 months of payments are specified, additional monthly payments will be made to the extent necessary to make the payments to creditors specified in this plan.

2.2 Regular payments to the trustee will be made from future income in the following manner:

Check all that apply.

- ❑ Debtor(s) will make payments pursuant to a payroll deduction order.
- ❑ Debtor(s) will make payments directly to the trustee.
- ❑ Other (specify method of payment):_____.

2.3 Income tax refunds.

Check one.

- ❑ Debtor(s) will retain any income tax refunds received during the plan term.
- ❑ Debtor(s) will supply the trustee with a copy of each income tax return filed during the plan term within 14 days of filing the return and will turn over to the trustee all income tax refunds received during the plan term.
- ❑ Debtor(s) will treat income tax refunds as follows:

_____

_____

2.4 Additional payments.

Check one.

- ❑ **None.** *If "None" is checked, the rest of § 2.4 need not be completed or reproduced.*
- ❑ Debtor(s) will make additional payment(s) to the trustee from other sources, as specified below. Describe the source, estimated amount, and date of each anticipated payment.

_____

_____

2.5 The total amount of estimated payments to the trustee provided for in §§ 2.1 and 2.4 is $ _____.

Part 3: Treatment of Secured Claims

3.1 Maintenance of payments and cure of default, if any.

Check one.

- ❑ **None.** *If "None" is checked, the rest of § 3.1 need not be completed or reproduced.*
- ❑ The debtor(s) will maintain the current contractual installment payments on the secured claims listed below, with any changes required by the applicable contract and noticed in conformity with any applicable rules. These payments will be disbursed either by the trustee or directly by the debtor(s), as specified below. Any existing arrearage on a listed claim will be paid in full through disbursements by the trustee, with interest, if any, at the rate stated. Unless otherwise ordered by the court, the amounts listed on a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) control over any contrary amounts listed below as to the current installment payment and arrearage. In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling. If relief from the automatic stay is ordered as to any item of collateral listed in this paragraph, then, unless otherwise ordered by the court, all payments under this paragraph as to that collateral will cease, and all secured claims based on that collateral will no longer be treated by the plan. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

Name of creditor	**Collateral**	**Current installment payment** (including escrow)	**Amount of arrearage** (if any)	**Interest rate on arrearage** (if applicable)	**Monthly plan payment on arrearage**	**Estimated total payments by trustee**
_____	_____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	_____%	$_____	$_____
_____	_____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	_____%	$_____	$_____

Insert additional claims as needed.

3.2 Request for valuation of security, payment of fully secured claims, and modification of undersecured claims. *Check one.*

❑ **None.** *If "None" is checked, the rest of § 3.2 need not be completed or reproduced.*

The remainder of this paragraph will be effective only if the applicable box in Part 1 of this plan is checked.

❑ The debtor(s) request that the court determine the value of the secured claims listed below. For each non-governmental secured claim listed below, the debtor(s) state that the value of the secured claim should be as set out in the column headed *Amount of secured claim*. For secured claims of governmental units, unless otherwise ordered by the court, the value of a secured claim listed in a proof of claim filed in accordance with the Bankruptcy Rules controls over any contrary amount listed below. For each listed claim, the value of the secured claim will be paid in full with interest at the rate stated below.

The portion of any allowed claim that exceeds the amount of the secured claim will be treated as an unsecured claim under Part 5 of this plan. If the amount of a creditor's secured claim is listed below as having no value, the creditor's allowed claim will be treated in its entirety as an unsecured claim under Part 5 of this plan. Unless otherwise ordered by the court, the amount of the creditor's total claim listed on the proof of claim controls over any contrary amounts listed in this paragraph.

The holder of any claim listed below as having value in the column headed *Amount of secured claim* will retain the lien on the property interest of the debtor(s) or the estate(s) until the earlier of:

(a) payment of the underlying debt determined under nonbankruptcy law, or

(b) discharge of the underlying debt under 11 U.S.C. § 1328, at which time the lien will terminate and be released by the creditor.

Name of creditor	Estimated amount of creditor's total claim	Collateral	Value of collateral	Amount of claims senior to creditor's claim	Amount of secured claim	Interest rate	Monthly payment to creditor	Estimated total of monthly payments
_____	$_____	_____	$_____	$_____	$_____	___%	$_____	$_____
_____	$_____	_____	$_____	$_____	$_____	___%	$_____	$_____

Insert additional claims as needed.

3.3 Secured claims excluded from 11 U.S.C. § 506.

Check one.

❑ **None.** *If "None" is checked, the rest of § 3.3 need not be completed or reproduced.*

❑ The claims listed below were either:

(1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor(s), or

(2) incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value.

These claims will be paid in full under the plan with interest at the rate stated below. These payments will be disbursed either by the trustee or directly by the debtor(s), as specified below. Unless otherwise ordered by the court, the claim amount stated on a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) controls over any contrary amount listed below. In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

Name of creditor	Collateral	Amount of claim	Interest rate	Monthly plan payment	Estimated total payments by trustee
_____	_____	$_____	_____%	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____
_____	_____	$_____	_____%	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____

Insert additional claims as needed.

3.4 Lien avoidance.

Check one.

☐ **None.** *If "None" is checked, the rest of § 3.4 need not be completed or reproduced.*

The remainder of this paragraph will be effective only if the applicable box in Part 1 of this plan is checked.

☐ The judicial liens or nonpossessory, nonpurchase money security interests securing the claims listed below impair exemptions to which the debtor(s) would have been entitled under 11 U.S.C. § 522(b). Unless otherwise ordered by the court, a judicial lien or security interest securing a claim listed below will be avoided to the extent that it impairs such exemptions upon entry of the order confirming the plan. The amount of the judicial lien or security interest that is avoided will be treated as an unsecured claim in Part 5 to the extent allowed. The amount, if any, of the judicial lien or security interest that is not avoided will be paid in full as a secured claim under the plan. See 11 U.S.C. § 522(f) and Bankruptcy Rule 4003(d). *If more than one lien is to be avoided, provide the information separately for each lien.*

Information regarding judicial lien or security interest	**Calculation of lien avoidance**	**Treatment of remaining secured claim**
Name of creditor _____	a. Amount of lien $_____ b. Amount of all other liens $_____	**Amount of secured claim after avoidance** (line a minus line f) $_____
Collateral _____	c. Value of claimed exemptions + $_____ d. Total of adding lines a, b, and c $_____	**Interest rate** (if applicable) _____ %
Lien identification (such as judgment date, date of lien recording, book and page number) _____ _____	e. Value of debtor(s)' interest in property − $_____ f. Subtract line e from line d. $_____	**Monthly payment on secured claim** $_____ **Estimated total payments on secured claim** $_____
	Extent of exemption impairment (*Check applicable box*): ☐ **Line f is equal to or greater than line a**. The entire lien is avoided. *(Do not complete the next column.)* ☐ **Line f is less than line a.** A portion of the lien is avoided. (*Complete the next column.)*	

Insert additional claims as needed.

3.5 Surrender of collateral.

Check one.

☐ **None.** *If "None" is checked, the rest of § 3.5 need not be completed or reproduced.*

☐ The debtor(s) elect to surrender to each creditor listed below the collateral that secures the creditor's claim. The debtor(s) request that upon confirmation of this plan the stay under 11 U.S.C. § 362(a) be terminated as to the collateral only and that the stay under § 1301 be terminated in all respects. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in Part 5 below.

Name of creditor	**Collateral**
_____	_____
_____	_____

Insert additional claims as needed.

Part 4: Treatment of Fees and Priority Claims

4.1 General

Trustee's fees and all allowed priority claims, including domestic support obligations other than those treated in § 4.5, will be paid in full without postpetition interest.

4.2 Trustee's fees

Trustee's fees are governed by statute and may change during the course of the case but are estimated to be _____% of plan payments; and during the plan term, they are estimated to total $_____.

4.3 Attorney's fees

The balance of the fees owed to the attorney for the debtor(s) is estimated to be $_____.

4.4 Priority claims other than attorney's fees and those treated in § 4.5.

Check one.

- ❑ **None.** *If "None" is checked, the rest of § 4.4 need not be completed or reproduced.*
- ❑ The debtor(s) estimate the total amount of other priority claims to be _____.

4.5 Domestic support obligations assigned or owed to a governmental unit and paid less than full amount.

Check one.

- ❑ **None**. *If "None" is checked, the rest of § 4.5 need not be completed or reproduced.*
- ❑ The allowed priority claims listed below are based on a domestic support obligation that has been assigned to or is owed to a governmental unit and will be paid less than the full amount of the claim under 11 U.S.C. § 1322(a)(4). *This plan provision requires that payments in § 2.1 be for a term of 60 months; see* 11 U.S.C. § 1322(a)(4).

Name of creditor	Amount of claim to be paid
_____	$_____
_____	$_____

Insert additional claims as needed.

Part 5: Treatment of Nonpriority Unsecured Claims

5.1 Nonpriority unsecured claims not separately classified.

Allowed nonpriority unsecured claims that are not separately classified will be paid, pro rata. If more than one option is checked, the option providing the largest payment will be effective. *Check all that apply.*

- ❑ The sum of $_____.
- ❑ _____% of the total amount of these claims, an estimated payment of $_____.
- ❑ The funds remaining after disbursements have been made to all other creditors provided for in this plan.

If the estate of the debtor(s) were liquidated under chapter 7, nonpriority unsecured claims would be paid approximately $_____. Regardless of the options checked above, payments on allowed nonpriority unsecured claims will be made in at least this amount.

5.2 Maintenance of payments and cure of any default on nonpriority unsecured claims. *Check one.*

❑ **None.** *If "None" is checked, the rest of § 5.2 need not be completed or reproduced.*

❑ The debtor(s) will maintain the contractual installment payments and cure any default in payments on the unsecured claims listed below on which the last payment is due after the final plan payment. These payments will be disbursed either by the trustee or directly by the debtor(s), as specified below. The claim for the arrearage amount will be paid in full as specified below and disbursed by the trustee. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

Name of creditor	Current installment payment	Amount of arrearage to be paid	Estimated total payments by trustee
_____	$_____	$_____	$_____
	Disbursed by: ❑ Trustee ❑ Debtor(s)		
_____	$_____	$_____	$_____
	Disbursed by: ❑ Trustee ❑ Debtor(s)		

Insert additional claims as needed.

5.3 Other separately classified nonpriority unsecured claims. *Check one.*

❑ **None.** *If "None" is checked, the rest of § 5.3 need not be completed or reproduced.*

❑ The nonpriority unsecured allowed claims listed below are separately classified and will be treated as follows

Name of creditor	Basis for separate classification and treatment	Amount to be paid on the claim	Interest rate (if applicable)	Estimated total amount of payments
_____	_____	$_____	_____%	$_____
_____	_____	$_____	_____%	$_____

Insert additional claims as needed.

Part 6: Executory Contracts and Unexpired Leases

6.1 The executory contracts and unexpired leases listed below are assumed and will be treated as specified. All other executory contracts and unexpired leases are rejected. *Check one.*

❑ **None.** *If "None" is checked, the rest of § 6.1 need not be completed or reproduced.*

❑ **Assumed items.** Current installment payments will be disbursed either by the trustee or directly by the debtor(s), as specified below, subject to any contrary court order or rule. Arrearage payments will be disbursed by the trustee. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

Name of creditor	Description of leased property or executory contract	Current installment payment	Amount of arrearage to be paid	Treatment of arrearage (Refer to other plan section if applicable)	Estimated total payments by trustee
_____	_____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	_____	$_____
_____	_____	$_____ Disbursed by: ❑ Trustee ❑ Debtor(s)	$_____	_____	$_____

Insert additional contracts or leases as needed.

Part 7: Vesting of Property of the Estate

7.1 Property of the estate will vest in the debtor(s) upon

Check the applicable box:

❑ plan confirmation.

❑ entry of discharge.

❑ other: _____.

Part 8: Nonstandard Plan Provisions

8.1 Check "None" or List Nonstandard Plan Provisions

❑ **None.** *If "None" is checked, the rest of Part 8 need not be completed or reproduced.*

Under Bankruptcy Rule 3015(c), nonstandard provisions must be set forth below. A nonstandard provision is a provision not otherwise included in the Official Form or deviating from it. Nonstandard provisions set out elsewhere in this plan are ineffective.

The following plan provisions will be effective only if there is a check in the box "Included" in § 1.3.

_____

_____

_____

_____

_____

Part 9: Signature(s):

9.1 Signatures of Debtor(s) and Debtor(s)' Attorney

If the Debtor(s) do not have an attorney, the Debtor(s) must sign below; otherwise the Debtor(s) signatures are optional. The attorney for the Debtor(s), if any, must sign below.

✘ _____
Signature of Debtor 1

Executed on _____
MM / DD / YYYY

✘ _____
Signature of Debtor 2

Executed on _____
MM / DD / YYYY

✘ _____
Signature of Attorney for Debtor(s)

Date _____
MM / DD / YYYY

By filing this document, the Debtor(s), if not represented by an attorney, or the Attorney for Debtor(s) also certify(ies) that the wording and order of the provisions in this Chapter 13 plan are identical to those contained in Official Form 113, other than any nonstandard provisions included in Part 8.

Exhibit: Total Amount of Estimated Trustee Payments

The following are the estimated payments that the plan requires the trustee to disburse. If there is any difference between the amounts set out below and the actual plan terms, the plan terms control.

a.	**Maintenance and cure payments on secured claims** (*Part 3, Section 3.1 total*)		$_____
b.	**Modified secured claims** (*Part 3, Section 3.2 total*)		$_____
c.	**Secured claims excluded from 11 U.S.C. § 506** (*Part 3, Section 3.3 total*)		$_____
d.	**Judicial liens or security interests partially avoided** (*Part 3, Section 3.4 total*)		$_____
e.	**Fees and priority claims** (*Part 4 total*)		$_____
f.	**Nonpriority unsecured claims** (*Part 5, Section 5.1, highest stated amount*)		$_____
g.	**Maintenance and cure payments on unsecured claims** (*Part 5, Section 5.2 total*)		$_____
h.	**Separately classified unsecured claims** (*Part 5, Section 5.3 total*)		$_____
i.	**Trustee payments on executory contracts and unexpired leases** *(Part 6, Section 6.1 total)*		$_____
j.	**Nonstandard payments** *(Part 8, total)*	**+**	$_____
	Total of lines a through j		$_____

Committee Note

Official Form 113 is new and is the required plan form in all chapter 13 cases, except to the extent that Rule 3015(c) permits the use of a Local Form. Except as permitted by Rule 9009, alterations to the Official Form are not permitted. As the form explains, spaces for responses may be expanded or collapsed as appropriate, and sections that are inapplicable do not need to be reproduced. Portions of the form provide multiple options for provisions of a debtor's plan, but some of those options may not be appropriate in a given debtor's situation or may not be allowed in the court presiding over the case. Debtors are advised to refer to applicable local rulings. Nothing in the Official Form requires confirmation of a plan containing provisions inconsistent with applicable law.

Part 1. This part sets out warnings to both debtors and creditors. For creditors, if the plan includes one or more of the provisions listed in this part, the appropriate boxes must be checked. For example, if Part 8 of the plan proposes a provision not included in, or contrary to, the Official Form, that nonstandard provision will be ineffective if the appropriate check box in Part 1 is not selected.

Part 2. This part states the proposed periodic plan payments, the estimated total plan payments, and sources of funding for the plan. Section 2.1 allows the debtor or debtors to propose periodic payments in other than monthly intervals. For example, if the debtor receives a paycheck every week and wishes to make plan payments from each check, that should be indicated in § 2.1. If the debtor proposes to make payments according to different "steps," the amounts and intervals of those payments should also be indicated in § 2.1. Section 2.2 provides for the manner in which the debtor will make regular payments to the trustee. If the debtor selects the option of making payments pursuant to a payroll deduction order, that selection serves as a request by the debtor for entry of the order. Whether to enter a payroll deduction order is determined by the court. See Code § 1325(c). If the debtor selects the option of making payments other than by direct payments to the trustee or by a payroll deduction order, the alternative method (*e.g.*, a designated third party electronic funds transfer program) must be specified. Section 2.3 provides

for the treatment of any income tax refunds received during the plan term.

Part 3. This part provides for the treatment of secured claims.

The Official Form contains no provision for proposing preconfirmation adequate protection payments to secured creditors, leaving that subject to local rules, orders, forms, custom, and practice. A Director's Form for notice of and order on proposed adequate protection payments has been created and may be used for that purpose.

Section 3.1 provides for the treatment of claims under Code § 1322(b)(5) (maintaining current payments and curing any arrearage). For the claim of a secured creditor listed in § 3.1, an estimated arrearage amount should be given. A contrary arrearage or current installment payment amount listed on the creditor's timely filed proof of claim, unless contested by objection or motion, will control over the amount given in the plan.

In § 3.2, the plan may propose to determine under Code § 506(a) the value of a secured claim. For example, the plan could seek to reduce the secured portion of a creditor's claim to the value of the collateral securing it. For the secured claim of a non-governmental creditor, that determination would be binding upon confirmation of the plan. For the secured claim of a governmental unit, however, a contrary valuation listed on the creditor's proof of claim, unless contested by objection or motion, would control over the valuation given in the plan. *See* Bankruptcy Rule 3012. Bankruptcy Rule 3002 contemplates that a debtor, the trustee, or another entity may file a proof of claim if the creditor does not do so in a timely manner. *See* Bankruptcy Rules 3004 and 3005. Section 3.2 will not be effective unless the appropriate check box in Part 1 is selected.

Section 3.3 deals with secured claims that under the so-called "hanging paragraph" of § 1325(a)(5) may not be bifurcated into secured and unsecured portions under Code § 506(a), but it allows for the proposal of an interest rate other than the contract rate to be applied to payments on such a claim. A contrary claim amount listed on the creditor's timely filed proof of claim, unless contested by

objection or motion, will control over the amount given in the plan. If appropriate, a claim may be treated under § 3.1 instead of § 3.3.

In § 3.4, the plan may propose to avoid certain judicial liens or security interests encumbering exempt property in accordance with Code § 522(f). This section includes space for the calculation of the amount of the judicial lien or security interest that is avoided. A plan proposing avoidance in § 3.4 must be served in the manner provided by Bankruptcy Rule 7004 for service of a summons and complaint. *See* Bankruptcy Rule 4003. Section 3.4 will not be effective unless the appropriate check box in Part 1 is selected.

Section 3.5 provides for elections to surrender collateral and requests for termination of the stay under § 362(a) and § 1301 with respect to the collateral surrendered. Termination will be effective upon confirmation of the plan.

Part 4. This part provides for the treatment of trustee's fees and claims entitled to priority status. Section 4.1 provides that trustee's fees and all allowed priority claims (other than those domestic support obligations treated in § 4.5) will be paid in full. In § 4.2, the plan lists an estimate of the trustee's fees. Although the estimate may indicate whether the plan will be feasible, it does not affect the trustee's entitlement to fees as determined by statute. In § 4.3, the form requests a statement of the balance of attorney's fees owed. Additional details about payments of attorney's fees, including information about their timing and approval, are left to the requirements of local practice. In § 4.4, the plan calls for an estimated amount of other priority claims. A contrary amount listed on the creditor's proof of claim, unless changed by court order in response to an objection or motion, will control over the amount given in § 4.4. In § 4.5, the plan may propose to pay less than the full amount of a domestic support obligation that has been assigned to, or is owed to, a governmental unit, but not less than the amount that claim would have received in a chapter 7 liquidation. *See* §§ 1322(a)(4) and 1325(a)(4) of the Code. This plan provision requires that the plan payments be for a term of 60 months. *See* § 1322(a)(4).

Part 5. This part provides for the treatment of unsecured claims that are not entitled to priority status. In § 5.1, the plan may propose to pay nonpriority unsecured claims in accordance with several options. One or more options may be selected. For example, the plan could propose simply to pay unsecured creditors any funds remaining after disbursements to other creditors, or it could also provide that a defined percentage of the total amount of unsecured claims will be paid. In § 5.2, the plan may propose to cure any arrearages and maintain periodic payments on long-term, nonpriority unsecured debts pursuant to § 1322(b)(5) of the Code. In § 5.3, the plan may provide for the separate classification of nonpriority unsecured claims (such as co-debtor claims) as permitted under Code § 1322(b)(1).

Part 6. This part provides for executory contracts and unexpired leases. An executory contract or unexpired lease is rejected unless it is listed in this part. If the plan proposes neither to assume nor reject an executory contract or unexpired lease, that treatment would have to be set forth as a nonstandard provision in Part 8.

The Official Form contains no provision on the order of distribution of payments under the plan, leaving that to local rules, orders, custom, and practice. If the debtor desires to propose a specific order of distribution, it must be contained in Part 8.

Part 7. This part defines when property of the estate will revest in the debtor or debtors. One choice must be selected—upon plan confirmation, upon entry of discharge the case, or upon some other specified event. This plan provision is subject to a contrary court order under Code § 1327(b).

Part 8. This part gives the debtor or debtors the opportunity to propose provisions that are not otherwise in, or that deviate from, the Official Form. All such nonstandard provisions must be set forth in this part and nowhere else in the plan. This part will not be effective unless the appropriate check box in Part 1 is selected. *See* Bankruptcy Rule 3015(c).

Part 9. The plan must be signed by the attorney for the debtor or debtors. If the debtor or debtors are not

represented by an attorney, they must sign the plan, but the signature of represented debtors is optional. In addition to the certifications set forth in Rule 9011(b), the signature constitutes a certification that the wording and order of Official Form 113 have not been altered, other than by including any nonstandard provision in Part 8.

TAB 5

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TAB 5A

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PRELIMINARY MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: ELECTRONIC NOTICING ISSUES

DATE: OCTOBER 21, 2016

At its Fall 2015 meeting, the Advisory Committee approved a work plan to study noticing issues in federal bankruptcy cases. The Advisory Committee then deliberated on the results of this preliminary study at its Spring 2016 meeting. Following those deliberations, the Advisory Committee determined, among other things, that the ongoing electronic filing, notice, and service initiatives by the federal rules committees could mitigate many of the general concerns regarding the extent and volume of required noticing in bankruptcy cases. It thus decided to defer any further consideration of an extensive overhaul of bankruptcy noticing provisions pending progress on those initiatives. The Advisory Committee also determined that it should review and evaluate the several formal and informal suggestions regarding noticing issues in bankruptcy cases submitted to the committee. A summary of these suggestions is included at ***Appendix A*** to the Associate Reporter's Preliminary Research Memorandum, dated September 27, 2016 (the "Research Memorandum"), attached to this Memorandum.

To facilitate the Advisory Committee's review of noticing issues, the Subcommittee evaluated certain of the suggestions relating specifically to general noticing and service issues (the "Notice Suggestions") during its conference call on October 6, 2016.[1] This Memorandum summarizes the key issues identified in, and the Subcommittee's deliberations on, the Notice

[1] This Memorandum uses the terms "notice" and "service" to mean the transmittal of papers generally in bankruptcy cases. It uses "service of process" when referencing the specific requirements of Rule 7004.

Suggestions.[2] The Subcommittee anticipates performing additional research and holding further deliberations on these matters in preparation for the Advisory Committee's Spring 2017 meeting. The Subcommittee welcomes the Advisory Committee's preliminary thoughts and questions on the issues described below to inform more fully its future discussions.

Overview of the Issues and the Subcommittee Deliberations

In general, the Notice Suggestions highlight the significant costs and burdens associated with providing effective notice and general service in bankruptcy cases. Unlike a standard litigation matter, bankruptcy cases frequently involve numerous notices and papers that must be transmitted to multiple parties. It is not simply the service of papers on the opposing party. Rather, it is often the transmittal of the notice or paper to, among others, the debtor, the trustee, all creditors, all indenture trustees, any committees, the U.S. Trustee, and maybe equity security holders. *See, e.g.*, FED. R. BANKR. P. 2002(a). In fact, the bankruptcy rules contain approximately 145 rules addressing noticing or service issues, and many of those rules include multiple subparts with different requirements.

Each of the key issues raised by the Notice Suggestions is set forth below. Additional information concerning these issues and the pertinent history to the rules committees' general progression toward electronic filing and service is set forth in the Research Memorandum. Overall, the Subcommittee determined that no one rule could address all of the suggestions or eliminate all of the potential issues. Nevertheless, the Subcommittee also agreed that, after additional research and consideration, it may be in a position to recommend amendments to certain of the bankruptcy rules to mitigate at least some of the concerns identified by the Notice Suggestions.

[2] The Research Memorandum more fully explains each of the issues, the primary considerations, and the relevant research relating to the Notice Suggestions.

Issue One: Electronic Noticing and Service

- *The Notice Suggestions.* The bankruptcy rules require notice by mail in certain circumstances and only permit the clerk (or such other person as directed by the court) to serve notices electronically if "the entity entitled to receive the notice requests in writing that, instead of notice by mail, all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission."[3] The Notice Suggestions submitted by the Administrative Office's Bankruptcy Judges Advisory Group (BJAG), the National Bankruptcy Conference (NBC), and others posit that broader application of electronic noticing and service would enhance efficiency and produce significant monetary savings for the judiciary.[4]
- *The Basic Problem.* In general, unless a party consents, the bankruptcy rules require parties to notice and serve papers by first-class mail. Although mail service does not appear problematic on its face, it becomes an issue when the party responsible for the transmittal must notice or serve hundreds of parties, as may be the case in many bankruptcy matters. This approach takes time and is expensive; notably, either the judiciary or, increasingly more so, the bankruptcy estate must pay for this kind of notice. For example, the clerk's office pays $0.05 for each notice sent electronically, but pays about $0.30 for a mailed notice. The BJAG's suggestion quantifies these costs as follows, "As of June 30, 2015, electronic noticing accounted for 38.4% of all notices sent through the BNC, and it yielded the judiciary a postage savings of close to $10 million in fiscal year 2014."[5] In addition, as the Advisory Committee has previously discussed in

[3] FED. R. BANKR. P. 9036.
[4] *See* Suggestion 15-BK-H (BJAG); Suggestion 14-BK-E (NBC).
[5] *See* Suggestion 15-BK-H (BJAG).

the context of a different suggestion, the party responsible for noticing or service does not always have a good mailing address for the recipient.[6]

- *The Potential Approaches.* The Civil Rules Committee has proposed an amendment to Civil Rule 5(b) that will permit service on "a registered user by filing it with the court's electronic-filing system or sending it by other electronic means that the person consented to in writing." (This proposed amendment is described more fully in the Research Memorandum. It does not affect the service of process rules.) The proposed amendment to Civil Rule 5(b), if adopted, will apply in various bankruptcy matters, including adversary proceedings and contested matters under Rules 7005 and 9014(b). It also evidences the general move toward more comprehensive electronic filing and service by the rules committees and corresponds to the practices of many bankruptcy courts that require registered users to consent to electronic service. Accordingly, the Advisory Committee could amend Rule 5005 to adapt to, or incorporate, the proposed amendment to Civil Rule 5(b).
- *The Subcommittee's Deliberations.* The Subcommittee discussed the advantages and disadvantages to permitting electronic noticing and service in bankruptcy cases on registered users and other parties consenting to electronic service. The Subcommittee generally agreed that this step was advisable, but focused on whether something more should be done in the bankruptcy context. As discussed at Issue Two, many of the parties who receive notice or service in bankruptcy cases are not registered users in the court's electronic-filing system. As such, the cost savings may be limited if the Advisory Committee elects only to incorporate the approach of the proposed amendment to Civil

[6] *See* Suggestion 15-BK-D, submitted by Russell C. Simon, Chapter 13 Standing Trustee, on behalf of the National Association of Chapter 13 Trustees.

Rule 5(b) in bankruptcy cases. In this context, the Subcommittee reviewed the costs associated with noticing and service and the practice of courts placing this burden on the debtor or creditors' committee, which expenses are paid by the bankruptcy estate. The Subcommittee also discussed whether the practice of electronic noticing and service complies with basic due process requirements. As the Research Memorandum explains, the Committee Notes to Rules 8001 and 9036, as well as to the proposed amendment to Civil Rule 5(b), all suggest that electronic transmittal is as effective as other modes of service currently used in practice. The Subcommittee was comfortable that the practice of electronic noticing and service generally satisfies due process requirements. Accordingly, the Subcommittee is inclined to propose an amendment to Rule 5005 to adapt to, or incorporate, the proposed amendment to Civil Rule 5(b), but intends to proceed cautiously to determine the appropriate scope of recipients subject to any such rule amendment (*see* Issue Two below) and proactively vet any issues raised through the public comments to the proposed amendment to Civil Rule 5(b).

Issue Two: Large Filers and Electronic Noticing and Service

- *The Notice Suggestions.* The BJAG and NBC Notice Suggestions also raise concerns regarding large filers in bankruptcy cases who are not registered users in the court's electronic-filing system and thus may not be subject to electronic noticing and service, even if permitted for registered users. In most jurisdictions, there is a distinction between a "registered user" and a "limited participant" or "non-registered user." A registered user typically is a licensed attorney (or other party approved by the court) that has signed a registered user agreement with the court and has full access to the electronic-filing system. A limited user, on the other hand, does not have to be an attorney and may file

only certain papers (e.g., proof of claim, ballot) through the court's electronic-filing system. To optimize any permissible electronic noticing and service in bankruptcy cases, the BJAG recommends an amendment to Rule 9036 that would mandate "electronic bankruptcy noticing for entities sent 100 or more court notices within a given month."[7] The NBC proposes a similar amendment that would require "[a]n entity … that has filed or expects to file, in the aggregate, 100 or more proofs of claim in one or ore bankruptcy cases in the United States, within any 12-month" to register with the court's electronic noticing system.[8]

- *The Basic Problem.* As explained in the context of Issue One, the term "registered users" in a bankruptcy case captures only a small percentage of parties entitled to notice and service under various bankruptcy rules. Many creditors—both individual and non-individual creditors—participate in bankruptcy cases on a pro se basis. These pro se creditors generally file proofs of claim on their own behalf and likewise submit ballots (to the extent they are entitled to vote on a bankruptcy plan) without the assistance of a lawyer. And, as noted in the BJAG and NBC Notice Suggestions, some of these pro se creditors may appear in multiple cases in any given district, requiring the court or other responsible party to notice and service them with hundreds of papers.
- *The Potential Approaches.* The scope of users captured by any amendments to Rule 5005 (and perhaps Rule 9036) may determine the utility of the amendments. Requiring large filers to register with the court's electronic-filing system may mitigate the problem, but it also may be difficult to monitor and enforce. Requiring any entity that files a paper in the bankruptcy case to register with the court's electronic-filing system

[7] Suggestion 15-BK-H (BJAG).
[8] Suggestion 14-BK-E (NBC).

may be a more comprehensive solution; it also may be something that is left to each district to consider and address for itself.

- *The Subcommittee's Deliberations.* The Subcommittee discussed the potential advantages and disadvantages to enlarging the pool of recipients subject to electronic noticing and service. Specifically, the Subcommittee explored the possibility of requiring any party who files a proof of claim in a bankruptcy case to provide an email address and be noticed and served electronically, unless the party opts out of electronic service or does not have an email address. The Subcommittee discussed whether including pro se creditors in electronic noticing and service raises due process or other concerns. The Subcommittee considered that pro se creditors may prefer to receive papers electronically and noted the importance of ensuring that parties understand how they will receive papers from the court and others in the case. In addition, the Subcommittee discussed whether any such provision should be in the form of a mandatory rule with an opt-out, or rather, a more explicit opportunity for parties to consent to electronic noticing and service. The Subcommittee agreed that it should evaluate the feasibility of capturing email information from proofs of claim filed with the court to facilitate electronic noticing and service by both the court and other parties. The Subcommittee also recognized that this approach would not capture all parties required to be noticed or served in bankruptcy cases, but that it would significantly mitigate the identified problems with the current system.

Issue Three: Parties Subject to Service of Process

- *The Notice Suggestions.* In addition to the mode of noticing or service, several Notice Suggestions highlight challenges in identifying the correct representative of a party being

served with a summons and complaint under the bankruptcy rules.[9] For example, Rule 7004(b)(3) permits service of process "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."[10] Comments to the Advisory Committee suggest that such service rarely provides actual notice to the correct individual within the entity and that similar issues exist under Bankruptcy Rule 4003(d).[11] In addition, the NBC discusses similar issues with respect to depository institutions under Rule 7004(h), which provides: "Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution…."[12]

- *The Basic Problem.* In the service of process context, Rule 7004 identifies certain parties who are qualified to receive service for business entities and depository institutions. This raises two issues: whether the rules require the identification of a named individual who holds one of the offices or positions authorized to receive service under the rules; and if a named individual is required, that information often is difficult to find and changes on periodic basis.

[9] *See* Suggestion 15-BK-H; Suggestion 14-BK-E.
[10] FED. R. BANKR. P. 7004(b)(3).
[11] Bankruptcy Rule 4003(d) provides, "A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion in accordance with Rule 9014. Notwithstanding the provisions of subdivision (b), a creditor may object to a motion filed under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien." Bankruptcy Rule 9014(b), in turn, incorporates the service and noticing provisions of Bankruptcy Rule 7004.
[12] FED. R. BANKR. P. 7004(h).

- *The Potential Approaches.* This issue certainly raises important noticing concerns, but it may not require a rule change. For example, it may be possible to supplement the information provided by parties registering with the court's electronic-filing system or the U.S. Court's Bankruptcy Noticing Center (BNC). Either system could require parties to identify the name and address of the person authorized to receive service or provide an option to consent to electronic noticing and service in lieu of that required by the statute and the rules. Another approach would be to amend the proof of claim form to capture this information. It may be helpful to solicit input from bankruptcy clerks, the BNC, and others to determine the extent of this problem and whether the proof of claim form, the registered user agreement, or either the Electronic Bankruptcy Noticing (EBN) or the National Creditor Registration Service (NCRS) databases could be changed to capture this information and make it available to parties tasked with noticing or service responsibilities in bankruptcy cases.
- *The Subcommittee's Deliberations.* The Subcommittee questioned whether this issue posed a significant problem for most parties in bankruptcy cases. The Subcommittee acknowledged the split in the case law concerning exactly what a party must do to satisfy either Rule 7004(b)(3) or 7004(h). Although most courts allow service on a generic (i.e., unnamed) officer or authorized agent under Rule 7004(b)(3), courts are more divided on whether such an approach satisfies Rule 7004(h), which is the more exacting of the two rules. Rule 7004(h) requires service "by certified mail addressed to an officer of the institution." The Subcommittee noted that the Advisory Committee cannot unilaterally amend Rule 7004(h), which was added in 1996 by an act of Congress. The Subcommittee also noted that Rule 7004(b)(3) corresponds to the language of Civil

Rule 4(h) and that, as such, the Subcommittee should not propose any changes to Rule 7004(b)(3) unless there is a bankruptcy-specific reason to do so. On balance, the Subcommittee did not find sufficient justifications for amending Rule 7004(b)(3) or trying to address the issue indirectly through the kinds of information requested on the proof of claim form. The Subcommittee agreed, however, to research further the EBN and NCRS databases, including the information collected and who has access to that information, in connection with making a final recommendation on these suggestions.

Issue Four: Objections to Claims

- *The Notice Suggestions.* As part of the chapter 13 national plan project, the Advisory Committee proposed amendments to certain bankruptcy rules, including Rule 3007(a) (Objections to Claims). The proposed amendment to Rule 3007(a) generally allows the party filing an objection to a claim to serve the objection and the related notice by first-class mail to the address listed in the proof of claim, rather than in accordance with the service of process requirements of Rule 7004. During the Advisory Committee's deliberations on the proposed amendments to Rule 3007(a), the Advisory Committee discussed whether to extend this procedure to claims for which no proof of claim is required under section 1111(a) of the Bankruptcy Code and Rule 3003. The Advisory Committee decided to refer this issue to the committee's larger noticing project.
- *The Basic Problem.* In chapter 9 and 11 cases, a debtor may list a claim on its schedules as undisputed, non-contingent, and liquidated, which makes that claim an "allowed" claim under the Bankruptcy Code, unless and until a party objects to the claim. Rule 3003 does not require parties whose claims are scheduled as undisputed, non-contingent, and liquidated in chapter 9 or 11 cases to file proofs of claim. In these

instances, if a debtor ultimately determines that such a claim was scheduled incorrectly, the debtor could (i) amend its schedules and require the claimant to file a proof of claim under Rule 3003 (if the debtor disagrees with the proof of claim, the debtor could then object to it), or (ii) object to the claim listed on its schedules, without triggering a requirement that the claimant file a proof of claim. In the latter situation, the primary information about the claimant, its claim, and its mailing address come from the debtor's schedules, not from a paper filed by the claimant. Accordingly, the court and parties in interest may have less confidence that a claims objection mailed to the claimant's address listed on the debtor's schedules actually reaches its intended recipient.

In addition, an objection to a claim must be filed and served on the claimant, which raises the question of how to accomplish such service. Some courts have held that the service of a claims objection must comply with the service of process requirements under Rule 7004. The proposed amendment to Rule 3007 resolves this uncertainty when a proof of claim is filed, providing that a claims objection may be served by mail on the claimant at the address listed in the claimant's proof of claim. The proposed amendment does not address how to serve a claimant who was not required to file, and has not filed, a proof of claim. The primary difference between the two cases is that a proof of claim indicates a current mailing address for the claimant and no such address is provided if a proof of claim is not filed. The practice in some courts with respect to the latter is to permit service on the claimant at the address listed in the debtor's schedules. Unfortunately, the debtor's schedules may not contain accurate information. That information also may not satisfy the service by mail requirements of Rule 7004, if service of process remains applicable for this subset of claims objections.

- *The Potential Approaches.* Many chapter 11 case management orders and omnibus claims objection orders require or allow service of claims objections electronically. If the Advisory Committee is inclined to recommend a move toward more general electronic noticing and service in bankruptcy cases, allowing service of claims objections electronically on registered users and others consenting to electronic service would be a consistent approach. The Advisory Committee then would need to consider whether addresses listed on a debtor's schedule of liabilities are reliable for purposes of service or, rather, whether the service of process of requirements of Rule 7004 are better calculated to provide reasonable notice and an opportunity to be heard in those cases. On balance, the latter approach appears more consistent with basic due process requirements.
- *The Subcommittee Deliberations.* The Subcommittee discussed the scope of this potential issue, with some members questioning how frequently a debtor objects to claims on its own schedules. Subcommittee members explained their experiences with this particular issue, and the incomplete nature of information contained in most debtors' schedules. The primary concern is the potential deficiencies in authorizing service of a claims objection by mail at the address listed in the debtor's schedule. To the extent that address is incomplete or inaccurate, the service would not be reasonably calculated to provide notice and an opportunity to be heard. The Subcommittee debated the value of applying the service of process rules in this context, agreeing that further research and deliberation was needed. The Subcommittee also noted that, to the extent it recommends broader electronic noticing and service rules, such service would capture the service of claims objections under the proposed amendment to Rule 3007 and also would apply to

claimants not required to file a proof of claim but who are registered users or had filed notices of appearance in the case.

Issue Five: Transmittal of Notice of Appeal

- *The Notice Suggestions.* Several Notice Suggestions urge an amendment to Rule 8003(c)(1) to eliminate the clerk's obligation to serve the notice of appeal to the U.S. Trustee and other parties.[13]
- *The Potential Approaches and the Subcommittee's Deliberations.* In 2014, the Advisory Committee completely revamped chapter 8 of the bankruptcy rules to follow the language and general structure of the Federal Rules of Appellate Procedure. The Advisory Committee has elected not to deviate from the Appellate Rules, unless a specific bankruptcy reason justifies the change. Accordingly, the Subcommittee determined to recommend no action on these suggestions at this time.

[13] *See* Suggestion 12-BK-005; Suggestion 12-BK-008; Suggestion 12-BK-026; Suggestion 12-BK-040.

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PRELIMINARY RESEARCH MEMORANDUM

TO: SUBCOMMITTEE ON BUSINESS ISSUES

FROM: MICHELLE HARNER, ASSOCIATE REPORTER

RE: ELECTRONIC NOTICING ISSUES

DATE: SEPTEMBER 27, 2016

At its Fall 2015 meeting, the Advisory Committee approved a work plan to study noticing issues in federal bankruptcy cases. The Advisory Committee then deliberated on the results of this preliminary study at its Spring 2016 meeting. Following those deliberations, the Advisory Committee determined, among other things, that the ongoing electronic filing, notice, and service initiatives by the federal rules committees could mitigate many of the general concerns regarding the extent and volume of required noticing in bankruptcy cases. It thus decided to defer any further consideration of an extensive overhaul of bankruptcy noticing provisions pending progress on those initiatives. The Advisory Committee also determined that it should review and evaluate the several formal and informal suggestions and comments (collectively, "Suggestions") regarding noticing issues in bankruptcy cases submitted to the committee. A summary of the Suggestions is attached at ***Appendix A***.

This Memorandum summarizes and evaluates certain of the Suggestions relating specifically to the parties required to receive notice, and the acceptable modes of accomplishing notice and service, in bankruptcy cases generally (the "Notice Suggestions"). Please note that this Memorandum uses the terms "notice" and "service" to mean the transmittal of papers generally in bankruptcy cases. It uses "service of process" when referencing the specific requirements of Rule 7004. In addition, separate memoranda address the remaining Suggestions,

as indicated at ***Appendix A***, as those Suggestions involve noticing issues particular to a specific chapter of the Bankruptcy Code or a unique issue under a specific bankruptcy rule.

Overview of Issues

The bankruptcy rules govern, among other things, the noticing of parties in federal bankruptcy cases. These rules include the service of notices, pleadings, and other papers in bankruptcy cases, which often impact the substantive rights of potentially hundreds of parties. Noticing thus not only is important to ensure the service of justice in bankruptcy cases, but it also can be time-consuming, cumbersome, and expensive.

The Advisory Committee has received several Suggestions regarding noticing issues in bankruptcy cases. The Suggestions highlight the cost associated with noticing, as well as certain challenges in identifying the correct parties to receive service of notice and other papers in bankruptcy cases. The key issues addressed by the Notice Suggestions and this Memorandum include:

- *Issue One: Electronic Noticing and Service.* The bankruptcy rules require notice by mail in certain circumstances, and only permit the clerk (or such other person as directed by the court) to serve notices electronically if "the entity entitled to receive the notice requests in writing that, instead of notice by mail, all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission." [1] The Notice Suggestions submitted by the Administrative Office's Bankruptcy Judges Advisory Group (BJAG), the National Bankruptcy Conference (NBC), and others posit that broader application of electronic noticing and service would enhance efficiency and produce significant monetary savings for the judiciary.[2]

- *Issue Two: Large Filers and Electronic Noticing and Service.* The BJAG and NBC Notice Suggestions also raise concerns regarding large filers in bankruptcy cases who are not registered users in the court's electronic-filing system and thus may not be subject to electronic noticing and service, even if permitted for registered users. In most jurisdictions, there is a distinction between a "registered

[1] FED. R. BANKR. P. 9036.
[2] *See* Suggestion 15-BK-H (BJAG); Suggestion 14-BK-E (NBC).

user" and a "limited participant" or "non-registered user." A registered user typically is a licensed attorney (or other party approved by the court) that has signed a registered user agreement with the court and has full access to the electronic-filing system. A limited user, on the other hand, does not have to be an attorney and may file only certain papers (e.g., proof of claim, ballot) through the court's electronic-filing system. To optimize any permissible electronic noticing and service in bankruptcy cases, the BJAG recommends an amendment to Rule 9036 that would mandate "electronic bankruptcy noticing for entities sent 100 or more court notices within a given month."[3] The NBC proposes a similar amendment that would require "[a]n entity … that has filed or expects to file, in the aggregate, 100 or more proofs of claim in one or ore bankruptcy cases in the United States, within any 12-month" to register with the court's electronic noticing system.[4]

- *Issue Three: Parties Subject to Service of Process.* In addition to the mode of noticing or service, several Notice Suggestions highlight challenges in identifying the correct representative of a party being served with a summons and complaint under the bankruptcy rules.[5] For example, Rule 7004(b)(3) permits service of process "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."[6] Comments to the Advisory Committee suggest that such service rarely provides actual notice to the correct individual within the entity and that similar issues exist under Bankruptcy Rule 4003(d).[7] In addition, the NBC discusses similar issues with respect to depository institutions under Rule 7004(h), which provides: "Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution…."[8]

- *Issue Four: Objections to Claims.* As part of the chapter 13 national plan project, the Advisory Committee proposed amendments to certain bankruptcy rules, including Rule 3007(a) (Objections to Claims). The proposed amendment to

[3] Suggestion 15-BK-H (BJAG).
[4] Suggestion 14-BK-E (NBC).
[5] *See* Suggestion 15-BK-H; Suggestion 14-BK-E.
[6] FED. R. BANKR. P. 7004(b)(3).
[7] Bankruptcy Rule 4003(d) provides, "A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion in accordance with Rule 9014. Notwithstanding the provisions of subdivision (b), a creditor may object to a motion filed under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien." Bankruptcy Rule 9014(b), in turn, incorporates the service and noticing provisions of Bankruptcy Rule 7004.
[8] FED. R. BANKR. P. 7004(h).

> Rule 3007(a) generally allows the party filing an objection to a claim to serve the objection and the related notice by first-class mail to the address listed in the proof of claim, rather than in accordance with the service of process requirements of Rule 7004. During the Advisory Committee's deliberations on the proposed amendments to Rule 3007(a), the Advisory Committee discussed whether to extend this procedure to claims for which no proof of claim is required under section 1111(a) of the Bankruptcy Code and Rule 3003. The Advisory Committee decided to refer this issue to the committee's larger noticing project.

- *Issue Five: Transmittal of Notice of Appeal.* In addition, several Notice Suggestions urge an amendment to Rule 8003(c)(1) to eliminate the clerk's obligation to serve the notice of appeal to the U.S. Trustee and other parties.[9]

Although the concerns articulated in the Notice Suggestions warrant the Advisory Committee's time and attention, there is a need to proceed cautiously here. The bankruptcy rules are an integrated set of principles that have served the bankruptcy system well for many years. Courts and parties generally understand the rules, as well as their rights and obligations under the rules. Moreover, many courts and practitioners have structured their noticing practices to comply with the existing rules, and any changes to the parties to be served or the methods of service could require significant revisions to those practices.

That said, a number of circumstances suggest that it may be time for the Advisory Committee to take a closer look at electronic noticing and service in bankruptcy cases. In general, there is a continued progression toward electronic or paperless transactions in many areas, including the judicial system, and parties are more comfortable with modes of electronic communication. The rules committees also have been embracing a more expansive use of electronic-filing systems. The Advisory Committee has posted for public comment a proposed amendment to Rule 5005 that would mandate electronic filing by represented parties. In addition, the Advisory Committee on Civil Rules has posted for public comment several amendments to

[9] *See* Suggestion 12-BK-005; Suggestion 12-BK-008; Suggestion 12-BK-026; Suggestion 12-BK-040.

Civil Rule 5 that deal with the court's electronic-filing system, including an amendment to Civil Rule 5(b) that would permit electronic service of papers on registered users. Notably, if adopted, amended Civil Rule 5(b) would apply in certain instances in bankruptcy cases, including under Rules 7005, 9014(b), and 9022(a).

Executive Summary of Issues for Subcommittee Consideration

The Notice Suggestions collectively addressed by this Memorandum require the Subcommittee to consider the role of electronic noticing and service in bankruptcy cases, as well as potential changes that would facilitate more efficient service on parties in particular situations. The following bullet points summarize the key issues and preliminary recommendations for the Subcommittee:

- *Issue One:* Whether to provide expressly that parties may invoke Civil Rule 5(b) (with the proposed amendment) to serve papers electronically under the bankruptcy rules and that the clerk and other parties designated by the court may notice parties electronically if the recipients are registered users or otherwise consent to such service.
    - *Recommendation:* An amendment to Rule 5005 to incorporate Civil Rule 5(b), as amended, and an amendment to Rule 9036 to allow noticing electronically as described above without further action of the court appear both reasonable and warranted in light of current practice and technological advancements.

- *Issue Two:* Whether to encourage parties to register for the court's electronic-filing system—or to otherwise expand the authority to notice electronically to limited participants and non-registered users—in order to optimize the utility of any amendments to Rules 5005 and 9036 permitting electronic noticing and service.
    - *Recommendation:* The scope of users captured by any amendments to Rules 5005 and 9036 may determine their utility. Requiring large filers to register with the court's electronic-filing system may mitigate the problem, but it also may be difficult to monitor and enforce. Requiring any entity that files a paper electronically in the bankruptcy case to register with the court's electronic-filing system may be a more comprehensive solution; it also may be something that the Subcommittee allows each jurisdiction to consider and address for itself. Finally, as with the next issue, the Subcommittee may want to solicit input from bankruptcy clerks, the

Administrative Office of the U.S. Courts (AOUSC), and the U.S. Court's Bankruptcy Noticing Center (BNC) to determine the feasibility of any changes to the registration requirements for the courts' electronic-filing systems, the Electronic Bankruptcy Noticing (EBN), and the National Creditor Registration Service (NCRS), as well as the possibility of party access to the EBN database.

- *Issue Three:* Whether to facilitate the designation of officers or agents authorized to receive service of process on behalf of corporations, partnerships, associations, and depository institutions by amendments to the proof of claim rule or form, or by requiring additional information for parties that register with the BNC or through the court's electronic-filing system.
    - *Recommendation:* This issue certainly raises important noticing concerns, but it may not require a rule change. It appears that supplementing the information required by parties registering with the court's electronic-filing system or the BNC could mitigate this issue. Either system could require parties to identify the name and address of the person authorized to receive service or provide an option to consent to electronic noticing and service in lieu of that required by the statute and the rules. As with the prior issue, the Subcommittee may want to solicit input from bankruptcy clerks, the AOUSC, and the BNC to determine the feasibility of any changes to the registration requirements for the courts' electronic-filing systems, the EBN, and the NCRS, as well as the possibility of party access to the EBN database.

- *Issue Four: Objections to Claims.* Whether to propose a further amendment to Rule 3007(a) that would permit first-class mail or electronic service of objections to claims for which no proof of claim is required.
    - *Recommendation:* As explained below, many chapter 11 case management orders and omnibus claims objection orders require or allow service of claims objections electronically. If the Subcommittee is inclined to recommend a move toward more general electronic noticing and service in bankruptcy cases, allowing service of claims objections electronically on registered users and others consenting to electronic service would be a consistent approach. The Subcommittee then would need to consider whether addresses listed on a debtor's schedule of liabilities are reliable for purposes of service or, rather, whether the service of process of requirements of Rule 7004 are better calculated to provide reasonable notice and an opportunity to be heard in those cases.

- *Issue Five:* Whether to maintain the current requirement under Rule 8003(c) that the clerk serve the notice of appeal, which aligns with the corresponding appellate rule.
    - *Recommendation:* As explained below, maintaining the status quo appears warranted in light of the Advisory Committee's approach to the Appellate Rules.

Issue One: Electronic Noticing and Service

A. *Background on Rules*

The bankruptcy rules contain approximately 145 rules addressing noticing or service issues, and many of those rules include multiple subparts with different requirements. Unlike many civil or criminal matters, a single bankruptcy case may involve hundreds of parties, and the bankruptcy rules require the clerk (or some other party as the court may direct) to notice or serve certain papers on all of these parties on numerous occasions. For example, under Rule 2002(a), the clerk or some party as the court may direct must serve *by mail* the listed notices on the debtor, the trustee, all creditors, indenture trustees, any committees, the U.S. Trustee, and maybe equity security holders. Additionally, attorneys may file notices of appearance, and attorneys and parties may file requests for service, in cases that enlarge the recipient pool.

Although courts may try to mitigate the impact of these extensive noticing and service requirements by local rule or case management orders, the process remains cumbersome and expensive. In large chapter 11 cases, debtors often retain noticing agents to manage the service list and comply with the noticing and service requirements authorized by the court's case management order. In addition, the bankruptcy rules or the court may direct the debtor, the chapter 7 trustee, or the chapter 13 trustee to notice or serve parties. In these instances, the cost of noticing and service impacts the bankruptcy estate directly and uses funds that otherwise would be available to pay creditors in the case. Similarly, as suggested by the BJAG's Notice

Suggestion, mailing notices in bankruptcy cases imposes significant costs on the judicial system. In fact, the Advisory Committee received comments to the proposed amendments to Rule 3015 focused on the mode and cost of service of, and the party required to serve, notice of the chapter 13 plan.[10] This Memorandum considers the mode and cost issues raised by these comments.

The high cost of noticing and service in bankruptcy cases alone should not justify a change in the bankruptcy rules, particularly if the due process rights of parties might suffer. For example, an informal Notice Suggestion by David Lander posits that parties should receive something more particular than e-noticing when the motion or pleading is adverse to the parties' interests. The bankruptcy rules do facilitate the "notice and opportunity to be heard" underlying a party's constitutional right of due process. As the Supreme Court explained in *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 314 (1950):

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably [sic] to convey the required information and it must afford a reasonable time for those interested to make their appearance.

The Subcommittee thus should balance cost and efficiency factors with due process considerations under *Mullane* in evaluating any potential amendments to the noticing and service requirements of the bankruptcy rules.[11]

[10] *See, e.g.*, Comments BK-2016-0001-0007, BK-2016-0001-0004, and BK-2016-0001-0008.

[11] For a general discussion of due process issues, see also *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010) and *Matthews v. Eldridge*, 424 U.S. 319 (1976). Notably, e-noticing that provides a party with actual notice of a motion or pleading in a bankruptcy case appears to satisfy the due process standards established by these cases. Although Mr. Lander's concern is understandable (particularly in large cases with numerous filings), the party is receiving notice and has the ability to determine for itself whether the party's interests are affected in any way. In addition, if the pleading is a complaint or motion

Interestingly, the history to the bankruptcy rules suggests that the factors of cost, efficiency, and due process fostered the existing preference for service by U.S. mail. Unlike the civil rules, the bankruptcy rules mandate notice or service by mail in certain circumstances[12] and allow service of process by mail in certain circumstances.[13] This preference for U.S. mail was adopted at a time when mailing a paper was viewed as cheaper and as reliable as other modes of transmission—i.e., it was a cost-effective means reasonably calculated to provide notice and an opportunity to be heard to parties affected by a bankruptcy case. As a past set of the Advisory Committee's Meeting Minutes explains:

> [Professor King] said the rule has provided for service by first class mail since 1976. That was a change, he said, from the original rule promulgated in 1973, which had specified certified or registered mail. The reason for the 1976 change, Professor King said, was that the Committee had learned that first class mail was more reliable in achieving service because many persons would refuse to sign for the registered or certified envelopes.[14]

B. *Notable Changes in Practice*

As suggested above, a number of relevant factors have changed since the adoption of the bankruptcy rules in 1983. Technology has advanced, making electronic transmission more reliable and more widely used than many other modes of communication. The judicial system likewise has adopted electronic-filing systems, including the CM/ECF system and the Electronic Bankruptcy Noticing (EBN) Program sponsored by the U.S. Court's Bankruptcy Noticing Center (BNC). Parties are increasingly more familiar and comfortable with electronic transmissions in judicial matters.

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governed by Rule 9014, the service of process requirements under Rule 7004 provide for service of the motion or complaint and not simply notice of the pleading.

[12] A chart summarizing the rules that require notice or service by mail is attached at ***Appendix B***.

[13] FED. R. BANKR. P. 7004(b).

[14] MEETING MINUTES, ADVISORY COMMITTEE ON THE BANKRUPTCY RULES (Feb. 1992).

These developments have already fostered changes to judicial rules. In 1993, the Advisory Committee adopted Rule 9036, which provides:

> Whenever the clerk or some other person as directed by the court is required to send notice by mail and the entity entitled to receive the notice requests in writing that, instead of notice by mail, all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission, the court may direct the clerk or other person to send the information by such electronic transmission. Notice by electronic means is complete on transmission.[15]

The Committee Note to Rule 9036 states, "The use of electronic technology instead of mail to send information to creditors and interested parties will be more convenient and less costly for the sender and the receiver."[16] It also explains the justification for a 2005 amendment as follows, "Confidence in the delivery of email text messages now rivals or exceeds confidence in the delivery of printed materials. Therefore, there is no need for confirmation of receipt of electronic messages just as there is no such requirement for paper notices."[17] Likewise, the Committee Note to Rule 8001, as amended in 2014, comments, "These rules take account of the evolving technology in the federal courts for the electronic filing, storage, and transmission of documents. Except as applied to pro se parties, the Part VIII rules require documents to be sent electronically, unless applicable court rules or orders expressly require or permit another means of sending a particular document."

The Advisory Committee's pending amendment to Rule 5005 provides, among other things:

[15] FED. R. BANKR. P. 9036.
[16] FED. R. BANKR. P. 9036, Committee Note.
[17] *Id.*

> **(a) Filing**.
>
> *****
>
> (2) *Electronic Filing and Signing~~by Electronic Means.~~*
>
> (A) *By a Represented Entity—Generally Required; Exceptions.*~~A court may by local rule permit or require 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.~~ An entity represented by an attorney shall file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.~~A local rule may require filing by electronic means only if reasonable exceptions are allowed.~~

Likewise, the pending amendment to Civil Rule 5(b) reads,

> **(b) Service: How Made**.
>
> **(2)** *Service in General.* A paper is served under this
>
> rule by:
>
> **(A)** handing it to the person;
>
> *****
>
> **(E)** sending it to a registered user by filing it with the court's electronic-filing system or sending it by other electronic means ~~if~~that the person consented to in writing—in either of which events service is complete upon ~~transmission~~filing or sending, but is not effective if the ~~serving party~~filer or sender learns that it did not reach the person to be served; or

The Committee Note to the pending amendment to Civil Rule 5(b) explains, "Provision for electronic service was first made when electronic communication was not as widespread or as fully reliable as it is now. Consent of the person served to receive service by electronic means was required as a safeguard. Those concerns have substantially diminished, but have not disappeared entirely, particularly as to persons not represented by an attorney."[18]

[18] FED. R. CIV. P. 5(b), Committee Note to proposed amendments, published for public comment, August 2016.

C. *Potential Responses to Suggestions*

At its spring 2016 meeting, the Advisory Committee determined that many of the issues and concerns raised regarding noticing and service in bankruptcy cases would likely resolve themselves as courts adopt broader application of electronic transmission procedures. The pending rule amendments discussed above certainly should help these issues, if ultimately adopted. Even though Rule 5005 does not address the service of papers, Civil Rule 5(b) will govern service and permit electronic transmission in various matters in bankruptcy cases.[19] The Subcommittee could recommend furthering these efforts by proposing a new subsection of Rule 5005 that incorporates Civil Rule 5(b), as amended, and an amendment to Rule 9036. For example,

> **Rule 5005:**
>
> (b) **Service: How Made**.
>
> (1) *General.* Any paper required to be served under these rules shall be served in the manner provided by Rule 5(b) F.R. CIV. P.
>
> (2) *Service of Process.* This rule does not apply to any complaint or motion required to be served in accordance with Rule 7004.
>
> **Rule 9036:**
>
> Whenever the clerk or some other person as directed by the court is required by these rules to send notice by mail, the clerk or other person may send the notice to a registered user by filing it with the court's electronic-filing system or sending it by other electronic means that the person consented to in writing—in either of which events service is complete upon filing or sending, but is not effective if the filer or sender learns that it did not reach the person to be served.

Alternatively, the Subcommittee could recommend a more limited amendment to Rule 9036 that more closely tracks the existing format:

[19] For example, Rules 7005, 9014(b), and 9022(a) incorporate Civil Rule 5.

> Whenever the clerk or some other person as directed by the court is required by these rules to send notice by mail and the entity is a registered user in the court's electronic-filing system or the entity entitled to receive the notice requests in writing that, instead of notice by mail, all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission, the court may direct the clerk or other person to send the information by such electronic transmission. Notice by electronic means is complete on transmission.

The former proposed amendment to Rule 9036 would remove the court from the process, and the latter approach would preserve the court's role in authorizing electronic service.[20] Both approaches leave open the issue of electronic noticing on limited users/non-registered participants, discussed further below, and the issue raised by David Lander concerning more particularized notice when an action is adverse to a party's interest.[21] They also likely correspond to existing practices in many jurisdictions in which registering with the court's electronic noticing system constitutes consent to electronic notice/service (but not service of process).[22]

[20] In practice, electronic noticing and service is common for registered users. For example, courts' administrative procedures for its CM/ECF system may provide for electronic noticing and service; registering with the system may constitute consent to such service.

[21] For a discussion of Mr. Lander's informal Notice Suggestion, see *supra* note 11 and accompanying text.

[22] For example, the an administrative order of the U.S. Bankruptcy Court for the District of Maryland provides:

> **C. Notice--Waiver and Consent.** Creditor Designees and Full Participants must maintain a current e-mail address. Registration as a Full Participant constitutes: (1) waiver of the right to receive notice by first class mail and consent to receive notice electronically, and (2) waiver of the right to service by personal service or first-class mail and consent to electronic service. Waiver of service and/or notice by first-class mail applies to notice of entry of an order or judgment under Federal Bankruptcy Rule 9022. Non-filing users do not waive their right to receive notice by first class mail.

Administrative Order No. 03-02. In re: Case Management/Electronic Case Filing Procedures (Bankr. D. Md.).

Issue Two: Large Filers and Electronic Notice and Service

A. *Background on Relevant Code Sections and Rules*

Several Notice Suggestions note that, although electronic noticing would assist the clerk and other parties, many participants in bankruptcy cases are not "registered users" of the court's electronic-filing system. Most court's electronic-filing systems do not require parties to register with the system if they are filing only a proof of claim, ballot, or other limited papers in the case.[23] Nevertheless, these limited users, which include businesses, banks, and other institutions, may appear in multiple bankruptcy cases and receive numerous notices from the clerk and others concerning the case.

The Bankruptcy Code and bankruptcy rules provide some guidance for noticing creditors that appear regularly and/or in multiple cases before the bankruptcy court. Section 342(e) of the Bankruptcy Code allows a creditor to request notice at a specific address in a particular chapter 7 or 13 case by notifying the debtor and the court of such address.[24] Section 342(f) then provides the following option for creditors appearing in multiple cases,

> An entity may file with any bankruptcy court a notice of address to be used by all the bankruptcy courts or by particular bankruptcy courts, as so specified by such entity at the time such notice is filed, to provide notice to such entity in all cases under chapters 7 and 13 pending in the courts with respect to which such notice is filed, in which such entity is a creditor.[25]

Once a creditor files a notice under section 342(e) or (f), the debtor and the court in the context of section 342(e), and the court in the context of section 342(f), must notice the creditor at the

[23] For example, in its General Order: Guidelines for Electronic Case Filing, the U.S. Bankruptcy Court for the Western District of Oklahoma permits both "Registered Participants" and "Limited Participants," but only imposes the waiver/consent provision concerning notice on Registered Participants. *See* General Order: Guidelines for Electronic Case Filing, Bankr. W.D. Okl., at pages 2, 8, available at http://www.okwb.uscourts.gov/sites/okwb/files/local_rules_ECF.pdf.
[24] 11 U.S.C. § 342(e).
[25] 11 U.S.C. § 342(f).

specified address. Bankruptcy Rule 2002(g) likewise permits a creditor and other parties in interest to file a notice of address in any particular case. If no specific request is made, Rule 2002(g) allows the proof of claim or interest to serve as the designation of address for that party in that case.[26]

In addition to the correct mailing address, the court and other parties often struggle to identify the appropriate representative of entities entitled to notice under the bankruptcy rules. Section 342(g) provides,

> If such creditor designates a person or an organizational subdivision of such creditor to be responsible for receiving notices under this title and establishes reasonable procedures so that such notices receivable by such creditor are to be delivered to such person or such subdivision, then a notice provided to such creditor other than in accordance with this section (excluding this subsection) shall not be considered to have been brought to the attention of such creditor until such notice is received by such person or such subdivision.[27]

Moreover, as discussed in the next section, Rule 7004 also indicates certain representatives that must receive service of process when the defendant is a corporation or depository institution.

The BNC maintains a register of preferred creditor addresses. Specifically, "The National Creditor Registration Service (NCRS) is a free service provided by the U.S. Bankruptcy Courts to give creditors options to specify a preferred mailing address. The NCRS database includes addresses registered by notice recipients, pursuant to 11 U.S.C. § 342(f) and Rule 2002(g)(4)."[28] The BNC also facilitates noticing by email, explaining "In lieu of registering a preferred mailing address, an entity may register to receive notices electronically through the Electronic Bankruptcy Noticing (EBN) program."[29] The BNC and bankruptcy

[26] FED. R. BANKR. P. 2002(g).
[27] 11 U.S.C. § 342(g).
[28] *See* information regarding the National Creditor Registration Service, available at https://ncrs.uscourts.gov.
[29] *Id.*

courts use the preferred creditor register and the EBN program to serve notices in bankruptcy cases. Parties outside of the court, however, do not have access to these databases.

B. *Potential Responses to Suggestions*

Several Notice Suggestions request that the Advisory Committee amend the bankruptcy rules to require certain creditors to register for noticing by electronic transmission. For example, the BJAG suggests, "Mandatory electronic bankruptcy noticing of entities sent 100 or more court notices within a given month will result in approximately $6 million of annual cost savings for the judiciary."[30] The NBC raises similar issues, with a focus on parties other than the court required to serve notices and other papers on parties in bankruptcy cases. The NBC suggests giving parties outside of the court system access to the EBN, or alternatively, requiring certain large creditors to register for the court's electronic-filing system. In light of the pending amendment to Civil Rule 5(b), encouraging more parties to register through the court's electronic-filing system or to consent to electronic noticing through EBN will likely have a significant positive impact on several aspects of bankruptcy cases. If the EBN path is pursued, the benefits may be limited to the BNC and bankruptcy courts, unless other parties are given access to that database perhaps through the court's electronic-filing system.

The NBC recommends the following amendment to Rule 9036:

> (b) An entity or its authorized agent that has filed or expects to file, in the aggregate, 100 or more proofs of claim in one or more bankruptcy courts in the United States, within any 12-month period, shall register for the electronic filing system in all bankruptcy courts in which the entity or its authorized agent files proofs of claim. Such an entity or its authorized agent shall file all proof of claim and other documents using the bankruptcy court's electronic-filing system [and shall receive all notices and service by electronic transmission, instead of notice

[30] Suggestion 15-BK-H (BJAG).

> or service by mail, except either respect to any notice or service of process in accordance with Rule 7004 is required].[31]

In connection with this amendment, the NBC also recommends a modification to the existing language of Rule 9036 similar to that discussed above. The BJAG's proposal seeks to encourage a similar result by an amendment to Rule 9036, but it proposes using the EBN program and includes consequences if a creditor does not enroll timely in the program.[32]

If the Subcommittee is inclined to recommend electronic noticing on registered users, it also should consider the circumstances under which the bankruptcy rules should require parties in interest to register with the court's electronic noticing system. Alternatively, it could consider extending electronic noticing to any entity (other than an unrepresented individual) who files any paper in a bankruptcy case electronically, whether a proof of claim, request for service of notices, or other paper. This approach would capture limited participants/non-registered users in the court's electronic-filing system. If the Subcommittee takes this broader approach, it also could recommend a safety valve by which any such party could opt out of electronic noticing for cause. This would be similar to the approach adopted by the Advisory Committee for represented entities in the context of mandatory electronic filing under pending Rule 5005.[33]

[31] The bracketed language may not be required if registering with the court's electronic-filing system allows parties to serve or notice the creditor electronically under the proposed amendments to Rules 5005 and 9036 discussed above.

[32] In addition, Suggestion 11-BK-A, filed by David Andersen highlights the cost and burden of noticing parties in chapter 13 cases. This suggestion recommends requiring parties in interest to "opt-in" to electronic noticing or lose their rights to further notices in the bankruptcy case. In addition, the informal suggestions from Jill A. Michaux and Thomas Moers Mayer suggest requiring only electronic notice for chapter 13 claimants and dismissal notices, respectively. The discussion of the BJAG and NBC rules captures the primary issues identified in these suggestions—i.e., permitting or mandating a more expensive use of electronic noticing in bankruptcy cases.

[33] The primary difference would be that non-individual entities cannot appear pro se in a bankruptcy case, but they could file a proof of claim or request for service in most instances. Accordingly, this broader approach would likely capture represented and unrepresented non-individual entities.

In considering its options, the Subcommittee should ensure that any process using electronic noticing and service as the default rule is reasonably calculated to provide parties in interest with notice and an opportunity to be heard. A process that requires registration and allows parties to opt out for cause should satisfy those concerns. The challenge for the Subcommittee is identifying the appropriate parameters of the default rule. Based on the Notice Suggestions and the Advisory Committee's past deliberations on electronic noticing, however, it does appear that a broader application of electronic noticing and service would mitigate the costs and burdens associated with bankruptcy noticing in many business and consumer cases.

Issue Three: Parties Entitled to Receive Notice or Service of Process

A. *Background on Relevant Code Sections and Rules*

The clerk and other parties often have difficulty identifying the appropriate representative of an entity for purposes of noticing and service of process. As noted above, section 342(g) allows creditors to designate a representative to accept service on its behalf. In addition, Rules 7004(b)(3) and (h) require specific service on representatives of corporations, partnerships, and associations, and depository institutions, respectively. These service of process rules are incorporated by reference in Rule 9014 in several contexts, including motions to avoid liens on exempt property under section 522(f) and Rule 4003(d).

The language of Rule 7004(b)(3) and Rule 7004(h) differs, and the two rules resulted from different processes. Rule 7004(b)(3) permits service of process by mail "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also

mailing a copy to the defendant."[34] That subsection of the rule was part of the original rule adopted in 1983, as the successor to former bankruptcy rule 704(c).

Rule 7004(h) provides,

> Service of Process on an Insured Depository Institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless—
>
> (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
>
> (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
>
> (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.[35]

This subsection of the rule was added in 1996 by an act of Congress; specifically, section 114 of the Bankruptcy Reform Act of 1994, Pub. L. No. 103–394, 108 Stat. 4106. Accordingly, the Advisory Committee cannot amend this subsection of the rule without Congressional action.

Courts have struggled with the meaning of the language in Rules 7004(b)(3) and (h). In the context of Rule 7004(b)(3), some courts allow service of process on an "officer" or "manager" or similar generic title of authority of the corporation, partnership, or association.[36] In the context of Rule 7004(h), courts generally apply a more stringent standard requiring service of process on a specific individual officer,[37] though some courts have followed the more flexible

[34] FED. R. BANKR. P. 7004(b)(3).
[35] FED. R. BANKR. P. 7004(h).
[36] *See, e.g.*, *In re Tudor*, 282 B.R 546, 549-550 (Bankr. S.D. Ga. 2002) (collecting cases and explaining in the context of Rule 7004(b)(3), "Courts are divided as to whether notice may be addressed simply to an unspecified officer or agent or if the notice must be addressed to an named individual.").
[37] *See, e.g.*, *In re Exum*, 2013 WL 828293, at *3 (Bankr. E.D.N.C. Mar. 6, 2013) (collecting cases and discussing split in courts regarding whether Rule 7004(h) requires service of process on a specifically named officer or whether service on an "officer" generically referenced was sufficient; holding the latter

approach of Rule 7004(b)(3).[38] As the NBC notes in its suggestion, parties frequently struggle to identify a designated officer for purposes of serving a depository institution under Rule 7004(h).[39]

B. *Potential Responses to Suggestions*

The Notice Suggestions recommend clarifying the appropriate representative to serve when the defendant is a corporation, partnership, association, or depository institution. Both of the pertinent Notice Suggestions[40] and the case law reviewed for purposes of this Memorandum indicate that there is some uncertainty for parties and the courts in these situations. Although the Advisory Committee cannot amend Rule 7004(h), the Subcommittee might recommend amendments to other rules that clarify an entity's designated officer or other representative.

The NBC proposes an amendment to Rule 3001 that would require corporations and depository institutions to identify the name and address of an officer (or other agent in the

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sufficient based on facts of case); *PNC Mortgage v. Rhiel*, 2011 WL 1043949, at *5 (S.D. Ohio Mar. 18, 2011) (discussing legislative history to Rule 7004(h) and holding that service of process on a designated agent was not sufficient; rather, "a party must strictly comply with Bankruptcy Rule 7004(h) in effectuating service of process on an insured depository institution").

[38] *See, e.g.*, *In re Braden*, 516 B.R. 672, 676 (Bankr. S.D. Ga. 2014) (explaining that Rule 7004(h) "should not be interpreted any differently [than Rule 7004(b)(3)] with regards to whether a movant should address service to a named individual officer or merely to 'Officer'" and finding that generic reference to "office" would suffice, but that debtor in case "failed to properly address service to either a named individual officer or to 'Officer'").

[39] The NBC collects additional cases consistent with the foregoing discussion and posits:

> The more difficult task is obtaining a name and address for a current officer of the institution. Courts have wrestled with whether the requirement in Rule 7004(h) that service should be "addressed to an officer of the institution" means that a specific officer must be named, or that service can simply be sent in care of "Officer" or a specific office like "President." Some courts suggest that it is easy to find the names of bank officers through online searches and use that as a basis for requiring named officers for service of process. Even courts that have acknowledged that finding names of officers may not be such an easy task generally conclude that service simply to an "officer" is not sufficient.

Suggestion 14-BK-E (NBC), at 3-6 (citations omitted).

[40] *See* Suggestion 15-BK-H (BJAG); Suggestion 14-BK-E (NBC).

context of a corporation, partnership, or association) authorized to receive service under Rule 7004. Specifically, the NBC suggests:

> If the holder of a claim or its authorized agent is a corporation, the proof of claim shall include the name and address of an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process on behalf of the corporation. If the holder of a claim is a depository institution (s defined in section 3 of the Federal Deposit Insurance Act), the proof of claim shall state whether the holder has waived its entitlement under Rule 7004(h) to service by certified mail in contested matters and adversary proceedings and, if such entitlement is not waived, the name and address of an officer to receive service by certified mail.[41]

Alternatively, the NBC focuses on the BNC's NCRS, and recommends requiring creditors to designate the name and address of an officer for purposes of service under Rule 7004(h) in that database and working with the AOUSC to make that database available to debtor's counsel through the CM/ECF system. Finally, the NBC suggests amendments to Rule 5003 that would require the clerk to maintain a separate register of the addresses designated under section 342(f)(1) and to make that register accessible to parties in bankruptcy cases.

The Subcommittee may want to solicit input from bankruptcy clerks, the AOUSC, and the BNC concerning the extent of the issue posed by identifying designated representatives of corporations and depository institutions, as well as potential solutions short of a rule amendment. For example, changes to the information requested by the BNC and making its databases available to parties through the CM/ECF system may address some of the concerns raised in the Suggestions.[42] Likewise, the Subcommittee could consider an amendment to the proof of claim form that would include line items for the name and address of an officer or other agent authorized to receive service of process under Rule 7004. An amendment to the form would be a

[41] Suggestion 14-BK-E (NBC), at 11.
[42] Alternatively, to the extent large creditors are required to register through the court's electronic-filing system, perhaps the name and address of the officer or agent authorized to receive service or process (or a waiver of such process via certified mail) could be incorporated into the registration process.

less intrusive and more expedient way to address the issue. If the Subcommittee is inclined to recommend action through either a rule or form amendment, it also should consider the consequences if a creditor fails to provide the information.

Issue Four: Objections to Claims

A. Background on Rule 3007(a) and Noticing Issue

At its October 2015 meeting, the Advisory Committee considered a package of rule amendments proposed in connection with the chapter 13 national plan project. The relevant portions of the proposed amendment to Rule 3007(a) read:

> (2) *Manner of Service.*
>
> (A) The objection and notice shall be served on the claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated; and
>
> (i) if the objection is to a claim of the United States, or any of its officers or agencies, in the manner provided for service of a summons and complaint by Rule 7004(b)(4) or (5); or
> (ii) if the objection is to a claim of an insured depository institution, in the manner provided by Rule 7004(h); and
>
> (B) If, as authorized by Rule 3003(b)(1), no proof of claim was filed, or a proof of claim was filed by an entity other than the creditor under Rule 3004 or 3005, the objection and notice shall be served on the creditor by first-class mail at the address contained in the schedule of liabilities and, if applicable, in the manner provided in subdivision (a)(2)(A)(i) or (a)(2)(A)(ii).
>
> (C) Service of the objection and notice shall [also] be made by first-class mail or other permitted means on the debtor or debtor in possession, and on the trustee, and, if applicable, the entity filing the proof of claim under Rule 3005 by first-class mail or other permitted means.

During the Advisory Committee's deliberations on Rule 3007(a), the Advisory Committee discussed whether subsection (a)(2)(B) was appropriate and provided adequate notice to creditors not otherwise filing a proof of claim. Notably this issue arises primarily in the

chapter 11 context, where a debtor may schedule a claim on its schedule of liabilities as undisputed, non-contingent, and liquidated, but subsequently file an objection to that claim. It also may arise in the chapter 9 setting in similar situations. In either case, the creditor is not required to file a proof of claim under section 1111(a) of the Bankruptcy Code and Rule 3003. Consequently, the creditor has not identified a current mailing address in a proof of claim form, leaving the debtor or other objecting party to rely on the address listed by the debtor in the schedule of liabilities. Unfortunately, the addresses included in the schedules may not be current or the correct address for purposes of noticing a claims objection.

Given these potential issues to Rule 3007(a)(2)(B), the Advisory Committee decided to refer this subsection of Rule 3007 to the committee's larger noticing project.

B. Potential Responses to the Issue

The service of a claims objection and the related notice in instances where no proof of claim has been filed raises at least two key issues for the Subcommittee: First, should the debtor or other objecting party be permitted to serve the objection and notice electronically if the creditor or the creditor's attorney is a registered user in the court's electronic-filing system? Second, if the answer to the foregoing is no, or if the creditor or its attorney is not a registered user, should the service of process requirements apply given that the creditor has not provided any personal information on which the debtor or other objecting party can rely for service by first-class mail?

In large chapter 11 cases, it is common for courts to enter both an order authorizing case management procedures and an order authorizing omnibus claims objection procedures. The case management order often mandates electronic service in the case and requires parties filing a request for service to provide an email address and consent to electronic service, unless an

appropriate opt-out certificate is filed. The omnibus claims objection order, in turn, typically requires or permits service of any claims objections electronically, in accordance with the case management order. In these cases, service by mail or other means is used only when an email address does not exist for the party to be served.

If the Subcommittee is inclined to recommend a more general move toward electronic noticing and service in bankruptcy cases, an amendment that allows electronic service of claims objections on registered users and parties otherwise consenting to electronic service would be consistent with that approach. Additionally, particularly in instances with no proof of claim, the email address (and other information) provided by the registered user likely is as or more accurate than the address listed in the debtor's schedule of liabilities. Such an approach would narrow the remaining issue for the Subcommittee concerning whether to permit first-class mail or require service of process for non-registered users.

Courts currently are split concerning whether a claims objection is subject to the service of process requirements of Rule 7004.[43] In fact, the Advisory Committee's proposed amendment to Rule 3007(a) is intended to address this split. Some courts characterize a claims objection as a contested matter and require service of process under Rules 9014 and 7004. Other courts find that Rule 9014, which subjects contested motions to Rule 7004, applies only if the request is not otherwise governed by the bankruptcy rules. Since Rule 3002 addresses the noticing of claims objections, these courts hold that rules 9014 and 7004 do not apply to claims objections. These courts also suggest that a claims objection is not a motion, again removing claims objections from the scope of Rule 9014. To further support this conclusion, courts note

[43] For a description of the split in the case law and the arguments addressed by this paragraph, see, e.g., *In re Gordon*, 2013 WL 1163773 (Bankr. D. Nev. Mar. 20, 2013) (collecting cases).

that the creditor identifies an address in the proof of claim and "recognize that the filing of a proof of claim is analogous to the filing of a complaint and that, by doing so, a creditor submits itself to the jurisdiction of the court, at least with regard to the adjudication of its claim. If the creditor has voluntarily submitted itself to the jurisdiction of the court by filing a proof of claim, there is no need to be concerned that the failure to perfect service of process in accordance with [Rule 7004]."[44] Notably, this justification does not apply in the Rule 3003 context in which no proof of claim is required.

Accordingly, if the Subcommittee has concerns regarding the accuracy of the addresses provided by debtors in the schedules of liabilities, it may want to consider requiring service under Rule 7004 for non-registered users and creditors not otherwise subject to electronic service, however ultimately defined by the Advisory Committee. Such an approach undoubtedly will impose additional costs and burdens on chapter 11 debtors, but the Subcommittee should strive to recommend a rule that is reasonably calculated to provide notice and an opportunity to be heard. Any additional costs and burdens also may be mitigated depending on the scope of permissible electronic noticing and service approved by the Advisory Committee.

Issue Five: Service of Notices of Appeal

Several Notice Suggestions propose deleting the requirement under Rule 8003(c) that the clerk serve a notice of appeal. For example, the Notice Suggestion filed by the Bankruptcy Clerks Advisory Group endorses the position of the National Conference of Bankruptcy Judges that "'there is no reason why the clerk should be responsible for serving notices of appeal at all, since service of papers filed with a court is typically the responsibility of the party filing

[44] *In re Cagle*, 2008 WL 7874772, *3 (Bankr. N.D. Ga. June 2, 2008) (collecting cases addressing split regarding service of claims objection).

them.'"[45] Although the concern raised by the Notice Suggestions is understandable, several developments warrant maintaining the current language of the rule.

In 2014, the Advisory Committee completely revamped chapter 8 of the bankruptcy rules to follow the language and general structure of the Federal Rules of Appellate Procedure. The Advisory Committee has elected not to deviate from the Appellate Rules, unless a specific bankruptcy reason justifies the change. In the context of Rule 8003(c), the requirement that the clerk serve the notice of appeal follows the language of both former Rule 8004 and Appellate Rule 3(d). Under the Appellate Rule, "The district clerk must serve notice of the filing of a notice of appeal by mailing a copy to each party's counsel of record—excluding the appellant's—or, if a party is proceeding pro se, to the party's last known address." Notably, Rule 8003(c) does permit the clerk to serve the notice electronically, which currently is not permissible under the Appellate Rules.[46] Based upon these considerations, the Subcommittee would be justified in recommended no action on this issue at this time.

Attachments

[45] Suggestion 12-BK-040, at 1.

[46] The 2014 Committee Note to Rule 8003(c) explains:

> Subdivision (c) is derived from former Rule 8004 and F.R.App.P. 3(d). Under Rule 8001(c), the former rule's requirement that service of the notice of appeal be accomplished by mailing is generally modified to require that the bankruptcy clerk serve counsel by electronic means. Service on pro se parties must be made by sending the notice to the address most recently provided to the court.

FED. R. BANKR. P. 8003(c), Committee Note.

Appendix A

List of Formal and Informal Suggestions Relating to Noticing Issues

Submitting Party	**No.**	**Summary of Suggestion or Comment**	**Addressed by this Memo?**
Shmuel Klein	BK-2016-0001-0007	Proposed Rule 3015(d) should allow notice through ECF and not require debtors to mail if creditor has elected to receive notice by ECF.	Yes, Issues One and Two
Ryan W. Johnson, Clerk, Bankruptcy Court Northern District of West Virginia	BK-2016-0001-0004	Under proposed Rule 3015(d), the debtor should be directed to mail rather than serve plan so as not to require service under Rule 7004.	In general, Issues One and Two; additional consideration may be needed regarding service of process issue
Eva Roeber, Chief Deputy Clerk, Bankruptcy Court District Nebraska, on behalf of Bankruptcy Noticing Working Group	BK-2016-0001-0008	Proposed Rule 3015(d) should clarify that cost of noticing plan to be borne by debtor, not judiciary. Proposed Rule 3015(h) should specify that proponent of plan modification bears burden of noticing modification.	Yes, Issues One and Two
Eva Roeber, Chief Deputy Clerk, Bankruptcy Court District Nebraska, on behalf of Bankruptcy Noticing Working Group	BK-2016-0001-0008	In proposed Rule 3015(d), remove opening conditional phrase regarding plan not being included with notice of hearing pursuant to Rule 2002.	In general, Issues One and Two; also addressed some by separate memorandum on Rule 2002(f)(7), referred to Consumer Subcommittee
Eva Roeber, Chief Deputy Clerk, Bankruptcy Court District Nebraska, on behalf of Bankruptcy Noticing Working Group	BK-2016-0001-0008	In proposed Rules 3015(d) and 3015(h), substitute the phrase “give notice” for the word “serve”. Make a similar change in the committee note.	Yes, Issues One and Two
Judge A. Benjamin Goldgar, U.S. Bankruptcy Court for the Northern District of Illinois	16-BK-C	Suggesting a clarification to Rule 6007(b) concerning parties to be noticed with motion to compel abandonment.	No, addressed in separate memorandum and under consideration
Judge A. Benjamin Goldgar, U.S. Bankruptcy Court for the Northern District of Illinois	16-BK-D	Suggesting a simplification of disclosure and noticing requirements under Rule 4001 (requests to obtain credit) in chapter 13 cases.	No, addressed in separate memorandum and referred to Consumer Subcommittee

Submitting Party	No.	Summary of Suggestion or Comment	Addressed by this Memo?
Judge Janice M. Karlin, on behalf of the Administrative Office's Bankruptcy Judges Advisory Group	15-BK-H	Proposing an amendment to Bankruptcy Rule 9036 that would mandate electronic noticing in certain circumstances.	Yes, Issue One
Richard Levin, Chair, National Bankruptcy Conference	14-BK-E	Proposing an amendment to Bankruptcy Rule 3001 to require a corporate creditor to specify address and authorized recipient information and the promulgation of a new rule to create a database for preferred creditor addresses under section 347. In addition, the Suggestion discusses the value to requiring electronic noticing and servicing on large creditors in bankruptcy cases for all purposes (other than process under Bankruptcy Rule 7004).	Yes, Issues One, Two, and Three
Chief Judge Scott Dales, U.S. Bankruptcy Court for the Western District of Michigan	12-BK-M	Proposing amendments to Bankruptcy Rule 2001(h) to mitigate the cost of giving notice to creditors who have not filed a proof of claim.	No, addressed in separate memorandum and referred to the Consumer Subcommittee
Matthew T. Loughney, Clerk of Court, U.S. Bankruptcy Court for the Middle District of Tennessee, on behalf of the Administrative Office's Bankruptcy Noticing Working Group	12-BK-B	Proposing amendment for noticing of an order confirming a chapter 13 plan.	No, addressed in separate memorandum and referred to the Consumer Subcommittee
Bankruptcy Clerks Advisory Group	12-BK-040	This Suggestion was submitted in response to proposed revisions to Rule 9027, and it requested the reference to "mail" in Rule 9027(e)(3) be changed to "transmit." This suggestion did not implicate the part of Rule 9027 being amendment and thus no action was taken.	Yes, Issue One
Several Suggestions Submitted Separately by Judge Robert J. Kressel, the National Conference of Bankruptcy Judges, Judge S. Martin Teel, Jr., and the Bankruptcy Clerks Advisory	12-BK-005 12-BK-008 12-BK-026 12-BK-040	These Suggestions related to the proposed revisions to Rule 8003(c)(1), and they generally requested that the obligation to serve the notice of appeal rest with the appellant or be permitted by electronic means.	Yes, Issue Five

Submitting Party	**No.**	**Summary of Suggestion or Comment**	**Addressed by this Memo?**
Group			
David Andersen, Esq.	11-BK-A	Addressing perceived issue of unnecessary and wasteful postpetition mailings. The Suggestion proposed to "[r]equire all parties in interest, other than the debtor, to 'opt in' to receive electronic notices within a time deadline after the initial notice of bankruptcy." The Minutes of the Advisory Committee's Spring 2011 note that this Suggestion was considered and referred to the CM/ECF/NextGen working group and BJAG.	Yes, Issues One and Two
Chief Judge Robert E. Nugent, U.S. Bankruptcy Court for the District of Kansas, on behalf of the National Conference of Bankruptcy Judges	BK-2014-0001-0062	Proposing amendments regarding service of entities under Bankruptcy Rule 7004(b) and, in turn, Bankruptcy Rules 4003(d) and 9014(b).	Yes, Issue Three
David Lander (former member of Advisory Committee)	Informal	Proposing rule in context of electronic noticing that would require particular notice to, or service on, a party when a motion or pleading is adverse to that party, as opposed to that party just receiving the general e-notice of a filing in the case. (This currently is the practice with respect to adversary proceedings and perhaps contested matters governed by Bankruptcy Rule 7004.)	Yes, Issue One
Jill A. Michaux (member of Advisory Committee)	Informal	Require CM/ECF electronic notice for all claimants; restrict notice in chapter 13 cases after proof of claim deadline expires to claimants only.	Yes, in part, Issues One and Two; limitation of chapter 13 notices addressed in separate memorandum and referred to Consumer Subcommittee
Thomas Moers Mayer (member of advisory committee)	Informal	Notice of Dismissal should be electronic only.	Yes, Issues One and Two

Appendix B

[Separate Attachment: Word Document Re Chart of Notice and Service by Mail Provisions]

Bankruptcy Rules Mandating Service or Notice by Mail
(revised draft as of April 12, 2016)

*Note: Language mandating service or notice by mail is highlighted. (Provisions without highlighting reference service or notice by mail, but do not necessarily mandate it.) This chart does not identify all rules that incorporate Bankruptcy Rule 9014 and the related Civil Rules.

Bankruptcy Rule	**Relevant Language Re "Service" or "Notice" and "Mail"**
Rule 1010 (Service of Involuntary Petition and Summons; Petition For Recognition of a Foreign Nonmain Proceeding)	Subsection (a) provides, in relevant part, "If service cannot be so made, the court may order that the summons and petition be served by **mailing** copies to the party's last known address, and by at least one publication in a manner and form directed by the court."
Rule 1019 (Conversion of a Chapter 11 Reorganization Case, *Chapter 12* Family Farmer's Debt Adjustment Case, or *Chapter 13* Individual's Debt Adjustment Case to a *Chapter 7* Liquidation Case)	Subsection (6) provides, in relevant part: "Upon the filing of the schedule of unpaid debts incurred after commencement of the case and before conversion, the clerk, or some other person as the court may direct, shall give notice to those entities listed on the schedule of the time for filing a request for payment of an administrative expense and, unless a notice of insufficient assets to pay a dividend is **mailed** in accordance with **Rule 2002(e)**, the time for filing a claim of a kind specified in **§ 348(d)**."
Rule 2002 (Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee)	Subsection (a) provides, in relevant part: "TWENTY-ONE-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i), (l), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by **mail** of: …." Subsection (b) provides: "TWENTY-EIGHT-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 28 days' notice by **mail** of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement or, under **§ 1125(f)**, to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary; and (2) for filing objections and the hearing to consider confirmation of a *chapter 9*, **chapter 11**, or *chapter 13* plan." Subsection (f) provides, in relevant part: "OTHER NOTICES. Except as provided in subdivision (*l*) of this rule,

Bankruptcy Rule	**Relevant Language Re "Service" or "Notice" and "Mail"**
	the clerk, or some other person as the court may direct, shall give the debtor, all creditors, and indenture trustees notice by **mail** of: …." Subsection (j) provides: "NOTICES TO THE UNITED STATES. Copies of notices required to be **mailed** to all creditors under this rule shall be **mailed** (1) in a **chapter 11** reorganization case, to the Securities and Exchange Commission at any place the Commission designates, if the Commission has filed either a notice of appearance in the case or a written request to receive notices; (2) in a commodity broker case, to the Commodity Futures Trading Commission at Washington, D.C.; (3) in a **chapter 11** case, to the Internal Revenue Service at its address set out in the register maintained under **Rule 5003(e)** for the district in which the case is pending; (4) if the papers in the case disclose a debt to the United States other than for taxes, to the United States attorney for the district in which the case is pending and to the department, agency, or instrumentality of the United States through which the debtor became indebted; or (5) if the filed papers disclose a stock interest of the United States, to the Secretary of the Treasury at Washington, D.C." Subsection (o) provides: "NOTICE OF ORDER FOR RELIEF IN CONSUMER CASE. In a voluntary case commenced by an individual debtor whose debts are primarily consumer debts, the clerk or some other person as the court may direct shall give the trustee and all creditors notice by **mail** of the order for relief within 21 days from the date thereof." Subsection (q) provides: "(1) *Notice of Petition for Recognition*. The clerk, or some other person as the court may direct, shall forthwith give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under **§ 1519** of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, at least 21 days' notice by **mail** of the hearing on the petition for recognition of a foreign proceeding. The notice shall state whether the petition seeks recognition as a foreign main proceeding or foreign nonmain proceeding. **(2)** *Notice of Court's Intention to Communicate with Foreign Courts and Foreign Representatives*. The clerk, or some other person as the court may direct, shall give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under **§ 1519** of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, notice by **mail** of the court's intention to communicate with a foreign court or foreign representative."
Rule 2003 (Meeting of Creditors or Equity Security Holders)	Subsection (d)(2) provides, in relevant part: "No later than the date on which the report is filed, the United States trustee shall **mail** a copy of the report to any party in interest that has made a request to receive a copy of the report." Subsection (g) provides: "FINAL MEETING. If the United States trustee calls a final meeting of creditors in a

Bankruptcy Rule	**Relevant Language Re "Service" or "Notice" and "Mail"**
	case in which the net proceeds realized exceed $1,500, the clerk shall **mail** a summary of the trustee's final account to the creditors with a notice of the meeting, together with a statement of the amount of the claims allowed. The trustee shall attend the final meeting and shall, if requested, report on the administration of the estate."
Rule 2007.1 (Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case)	Subsection (b)(3)(B) (*Report of Election and Resolution of Disputes*) provides, in relevant part: "Not later than the date on which the report of the disputed election is filed, the United States trustee shall **mail** a copy of the report and each verified statement to any party in interest that has made a request to convene a meeting under **§ 1104(b)** or to receive a copy of the report, and to any committee appointed under **§ 1102** of the Code."
Rule 2015 (Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status)	Subsection (e) provides: "In a **chapter 11** case the court may direct that copies or summaries of annual reports and copies or summaries of other reports shall be **mailed** to the creditors, equity security holders, and indenture trustees. The court may also direct the publication of summaries of any such reports. A copy of every report or summary **mailed** or published pursuant to this subdivision shall be transmitted to the United States trustee."
Rule 3001 (Proof of Claim)	Subsection (e)(2) provides, in relevant part: "The clerk shall immediately notify the alleged transferor by **mail** of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 21 days of the **mailing** of the notice or within any additional time allowed by the court." Subsection (e)(3) provides, in relevant part: "If either the transferor or the transferee files a proof of claim, the clerk shall immediately notify the other by **mail** of the right to join in the filed claim." Subsection (e)(4) provides, in relevant part: "The clerk shall immediately notify the alleged transferor by **mail** of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 21 days of the **mailing** of the notice or within any additional time allowed by the court." Subsection (e)(5) provides: "*Service of Objection or Motion; Notice of Hearing*. A copy of an objection filed pursuant to paragraph (2) or (4) or a motion filed pursuant to paragraph (3) or (4) of this subdivision together with a notice of a hearing shall be **mailed** or otherwise delivered to the transferor or transferee, whichever is appropriate, at least 30 days prior to the hearing."
Rule 3002 (Filing Proof of Claim or Interest)	Subsection (c)(5) provides, in relevant part: "If notice of insufficient assets to pay a dividend was given to creditors under **Rule 2002(e)**, and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall give at least 90 days' notice by **mail** to creditors of that fact and of the date by which proofs of claim must be filed."
Rule 3007 (Objections to	Subsection (a) provides: "An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be **mailed** or otherwise delivered to the claimant, the debtor or

Bankruptcy Rule	**Relevant Language Re "Service" or "Notice" and "Mail"**
Claims)	debtor in possession, and the trustee at least 30 days prior to the hearing."
Rule 3009 (Declaration and Payment of Dividends in a *Chapter 7* Liquidation Case)	"In a *chapter 7* case, dividends to creditors shall be paid as promptly as practicable. Dividend checks shall be made payable to and **mailed** to each creditor whose claim has been allowed, unless a power of attorney authorizing another entity to receive dividends has been executed and filed in accordance with **Rule 9010**. In that event, dividend checks shall be made payable to the creditor and to the other entity and shall be **mailed** to the other entity."
Rule 3015 (Filing, Objection to Confirmation, and Modification of a Plan in a *Chapter 12* Family Farmer's Debt Adjustment or a *Chapter 13* Individual's Debt Adjustment Case)	Subsection (d) provides: "NOTICE AND COPIES. The plan or a summary of the plan shall be included with each notice of the hearing on confirmation **mailed** pursuant to **Rule 2002**. If required by the court, the debtor shall furnish a sufficient number of copies to enable the clerk to include a copy of the plan with the notice of the hearing."
Rule 3017 (Court Consideration of Disclosure Statement in Chapter 9 Municipality or a Chapter 11 Reorganization Case)	Subsection (a) provides: "The plan and the disclosure statement shall be **mailed** with the notice of the hearing only to the debtor, any trustee or committee appointed under the Code, the Securities and Exchange Commission and any party in interest who requests in writing a copy of the statement or plan." In addition, upon approval of the disclosure statement, the clerk "shall **mail** to all creditors and equity security holders, and in a **chapter 11** reorganization case shall transmit to the United States trustee," certain documents, ballots, etc.
Rule 3019 (Modification of Accepted Plan in a *Chapter 9* Municipality or a Chapter 11 Reorganization Case)	Subsection (b) provides, in relevant part: "The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by **mail** of the time fixed to file objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification."
Rule 3020 (Deposit; Confirmation of Plan in a *Chapter 9* Municipality or Chapter 11 Reorganization Case)	Subsection (c)(2) provides: "Notice of entry of the order of confirmation shall be **mailed** promptly to the debtor, the trustee, creditors, equity security holders, other parties in interest, and, if known, to any identified entity subject to an injunction provided for in the plan against conduct not otherwise enjoined under the Code."

Bankruptcy Rule	**Relevant Language Re "Service" or "Notice" and "Mail"**
Rule 4001 (Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements)	Subsection (a) provides, in relevant part: "The party obtaining relief under this subdivision and **§ 362(f)** or **§ 363(e)** shall immediately give oral notice thereof to the trustee or debtor in possession and to the debtor and forthwith **mail** or otherwise transmit to such adverse party or parties a copy of the order granting relief." Subsection (d) (relating to agreements): "(2) *Objection*. Notice of the motion and the time within which objections may be filed and **served** on the debtor in possession or trustee shall be **mailed** to the parties on whom **service** is required by paragraph (1) of this subdivision and to such other entities as the court may direct. Unless the court fixes a different time, objections may be filed within 14 days of the **mailing** of the notice." [In addition, subsection (a)(2) states, "The party obtaining relief under this subdivision and **§ 362(f)** or **§ 363(e)** shall immediately give oral notice thereof to the trustee or debtor in possession and to the debtor and forthwith **mail** or otherwise transmit to such adverse party or parties a copy of the order granting relief."]
Rule 4003 (Exemptions)	Subsection (b)(4) provides: "A copy of any objection shall be delivered or **mailed** to the trustee, the debtor and the debtor's attorney, and the person filing the list and that person's attorney."
Rule 4004 (Grant or Denial of Discharge)	Subsection (c) (dealing with notice of discharge) provides: "The clerk shall promptly **mail** a copy of the final order of discharge to those specified in subdivision (a) of this rule."
Rule 5005 (Filing and Transmittal of Papers)	Subsection (b)(1) provides: "The complaints, motions, applications, objections and other papers required to be transmitted to the United States trustee by these rules shall be **mailed** or delivered to an office of the United States trustee, or to another place designated by the United States trustee, in the district where the case under the Code is pending."
Rule 6004 (Use, Sale, or Lease of Property)	Subsection (d) provides, in relevant part: "An objection to any such sale may be filed and served by a party in interest within 14 days of the **mailing** of the notice, or within the time fixed by the court. An objection is governed by **Rule 9014**."
Rule 6007 (Abandonment or Disposition of Property)	Subsection (a) provides, in relevant part: "A party in interest may file and serve an objection within 14 days of the **mailing** of the notice, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other entities as the court may direct."
Rule 6011 (Disposal of Patient Records in Health Care Business Case)	Subsection (b) provides, in relevant part: "Any notice under this subdivision shall be **mailed** to the patient and any family member or other contact person whose name and address have been given to the trustee or the debtor for the purpose of providing information regarding the patient's health care, to the Attorney General of the State where

Bankruptcy Rule	**Relevant Language Re "Service" or "Notice" and "Mail"**
	the health care facility is located, and to any insurance company known to have provided health care insurance to the patient."
Rule 8001 (Scope of Part VIII Rules; Definition of "BAP"; Method of Transmission)	Subsection (c) provides: "METHOD OF TRANSMITTING DOCUMENTS. A document must be sent electronically under these Part VIII rules, unless it is being sent by or to an individual who is not represented by counsel or the court's governing rules permit or require **mailing** or other means of delivery."
Rule 8002 (Time for Filing Notice of Appeal)	Subsection (c)(1) provides: "*In General*. If an inmate confined in an institution files a notice of appeal from a judgment, order, or decree of a bankruptcy court, the notice is timely if it is deposited in the institution's internal **mail** system on or before the last day for filing. If the institution has a system designed for legal **mail**, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with **28 U.S.C. § 1746** or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid."
Rule 8011 (Filing and Service; Signature)	Subsection (a)(2)(B) provides: "*Brief or Appendix*. A brief or appendix is also timely filed if, on or before the last day for filing, it is: **(i) mailed** to the clerk by first-class **mail**—or other class of **mail** that is at least as expeditious—postage prepaid, if the district court's or BAP's procedures permit or require a brief or appendix to be filed by **mailing**; or…." Subsection (a)(2)(C) provides: "*Inmate Filing*. A document filed by an inmate confined in an institution is timely if deposited in the institution's internal **mailing** system on or before the last day for filing. If the institution has a system designed for legal **mail**, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with **28 U.S.C. § 1746** or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid."
Rule 9027 (Removal)	Subsection (e)(3) statement: "Any party who files a statement pursuant to this paragraph shall **mail** a copy to every other party to the removed claim or cause of action." [Subsection (d) governing remand incorporates Rule 9014]
Rule 9033 (Review of Proposed Findings of Fact and Conclusions of Law in Non-Core Proceedings)	Subsection (a) provides: "SERVICE. In non-core proceedings heard pursuant to **28 U.S.C. § 157(c)(1)**, the bankruptcy judge shall file proposed findings of fact and conclusions of law. The clerk shall **serve** forthwith copies on all parties by **mail** and note the date of **mailing** on the docket."

Bankruptcy Rule	**Relevant Language Re "Service" or "Notice" and "Mail"**
Rule 9036 (Notice by Electronic Transmission)	"Whenever the clerk or some other person as directed by the court is required to send notice by **mail** and the entity entitled to receive the notice requests in writing that, instead of notice by **mail**, all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission, the court may direct the clerk or other person to send the information by such electronic transmission. Notice by electronic means is complete on transmission."

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS, AND APPEALS

SUBJECT: AMENDMENT OF RULE 8011 TO CONFORM TO PROPOSED AMENDMENTS TO FRAP 25

DATE: OCTOBER 14, 2016

The Bankruptcy, Civil, Criminal, and Appellate Rules Advisory Committees are engaged in a coordinated effort to address electronic filing, signatures, service, and proof of service in their respective rules. This project began with the Civil Committee's proposal for amending Civil Rule 5 (Serving and Filing Pleadings and Other Papers); the other committees then proposed similar amendments to their service and filing rules. The committees' proposed rule amendments were published for public comment in August.

Included among the amendments published for comment is Bankruptcy Rule 5005(a) (Filing). The preliminary draft closely follows the draft of Civil Rule 5(d) and would generally require electronic filing for entities represented by counsel. For unrepresented individuals, the use of electronic filing would be left up to local rules or court orders. The proposed amendment also provides that an attorney's CM/ECF user name and password, along with the attorney's name on the signature block, constitutes the attorney's electronic signature.

There is no proposal to amend the bankruptcy rules to address electronic service and proof of service, which are addressed by Civil Rule 5(b) and (d)(1)(B). That is because Bankruptcy Rule 7005 makes Civil Rule 5 applicable in adversary proceedings, and Rule 9014(b) provides that service in contested matters is governed by Civil Rule 5(b). Any amendment to the civil rule will automatically apply in bankruptcy proceedings. In contrast to

Rule 5005(a), no separate bankruptcy rule addresses service and proof of service in the bankruptcy court.

Because of the focus on conforming to the proposed amendment of Civil Rule 5, the Committee considered only the filing and service provisions at the trial level. Overlooked was Rule 8011, the recently amended bankruptcy appellate rule that addresses filing and service in bankruptcy appeals in district courts and bankruptcy appellate panels. This oversight came to light at the June Standing Committee meeting when the Appellate Rules Committee presented its proposed amendment to FRAP 25 (Filing and Service). Those proposed amendments also closely track the proposed amendments to Civil Rule 5 and would alter the current appellate rule on which Rule 8011 was based.

One of the goals of the 2014 revision of Part VIII of the bankruptcy rules was to bring them into closer alignment with the Federal Rules of Appellate Procedure. The Subcommittee therefore considered whether Rule 8011 should be amended in a manner similar to FRAP 25. The Subcommittee concluded that it should be so amended. Not only would doing so keep Rule 8011 in conformity with FRAP 25, it would also maintain internal consistency among Rules 8011, 5005(a), and 7005.

This memorandum discusses the four subjects addressed by the proposed amendments to FRAP 25—electronic filing, signatures, service, and proof of service—and identifies the how amended FRAP 25 would differ from current Rule 8011. It concludes with **the Subcommittee's recommendation that Rule 8011 be similarly amended.**

Electronic Filing

FRAP 25(a) would be amended to provide a new provision on electronic filing that would mirror the proposed amendments to Civil Rule 5, Criminal Rule 49, and Bankruptcy Rule 5005.

It would address represented and unrepresented persons separately. Electronic filing would be required for a represented person "unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule." For unrepresented persons, electronic filing would be permitted only if allowed by court order or local rule. If a local rule required unrepresented persons to file electronically, reasonable exceptions would have to be allowed.

Rule 8011(a) does not address electronic filing. Instead, filing is governed by the general rule stated in Rule 8001(c):

> METHOD OF TRANSMITTING DOCUMENTS. A document must be sent electronically under these Part VIII rules, unless it is being sent by or to an individual who is not represented by counsel or the court's governing rules permit or require mailing or other means of delivery.

As applied to filing, this rule therefore (1) requires electronic filing by a represented individual unless the court's governing rules permit or require another method, and (2) neither requires nor prohibits electronic filing by an unrepresented individual, instead leaving the matter up to the court's governing rules.

The current bankruptcy rule is therefore similar, but not identical, to the proposed amendment of FRAP 25. For represented individuals, the general rule is the same: electronic filing is required. The exceptions to that rule, however, seem slightly different. FRAP 25 would allow nonelectronic filing for good cause or as permitted or required by local rule. Rule 8001(c) would allow a represented party to file nonelectronically only if permitted or required by the court's rules. The Committee Note to Rule 8001(c), however, states more broadly that, "[e]xcept as applied to pro se parties, the Part VIII rules require documents to be sent electronically, unless applicable court rules *or orders* expressly require or permit another means of sending a particular document." (Emphasis added.)

The two rules deal with electronic filing by unrepresented individuals somewhat differently. FRAP 25 itself does not permit electronic filing by these individuals; instead, for an unrepresented person to file electronically, a court order or local rule must authorize such persons to do so. And if electronic filing by unrepresented individuals is required, reasonable exceptions must be allowed. Rule 8001(c), in contrast, does not prohibit electronic filing by unrepresented individuals; it just does not require it. The rule, however, would allow court rules to require nonelectronic filing.

Rule 8001(c) was the forerunner of the current proposals regarding electronic filing and service. In an effort to recognize and encourage the use of electronic communication, the Committee drafted Rule 8001(c) to provide electronic transmission as a default rule, except with respect to unrepresented individuals. And the Committee chose to address this issue with a general rule applicable to all of Part VIII, rather than on a rule-by-rule basis. The rules currently published for public comment take a different approach. They address the use of electronic communication with respect to four specific topics only.

The Subcommittee concluded that, despite Rule 8001(c), it would be advisable to propose amendments to Rule 8011 that track the proposed amendments to FRAP 25 regarding electronic filing. Doing so would prevent confusion. If amended, the filing provisions for bankruptcy appeals in district courts and BAPs would be the same as for cases and proceedings in bankruptcy courts, civil and criminal cases in district courts, and appeals in the courts of appeals. Addressing electronic filing expressly in Rule 8011 would also eliminate the need to be aware of and consult Rule 8001(c) in order to determine how to file a document.

Such an amendment to Rule 8011 would not conflict with Rule 8001(c). Although the two rules would be slightly different regarding electronic filing, Rule 8001(c) makes its

provisions subject to change by a court's "governing rules." The Committee used the term "governing rules" rather than "local rules" in order to include the national bankruptcy rules. The Committee wanted the rule about electronic transmission to be sufficiently flexible to allow for advances in technology and subsequent amendments to other rules.

Electronic Signatures

As proposed for amendment, FRAP 25(a)(2)(B)(iii) provides that "[t]he user name and password of an attorney of record, together with the attorney's name on a signature block, serves as the attorney's signature." This provision is identical to the proposed amendments to Civil Rule 5(d)(3)(C), Bankruptcy Rule 5005(a)(2)(C), and Criminal Rule 49(b)(2)(A).

Rule 8011(e) currently provides as follows:

> SIGNATURE. Every document filed electronically must include the electronic signature of the person filing it or, if the person is represented, the electronic signature of counsel. The electronic signature must be provided by electronic means that are consistent with any technical standards that the Judicial Conference of the United States establishes. Every document filed in paper form must be signed by the person filing the document or, if the person is represented by counsel, by counsel. (Underlining added.)

The underlined sentence uses language similar to what is being replaced in the parallel rules.

The Subcommittee recommends that the underlined sentence be amended to conform to the proposed language in the other rules. The Judicial Conference has never issued any technical standards for electronic signatures, so the current rule provides no guidance. Uniformity is desirable here.

Electronic Service

The proposed amendment to FRAP 25(c)(2) authorizes electronic service "by sending it to a registered user by filing it with the court's electronic-filing system or by using other electronic means that the person consented to in writing." With the exception of the inclusion of

the word "using," the quoted language is identical to proposed Civil Rule 5(b)(2)(E), which would be made applicable in the bankruptcy court by Rules 7005 and 9014(b). Criminal Rule 49(a)(3) departs somewhat from the language of the civil and appellate rules, but its substance is basically the same.

Consistent with the preference in Part VIII for electronic transmission, current Rule 8011(c)(1) provides as follows:

> (c) MANNER OF SERVICE
>
> (1) *Methods*. Service must be made electronically, unless it is being made by or on an individual who is not represented by counsel or the court's governing rules permit or require service by mail or other means of delivery. Service may be made by or on an unrepresented party by any of the following methods:
>
> (A) personal delivery;
> (B) mail; or
> (C) third-party commercial carrier for delivery within 3 days.

This provision requires electronic service on a represented party and authorizes it on a broader basis than do the proposed amendments to the other service rules. The amendments to the civil, criminal, and appellate rules (and indirectly Rules 7005 and 9014(b)) designate electronic service as one permissible method and would still require the written consent of a person for electronic service by means other than the court's electronic filing system, such as by email. In contrast, Rule 8011 requires electronic service of some type on a represented person unless the court's rules allow or require another method. Consent of the person served is not required.

There does not seem to be any reason to allow a broader use of electronic service in the context of bankruptcy appeals than is allowed in all other federal proceedings. The pending amendments to the other rules do not require electronic service, and they do not eliminate the consent requirement for email service and electronic methods other than the

court's electronic-filing system. Once again, uniformity is desirable here. Accordingly, the Subcommittee recommends that Rule 8011 be amended to conform to FRAP 25 regarding electronic service.

Proof of Service

The final amendment proposed for FRAP 25 would eliminate the requirement of proof of service if service is made using the court's electronic-filing system. FRAP 25(d) would be amended to provide that a paper presented for filing must contain either an acknowledgment of service by the person served or proof of service, "if it was served other than through the court's electronic-filing system." Civil Rule 5(d)(1)(B) reaches the same result in a slightly different manner. It provides that "[a] certificate of service must be filed within a reasonable time after service, but a notice of electronic filing constitutes a certificate of service on any person served by the court's electronic-filing system." The civil rule also would become the rule in the bankruptcy court under Rule 7005, and Criminal Rule 49(b)(1) would be amended in a similar manner.

Rule 8011(d) does not contain an exception from the proof-of-service requirement for documents served through the court's electronic filing system. Instead, like current FRAP 25(d), it requires all documents presented for filing to contain either an acknowledgment of service or proof of service. Curiously, one provision of the Part VIII rules does have such an exception. Rule 8004(a)(3) (Appeal by Leave) provides that the notice of appeal must include proof of service "unless [the notice is] served electronically using the court's transmission equipment."

Given the emphasis on electronic filing and service in the Part VIII rules, the Subcommittee concluded that it makes sense for Rule 8011 to allow a notice of electronic

filing to replace a certificate of service, just as Rule 8004 already does. Because the Part VIII rules generally track the language of the Federal Rules of Appellate Procedure, the Subcommittee recommends that the amendment to Rule 8011(d) adopt the language of FRAP 25(d).

Draft of Proposed Amendments to Rule 8011

The Subcommittee proposes that Rule 8011 be amended in a manner similar to the proposed amendments to FRAP 25 and that, as a conforming amendment, approval be sought without publication. The Committee has published amendments to Rule 5005(a) regarding electronic filing and signatures, and the other advisory committees have published the amendments regarding electronic service and proof of service, which will apply to Rule 7005. Therefore, even without publishing the amendments to Rule 8011, the Committee will receive public feedback on these rule changes. Dispensing with publication will allow the amendments to Rule 8011 to go into effect at the same time as the parallel rules.

Currently Rule 8011 and FRAP 25 are not identical, because Rule 8011 carried forward some of the organizational features of former Rule 8008. Rather than reorganize the bankruptcy rule at this point to exactly mirror the appellate rule, the Subcommittee concluded that it would be preferable to limit the amendments to the specific provisions affected by the FRAP 25 amendments. Amended Rule 8011 would then provide as follows:

Rule 8011. Filing and Service; Signature

(a) FILING.

* * * * *

(2) *Method and Timeliness.*

(A) *Nonelectronic Filing*

~~(A)~~(i) *In General*. ~~Filing~~ For a document not filed electronically, filing may be accomplished by ~~transmission~~ mail addressed to the clerk of the district court or BAP. Except as provided in subdivision ~~(a)(2)(B) and (C)~~ (a)(2)(A)(ii) and (iii), filing is timely only if the clerk receives the document within the time fixed for filing.

~~(B)~~(ii) *Brief or Appendix*. A brief or appendix not filed electronically is also timely filed if, on or before the last day for filing, it is:

~~(i)~~• mailed to the clerk by first-class mail—or other class of mail that is at least as expeditious—postage prepaid~~, if the district court's or BAP's procedures permit or require a brief or appendix to be filed by mailing~~; or

~~(ii)~~• dispatched to a third-party commercial carrier for delivery within 3 days to the clerk~~, if the court's procedures so permit or require~~.

~~(C)~~(iii) *Inmate Filing*.[1] A document not filed electronically by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If the institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. §1746 or by a notarized statement, either of which must

[1] An amendment to this provision was published for comment in August 2016. At the appropriate time the two sets of amendments will have to be merged if both go forward.

set forth the date of deposit and state that first-class postage has been prepaid.

(B) *Electronic Filing.*

(i) *By a Represented Person—Generally Required; Exceptions*. An entity represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

(ii) *By an Unrepresented Individual—When Allowed or Required*. An individual not represented by an attorney:

• may filed electronically only if allowed by court order or by local rule; and

• may be required to file electronically only by court order, or by a local rule that incudes reasonable exceptions.

(iii) *Same as Written Paper*. A document filed electronically is a written paper for purposes of these rules.

~~(D)~~(C) *Copies*. If a document is filed electronically, no paper copy is required. If a document is filed by mail or delivery to the district court or BAP, no additional copies are required. But the district court or BAP may require by local rule or by order in a particular case the filing or furnishing of a specified number of paper copies.

* * * * *

(c) MANNER OF SERVICE.

(1) *Nonelectronic Service*. ~~*Methods*. Service must be made electronically, unless it is being made by or on an individual who is not represented by counsel or the court's governing rules permit or require service by mail or other~~

~~means of delivery. Service~~ Nonelectronic service may be ~~made by or on an unrepresented party~~ by any of the following ~~methods~~:

(A) personal delivery;

(B) mail; or

(C) third-party commercial carrier for delivery within 3 days.

(2) *Electronic Service.* Electronic service may be made by sending a document to a registered user by filing it with the court's electronic-filing system or by using other electronic means that the person served consented to it writing.

~~(2)~~(3) *When Service is Complete*. Service by electronic means is complete on ~~transmission~~ filing or sending, unless the ~~party~~ person making service receives notice that the document was not ~~transmitted successfully~~ received by the person served. Service by mail or by commercial

carrier is complete on mailing or delivery to the carrier.

(d) PROOF OF SERVICE.

(1) *What is Required*. A document presented for filing must contain either of the following if it was served other than through the court's electronic-filing system:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) the mail or electronic address, the fax number, or the address of the place of delivery, as appropriate for the manner of service, for each person served.

* * * * *

(e) SIGNATURE. Every document filed electronically must include the electronic signature of the person filing it or, if the person is represented, the electronic signature of counsel. ~~The electronic signature must be provided by electronic means that are consistent with any technical standards that the Judicial Conference of the United States establishes.~~ The user name and password of an attorney of record, together with the attorney's name on a signature block, serves as the attorney's electronic[2] signature. Every document filed in paper form must be signed by the person filing the document or, if the person is represented, by counsel.

[2] The other rules, including Rule 5005(a), do not include the word "electronic" because the provisions are located in paragraphs dealing only with electronic filing.

Committee Note

The rule is amended to conform to the amendments to Fed. R. App. P. 25 on electronic filing, signature, service, and proof of service.

Consistent with Rule 8001(c), subdivision (a)(2) generally makes electronic filing mandatory. The rule recognizes exceptions for persons proceeding without an attorney, exceptions for good cause, and variations established by local rule.

Subdivision (c) is amended to authorize electronic service by means of the court's electronic-filing system on registered users without requiring their written consent. All other forms of electronic service require the written consent of the person served. As amended, subdivision (d) eliminates the requirement of proof of service when service is made through the electronic-filing system. The notice of electronic filing generated by the system serves that purpose.

Subdivision (e), which requires the signature of counsel or an unrepresented party on every document that is filed, is amended to make an attorney's user name and password the attorney's electronic signature.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS, AND APPEALS

SUBJECT: SUGGESTION REGARDING ISSUANCE OF MANDATE BY DISTRICT COURT OR BAP UPON CONCLUSION OF APPEAL

DATE: OCTOBER 19, 2016

Advisory Committee member Judge Ben Goldgar has suggested (16-BK-E) that the Committee study whether a mandate procedure, similar to FRAP 41 (Mandate; Contents; Issuance and Effective Date; Stay), would be useful for bankruptcy appeals to district courts and bankruptcy appellate panels. He notes that the current Part VIII rules do not provide for the district court or BAP to issue a mandate to the bankruptcy court upon the conclusion of an appeal. (The same was true for the prior Part VIII rules.) As a result, he says, there is not a clearly defined time at which jurisdiction over the matter on appeal revests in the bankruptcy court. This situation can cause confusion for the bankruptcy court and parties regarding the bankruptcy court's authority to take post-appeal actions.

A similar suggestion was previously raised in the comments that the National Conference of Bankruptcy Judges ("NCBJ") made in response to the publication in 2012 of the revised Part VIII rules. The Subcommittee considered the merits of adding a mandate provision and ultimately decided to recommend against making that change. The Advisory Committee agreed with that recommendation at the spring 2014 meeting.

Despite that earlier consideration, the Subcommittee decided during its September 29 conference call that the Suggestion merits further study. Among other things, the Committee will seek input from bankruptcy judges about whether the absence of a mandate procedure is

causing problems that should be addressed by a national rule and will attempt to determine why no requirement for the issuance of a mandate was ever included in the bankruptcy appellate rules.

Attached to this memorandum is the Subcommittee's March 13, 2014, memorandum to the Advisory Committee that explains the basis for its earlier recommendation not to propose a mandate provision.

Attachment

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS, AND APPEALS

SUBJECT: ISSUANCE OF MANDATE BY DISTRICT COURT OR BAP UPON CONCLUSION OF APPEAL

DATE: MARCH 13, 2014

Among the comments that the National Conference of Bankruptcy Judges ("NCBJ") submitted in response to the publication of the Part VIII rules was the suggestion that a provision similar to Federal Rule of Appellate Procedure ("FRAP") 41 for issuance of a mandate by the district court or bankruptcy appellate panel ("BAP") be added to the Bankruptcy Rules. In commenting on published Rule 8024 (Clerk's Duties on Disposition of the Appeal), the NCBJ said:

> The proposed rule carries forward a problem in current rule 8016. It fails to address when jurisdiction revests in the bankruptcy court after an appeal. The Federal Rules of Appellate Procedure resolve this problem for appeals from the district court to the court of appeals by providing for the issuance of a mandate by the appellate court.

The Advisory Committee decided to give final approval to the revised Part VIII rules without acting on the NCBJ's suggestion, but it left the matter open for further consideration at a later time.

The Subcommittee discussed the NCJB's suggestion for the addition of a mandate provision during its conference calls on July 30, 2013, and January 29, 2014. **The Subcommittee recommends that no further action be taken on the suggestion.**

Background

In the courts of appeals, FRAP 36(b) requires the clerk to serve a copy of the court's opinion—or the judgment if there is no written opinion—on all parties. In addition, FRAP 41provides for the issuance of a mandate by the court of appeals. The mandate generally consists of a certified copy of the judgment; a copy of the court's opinion, if any; and any directions about costs. FRAP 41(c) provides that the mandate is effective when it is issued, although subdivision (d) provides for a stay of the mandate if a timely petition for rehearing is filed or a petition for certiorari is filed.

Under the Bankruptcy Rules, new Rule 8024(b)[1] requires the clerk of the district court or BAP, immediately upon the entry of a judgment in a bankruptcy appeal, to transmit a notice of the judgment's entry to each party to the appeal, to the United States trustee, and to the bankruptcy clerk, together with a copy of any opinion, and to note the date of the transmission on the docket. There is no provision equivalent to FRAP 41 in the existing or new Part VIII rules.

The Wright & Miller treatise explains the significance of the mandate as follows:

> The mandate is directed to the court below, which upon receipt of the mandate can take whatever further proceedings are appropriate or necessary in light of the mandate. Until the mandate issues, however, the case ordinarily remains within the jurisdiction of the court of appeals and the district court lacks power to proceed further with respect to the matters involved with the appeal.

16AA CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3987 (4th ed. 2013) (footnotes omitted).

In Payne v. Clarendon Nat'l Ins. Co. (*In re* Sunset Sales, Inc.), 195 F.3d 568, 571 n.1 (10th Cir. 1999), the Tenth Circuit noted the absence from the Bankruptcy Rules of a provision addressing the issuance of a mandate by the BAP. It instead relied on the Tenth Circuit BAP's

[1] "New Rule 8024" is part of the revised Part VIII rules that will take effect on December 1, 2014, if they are approved by the Supreme Court this spring and Congress takes no action to the contrary.

Local Rule 8016-3(a) [now 8016-6], which is modeled on FRAP 41.[2] The court explained that "'Issuance of the mandate formally marks the end of appellate jurisdiction. Jurisdiction returns to the tribunal to which the mandate is directed, for such proceedings as may be appropriate.'" *Id.* at 571 (quoting Johnson v. Bechtel Assocs. Professional Corp., 801 F.2d 412, 415 (D.C. Cir. 1986)).

The NCBJ stated that the absence of a mandate provision in the existing rules does not seem to be causing significant problems. Nevertheless, the NCBJ suggested that requiring the issuance of a mandate by the appellate court would provide a clearly determined point at which jurisdiction passes from that court to the bankruptcy court.

The Subcommittee's Consideration of the Suggestion

The Subcommittee considered the possibility of amending new Rule 8024 to add a mandate procedure similar to FRAP 41. It preferred placing such a provision in that rule, rather than proposing a separate new rule, in order to avoid disrupting the new numbering scheme of the Part VIII rules.

The Subcommittee reviewed a draft of an amendment to new Rule 8024 that the Reporter had prepared. The draft amendment was modeled on FRAP 41 and addressed the contents of a mandate, when a mandate is issued, the effective date of a mandate, and staying a mandate. In light of the proposed addition of a mandate procedure, the draft deleted from Rule 8024(b) the duplicative requirement that the district or BAP clerk transmit to the bankruptcy clerk notice of the entry of a judgment and a copy of any opinion.

[2] The Eighth Circuit BAP also has a local rule providing for the issuance and stay of a mandate. *See* Local Rule 8016A(b) and (c) (Duties of the Clerk of the Bankruptcy Appellate Panel). The First and Ninth Circuit BAPs provide for the issuance and stay of a mandate in other documents. *See* Practice Guide for Appeals to the Bankruptcy Appellate Panel for the First Circuit at 8; Appeals Before the Bankruptcy Appellate Panel of the Ninth Circuit at 43.

The Subcommittee's review of the draft and careful consideration of the issue led it to conclude for several reasons that creation of a mandate procedure for bankruptcy appeals should not be pursued. First, members noted that the Bankruptcy Rules have never provided for the issuance of a mandate by the district court or BAP in a bankruptcy appeal. Indeed, as one bankruptcy judge has pointed out, the original drafters of the Bankruptcy Rules were clearly aware of FRAP 41, but chose not to adopt that procedure. *See In re* Capitol Hill Group, 330 B.R. 1, 3 n.5 (Bankr. D.D.C. 2005) ("Rule 8017(b) [soon to be Rule 8025(b)] itself is evidence that the [Advisory] Committee had in mind F.R. App. P. 41 when it elected to dispense with a delay of the issuance of the mandate as the vehicle for staying the effectiveness of a district court's ruling."). Despite the longevity of the no-mandate procedure, the Subcommittee had no evidence that problems have arisen as a result of the absence of an appellate court mandate.

Second, one member of the Subcommittee persuasively challenged the view that issuance of a mandate would provide a definite point at which jurisdiction is transferred back to the bankruptcy court from the appellate court. She stated that, insofar as a mandate of a court of appeals is concerned, its significance is not jurisdictional, but rather is a matter of administrative coordination between the court of appeals and the district court. Courts of appeals sometimes recall the issuance of a mandate, *see* Calderon v. Thompson, 523 U.S. 538, 549 (1998) (noting the "inherent power" of courts of appeal to recall their mandates), so requiring a mandate will not always result in a clearly defined moment at which jurisdiction is transferred back to the trial court.

Finally, the Subcommittee concluded that, if Rule 8024 were amended to include a mandate procedure, two other rules would have to be revised. The first is new Rule 8025, which governs the stay of a district court or BAP judgment in a bankruptcy appeal. Rule 8025(a) and

(b) are the Bankruptcy Rules' substitutes for FRAP 41(b) and (d). Rather than providing for a stay of the mandate for a period after the appellate court enters a judgment and while a further appeal is sought or is pending, Rule 8025 provides for the stay of the district court's or BAP's judgment. The rule in large part serves the same function as the stay-of-mandate provisions derived from FRAP 41 that would be added to Rule 8024.

The Subcommittee concluded that there would be no reason to add the proposed mandate provisions to Rule 8024 and to also retain Rule 8025 in its current form. Instead, consideration would have to be given to whether Rule 8025 should be abrogated in its entirety (after going into effect in 2014) or whether some parts of it should be retained.

The other impacted rule is new Rule 8021, which governs the assessment of costs on appeal. It is modeled on FRAP 39. Because the existing and new Part VIII rules do not provide for the issuance of a mandate by the district court or BAP, FRAP 39(d) was not incorporated into Rule 8021. That provision of FRAP 39 requires a party seeking the taxing of costs to file an itemized and verified bill of costs in the appellate court within 14 days after judgment and requires any objections to be filed in the appellate court within 14 days after service of the bill of costs. The appellate clerk then includes an itemized statement of costs in the mandate. New Rule 8021—like current Rule 8014—instead requires the bill of costs and any objections to be filed in the bankruptcy court.

If a mandate provision were added to Rule 8024, revision of the procedure for taxing costs on appeal under Rule 8021 would have to be considered. Rule 8021 could be amended to parallel FRAP 39—moving to the district court or BAP the filing of the bill of costs on appeal and any objections. Alternatively, proposed Rule 8024(d) could be revised to eliminate from the mandate any directions about costs.

In the end, lacking any reason for concern about existing procedures, the Subcommittee concluded that any benefit from adopting bankruptcy provisions similar to FRAP 41 would be outweighed by the possible disruption caused by amending several Part VIII rules so shortly after they have been completely revised. It therefore recommends against taken any further action on the NCBJ suggestion.

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MEMORANDUM

TO: The Rules Committees

FROM: Scott Myers -- Rules Committee Support Office

RE: Rules Coordination Report

DATE: October 21, 2016

At its June 2016 meeting, the Standing Committee asked the Rules Committee Support Office (RCSO) to identify and coordinate rule changes that affect more than one advisory committee. RCSO is tracking the following matters.

Rules published for comment in 2016

Electronic filing. Proposed amendments to Appellate Rule 25, Bankruptcy Rule 5005, Civil Rule 5, and Criminal Rule 49 to address electronic filing, signatures, service and proof of service.

Amendments to the proposed electronic filing rules were coordinated by the advisory committees prior to publication to use the same language to the greatest extent possible. The proposed amendments address standards for electronic filing, signatures, service and proof service. The advisory committees will consider comments at their spring 2017 meetings, and make recommendations for final approval. The rules are on track to go into effect December 1, 2018.

Two additional bankruptcy rules are implicated: Rule 7005 and Rule 8011. Rule 7005 incorporates Civil Rule 5 in adversary proceedings. The Bankruptcy Rules Committee has recommended no changes to Rule 7005, so, where applicable in bankruptcy cases, the Civil Rule 5 changes will apply automatically. Rule 8011 is the bankruptcy rule counterpart to Appellate Rule 25. At its fall 2016 meeting, the Bankruptcy Rules Committee will consider as technical amendments changes to Rule 8011 that would conform to the published amendments to Appellate Rule 25. If approved as technical conforming amendments, the proposed changes to Rule 8011 would be on track to go into effect the same time as the published amendments to Appellate Rule 25, Bankruptcy Rule 5005, Civil Rule 5, and Criminal Rule 49.

Proposed Amendment to Civil Rule 62 (Stay of Proceedings to Enforce a Judgment), *affects Appellate Rules 8, 11, 39, and Bankruptcy Rules 8007, 8010, and 8021*.

The proposed amendment to Civil Rule 62 would eliminate the antiquated term "supersedeas bond" and use instead the term "bond or other security" for what an appellant must post to stay the enforcement of a judgment while an appeal is taken. The Appellate Rules Committee has published conforming amendments to its Rules 8, 11, and 39 eliminating the term "supersedeas bond" and the Bankruptcy Rules Committee will

consider at its fall 2016 meeting making similar technical conforming amendments its appellate rules 8007, 8010, and 8021. The Civil Rule and the conforming Appellate and Bankruptcy Rule changes are on track to go into effect December 1, 2018.

Pending Amendment to Criminal Rule 12.4 (b) (Disclosure Statement).

The proposed amendment, published for comment in the summer of 2016, provides a specific time frame within which a corporate party must make disclosures and clarifies the corporate party's obligation to supplement the disclosure when it learns of additional information. Conforming changes could be made to Appellate Rule 26.1 (Corporate Disclosure Statement), Civil Rule 7.1(a) (Disclosure Statement), and Bankruptcy Rules 7007.1 (Corporate Ownership Statement) and 8012 (Corporate Disclosure Statement). The Appellate Rules Committee recommended conforming changes to Appellate Rule 26.1(b) at its fall 2016 meeting. The change to Criminal Rule 12.4(b) is on track to go into effect December 1, 2018. If conforming changes to the parallel appellate, bankruptcy, and civil rules are published in the summer of 2017, they would go into effect a year after the criminal rule unless the effective date of the criminal rule is delayed.

Rules pending publication

Proposed Bankruptcy Rule 9037(h) – a new subpart to the bankruptcy privacy rule in response to suggestion 14-BK-B from CACM addressing redaction of private information in closed cases.

The Bankruptcy Rules Committee recommended proposed Rule 9037(h) for public comment at its spring 2016 meeting, but held submission to the Standing Committee in order give the other advisory committees time to consider parallel amendments to their privacy rules. It expects to submit a final version of proposed Rule 9037(h) to the Standing Committee next summer. The proposed amendment potentially affects Appellate Rule 25, Civil Rule 5.2, and Criminal Rule 49.1. Because Appellate Rule 25 is derivative, the Appellate Rules Committee plans no changes. The Civil Rule Committee is considering a parallel amendment to Civil Rule 5.2 at its fall 2016 meeting, and Criminal Rules Committee can consider an amendment to Criminal Rule 49.1 at its spring 2017 meeting. The RCSO will coordinate Bankruptcy, Civil and Criminal versions over the winter so that the advisory committees are in a position to consider final recommendations for publication at their spring 2017 meetings.

Proposed Appellate Rule 26.1(e) (Disclosure Statement)

At its fall 2016 meeting, the Appellate Rules Committee discussed recommending for public comment an additional amendment to its version of the Disclosure Statement Rule to require disclosures of certain actors when an appeal originates from a bankruptcy proceeding. It tabled its recommendation until its spring 2017 meeting to consult with the Bankruptcy Rules Committee.

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

September 27, 2016

Honorable Danny C. Reeves
Chair of the Committee on the Administration
of the Bankruptcy System
United States District Court
United States Courthouse and Post Office
101 Barr Street, Room 136
Lexington, KY 40507-1313

Re: *Suggestion 15-BK-D, submitted by Russell C. Simon, Chapter 13 Standing Trustee, on behalf of the National Association of Chapter 13 Trustees*

Dear Judge Reeves:

The Advisory Committee on Bankruptcy Rules received the attached suggestion from the National Association of Chapter 13 Trustees (NACTT) asking us to promulgate an Official Form entitled "Notice of Change of Address" that would help creditors provide notification of a change in their mailing address during the bankruptcy case.

According to the NACTT, having a uniform method for changing mailing addresses in a bankruptcy case would increase efficiency and reduce costs for parties trying to serve papers on creditors, or make distributions to them. In addition, the NACTT posits that unknown or incorrect mailing addresses contribute to the significant amount of unclaimed funds in the courts' registries and the U.S. Treasury.

We considered the NACTT's suggestion during both our October 2015 and April 2016 meetings. The attached Supplemental Memorandum explains the various issues raised by the suggestion in greater detail. As set forth in the Supplemental Memorandum, the NACTT's concerns appear to reflect the realities of bankruptcy practice, both in terms of the lack of a uniform process for

While we appreciated the issues raised by the NACTT and the related challenges faced by trustees and others trying to locate parties affected by a bankruptcy case, our research indicated that many jurisdictions have already implemented local rules, forms, or practices to allow parties to notify the bankruptcy court of a change in address. Based on our research, there is no evidence that differences in the procedures adopted by local rules posed problems for the parties wanting to notify the court about a change of address. Nor did we see any basis for concluding that the availability of an Official Form would increase the likelihood that unmotivated creditors would provide such notification. With respect to the latter point, we recognized that creditors should be motivated to ensure that the court and the trustee or debtor in possession have current information for purposes of mailing distributions and papers, but that neither the statute nor the rules require creditors to make such a filing. In addition, we determined that the unclaimed funds issue was not an issue that could be addressed through the bankruptcy rules.

In light of the foregoing, we decided to take no action on the NACTT's suggestion at this time. Nevertheless, we decided to refer the NACTT's suggestion to the Committee on the Administration of the Bankruptcy System to consider whether it has an interest in addressing the issues raised by the NACTT regarding the failure of some creditors to give notice of changes in address. We would be willing to reconsider developing a Director's Form or other appropriate form to facilitate changes of address in bankruptcy cases if it would complement or assist the efforts of your committee on these issues.

Please let me know if you need any additional information or would like to discuss these matters further.

Sincerely,

Sandra Segal Ikuta
United States Circuit Judge
Ninth Circuit
Chair, Advisory Committee on Bankruptcy Rules

Attachments
cc: Honorable Jeffrey S. Sutton
Honorable Erithe A. Smith
Honorable Stuart M. Bernstein
Rebecca A. Womeldorf
Scott Myers, Esq.
Michele Reed, Esq.
Mark Miskovsky, Esq.

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

October 25, 2016

Honorable Wm. Terrell Hodges
Chairman, Committee on Court Administration and
Case Management
United States District Court
Golden-Collum Federal Building and
United States Courthouse
207 Northwest Second Street, Room 330
Ocala, FL 34475-6603

Re: *Suggestion 14-BK-B regarding the procedure for redacting filed documents*

Dear Judge Hodges:

Judge Julie Robinson, on behalf of the Committee on Court Administration and Case Management (CACM), submitted a suggestion to the Advisory Committee on Bankruptcy Rules regarding the procedure for belatedly redacting personal identifiers in documents that were filed in bankruptcy courts without complying with Rule 9037(a)'s protection of social security numbers, financial account numbers, birth dates, and names of minor children. CACM suggested, among other things, that Rule 9037 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)."

After studying the issue and conducting a survey of bankruptcy clerks to determine the procedures currently being used, we have drafted a proposed amendment to Rule 9037 that would add a new subdivision (h) to provide a procedure for redacting personal identifiers in documents that were previously filed without complying with the rule's redaction requirements. It would require that notice of a motion to redact be given to the debtor, debtor's attorney, trustee

if any, United States trustee, filer of the unredacted document, and any individual whose personal identifying information is to be redacted. In addition, the proposed provision requires that access to the motion and the unredacted document be restricted in order to prevent the filing of the motion from highlighting the existence of the unredacted document on file. The Advisory Committees on Civil Rules and Criminal Rules are currently considering whether to propose similar amendments.

In working on the proposed rule, it came to our attention that there are commercial services that maintain and make available to subscribers parallel dockets for all the bankruptcy and other federal courts. There are at least five services that provide bankruptcy databases downloaded from PACER. For example, American Infosource's website says that it "engages in [d]aily retrieval of all new filing updates to [bankruptcy] cases in progress as well as claims register and creditor matrix data." LexisNexis advertises that its CourtLink service "lets you conduct a single search across the full text of more than 168 million federal and state court dockets and documents in a single click."

We understand that several AO groups and Judicial Conference committees are considering the impact of PACER data mining on federal judicial policies and practices. Insofar as our work is concerned, the existence of these dockets outside the control of the courts means that an unredacted document can continue to be accessible despite a belated redaction and the court's restriction of access to the unredacted document in the court's files. We concluded that the resolution of this problem is outside the scope of rulemaking authority and that the proposed rule should address only documents within the courts' control. Knowledge of the existence of these services, however, did lead us to conclude that, following a successful motion to redact, access to the motion and the unredacted document should remain restricted in the court's files to avoid alerting the subscribers to parallel dockets where they might be able to find unredacted information.

The Advisory Committee asked that I call to the attention of CACM the existence of these unofficial dockets because of their potential impact on the effectiveness of courts' belated redaction of filed documents. We are uncertain whether the resolution of this matter requires legislation or adjustment of the judicial polices governing PACER access, but we concluded that this is a matter that your committee should be aware of, if it is not already.

Sincerely,

Sandra Segal Ikuta
United States Circuit Judge
Ninth Circuit
Chair, Advisory Committee on Bankruptcy Rules

cc: Honorable David G. Campbell
Mark S. Miskovsky
Rebecca A. Womeldorf

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JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

October 3, 2016

MEMORANDUM

To: Judicial Conference Committee Chairs

From: James C. Duff

RE: QUESTIONNAIRE ON THE FIVE-YEAR REVIEW OF COMMITTEE JURISDICTION AND STRUCTURE

In 1987, the Judicial Conference established a requirement that "[e]very five years, each committee must recommend to the Executive Committee, with a justification for the recommendation, either that the committee be maintained or that it be abolished." JCUS-SEP 87, p. 60. This review is scheduled to occur again in 2017, and attached you will find a questionnaire that will assist your committee in meeting this requirement. As you will see from the questionnaire, we use this opportunity to ask committees to evaluate not only the continuing importance of their mission, but also their membership, operating procedures, and relationships with other committees to identify where improvements can be made. I am requesting that you place this issue on the agendas for your committees' winter 2016-2017 meetings so that the Executive Committee can consider your responses at its February 2017 meeting.

Each committee staff has received this memorandum and will include the attached questionnaire and all committees' current jurisdictional statements in their agenda materials for the winter meetings. Please feel free to provide your committee with any additional information you believe will assist them in this review.

When completed, the questionnaires should be emailed to WonKee Moon, Attorney Advisor, Judicial Conference Secretariat, at WonKee_Moon@ao.uscourts.gov. To permit timely consideration by the Executive Committee, the questionnaires should be received no later than **January 17, 2017**.

Attachment

cc: Committee Staffers

JURISDICTION OF COMMITTEES OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

(As approved by the Executive Committee, effective February 7, 2013)

The Executive Committee: The senior executive arm of the Judicial Conference.

Act on behalf of the Judicial Conference between regular sessions, after consultation with the relevant Judicial Conference committee, on any matter requiring emergency action, and report to the Judicial Conference at its next session or more promptly, as necessary.

Prepare the discussion and consent calendars for meetings of the Judicial Conference. In its review of the report submitted by each Judicial Conference committee in connection with calendar preparation, the Committee may, from time to time, call to the submitting committee's attention aspects of its report that may be problematic so that the submitting committee will have the opportunity to reconsider whether to submit its report to the Judicial Conference with no change (as is its right), or to modify its report before submission to the Judicial Conference, or to take other action.

Establish and publish procedures for assembling Judicial Conference and committee agendas.

Review, revise, and publish statements of committee jurisdiction, and resolve questions as to whether a given matter falls within the jurisdiction of a particular committee. Assign matters of first impression to the appropriate committee. Receive every five years a recommendation from each committee as to whether that committee should be maintained or abolished, together with a justification for that recommendation, and make appropriate recommendations to the Judicial Conference.

Make recommendations to the Judicial Conference and its committees with respect to the needs of the judiciary that, in its view, should be addressed or planned for.

Working with the Director of the Administrative Office, fashion spending plans for the federal judiciary's congressionally approved appropriations.

Coordinate legislative liaison on behalf of the Judicial Conference and maintain and improve relationships between the judiciary and the legislative and executive branches. However, each committee will continue to be responsible for developing for Judicial Conference consideration substantive positions on legislative matters within its area of assigned responsibility.

Perform such other duties as may be delegated by the Judicial Conference or the Chief Justice.

Confer from time to time with the Chief Justice.

Facilitate and coordinate the federal judiciary's planning activities.

Committee on Audits and Administrative Office Accountability: To oversee audit, review, and investigative assistance activities and address certain other matters involving the Administrative Office, recognizing that the Director is responsible for day-to-day managerial and administrative matters.

Oversee the Administrative Office's audit, review, and investigative assistance activities in and for the judiciary and recommend actions by the Administrative Office to address recurring issues.

Receive, consider, and respond to complaints and suggestions concerning operations of the Administrative Office and recommend appropriate action to the Director.

Conduct studies of the operations of the Administrative Office as requested by the Judicial Conference or the Executive Committee.

Committee on the Administration of the Bankruptcy System: To oversee the bankruptcy system.

Monitor, analyze, and propose legislation affecting bankruptcy operations, including their impact on the entire judiciary, for consideration by the Judicial Conference.

Review and make recommendations to the Judicial Conference on the numbers and locations of bankruptcy judgeships; the selection, appointment, and reappointment of bankruptcy judges; and the recall of retired bankruptcy judges.

Review and make recommendations to the Judicial Conference (or, if another Conference committee has primary jurisdiction of the matter, to the appropriate committee) regarding other issues affecting the office of bankruptcy judge, including (but not limited to) the salaries and retirement benefits of bankruptcy judges and the allocation and management of bankruptcy judge resources (through temporary assignment of bankruptcy judges under 28 U.S.C. § 155(a) and other techniques); and on other matters affecting the operation of the bankruptcy system, including (but not limited to) bankruptcy appeals, case management, court governance, federal rules of bankruptcy practice and procedure, statistical workload information and projections, and the consolidation of court units.

Review and make recommendations to the Committee on Judicial Resources concerning staffing and support services for bankruptcy judges, staffing formulae for bankruptcy clerks' offices, and staffing requirements for other non-judge bankruptcy personnel, and approve individual chambers staff positions for bankruptcy judges insofar as staff may be allocated on a case-by-case basis pursuant to established policy.

Review and make recommendations to the Judicial Conference (or, if another Conference committee has primary jurisdiction of the matter, to the appropriate committee) and the Director of the Administrative Office regarding matters involving the operation and administration of the bankruptcy administrator program and the relationship with U.S. trustees concerning estate administration.

Propose adequate funding resources when the budget is being formulated to support the programs within the committee's jurisdiction, taking into account the overall fiscal situation of the judiciary, and monitor the condition of the fund held in escrow to pay the chapter 7 trustees.

Committee on the Budget: To assemble and present to Congress the budget for the judicial branch.

Consult with Judicial Conference committees on proposals with budgetary implications and their justification, including revenue enhancement proposals such as new fees.

Consult with committee chairs to formulate and present for approval of the Judicial Conference a budget request to Congress for the courts of appeals, district courts, bankruptcy courts, other units of the judicial branch, and the Administrative Office. Propose appropriate funding levels, as necessary, working with the Judicial Conference and relevant committee chairs to arrive at those levels.

Assist the judiciary's efforts to improve fiscal responsibility, accountability, and efficiency in overall operations.

Make recommendations as appropriate on ways to develop and execute the budget of the judiciary in a logical and accountable manner, including specific line-item budgetary reductions.

Present and defend the budget approved by the Judicial Conference to Congress.

Monitor reports of expenditure of appropriated funds.

Committee on Codes of Conduct: To provide advice, training, and other information on the application of the Code of Conduct for United States Judges and other judicial branch codes of conduct and Titles III and VI of the Ethics Reform Act of 1989, as amended; to implement statutory provisions relating to deferral of capital gains tax on

certain ethics-based divestitures of property by judicial officers; and to recommend policies concerning matters of judicial ethics.

Render confidential advisory opinions on the application of the codes in response to confidential inquiries from persons bound by a code adopted by the Judicial Conference.

Render confidential advisory opinions, in response to confidential inquiries, concerning the application of other codes of conduct binding on officers and employees of the Tax Court, the Court of Veterans Appeals, and other entities of the judicial branch so long as (1) the relevant code is substantially identical in all material respects to a code adopted by the Judicial Conference, and (2) the judicial branch entity served by the inquirer has requested that the Committee render confidential advisory opinions to its officers and employees concerning the relevant code.

Render confidential advisory opinions interpreting Titles III (relating to gifts to federal employees) and VI (relating to limitations on outside earned income, honoraria, and outside employment) of the Ethics Reform Act of 1989, as amended, in response to confidential inquiries from judicial officers and employees of the judicial branch, except those of the Supreme Court and the Federal Judicial Center.

Publish such advisory opinions, after appropriate redaction to preserve privacy interests, on issues frequently raised or of broad application.

Make policy recommendations to the Judicial Conference on matters of judicial ethics, including proposals to adopt or pursue code and statutory modifications.

Determine whether divestiture of specific property is reasonably necessary to comply with federal conflict of interest requirements and issue certificates of divestiture, under 26 U.S.C. (I.R.C.) § 1043, to judicial officers other than Supreme Court Justices.

Educate and inform judicial officers and employees about their ethical responsibilities under the foregoing provisions.

Committee on Court Administration and Case Management: To study and make recommendations on matters affecting case management; the operation of appellate, district and bankruptcy clerks' offices; jury administration; and other court operational matters.

Monitor all case management activity of the appellate and district courts, and make recommendations for changes and improvements.

Make recommendations on proposals (including proposed legislation and proposed federal rules) involving matters including, but not limited to: court administration and organization; alternative dispute resolution; attorney admission and discipline; case management of mass tort litigation; miscellaneous and filing fees; the lawbook and library program; records management; places of holding court; methods of court reporting and court interpreting; and the operation of grand and petit juries.

Review initiatives on the development of electronic technologies for the courts for their effect on case management and the administration of justice, and make policy recommendations when appropriate.

Review matters affecting the operation of appellate, district, and bankruptcy clerks' offices and make recommendations for changes in related administrative practices, federal rules, and legislation.

Review the staffing formulae for the appellate, district, and bankruptcy clerks' offices and recommend any revisions to such formulae to the Committee on Judicial Resources.

Committee on Criminal Law: To oversee the federal probation and pretrial services system and review legislation and other issues relating to the administration of the criminal law.

Monitor and analyze for Judicial Conference consideration legislation affecting the administration of criminal justice.

Make recommendations to the Judicial Conference regarding exercise of the Judicial Conference's authority over sentencing institutes under 28 U.S.C. § 334.

Provide oversight of the implementation of sentencing guidelines and make recommendations to the Judicial Conference with regard to proposed amendments to the guidelines, including proposals that would increase their flexibility.

Make recommendations to the Judicial Conference in meeting its and the probation system's responsibilities to submit an annual report to the Sentencing Commission (28 U.S.C. § 994(o)).

Assure that working relationships are maintained and developed with the Department of Justice, Bureau of Prisons, United States Parole Commission, and United States Sentencing Commission, with respect to issues falling within the Committee's jurisdiction.

Propose to the Judicial Conference or Director of the Administrative Office, as appropriate, policies and standards on issues affecting the probation system, pretrial services, presentence investigation procedures, disclosure of presentence reports, sentencing and sentencing guidelines, supervision of offenders released on probation and parole and on supervised release, drug aftercare services, witness protection, and interdistrict transfer of offenders under supervision.

Recommend to the Committee on Judicial Resources standards of employment for employees in probation and pretrial services.

Monitor the workload and operations of probation and pretrial services offices and when the budget is being formulated, propose adequate funding and resources to support these operations, taking into account the overall fiscal situation of the judiciary. Review the staffing formulae for probation and pretrial services offices and recommend such formulae and any revisions to the Committee on Judicial Resources.

Committee on Defender Services: To oversee the provision of legal representation to defendants in criminal cases who cannot afford an adequate defense.

Provide general policy guidance in interpretation and application of the Criminal Justice Act and related statutes, including approving non-controversial revisions to the Guidelines for the Administration of the Criminal Justice Act and Related Statutes, recommending approval to the Judicial Conference for other amendments to these guidelines, and reviewing and modifying forms used by the courts in administering the Act and related statutes.

Review and make recommendations to the Committee on Judicial Resources on policy concerning compensation and staffing for federal public and community defender organizations.

Review budget and grant requests (including staffing) of federal public and community defender organizations, and approve appropriate amounts, subject to applicable Conference-approved formulae, policies, or standards.

Review the Administrative Office's fiscal reports concerning appointments and payments under the Criminal Justice Act.

Monitor, analyze, and propose for Judicial Conference consideration legislation affecting the appointment and compensation of counsel and, where appropriate, make recommendations to other Judicial Conference committees and to the Judicial Conference regarding issues which impact upon the defender services program.

Ensure, to the extent possible, adequate and appropriate substantive training of all persons providing representational services under the Criminal Justice Act.

Monitor the expenditure of Criminal Justice Act funds, advise the Judicial Conference (or other Conference committees, as appropriate) of developments in the defender services program which require additional resources, and, when the budget is being formulated, propose adequate funding and resources to support the defender services program taking into account the overall fiscal situation of the judiciary.

Committee on Federal-State Jurisdiction: To analyze proposed changes in federal jurisdiction and to serve as liaison with state courts.

Make recommendations on proposals regarding elimination, modification, or creation of new federal jurisdiction (including diversity), creation of new courts, territorial issues, and revision of venue provisions.

Serve as the conduit for communication on matters of mutual concern between the federal judiciary and state courts and their support organizations such as the National Center for State Courts, the Conference of Chief Justices, and the State Justice Institute.

Committee on Financial Disclosure: To supervise the filing of financial disclosure reports by judicial officers and employees.

Review financial disclosure reports filed by judges and other judicial branch officers and employees, as required by the Ethics in Government Act, and respond to requests for redaction of such reports, consistent with the Regulations of the Judicial Conference of the United States on Access to Financial Disclosure Reports Filed by Judges and Judiciary Employees Under the Ethics in Government Act of 1978, as Amended.

Approve and modify reporting forms and instructions, as necessary.

Respond to inquiries regarding financial disclosure matters from judges, employees, and the public.

Committee on Information Technology: To provide general policy recommendations, planning, and oversight of the judiciary information technology program.

Recommend to the Judicial Conference broad information technology goals, objectives, and priorities.

Develop and propose national policies which will promote the effective and efficient use of information technology in the courts.

Coordinate the development of, and approve for submission to the Judicial Conference, the *Long Range Plan for Information Technology in the Federal Judiciary.*

Conduct ongoing evaluations of existing systems and make recommendations for changes, as necessary.

When the budget is being formulated, propose adequate funding and resources to support the information technology programs, including relevant education and training, electronic public access, and voice telecommunications programs, taking into account the overall fiscal situation of the judiciary. Make recommendations on information technology staffing issues to the Committee on Judicial Resources.

Committee on Intercircuit Assignments: To assist the Chief Justice in assigning and designating Article III judges for service outside their circuits or national courts, and to advise the Judicial Conference on policy and other matters concerning intercircuit assignments of Article III judges, bankruptcy judges, and magistrate judges.

Review requests from chief circuit judges for the assignment of Article III judges from other circuits or national courts.

Receive or request offers from Article III judges to serve outside their circuits or national courts.

Recommend to the Chief Justice disposition of requests for and offers of Article III judicial assistance from other circuits or national courts.

Recommend for the approval of the Chief Justice guidelines governing the intercircuit assignments of Article III judges, and recommend for the approval of the Judicial Conference guidelines governing the intercircuit assignments of bankruptcy judges and magistrate judges.

Identify courts with excessive caseloads and provide information to those courts regarding the use of supplemental judgepower through intercircuit assignments.

Committee on International Judicial Relations: To coordinate the federal judiciary's relationship with foreign judiciaries and with official and unofficial agencies and organizations interested in international judicial relations, and the establishment and expansion of the rule of law and the administration of justice, and to make recommendations as appropriate to the Chief Justice, Judicial Conference of the United States, and other judicial entities.

Serve as a conduit for communication on matters of mutual concern between the Chief Justice, the Judicial Conference, the federal judiciary, and foreign courts and international judicial organizations.

Coordinate and respond to requests from foreign judges and court managers, and agencies representing their interests, and international organizations concerned with the rule of law and the administration of justice.

In cooperation with executive branch and private agencies, facilitate the development and administration of programs designed to assist foreign judges and court managers such as the translation and dissemination of materials about the United States and its judicial system.

Committee on the Judicial Branch: To address problems affecting the judiciary as an institution and affecting the status of federal judicial officers.

Advise and make recommendations to the Judicial Conference on matters relating to judges' salaries, benefits, and other perquisites.

Review and advise the Judicial Conference on appropriate changes to the Travel Regulations for United States Justices and Judges.

Disseminate information and promote interest throughout the judiciary regarding the financial status of judges and the viability of the judicial office as a lifetime calling.

Study and report to the Judicial Conference on past, present, and possible future relationships with Congress, the executive branch, media, bar, and the general public.

Committee on Judicial Conduct and Disability: To oversee the implementation of the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, consider petitions for review of final actions by circuit judicial councils on complaints of misconduct or disability of federal judges, and review legislative proposals on judicial discipline and removal.

Consider petitions addressed to the Judicial Conference for review of circuit council actions on judicial conduct or disability complaints under 28 U.S.C. §§ 354(b) and 357(a).

Monitor periodically the administration of Title 28, United States Code, §§ 351-364.

Provide advice and counsel to chief circuit judges and judicial councils regarding the implementation of 28 U.S.C. §§ 351-364, and serve as a liaison and clearinghouse for the circuits on their experiences regarding judicial conduct and disability complaints.

Maintain an orientation program for new chief circuit judges and a compendium of relevant materials to aid chief circuit judges, judicial councils, and circuit staff in implementing 28 U.S.C. §§ 351-364.

Recommend to the Judicial Conference procedural and substantive rules, regulations, and guidelines for the conduct of proceedings under 28 U.S.C. §§ 351-364, for promulgation pursuant to 28 U.S.C. §§ 331 and 358.

Study and periodically evaluate the experience of the circuits accumulated under 28 U.S.C. §§ 351-364, and related matters, coordinate the collection and analysis of relevant data incident to such studies, report to the Judicial Conference on circuit developments and experiences regarding judicial conduct and disability complaints, and develop for Conference consideration appropriate policy proposals, including recommendations for desirable legislative changes.

Monitor and report to the Judicial Conference on legislation in the area of judicial discipline, impeachment, and removal (excluding matters pertinent to the Code of Conduct for United States Judges).

Committee on Judicial Resources: To consider all issues of human resource administration, including the need for additional Article III judges and support staff, and oversee the operation of statistical systems and the development of methodologies for human resource needs assessment and allocation.

Make recommendations to the Judicial Conference regarding additional Article III judgeships and Court of Federal Claims judgeships.

Oversee the Judiciary Salary Plan and the Court Personnel System.

Supervise, coordinate, and make recommendations to the Judicial Conference regarding all staffing formulae and requirements for personnel in circuit units, courts, chambers, and federal public and community defender organizations (other than bankruptcy judge, magistrate judge, federal public defender, and executive director of community defender organization positions).

Make policy recommendations to the Judicial Conference on non-information technology administrative and operational training needs, on funding for such training in the judiciary budget requests to the Congress, on the discharge of specific training-related responsibilities assigned to the Judicial Conference by the Congress, and on other matters related to employee development policy as the Judicial Conference may direct.

Make recommendations to the Judicial Conference on compensation policy (other than for Article III and non-Article III judges, federal public defenders, and executive directors of community defender organizations).

Review and recommend Judicial Conference approval of all other matters of human resource policy and administration such as classification and qualification standards; background investigations (other than for bankruptcy judges and magistrate judges), leave administration, employment practices and procedures; and all judiciary-wide benefit programs.

Oversee the operation of the statistical systems of the courts (to the extent not done by other committees), focusing in particular on the weighted caseload system and on reports of cases pending or under submission for long periods of time.

When the budget is being formulated, propose adequate funding and resources to support the programs within the committee's jurisdiction, taking into account the overall fiscal situation of the judiciary.

Committee on Judicial Security: To review, monitor, and propose to the Judicial Conference policies regarding the security of the federal judiciary, including protection of court facilities and proceedings, and protection for judicial officers, other officers and employees of the judiciary, and any immediate family members of such persons, at federal court facilities and other locations, and protection of the personal information of judges and their immediate family members against public disclosure on the internet in ways that could pose a security threat to those individuals. Make recommendations for changes as appropriate.

Review the provision of security services by the United States Marshals Service and the Department of Homeland Security, and make recommendations for changes where deemed advisable.

Coordinate relations of the United States Marshals Service, the Department of Justice in general, and the Department of Homeland Security with the United States courts and court security committees on security matters.

Analyze or prepare for Judicial Conference consideration proposed legislation affecting the security program.

Initiate studies and surveys concerning security matters.

Monitor the coordination of emergency preparedness in the judiciary, which includes crisis response and continuity-of-operations planning.

Coordinate and maintain a liaison with the Committee on Space and Facilities with respect to security arrangements, including measures for emergency preparedness, that involve court facilities.

When the budget is being formulated, propose adequate funding and resources to support the security program, including education and training, taking into account the overall fiscal situation of the judiciary.

Committee on the Administration of the Magistrate Judges System: To provide oversight of the federal magistrate judges system.

Review on a regular basis the need for and utilization of existing magistrate judge positions and the need for new positions, and make recommendations to the Judicial Conference for changes in magistrate judge positions, as necessary, including designations to serve in an adjoining district under 28 U.S.C. § 631(a).

Review and make recommendations to the Judicial Conference (or, if another Conference committee has primary jurisdiction of the matter, to the appropriate committee) on the salaries and retirement benefits of magistrate judges and the temporary assignment of magistrate judges under 28 U.S.C. § 636(f).

Review and make recommendations to the Committee on Judicial Resources concerning staffing and support services for magistrate judges, and approve individual chambers staff positions for magistrate judges insofar as staff may be allocated on a case-by-case basis pursuant to established policy.

Review and make recommendations to the Judicial Conference on other matters relating specifically to the office of magistrate judge, including (but not limited to) the qualification standards for magistrate judges, the selection, appointment, and reappointment of magistrate judges, the recall of retired magistrate judges, the authority and utilization of magistrate judges, and the participation of magistrate judges in court administration and governance.

Review periodically the legal and administrative manuals for magistrate judges.

Maintain liaison with judges regarding the magistrate judges system.

Committee on Rules of Practice and Procedure: To carry on a continuous study of the operation and effect of the general rules of practice and procedure.

Review reports and recommendations submitted by the five Advisory Committees and approve, modify, disapprove, or return those recommendations to the Advisory Committees, as appropriate.

Transmit to the Judicial Conference proposed rules changes, together with Committee Notes relating thereto, and a summary indicating which proposed changes were the subject of substantial controversy.

Review and make recommendations to the Judicial Conference with regard to legislation affecting rules of practice and procedure.

Coordinate the work of the Advisory Committees, and make suggestions of proposals to be studied by them.

Rules Advisory Committees: To study the rules of practice and procedure in each Advisory Committee's field.

Consider suggestions and recommendations from bench and bar for changes in the rules.

Draft and publish proposed rules changes and Committee Notes and, when necessary, conduct public hearings thereon.

Submit to the Rules Committee those rule changes and Committee Notes finally agreed upon, a summary indicating which proposed rules changes were the subject of substantial controversy, the reports of the comments received in writing or during public hearings, and an explanation of any changes made subsequent to the original publication.

Committee on Space and Facilities: To review, monitor, and propose to the Judicial Conference policies regarding the judiciary's space and facilities requirements. Make recommendations for changes as appropriate.

Oversee long range planning for court facilities, including facilities for additional judgeships recommended by the Judicial Conference.

Coordinate and maintain a liaison with the Committee on Judicial Security with respect to physical security arrangements, including measures for emergency preparedness, that involve court facilities.

Review the provision of design, construction, and maintenance services for court facilities by the General Services Administration, and make recommendations for changes where deemed advisable.

Coordinate relations of the General Services Administration, the United States Marshals Service, the Department of Justice in general, and the Department of Homeland Security with the United States courts on space and facilities matters.

Analyze or prepare for Judicial Conference consideration proposed legislation affecting the space and facilities program.

Initiate studies and surveys concerning space and facilities matters.

Monitor use of, and propose revisions (and exceptions) to, the *U. S. Courts Design Guide* and any other design publications such as alterations and courtroom technology manuals. Recommend standards governing furniture and furnishings.

When the budget is being formulated, propose adequate funding and resources to support the space and facilities program, including education and training, taking into account the overall fiscal situation of the judiciary. Oversee the budget and other cost-containment initiatives involving the space and facilities program.

2012 JUDICIAL CONFERENCE COMMITTEES' SELF-EVALUATION QUESTIONNAIRE

Committee Name: Committee on Rules of Practice and Procedure

Background

In 1987, as part of the last major restructuring of the Judicial Conference and its committees, the Conference established a policy that ñ[e]very five years, each committee must recommend to the Executive Committee, with a justification for the recommendation, either that the committee be maintained or that it be abolished.ò This review examines not only the need for a committeeôs continued existence but also the scope of its jurisdiction and its workload, composition, and operating processes, as well as aspects of the committee structure that might be reevaluated in the future. All committees have been asked to include it on their agendas for the winter 2011-12 meetings, and the following questionnaire is intended to facilitate the review process. The Executive Committee will consider the committeesô responses at its February 2012 meeting.

Jurisdiction

1. Is the work of the Committee consistent with its jurisdictional statement?
   _x_ yes _____ no

   If no, please explain:

2. Are there areas in which the Committeeôs work currently overlaps with the work of other committees? _x_ yes _____ no

   If yes, please explain:

   Changes to the Federal Rules sometimes are closely intertwined with substantive areas of law, which are handled by specific Conference committees, including for example Committees on Bankruptcy, Criminal Law, Federal-State Jurisdiction, Magistrate Judges, and Code of Conduct. Many of the procedural rule changes affect areas handled by the Committee on Court Administration and Case Management.

3. Are there areas currently within the jurisdiction of this Committee that might be handled by another committee? _____ yes _x_ no

   If yes, please explain:

Committee Name: Committee on Rules of Practice and Procedure

4. Are there areas currently within the jurisdiction of other committees that might be handled by this Committee? _____ yes __x__ no

   If yes, please explain:

   It should be noted that other committees occasionally address particular local rules. The Standing Committee has a special obligation to assure that local rules are consistent with the national rules. Accordingly, other committees that take a position on, or propose model, local rules should be encouraged to consult with the Standing Committee.

5. Are issues that cut across committee jurisdictional lines adequately identified and addressed? __x__ yes _____ no

   If no, what more can be done to facilitate the handling of cross-cutting issues?

Size/Composition

6. Is the size of the Committeeð

_____ too big? _____ too small? ____x_____ appropriate?

   If too big or too small, please explain:

7. Is the Committee membership appropriately representative? __x__ yes _____ no

   If no, please explain:

Committee Name: Committee on Rules of Practice and Procedure

8. Do non-committee members regularly attend your meetings? x yes _____ no

If yes, on average how many non-committee members attend and, generally, for what purpose?
The Committee's meetings and hearings are open to the public. Interested judges, practicing lawyers, and law students frequently attend, and are encouraged to do so. When meetings are held in Washington, congressional staff occasionally attend. One meeting may draw only a handful of non-member attendees while another may draw several dozen. Attendance varies widely based on the Committee's consideration of particular rulemaking proposals. A handful of attorneys from the Administrative Office and the Federal Judicial Center regularly attend the Committee's meetings.

Amount of Work

9. Overall, the Committee hasð

_____ too much to do.	_____ too little to do.	x the appropriate amount of work.

If too much or too little, please explain:

Operating Processes

10. How often and on what types of issues is Committee business conducted by means other than face-to-face meetings?

Teleconferences are scheduled as needed, but not often.

11. Does the Committee use subcommittees to conduct its business? x yes _____ no

If yes, have the 2009 guidelines on the use of subcommittees[1] had an impact on your use and management of subcommittees?

Consistent with the 2009 guidelines, the Committee periodically reviews the need for its subcommittees, and takes action to dissolve a subcommittee upon the completion of that subcommittee's work. The Committee's use of subcommittees is minimal but at times necessary, such as when the full Committee's review of a recurring or complex issue would be more effectively or efficiently handled by a smaller subgroup.

[1] For access to these guidelines, committee chairs please click here, and committee staffers please click here.

Committee Name: Committee on Rules of Policies and Procedures

12. How, if at all, has technology facilitated the work of your committee? Are there additional technology needs that would further facilitate your work?

The Committee uses video- and tele-conferencing technologies as needed, including for hearings open to the public on proposed rule amendments. This technology is also used for subcommittee meetings and various working groups, to avoid the costs associated with scheduling additional face-to-face meetings.

13. Are the materials you receive in preparation for committee meetings appropriate in terms of content and quantity? x yes _____ no

If no, please explain:

Conclusion

14. This Committee shouldð

x continue to exist.

_____ be divided into two or more committees.

_____ be combined with one or more committees.

_____ be abolished.

Please explain why:

Required by statute. 28 U.S.C. §2073(b).

15. Would you suggest any other changes related to this Committee?

Unlike many of the other committees, the Rules Committees are public, lawmaking committees. The Standing Committee is a creation of statute. The Advisory Committees for the most part do not address internal operations of the courts or of the Administrative Office. Rather, the committees focus on procedural rules designed to effectuate substantive law. In addition to federal judges, their membership includes lawyers, Department of Justice officials, and state court justices. The Committees are supported by academic reporters. They often interact (through Conference Correspondence) with members of Congress on particular rules of procedure. It is important that the Administrative Office recognize that these committees have an independent, public, statutory role and that the reports of the committees are similar to legislative history.

Committee Name: Committee on Rules of Policy and Procedure

16. Would you suggest any near-term changes related to the committee structure as a whole? For example, should the number of committees be enlarged or reduced? Should other committees be combined, eliminated or divided?

No.

17. For the longer term, what issues or possible changes to committee structure should be considered? Please think broadly.

None.

* * * * * *

Please return by email to OJCES@ao.uscourts.gov.

2012 JUDICIAL CONFERENCE COMMITTEES' SELF-EVALUATION QUESTIONNAIRE

Committee Name: Advisory Committee on Appellate Rules

Background

In 1987, as part of the last major restructuring of the Judicial Conference and its committees, the Conference established a policy that ñ[e]very five years, each committee must recommend to the Executive Committee, with a justification for the recommendation, either that the committee be maintained or that it be abolished.ò This review examines not only the need for a committeeôs continued existence but also the scope of its jurisdiction and its workload, composition, and operating processes, as well as aspects of the committee structure that might be reevaluated in the future. All committees have been asked to include it on their agendas for the winter 2011-12 meetings, and the following questionnaire is intended to facilitate the review process. The Executive Committee will consider the committeesô responses at its February 2012 meeting.

Jurisdiction

1. Is the work of the Committee consistent with its jurisdictional statement?
   __x__ yes _____ no

   If no, please explain:

2. Are there areas in which the Committeeôs work currently overlaps with the work of other committees? _____ yes __x__ no

   If yes, please explain:

3. Are there areas currently within the jurisdiction of this Committee that might be handled by another committee? _____ yes __x__ no

   If yes, please explain:

Committee Name: Advisory Committee on Appellate Rules

4. Are there areas currently within the jurisdiction of other committees that might be handled by this Committee? _____ yes __x__ no

   If yes, please explain:

5. Are issues that cut across committee jurisdictional lines adequately identified and addressed? __x__ yes _____ no

   If no, what more can be done to facilitate the handling of cross-cutting issues?

Size/Composition

6. Is the size of the Committeeð

_____ too big? _____ too small? ____x____ appropriate?

   If too big or too small, please explain:

7. Is the Committee membership appropriately representative? __x__ yes _____ no

   If no, please explain:

Committee Name: Advisory Committee on Appellate Rules

8. Do non-committee members regularly attend your meetings? x yes _____ no

If yes, on average how many non-committee members attend and, generally, for what purpose?

The Committee's meetings and hearings are open to the public. Interested judges, practicing lawyers, and law students frequently attend, and are encouraged to do so. When meetings are held in Washington, congressional staff occasionally attend. One meeting may draw only a handful of non-member attendees while another may draw several dozen. Attendance varies widely based on the Committee's consideration of particular rulemaking proposals. A handful of attorneys from the Administrative Office and the Federal Judicial Center regularly attend the Committee's meetings.

Amount of Work

9. Overall, the Committee hasð

_____ too much to do.	_____ too little to do.	x the appropriate amount of work.

If too much or too little, please explain:

Operating Processes

10. How often and on what types of issues is Committee business conducted by means other than face-to-face meetings?

Temporary ad hoc subcommittees meet by telephone conference calls and follow-up e-mails in order to develop their report to the full committee.

11. Does the Committee use subcommittees to conduct its business? x yes _____ no

If yes, have the 2009 guidelines on the use of subcommittees[1] had an impact on your use and management of subcommittees?

Consistent with the 2009 guidelines, the Committee periodically reviews the need for its subcommittees, and takes action to dissolve a subcommittee upon the completion of that subcommittee's work. The Committee's use of subcommittees is minimal but at times necessary, such as when the full Committee's review of a recurring or complex issue would be more effectively or efficiently handled by a smaller subgroup.

[1] For access to these guidelines, committee chairs please click here, and committee staffers please click here.

Committee Name: Advisory Committee on Appellate Rules

12. How, if at all, has technolo gy facilitated the work of your committee? Are there additional technology needs that would further facilitate your work?

The Committee uses video- and tele-conferencing technologies as needed, including for hearings open to the public on proposed rule amendments. This technology is also used for subcommittee meetings and various working groups, to avoid the costs associated with scheduling additional face-to-face meetings.

13. Are the materials you receive in preparation for committee meetings appropriate in terms of content and quantity? x yes _____ no

If no, please explain:

Conclusion

14. This Committee shouldð

x continue to exist.

_____ be divided into two or more committees.

_____ be combined with one or more committees.

_____ be abolished.

Please explain why:

The Committee is the only vehicle for receiving, analyzing, and processing suggestions for revising the Federal Rules of Appellate Procedure and making recommendations for rule changes to the Committee on Rules of Practice and Procedure.

15. Would you suggest any other changes related to this Committee?
No.

Committee Name: Advisory Committee on Appellate Rules

16. Would you suggest any near-term changes related to the committee structure as a whole? For example, should the number of committees be enlarged or reduced? Should other committees be combined, eliminated or divided?

No.

17. For the longer term, what issues or possible changes to committee structure should be considered? Please think broadly.

Given the requirements and constraints of the Rules Enabling Act, the Advisory Rules Committee structure works very well.

* * * * * *

Please return by email to OJCES@ao.uscourts.gov.

2012 JUDICIAL CONFERENCE COMMITTEES' SELF-EVALUATION QUESTIONNAIRE

Committee Name: Advisory Committee on Bankruptcy Rules

Background

In 1987, as part of the last major restructuring of the Judicial Conference and its committees, the Conference established a policy that ñ[e]very five years, each committee must recommend to the Executive Committee, with a justification for the recommendation, either that the committee be maintained or that it be abolished.ò This review examines not only the need for a committeeôs continued existence but also the scope of its jurisdiction and its workload, composition, and operating processes, as well as aspects of the committee structure that might be reevaluated in the future. All committees have been asked to include it on their agendas for the winter 2011-12 meetings, and the following questionnaire is intended to facilitate the review process. The Executive Committee will consider the committeesô responses at its February 2012 meeting.

Jurisdiction

1. Is the work of the Committee consistent with its jurisdictional statement?
   x yes _____ no

   If no, please explain:

2. Are there areas in which the Committeeôs work currently overlaps with the work of other committees? x yes _____ no

   If yes, please explain:

   Some issues have been jointly addressed with the Bankruptcy Administration Committee.

3. Are there areas currently within the jurisdiction of this Committee that might be handled by another committee? _____ yes x no

   If yes, please explain:

Committee Name: Advisory Committee on Bankruptcy Rules

4. Are there areas currently within the jurisdiction of other committees that might be handled by this Committee? _____ yes ___x__ no

   If yes, please explain:

5. Are issues that cut across committee jurisdictional lines adequately identified and addressed? __x___ yes _____ no

   If no, what more can be done to facilitate the handling of cross-cutting issues?

Size/Composition

6. Is the size of the Committeeð

_____ too big? _____ too small? ____x_____ appropriate?

   If too big or too small, please explain:

7. Is the Committee membership appropriately representative? __x___ yes _____ no

   If no, please explain:

Committee Name: Advisory Committee on Bankruptcy Rules

8. Do non-committee members regularly attend your meetings? _x_ yes _____ no

If yes, on average how many non-committee members attend and, generally, for what purpose?

The Committee's meetings and hearings are open to the public. Interested judges, practicing lawyers, and law students frequently attend, and are encouraged to do so. When meetings are held in Washington, congressional staff occasionally attend. One meeting may draw only a handful of non-member attendees while another may draw several dozen. Attendance varies widely based on the Committee's consideration of particular rulemaking proposals. A handful of attorneys from the Administrative Office and the Federal Judicial Center regularly attend the Committee's meetings.

Amount of Work

9. Overall, the Committee hasð

_____ too much to do.	_____ too little to do.	_x_ the appropriate amount of work.

If too much or too little, please explain:

The Committee's work is demanding but appropriate under the circumstances.

Operating Processes

10. How often and on what types of issues is Committee business conducted by means other than face-to-face meetings?

The Committee's subcommittees conduct approximately ten teleconference calls per year in order to formulate recommendations to the Standing Rules Committee. Final decisions are made only at the semi-annual public meetings of the Committee.

11. Does the Committee use subcommittees to conduct its business? _x_ yes _____ no

If yes, have the 2009 guidelines on the use of subcommittees[1] had an impact on your use and management of subcommittees?

Consistent with the 2009 guidelines, the Committee periodically reviews the need for its subcommittees, and takes action to dissolve a subcommittee upon the completion of that subcommittee's work. The Committee's use of subcommittees is minimal but at times necessary, such as when the full Committee's review of a recurring or complex issue would be more effectively or efficiently handled by a smaller subgroup.

[1] For access to these guidelines, committee chairs please click here, and committee staffers please click here.

Committee Name: Advisory Committee on Bankruptcy Rules

12. How, if at all, has technology facilitated the work of your committee? Are there additional technology needs that would further facilitate your work?

The Committee uses video- and tele-conferencing technologies as needed, including for hearings open to the public on proposed rule amendments. This technology is also used for subcommittee meetings and various working groups, to avoid the costs associated with scheduling additional face-to-face meetings.

13. Are the materials you receive in preparation for committee meetings appropriate in terms of content and quantity? _x_ yes _____ no

If no, please explain:

Conclusion

14. This Committee shouldð

_x_ continue to exist.

_____ be divided into two or more committees.

_____ be combined with one or more committees.

_____ be abolished.

Please explain why:

There is a continuing responsibility for this Committee to monitor the existing Bankruptcy Rules and Official Forms and to consider and propose relevant improvements and amendments. The Committee is the only vehicle for receiving, analyzing, and processing suggestions for revising the Federal Rules of Bankruptcy Procedure and making recommendations for rule changes to the Committee on Rules of Practice and Procedure.

15. Would you suggest any other changes related to this Committee?

No.

Committee Name: Advisory Committee on Bankruptcy Rules

16. Would you suggest any near-term changes related to the committee structure as a whole? For example, should the number of committees be enlarged or reduced? Should other committees be combined, eliminated or divided?

No.

17. For the longer term, what issues or possible changes to committee structure should be considered? Please think broadly.

Given the requirements and constraints of the Rules Enabling Act, the Advisory Rules Committee structure works very well.

* * * * * *

Please return by email to OJCES@ao.uscourts.gov.

2012 JUDICIAL CONFERENCE COMMITTEES' SELF-EVALUATION QUESTIONNAIRE

Committee Name: Advisory Committee on Civil Rules

Background

In 1987, as part of the last major restructuring of the Judicial Conference and its committees, the Conference established a policy that ñ[e]very five years, each committee must recommend to the Executive Committee, with a justification for the recommendation, either that the committee be maintained or that it be abolished.ò This review examines not only the need for a committeeôs continued existence but also the scope of its jurisdiction and its workload, composition, and operating processes, as well as aspects of the committee structure that might be reevaluated in the future. All committees have been asked to include it on their agendas for the winter 2011-12 meetings, and the following questionnaire is intended to facilitate the review process. The Executive Committee will consider the committeesô responses at its February 2012 meeting.

Jurisdiction

1. Is the work of the Committee consistent with its jurisdictional statement?
   _x_ yes _____ no

   If no, please explain:

2. Are there areas in which the Committeeôs work currently overlaps with the work of other committees? _x_ yes _____ no

   If yes, please explain:

   The work overlaps only when and as necessary. It is sometimes necessary to coordinate changes in the Civil Rules with the Appellate, Bankruptcy, and Criminal Rules. The Advisory Rules Committees work together to avoid unnecessary inconsistency. For example, electronic filing rules have been coordinated among the Rules Committees and the Rules Committees have worked together to make the time-counting rules consistent.

3. Are there areas currently within the jurisdiction of this Committee that might be handled by another committee? _____ yes _x_ no

   If yes, please explain:

Committee Name: Advisory Committee on Civil Rules

4. Are there areas currently within the jurisdiction of other committees that might be handled by this Committee? _____ yes __x__ no

   If yes, please explain:

5. Are issues that cut across committee jurisdictional lines adequately identified and addressed? __x__ yes _____ no

   If no, what more can be done to facilitate the handling of cross-cutting issues?

Size/Composition

6. Is the size of the Committeeð

_____ too big? _____ too small? ____x_____ appropriate?

   If too big or too small, please explain:

7. Is the Committee membership appropriately representative? __x__ yes _____ no

   If no, please explain:

Committee Name: Advisory Committee on Civil Rules

8. Do non-committee members regularly attend your meetings? _x_ yes _____ no

If yes, on average how many non-committee members attend and, generally, for what purpose?
The Committee's meetings and hearings are open to the public. Interested judges, practicing lawyers, and law students frequently attend, and are encouraged to do so. When meetings are held in Washington, congressional staff occasionally attend. One meeting may draw only a handful of non-member attendees while another may draw several dozen. Attendance varies widely based on the Committee's consideration of particular rulemaking proposals. A handful of attorneys from the Administrative Office and the Federal Judicial Center regularly attend the Committee's meetings.

Amount of Work

9. Overall, the Committee hasð

_____ too much to do.	_____ too little to do.	____x____ the appropriate amount of work.

If too much or too little, please explain:

Operating Processes

10. How often and on what types of issues is Committee business conducted by means other than face-to-face meetings?

Conference calls and e-mail communications frequently occur and are used primarily by subcommittees to prepare materials for Committee meetings.

11. Does the Committee use subcommittees to conduct its business? _x_ yes _____ no

If yes, have the 2009 guidelines on the use of subcommittees[1] had an impact on your use and management of subcommittees?

Consistent with the 2009 guidelines, the Committee periodically reviews the need for its subcommittees, and takes action to dissolve a subcommittee upon the completion of that subcommittee's work. The Committee's use of subcommittees is minimal but at times necessary, such as when the full Committee's review of a recurring or complex issue would be more effectively or efficiently handled by a smaller subgroup.

[1] For access to these guidelines, committee chairs please click here, and committee staffers please click here.

Committee Name: Advisory Committee on Civil Rules

12. How, if at all, has technology facilitated the work of your committee? Are there additional technology needs that would further facilitate your work?

The Committee uses video- and tele-conferencing technologies as needed, including for hearings open to the public on proposed rule amendments. This technology is also used for subcommittee meetings and various working groups, to avoid the costs associated with scheduling additional face-to-face meetings.

13. Are the materials you receive in preparation for committee meetings appropriate in terms of content and quantity? _x_ yes _____ no

If no, please explain:

Conclusion

14. This Committee shouldð

_x_ continue to exist.

_____ be divided into two or more committees.

_____ be combined with one or more committees.

_____ be abolished.

Please explain why:

This Committee is the only vehicle for receiving, analyzing, and processing suggestions for revising the Federal Rules of Civil Procedure and making recommendations for rule changes to the Committee on Rules of Practice and Procedure.

15. Would you suggest any other changes related to this Committee?

No.

Committee Name: Advisory Committee on Civil Rules

16. Would you suggest any near-term changes related to the committee structure as a whole? For example, should the number of committees be enlarged or reduced? Should other committees be combined, eliminated or divided?

No.

17. For the longer term, what issues or possible changes to committee structure should be considered? Please think broadly.

Given the requirements and constraints of the Rules Enabling Act, the Advisory Rules Committee structure works very well.

* * * * * *

Please return by email to OJCES@ao.uscourts.gov.

2012 JUDICIAL CONFERENCE COMMITTEES' SELF-EVALUATION QUESTIONNAIRE

Committee Name: Advisory Committee on Criminal Rules

Background

In 1987, as part of the last major restructuring of the Judicial Conference and its committees, the Conference established a policy that ñ[e]very five years, each committee must recommend to the Executive Committee, with a justification for the recommendation, either that the committee be maintained or that it be abolished.ò This review examines not only the need for a committeeôs continued existence but also the scope of its jurisdiction and its workload, composition, and operating processes, as well as aspects of the committee structure that might be reevaluated in the future. All committees have been asked to include it on their agendas for the winter 2011-12 meetings, and the following questionnaire is intended to facilitate the review process. The Executive Committee will consider the committeesô responses at its February 2012 meeting.

Jurisdiction

1. Is the work of the Committee consistent with its jurisdictional statement?
   _x_ yes _____ no

   If no, please explain:

2. Are there areas in which the Committeeôs work currently overlaps with the work of other committees? _x_ yes _____ no

   If yes, please explain:

   We sometimes overlap and work in conjunction with other Rules Committees. Also, the Criminal Law Committee and CACM sometimes share an interest in the development of a rule. We overlap at times with the Sentencing Guidelines Commission.

3. Are there areas currently within the jurisdiction of this Committee that might be handled by another committee? _____ yes _x_ no

   If yes, please explain:

Committee Name: Advisory Committee on Criminal Rules

4. Are there areas currently within the jurisdiction of other committees that might be handled by this Committee? _____ yes __x__ no

   If yes, please explain:

5. Are issues that cut across committee jurisdictional lines adequately identified and addressed? __x__ yes _____ no

   If no, what more can be done to facilitate the handling of cross-cutting issues?

Size/Composition

6. Is the size of the Committeeð

_____ too big? _____ too small? ___x_____ appropriate?

   If too big or too small, please explain:

7. Is the Committee membership appropriately representative? __x__ yes _____ no

   If no, please explain:

Committee Name: Advisory Committee on Criminal Rules

8. Do non-committee members regularly attend your meetings? x yes _____ no

If yes, on average how many non-committee members attend and, generally, for what purpose?
The Committee's meetings and hearings are open to the public. Interested judges, practicing lawyers, and law students frequently attend, and are encouraged to do so. When meetings are held in Washington, congressional staff occasionally attend. One meeting may draw only a handful of non-member attendees while another may draw several dozen. Attendance varies widely based on the Committee's consideration of particular rulemaking proposals. A handful of attorneys from the Administrative Office and the Federal Judicial Center regularly attend the Committee's meetings.

Amount of Work

9. Overall, the Committee hasð

too much to do.	too little to do.	the appropriate amount of work.
_____	_____	x

If too much or too little, please explain:

Operating Processes

10. How often and on what types of issues is Committee business conducted by means other than face-to-face meetings?

Subcommittees generally meet by conference call. When necessary, proposed rule amendments are referred to subcommittees prior to consideration by the full committee. Depending on the number of subcommittees, conference calls may occur once or twice per month.

11. Does the Committee use subcommittees to conduct its business? x yes _____ no

If yes, have the 2009 guidelines on the use of subcommittees[1] had an impact on your use and management of subcommittees?

Consistent with the 2009 guidelines, the Committee periodically reviews the need for its subcommittees, and takes action to dissolve a subcommittee upon the completion of that subcommittee's work. The Committee's use of subcommittees is minimal but at times necessary, such as when the full Committee's review of a recurring or complex issue would be more effectively or efficiently handled by a smaller subgroup.

[1] For access to these guidelines, committee chairs please click here, and committee staffers please click here.

Committee Name: Advisory Committee on Criminal Rules

12. How, if at all, has technology facilitated the work of your committee? Are there additional technology needs that would further facilitate your work?

The Committee uses video- and tele-conferencing technologies as needed, including for hearings open to the public on proposed rule amendments. This technology is also used for subcommittee meetings and various working groups, to avoid the costs associated with scheduling additional face-to-face meetings.

13. Are the materials you receive in preparation for committee meetings appropriate in terms of content and quantity? x yes _____ no

If no, please explain:

Conclusion

14. This Committee shouldð

x continue to exist.

_____ be divided into two or more committees.

_____ be combined with one or more committees.

_____ be abolished.

Please explain why:

This Committee is the only vehicle for receiving, analyzing, and processing suggestions for revising the Federal Rules of Criminal Procedure and making recommendations for rule changes to the Committee on Rules of Practice and Procedure.

15. Would you suggest any other changes related to this Committee?

No.

Committee Name: Advisory Committee on Criminal Rules

16. Would you suggest any near-term changes related to the committee structure as a whole? For example, should the number of committees be enlarged or reduced? Should other committees be combined, eliminated or divided?

No.

17. For the longer term, what issues or possible changes to committee structure should be considered? Please think broadly.

Given the requirements and constraints of the Rules Enabling Act, the Advisory Rules Committee structure works very well.

* * * * * *

Please return by email to OJCES@ao.uscourts.gov.

2012 JUDICIAL CONFERENCE COMMITTEES' SELF-EVALUATION QUESTIONNAIRE

Committee Name: Advisory Committee on Evidence Rules

Background

In 1987, as part of the last major restructuring of the Judicial Conference and its committees, the Conference established a policy that "[e]very five years, each committee must recommend to the Executive Committee, with a justification for the recommendation, either that the committee be maintained or that it be abolished." This review examines not only the need for a committee's continued existence but also the scope of its jurisdiction and its workload, composition, and operating processes, as well as aspects of the committee structure that might be reevaluated in the future. All committees have been asked to include it on their agendas for the winter 2011-12 meetings, and the following questionnaire is intended to facilitate the review process. The Executive Committee will consider the committees' responses at its February 2012 meeting.

Jurisdiction

1. Is the work of the Committee consistent with its jurisdictional statement?
   _x_ yes _____ no

   If no, please explain:

2. Are there areas in which the Committee's work currently overlaps with the work of other committees? _x_ yes _____ no

   If yes, please explain:

   Some evidence rules affect, or are affected by, other rules. The Committee works together with the other advisory committees when needed.

3. Are there areas currently within the jurisdiction of this Committee that might be handled by another committee? _____ yes _x_ no

   If yes, please explain:

Committee Name: Advisory Committee on Evidence Rules

4. Are there areas currently within the jurisdiction of other committees that might be handled by this Committee? _____ yes __x__ no

   If yes, please explain:

5. Are issues that cut across committee jurisdictional lines adequately identified and addressed? __x__ yes _____ no

   If no, what more can be done to facilitate the handling of cross-cutting issues?

Size/Composition

6. Is the size of the Committee—

_____ too big? _____ too small? ___x___ appropriate?

   If too big or too small, please explain:

7. Is the Committee membership appropriately representative? __x__ yes _____ no

   If no, please explain:

Committee Name: Advisory Committee on Evidence Rules

8. Do non-committee members regularly attend your meetings? x yes _____ no

If yes, on average how many non-committee members attend and, generally, for what purpose?

The Committee's meetings and hearings are open to the public. Interested judges, practicing lawyers, and law students frequently attend, and are encouraged to do so. When meetings are held in Washington, congressional staff occasionally attend. One meeting may draw only a handful of non-member attendees while another may draw several dozen. Attendance varies widely based on the Committee's consideration of particular rulemaking proposals. A handful of attorneys from the Administrative Office and the Federal Judicial Center regularly attend the Committee's meetings.

Amount of Work

9. Overall, the Committee has—

too much to do.	too little to do.	the appropriate amount of work.
_____	_____	x

If too much or too little, please explain:

Operating Processes

10. How often and on what types of issues is Committee business conducted by means other than face-to-face meetings?

Teleconference calls are made when needed.

11. Does the Committee use subcommittees to conduct its business? x yes _____ no

If yes, have the 2009 guidelines on the use of subcommittees[1] had an impact on your use and management of subcommittees?

Consistent with the 2009 guidelines, the Committee periodically reviews the need for its subcommittees, and takes action to dissolve a subcommittee upon the completion of that subcommittee's work. The Committee's use of subcommittees is minimal but at times necessary, such as when the full Committee's review of a recurring or complex issue would be more effectively or efficiently handled by a smaller subgroup.

[1] For access to these guidelines, committee chairs please click here, and committee staffers please click here.

Committee Name: Advisory Committee on Evidence Rules

12. How, if at all, has technology facilitated the work of your committee? Are there additional technology needs that would further facilitate your work?

The Committee uses video- and tele-conferencing technologies as needed, including for hearings open to the public on proposed rule amendments. This technology is also used for subcommittee meetings and various working groups, to avoid the costs associated with scheduling additional face-to-face meetings.

13. Are the materials you receive in preparation for committee meetings appropriate in terms of content and quantity? x yes _____ no

If no, please explain:

Conclusion

14. This Committee should—

x continue to exist.

_____ be divided into two or more committees.

_____ be combined with one or more committees.

_____ be abolished.

Please explain why:

This Committee is the only vehicle for receiving, analyzing, and processing suggestions for revising the Federal Rules of Evidence and making recommendations for rule changes to the Committee on Rules of Practice and Procedure.

15. Would you suggest any other changes related to this Committee?

No.

Committee Name: Advisory Committee on Evidence Rules

16. Would you suggest any near-term changes related to the committee structure as a whole? For example, should the number of committees be enlarged or reduced? Should other committees be combined, eliminated or divided?

No.

17. For the longer term, what issues or possible changes to committee structure should be considered? Please think broadly.

Given the requirements and constraints of the Rules Enabling Act, the Advisory Rules Committee structure works very well.

* * * * * *

Please return by email to OJCES@ao.uscourts.gov.

2017 JUDICIAL CONFERENCE COMMITTEE SELF-EVALUATION QUESTIONNAIRE

In 1987, as part of the last major restructuring of the Judicial Conference and its committees, the Conference established a policy that "[e]very five years, each committee must recommend to the Executive Committee, with a justification for the recommendation, either that the committee be maintained or that it be abolished." During this review, committees are asked to examine not only the need for a committee's continued existence but also its jurisdiction, workload, composition, and operating processes. All committees have been asked to include this self-evaluation on their agendas for the winter 2016-17 meetings. The following questionnaire is intended to facilitate the committee's review. The Executive Committee will consider the committees' responses at its February 2017 meeting.

For your convenience, attached to this questionnaire is a copy of every committee's jurisdictional statement. **Please return the completed questionnaire to WonKee Moon by Tuesday, January 17, 2017**.

Committee Name: Click here to enter committee name.

Jurisdiction

1. Is the work of the Committee consistent with its jurisdictional statement?

   ☐ yes ☐ no

2. Are there areas in which the Committee's work currently overlaps with the work of other committees?

   ☐ yes ☐ no

3. Are there areas currently within the jurisdiction of this Committee that might be handled by another committee?

   ☐ yes ☐ no

4. Are there areas currently within the jurisdiction of other committees that might be handled by this Committee?

   ☐ yes ☐ no

5. Are issues that cut across committee jurisdictional lines adequately identified and addressed?

   ☐ yes ☐ no

Please elaborate on your answers to Questions 1-5 as necessary:

Size and Composition

6. Is the size of the Committee—

☐ too big? ☐ too small? ☐ appropriate?

7. Is the Committee composition appropriately representative?

☐ yes ☐ no

Please elaborate on your answers to Questions 6 and 7 as necessary:

8. Do non-committee members regularly attend your meetings?

☐ yes ☐ no

If yes, on average how many non-committee members attend and, generally, for what purpose?

Committee Work

9. Overall, the Committee has—

☐ too much work ☐ too little work ☐ the appropriate amount

Please elaborate as necessary:

10. How often and on what types of issues is Committee business conducted by means other than face-to-face meetings?

11. Does the Committee use subcommittees to conduct its business?

☐ yes ☐ no

Please list any subcommittees and the work performed by each subcommittee:

12. How, if at all, has technology facilitated the work of your committee? Are there additional technology needs that would further facilitate your work?

Please elaborate as necessary:

13. How does your Committee distribute materials?

☐ electronically
☐ paper
☐ both

Please elaborate as necessary:

14. Does your Committee utilize an online committee workplace?

☐ yes ☐ no

15. Are the materials you receive in preparation for committee meetings appropriate in terms of content and quantity?

☐ yes ☐ no

Please elaborate as necessary:

Conclusion

16. This Committee should—

☐ continue to exist in its current form.
☐ be divided into two or more committees.
☐ be combined with one or more committees.
☐ be abolished.

Please explain why:

15. Would you suggest any other changes related to this Committee?

16. Would you suggest any near-term changes related to the committee structure as a whole? For example, should the number of committees be enlarged or reduced? Should other committees be combined, eliminated or divided?

17. For the longer term, what issues or possible changes to committee structure should be considered? Please think broadly.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ELIZABETH GIBSON, REPORTER

SUBJECT: SUGGESTED AMENDMENT TO RULE 2016(b) TO CHANGE THE TIME FOR FILING THE ATTORNEY'S STATEMENT REQUIRED BY CODE § 329

DATE: OCTOBER 14, 2016

A suggestion submitted to the Committee in 2013 was considered by the Subcommittee on Attorney Conduct and Healthcare in 2014, but was then put on hold awaiting input from the Executive Office for U.S. Trustees regarding the existence and scope of any problems presented by the current rule. The suggestion (13-BK-J) from attorney Neil Enmark was that Rule 2016(b) be amended to require an attorney's § 329 statement regarding compensation to be filed with the petition rather than within 14 days after the petition date. The Attorney Conduct Subcommittee considered Assistant Reporter Troy McKenzie's memorandum and recommendation that no further action be taken on the suggestion and was inclined to agree. Before deciding finally on its recommendation, however, the Subcommittee agreed to wait for further investigation by Ramona Elliot as to whether the EOUST saw an ongoing problem of attorneys not filing 2016(b) statements.

Ms. Elliot now has reported that she did not find any problems necessitating the amendment suggested by Mr. Enmark. Because the Subcommittee on Attorney Conduct and Healthcare has been disbanded, I am **recommending as reporter that the Committee take no further action on the Suggestion**.

Professor McKenzie's memorandum to the Subcommittee is attached.

Attachment

MEMORANDUM

TO: SUBCOMMITTEE ON ATTORNEY CONDUCT AND HEALTHCARE

FROM: TROY A. MCKENZIE, ASSISTANT REPORTER

RE: SUGGESTED AMENDMENT TO RULE 2016(b) TO CHANGE THE TIME FOR FILING THE ATTORNEY'S STATEMENT REQUIRED BY CODE § 329

DATE: JANUARY 28, 2014

Code § 329(a) requires any attorney representing a debtor to disclose the amount and source of compensation paid (or agreed to be paid) within a year of the petition date "in contemplation of or in connection with" the bankruptcy case. Under Rule 2016(b), the statement required by § 329 must be filed "within 14 days after the order for relief, or at another time as the court may direct." The Rules Committee has received a suggestion (13-BK-J) from Neil Enmark, an attorney in the office of a chapter 13 trustee for the Eastern District of California, to alter the time for filing the Rule 2016(b) statement. He proposes that the rule should be changed to require an attorney to file the statement on the petition date rather than within 14 days after the petition date.

Although requiring the Rule 2016(b) statement to be filed with the petition in a voluntary case would not impose a significant burden in most situations, there is good reason to leave the rule as it is. The rule applies to all attorneys representing the debtor, whether or not an attorney is counsel of record, and regardless of the purpose for which that attorney was retained. Because of the sweep of Rule 2016(b), and the harsh sanctions that courts impose for failure to file a statement in accordance with the rule, the Subcommittee may wish to be cautious about shortening the time to comply.

The Suggestion

Mr. Enmark observes that the pace of bankruptcy cases justifies eliminating the 14-day window in current Rule 2016(b).[1] In particular, he raises the concern that a case might be dismissed before the 14-day period has expired, such that the debtor's attorney would never have to file a Rule 2016(b) statement. He believes that a rule change would prompt more full and timely disclosure of fee arrangements between debtors and their attorneys.

Discussion

In most cases, shortening the time for filing the statement will not impose an additional burden. In a case in which the attorney of record has appropriate time to prepare the filing in advance, the suggested rule change would require the lawyer to prepare and file a document regarding fee arrangements along with the voluntary petition. That information would be available before the petition date. In any event, it is common practice to submit the Rule 2016(b) statement with other case opening documents at the time the petition is filed. But there are three reasons for caution when considering a change to the rule's filing deadline.

First, not every case is so straightforward. Sometimes, a lawyer must file a petition with little notice because of the debtor's circumstances (in order to halt a foreclosure in a consumer

[1] Rule 2016(b) reads in full:

> Disclosure of Compensation Paid or Promised to Attorney for Debtor. Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 14 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 14 days after any payment or agreement not previously disclosed.

case, or because of a "freefall" business bankruptcy in which there is little advance planning). In those cases, eliminating the 14-day window from Rule 2016(b) would require the preparation of an additional document. There would be little benefit to the court, the trustee, and other parties in interest from an immediate disclosure of fee arrangements that would outweigh the added burden to the attorney of preparing an additional document in those circumstances.

Second, and more importantly, the rule is not limited solely to lawyers who are entering an appearance as counsel of record for the debtor in the bankruptcy case. As the Collier treatise explains, "Rule 2016(b)'s disclosure obligations apply to all attorneys representing the debtor." 9 Collier on Bankruptcy ¶ 2016.16 (16th ed.). Those lawyers may not know in advance the precise timing of the debtor's voluntary petition, and the 14-day window for filing the Rule 2016(b) statement takes account of that potential time lag. This is of particular concern, because § 329(a) applies so long as the lawyer's services were provided at a time the debtor was contemplating bankruptcy. *See Conrad, Rubin & Lesser v. Pender*, 289 U.S. 472, 476 (1933) (interpreting the provision of the Bankruptcy Act of 1898 from which § 329 was derived); *In re Perrine*, 369 B.R. 571, 579-84 (Bankr. C.D. Cal. 2007) ("Congress intended to permit bankruptcy courts to reexamine the reasonableness of fees within the one-year look back period, irrespective of the nature of the services rendered.").

Third, the responsibility to prepare the Rule 2016(b) disclosure statement in a timely manner is not a trivial concern. Courts can and do impose severe sanctions—including complete disgorgement of fees—when lawyers fail to file a complete and timely Rule 2016(b) statement. *See, e.g.*, *In re Downs*, 103 F.3d 472, 476-78 (6th Cir. 1996) (requiring an attorney who did not file a timely Rule 2016(b) statement to disgorge his entire retainer); *In re Smitty's Truck Stop, Inc.*, 210 B.R. 844, 848 (10th Cir. B.A.P. 1997) ("[A]n attorney who fails to comply with the

disclosure requirements of § 329 and Rule 2016(b) forfeits any right to receive compensation for services rendered on behalf of the debtor and may be ordered to return fees already received."). Given the harsh penalties that may accompany an untimely Rule 2016(b) statement, the 14-day window for filing the statement serves as a useful grace period.

For these reasons, I suggest that the Subcommittee recommend to the Advisory Committee that no further action be taken on the suggestion.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: MICHELLE M. HARNER, ASSOCIATE REPORTER

RE: SUGGESTION REGARDING RULE 7004(a)(1)

DATE: OCTOBER 21, 2016

The Advisory Committee received Suggestion 14-BK-F from Judge Martin Teel, Jr., concerning the reference to Civil Rule 4(d)(1) in Bankruptcy Rule 7004(a). As explained in the Suggestion, Civil Rule 4(d) has changed since it was incorporated by reference into Rule 7004 in 1996. At that time, the language of Civil Rule 4(d) read:

> (1) A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.

In 2007, Civil Rule 4(d) was amended to change, among other things, the language and placement of the foregoing provision. Specifically, the 2007 amendments renumbered the provision as Civil Rule 4(d)(5) and modified the language to read:

> **(5) Jurisdiction and Venue Not Waived.** Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

Judge Teel's observations are correct, and a change to the language of Rule 7004(a) to incorporate the correct subsection of Civil Rule 4(d) is warranted. Based on the technical nature of these changes, the Suggestion was not referred to a specific subcommittee for study and review. Rather, the Reporters recommend that the Advisory Committee propose an amendment to Rule 7004(a) to correct this technical error. The proposed amendment would read as follows:

> (a) SUMMONS; SERVICE; PROOF OF SERVICE.
>
> (1) Except as provided in Rule 7004(a)(2), Rule 4(a), (b), (c)(1), (d)~~(1)~~(5), (e)–(j), (l), and (m) F.R.Civ.P. applies in adversary proceedings. Personal service under Rule 4(e)–(j) F.R.Civ.P. may be made by any person at least 18 years of

age who is not a party, and the summons may be delivered by the clerk to any such person.

* * * * *

Committee Note

In 1996, Rule 7004(a) was amended to incorporate by reference Rule 4(d)(1) of the Federal Rules of Civil Procedure. At that time, Civil Rule 4(d)(1) addressed the effect of a defendant's waiver of service. In 2007, Civil Rule 4 was amended, and the language of old Civil Rule 4(d)(1) was modified and renumbered as Civil Rule 4(d)(5). Accordingly, Rule 7004(a) is amended to update the cross-reference to Civil Rule 4.

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Consent 2A

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

SUBJECT: SUGGESTION 15-BK-I REGARDING PRO SE FILERS

DATE: OCTOBER 19, 2016

A person identified only as "Sai" submitted a suggestion to the Civil Rules Committee that consisted of four proposals regarding pro se filers. Thereafter, he submitted a request that similar amendments also be adopted for parallel criminal, appellate, and bankruptcy rules. With the exception of a single amendment to an appellate form, the other three advisory committees have decided to take no action in response to Sai's suggestions. The suggestions regarding the bankruptcy rules were discussed by the Subcommittee during its September 6 conference call. **For the reasons discussed below, the Subcommittee recommends that no action be taken on the suggestions.**

The Suggestions

1. Sai's first suggestion is that Civil Rule 5.2 be amended to require redaction of all digits of social security and taxpayer-identification numbers. He submits that disclosure of the last four digits of such numbers—the only random part—allows the determination of the entire number if the person's place and date of birth are known.

2. Next he suggests that any affidavit made in support of *in forma pauperis* status be filed under seal and reviewed ex parte. He would permit the court for cause to allow the affidavit to be disclosed to another party under an appropriate protective order or be unsealed in a redacted form.

3. Third, Sai suggests that a national rule be adopted that requires counsel to provide pro se litigants with copies of any cited opinions that are unpublished or available only on electronic databases. He notes that this practice is required by some local rules.

4. Finally he suggests that Civil Rule 5 be amended to permit, but not require, pro se litigants to file documents non-electronically. He further says that courts should not deny access to CM/ECF for pro se litigants when represented parties have such access.

Discussion

The Civil, Criminal, and Appellate Rules Advisory Committees considered these suggestions at their spring 2016 meetings. All three committees concluded that the fourth suggestion, regarding filing, was already being addressed by the proposed electronic filing rules that were published for comment in August. Those proposed rules, including Bankruptcy Rule 5005(a)(2), leave to local rulemaking or court order the decision whether to allow or require pro se litigants to file electronically.

All three committees declined to act on the suggestion that no part of a social security number be revealed in court filings. Believing that the various sets of rules should be uniform on this issue, they relied in part on their understanding that some creditors in bankruptcy cases still need the debtor's social security number for identification purposes. This Advisory Committee has declined twice in the last few years (2012 and 2015) to propose an amendment to Rule 2002(a) that would delete the requirement that the notice of the meeting of creditors disclose the debtor's full social security number to creditors.

The Appellate Rules Committee did decide, however, to propose the removal of the request for the last four digits of a litigant's social security number on Appellate Form 4

(Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis). It appeared to be the view of clerks that this information is not needed for any purpose.

None of the committees supported the suggestion that *in forma pauperis* affidavits be filed under seal. The Civil Rules Committee concluded that the protection of financial privacy that is sought is outweighed by the value of public access to information about the courts' handling of requests to allow free filing, as well as by the administrative burdens of sealing. The other two committees agreed. In bankruptcy cases, the public disclosure of financial information is fundamental to the process, and there would not appear to be any reason to provide special treatment for Official Form 103B (Application to Have the Filing Fee Waived).

Finally, the Civil Committee concluded that the handling of unpublished opinions is better left to local rules, and the Criminal Committee agreed. The Appellate Committee also took no action on the suggestion, although it should be noted that FRAP 32.1(b) already requires copies of federal opinions that are not available in any publicly accessible electronic database to be served on other parties with the document in which they are cited.

Recommendation

The Subcommittee recommends that the Advisory Committee take no action on Sai's suggestions. These are issues for which uniform treatment in the various rules is desirable, and there do not appear to be any unique bankruptcy reasons to depart from the decisions made by the other advisory committees.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

SUBJECT: SUGGESTION REGARDING OFFICIAL FORM 101

DATE: OCTOBER 19, 2016

Judge Martin Teel (Bankr. D.D.C.) has submitted a suggestion (Suggestion 16-BK-B) regarding question 11 on Official Form 101, the voluntary petition for individual debtors. He suggests that the wording of the question relating to eviction judgments is inconsistent with § 362 of the Bankruptcy Code, as well as with Official Form 101A (Initial Statement About an Eviction Judgment Against You). This matter was considered by the Subcommittee during its conference call on September 6.

After first providing some background information about the relevant statutory and official form provisions, this memorandum discusses Judge Teel's suggestion and the **Subcommittee's recommendation that the amendments to Form 101 suggested by Judge Teel be proposed for approval without publication**.

Background Information

The 2005 BAPCPA amendments added several new exceptions to the automatic stay in § 362(b). Among them was § 362(b)(22), which provides as a general matter that the automatic stay does not apply to the continuation of any eviction action by a lessor against the debtor with respect to the debtor's residence if the lessor obtained a judgment of possession before the bankruptcy petition was filed. This exception, however, is made subject to § 362(*l*).

Subsection (*l*) provides a several-step process by which the debtor can obtain the benefit of the automatic stay to prevent eviction. It works as follows:

- The stay remains in effect for 30 days after the petition is filed if the debtor files with the petition a certification that (1) under some circumstances applicable nonbankruptcy law allows the debtor to cure the monetary default after a judgment for possession has been entered and (2) the debtor has deposited with the court any rent that will become due during that initial 30-day period. § 362(*l*)(1).
- If during that 30-day period the debtor certifies that he has cured the entire monetary default, subsection (b)(22) does not become applicable unless the lessor files an objection to the debtor's certification and the court upholds the objection. If the court does uphold the objection, finding that the debtor's certification is not true, subsection (b)(22) applies immediately and the lessor can proceed to regain possession of the property. § 362(*l*)(2) and (3). If the lessor does not object or the court overrules the objection, the eviction process is stayed.
- If the debtor indicates on the petition that there was a prepetition judgment for possession of his residence but does not file either of the above certifications, subsection (b)(22) applies immediately upon the failure to file the certification. § 362(*l*)(4).

Section 362(*l*)(5)(C) requires that the official forms be amended to reflect the requirements of subsection (*l*). Former Official Form 1 complied with this mandate by adding a section entitled "Certification by a Debtor Who Resides as a Tenant of Residential Property." It contained four check boxes and instructed the debtor to check all that were applicable. They consisted of the following:

1. A statement that the landlord had obtained a judgment for possession of the residence, along with space for providing the lessor's name and address;

2. a statement that there were circumstances under which nonbankruptcy law allowed the debtor to cure the monetary default after the judgment for possession was entered;
3. a statement that the debtor had included with the petition a deposit of any rent that would become due during the 30-day period following the filing of the petition; and
4. a certification that the debtor had served the lessor with this certification.

As part of the Forms Modernization Project, the petition form was revised, and a separate form was adopted for individual debtors filing a voluntary petition—Form 101. Question 11 of that form states:

11. **Do you rent your residence?**	❑ No. Go to line 12. ❑ Yes. Has your landlord obtained an eviction judgment against you and do you want to stay in your residence? ❑ No. Go to line 12. ❑ Yes. Fill out *Initial Statement About an Eviction Judgment Against You* (Form 101A) and file it with this bankruptcy petition.

New Official Forms 101A and B were also adopted. Form 101A is the Initial Statement About an Eviction Judgment Against You. It instructs the debtor to complete the form if the debtor rents her residence and the landlord has obtained an eviction judgment against her with respect to the debtor's residence. It provides spaces for listing the landlord's name and address. The second part of Form 101A consists of a certification about applicable law and the deposit of rent. The form states that the certification should be completed "[i]f you want to stay in your rented residence after you file your case for bankruptcy." Official Form 101B is the form for certifying that the debtor has cured the monetary default that gave rise to the eviction judgment.

Judge Teel's Suggestion

Judge Teel says that Form 101is inconsistent with § 362(*l*) because it requires a debtor to provide information about a prepetition eviction judgment only if the debtor desires to remain in the residence. In contrast, § 362(*l*)(5)(A) requires all debtors against whom a prepetition eviction

judgment was obtained for their residence to indicate that fact on the petition and to provide the name and address of the lessor. And, he notes, § 362(*l*)(4) specifies the consequence of disclosing that such a judgment was obtained. If the debtor does not file a certification about depositing the rent due during the next 30 days, the (b)(22) exception to the automatic stay becomes immediately applicable and the clerk must provide the lessor with a certified copy of the docket indicating that the certification was not filed. Judge Teel argues that Form 101, by limiting the instruction to file Form 101A to debtors who wish to remain in their residence, frustrates the statutory goals of identifying debtors as to whom the exception of (b)(22) applies and providing the lessor with a certified document establishing that the automatic stay does not prevent eviction.

Judge Teel also points out that question 11 on Form 101 is inconsistent with Form 101A. The latter form, he says, correctly requires all debtors subject to an eviction judgment to indicate that fact and to give the name and address of the lessor. Only the second part of the form, the certification, is limited to debtors who "want to stay in [the] rented residence."

Judge Teel suggests that question 11 on Form 101 be amended by eliminating the second part of the compound sentence following the first yes box: "Has your landlord obtained an eviction judgment against you ~~and do you want to stay in your residence~~?". He also suggests that the last sentence in question 11—"Fill out *Initial Statement About an Eviction Judgment Against You* (Form 101A) and file it with this bankruptcy petition"—be amended by changing "file it with this bankruptcy petition" to "file it as part of this bankruptcy petition." He believes that the suggested language is needed in order to comply with the requirement of § 362(*l*)(5)(A) that the name and address of the lessor be provided "on the petition."

Recommendation

The Subcommittee concluded that Judge Teel has correctly identified an error in the wording of question 11, and therefore it recommends that the Committee propose that his suggested amendments be made. Section 362(*l*)(5)(A) requires all debtors against whom a judgment for possession of residential property has been obtained to "so indicate on the bankruptcy petition and . . . provide the name and address of the lessor." By limiting its instruction to debtors who want to stay in their residences, Official Form 101 results in delayed notice of the bankruptcy to lessors whose continued eviction efforts are not stayed, and it makes it more difficult to determine when such lessors exist. The revision of the petition form as part of the Forms Modernization Project inadvertently introduced this error, and revising question 11 as Judge Teel suggests will make the question consistent with the wording of former Form 1 and with the instructions of current Form 101A. In addition, amending the last sentence in question 11 as suggested by Judge Teel will ensure compliance with the statutory directive to provide the lessor's name and address "on the petition."

The Subcommittee considered which procedure for this form's amendment the Committee should pursue. There are three possibilities: (1) an immediate amendment made by the Committee this fall (change effective in 2016), with retroactive approval by the Standing Committee; (2) submission of the amendment to the Standing Committee and the Judicial Conference for approval without publication (change effective in 2017); and (3) proposal of the amendment for publication, with final approval to be sought during the following year (change effective in 2018).

The Subcommittee recommends the second option—that the amendment be proposed for approval by the Standing Committee and Judicial Conference without publication. It is being

proposed in order to bring the form into conformity with § 362, but it is sufficiently extensive that an immediate change by the Committee with retroactive approval seems inappropriate. The Subcommittee did not think that the need for the corrective amendment is so urgent that an effective date of December 1, 2017, will present problems.

As amended, question 11 on Official Form 101 would read as follows and be accompanied by the following Committee Note:

11. Do you rent your residence?	☐ No.	Go to line 12.
	☐ Yes.	Has your landlord obtained an eviction judgment against you?
		☐ No. Go to line 12.
		☐ Yes. Fill out *Initial Statement About an Eviction Judgment Against You* (Form 101A) and file it as part of this bankruptcy petition.

Committee Note

Part 2, line 11, is amended to accurately reflect the requirements of § 362(*l*) of the Bankruptcy Code. All debtors against whom an eviction judgment has been entered with respect to their residence must fill out Official Form 101A (*Initial Statement About an Eviction Judgment Against You*), whether or not they desire to remain in their residence. Form 101A is deemed to be part of the petition.

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Fill in this information to identify your case:

United States Bankruptcy Court for the:

_____ District of _____
(State)

Case number (*If known*): _____ Chapter you are filing under:

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

❑ Check if this is an amended filing

Official Form 101

Voluntary Petition for Individuals Filing for Bankruptcy 12/17

The bankruptcy forms use *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, these forms use *you* to ask for information from both debtors. For example, if a form asks, "Do you own a car," the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

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

Part 1: Identify Yourself

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
1. Your full name Write the name that is on your government-issued picture identification (for example, your driver's license or passport). Bring your picture identification to your meeting with the trustee.	_____ First name _____ Middle name _____ Last name _____ Suffix (Sr., Jr., II, III)	_____ First name _____ Middle name _____ Last name _____ Suffix (Sr., Jr., II, III)
2. All other names you have used in the last 8 years Include your married or maiden names.	_____ First name _____ Middle name _____ Last name _____ First name _____ Middle name _____ Last name	_____ First name _____ Middle name _____ Last name _____ First name _____ Middle name _____ Last name
3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)	XXX – XX – ____ ____ ____ ____ OR **9** XX – XX – ____ ____ ____ ____	XXX – XX – ____ ____ ____ ____ OR **9** XX – XX – ____ ____ ____ ____

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
4. Any business names and Employer Identification Numbers (EIN) you have used in the last 8 years Include trade names and *doing business as* names	❑ I have not used any business names or EINs. _____ Business name _____ Business name __ __ – __ __ __ __ __ __ __ EIN __ __ – __ __ __ __ __ __ __ EIN	❑ I have not used any business names or EINs. _____ Business name _____ Business name __ __ – __ __ __ __ __ __ __ EIN __ __ – __ __ __ __ __ __ __ EIN
5. Where you live	_____ Number Street _____ _____ City State ZIP Code _____ County **If your mailing address is different from the one above, fill it in here.** Note that the court will send any notices to you at this mailing address. _____ Number Street _____ P.O. Box _____ City State ZIP Code	**If Debtor 2 lives at a different address:** _____ Number Street _____ _____ City State ZIP Code _____ County **If Debtor 2's mailing address is different from yours, fill it in here.** Note that the court will send any notices to this mailing address. _____ Number Street _____ P.O. Box _____ City State ZIP Code
6. Why you are choosing *this district* to file for bankruptcy	*Check one:* ❑ Over the last 180 days before filing this petition, I have lived in this district longer than in any other district. ❑ I have another reason. Explain. (See 28 U.S.C. § 1408.) _____ _____ _____ _____	*Check one:* ❑ Over the last 180 days before filing this petition, I have lived in this district longer than in any other district. ❑ I have another reason. Explain. (See 28 U.S.C. § 1408.) _____ _____ _____ _____

Part 2: Tell the Court About Your Bankruptcy Case

7. The chapter of the Bankruptcy Code you are choosing to file under

Check one. (For a brief description of each, see *Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy* (Form 2010)). Also, go to the top of page 1 and check the appropriate box.

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

8. How you will pay the fee

- ❑ **I will pay the entire fee when I file my petition**. Please check with the clerk's office in your local court for more details about how you may pay. Typically, if you are paying the fee yourself, you may pay with cash, cashier's check, or money order. If your attorney is submitting your payment on your behalf, your attorney may pay with a credit card or check with a pre-printed address.
- ❑ **I need to pay the fee in installments**. If you choose this option, sign and attach the *Application for Individuals to Pay The Filing Fee in Installments* (Official Form 103A).
- ❑ **I request that my fee be waived** (You may request this option only if you are filing for Chapter 7. By law, a judge may, but is not required to, waive your fee, and may do so only if your income is less than 150% of the official poverty line that applies to your family size and you are unable to pay the fee in installments). If you choose this option, you must fill out the *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 103B) and file it with your petition.

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

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

10. Are any bankruptcy cases pending or being filed by a spouse who is not filing this case with you, or by a business partner, or by an affiliate?

- ❑ No
- ❑ Yes. Debtor _____ Relationship to you _____
  District _____ When _____ Case number, if known_____
  MM / DD / YYYY
  Debtor _____ Relationship to you _____
  District _____ When _____ Case number, if known_____
  MM / DD / YYYY

11. Do you rent your residence?

- ❑ No. Go to line 12.
- ❑ Yes. Has your landlord obtained an eviction judgment against you?
  - ❑ No. Go to line 12.
  - ❑ Yes. Fill out *Initial Statement About an Eviction Judgment Against You* (Form 101A) and file it as part of this bankruptcy petition.

Part 3: Report About Any Businesses You Own as a Sole Proprietor

12. Are you a sole proprietor of any full- or part-time business?

A sole proprietorship is a business you operate as an individual, and is not a separate legal entity such as a corporation, partnership, or LLC.

If you have more than one sole proprietorship, use a separate sheet and attach it to this petition.

❑ No. Go to Part 4.

❑ Yes. Name and location of business

_____
Name of business, if any

_____
Number Street

_____

_____ _____ _____
City State ZIP Code

Check the appropriate box to describe your business:

❑ Health Care Business (as defined in 11 U.S.C. § 101(27A))

❑ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))

❑ Stockbroker (as defined in 11 U.S.C. § 101(53A))

❑ Commodity Broker (as defined in 11 U.S.C. § 101(6))

❑ None of the above

13. Are you filing under Chapter 11 of the Bankruptcy Code and are you a *small business debtor*?

For a definition of *small business debtor*, see 11 U.S.C. § 101(51D).

If you are filing under Chapter 11, the court must know whether you are a small business debtor so that it can set appropriate deadlines. If you indicate that you are a small business debtor, you must attach your most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).

❑ No. I am not filing under Chapter 11.

❑ No. I am filing under Chapter 11, but I am NOT a small business debtor according to the definition in the Bankruptcy Code.

❑ Yes. I am filing under Chapter 11 and I am a small business debtor according to the definition in the Bankruptcy Code.

Part 4: Report if You Own or Have Any Hazardous Property or Any Property That Needs Immediate Attention

14. Do you own or have any property that poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety? Or do you own any property that needs immediate attention?

For example, do you own perishable goods, or livestock that must be fed, or a building that needs urgent repairs?

❑ No

❑ Yes. What is the hazard? _____

_____

If immediate attention is needed, why is it needed? _____

_____

Where is the property? _____
Number Street

_____

_____ _____ _____
City State ZIP Code

Part 5: Explain Your Efforts to Receive a Briefing About Credit Counseling

15. Tell the court whether you have received a briefing about credit counseling.

The law requires that you receive a briefing about credit counseling before you file for bankruptcy. You must truthfully check one of the following choices. If you cannot do so, you are not eligible to file.

If you file anyway, the court can dismiss your case, you will lose whatever filing fee you paid, and your creditors can begin collection activities again.

About Debtor 1:

You must check one:

❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.**

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.**

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

❑ **I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.**

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.

If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

❑ **I am not required to receive a briefing about credit counseling because of:**

- ❑ **Incapacity.** I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.
- ❑ **Disability.** My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.
- ❑ **Active duty.** I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

About Debtor 2 (Spouse Only in a Joint Case):

You must check one:

❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.**

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

❑ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.**

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

❑ **I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.**

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.

If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

❑ **I am not required to receive a briefing about credit counseling because of:**

- ❑ **Incapacity.** I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.
- ❑ **Disability.** My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.
- ❑ **Active duty.** I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

Part 6: Answer These Questions for Reporting Purposes

16. What kind of debts do you have?

16a. **Are your debts primarily consumer debts?** *Consumer debts* are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."

- ❑ No. Go to line 16b.
- ❑ Yes. Go to line 17.

16b. **Are your debts primarily business debts?** *Business debts* are debts that you incurred to obtain money for a business or investment or through the operation of the business or investment.

- ❑ No. Go to line 16c.
- ❑ Yes. Go to line 17.

16c. State the type of debts you owe that are not consumer debts or business debts.

_____

17. Are you filing under Chapter 7?

Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available for distribution to unsecured creditors?

- ❑ No. I am not filing under Chapter 7. Go to line 18.
- ❑ Yes. I am filing under Chapter 7. Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available to distribute to unsecured creditors?
  - ❑ No
  - ❑ Yes

18. How many creditors do you estimate that you owe?

- ❑ 1-49
- ❑ 50-99
- ❑ 100-199
- ❑ 200-999
- ❑ 1,000-5,000
- ❑ 5,001-10,000
- ❑ 10,001-25,000
- ❑ 25,001-50,000
- ❑ 50,001-100,000
- ❑ More than 100,000

19. How much do you estimate your assets to be worth?

- ❑ $0-$50,000
- ❑ $50,001-$100,000
- ❑ $100,001-$500,000
- ❑ $500,001-$1 million
- ❑ $1,000,001-$10 million
- ❑ $10,000,001-$50 million
- ❑ $50,000,001-$100 million
- ❑ $100,000,001-$500 million
- ❑ $500,000,001-$1 billion
- ❑ $1,000,000,001-$10 billion
- ❑ $10,000,000,001-$50 billion
- ❑ More than $50 billion

20. How much do you estimate your liabilities to be?

- ❑ $0-$50,000
- ❑ $50,001-$100,000
- ❑ $100,001-$500,000
- ❑ $500,001-$1 million
- ❑ $1,000,001-$10 million
- ❑ $10,000,001-$50 million
- ❑ $50,000,001-$100 million
- ❑ $100,000,001-$500 million
- ❑ $500,000,001-$1 billion
- ❑ $1,000,000,001-$10 billion
- ❑ $10,000,000,001-$50 billion
- ❑ More than $50 billion

Part 7: Sign Below

For you

I have examined this petition, and I declare under penalty of perjury that the information provided is true and correct.

If I have chosen to file under Chapter 7, I am aware that I may proceed, if eligible, under Chapter 7, 11,12, or 13 of title 11, United States Code. I understand the relief available under each chapter, and I choose to proceed under Chapter 7.

If no attorney represents me and I did not pay or agree to pay someone who is not an attorney to help me fill out this document, I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I understand making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

✘ _____
Signature of Debtor 1

Executed on _____
MM / DD / YYYY

✘ _____
Signature of Debtor 2

Executed on _____
MM / DD / YYYY

For your attorney, if you are represented by one

If you are not represented by an attorney, you do not need to file this page.

I, the attorney for the debtor(s) named in this petition, declare that I have informed the debtor(s) about eligibility to proceed under Chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each chapter for which the person is eligible. I also certify that I have delivered to the debtor(s) the notice required by 11 U.S.C. § 342(b) and, in a case in which § 707(b)(4)(D) applies, certify that I have no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

✘ _____ Date _____
Signature of Attorney for Debtor MM / DD / YYYY

_____
Printed name

_____
Firm name

_____
Number Street

_____

_____ _____ _____
City State ZIP Code

Contact phone _____ Email address _____

_____ _____
Bar number State

For you if you are filing this bankruptcy without an attorney

If you are represented by an attorney, you do not need to file this page.

The law allows you, as an individual, to represent yourself in bankruptcy court, but **you should understand that many people find it extremely difficult to represent themselves successfully. Because bankruptcy has long-term financial and legal consequences, you are strongly urged to hire a qualified attorney.**

To be successful, you must correctly file and handle your bankruptcy case. The rules are very technical, and a mistake or inaction may affect your rights. For example, your case may be dismissed because you did not file a required document, pay a fee on time, attend a meeting or hearing, or cooperate with the court, case trustee, U.S. trustee, bankruptcy administrator, or audit firm if your case is selected for audit. If that happens, you could lose your right to file another case, or you may lose protections, including the benefit of the automatic stay.

You must list all your property and debts in the schedules that you are required to file with the court. Even if you plan to pay a particular debt outside of your bankruptcy, you must list that debt in your schedules. If you do not list a debt, the debt may not be discharged. If you do not list property or properly claim it as exempt, you may not be able to keep the property. The judge can also deny you a discharge of all your debts if you do something dishonest in your bankruptcy case, such as destroying or hiding property, falsifying records, or lying. Individual bankruptcy cases are randomly audited to determine if debtors have been accurate, truthful, and complete. **Bankruptcy fraud is a serious crime; you could be fined and imprisoned.**

If you decide to file without an attorney, the court expects you to follow the rules as if you had hired an attorney. The court will not treat you differently because you are filing for yourself. To be successful, you must be familiar with the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the local rules of the court in which your case is filed. You must also be familiar with any state exemption laws that apply.

Are you aware that filing for bankruptcy is a serious action with long-term financial and legal consequences?

- ❑ No
- ❑ Yes

Are you aware that bankruptcy fraud is a serious crime and that if your bankruptcy forms are inaccurate or incomplete, you could be fined or imprisoned?

- ❑ No
- ❑ Yes

Did you pay or agree to pay someone who is not an attorney to help you fill out your bankruptcy forms?

- ❑ No
- ❑ Yes. Name of Person_____.
  Attach *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119).

By signing here, I acknowledge that I understand the risks involved in filing without an attorney. I have read and understood this notice, and I am aware that filing a bankruptcy case without an attorney may cause me to lose my rights or property if I do not properly handle the case.

✘ _____	✘ _____
Signature of Debtor 1	Signature of Debtor 2
Date _____ MM / DD / YYYY	Date _____ MM / DD / YYYY
Contact phone _____	Contact phone _____
Cell phone _____	Cell phone _____
Email address _____	Email address _____

COMMITTEE NOTE

Part 2, line 11, is amended to accurately reflect the requirements of § 362(*l*) of the Bankruptcy Code. All debtors against whom an eviction judgment has been entered with respect to their residence must fill out Official Form 101A (*Initial Statement About an Eviction Judgment Against You*), whether or not they desire to remain in their residence. Form 101A is deemed to be part of the petition.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: SUGGESTION 16-BK-G REGARDING TIME FOR SERVING SUMMONS

DATE: OCTOBER 14, 2016

Jonathan H. Stanwood, an attorney in Philadelphia, has submitted a suggestion that the time for serving a summons be changed from 7 days to at least 14 days. He made this suggestion because he has found it difficult to make service within the shorter time period and as a result has frequently had to request that a summons be reissued.

Rule 7004(e), which governs the time for serving a summons within the United States, was amended in 2014 to reduce the time limit from 14 to 7 days.[1] This change was made in order to provide more time for a defendant to respond to a complaint. Rule 7012(a) generally provides that a defendant must serve an answer "within 30 days after the issuance of the summons." In response to a suggestion (11-BK-F) that service, not issuance, of the summons trigger the time for responding, the Advisory Committee instead chose to propose an amendment shortening the time for service of the summons in order to provide a defendant sufficient time to answer.

When the proposed amendment to Rule 7004(e) was published in 2012, four comments were submitted in opposition to the change. All of them expressed concern that a 7-day service deadline might be too short in some circumstances. Two situations were identified: (1) when the defendant's mailing address is a post office box and thus service by mail may not be used, and

[1] In 2009, as part of the time computation project, Rule 7004(e) was amended to change the period for serving a summons from 10 to 14 days. The time period under the rule was never 30 days, as Mr. Stanwood stated.

(2) when the summons is not issued electronically or the plaintiff must wait for some other court action following issuance before serving the summons. The Committee considered these concerns but concluded that they would occur relatively infrequently and that when service could not be completed within 7 days of issuance, the plaintiff could seek an extension of time under Rule 9006(b). In order to alert plaintiffs to that possibility, the following sentence was added to the Committee Note: "If service of the summons within seven days is impracticable, a court retains the discretion to enlarge that period of time under Rule 9006(b)."

Because Rule 7004(e) was so recently amended and the Committee at that time considered the issue raised by Mr. Stanwood, **the Subcommittee recommends that no further action be taken in response to the suggestion.** Should the Committee continue to receive suggestions of the need for a longer time limit for serving a summons, it could reconsider the issue at a later date.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS, AND APPEALS

RE: SUGGESTION 16-BK-F REGARDING CERTIFICATION OF DIRECT APPEALS

DATE: OCTOBER 19, 2016

Bankruptcy Judge Geraldine Mund (C.D. Cal.) has submitted a suggestion regarding the procedure for pursuing an appeal that has been certified for direct review in the court of appeals. Specifically, she proposes that Rule 8006(g) be amended to eliminate the requirement that a party file in the court of appeals a request for permission to appeal in cases in which a lower court has certified the case for direct appeal on its own motion. The Subcommittee considered this matter during its September 29 conference call.

This memorandum begins by reviewing the statutory and rules provisions governing direct appeals. It then describes Judge Mund's suggestion in more detail, and it concludes with a discussion of the issues and the **Subcommittee's recommendation that no further action be taken on the suggestion**.

The Statute and Rules

The 2005 BAPCPA amendments added a new provision to 28 U.S.C. § 158, the statute governing bankruptcy appeals. New subsection (d)(2) confers jurisdiction on courts of appeals to hear bankruptcy appeals directly from bankruptcy courts if (1) there is a certification that one of several circumstances applies, and (2) "the court of appeals authorizes the direct appeal of the judgment, order, or decree." 28 U.S.C. § 158(d)(2)(A). The grounds for certification are as follows:

- The proceeding involves a question of law for which there is no controlling decision of the applicable court of appeals or of the Supreme Court, or it involves a matter of public importance; or
- a question of law requires the resolution of conflicting decisions; or
- an immediate appeal may materially advance the progress of the bankruptcy case or the proceeding.

The statute prescribes three ways in which a certification can occur. First, the bankruptcy court, district court, or bankruptcy appellate panel can act on its own motion. Second, the lower court can act in response to a request for certification by a party to the proceeding. And third, all of the appellants and appellees may jointly make the certification themselves.

An uncodified subsection of the BAPCPA legislation (Pub. Law 109-8, § 1233(b)) prescribed temporary procedural rules for direct appeals. The statute provided that these rules were to "apply to appeals under section 158(d)(2) of title 28, United States Code, until a rule of practice and procedure relating to such provision and such appeals is promulgated or amended under chapter 131 of such title." § 1233(b)(1). Among the temporary procedural rules was one making applicable to such appeals FRAP 5(a)(1), (b), (c), and (d), which govern appeal by permission. § 1233(b)(3). Section 1233(b)(4) further provided that a "petition requesting permission to appeal that is based on a certification under . . . section 158(d)(2) shall . . . be filed with the circuit clerk not later than 10 days after the certification is entered on the docket of the [lower] court."

Because BAPCPA was enacted in April 2005 and most of its provisions took effect in October of that year, there was not time to go through the formal rules-promulgation process for rules to implement the new legislation on its effective date. Instead, the Advisory Committee

drafted interim bankruptcy rules, which were approved on an expedited basis by the Standing Committee and the Judicial Conference. The interim rules were then adopted by general order in all of the districts.

Among the interim rules was one governing direct appeals—Interim Rule 8001(f). Although the rule itself did not mention the need to file a petition for permission to appeal in the court of appeals after a certification was made, the Committee Note made reference to the uncodified procedures in the BAPCPA legislation: "An uncodified provision in Public Law No. 109-8, § 1233(b)(4), requires that, not later than 10 days after a certification is entered on the docket, there must be filed with the circuit clerk a petition requesting permission to appeal."

The formal rules-promulgation process for BAPCPA rules was initiated in 2006. For the most part the rules published for public comment were the same as the interim rules. Rule 8001(f) was published with only one change from the interim version—a new subdivision (f)(5) was added. It provided as follows:

> (5) *Duties of Parties After Certification*. A petition for permission to appeal in accordance with F.R. App. P. 5 shall be filed no later than 30 days after a certification has become effective as provided in subdivision (f)(1).

The Committee Note explained that a "certification under subdivision (f)(1) does not place the appeal in the circuit court." Instead, it said, the court of appeals has to authorize the appeal and therefore a party intending to pursue a direct appeal must seek permission under FRAP 5. The rule as published became the final rule.

When Part VIII of the bankruptcy rules was completely revised in 2014, the provisions governing direct appeals were moved from Rule 8001(f) to a separate rule, Rule 8006. Subdivision (g) of that rule provides:

> (g) PROCEEDING IN THE COURT OF APPEALS FOLLOWING A CERTIFICATION. Within 30 days after the date the certification becomes effective under

> subdivision (a), a request for permission to take a direct appeal to the court of appeals must be filed with the circuit clerk in accordance with Fed. R. App. P. 6(c).

The Committee Note to Rule 8006 explains that FRAP 6(c), "which incorporates all of Fed. R. App. P. 5 except subdivision (a)(3), prescribes the procedures for requesting permission of the court of appeals and governs proceedings that take place thereafter in that court." The Appellate Rules Advisory Committee worked in conjunction with our Advisory Committee and added FRAP 6(c) at the same time as the revision of the Part VIII rules. Rule 6(c) governs "Direct Review by Permission Under 28 U.S.C. § 158(d)(2)." By making Rule 5(a) applicable, it requires a party to file a petition for permission to appeal when "an appeal is within the court of appeals' discretion."

Judge Mund's Suggestion

Judge Mund made her suggestion in response to an experience she had regarding one of her cases. Acting on her own motion, she entered a certification of direct appeal after granting defendants' motions for summary judgment in an adversary proceeding. The debtor plaintiff appealed from the judgments but did not file a petition for permission to appeal in the court of appeals. As a result, Judge Mund later discovered that the Ninth Circuit had opened no docket in the case and had no record of the certification.

In her suggestion, Judge Mund contends that only the court's certification should be required for a direct appeal, without the requirement that a party file a petition for permission to appeal.[1] She argues that making a direct appeal dependent on actions of a party is inconsistent with authorizing the court to certify a direct appeal on its own. If no party petitions for

[1] Judge Mund suggests that this change be made for cases in which "it is the bankruptcy judge or the district judge who is certifying a direct appeal." It is not completely clear whether she intends her suggestion to be limited to certifications made by courts acting on their own motions or whether she would also include cases in which courts certify a direct appeal in response to the motion of a party. I believe she intends the former.

permission to appeal, the case will remain in the district court or bankruptcy appellate panel. That result, she says, will cause an unnecessary delay in resolution of the issues on appeal, impose an unnecessary burden on the lower courts, and ignore the judgment of the judge who is familiar with the case that a direct appeal to the court of appeals would be beneficial to the courts and parties. She attached a certification order to her suggestion to show that it would provide sufficient information for the court of appeals to decide whether to allow the direct appeal.

Discussion and Recommendation

The suggestion to eliminate the requirement of filing a petition for permission to appeal runs counter to the history of 28 U.S.C. § 158(d)(2) and its implementation, as well as the established procedure for taking any discretionary appeal to the court of appeals. Section 158(d)(2)(A) places two conditions on the conferral of jurisdiction on the courts of appeals over direct bankruptcy appeals: that a certification be made and that the court of appeals authorize the direct appeal. The uncodified, temporary procedures enacted by Congress show that it intended the normal procedures for discretionary appeals to apply—those set out in FRAP 5—and specifically that a petition seeking permission to appeal be required. Congress enacted these requirements while at the same time authorizing bankruptcy courts to certify direct appeals on their own motions, thus demonstrating that it did not view the procedure as being inconsistent with or inapplicable to *sua sponte* certifications.

While Congress allowed the statutory procedures to be displaced by officially promulgated rules, both the Bankruptcy and Appellate Rules Advisory Committees have consistently retained the requirement that a petition for permission to appeal be filed for a direct bankruptcy appeal. This decision is not surprising, because FRAP 5 has long been applied to interlocutory appeals under 28 U.S.C. § 1292(b), the statute on which § 158(d)(2) appears to

have been loosely based. An appeal under § 1292(b) requires a party to file a petition for permission to appeal even though a district judge has already stated in writing that he or she is "of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." The ultimate decision under both § 1292(b) and § 158(d)(2) as to whether the court of appeals should hear the appeal is for the court of appeals to make, and so there must be a procedural mechanism for putting the issue before that court. FRAP 5(a) has long provided that mechanism—a party's petition for permission to appeal.

Judge Mund seeks a procedure that would prevent the parties from thwarting the possibility of direct review by the court of appeals when a lower court judge has found direct review of the case to be desirable. Section 158(d)(2), however, always requires affirmative action by one or more parties. Someone must appeal. A certification without an appeal being taken is of no effect. The direct review process therefore is unlike a certification procedure that allows a federal court to communicate directly with the highest court of a state in order to obtain a clarification of state law.

The petition requirement imposed by Rule 8006(g) and FRAP 6(c) and 5(a) should only rarely stand in the way of direct review. One would expect most appellants to prefer a shorter and less expensive appeal process. Direct court of appeals review eliminates an entire level of appeal. It is likely that the pro se debtor in Judge Mund's case was unaware of the petition requirement. When faced with that situation in other cases, a judge who certifies a direct appeal *sua sponte* could call the requirements of Rule 8006(g) and FRAP 5(a) to the attention of the appellant.

Even if the Committee were otherwise inclined to accept the suggestion, it appears to be misdirected. Taking action on the suggestion is more appropriately addressed in the first instance by the Appellate Rules Advisory Committee. Bankruptcy Rule 8006(g) merely reflects the existing FRAP procedure for discretionary appeals. The bankruptcy rules do not force this procedure on the courts of appeals. Any change in that procedure for direct bankruptcy appeals should be initiated by the Appellate, not Bankruptcy, Rules Committee.

For these reasons, the Subcommittee recommends that Judge Mund's suggestion not be pursued.