ADVISORY COMMITTEE
ON
BANKRUPTCY RULES

Marco Island, FL
March 29-30, 2007

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of March 29-30, 2007
Marco Island, Florida

Draft Agenda 3/6/07

Introductory Items

1. Approval of minutes of Seattle meeting of September 14-15, 2006 (Judge Zilly)

2. Oral reports on meetings of other Rules Committees:

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

Possible revision of proposed amendments to Rules 7052 and 9021 and new Rule 7058.

(B) November 2006 meeting of the Advisory Committee on Appellate Rules Committee. (Judge Zilly)
(C) January 2007 meeting of the Committee on the Administration of the Bankruptcy System. (Judge Klein)
(D) September 2006 meeting of Advisory Committee on Civil Rules. (Judge Walker)
(E) November 2006 meeting of Advisory Committee on Evidence. (Judge Klein)
(F) Bankruptcy CM/ECF Working Group (Judge McFeeley)

Action Items

3. Report on comments to proposed amendments to the Bankruptcy Rules and Official forms published in August 2006. Lists of the 2005 comments on the Interim Rules and Forms and 2006/2007 comments on the published Rules and Forms. (Professor Morris)

(A) No comments were submitted on the following published rules:

Bankruptcy Rules 1005, 1009, 1015, 2007.1, 2015, 3003, 3017.1, 3019, 5001, 9006, and 9009, and new Bankruptcy Rule 2015.2.

(B) No comments were submitted on the following published Official Forms:

Official Forms 3A, 3B, 10, 16A, 19A, 19B.

(C) Comments were submitted on the following rules but the subcommittee to which each comment was assigned recommends that no change be made in the published rule:

Bankruptcy Rules 1006, 1010, 1011, 1017, 1020, 2003, 3016, 3017.1, 4006, 4007, 4008, and 8001; and new Bankruptcy Rules 1021, 2007.2, 2015.1, 2015.3, 5008, and 5012.

Comments in which changes in the published rule or Committee Note are recommended are set out below by subcommittee. Comments on the Interim Rules and Forms are included with the discussion of the comments on the published rules and forms.

(D) Comments or suggested changes to the following rules (not published for comment in August 2006) have been received and are recommended for referral to the following subcommittees for study:

Rule 1010	Subcommittee on Technology and Cross Border Insolvency
Rule 1011	Subcommittee on Technology and Cross Border Insolvency
Rule 5009	Subcommittee on Consumer Matters
Procedure to implement "automatic dismissal" under § 521	Subcommittee on Consumer Matters
Rule 7065	Subcommittee on Technology and Cross Border Insolvency
Rule 8005	Subcommittee on Privacy, Public Access, and Appeals.

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

(A) Proposed changes to Rule 9011 and Official Form 1 (possible republication).
(B) Comments on the proposed health care rules and proposed change to Rule 6011(b).

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

(A) Comments on the means test and related rules; proposed changes to Rule 1007(b)(4) and Official Forms 22A, 22B, and 22C. Annotated copies of the forms including proposed changes.
(B) Additional comments on the consumer rules and proposed changes to Rules 1007, 4003, and 4004; existing Rules 5009 and 7001; the Committee Notes to Rules 1019 and 4003; and Official Forms 6I, 6J, 8, and 23.
(Proposed changes to Rule 1007, the existing rules, and the Official Forms may require publication or further study.)

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

(A) Proposed changes to Rules 2002, 3002, 3007, 5003, and 6004, and the Committee Note to Rule 4002; and proposed changes in new Official Forms 26A and 26B.
(Proposed changes to Rules 2002(g)(2), 3002(c), and 3007(a) may require publication.)

(B) The revised Baker & Hostetler proposal on investing estate funds has been withdrawn.

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

(A) Comments on the proposed cross border rules and proposed changes to Rules 1007 and 2002; the Committee Note for new Rule 5012; and Official Forms 9A - I. (Some proposed changes to Rule 1007 may require republication or further study.)

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

(A) No proposed changes as result of comments on the appeals rules; possible change to the Committee Note for Rule 8001(f).
(B) Possible changes to published Rule 8003 and existing Rule 8005.

9. Report of Subcommittee on Forms. (Judge Klein, Professor Morris)

(A) Comments on the Official Forms. Memo with copies of proposed changes. (Judge Klein, Professor Morris)

(1) Possible designation of Director's Form 240, Reaffirmation, as Official Form 27. Memo with copy of the proposed form.
(2) Proposed amendments to Official Forms 1, 4, 6, 7, 8.
(3) Proposed technical amendments to Official Forms 1, 6, 7, 22A, 22B, 22C, 24, and 25A.
(4) Comments were submitted on Official Forms 5, 6, 16A and 23, but the subcommittee recommends that no change be made in the published forms.

(Possible new Form 27 and proposed changes to Official Forms 1 and 8 may require publication or further study.)
(B) Automatic, statutory adjustments to certain dollar amounts on Official Forms 6E, 7, 10, 22A, and 22C on April 1, 2007. Report on the changes, list of the dollar amounts adjusted, and excerpts from the revised Official Forms. (Mr. Wannamaker)
(C) Proposed amendments to Director's Procedural Forms. Report on privacy amendments to the captions of Forms 13S, 15S, 132, 204, 205, 206, 207, 231A, 231B, 253, and 270; revision of bankruptcy subpoena forms 254, 255, and 256; abrogation of Forms 130A and 130B; and additional amendments to Forms 13S, 104, 202, 204, and 240. (Mr. Wannamaker)

Discussion Items

10. Report of the ad hoc group on time computation and the discussion of time computation at the Standing Committee meeting. Memo from Judge Mark R. Kravitz, chair of the Standing Committee's Time Computation Committee, and a copy of the revised draft template rule. (Judge Zilly and Professor Morris)

11. Proposed amendments to the Bankruptcy Rules as a result of the restyling of the Civil Rules. Report by Professor Morris including draft amendments to Rules 7012, 7022, 7023.1, and 9024; copy of the Advisory Committee's December 15, 2005, comment to the Civil Committee on the restyled rules. (Professor Morris)

Information Items

12. Rules Docket.

13. *Bull Pen*: proposed chapter 15 amendments to Rules 1004.2, 1010, 2002(p), 5009, 5012, and 9001 and the proposed combination of Official Forms 19A and 19B are in the "bull pen" awaiting transmission to the Standing Committee.

14. Next meeting reminder: September 6-7, 2007, at the Teton Mountain Lodge, Jackson Hole, WY.

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Judge Mark B. McFeeley
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ADVISORY COMMITTEE ON BANKRUPTCY RULES

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Thomas S. Zilly Chair	D	Washington (Western)	Member: 2000 Chair: 2004	---- 2007
G. Eric Brunstad, Jr.	ESQ	Connecticut	2005	2008
Ransey Guy Cole, Jr.	C	Sixth Circuit	2003	2009
Irene M. Keeley	D	West Virginia (Northern)	2002	2008
Christopher M. Klein	B	California (Eastern)	2000	2007
J. Christopher Kohn*	DOJ	Washington, DC	-----	Open
J. Michael Lamberth	ESQ	Georgia	2005	2008
Mark B. McFeeley	B	New Mexico	2001	2007
Kenneth J. Meyers	B	Illinois (Southern)	2006	2009
William H. Pauley III	D	New York (Southern)	2005	2008
Lawrence Ponoroff	ACAD	Louisiana	2004	2007
John Rao	ESQ	Massachusetts	2006	2009
Richard A. Schell	D	Texas (Eastern)	2003	2009
Laura Taylor Swain	D	New York (Southern)	2002	2008
Eugene R. Wedoff	B	Illinois (Northern)	2004	2007
Jeffrey W. Morris Reporter	ACAD	Ohio	1998	Open

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ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of September 14-15, 2006
Seattle, WA

Draft Minutes

The following members attended the meeting:

District Judge Thomas S. Zilly, Chairman
District Judge Irene M. Keeley
District Judge Richard A. Schell
District Judge William H. Pauley, III
Bankruptcy Judge Mark B. McFeeley
Bankruptcy Judge Eugene R. Wedoff
Bankruptcy Judge James D. Walker, Jr.
Bankruptcy Judge Christopher M. Klein
Dean Lawrence Ponoroff
K. John Shaffer, Esquire
J. Michael Lamberth, Esquire
G. Eric Brunstad, Jr., Esquire
J. Christopher Kohn, Esquire

The following persons also attended the meeting:

Professor Jeffrey W. Morris, Reporter
Circuit Judge Harris L. Hartz, liaison from the Committee on Rules of Practice and Procedure (Standing Committee)
Bankruptcy Judge Karen Overstreet, as liaison from the Committee on the Administration of the Bankruptcy System (Bankruptcy Administration Committee)
Peter G. McCabe, secretary of the Standing Committee
Clifford J. White, III, Acting Director, Executive Office for U.S. Trustees (EOUST)
Donald F. Walton, Acting Deputy Director, EOUST
Mark A. Redmiles, National Civil Enforcement Coordinator, EOUST
Monique Bourque, Chief Information Officer, EOUST
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
Matthew I. Hall, Rules Clerk for Judge David F. Levi
John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the U.S. Courts (Administrative Office)
James Ishida, Rules Committee Support Office, Administrative Office
James H. Wannamaker, Bankruptcy Judges Division, Administrative Office
Stephen "Scott" Myers, Bankruptcy Judges Division, Administrative Office
Robert J. Niemic, Federal Judicial Center (FJC)
Philip S. Corwin, Butera & Andrews, Washington, D.C.
Matthew R. Goldman, Baker & Hostetler LLP, Cleveland, OH

The following persons were unable to attend the meeting:

Circuit Judge R. Guy Cole, Jr., member
District Judge Laura Taylor Swain, member
Bankruptcy Judge Dennis Montali, liaison from the Bankruptcy Administration Committee
Patricia S. Ketchum, advisor to the Committee

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

Introductory Matters

The Chairman welcomed the members, liaisons, advisers, staff, and guests to the meeting. He expressed the regrets of Judge Cole, Judge Swain, Judge Montali and Ms. Ketchum who were unable to attend the meeting.

Agenda Item 1; Approval of Minutes for Chapel Hill Meeting

The Chairman directed the Committee's attention to the draft minutes of the March 9-10, 2006 meeting in Chapel Hill (*Agenda Item 1*). Judge Wedoff moved that language be inserted in the minutes to reflect that in approving the Small Business Disclosure Statement form recommended by the Business Subcommittee, the Committee discussed and acknowledged that its recommendation *did not* preclude the adoption of a similar form prepared by the EOUST as an alternative. **The Committee approved the Chapel Hill minutes as revised by Judge Wedoff's suggestion without objection.**

Agenda Item 2; Oral Reports on Meetings of other Rules Committees

The Chairman and Mr. McCabe briefed the Committee on the June 2006 meeting of the Standing Committee. Copies of the Standing Committee minutes were included in the materials at Agenda Item 2.

In Judge Montali's absence, the Chairman asked Judge Overstreet to report on the most recent meeting of the Bankruptcy Administration Committee (the "Bankruptcy Committee"). The Chairman asked that the minutes reflect Judge Montali's strong contributions to the Committee over the years.

Judge Overstreet described a number of issues considered by the Bankruptcy Committee including budget issues related to the low level of case filings post-BAPCPA. She also recapped recent fee increases, and fee increases under consideration.

Judge Walker reported on the most recent meeting of the Advisory Committee on Civil Rules. He said the Civil Rules Committee discussed Rule 12 notice pleading, and the need for particularity in summary judgment motions. He said there was also a lot of discussion about Rule 26 with respect to the admissibility of expert work product. Finally, he said the Civil Rules Committee had also been busy with the time computation project.

Judge Klein reported on most recent meeting of the Advisory Committee on Evidence Rules. He said the primary issue before the Evidence Committee concerned waivers, and that it had published a new proposed Rule 502, dealing with waiver of attorney-client privilege and work product.

Action Items

Agenda Item 3A; Rule 9011 Amendment Proposals

The Chairman and the Reporter recapped a letter sent by Senators Grassley and Sessions suggesting that the rules be amended to ensure that attorneys comply with the addition of §707(b)(4)(C) and (D) to the Bankruptcy Code.

By way of background, the Chairman reminded the Committee that it had previously considered a similar suggestion from Senator Grassley made shortly after the Interim Rules were published, and had concluded that it was not necessary to amend Rule 9011 to simply restate the statute. Despite this conclusion, however, the Committee asked the Subcommittee on Attorney Conduct to consider, in light of the amendments to § 707, as well as the sense of Congress provision set forth at § 319 of the 2005 Act, whether the forms or Rule 9011 should be amended.

Although the subcommittee believed that the statement of Congressional intent at § 319 was sufficiently strong to consider a change to Rule 9011, it was unable to recommend specific language. Further, it identified a number of drafting problems that would impact the current reach of Rule 9011. For example, Rule 9011 already contains language *similar*, but not identical to the language found in § 707(b)(4)(C). However, while Rule 9011 applies to all attorneys in all chapters, § 707(b)(4)(C) only applies in chapter 7. Repeating the § 707(b)(4)(C) statutory language in Rule 9011, and limiting its effect to chapter 7 cases, might infer that that there is different standard for the applicability of Rule 9011 outside of chapter 7. And the standard could change in cases that convert from chapter 11 or 13 to chapter 7. Ultimately, the subcommittee drafted alternative proposed changes to Rule 9011 for the Committee to consider. The subcommittee also recommended including language from § 707(b)(4)(D) in the debtor attorney certification at Exhibit B on Form 1.

Mr. Lamberth , a member of the subcommittee, elaborated on the subcommittee's proposal to enhance the debtor attorney certification on the petition. He thought adding the language from § 707(b)(4)(D) would reinforce the notion (new under the 2005 Act) that in signing the petition the attorney was representing that he or she "has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect."

Judge Wedoff agreed that a "Miranda type" warning in the Chapter 7 version of the petition would probably benefit attorneys and remind them of their obligations under the statute. He noted, however, that § 704(b)(4)(D) only applies in chapter 7 consumer cases, and he wondered whether the Committee should consider expanding the reach of the warning to all petitions. A majority of members agreed in concept with a warning of some sort on the petition, but thought it should be limited to chapter 7 consumer cases. And Mr. Brunstad suggested that the problem of creating a special petition form for use only in chapter 7 consumer cases could be avoided by using the underlined language at the top of page 94 of the materials, but changing the first clause from ~~In a chapter 7 case~~ to "In a case in which § 707(b)(4)(D) applies, ...".

The Chairman asked whether the rule could or should be amended to parrot the language in § 704(b)(4)(C) and (D) and § 319 of the 2005 Act. Mr. Lamberth, said he thought that Rule 9011(a) *already* implements § 707(b)(4)(C), although with slightly different wording. He noted that the subcommittee recommended *against* expanding Rule 9011 to cover papers submitted to the trustee because it would dramatically expand the scope of the rule and could create situations that might actually delay delivery of documents requested by the trustee while the debtor's counsel undertook steps to verify the information in the requested documents. Instead, he recommended that if a change was made to Rule 9011 that it be limited to papers submitted to the court, similar to Alternative A of the Reporter's memo (at pages 85-86 of the Agenda book).

On behalf of the EOUST, Mr. White agreed with member comments that putting a notice in the petition would likely help educate the bar and would generally improve the accuracy of the schedules. He disagreed with the subcommittee's limited suggested change to the rule, however and instead supported expanding any change to include papers submitted to the trustee, as suggested by the § 319 sense of Congress, and also expanding the reach of any change to all attorneys, not just consumer debtor attorneys in chapter 7. In response, a number of committee members reiterated concerns that attorney fees in "Enron style cases" would skyrocket and case progress could grind to a halt if every paper submitted to the trustee in a case was "submitted only after ... debtors' attorneys ... made reasonable inquiry to verify ..." the information in the papers.

Judge Klein identified a new issue of sanctions he thought the Committee should consider before recommending any change to Rule 9011. He noted that §704(b)(4)(A) and (B), which are new in the 2005 Act, give the bankruptcy judge the ability to shift fees "on its own initiative" if it finds a violation of §707(b) or Rule 9011. Because Rule 9011 currently requires that motion requesting sanctions be filed before fees can be awarded, Judge Klein wondered whether there could be any change to the rule without incorporating all of the language in § 707(b)(4), as opposed to just that set out in § 707(b)(4)(C) and/or (D).

After additional discussion, the Committee considered the following motions:

- Should the attorney certification on the petition be modified to include § 707(b)(4)(D) language "in any case where § 707(b)(4)(D) applies"? **The motion carried without opposition.**
- Should the Consumer Subcommittee be directed to draft a change to Rule 9011 to apply the § 707(b)(4)(D) language in all consumer cases? **Six members voted for the motion and six voted against the motion.**

- Should any change to the rule be limited to incorporating language from § 707 (as opposed to § 319)? **Eight members voted in favor of limiting any change in the rule to incorporating language from § 707.**
- Should the Consumer Subcommittee be directed to draft a change in the rule to incorporate the statutory language "in a case where § 707(b)(4)(D) applies?" **Seven members voted in favor, four against.**
- Judge Schell moved that the Committee consider incorporating § 707(b)(4)(C) language in Rule 9011 as well. Mr. Brunstad said that the issue should be returned to the subcommittee to consider along with the sanctions issue identified by Judge Klein. **The Committee voted against incorporating § 707(b)(4)(C) language in the rule at this time.**

In light of the alternative votes, the Chairman asked the subcommittee to draft an amendment to Rule 9011 incorporating the statutory language "in a case where § 707(b)(4)(D) applies;" to consider whether the change should be made applicable to all consumer cases regardless of chapter; to consider incorporating § 707(b)(4)(C) language in the rule; and to consider the applicability of the court's sanctioning power under § 707(b)(4)(A) and (B) in light of the various proposed changes to Rule 9011.

Agenda Item 3B; Judge Mannes's Corporate Representation Proposal

The Reporter summarized the Subcommittee on Attorney Conduct's review of a renewed request from Judge Paul Mannes to allow non-lawyer representation of corporations in matters involving less that $5,000. In his proposal, Judge Mannes noted that many states now allow such representation in small claims courts. He suggested a rule change that would allow the court to authorize non-attorney corporate appearance in small matters if such representation would be permitted under state law.

The subcommittee was spilt in its recommendation and ultimately recommended that no action be taken. No subcommittee member was in favor of changing the national rules; however two members were in favor of suggesting to Judge Mannes that a local rule might be adopted. And one subcommittee member voted against recommending either a national or local rule on the basis that actual practice may already reflect Judge Mannes's proposal. **After discussion, the Committee agreed with the subcommittee that no action should be taken.**

Agenda Item 4A; Chapter 15 Rules

The Reporter provided an overview of the work by the Subcommittee on Technology and Cross Border Insolvency regarding several new rules recommended by Judge Samuel Bufford for use in chapter 15 cases. He stated that after deliberation, the subcommittee suggested three new chapter 15 specific rules for the Committee's consideration: (i) a new Rule 15001 that would require the debtor to identify its center of main interests on the petition, and that would establish a procedure for challenging the debtor characterization; (ii) a new Rule 15002 that would make all Part 7 rules of the Federal Rules of Bankruptcy Procedure applicable in chapter 15 cases; and (iii) a new Rule 15003 that would govern the establishment of protocols concerning coordination of the case with an ancillary of cross-border case. The Reporter said

that the subcommittee recommended adoption of the new Rules 15001 and 15003, but that it was split over the need for proposed Rule 15002.

After discussion, the Committee decided that proposed Rule 15002 was unnecessary because Rule 7001 already sets out the scope of the Part 7 rules, and nothing in Rule 7001 suggests that the Part 7 rules would not apply in a chapter 15 case.

With respect to proposed Rule 15003, Mr. Brunstad thought that 10 days notice of a hearing on a protocols motion was too short. Judge Klein agreed that 10 days notice was too short and suggested 20 days instead. He also suggested putting the proposed 15003 language in place of the existing language in Interim Rule 5012. Judge Overstreet suggested extending notice to parties who had made filings in the case requesting special notice, and Judge Klein suggested changing the title of the new Rule 5012.

In light of Judge Klein's suggestion that proposed 15003 be redesignated as Rule 5012 (to replace existing Interim Rule 5012 as the national rule in 2008), the Committee asked the Reporter to redesignate proposed Rule 15001 as a new proposed rule within the current rules numbering scheme.

The Reporter said the subcommittee also reviewed chapter 15 related comments to existing rules (as modified by the Interim Rules) received from the Commercial Law League of America ("CLLA") (comments at tab 18 of the materials), and from Daniel Glosband, the principal drafter of the model law that became chapter 15 (Mr. Glosband's comments are described in the Reporter memo at tab 4A).

The CLLA suggested changes to existing interim rules so that language would more closely track the terms used in chapter 15. The Reporter said that the CLLA suggestions were stylistic and would be considered at the March meeting along with other comments on the published rules.

Mr. Glosband suggested a change to Rule 1010 to prevent gamesmanship by eliminating any differences in service based on whether the petition designated the proceeding as a "foreign main" or a "foreign nonmain" proceeding. The Reporter recommended Mr. Glosband's suggested change.

And Mr. McCabe suggested a technical change to Rule 9001 to add 11 U.S.C. § 1502 to the list of definitional sections in that rule that govern the meaning of statutorily defined words and phrases when the same phrases are used in the rules.

The Committee approved all subcommittee suggested changes to the "chapter 15 rules" as modified by the member suggestions at the meeting. The Reporter compiled and distributed the changes in a handout the next day and the Committee approved proposed new Rules 1004.2 (in place of proposed Rule 15001 in the agenda materials), Rule 5012 (in place of proposed Rule 15003 and Interim Rule 5012), and also approved changes to Rules 5009, 1010, 9001 and 2002. The Chairman referred all changes to the Style Subcommittee for final revisions.

Agenda Item 4B; Smart Forms

The Chairman provided the Committee with an overview of the efforts by the AO and the EOUST to implement a voluntary standard for data-enabled forms, also known as "smart forms." He explained that smart forms, a subset of "fillable forms," use a programming code to "tag" and store the data entered in the form in a manner that makes the tagged information easily retrievable.

The Chairman said that the EOUST and the AO had held several meetings with forms vendors seeking voluntary adoption of a smart forms standard to facilitate the capture of certain statistical data required under BAPCPA. So far, however, only one of the software vendors appeared able or willing to implement smart forms unless such forms were mandatory. He said that because of the lack of vendor interest in a voluntary standard, the EOUST had recently approached him and staff at the AO and requested that the Committee consider amending the rules to *require* the use of smart forms.

The Chairman said that he, the Reporter, and AO staff discussed the EOUST's request and concluded that it was probably not necessary propose a new rule requiring the use of smart forms because Rule 5005 (as amended effective December 1, 2006) allows courts to *require* that documents filed electronically conform to technical standards established by the Judicial Conference. They also thought that the EOUST's request raised policy issues and should be considered by the Bankruptcy Committee, the Information Technology Committee, and the Court Administration Case Management Committee instead of the Rules Committee.

The Chairman said the EOUST was actively pursuing a smart forms agenda item with the appropriate committees, but was attempting to "fast track" its efforts as much as possible, and that it was seeking this Committee's endorsement of its effort to change the technical standard.

Mr. White, acting director of EOUST, distributed a letter he recently sent to James Duff, the Director of the Administrative Office, regarding the need for smart forms. He said that the technical standards were set, but that he did not think vendors would implement smart forms unless they were mandatory. He said that the EOUST needs smart forms to facilitate new statutory duties including: automatic sorting of cases above and below state income medians; establishing asset and liability norms – and deviations from such norms – so that debtor audits can be done; and to facilitate studies on such things as household goods valuations and identification of domestic support orders.

Mr. White said that earlier in the week he had spoken with Mr. McCabe and received a commitment from the AO to put this matter before the Bankruptcy Administration Committee and the IT Committee with the purpose of getting the issue in front of the Judicial Conference as soon as possible. He said that although he did not believe there was significant opposition to smart forms, he thought some sort of endorsement from this Committee would facilitate their adoption. He asked that the Committee either endorse the letter he had just sent to the Director, authorize the Chairman to endorse the letter, or possibly send its own letter to the Director recommending smart forms.

Mr. McCabe said from the AO's perspective, adoption of smart forms was more of a long-term solution to its statutory data-gathering obligations, and that it had already made changes to CM/ECF to address its current obligations under BAPCPA. He reported that the AO was working with the EOUST, and was trying to get the smart forms agenda item in front of the appropriate committees as soon as possible. Although Mr. McCabe thought there were still some problems with the current technical standards, he did not think there was significant opposition to the concept of smart forms.

Judge Walker suggested that the Committee make a "Sense of Committee" motion that smart forms should be mandatory. And Mr. Waldron suggested that the Committee should also consider whether smart forms would be mandatory just for vendors, or for all parties. **After additional discussion, the Committee unanimously passed a motion establishing that it was the Sense of the Committee that the Committee and others take all necessary steps to advance the cause of data enabled forms in conjunction with the efforts of the AO and the Bankruptcy Administrator Committee.**

Agenda Item 5A; Separate Document Rule

The Chairman said that the Subcommittee on Privacy, Public Access, and Appeals had met be teleconference to discuss whether to recommend amending the bankruptcy rules that require a separate document for every judgment in a contested matter or adversary proceeding. He said that subcommittee recommended that the separate document rule continue to be applied in adversary proceedings, but that it was split on whether it should be applied in contested matters.

Committee members expressed strong opinions on both sides of the issue. Judges Klein and Walker thought that entry of a separate document for the judgment (distinct from the opinion) clarifies when a judgment takes effect and when time for an appeal begins to run. Mr. Waldron said that from the clerk's perspective, a separate document was very helpful because it eliminated guesswork by deputy clerks who might otherwise have to review orders and decisions in detail to determine whether a judgment had been made.

Judge Wedoff, and Mr. Brunstad argued against a separate document rule in contested matters. Judge Wedoff pointed out that unlike district court, there are many instances in contested matters where a separate document doesn't make sense, and there are lots of courts that do not enforce the requirement in some contested matters, such as a lift stay that is settled through a consent order. He said that in such courts the separate document rule merely creates a trap for the unwary. Mr. Brunstad added that even in district court practice, Rule 58 carves out a number of situations where a separate document is not required. And although it might be possible to carve out similar "bankruptcy specific" contested matters that don't require a separate document, Mr. Brunstad thought the better approach would be eliminate the requirement in contested matters altogether.

There were several comments about how the separate document requirement currently in Rule 9021 is being interpreted. One member believed that a strict reading of Rule 9021 requires

the judge to essentially sign two pieces of paper (the decision, and then the judgment) before an appeal could be taken. Even if such a reading were inaccurate, the member thought it would create unnecessary litigation. Other members (who supported the separate document rule) thought the "separate document" requirement in Rule 9021could be satisfied with a minute entry from the bench which could be docketed separately from the decision, or that the clerk's entry itself could satisfy the requirement.

After additional discussion, the Committee voted to eliminate the separate document rule in contested matters by a vote of 7-6.

The Committee then discussed how to amend Rule 9021 to eliminate the requirement for a separate document in contest matters, while leaving it in effect for adversary proceedings. **After discussion, the Committee voted 6-2 in favor of creating a new Rule 7058 that would make Rule 58 applicable in adversary proceedings. The Committee then voted, without dissent, in favor of: (i) amending Rule 9021 to say "A judgment or order is effective when entered under Rule 5003", and (ii) amending Rule 7052 to clarify that the reference in Civil Rule 52 to Civil Rule 58 should be construed in bankruptcy cases as a reference to Rule 5003.**

The Reporter provided a draft of new Rule 7058 and the changes to Rules 7052 and 9021 in a handout the next day. After reviewing drafts, the Committee approved the changes and directed that they be submitted to the Style Subcommittee.

Agenda Item 5B; Disclosure Statements and Modified Plans Under Rule 3019

Tabled.

Agenda Item 6; Report of the Forms Subcommittee

The Reporter said that the Forms Subcommittee had met by teleconference to consider possible amendments to Official Forms 10, 19A and 19B, and to consider whether to recommend that Director's Form 240 be revised and promulgated as an official form.

Form 240. Judge Walker reviewed suggested changes to Form 240 described at Agenda Item 6. He noted that the form was completely rewritten in 2005 to incorporate changes required by BAPCPA and that there had been several modifications to the form over the past year. He said that the AO was now asking the Committee to review and comment on a reorganization of the boxes on page one of the form, and changes to the attached order.

Judge Walker said the Forms Subcommittee approved all the described changes to Form 240, but that it did not recommend making the form an official form at this time because it would be harder to modify in the future. Judge Wedoff thought making the form an official form would be a good idea. **After additional discussion the Committee approved all the changes set forth at Agenda Item 6, and decided to table the issue of whether the form should be an official form until the fall meeting of 2007.**

Form 10. The Reporter described an issue in Form 10 with respect to the hanging paragraph at § 1325(a)(9) of the Bankruptcy Code. He said that there was a concern by some creditors that if they correctly described that value of their collateral as being less than the amount of their claim (as required by the form) that they might waive the right to "hanging paragraph" treatment of the claim as fully secured when the claim was based on purchase money security interest created in a motor vehicle within 910 days of the petition date.

Some subcommittee members suggested that a box could be put on Form 10 that would allow the creditor to identify its claim as a "910 claim." But the majority of the subcommittee thought such a box would likely be confusing and that the information was not really useful. **After discussion, the Committee agreed with the subcommittee and voted against making any change to Form 10 with respect to the 910 claim issue.**

Forms 19A and 19B. The Reporter said § 110(b) of the Bankruptcy Code requires bankruptcy petition preparers to sign the documents prepared for filing in bankruptcy cases and to list their name and address on the document as well. He said that Form 19A was designed to meet that statutory requirement. However § 110(b)(2) places additional requirements on bankruptcy petition preparers including the requirement that "before preparing any document for filing ..., the bankruptcy petition preparer shall provide to the debtor a written notice ...". Official Form 19B was designed to address the § 110(b)(2) requirement. Because all of the information in Official Form 19A is also in Official From 19B, and because 19B must be filed along with any document petition preparer prepares for filing in the case, the AO has been asked whether Form 19A could be abrogated and Form 19B be redesignated as Form 19. **A motion to combine both forms into a redesignated Form 19 (as described in the agenda materials) carried without opposition.**

Agenda Item 7; Review of Possible Change to Interim Rule 1007(c)

Judge Klein provided an overview of a problem with Interim Rule 1007. He said that some debtors fail to file the required statement concerning completion of a personal financial management course before the Rule 1007(c) deadline and the case is closed without a discharge. The debtor then attempts to reopen and the court is required to find cause to allow reopening. The Reporter suggested a change to 1007(c) that would allow the debtor to reopen the case without a showing of cause.

Some members thought getting rid of the deadline would be a better idea. But Judge Klein said that one reason to maintain the deadline is so the clerk has a date certain to close the case. The Chairman moved to table the matter until the spring meeting so that the consumer subcommittee could draft a fix. **The motion to table carried without opposition.**

Agenda Item 8; Review of Time Computation Template

Judge Klein reported on the efforts of the Time-Computation Subcommittee to establish a uniform method of counting time throughout all federal rules. He said a template has already been created (proposed Civil Rule 6 at page 232 of the agenda materials), and that the Committee has been asked to review the template and determine its applicability to the bankruptcy rules. Mr. Kohn suggested that there would be a need to ensure that the proposed

changes did not override a proscribed statutory period. And there was an extensive discussion among Committee members about whether the proposed changes adequately addressed many of counting problems that occur in bankruptcy cases. The Reporter suggested that a committee note to a bankruptcy version of proposed Civil Rule 6 could address certain counting problems by adding examples.

After additional discussion, the Chairman said he would divide up the list of deadlines complied by the Reporter among several committee members and ask for reports at the spring meeting.

Information and Discussion Matters

Agenda Item 9; Civil Rules Restyling Project.

The Chairman said that only a few bankruptcy rules would be impacted by the civil rules restyling project. He said that he and the Reporter would address changes and would report back to the Committee at the spring meeting.

Agenda Item 10; Oral Report on Joint Subcommittee on Venue and Chapter 11 Matters.

The Chairman and John Shaffer provided an oral report of the joint subcommittee's work.

Agenda Item 11 – Judge Walker Letter Regarding Future Format of Forms

The Chairman said Judge Walker's letter was a long range look at how information currently collected through forms could be collected and utilized more efficiently. Judge Walker added that one problem with the form format in the electronic era is fitting information into a particular box. He thought that developing an input system that allowed the filer to enter the information once so that the court or a program could develop produce forms as needed would be much less cumbersome.

Mr. McCabe suggested creating a working group that would develop a prototype to illustrate the concept, and then bring in vendors to develop how it could be implemented. In his view, a change in the way forms information was collected raised issues beyond the scope of the rules process and he thought that the working group should include members from outside the rules committees. And Mr. Shaffer said the project would likely require as much thought about how information comes out of the system as to how it gets into the system.

Agenda Item 12; Rules Tracking Docket.

The Chairman asked to Committee to review the rules tracking docket for any needed changes.

Agenda Item 13; Oral Report on Electronic Submission of Agenda Materials.

The Chairman told the Committee that there would likely be a shift in the future toward distributing agenda materials in electronic from only.

Agenda Item 14; Report on "fillable PDF" Forms on the U.S. Courts Website.

The Chairman said that this item was addressed in the context of the EOUST's report on smart forms.

Agenda item 15; Report on Pending Legislation to Increase Chapter 7 Filing Fees.

Mr. Wannamaker reported on proposed changes to filing fees that are currently being considered in Congress. If implemented, the changes would require some changes to Form 3B (the existing in forma pauperis form) and possibly to some Director's Forms.

Agenda Item 16; Report on Director's Forms 104 and 281.

Mr. Wannamaker reported on recent changes to Director's Forms 104 and 281. He explained that the change to Form 104, the adversary proceeding coversheet, was timed to coincide with the implementation of CM/ECF 3.1. He said that the primary change was to increase and regroup the nature of suit codes to correspond with the subdivisions of Rule 7001. The changes to Form 281, Appearance of Child Support Creditor, dealt with privacy matters. **All members voted in favor the changes.**

Agenda Item 17; Comment by Judge Geraldine Mund.

The Chairman reviewed Judge Mund's comment that the rules currently do not provide for any restriction on payment to a bankruptcy petition preparer in situations where the debtor subsequently seeks a waiver of the filing fee. The effect of granting the waiver would be that the petition preparer would be paid, but the chapter 7 trustee would not. Judge Mund doubted that Congress intended such a result. There was a split of opinion on the Committee as to whether a change was needed. **The Chairman referred the matter to the Consumer Subcommittee.**

Agenda Item 18; Commercial Law League Position Paper on Chapter 15.

The Reporter indicated that the suggested stylistic changes were in the nature of comments and would be considered along with any other comments to the affected rules.

Agenda Item 19; Request from CM/ECF Working Group to Review Rules 8006 and 8007 Concerning Transmission of the Record on Appeal.

The Chairman referred the matter to the Appeals Subcommittee.

Agenda Item 20; Next Meeting Reminder

The Spring Meeting will be March 29 and 30, 2007 in Marco Island, Florida. The Chairman asked members to e-mail suggested locations for the Fall 2007 meeting. He said the current dates under consideration were September 6 and 7, 10 and 11, or 12 and 13.

Supplemental Agenda Item A; ABA Attorney Discipline Proposal.

The Chairman reviewed an ABA proposal to amend the rules to clarify the authority of the bankruptcy courts to discipline attorneys. He said he was not sure the proposal was really a rules issue, and suggested referring it to the Attorney Conduct Subcommittee.

Mr. Brunstad provided background for the proposal stating that he thought ABA was attempting to head-off a legislative response. Mr. Rabiej said that the Judicial Conference first addressed this issue about 25 years ago and came up with model local rules. He said that Standing Committee also attempted to address the issue about 15 years ago but that it turned into a quagmire because so many players were involved.

Several members were in favor of the Chairman's suggestion that the matter should considered by a subcommittee. And Mr. Walton said that a representative of the EOUST should participate in any subcommittee meetings on the matter. **After additional discussion, the Chairman referred the matter to the Attorney Conduct Subcommittee and requested a report in the spring.**

Supplemental Agenda Item B; Possible Rule 4004 Amendment

Judge Wedoff described a need to amend Rule 4004. He said that § 1328(f) provides a limitation on a chapter 13 discharges that did not exist before, which raises several issues. For example, does the 2 or 4 year limitation period begin on the filing date of the prior case, or on the date of the prior discharge? And how will the change be enforced?

In anticipation of this agenda item, Mr. Waldron surveyed the court clerks and found that most courts will deny a discharge in a chapter 7 case (which has historically had time-related discharge limitations) only if someone initiates an objection to discharge complaint. He said that many courts, however, will close the case without a discharge if no complaint is filed.

Judge Wedoff suggested revising Rule 4004 to require an objection to deny the discharge in chapter 13, as most courts already require in chapter 7. Mr. Brunstad suggested sending the matter to a subcommittee. Judge Overstreet agreed the issue should be considered by a subcommittee, and she suggested that the complaint procedure is too cumbersome to deal with this matter, and that a motion procedure might be better. **The Chairman referred the matter to the Consumer Subcommittee.**

Supplemental C; Proposed Revision to Form 8

The Reporter reviewed a suggestion from Bankruptcy Judge Elizabeth L. Perris to revise Form 8, Debtor's Statement of Intention, to clarify that debtors must indicate both whether the property is claimed as exempt, and whether the debtor intends to surrender, reaffirm, or redeem the property. **The Chairman referred the matter to the Consumer Subcommittee.**

Supplemental D; Recommendation to Adopt Rule Expanding Methods to Invest Estate Funds

The Reporter reviewed a suggestion from the law firm of Baker & Hostetler that the rules be amended to allow for the investment of estate funds in certain approved accounts without the need to post a bond. Providing background, the Reporter said that 11 U.S.C. §345 generally requires the trustee or DIP to seek a court order to invest estate funds in a non-FDIC insured account without posting a bond or collateral for the investment. Baker & Hostetler suggested a rule that would provide investment safe harbors that the trustee could use without providing a bond or collateral. The Reporter identified at least two problems with the proposal: first, it was unclear whether a rule could be drafted that does not conflict with the statutory language in § 345; second, because the issue seemed to address policy, he thought it might more appropriately be considered by the Bankruptcy Administration Committee.

Mr. Walton advocated giving the matter to a subcommittee to determine whether an appropriate rule could be drafted. But Judge Wedoff questioned whether any rule could be drafted that would comply with § 345. Both Judge Wedoff and Judge Overstreet thought that it might make more sense for the EOUST to create a proposed general order that could be adopted by courts locally.

Judge Hartz indicated that the standing committee is currently looking at the limits of a standing order vs. a local rule. Mr. Shaffer thought that this was not rules issue. And Mr. Brunstad thought it should be considered by a subcommittee.

The Chairman referred the matter to the Business Subcommittee and indicated that he would send a copy to the chair of the Bankruptcy Administration Committee, Circuit Judge Marjorie O. Rendell. Judge Overstreet said she would present the matter to Judge Rendell.

Potential Changes to Schedules I and J and the IFP Waiver Form.

Mr. Wannamaker said he thought there would be a need to make certain technical changes to schedules I and J and the IFP notice with respect to net income. He said he would prepare something for review by the Forms Subcommittee.

Administrative Matters

The Chairman informed the Committee that a hearing on the rules published for comment in August, 2006 is tentatively scheduled for January 22, 2007. He requested that members keep their calendars clear in case hearings were held.

Judge Walker moved that the meeting be adjourned. Judge Wedoff seconded the motion. The Chairman commented that this would be Judge Walker's last meeting, as his second term on the Committee was expiring. And he thanked Judge Walker for his service. He then asked that the minutes reflect that for the first time in six years, Judge Walker made a motion that was seconded by Judge Wedoff. The meeting was adjourned.

Respectfully submitted,

Stephen "Scott" Myers

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JUDGE ZILLY, CHAIR

RE: STANDING COMMITTEE'S CONCERNS ABOUT RULES 7052, 9021, AND NEW RULE 7058

DATE: FEBRUARY 27, 2007

In 2002, Rule 58 F.R.Civ.P. was amended to provide that if the court did not issue a judgment on a separate document, then appeal of the judgment must be taken not later than 150 days after the docketing of the judgment or order being appealed. Bankruptcy Rules 9021 and 5003 have governed the entry of judgments in the bankruptcy case as well as in adversary proceedings and contested matters. The amendment to Civil Rule 58 provided an impetus for the Bankruptcy Rules Committee to study the issue anew.

The following is the text of Rules 7052, 9021 and proposed new Rule 7058 approved at our September 2006 meeting and presented in January 2007 to the Standing Committee for publication. These rules were recommended as a package of amendments to implement changes to the Bankruptcy Rules regarding the application of the "separate document" requirement for judgments.

RULE 7052. Findings by the Court

Rule 52 F. R. Civ. P. applies in adversary proceedings. <u>The reference in Rule 52 F. R. Civ. P. to the entry of judgment under Rule 58 F. R. Civ. P. means the entry of a judgment or order under Rule 5003(a).</u>

COMMITTEE NOTE

The rule is amended to clarify that the reference in Rule 52 F. R. Civ. P. to Rule 58 F. R. Civ. P. and its provisions is construed as a reference to the entry of a judgment or order under Rule 5003(a).

RULE 7058. Entry of Judgment

Rule 58 F. R. Civ. P. applies in adversary proceedings. The reference in Rule 58 F. R. Civ. P. to the civil docket means the docket maintained by the clerk under Rule 5003(a).

COMMITTEE NOTE

This rule makes Rule 58 F. R. Civ. P. applicable in adversary proceedings and is added in connection with the amendments to Rule 9021.

Rule 9021. Entry of Judgment

~~Except as otherwise provided herein, Rule 58 F. R. Civ. P. applies in cases under the Code. Every judgment entered in an adversary proceeding or contested matter shall be set forth on a separate document.~~ A judgment or order is effective when entered ~~as provided in~~ under Rule 5003. ~~The reference in Rule 58 F. R. Civ. P. to Rule 79(a) F. R. Civ. P. shall be read as a reference to Rule 5003 of these rules.~~

COMMITTEE NOTE

The rule is amended in connection with the amendment that adds Rule 7058. The entry of judgment in adversary proceedings is governed by Rule 7058, and the entry of a judgment or order in all other proceedings is governed by this rule.

The Standing Committee approved the recommendations of our Committee which will have the effect of making Rule 58 of the Federal Rules of Civil Procedure **only** applicable in adversary proceedings. Without changing the effect of the proposed rule changes, some members of the Standing Committee asked us to reconsider the use of certain words in the proposed rules we had presented for approval. This memo outlines the issues raised and suggests some changes. These proposals have also been reviewed by Dean Ponoroff and Jeff Morris and I believe they concur in the recommendation.

Rule 7052

Add "In such proceedings," at the beginning of the second sentence. **I recommend we make this change but use the words "In these proceedings" and avoid using "such".**

Change "means" in the second sentence to "shall be read as". We use similar wording in present Rule 9021 when we say "The reference in Rule 58 F.R.Civ. P. to Rule 79(a) F.R.Civ.P. shall be read as a reference to Rule 5003 of these rules". Dean Ponoroff had recommended to the Style Committee changing "means" to "shall be read as a reference to" to conform to Rule 9021. In light of the Standing Committee concerns and the Dean's recommendations, **I recommend we change "means" to "shall be read as a reference to".**

Rule 7058

Add "In these proceedings," at the beginning of the second sentence. **I recommend we make this change.**

Rule 9021

Change the word "effective" in the first sentence of the proposed rule. No substitute was suggested by members of the Standing Committee. **No change is recommended here.** This would be a change to the existing language of Rule 9021. **Please note here that this has never been discussed by the Style Subcommittee.**

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: COMMENTS SUBMITTED PRIOR TO JANUARY 10, 2007 ON PROPOSED RULES AND FORMS

DATE: FEBRUARY 28, 2007

We have received 12 comments up to January 10, 2007, regarding the rules and forms published in August 2006. Four of the comments are addressed to the means test forms, Official Forms 22A, 22B, and 22C. These are comments 06-BK-003, 06-BK-005, 06-BK-009, and 06-BK-011. The remaining comments, as well as a portion of one of the comment 06-BK-011 on the means test forms, address other rules or forms. This memo summarizes the comments on matters other than the means test and will recommend whether to send the comments to a Subcommittee for consideration prior to the March meeting. The Subcommittees have taken action on these comments and have recommendations for the Advisory Committee. A separate memo will summarize the comments submitted hereafter and up to the February 15 deadline for the submission of comments.

Judge Geraldine Mund (Bankr. C.D. Cal.) submitted **Comment 06-BK-001** in which she asked the Committee to reconsider Rule 1006 to prevent the payment of fees to petition preparers when debtors obtain a waiver of the filing fee. She suggests that it is improper to allow the petition preparer to recover a fee in the case when the court has to take its action without any funding by the debtor. The Advisory Committee had an opportunity to consider this suggestion at the meeting in Seattle in September, 2006, and concluded that the rule should not be amended. The Committee determined that the debtor's access to the bankruptcy courts should not be barred on the grounds that the debtor had paid a petition preparer to assist in the preparation of the case. **Thus, no further action is necessary regarding this comment.**

Judge Elizabeth Perris (Bankr. D.Ore.) Submitted **Comment 06-BK-002**. She has asked the Committee to consider revising Official Form 8 which is the Chapter 7 Individual Debtor's Statement of Intention. She suggests that the existing form is confusing to many debtors who do not complete the form fully. For example, they often indicate that they intend to claim the listed property as exempt, but they may need to take further action (redemption or reaffirmation) in order to be entitled to retain the property. **The matter is pending before the Consumer Subcommittee which will be making a recommendation to the Advisory Committee for changing Form 8.**

Mr. Thomas Yerbich of Alaska submitted **Comment 06-BK-003. This comment is**

addressed to the means test and will be forwarded to Judge Wedoff for his review.

Mr. Mark Diamond, Operations Manager of the Bankruptcy Court for the Southern District of New York, submitted **Comment 06-BK-004** which is addressed to Official Form 23, the form by which individual debtors certify that they have completed an instructional course in personal financial management. Completion of such a course is a condition to the entry of a discharge, and the form is intended to advise the court that the condition has been met. Mr. Diamond suggests that the form be expanded to separate disability and incapacity as grounds for a debtor to be exempted from meeting the requirement, and he proposes that the form incorporate the statutory definitions of those terms. He also recommends that the form include a reference to the United States trustee website which presumably would identify any districts in which there is a waiver of the course completion requirement. I think that the slight expansion of the form is a valuable suggestion and could serve to better focus debtors' attention on the standards they must meet to be exempted from the personal financial management course requirement. I do not think it is necessary to provide a cross reference to the United States trustee website for debtors to determine if their district is exempt from the requirement. The clerk in each district will be very much aware of whether any exemption exists for their particular district, so I do not believe any amendment is necessary to implement that suggestion. **I would suggest that the matter be forwarded to the Forms Subcommittee for its review.**

Mr. Thomas Yerbich of Alaska submitted **Comment 06-BK-005. This comment is addressed to the means test and will be forwarded to Judge Wedoff for his review.**

Mr. George Kamen of Texas submitted **Comment 06-BK-006** which is addressed to the amendments to Rule 4003(b)(2) which would permit a trustee to object to a fraudulently claimed exemption at any time up to one year after the case is closed. Mr. Kamen suggests that since the trustee is no longer serving in the case once it is closed, the rule should refer to the "former trustee" rather than the "trustee." I do not believe that any confusion will result from referring to the trustee rather than the "former trustee," so I do not believe any action is necessary to be taken on this comment. In any event, **I do not believe it is necessary to forward the comment to any subcommittee for consideration prior to the March meeting.**

Mr. Henry Sommer of Pennsylvania, and a former member of the Committee, submitted **Comment 06-BK-007** which is addressed to Official Form 24, the Certification to Court of Appeals By All Parties. He suggests that the form should include a signature line for the Appellee of the Attorney for the Appellee. The form currently has a signature line only for the Appellant and the Appellant's attorney. **I believe that the form should be changed as he suggests, and I do not believe that it is necessary for any subcommittee consider the matter prior to the March meeting.**

Comment 06-BK-008 was submitted by an unnamed person who apparently is a bankruptcy petition preparer. The comment urges that the Committee take action to increase the fees paid to petition preparers. The Rules do not govern the fees allowed to petition preparers,

and **I believe that there is no need to take action on this proposal.**

Judge Keith Lundin (Bankr. W.D. Tenn.) submitted **Comment 06-BK-009.** It is a lengthy commentary with extensive suggestions for amendments to the means test forms. **Since this comment is addressed to the means test, it will be forwarded to Judge Wedoff for his review.**

Mr. Jack Horsley submitted **Comment 06-BK-010**. Mr. Horsley regularly comments on the published rules, and his comments in this instance involve several rules. His comments generally are brief, and in many instances they are focused on language in the rule that has not been changed. For example, he suggests that Rule 2002(b) be amended to provide that notices be given to the "current trustee" as opposed to the "trustee" as is set out in the current version of the rule. I do not believe that the rule needs to be changed in the manner suggested. He also proposes that Rule 1007(b)(1)(B) be amended from its existing language that is not proposed to be changed to include a statement that the debtors expenditures "be described." Since the rule is directing the debtor to use an official form which itself would include descriptions of the expenditures (e.g., the categories of expenses), I do not believe that there is any need to adopt this proposed change. Mr. Horsley also suggests that Proposed Rule 4002(b)(2)(A) be amended to add "or other relevant information" after the rule's listing of payment advices as evidence of current income. I believe that making the addition he suggests would be redundant and should not be adopted because the rule already asks for evidence of current income. He also suggests a change to a portion of Rule 9006(b)(1) that was not changed from the current version of the rule. He proposes that the rule include a service requirement for notices. That portion of the rule, however, only addresses the general procedure for the court to follow when it determines whether to enlarge a time period. It does not include any service requirement, so I do not believe that this suggestion of Mr. Horsley be adopted. Finally, he recommends that a portion of Rule 2003 that was not recommended for change be altered by clarifying that locations other than courtrooms might be appropriate to include in the rule. The rule concerns the location of meetings of creditors, and it already includes locations other than courtrooms, so I do not believe that the Committee should adopt this recommendation. Consequently, **I recommend that the Committee not adopt any of the suggestions submitted by Mr. Horsley, and I do not believe that it will be necessary to have a subcommittee consider the proposals prior to the March meeting.**

Judge Marvin Isgur (Bankr. S.D. Tex.) submitted **Comment 06-BK-011.** The comment addresses a number of matters, but it can be broken down into four primary parts. The first is a suggestion that Rule 1007 be amended in a variety of ways that would also require the revision of a number of existing forms and the adoption of new forms. The second part of the proposal is a suggestion to amend Rule 2007.2 to require the debtor to file a motion at the start of the case to seek a determination of whether a patient care ombudsman needs to be appointed. The third recommendation concerns proposed changes to Rule 4004 to prevent the improper issuance of a discharge in cases in which the debtor claims an excessive discharge under § 522(q) or if a chapter 13 debtor has failed to make all required domestic support obligation payments. His

fourth recommendation is that Exhibit D to Official Form 1 (the "warning to debtors that they generally must have prepetition credit counseling) is misleading and should be changed.

As to the first issue, I believe that Judge Isgur has made a number of excellent points. He is suggesting that the forms should be renumbered so that all of the forms necessary in the bulk of consumer cases under chapters 7 and 13 are bundled together for ease of use by debtors. He also suggests that Rule 1007 be revised to refer to the specific Official Forms that debtors must file rather than simply directing persons to file the appropriate Official Form. As to these suggestions, **I think that they should be forwarded to the subcommittee that will be studying the forms generally.** Judge Walker's previous suggestion for a more global study of the forms is similar in many ways to this part of Judge Isgur's proposal, so putting them together is appropriate.

As to his suggestion for the amendment to Rule 2007.2, I do not believe that the change is necessary. The statute, § 333 of the Code, requires the court to appoint a patient care ombudsman unless the court concludes that the appointment is unnecessary in the specific case. Also, the petition includes a requirement that the debtor identify itself as a health care business, so the court should know in every instance whether it needs either to appoint the ombudsman or to make the determination that such an appointment is unnecessary. Although I do not believe that the change should be made, **the Subcommittee on Attorney Conduct and Health Care should also consider the suggestion about the revision of Rule 2007.2 prior to the March meeting.**

Judge Isgur's suggested amendments to Rule 4004 regarding the delay in the entry of a discharge seem appropriate to me. We do not want to allow debtors who are not eligible to obtain a discharge to have one issued in error. A couple of adjustments along the lines he suggests may improve the rules and prevent the inadvertent entry of a discharge when a debtor is not eligible to receive a discharge. **I believe that the Consumer Subcommittee should consider this suggestion prior the March meeting.**

Finally, **I think that the Consumer Subcommittee also should consider Judge Isgur's suggested changes to Exhibit D to the Voluntary Petition**. The case law is still developing on the effect of a petition filed when the debtor has not completed prepetition credit counseling. The Exhibit is intended to protect debtors (especially those who file pro se) from filing a case improvidently and suffering whatever consequences follow from an improper filing. Those consequences may be different from or additional to the ones set out in the warning, and the form should be as accurate a possible.

Ms. Robin Hunt of Colorado has suggested a change in Proposed Official Form 5, the Involuntary Petition form. In **Comment 06-BK-012**, she suggests changing the statutory reference in the filing fee box which refers to the waiver of certain fees for child support creditors. The form refers to § 304(g) of the Bankruptcy Reform Act of 1994, and Ms. Hunt suggests that the reference should be to § 303(g). I believe she is referring to § 303(g) of the

Code which governs involuntary cases. The reference in the form is correct. It was § 304(g) of the 1994 legislation (Pub. L. No. 103-394) that includes the waiver of fees for child support creditors. That provision, however, is not codified in title 11. Perhaps a reference to the Public Law Number would be helpful, but I do not think it is necessary. **The Forms Subcommittee could be asked to consider the matter**.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: COMMENTS SUBMITTED AFTER JANUARY 10, 2007 ON PROPOSED RULES AND FORMS

DATE: FEBRUARY 28, 2007

Since January 10, 2007, there were an additional 46 comments received on the Proposed Rules and Official Forms published in August 2006. Twenty-nine of the comments were nearly identical submissions indicating support for the comments offered by Bankruptcy Judge Keith Lundin in **Comment 06-BK-009**.[1] Thus, there were seventeen additional comments that were submitted. Of these seventeen, two are more properly addressed as a suggestion for an amendment to the rules without regard to the currently Published Proposed Rules. In **Comment 06-BK-054**, Bankruptcy Judge Dennis Montali recommends an amendment to Rule 1019 that would establish a new time period to object to exemptions upon the conversion of a case to chapter 7. This is a matter that the Committee has not considered, and, as Judge Montali

[1] The twenty-nine comments are **Comments 06-BK-021 to 048, and Comment 06-BK-058.** With the exception of a very few, these comments literally state that they support the comment submitted by Judge Lundin. Several add very brief additional statements, usually voicing specific support for a particular part of Judge Lundin's analysis. For example, **Comment 06-BK-048** submitted by Henry Hildebrand, III, Esq., specifically urges that Judge Lunidn's suggestions about revising Lines 3 and 4 of Form 22C be adopted. Mr. Hildebrand also notes that subsequent legislation regarding charitable contributions rendered one of Judge Lundin's suggestions no longer appropriate. In **Comment 06-BK-041**, on the other hand, Wendell Sherk, Esq., opposes Judge Lundin's recommendations for amending Lines 3 and 4 on the form. Mr. Sherk otherwise supports the proposals. Several of these comments suggested that they supported the comments of NACBA or Henry Sommer, and it appears that Judge Lundin's recommendations were presented to a NACBA audience which may explain some minor differences in the way in which the support was identified.

requests, should be studied by the Committee in the future. In **Comment 06-BK-016**, Bankruptcy Judge Colleen Brown of the District of Vermont also offered suggested revisions that are more in the nature of changes that are not the result of the 2005 amendments to the Bankruptcy Code. Judge Brown makes recommendations relating to the protection of privacy beyond social security numbers as well as changes to improve the rules governing interlocutory appeals. I recommend that these issues as well be considered by the appropriate Subcommittees (Forms and Appeals) hereafter. The remaining comments are summarized below.

Comment 06-BK-013. (Susan Thruston, Clerk of the Bankruptcy Court, District of Rhode Island) In this comment, Ms. Thruston suggests that Rule 1019 be amended to require specifically that Form 22A be filed whenever a case is converted to chapter 7. **The Consumer Subcommittee considered this matter and concluded that no amendment should be made to Rule 1019, although the Subcommittee did recommend that the Committee Note be amended to reflect that the establishment of a deadline for filing a motion under § 707(b) does not mean that such motions are appropriate.**

Comment 06-BK-014. (Bankruptcy Judges Wesley Steen and Marvin Isgur, Southern District of Texas) Judges Steen and Isgur recommended that the Committee address the problem of debtors who claim that their debts are not primarily consumer debts and the application of the means test and § 521 when a court later concludes that the debts are primarily consumer debts. **The Consumer Subcommittee considered this suggestion and adopted a solution different than the specific solution recommended by Judges Steen and Isgur, but intended to accomplish the same result. Form 22A would be amended to insert a check box at the beginning of the form to permit the debtor to state that his or her debts are not primarily consumer debts.**

Proposed Rule 1007 (b)(4) would also be amended by deleting the words "with primarily consumer debts" from line 65 of the published rule. This results in all individual debtors having to file a means test form, but a debtor who claims that his or her debts are not primarily consumer debts can simply check the appropriate box and ignore the remainder of the form. Importantly, if the court later concludes that the debts are primarily consumer debts, the case would not be dismissed under § 521(i) for failure to file the required form.

Comment 06-BK-015 (Internal Revenue Service) The IRS submitted this comment with several suggested amendments to the Proposed Rules, and other suggestions as to rules for which no amendments were published in 2006. The IRS recommended that Proposed Rule 2002(g)(2) be amended to include Rule 5003(e) as an exception to the rule governing designated addresses for creditors, and the Business Subcommittee accepted that proposal. The Subcommittee also addressed several other comments and proposals submitted by the IRS. The first issue relates to the ability of the IRS to seek an enlargement of time within which to file a §1308 claim. The proposed rule, Rule 3002(c), permits the IRS to seek the enlargement of other time periods, but does not permit the enlargement of the time to file a §1308 claim. **The Subcommittee concluded that there is no basis for distinguishing between §1308 claims and other claims, so that the rule should be revised as suggested by the IRS to permit the enlargement of time to file §1308 claims.**

The IRS also recommended a change in the Committee Note to Rule 4002. **The Subcommittee approved a proposed revision to that Committee Note to clarify that the debtor must obtain a copy of a tax return or a tax transcript even if the debtor does not have possession of those documents. This distinguishes the tax returns from other**

documents that the debtor must file. The next issue raised by the IRS was the need to amend Rule 5003 to permit the IRS and governmental units to have separate addresses in a register maintained by the clerk for §505(b) notices, as well as for other notices. **The Subcommittee discussed the matter at some length, and concluded that the statute requires a separate register for §505(b) addresses. Therefore, the Subcommittee recommends that the rule be rewritten to recognize those distinctions.**

The IRS then offered two additional suggestions for amendments to rules based on §716(e) of BAPCPA. That section recommends both that the IRS be allowed more time to object to confirmation of Chapter 13 plans than is applicable to other parties, as well as to prohibit the filing of objections to any IRS claim for §1308 taxes until a return for those taxes has been filed. **The Subcommittee discussed each of these measures, and concluded that Rule 3007 should be amended to prohibit the filing of an objection to a §1308 claim unless and until a return for those taxes has been filed.**

The Subcommittee concluded that it would not be appropriate to amend Rule 3015 to permit the IRS to file an objection to confirmation after a Chapter 13 Plan had already been confirmed. Nevertheless, **the Subcommittee concluded that it should study the issue further for the purpose of making a recommendation to the Advisory Committee on the topic at the September meeting.**

Comment 06-BK-017 (National Conference of Bankruptcy Judges) This comment is a resolution of the NCBJ that the guidelines for court to court communication published jointly by the III and ALI be consulted by the Advisory Committee in the consideration of rules governing these matters. **The Subcommittee has considered these guidelines, and has concluded that**

they should not be directly adopted by the rules. Rather, the courts should be accorded fairly broad discretion to adopt whatever guidelines they believe necessary and appropriate in the circumstances. **The Cross Border Subcommittee, however, does recommend that the Committee Note to Proposed Rule 5012 be revised to mention specifically that these guidelines are available for adoption should the court see fit to do so.**

Comment 06-BK-018 (National Bankruptcy Conference "NBC") This comment addresses a number of rules and forms. The comment makes recommendations concerning the patient care ombudsman, notices to creditors with foreign addresses, and consumer bankruptcy issues. These matters may be considered by the Consumer Subcommittee prior to the March meeting and any recommendations following therefrom will be provided to the Advisory Committee by a supplemental report.

As to consumer matters, the NBC suggests on pages 4-5 of the comment that Exhibit D to the Voluntary Petition be amended to delete any requirement that the debtor file a motion with the court to obtain a postponement of the credit counseling obligation. The NBC argues that § 109(h)(3) differs from (h)(4) in that subsection (h)(4) specifically requires a notice and hearing, while (h)(3) does not. Thus, they suggest that the debtor only be required to submit the certification that exigent circumstances exist to warrant the postponement. I do not believe that we should adopt this proposal. The two subsections differ in their language, but subsection (h)(3)(A)(iii) requires that the certification be satisfactory to the court. That requirement means that the court must render a decision on the certification. Requests for court action are made by motion (or application), and I think it is more manageable for the debtor to file the motion. This will then appear separately on the docket, and it will be easier to keep track of the court's action

if it is tied to the motion. The trustee would be aware of the debtor's intention to seek the postponement since it would be included with the petition. Therefore, **I do not believe that Rule 1007(b)(3)(D) should be changed. I also do not believe that the instructions in the nature of a warning as to the consequences of seeking a postponement should be changed. The Subcommittee has considered these issues in response to other comments and has concluded that no change should be made.**

The NBC also suggests that a new rule be proposed that would require the court to act within 21 days after the filing of the certification. This is necessary, because if the request is granted, the debtor still must obtain the counseling within 30 days after the commencement of the case. While this accurately describes the operation of the postponement mechanism, **I do not believe it is necessary to include this directive in a rule. The statute is self executing, and the courts are aware of the deadline facing the debtor. Therefore, I do not believe this suggestion should be adopted. Even if the Subcommittee believes that the proposal should be adopted, I think that the proposed rule would have to be published for comment in August 2007.**

The NBC next recommends that Proposed Rule 1007(b)(7) and the sentence in Proposed Rule 1007(c) referring back to (b)(7) be deleted. These provisions require the debtor to file a statement of completion of a personal financial management course. The NBC recommends that the rule and Official Form 23 be deleted in favor of a system in which the trustee would be required to come forward to prevent the entry of a discharge for a debtor who has not completed the course. They assert that this is appropriate because the United States trustee would have access to a computer data base of persons who have completed the course. The course providers,

according to the regulations of the United States trustee, must have sufficient computer capabilities to provide certificates of completion of the course, so the trustee would have that information available. The NBC asserts that this should be sufficient, and that Rule 4004(c) could be amended to require a party in interest to come forward to move for the withholding of a discharge in the absence of a certificate being awarded to the debtor. The Subcommittee considered such a regime and concluded that it would be more workable to have the debtor (who has the greatest interest in obtaining the discharge) file the Official Form 23. I think we should continue that practice, and would not recommend that we adopt this portion of the NBC recommendation. **I do believe, however, that we should consider adopting the recommendation of the NBC that Rule 5009 be amended to insert a new subdivision that would direct the court to notify the debtor that the case may be closed without the entry of a discharge. This would provide the debtor with notice that some additional action may need to be taken. This would be a new rule, however, and it would be necessary to publish the rule for comment in August 2007.**

The NBC recommends at pages 7-9 of the comment that the Committee adopt an Official Form for reaffirmation agreements. They recommend that a portion of the Official Form set out in an accessible manner the information necessary to determine if the proposed reaffirmation agreement would create a presumption of an undue hardship. **The Subcommittee has already approved, in principle, such a form, and the Forms Subcommittee will be presenting the Form to the Advisory Committee.**

Finally, the NBC opposes the extension of the time to object to exemptions from 30 to 60 days in Proposed Rule 4003(b)(1). They assert that the additional 30 days (which runs from the

conclusion of the § 341 meeting) would leave a debtor's property in limbo and would delay the prompt administration of cases. Moreover, trustees currently are known to hold the § 341 meetings open to allow for the resolution of questions about the propriety of exemption claims. They also suggest that the new deadline set out in Proposed Rule 4003(b)(2) (trustee has up to one year after the closing of the case to object to a fraudulently claimed exemption) provides insufficient notice to the debtor of the filing of the objection. They suggest that the last sentence of subdivision (b)(2) provide that "The trustee shall deliver or mail the objection to the debtor and the debtor's attorney, and, if the debtor did not file the list, to the person filing the list and to that person's attorney." **I think this additional notice to the debtor is appropriate, but I would recommend that the last sentence state that "The trustee shall deliver or mail the objection to the debtor and the debtor's attorney, and, to any person filing the list of exempt property and to that person's attorney." I also believe that there is no need to amend Rule 4003(b)(1) to extend the time to object to exemptions, although the Advisory Committee has already adopted that position.**

The NBC's first comment on the rules relating to patient care ombudsmen is that Proposed Rule 1021 should be amended to require that whenever a petition is filed in which the debtor or the petitioning creditors in an involuntary case identify the debtor as a health care business, that notice of that status be sent to the persons listed in Proposed Rule 1021(b). The not would advise that the debtor is a health care business and that parties have a limited time to move that the court not appoint a patient care ombudsman. However, Proposed Rule 2007.2(d) permits any party in interest to move for the termination of the appointment of the ombudsman at any time during the case. There may be some problem of inertia if an ombudsman is appointed at the start of the case and a party in interest moves thereafter for the termination of the appointment, but I do not believe that constitutes a sufficient reason to amend either Proposed

Rules 1021 or 2007.2. The NBC also suggests inserting into Proposed Rule 2015.1 a directive that the court may excuse the obligation to notify patients that the patient care ombudsman will be submitting a report to the court. The suggestion is that some patients in psychiatric or acute care facilities may be injured by receiving the notice, so the court should be authorized to limit the notice to prevent the injury. Proposed Rule 2015.1 already beings with the words "Unless the court orders otherwise," so I do not believe it would be necessary to add them to the next sentence of the rule as well. **Therefore, I would not recommend that we adopt that change to Proposed Rule 2015.1.**

Finally, as to health care businesses, the NBC recommends that Proposed Rule 6011 be amended in three ways. First, it recommends that "request" be substituted for "direct" on line 18 of the rule as published. The suggestion is based on concerns that a family member who is "directed" as opposed to "requested" to inform a patient of a particular notice could be susceptible to sanctions including contempt. The NBC also notes that § 351(1)(B) requires only that the trustee "attempt" to notify patients that their records will be destroyed. I do not believe that this language in the statute justifies adopting the recommended change. Inserting "request" instead of "direct" could permit family members to withhold the information from the patient when the court expects the patient to be informed. **Therefore, I would not recommend that we adopt this amendment that the NBC suggests to Proposed Rule 6011.** The NBC also recommends two other changes for Proposed Rule 6011. They recommend that the last sentence of Proposed Rule 6011(b) be amended to provide that the notice be sent to the patient <u>or</u> a family member or contact person rather than to the patient <u>and</u> the family member of contact person. As the suggestion notes, this is more consistent with the statute, but **I believe that in the Committee's discussion of the issue, the prevailing view was that there should be notice to both groups to improve the likelihood that the notices will be received and effective. I see no reason to change that position, and recommend that the Committee not adopt this proposed amendment to Proposed Rule 6011(b).** The last recommendation on Proposed Rule 6011 is that subdivision (c) should be amended to provide a one year deadline rather than a "reasonable time" for the trustee to retain proof of compliance with the notice requirements of the rule whenever the proof of service is not filed under seal. **The Advisory Committee**

considered this issue previously, and concluded that the trustee would be in the best position to determine what a reasonable time would be to retain the proof of compliance. If a trustee has particular concerns, the proof of compliance could be filed under seal, and the trustee would not be governed by the "reasonable time" requirement. Thus, I would not recommend that this suggestion be adopted.

The last category of comments submitted by the NBC in 06-BK-018 relates to notices to foreign creditors. In particular, the Conference recommends that the instructions on Forms 9E and 9F be revised slightly to clarify that in those cases the court will later set a bar date for the filing of claims, and that the order will apply to all creditors unless the order specifically states otherwise. Nonetheless, if the notice is sent to a creditor at a foreign address, the creditor may file a motion for an extension of the deadline. **I recommend that this proposal be adopted and that Forms 9E and 9F be amended accordingly.**

The NBC also suggests that even though the Code uses the phrases "foreign creditor" and "creditor with a foreign address" without any apparent distinction, that the Rules and the headings should just use the phrase "creditor with a foreign address" throughout. **Again, I believe this change should be made as proposed by the NBC.**

Comment 06-BK-019 (Eric Froisland, Esq.) Mr. Froisland is the attorney for a chapter 13 trustee. He submitted this 20 page comment which includes a number of issues that were raised in Judge Lundin's comment (06-BK-009) and were considered by the Consumer Subcommittee. **The Consumer Subcommittee also considered those aspects of the means test forms raised only by Mr. Froisland, and the Subcommittee's recommendations on those issues set out in a separate memo.**

Comment 06-BK-020 (National Association of Consumer Bankruptcy Attorneys "NACBA") This comment was submitted by Henry Sommer, Esq. as President of NACBA. The comment includes a number of proposals submitted by others. For example, NACBA joins with the NBC to oppose the lengthening of the time to object to exemptions and the lack of notice to the debtor if the trustee files an objection under Proposed Rule 4003(b)(2). As to the second matter, notice to the debtor, I have recommended that we make that change to the rule. NACBA also supports the NBC in its suggestion that the court be directed to warn debtors prior to the entry of the

discharge that they have not filed a certificate of completion of the personal financial management course, as well as in its opposition to the requirement that the debtor file a motion to obtain a postponement of the prebankruptcy credit counseling requirement. Each of these matters is discussed above under **Comment 06-BK-018**. NACBA also suggests that the rules provide a process by which debtors could cure the failure to complete the personal financial management course, but I do not see how that can be accomplished beyond what is already available to debtors. They can seek to reopen the case, but they must pay a filing fee to do so. **The NBC likewise suggests that debtors be allowed to reopen their cases without additional costs, but the Judicial Conference has already taken a contrary position.**

There are two additional proposals offered by NACBA. The first is that Proposed Rule 4004(c)(1)(K) be amended to provide that a motion to approve a reaffirmation agreement would also constitute grounds for the delay of the discharge. **I believe that this is a good suggestion, and I recommend that the proposed subparagraph (J) rather than (K) be changed as follows: "<u>a motion for approval of a reaffirmation agreement or</u> a motion to enlarge the time to file a reaffirmation agreement under Rule 4008(a) is pending;".** Secondly, NACBA recommends that Proposed Rule 1007(b)(1)(F) be amended to provide that the listing of the relevant information about the education accounts described in § 521(c) of the Code constitutes a "record" sufficient to meet the requirements of the Code. **The Committee has discussed this issue and concluded that the specific inclusion of these assets in § 521 and the reference to a "record" of the interest suggests that mere listing of the asset on the debtor's schedules would not meet the requirements of the Code. I do not believe that we should change our position on that matter.**

NACBA also offers a suggestion on a matter that we have not addressed to date in the rules. That is, it suggests that the rules adopt a procedure that would implement the "automatic dismissal" provision of § 521. They note that some courts have adopted procedures that implement the provision, and they suggest that a process be proposed that would establish a warning for debtors that the case will be dismissed if particular papers are not filed. **I would treat this as a suggestion, rather than a comment on the Proposed Rules, and recommend that it be addressed by the Consumer Subcommittee prior to the next meeting.** This is a

matter of great significance for debtors, and the case law is just beginning to develop on the issue. There could be a wide variety of ways to resolve the matter, so the Subcommittee will need time to consider those options.

Comment 06-BK-49 (Commercial Law League) The comment of the Commercial Law League is addressed entirely to the form plan and disclosure statement in small business chapter 11 cases. These are Proposed Official Forms 25A and 25B, respectively. The first recommendation is that the plan and disclosure statement be amended to more specifically provide for the retention and prosecution of avoidance actions by the debtor. The recommendation is that Article IX of the plan be amended to insert a provision that explicitly provides that the reorganized debtor is retaining the right to pursue avoidance actions under §§ 542-551 of the Code with a corresponding insertion to Part VI of the disclosure statement that describes the plan provision. Currently, Part II(F) of the disclosure statement sets out the debtor's expected actions regarding the recovery of transfers through the use of the avoiding powers. The discussion of the debtor's actions regarding the avoiding powers in the disclosure statement is intended to provide creditors with notice prior to the casting of their ballots as to whether the debtor intends to pursue avoiding power actions. The form plan does not include a provision expressly addressing the matter. Instead, the matter is left for possible inclusion in Article IX of the plan. The Business Subcommittee in preparing the form plan and disclosure statement intended to leave open the possibility of additional provisions, including a provision governing the post-confirmation prosecution of avoiding powers actions. The plan proponent can certainly include such a provision. Including some provisions and not others that might be included in Article IX of the plan could be misleading to debtors, so no examples of additional provision are given either in the instructions or the Committee Notes for the plan and disclosure statement. Here again, providing examples of possible provisions creates the risk of excluding some provisions that are also worthy of inclusion. **Consequently, I do not believe that the form plan or disclosure statement should be revised as suggested by the Commercial Law League as to the inclusion of a provision for the prosecution of avoidance actions.**

The League next suggests that the form plan and disclosure statement should include a section that describes in detail the means by which the debtor intends to implement the plan.

Section 1123(a)(5) requires that the plan include adequate means for its implementation, and the plan as proposed seems more than adequate with respect to the treatment of claims and interests, but there is little besides the references to executory contracts and unexpired leases in Article VI of the plan that sets out what the debtor intends to do to generate the funds necessary to make the payments called for under the plan. Inserting a section in the plan and disclosure statement directing the plan proponent to complete such a section would be helpful to the court and creditors. **Therefore, I believe the form plan and disclosure statement should be amended to include such a section as suggested by the Commercial Law League.**

The League also suggests that the Section 5.03 of the proposed plan be amended to authorize the settlement of disputed claims without court approval if they are below a certain amount or if the settlement is at or below a maximum discount of the claim. While such provisions may be sensible, and the League asserts that they may be particularly appropriate in small cases, I think that such a provision is best left to addition by plan proponents who have a specific need for the provision. **I would not recommend making the settlement without court approval provision a part of the form plan.**

Finally, the League suggests that Section 6.01 of the plan be amended by inserting a new subsection (b) into the section and redesignating existing subsection (b) as a new subsection (c). The new subsection (b) would set out the dates by which the necessary payments would be made to cure any defaults under the contracts. The league points out that § 365(b) of the Code requires that any defaults be cured at the time of assumption (or at least be promptly cured), and it suggests that the cure payments be set out in the plan. Under § 1123(b)(2), the assumption, rejection, or assignment of executory contracts and unexpired leases is subject to § 365, so I do not believe it would be necessary for the plan to set out the specific payment dates for the debtor to effect a cure of defaults under executory contracts and unexpired leases. Creditors and lessors could raise the issue if they are sufficiently concerned about the timing and amount of payments. **Therefore, I would not recommend that this section of the form plan be amended as suggested by the League.**

Comment 06-BK-050 (American Institute of Certified Public Accountants "AICPA") This comment addresses two new forms adopted as a response to the 2005 amendments to the

Bankruptcy Code. The first form is Proposed Official Form 25C, the Small Business Monthly Operating Report. The AICPA suggests that the form be expanded to provide substantially more information about the status of the debtor's tax filings including explanations for any delinquencies and the information that may be forthcoming, expanded of payables and receivables, accrued and unpaid expenses, and more elaborate disclosures about the debtor's inventory including aging and different values. The second form is Proposed Form 26 which sets out the Value, Operations, and Profitability of entities in which the debtor owns a substantial or controlling interest. As to each comment, the AICPA notes that the positions taken in the forms may not comport with Generally Accepted Accounting Principles and that the trigger point for the presumption of a substantial or controlling interest (20% ownership in Proposed Rule 2015.3) differs from similar rules followed by the accounting profession. These comments point out that Form 26 is not what an accountant would adopt if writing on a clean slate. However, the forms are intended for a different audience and are likely to be completed by the debtor rather than a professional accountant. The Business Subcommittee worked with the United States Trustee Program to prepare the Form such that it would be accessible to the small business debtor. I believe that the Forms strike the proper balance in collecting the necessary information while still being sufficiently user friendly that the debtor will be able to complete them in a timely, efficient, and cost effective manner. **Therefore, I recommend that the Committee not adopt the changes proposed by the AICPA.**

Comment 06-BK-051 (Financial Services Roundtable) This comment submits four recommendations for amendments to the Proposed Rules and Forms. First, it suggests that the requirement that motions to dismiss under § 707(b)(1) and (3) be stated with particularity be rejected. **The Committee has considered this suggestion in the past and determined that Proposed Rule 1017(e)(1) should not be changed.** Second, the Roundtable recommends that debtors be required to file a certificate that they have completed the personal financial management course rather than be allowed to file a statement that they have completed the course (Form 23). **The Committee has also considered this matter in the past, and I do not believe that there is any reason to change that position.** Third, it recommends that certifications by debtors' attorneys be made more explicit on the forms, and **the Forms**

Committee has made such a recommendation for a change to the petition. Finally, the Roundtable recommends that the means test forms should not allow a debtor to claim any expenses above the amount they actually spend. The Committee has addressed this issue as well, and has responded to Senator Grassley on this topic. The language of § 707(b)(2) specifically directs the courts to use the amounts set out in the relevant IRS standards as the expense amounts allowed in determining a debtor's disposable income. **Thus, I do not believe the means test forms should be changed as suggested by the Roundtable. The Consumer Subcommittee also recommends that this suggested revision not be adopted.**

Comment 06-BK-052 (State Bar of California Committee on Federal Courts) The State Bar Committee submitted comments on the proposed rules published by each of the Advisory Committees. Its comment addressed rules relating to consumer cases, health care cases, chapter 11 cases, and notices to creditors with foreign addresses. In the consumer area, the Committee suggests that Proposed Rule 4003(b)(3) be made explicitly subject to subdivision (b)(2). That is, the trustee should still have the power to object to a fraudulently asserted exemption within one year after the closing of the case. I believe that this misunderstands the nature of an objection governed by subdivision (b)(3). There is no need to correlate the two subdivisions. Even in the absence of introductory language like "Except as provided in subdivision (b)(2)," the language of subdivision (b)(3) would not prevent the trustee from acting under (b)(2). **Therefore, I do not believe that we should adopt this suggestion.**

The Committee also suggests that Proposed Rule 5008 should not require the court to send a notice of the presumption of abuse if that notice is required by the late filed statement of presumption of abuse by the debtor. In that instance, they suggest that the debtor send the notice. I do not believe that this would necessarily be the best solution. First, the court already has the mailing or other contact information for all of the creditors. Second, this circumstance should not arise in too many cases. **Thus, the expense should not be that extensive, especially as to those creditors who are receiving notices electronically. Therefore, I do not believe that we should adopt the recommendation of the California State Bar Committee regarding Proposed Rule 5008.**

The Committee also recommended that Rule 6011 governing notices of the proposed

destruction of patient records in health care cases. The State Bar Committee urges that the rule should provide that the cost of the notice should not be a factor in determining whether the notice should be sent, and if there are insufficient funds in the estate to pay for the notice, that the cost of the notice should be paid by the United States trustee or the court. The problem identified in this comment could be significant in a case where there are no assets available in the estate to cover the costs of notice. However, the Code provides specifically that this is an obligation of the trustee, and I think it would be inconsistent with the Code to shift that cost to another party. Instead, I would assume that if there are no assets available to pay for the notice, noone would be willing to serve as trustee (or would seek to resign if they were already serving), and the United States trustee would be required to serve as the trustee under 28 U.S.C. § 586(a)(2). **Therefore, I do not believe that we should adopt the recommendation of the State Bar Committee.**

The Committee also suggests that Proposed Rule 2015.3(e) may be inconsistent with Rule 2003(a). Under Rule 2003(a), the meeting of creditors can be held between 20 and 40 days after the commencement of the case. Under Proposed Rule 2015.3(e), the debtor must provide at least 20 days notice to the entity about which the debtor intends to file a financial report that such a report is to be filed. This is intended to give that entity an opportunity to seek a protective order under § 107 of the Code. The Committee rightly notes that it is almost impossible to provide 20 days notice, unless the notice is given on the same day as the filing of the petition. While this is possible, it would seem better to reduce the notice time to 10 days which should be a sufficient period to determine whether to seek a protective order. **I recommend that we amend Proposed Rule 2015.3 to reduce the notice period from 20 days to a shorter period, and I think 10 days would be sufficient.**

Finally, the Committee recommends that Proposed Rule 3002(c)(6) be amended presumably to allow an extension of the filing time only if the request is made after the expiration of the period. They assert that if the creditor knows of the deadline prior to its expiration, it is easier just to file the proof of claim rather than to move for an extension. I do not believe that we should amend the Proposed Rule as they suggest. This rule applies only to a creditor to whom the notice of the time to file a proof of claim has been mailed to a foreign address. It is possible, and I believe that the Advisory Committee considered, that the notice

might be received a short time prior to the expiration of the time period. The rule was written to allow the creditor with a foreign address to seek an extension in that situation rather than to permit the time to expire and then seek an extension. The creditor would have to wait for the time to expire before asking for additional time if we were to adopt the recommendation of the State Bar Committee. Moreover, I believe that the rule as proposed better implements § 1514(d) of the Code. **Therefore, I recommend that Proposed Rule 3002(c)(6) be approved as published.**

Comment 06-BK-053 (William McNeal, Esq.) This comment objects to the treatment of secured debt payments under the means test form. It asserts that these amounts are allowed deductions only if they are reasonable and necessary. The Advisory Committee considered this issue previously and concluded that since § 707(b)(2) requires that the amounts set out in § 707 (b)(2)(A)(iii) must be deducted from the debtor's current monthly income to determine the debtor's disposable income, and that sub-subparagraph (iii) has no limitation on the nature of the secured claim or the collateral, that these amounts must be deducted. Hence, Line 42 on Form 22A and Line 47 on Form 22C each provide for the 1/60th deduction of the secure payments from the debtor's current monthly income. **I do not believe that the form should be changed and recommend that the proposed amendment be rejected.**

Comment 06-BK-055 (American Bankers Association, et.al.) This comment was submitted by several trade groups of lenders. They suggest amendments to a wide range of rules and forms, both as regards consumer and business bankruptcies. As to the comments offered on the means test, the Consumer Subcommittee has considered these suggestions, and its recommendations are set out separately. The comment (page 8) urges that Exhibit D to the Voluntary Petition be amended to state more clearly that the debtor must have obtained credit counseling prior to the commencement of the case if he or she is to check either the first or second box on the form. **I believe that this information is already sufficiently stated on the form (it is in bold print in the first two boxes of the form) and recommend that this suggestion of the Bankers Association not be adopted.**

The Bankers Association also recommends the adoption of an Official Form for reaffirmation agreements. **The Forms Committee is recommending such a form, though it**

may not be as extensive as the Bankers Association wishes.

The Bankers Association, like the Financial Services Roundtable in **Comment 06-BK-051**, also suggests that Proposed Rule 1017(e)(1) be amended to delete the requirement that motions under § 707(b)(1) and (3) be made with particularity. As noted above, the Advisory Committee has considered this issue specifically in the past, and I do not believe there is any reason to change the Committee's position. **Thus, I would not recommend that Rule 1017(e)(1) be amended as suggested by the Bankers Association.**

The Bankers Association also proposes that the rules be amended to include provisions that would direct the courts to enter orders under § 362(c)(3)(A) and § 362(c)(4) which limit the effect of the automatic stay based on prior bankruptcy cases of the debtor. As the Bankers Association notes, however, these provisions of the Code are self executing. **Consequently, I do not recommend that the Advisory Committee propose any addition to the rules to implement these sections of the Code.**

The Association also urges that the Voluntary Petition be amended to require a debtor's attorney to make a certification regarding the petition as set out in § 707(b)(4). **The Attorney Conduct Subcommittee has recommended that the language of § 707(b)(4)(D) be added to the Voluntary Petition immediately above the signature line for the debtor's attorney.**

The Bankers Association generally supports the provision in Proposed Rule 4002 (b)(2)(A) that requires the debtor to bring the most recent payment advice to the § 341 meeting of creditors, but it suggests two further amendments. First, it suggests that the rule should excuse the debtor from this obligation only if "the debtor has no reasonable opportunity to obtain the payment advices" rather than as the rule provides, the payment advices are not in the debtor's possession. This specific matter was the subject of discussion in the Committee, and the compromise reached was that possession was the best alternative standard for these documents. By way of contrast, the debtor must take action to obtain tax returns or tax transcripts that are not in the debtor's possession. **I believe that we should maintain the distinction between these kinds of documents and that the rule should not be amended as suggested by the Bankers Association.** The Association also suggests that the rule provide a more streamlined process for parties in interest to obtain these documents from the debtor, but I do not believe that would be

an appropriate change to the rule. As was discussed in the Committee, this could place a significant additional burden on the debtor who has already provided the documents to the creditors' representative, the trustee. Therefore, there is little reason to required the debtor to make these materials available to any creditor who might request them. **Thus, I recommend that we make no change to Proposed Rule 4002(b)(2)(A).**

Under Proposed Rule 4002(b)(4), a creditor can obtain a copy of the debtor's tax return or tax transcript at the § 341 meeting of creditors if the creditor makes a request to the debtor at least 15 days before the meeting. The Association notes that this is eight days prior to the time that the debtor must submit the documents to the trustee, so it proposes that the deadline for requesting the documents be changed to ten days prior to the meeting of creditors. This would still be three days prior to the time that the return is due to the trustee, and the Association suggests that this still provides the debtor with a reasonable opportunity to copy the documents and provide them to the creditor. Given that Rule 2003(a) permits the meeting of creditors to be scheduled as early as 20 days after the order for relief, the 15 day notice requirement could be difficult to meet if the creditor receives notice of the filing by mail. Also, the debtor already has the tax documents for delivery to the trustee, so I think that a slightly shorter notice period under Rule 4002(b)(4) would not be too burdensome for the debtor. **Therefore, I recommend that the notice deadline in Proposed Rule 4002(b)(4) be changed from 15 days to 10 days.**

The Bankers Association's final recommendation for amendments to the rules governing consumer cases is to promulgate a rule to ensure the uniform application of the provision in § 1325(a) that has been referred to as the "hanging paragraph" or the "910 provision." This provision applies to certain purchase money security interests, and there has been some variety of application of this section in the courts. I do not believe, however, that there is a rules based solution to the differences in the courts' decisions under the statute. **That is a purely substantive matter that cannot be resolved by adoption of a rule of procedure. Therefore, I recommend that the Advisory Committee take no action in response to the Association's recommendation regarding § 1325(a) of the Code.**

The Association also suggests revisions to two of the Proposed Rules that operate in business cases. First, it urges that the deadline for creditors to object to a debtor's

characterization that it either is or is not a small business debtor. The Voluntary Petition includes check boxes in which the debtor must make the designation, and under Proposed Rule 1020 a creditor has up to 30 days after the conclusion of the meeting of creditors or 30 days after any amendment to the designation within which to object to this characterization. This seems to be ample time. The Association recognizes that 30 days after the conclusion of the creditors' meeting is sufficient, but it suggests that there may not be sufficient time for creditors to respond to amendments. I would expect that any change in designation by a chapter 11 debtor out of the small business category would be unusual, and the creditors either would already have had an opportunity to question the debtor at the creditors' meeting, so they would have much of the information necessary to evaluate the debtor. The most likely reason for the change in designation would be that a creditors' committee is actively participating in the case, so in that instance, there would seem to be less need to allow more time to object to the designation of the debtor. There is very little likelihood of changing to a small business debtor because the time restrictions built into chapter 11 for small business debtors would generally operate against the debtor. **Consequently, I do not believe that the Committee should change the deadline in Proposed Rule 1020(b) as suggested by the Bankers Association.**

The Association also recommends that Proposed Rule 1020(c) be amended by deleting the requirement that a request by the United States trustee or a party in interest for a determination as to whether a creditors' committee is sufficiently active be made within a reasonable time after the committee fails to be sufficiently active. Instead, the Association proposes that the deadline be not less than 90 days and that the court be authorized to extend the deadline if circumstances warrant. I believe that such a change is not warranted. Moreover, I think that substituting a 90 day deadline would not bring the certainty to the deadline that it might suggest. The problem with the deadline is not so much when the period ends as it is with when the period begins. It may be quite difficult to determine when the period should commence running, and stating that it ends in 90 days tells you very little. It seems unlikely, however, that 90 days would be an appropriate amount of time in any event because of the deadlines included in the Code for a small business debtor to file and confirm a plan. Ninety days is nearly one-third of the "life span" of a small business chapter 11 debtor, and permitting a creditor who knows or

should know that it can act to challenge the debtor's status to use up so much of that time is inappropriate. The Committee recognized that setting "a reasonable time" as a deadline is inherently uncertain, but I believe it is a more appropriate deadline than one that would permit if not encourage strategic behavior by objecting creditors. **I recommend that the Committee not adopt the recommendation of the Bankers Association to impose a new deadline under Proposed Rule 1020(c).**

The Bankers Association also recommends that Proposed Rule 3017.1 be amended to provide specifically that the deadlines being set by the court under that rule be "a reasonable time that fully protects the substantive and procedural rights of all holders of claims and interests." This recommendation relates to a portion of the rule that was not amended. Moreover, it urges the addition of language to the rule that I believe is inherent in the action that the court would be taking. There is no need, in my opinion, to remind the courts that when they set deadlines that the deadlines need to be reasonable. In fact, if there was a need to include such language in the rule, it would raise questions about the need of the courts to set reasonable deadlines in other situations. **I recommend that the Committee not adopt this proposal suggested by the Bankers Association.**

The Bankers Association's comment also includes references to a number of proposed rules and forms amendments that the Association believes are proper. These range from matters governing the appointment of a privacy ombudsman and the rules governing the sale of personally identifiable information, to the small business plan and disclosure statement and the reports on entities in which the debtor holds a substantial or controlling interest. The Association also noted its support of proposed rules governing the election of chapter 11 trustees and the small business reporting requirements.

Comment 06-BK-056 (American Bankruptcy Institute "ABI") The ABI conducted a survey of its membership regarding the Proposed Rules and Forms. The survey consisted of questions about 17 rules. Rule 2002 appears twice in the survey for different reasons. The survey broke the rules down into different topical categories, and Rule 2002 was considered in both the consumer area as well as under the cross border case section of the survey. The ABI has in excess of 10,000 members, and a total of 150 members submitted responses. Not all of the

members completed the entire survey, and in fact as many as 141 respondents answered one or more questions on rules that are generally applicable, and as few as 34 members answered questions on cross border cases. The survey itself would ask for the respondents agreement or disagreement with a statement, and the strength of a respondents agreement or disagreement with a particular statement about the rule. It also allowed for individual commentary. Given the limited response, it is difficult to assess the significance of the positions. The respondents are not identified (other than as presumably being ABI members), and the questions sometimes are more directed to the provisions of the Code than to the Rules.[2] Consequently, I believe that the Survey and its results should not be evaluated in the same manner as the comments submitted directly concerning the language of the Proposed Rules and Forms. They may be consulted for some guidance as to the views of a small group in response to a question that may or may not bear on the matters before the Advisory Committee. Perhaps as the ABI has more experience in the application of the survey process, the questions and comments will be more specifically directed to the pending proposed rules and forms, and may be of even greater assistance to the Advisory Committee in the future.

Comment 06-BK-057 (Ms. Margaret Grammar Gay, Chief Deputy Clerk of the Bankruptcy Court for the District of New Mexico) Ms. Grammar Gay offered comments on several rules and forms relating to consumer issues. As to Rule 1007(b)(7) and Official Form 23, she notes that many debtors seem to confuse the prebankruptcy credit counseling requirement and the predischarge personal financial management course completion requirement. Her suggestion is that the rule require the debtor to file a certificate of completion of the personal financial management course rather than simply a statement to that effect. Also, she proposes that Official Form 23 at least be amended so that it is titled "Debtor's Certification of Completion of Postpetition Instructional Course." **Her suggestion that the debtor be required to file the**

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[2] For example, on page 23 of the submitted comment, the question asks whether a party (other than the United States trustee) moving for dismissal of a case under § 707 must establish the harm that the movant has suffered in order to prevail. Such a question may be relevant to a court that is determining whether to dismiss or grant the motion, but it does not seem appropriate for the consideration of the Advisory Committee in the act of recommending rules of procedure to implement the Code.

certificate (and amend Proposed Rule 4004(c)(1)(H)) is the same as was suggested by the NBC, and I do not believe that this should be the result. I do, however, believe that the title to Form 23 should be changed as she recommends. That would also be consistent with the position of the Forms Subcommittee in its consideration of the form.

Ms. Grammar Gay proposes that Rule 1007 be rewritten so that the list of filing requirements be stated in a different format. Items would be identified as to when they are due, such as with the petition, within 15 days after the filing of the petition, and so on. This suggestion is stylistic and can be considered by the Style Subcommittee. She makes another suggestion as to Rule 2003 to better accommodate providing notice to creditors in involuntary cases, but this part of the Rule is not being amended, so this is better treated as a suggestion for amendment to the rule rather than a comment on the proposed rules.

Ms. Grammar Gay also suggests that Exhibit D to the Voluntary Petition delete the portion of the form that asks the debtor to summarize the exigent circumstances that warrant the postponement of completion of the credit counseling requirement because the debtor's motion will include the same language. Including that statement on the form, however, makes it available to the trustee and the United States trustee rather than requiring the debtor to serve those parties with the motion which would actually delay the receipt of the information by the trustee and United States trustee. **Therefore, I do not believe that we should amend Exhibit D as she recommends.**

Ms. Grammar Gay included comments on two other rules. One issue relates to Proposed Rule 8001(f)(2) which was published in August 2006. She suggests that the "bright line" test that the rule attempts to employ may not establish such a bright line. She notes that in New Mexico, the clerk of the district court requests the clerk of the bankruptcy court to serve the district court clerk with the certificate of service under Rule 8004. Ms. Grammar Gay asserts that this has created some confusion as to when the appeal is docketed because the clerk of the district court apparently "dockets" the matter when it receives the certificate of service of the notice of appeal rather than when the clerk of the bankruptcy court transmits a copy of the complete record in the case. This does seem to create some uncertainty, but it would appear that the uncertainty is a consequence of the clerk of the district court moving more quickly than Rule 8007(b)

anticipates in the docketing of appeals. **I do not believe that this situation warrants a change in any of the Proposed Rules published for comment in August 2006.**

Ms. Grammar Gay recommends that Rule 2003 be amended to establish different deadlines for the clerk to provide notices to creditors of the § 341 meeting in voluntary and involuntary cases. She asserts that the common deadlines in the two types of cases present difficulties for clerks when an involuntary case is commenced. While a proposed amendment to Rule 2003 was included in the August published rules, the amendment is unrelated to the issue raised by Ms. Grammar Gay. **Therefore, I recommend that the matter be sent to the Business Subcommittee for its consideration prior to the September meeting of the Advisory Committee.**

Ms. Grammar Gay also made several suggestions for amendments to the forms. In particular, she recommends that the forms be amended generally to make several stylistic changes. These suggestions should be forwarded to the Forms Subcommittee for its consideration prior to the September meeting.

Comments on Published Amendments to Bankruptcy Rules and Forms				
Comment #	Name	Rule/Form	Assignment	Status
06-BK-001	Judge Mund	Rule 1006		
06-BK-002	Judge Perris	Form 8		
06-BK-003	Thomas Yerbich	Form 22C attorney fees		
06-BK-004	Mark Diamond	Form 23		
06-BK-005	Thomas Yerbich	Form 22B § 1325(b)(2) deductions		
06-BK-006	George Kamen	Rule 4003(b)(2)		
06-BK-007	Henry Sommer	Form 24		
06-BK-008	Sharon Williams	Bankruptcy petition preparer		
06-BK-009	Judge Lundin	Form 22C attorney fees		
		Form 22B spousal income		
		Form 22B business & rental expenses		
		Form 22 amounts. paid by others for household expenses.		
		Forms 22 EOUST web reference		
		Form 22C use of word "clothing"		
		Form 22C gross monthly income		
		Form 22C real estate taxes		
		Form 22C mandatory payroll deductions		
		Form 22C Life insurance		
		Form 22C court-ordered payments		
		Form 22C education		

		Form 22C medical expenses		
		Form 22C use of "total"		
		Form 22C optional telephone and internet		
		Form 22C omitted categories		
		Form 22C heading for subpart B of Part IV		
		Form 22C line 39 instruction		
		Form 22C line 40 instruction		
		Form 22C line 42 instruction		
		Form 22C line 43 instruction		
		Form 22C line 44 instruction		
		Form 22C line 45 instruction		
		Form 22C line 47 instruction		
		Form 22C line 48 instruction		
		Form 22C line 49 instruction		
		Form 22C line 50		
		Form 22C special circumstances		
		Form 22C line 54 instruction		
		Form 22C line 55 instruction		
		Form 22C income received by debtor		
06-BK-010	Jack Horsley	Rule 1021		
06-BK-011	Judge Isgur	Renumbering forms		
		Automatic Dismissal		
		Rule 2007.2		
		Form 1 Exhibit D		

		Rule 4004 delay for finan. Mgmt course § 522(q)		
06-BK-012	Robin Hunt	Form 5		
06-BK-013	Susan Thurston	Form 22A cases converted to chapter 7		
06-BK-014	Judges Isgur and Steen	Form 22A determination of consumer debts		
06-BK-015	Deborah Butler on behalf of the IRS	Rule 2002(g)(2) govt address, Rule 5003(e) interplay		
		Rule 3002(c) extension of time for § 1308 claims		
		Rule 4002 clarify Committee Note		
		Rule 5003(e) govt. units may designate more than one address		
		Forms 1 and 6		
		Rule 4002 Committee Note		
		Rule 3007 objection to chapter 13 claim		
		Rule 3015 time for objection confirmation chapter 13 confirmation re tax returns		
06-BK-016	Judge Brown	Rule 3001, Form 10		
		Rules 8003, 8005		
06-BK-017	Judge Hopkins on behalf of NCBJ	III-ALI Guidelines Rule 5012		
06-BK-018	Richard Levin on behalf of the NBC	Rule 2002(p),(q) and Forms 9E and 9F "creditors with a foreign address"		
		Rules 1021		
		Form 22C		

		Exhibit D to Form 1		
		Rules 1007 and 4004 and Form 23		
		Form 240 as Official Form		
		Rule 4003(b)		
06-BK-019	Eric Froisland on behalf of trustee Kevin Anderson	Form 22C marital status		
		Form 22C, line 3 income from operation of business, line 4 rental income		
		Form 22C line 7 amounts paid by others		
		Form 22C line 9 income from other sources		
		Form 22C line 11 total		
		Form 22C lines 12-17 commitment period		
		Form 22C line 19 disposable income		
		Form 22C line 24		
		Form 22C lines 25a, 25b, 26		
		Form 22C line 27		
		Form 22C lines 28-29		
		Form 22C lines 30-37 other necessary expenses		
		Form 22C line 31 payroll deductions		
		Form 22C line 33 court-ordered payments		
		Form 22C line 36 health care		

		Form 22C line 37 telecommunication services		
		Form 22C line 39 insurance HSA expenses		
		Form 22C line 41 protect against family violence		
		Form 22C line 42 home energy costs		
		Form 22C line 43 education expenses		
		Form 22C line 44 additional food clothing expense		
		Form 22C line 45 charity		
		Form 22C line 47 payment on secured claims		
		Form 22C line 49 payments on priority claims		
		Form 22C line 52 total deductions under 707(b)(2)		
		Form 22C line 53 total CMI		
		Form 22C line 54 support income		
		Form 22C line 55 retirement deductions		
		Form 22 line 56 total deductions under 707(b)(2)		
		Form 22 line 57 total adjust-ment disposable income		
		Form 22 line 59 other expenses		
06-BK-020	Henry Sommer on behalf of NACBA	Rules 4002, 1007(b)(1)(F), 4003(b)(1), 4004; automatic dismissal; Forms 22A, 22C		
06-BK-21	Robert Toomey	Endorsed 06-BK-009		

06-BK-22	David Baker	Endorsed 06-BK-0048		
06-BK-23	Christopher M. Kerney	Endorsed 06-BK-009		
06-BK-24	David E. Phillips	Endorsed 06-BK-009		
06-BK-25	Pamela Stewart	Endorsed 06-BK-009		
06-BK-26	Jimmy Eaton	Endorsed 06-BK-009		
06-BK-27	Lee M. Perlman	Endorsed 06-BK-009		
06-BK-28	Robert J. Haeger	Endorsed 06-BK-009		
06-BK-29	Marvin Wolf	Endorsed 06-BK-009		
06-BK-30	J. Robert Harlan	Endorsed 06-BK-009		
06-BK-31	Perry R. Happell	Endorsed 06-BK-009		
06-BK-32	Linda E. Merritt	Endorsed 06-BK-009		
06-BK-33	Joseph Angus	Endorsed 06-BK-009		
06-BK-34	Maria M. Salas	Endorsed 06-BK-009		
06-BK-35	Elizabeth H. Parrott	Endorsed 06-BK-009		
06-BK-36	Stephen M. Otto	Endorsed 06-BK-0020		
06-BK-37	Chris Mills	Endorsed 06-BK-009		
06-BK-38	Andy Miofsky	Endorsed 06-BK-009		
06-BK-39	Alan C. Lee	Endorsed 06-BK-009		
06-BK-40	John Vos	Endorsed 06-BK-0018 and 06-BK-020		
06-BK-41	Wendell J. Sherk	Form 22C, lines 3, 4, endorsed 06-BK-009 (generally) and 06-BK-020		
06-BK-42	Scott Wilson	Endorsed 06-BK-009		
06-BK-43	Lyssette Morales	Endorsed 06-BK-009		
06-BK-44	Paula M. Powers	Endorsed 06-BK-009		
06-BK-45	David F. Cannon	Form 22C, Schedules I and J endorsed 06-BK-009		

06-BK-46	Brett Weiss	Endorsed 06-BK-009 and 06-BK-020		
06-BK-47	Erik Clark	Endorsed 06-BK-009		
06-BK-48	Henry E. Hildebrand, III	Form 22C, lines 3, 4, endorsed 06-BK-009		
06-BK-49	John R. Strout	Forms 25A and 25B		
06-BK-50	Steve Winters on behalf of the Consulting Services Executive Committee of the American Institute of Certified Public Accountants	Forms 25C and 26		
06-BK-51	Steve Bartlett on behalf of Financial Services Roundtable	Rules 1017, 4006; Forms 22A and 22C		
06-BK-52	The State Bar of California Committee on Federal Courts	Rules 2015.3, 3002, 4003, 5008, and 6011		
06-BK-53	William Andrew McNeal	Forms 22A and 22C		
06-BK-54	Judge Montali	Rule 1019		

06-BK-55	American Bankers Association, America's Community Bankers, The Financial Services Roundtable, American Financial Services Association, Consumer Bankers Association, and Independent Community Bankers of America	Forms 1, 1-Exhibit D, 22A, 22C, 240; Rules 1017 and 1029		
06-BK-56	American Bankruptcy Institute Task Force on Bankruptcy Rules	Rules 6004, 8001, 3002, 1007, 1017, 2002, 4003, 4007, 4008, 5008, 1020, 2015.3, 3016, 1021, 2015.1, 6011, 5012		
06-BK-57	Margaret Grammar Gay	Rules 1007(b)(7), 4001(c)(1)(H), 1007, 2003, 8001(f)(2), Official Forms 1, 5, 91, 16A, 23		
06-BK-58	Robert J. Warren	Endorsed 06-BK-009		
Comments on Interim Bankruptcy Rules and Forms				
05-BR-001	Senator Grassley	Rules 1017 and 9011 and Form 1 re § 319 of BAPCPA		
05-BR-002	Gary Neustadter	Rule 1007(b)(4)		
05-BR-003	Carl Barnes	Schedule D		
05-BR-004	Terry Dunn	Rule 1007(c) typo		
05-BR-005	Annette Crawford	Means test car ownership costs		
05-BR-006	Judge McManus	Form 5 Committee Note typo		
05-BR-007	Victor Karl	Creditor		

05-BR-008	Thomas Yerbich	Inclusion of minors on Form 6		
05-BR-009	Carl Barnes	Form 6 Summary		
05-BR-010	Carl Barnes	Schedule F typo		
05-BR-011	Judge Grant	Rule 4003(b)		
		Timing for filing reaffirmation agreements		
05-BR-012	Judge Markell	Adoption of Interim Rules		
05-BR-013	Derek Hong	45-day limit for filing documents		
05-BR-014	William Redden	Rules 2001.2(a), 2015.1(b) typos		
05-BR-015	Judge Mund	Small business checkbox		
05-BR-016	Judge Nugent	Congratulations		
05-BR-017	Mark Diamond	Rule 8001(f)(2)		
05-BR-018	Prof. Culhane Prof. White	Non-filing spouse's income		
		Other necessary expenses		
		Admissions by debtor (checkbox)		
05-BR-019	Thomas Yerbich	Rules 4002(b)(1)(B), 4002(b)(3)		
05-BR-020	Donald Bernstein on behalf of NBC	Means test compells debtors to make legal statements		
05-BR-021	Thomas Yerbich	Form 22C – disposable income when § 1325(b)(3) doesn't apply		
05-BR-022	Brian Barash	Providing copies of tax returns		
05-BR-023	Chip Trimmier	Form 240 credit unions		
05-BR-024	Judge Williamson	New filing period in cases converted to chapter 7		

05-BR-025	Judge Bufford	Chapter 15 rules		
05-BR-026	Don Walton	Credit Counseling		
05-BR-027	Richard Levin on behalf of the NBC	Credit counseling warning, time for filing certificate		
		Means test – other deductions and adjustments		
		§ 707(b) safe harbor		
05-BR-028	Richard Levin on behalf of the NBC	§ 342(g) notice		
		notice standard for "reasonableness"		
05-BR-029	Judge Teel	Rule 2002(f) § 727(a)(12) motion deadline		
05-BR-030	Judge Teel	§§ 727 (a)(12) 522(q) interplay		
05-BR-031	Henry Sommer on behalf of NACBA	CMI for means test safe harbor		
		Include warning on completing financial management course on § 341 notice		
		Form 22C ch 13 disposable income		
		Means test – other necessary expenses		
		Deadlines, Form 1		
05-BR-032	Steve Bartlett on behalf of Financial Service Roundtable	Rule 1017(e)(1) "particularity"		
		Form 23 should be a "certificate" not a "statement"		
		Debtor's attorney certifies schedules		

		Mortgage payment in means test		
05-BR-033	Sen. Grassley and Sen. Sessions	Rule 1017(e)(1) "particularity"		
		Form 23 should be a "certificate" not a "statement"		
		Rule 9011 & Form 1 re § 319 of BAPCPA		
05-BR-034	Phil Corwin on behalf of American Bankers Assoc.	Means test unemployment compensation		
		All consumer debtors complete full means test		
		Local standards for housing and transportation		
		Chapter 13 administrative expenses		
		Additional expense claims		
		Form 22C marital adjustment		
		Form 240 as Official Form		
		Rule 1017(e)(1) "particularity"		
		Automatic stay		
		Debtor's attorney certifies schedules		
		Rule 4002(b)(2)(A) documents		
		Uniform application of § 1325(a)		
		Small business designation		
		Rule 3017.1 deadlines		

05-BR-035	Judge Teel	Form 1 statement residential tenant		
05-BR-036	Judge Walker			
05-BR-037	Paul Pascuzzi on behalf of the Insolvency Law Committee of Business Law Section of State Bar of California	Rule 1019, new filing period in cases converted to chapter 7		
		Rule 2002(f)(9), (10) incl. trustee		
		Rule 2002(c) clarification		
		Rule 2007.2		
		Rule 5003		
		Rule 6004(g) sales of personally identifiable info		
		Rule 6004(g)(2) motions		
		Foreign representatives file corporate ownership stmt.		
		Rule 1007(a)(4)		
		Rules 1007(a)(4) and 2002(q) foreign representatives		
		Rule 5009 closing chapter 15 cases		
		Rule 7065 and § 1519(e)		
		Rule 9006(b)(3) and Rule 4004(b)		
05-BR-038	David Goch on behalf of the Commercial Law League of America	Rules 1007(a)(4) and 2002(q) foreign representatives		
		Rules 1010 and 1011		

		Rule 2002(q)(1) and (q)(2)		
		Rule 2002(q)(1) and (q)(2) and § 1514(d)		
		Rule 6004 sales		
		Rule 8001(f)(2)(B)		
		Rule 8001(f)(3)(B)		
		Rule 8001(f)(4)(B)		

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: RECOMMENDATIONS FOR AMENDMENTS TO RULE 9011

DATE: JANUARY 10, 2007 / Revised February 27, 2007 (TSZ)

The Subcommittee on Attorney Conduct met by teleconference to consider amendments to Rule 9011. This action followed from the discussion of these issues at the meeting of the Advisory Committee in Seattle in September. The Subcommittee addressed two issues during the teleconference. The first was the proposal of the American Bar Association that the Bankruptcy Rules be amended to include a rule or rules governing attorney conduct in bankruptcy cases. The second issue is whether to amend Rule 9011 either to adopt the Sense of Congress set out in § 319 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 or to amend Rule 9011 in other ways that reflect the enactment of § 707(b)(4)(C/D).

1. ABA PROPOSAL

The ABA submitted a resolution to the Advisory Committee recommending that the Bankruptcy Rules be amended to govern attorney conduct in bankruptcy cases. The ABA argued that a bankruptcy specific rule is appropriate because in districts that include such a local rule, enforcement of the rules of conduct are more effective and frequent than in districts in which such matters are governed by the rules of the district court. Moreover they assert that Rule 9011 is insufficient to address the matter because that rule applies in each case, and much of the problem with attorney conduct is the result of repeated actions in a number of cases. Consequently, they argue that another rule should be adopted that would be easier to use across

cases as opposed to within individual cases. The ABA also noted that the enactment of BAPCPA increased the need for an attorney conduct rule because it includes a number of provisions that govern attorney conduct and could lead to substantially more actions pending in the courts implementing those provisions. They suggest that a rule specifically establishing procedures governing these matters would benefit the bankruptcy system.

The Subcommittee concluded that the Bankruptcy Rules should not be amended to add such a provision. First, the matter is addressed in large part by Rule 9011 to the extent that actions are taken in a specific case. Secondly, most district courts already have such rules, and they are often if not generally applicable to the bankruptcy courts for that district. Thirdly, adopting a rule of attorney conduct in bankruptcy cases would be inconsistent with the Civil Rules. An Ad Hoc Subcommittee of the Standing Committee has previously studied the prospect of adopting an attorney conduct rule, and it declined to go forward with the rule for a variety of reasons. If the bankruptcy rules were to include such a rule, it would arguably conflict with a previous position taken by the Standing Committee in a comparable situation. Finally, a study conducted by the Federal Judicial Center found that a significant majority of bankruptcy judges did not believe that any need existed for the adoption of a bankruptcy specific attorney conduct rule. **Thus, the Subcommittee recommends that no action be taken on the proposal submitted by the ABA regarding a rule governing attorney conduct in bankruptcy cases.**

2. RULE 9011 AND SECTION 319 OF BAPCPA

BAPCPA included a section expressing the sense of Congress that Rule 9011 should be amended in several ways. In its entirety, that section states that

> It is the sense of Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure (11 U.S.C. App.) should be modified to include a requirement that all documents (including schedules), signed and unsigned, submitted to the court or to a trustee by debtors who represent themselves and debtors who are represented by attorneys be submitted only after the debtors or the debtors' attorneys have made reasonable inquiry to verify that the information contained in such documents is –
>
> (1) well grounded in fact; and
>
> (2) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

The Subcommittee discussed at length whether Rule 9011 should be amended to implement these changes, and it concluded that the rule should not be amended in that manner. Concern was expressed that the amendments proposed in § 319 would have an adverse affect on the efficient administration of bankruptcy cases. They would also interject different standards of conduct for debtors and their attorneys as compared to the standards governing creditors, trustees, the United States trustee, and their attorneys. Other parties in interest such as purchasers of estate assets, plan proponents in chapter 11 cases, and the like, also would be governed by standards different from those governing debtors and their representatives. The Subcommittee believes that such a rule would be unfair and inappropriate.

The Subcommittee also concluded that the provision of § 319 that the rule be expanded to apply to all documents submitted to trustees is unwise. Making the rule applicable to these documents could lead to significant delays in the submission of documents due to the need for debtor's counsel to conduct due diligence investigations to ensure that they are complying with the rule. This delay would often be more detrimental to the estate than the benefit gained by the application of a revised rule to these documents. Furthermore, it would seem that if the rule were to be amended to apply to these submissions, then it would also apply to submissions made by

the debtor to the creditors' committee or other committees or examiners. This would also likely cause delays in the delivery of information to the non-debtor parties with relatively little benefit to be derived from the application of the rule to these documents. **Thus, the Subcommittee recommends against amending Rule 9011 to implement the changes suggested in § 319 of BAPCPA.**

3. RULE 9011 AND BANKRUPTCY CODE § 707(B)(4)(D)

Section 707(b)(4)(D) of the Code provides that "the signature of the debtor's attorney on the petition constitutes a certification that the debtor's attorney has no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect." Unlike § 319 of BAPCPA, however, this section applies directly and solely to chapter 7 cases. Consequently, the Subcommittee concluded that the form of the petition, Official Form 1, should be amended to include a statement, immediately above the space for the attorney's signature on the form, that highlights that the signature is a certification as provided in § 707(b)(4)(D). **The Subcommittee recommends that the statement be as follows:**

> **SIGNATURE OF ATTORNEY**
>
> **In a case in which § 707(b)(4)(D) applies, this signature constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.**
>
> X_____
>
> **Signature of Attorney**

The Subcommittee recognized that this certification applies only to the information on schedules that are filed with the petition and would not apply to the information in schedules

filed at a later date as allowed under Rule 1007. The Subcommittee also noted that in some cases the attorney who signed the petition may not be the attorney for the debtor when schedules are filed in a particular case. Thus, § 707(b)(4)(D) is in some ways deficient if its purpose is to require that in every chapter 7 case of an individual debtor whose debts are primarily consumer debts that the debtor's attorney certify that the attorney has no knowledge that the information in the schedules is incorrect. Instead, the Subcommittee concluded that a more appropriate solution, consistent with the intent of Congress in its enactment of § 707(b)(4)(D), would be an amendment to Official Form 6 (Schedules) that would add a signature requirement for the attorney for any debtor whose debts are primarily consumer debts. This would connect the certification to the document about which Congress has expressed concern. It also avoids the problem presented when the attorney who signed the petition is no longer the debtor's attorney at the point in the case when the schedules or amendments thereto are filed with the court. The appropriate attorney's signature will be present on the schedules.

While § 707 applies only in chapter 7 cases, the Subcommittee concluded that the obligation that the attorney certify that the attorney has no knowledge that the information in the schedules is incorrect should not be limited to chapter 7 cases. Section 707(b) applies in cases in which the debtor is an individual whose debts are primarily consumer debts. If the rule were amended to apply to all cases, regardless of the chapter under which they are brought, it would cover all of the cases governed by § 707(b) and would also apply to cases filed under chapters 11 and 13 when the debtor is a consumer debtor. The Subcommittee believes that this is a more sensible solution as compared to providing in the rules that the certification requirement applies only in chapter 7 cases. The minimum level of scrutiny by the debtor's attorney of the

information contained in the schedules should be the same under any chapter. Moreover, the attorney often will not even know which chapter the case will be filed under when he or she is preparing the schedules. Finally, many cases in chapter 13 are converted to chapter 7, so confusion could arise as to whether the debtor's attorney would have to certify the schedules at the point of conversion. This may be impossible given the potential passage of time between the filing of the schedules and the conversion of the case.

The Subcommittee recommends that Rule 9011 be amended to include a debtor and attorney certificate on all papers filed by an individual whose debts are primarily consumer debts in accord with the requirements of Section 707(b) (which will include Chapter 7, 11 and 13. The following is the proposed language proposed by the Subcommittee to amend Rule 9011.

Rule 9011. Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers

1 (a) SIGNING OF PAPERS. Every petition, pleading, written
2 motion, and other paper, except a list, schedule, or statement, or
3 amendments thereto, shall be signed by at least one attorney of
4 record in the attorney's individual name. A party who is not
5 represented by an attorney shall sign all papers. Each paper shall
6 state the signer's address and telephone number, if any. An
7 unsigned paper shall be stricken unless omission of the signature is

8 corrected promptly after being called to the attention of the
9 attorney or party.
10 (b) REPRESENTATIONS TO THE COURT BY ALL PARTIES
11 AND ATTORNEYS; REPRESENTATIONS BY DEBTORS
12 WHOSE DEBTS ARE PRIMARILY CONSUMER DEBTS AND
13 BY THEIR ATTORNEYS.
14 (1) REPRESENTATIONS BY ALL PARTIES AND
15 THEIR ATTORNEYS. By presenting to the court, whether by
16 signing, submitting, or later advocating a petition, pleading, written
17 motion, or other paper, an attorney or unrepresented party is
18 certifying that to the best of the person's knowledge, information,
19 and belief, formed after an inquiry reasonable under the
20 circumstances, –
21 ~~(1)~~ (A) it is not being presented for any improper purpose, such
22 as to harass or to cause unnecessary delay or needless increase in
23 the cost of litigation;
24 ~~(2)~~ (B) the claims, defenses, and other legal contentions therein
25 are warranted by existing law or by a nonfrivolous argument for
26 the extension, modification, or reversal of existing law or the
27 establishment of new law;
28 ~~(3)~~ (C) the allegations and other factual contentions have
29 evidentiary support or, if specifically so identified, are likely to

30 have evidentiary support after a reasonable opportunity for further
31 investigation or discovery; or
32 ~~(4)~~ (D) the denials of factual contentions are warranted on the
33 evidence or, if specifically so identified, are reasonably based on a
34 lack of information or belief.
35 (2) REPRESENTATIONS BY A DEBTOR WHOSE DEBTS
36 ARE PRIMARILY CONSUMER DEBTS AND BY THE
37 DEBTOR'S ATTORNEY. In a case in which the debtor is an
38 individual whose debts are primarily consumer debts, any schedule
39 or amended schedule shall be accompanied by a certification by the
40 debtor's attorney that the attorney has no knowledge after an
41 inquiry that the information in the schedule or amended schedule is
42 incorrect.
43 * * * * * *

COMMITTEE NOTE

Subdivision (b) of the rule is amended by adding a new subparagraph that establishes obligations on counsel for debtors whose debts are primarily consumer debts. The former provisions of subdivision (b) are renumbered as subparagraphs (b)(1)(A) through (D), and a new subparagraph (2) is added to the subdivision. Subparagraph (b)(1) continues to apply to all attorneys and unrepresented parties. Subparagraph (b)(2) makes the standards of § 707(b)(4)(D) applicable to all cases under all chapters as long as the debtor has primarily consumer debts. Thus, counsel for consumer debtors in chapter 7, 11 and chapter 13 cases each have the same standard of conduct in submitting the petition regarding the information contained in the schedules submitted with the petition.

4 A - Attorney Certification

Voluntary Petition
(This page must be completed and filed in every case.)

Name of Debtor(s):

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
[If no attorney represents me and no bankruptcy petition preparer signs the petition] 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.

X _____
Signature of Debtor

X _____
Signature of Joint Debtor

_____
Telephone Number (if not represented by attorney)

_____
Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only **one** box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S C. § 1515 are attached.

☐ Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X _____
(Signature of Foreign Representative)

_____
(Printed Name of Foreign Representative)

_____
Date

Signature of Attorney

In a case in which § 707(b)(4)(D) applies, this signature constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

X _____
Signature of Attorney for Debtor(s)

_____
Printed Name of Attorney for Debtor(s)

_____
Firm Name

_____
Address

_____

_____

_____
Telephone Number

_____
Date

Signature of Non-Attorney Bankruptcy Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19B is attached.

_____
Printed Name and title, if any, of Bankruptcy Petition Preparer

_____
Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer) (Required by 11 U.S.C. § 110.)

_____
Address

_____

X _____

_____
Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor

The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Authorized Individual

_____
Printed Name of Authorized Individual

_____
Title of Authorized Individual

_____
Date

MEMORANDUM

TO: SUBCOMMITTEE ON ATTORNEY CONDUCT & HEALTH CARE

FROM: JEFF MORRIS, REPORTER

RE: COMMENTS ON INTERIM AND PUBLISHED RULES RELATING TO HEALTH CARE CASES

DATE: FEBRUARY 23, 2007

The comments on the Interim Rules and the Rules Published for Comment in August 2006 include comments on the rules governing attorney conduct and those applicable to health care cases. This memo sets out those comments and recommends action by the Subcommittee as to matters relating to health care cases. A separate memo will set out the issues relating to attorney conduct in bankruptcy cases.

There were two comments to the Interim Rules relating to health care cases. The first was submitted by William Redden, the Clerk of the Bankruptcy Court for the Eastern District of Virginia. In **Comment 05-BK-014**, he correctly noted that the rule should refer to a "patient care ombudsman" rather than a "health care ombudsman." **That change has been made, so no further action is necessary regarding that comment.**

The second comment on the Interim Rules, **Comment 05-BK-037**, was submitted by the Insolvency Law Committee of the Business Law Section of the California State Bar. On pages 2-3 of that comment, the Committee suggests that Interim Rule 2007.2 should include a reference to the interests of patients as well as the quality of health care. The Committee states that § 333 of the Code provides that the ombudsman has the responsibility to consider the interests of patients. While that is true, the statute also provides that the determination of whether the appointment of an ombudsman is not necessary is based only on whether the appointment is "not

necessary for the protection of patients under the specific circumstances of the case." Thus, the rule adopts the direct language of the statute, and the Insolvency Law Committee's reference to another portion of the statute is not relevant to the specific action governed by Rule 2007.2. **Therefore, I do not believe that we should adopt this recommendation.**

We have received two additional comments on health care issues among the comments on the rules that were published in August 2006. In **Comment 06-BR-052**, the California State Bar Committee on Federal Courts offered a comment on proposed Rule 6011 governing the disposal of patient records. Section 351 of the Code includes an elaborate procedure governing these matters, and proposed Rule 6011 implements the statute. The Code allows the trustee to dispose of patient records if the estate does not have sufficient funds to pay for their storage. The statute directs the trustee to publish notice of the proposed destruction of the records. The State Bar Committee urges that the rule should provide that the cost of the notice should not be a factor in determining whether the notice should be sent, and if there are insufficient funds in the estate to pay for the notice, that the cost of the notice should be paid by the United States trustee or the court. The problem identified in this comment could be significant in a case where there are no assets available in the estate to cover the costs of notice. However, the Code provides specifically that this is an obligation of the trustee, and I think it would be inconsistent with the Code to shift that cost to another party. Instead, I would assume that if there are no assets available to pay for the notice, noone would be willing to serve as trustee (or would seek to resign if they were already serving), and the United States trustee would be required to serve as the trustee under 28 U.S.C. § 586(a)(2). **Therefore, I do not believe that we should adopt the recommendation of the State Bar Committee.**

The American Bankruptcy Institute's Task Force on Bankruptcy Rules submitted **Comment 06-BK-056.** The Task Force compiled comments on a number of rules, including proposed Rules 1021, 2015.1, and 6011. These comments essentially consist of the responses of 40 members of the ABI to a survey regarding the proposed rules. The ABI has over 10,000 member, so the responses of 40 of their members cannot be considered necessarily representative. As to proposed Rule 1021, approximately 75% of the respondents believed that the rule should be amended to include a deadline for parties in interest to object to the debtor's self-designation as a health care business. Once the debtor identifies itself as a health care business on the petition, then the court must take action on the appointment of a patient care ombudsman under Rule 2007.2 within the first 20 days of the case. The significance of being a health care business is thus largely resolved once the court makes its determination about the appointment of the ombudsman. Therefore, there would not seem to be any need for the court to decide that the debtor is not a health care business. On the other hand, if the debtor did not identify itself as a health care business, parties in interest should be allowed to raise that issue with the court. Proposed Rule 1021 permits them to do so without a deadline. There is no deadline because the parties in interest may not know what designation the debtor has selected in the petition, and requiring the debtor to defend its designation as an entity other than a health care business seems appropriate whenever it is first raised in the case. **Therefore, I do not believe that we should adopt the recommendation that a deadline be inserted into proposed Rule 1021.**

The comment also suggests that proposed Rule 2015.1 be amended to provide more details about the form and contents of reports to be provided by the patient care ombudsman.

These reports are required under § 333(b) of the Code, and Rule 2015.1 establishes a notice requirement so that parties in interest can obtain access to the reports. I do not believe that it would be appropriate to set standards or provide a form for these reports in a rule. The circumstances under which these reports would be provided to the court could vary greatly, and since these are reports to be given to the court, I believe that the court would be in the best position in each case to direct the ombudsman as to the nature and form of the report. **Thus, I do not believe that we should adopt the recommendation that Rule 2015.1 be amended to include guidelines for the contents of the reports.**

Finally, the ABI comments raise two matters concerning proposed Rule 6011. First, its suggests that the rule be amended to require that the notice of the disposal of patient records be sent as well to the state attorney general in the state in which the records are located. Since the attorney general may have responsibility for the operation of health care facilities, it may be appropriate to add the attorney general to the notice list under Rule 6011(b). The ABI also suggests that rule should set out the mechanism by which persons can object to the proposed destruction of patient records. I believe that proposed Rule 6011(a) already provides that mechanism. It provides for notice to affected parties that includes directions as to how they can obtain those records. This should be a sufficient protection for persons with legitimate interests in the records. Therefore, **I do not recommend that Rule 6011 be amended to provide a mechanism for filing objections to the proposed destruction of patient records, but I recommend that the attorney general for the state in which a health care facility is located be added to the list of persons entitled to notice under Rule 6011(b).**

Analysis of the 2006 Means Test Comments (Final version, 3/5/07)

1. Chapter 13 Attorney Fees.

a. *Substance of the comments.*

i. Tom Yerbich (06-BK-003) and Keith Lundin (06-BK-009 at 26) suggest that the following statement in the Committee Comment be deleted:

> The Chapter 13 form does not provide a deduction from disposable income for the Chapter 13 debtor's anticipated attorney fees. No specific statutory allowance for such a deduction exists, and none appears necessary. Section 1325(b)(1)(B) requires that disposable income contributed to a Chapter 13 plan be used to pay "unsecured creditors." A debtor's attorney who has not taken a security interest in the debtor's property is an unsecured creditor who may be paid from disposable income.

ii. Keith Lundin (06-BK-009 at 26) alternatively suggests that an instruction be added to From 22C, Line 49 specifying that projected attorney's fees may be deducted as "Payments on priority claims." Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 18) also makes this suggestion.

iii. As a second alternative, Judge Lundin suggests (06-BK-009 at 27) that "[i]f attorneys fees are excluded at Line 49 . . . then attorneys fees should be a line item added to average monthly administrative expenses at Line 50."

b. *Suggested response.* The only change should be to the instruction in Line 49, which should be amended to make it clear that only existing (not anticipated) priority claims are to be deducted.

c. *Explanation.* Omitting the discussion of Chapter 13 debtors' attorneys' fees would leave substantial uncertainty as to how these fees should be treated. As indicated by Judge Lundin's comments, a debtor might think that projected attorneys' fees could properly be included either as a priority claim on Line 49 of Form 22C or as an expense of administration of a Chapter 13 case on Line 50. However, neither of those possi-

bilities is consonant with the relevant provisions of the means test.

Line 49 of Form 22C effectuates § 707(b)(2)(A)(iv), which provides a deduction from current monthly income (CMI) for "priority claims (including child support and alimony claims)." At the time of filing a case, a debtor could not be liable on a priority claim for attorneys' fees to the debtor's current counsel, because such fees would only gain priority status if later approved by the court under § 330. Moreover, the fact that there is a separate provision for deducting the prospective administrative expenses in Chapter 13 (§ 707(b)(2)(A)(ii)(III), discussed below), indicates that the priority claims dealt with by § 707(b)(2)(A)(iv) are existing prepetition claims, not anticipated administrative claims. An amendment to the instruction to make this clear would be appropriate. See Point 12, below.

Line 50 of Form 22C effectuates § 707(b)(2)(A)(ii)(III), which provides a deduction from CMI for "the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to an amount of 10 percent of the projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees." This provision caps the amount of the administrative expense allowance at the percentage of projected plan payments set by the EOUST. Perhaps because ten percent of plan payments is the maximum fee that can be allowed standing trustees for administering Chapter 13 cases (pursuant to 28 U.S.C. § 586(e)(1)(B)), the EOUST appears to be setting the administrative expense cap at the fee percentage allowed to standing trustees, leaving little if anything for debtors' attorneys' fees. See http://www.usdoj.gov/ust/eo/bapcpa/20070201/bci_data/ch13_exp_mult.htm. In any event, Line 50 instructs debtors to deduct the full amount of the percentage of projected monthly Chapter 13 payments allowed by the EOUST. No additional amount for attorneys' fees can be claimed consistent with the statutory language.

It is helpful for the Committee Comment to point out that Form 22C (consistent with the statutory language) does not provide for deducting debtor's attorneys' fees, but at the same time, it is important to note that this omission does not make it impossible for above-median income debtors (who must use the means test deductions) to pay their attorneys through a Chapter 13 plan. Pursuant to § 1325(b)(1)(B), the disposable income that is left after the allowed deductions from income must be

paid, upon objection, "to unsecured creditors under the plan." As the Committee Note indicates, unless an attorney has taken collateral to secure fee payment, the claim of the debtor's attorney will be unsecured. Disposable income is not required to be paid exclusively to non-priority unsecured claims, as Mr. Yerbich's comment appears to assume.[1]

2. Deductions from CMI in Chapter 11.

a. *Substance of the comment*. Tom Yerbich (06-BK-005) suggests that Form 22B include deductions from current disposable income specified in § 1325(b)(2), because these deductions are applicable in Chapter 11, pursuant to § 1129(b)(15)(B).

b. *Suggested response*. No action is necessary, but the suggestion could be adopted without difficulty and would not cause the form to be inaccurate.

c. *Explanation*. We determined that a current monthly income form was needed in individual Chapter 11 cases because § 1129(b)(15)(B) requires that, upon objection, an individual debtor's Chapter 11 plan must distribute property equal to "the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received" during a defined period. Section 1325(b)(2), in turn, specifies the use of CMI in calculating disposable income. However, § 1325(b)(2) does not specify use of the means test deductions in calculating disposable income, leaving disposable income in Chapter 11 to be determined according to judicially determined standards. As Mr. Yerbich suggests, a calculation of disposable income for purposes of § 1325 is required to include certain special deductions from CMI—such as child support payments received by the debtor. However, because the form does not calculate disposable income, it is not necessary to include these special deductions. If we were to do so, Mr. Yerbich is correct in suggesting that the deductions

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[1] Indeed, if all disposable income were required to be paid to non-priority unsecured claims, there would be substantial difficulty in paying Chapter 13 debtors' attorneys in many cases even if the fees could be deducted as a priority claim, since such claims are only deductible at 1/60 of the total amount monthly. Assuming that the other means test deductions accurately measure necessary payments, a "priority" deduction for debtors' attorneys would pay the debtor's attorney in full only if the plan paid all creditors in full or only if the debtor completed all payments under a five-year plan.

currently set out in Part V of Form 22C could accurately be included in Form 22B.

3. Calculation of spousal current monthly income.

a. *Substance of the comments*. Keith Lundin (06-BK-009) and Eric Froisland (06-BK-019 at 1-2. 5-6) make suggestions relating to the treatment of spousal income in Form 22C. A group of organizations representing consumer credit providers (06-BK-055 at 8) suggests that debtors not be allowed to remove the income of a non-filing spouse from the calculation of current monthly income for purposes of determining the applicable commitment period. Judge Lundin's comments, which appear to include all of the points made by Mr. Froisland, suggest the following:

i. Include in Line 1 a provision for joint debtors to designate which one is "debtor" and which is "debtor's spouse" (p. 5). This recommendation is consistent with the later suggestion (pp. 7-8) that the current monthly income of a jointly filing "debtor's spouse" does not include payments received on a regular basis for the support of that spouse's dependents who are not also dependents of the debtor. To accommodate this view, all of the means test forms would have to be amended to allow a joint debtor to declare him or herself the "debtor's spouse" and thereby avoid counting as current monthly income any contributions to the household expenses of his or her individual dependents. (To preserve the question for decision by the court, the forms would have to require disclosure of the amount of such support payments with an option to exclude that amount from income, as with the treatment of unemployment compensation in Line 8 of existing Form 22C.)

ii. Modify Line 1 to indicate that Column B should be completed only by married debtors filing jointly (pp. 5, 8).

iii. For married debtors not filing jointly, provide that spousal income be counted only in Line 7 (amounts contributed on a regular basis for the household expenses of the debtor or the debtor's dependents) (id.).

iv. Either eliminate Line 13 (marital adjustment for the applicable commitment period) (p. 5) or change it to add whatever income of a nonfiling spouse the debtor believes should be part of the combined current monthly income of the debtor and the debtor's spouse pursuant to § 1325(b)(4) (p.11).

v. Eliminate Line 19 (marital adjustment for calculating disposable income) (id.) (pp. 5, 13).

vi. Alternatively, reverse parts II and III, so that the marital adjustment of Line 19 is part of the determination of current monthly income for the applicable commitment period (p, 12-13).

b. *Suggested response*. No action.

c. *Explanation*. The treatment of spousal income in the means test forms was thoroughly discussed by the Advisory Committee in connection with the original adoption of the forms and again in response to earlier comments by the National Bankruptcy Conference; the suggestion of the consumer finance group and most of the suggestions made in Judge Lundin's comments were rejected in that discussion. A summary of the points in favor of the current version of the form is attached as an appendix to this memorandum.

The one suggestion not previously advanced is the idea that the means test forms should distinguish in joint cases between the debtor and the debtor's spouse. I noted the drafting problem that gives rise to this suggestion in an article for the American Bankruptcy Law Journal, Means Testing in the New § 707(b), 79 Am. Bankr. L.J. 231, 246 n.36:

> Section 101(10A)(B) recognizes, as part of the [definition of current monthly] income used to determine CMI, regular contributions made by a non-debtor (1) to the household expenses of "the debtor," (2) to the household expenses of dependents of "the debtor," and (3) to household expenses of "the debtor's spouse" in a joint case, but not (4) to the household expenses of dependents of the debtor's spouse in a joint case. Literally then, if the individual listed in a joint petition as the "debtor's spouse" has dependents not shared with the individual listed as the "debtor"—for example, children from a prior marriage—any regular support payments to those dependents would not be part of the CMI of the joint debtors, but if the listing of the spouses on the petition were reversed, the support payments would be included in calculating CMI. This is an absurd result, since both spouses are equally "debtors." *See* 11 U.S.C. § 302(b) (2000) ("After the commencement of a joint case, the court shall determine the extent, if any, to which the debtors' estates

shall be consolidated."). Because, in a joint case, there is no reasonable policy basis for distinguishing support payments made to dependents of the debtor from support payments made to dependents of the debtor's spouse, this implication of the statutory language may be safely discarded. *See Nelson v. Scala*, 192 F.3d 32, 35 (1st Cir.1999) (rejecting a literal application of § 522(f)(2) of the Bankruptcy Code on the basis that "[c]ourts are not required to follow literal language where it would produce an outcome at odds with the purpose of Congress and where the result stems merely from an unintended quirk in drafting.")

4. Treatment of business and rental expenses.

a. *Substance of the comments.* Keith Lundin (06-BK-009 at 6) and Eric Froisland (06-BK-019 at 3) suggest that Lines 3 and 4 of Form 22C include the gross receipts of a business or rental property as income, without deduction for the costs of doing business or maintaining the rental property, with those costs considered as "expenses" deducted from current monthly income. This suggestion would apply to each of the means test forms.

b. *Suggested response.* No action.

c. *Explanation.* The question of accounting for business and rental costs was discussed by the Advisory Committee at the time that the means test forms were initially adopted. We determined that these costs should be deducted from gross receipts principally because this is the method used by the Census Bureau in calculating the median income levels to which current monthly income under the Code is compared. Moreover, the Internal Revenue Manual, which sets out the general deductions for living expenses used in the means test also employs "net income from self-employment" and "net rental income" as the base from which deductions are made. See Manual § 5.15.1.11(2C-D). Including ordinary business or rental costs in current monthly income would cause individuals with business or rental income to be put into artificially higher income categories.

5. Amounts paid by others for household expenses of the debtor or debtor's dependents.

a. *Substance of the comments.* Keith Lundin (06-BK-009, at 7-8) suggests that Line 7 of Form 22C improperly includes child or spousal support and that support payments should be a sepa-

rate line item. The suggestion would be applicable to all of the means test forms. Eric Froisland (06-BK-019 at 3-4) suggests that Line 7 should require the inclusion of regular payments from a non-filing spouse.

b. *Suggested response*. Judge Lundin's suggestion should be implemented in part.

c. *Explanation*. The definition of current monthly income ("CMI") in § 101(10A) has two parts. The first part, (10A)(A), is general, defining CMI as "average monthly income from all sources that the debtor receives . . . without regard to whether such income is taxable." The second part, (10A)(B) contains specific inclusions and exclusions from CMI, beginning with the provision that CMI "includes any amount paid by any entity other than the debtor . . . on a regular basis for the household expenses of the debtor or the debtor's dependents." The comment is correct in part: some support payments—alimony and separate maintenance payments—are within the general (10A)(A) definition (income received by the debtor) and so should not be limited by the provision of (10A)(B) that includes only regular payments of household expenses. *See* 26 U.S.C. § 71(a) (alimony and separate maintenance are "gross income" for tax purposes). Child support, however, is not considered income to the recipient. *See* 26 U.S.C. § 71(c) (excluding child support payments from the scope of § 71(a)); *Preston v. Commissioner*, 209 F.3d 1281, 1284 (11th Cir. 2000) (child support payments do not constitute income to the recipient spouse and cannot be deducted from the income of the paying spouse). Thus, child support payments are properly included in CMI only to the extent regularly paid for the household expenses of the debtor's dependents under (10A)(B). To deal properly with this distinction, Line 7 of Form 22C would have to be modified to include the average of all alimony and separate maintenance payments received by the debtor in the six calendar months before filing, regardless of whether they were paid on a regular basis or were for household expenses. Child support payments, however, would continue to be subject to the (10A)(B) limitations.

To avoid changing line numbers, alimony and separate maintenance payments could be set out in a Line 7A, with child support on Line 7B and other payments of household expenses in Line 7C. In addition to better implementing the definition of CMI, providing for a report of formal support payments on a separate line would simplify deduction of child support payments from disposable income, as required by § 1325(b)(2) and implemented in Line 54 of Form 22C.

Mr. Froisland's suggestion is based on his proposed overall restructuring of the treatment of spousal income. Since the current forms use the income of a non-filing spouse for calculating current monthly income under §§ 707(b)(7) and 1326(b)(4), it is essential that payments from the non-filing spouse not be included in the debtor's income, to avoid double-counting.

6. References to the website of the Executive Office for United States Trustees.

a. *Substance of the comment*. Keith Lundin (06-BK-009, at 11, 14, 15, 23) suggests that references to data posted on the website of the EOUST be deleted from Lines 16, 24, 25A, 25B, 27, and 29 of Form 22C. The comment focuses particularly on Lines 25A and 25B, which direct the debtor to state components of the IRS Local Standard for housing and utilities, because these components of the IRS housing and utilities standard are issued by the EOUST based on information provided by the IRS rather than by the IRS directly. The suggestion would require changes to the parallel lines of Form 22A.

b. *Suggested response*. No action.

c. *Explanation*. The substance of this suggestion has been considered by the Advisory Committee. With the exception of Lines 25A and 25B, Form 22C only directs the debtor to the website of the EOUST as a convenient source of information that is otherwise be available through the agencies that generate the information—the Census Bureau and the IRS. The form does not mandate the use of the EOUST as a source of the required information. The EOUST's website is cited because the originating agencies do not provide a consistent web addresses for access to the required information. There is no reason to believe that the EOUST would incorrectly transcribe the information available from the other agencies or that it would not immediately correct any error in its transcription.

Lines 25A and 25B do require the use of one type of data issued originally by the EOUST—a separation of the IRS Local Standard for housing and utilities into components for non-mortgage expenses and mortgage/rent expense. Line 26 accommodates the suggestion that the use of this data is inappropriate by allowing the debtor to claim a larger deduction. The Advisory Committee discussed this matter at length and approved this approach. The Committee's rationale is set out in the Appendix to this memorandum.

7. References to the IRS National Standards.

a. *Substance of the comments.* Keith Lundin (06-BK-009, at 13, 23) suggests changes in references to the IRS National Standards in Lines 24 and 44 of Form 22C. In Line 24, Judge Lundin suggests that "clothing" be changed to "apparel & services" and that "household supplies" be changed to "housekeeping supplies." In Line 44, Judge Lundin suggests that "food and apparel" be changed to "food and apparel and services." Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 6-7) makes similar suggestions.

b. *Suggested response.* The suggestions should be implemented with a minor modification.

c. *Explanation.* The comments correctly identify instances in which Form 22C uses language deviating from the language of the Internal Revenue Manual, which sets out the National Standards for expense deductions employed in the means test. The Advisory Committee has previously amended Form 22 to comport more closely to the Internal Revenue Manual and the suggested changes would be consistent with this approach. However, Judge Lundin's suggestion for Line 44 might be improved by changing "food and apparel and services" to "food and clothing (apparel and services)" since the statute itself uses "clothing" to describe the "apparel and services" category of the National Standards. These wording changes will have no substantive effect but will make references to the National Standards clearer. The changes should also be made in the corresponding lines of Form 22A.

8. Determining "gross monthly income" for application of the IRS National Standards.

a. *Substance of the comments.* Keith Lundin (06-BK-009, at 13-14) suggests that Line 24 of Form 22C be amended to include an instruction for determining the amount of the debtor's "gross income" under the IRS National Standards. Judge Lundin does not suggest the content of such an instruction. Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 7) suggests that debtors be required to "disclose what gross income figure was used in determining the applicable National Standard."

b. *Suggested response.* No definition of "gross monthly income" should be given. However, the instruction in Line 24 and

the other lines dealing with the IRS standards (as well as the corresponding line of Form 22A) should be changed to refer to "household" rather than "family" size, and other non-definitional changes to the form may be appropriate.

c. *Explanation.* The IRS National Standards allow varying deductions for food, clothing and other specified expenses depending on the number of persons in the taxpayer's household and the "gross monthly income" of the household.[2] Line 24 of Form 22C instructs debtors to deduct the applicable amount for their "family size and income level." Although not commented on by Judge Lundin, the reference to "family size" should be changed to "household size," both because this is the statistic used by the IRS Standards and because the means test itself uses the size of the debtor's "household" in comparing current monthly income to state medians. *See, e.g.*, § 707(b)(2)(6). Moreover "family" is ambiguous, and could be understood to include members of the debtor's family who do not reside in the debtor's household.

On the other hand, there is no clear basis for determining what "monthly gross income" should be used in applying the National Standard expense deductions.
The Internal Revenue Manual sets out a lengthy definition of "income" for purposes of determining a taxpayer's ability to repay debt. Manual § 5.15.1.11(2) (set out in the Appendix to this memorandum). This definition varies in some respects from the definition of current monthly income set out in § 101(10A) of the Code. For example, the IRS definition calls for an annual (rather than six-month) averaging of interest and dividend income, it expressly includes social security benefits, and it

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[2] "Household" size is not expressly specified by the Internal Revenue Manual, but the manual's expense deductions are based on the Bureau of Labor Statistics (BLS) Consumer Expenditure Survey (see Internal Revenue Manual § 5.15.1.7(3)) and the BLS Survey expressly reports its data based on "household" size, defining "household" in detail. *See* Bureau of Labor Statistics, Consumer Expenditures in 2004 (Report 992) at 7, defining "consumer unit" as "Members of a household consisting of (a) occupants related by blood, marriage, adoption, or some other legal arrangement; (b) a single person living alone or sharing a household with others, but who is financially independent; or (c) two or more persons living together who share responsibility for at least 2 out of 3 major types of expenses—food, housing, and other expenses. Students living in university-sponsored housing also are included in the sample as separate consumer units."

includes all child support received, regardless of its regularity. The monthly income calculated in Schedule I presents yet a third possible statement of "monthly gross income." A debtor could reasonably employ any of these possibilities in choosing the applicable National Standard expense allowance.

Consistent with the general policy of the Advisory Committee to avoid choosing from among reasonable alternatives, it would not be appropriate for Form 22 to direct which of these possibilities should be followed. However, the Committee Note to the forms (or an expanded instruction sheet made part of the forms) might discuss the ambiguity here. It might also be appropriate to direct the debtor to indicate on the form how the debtor determined "monthly gross income," so that the matter could be raised more easily in the event of a dispute.

9. Deductions for tax payments.

a. *Substance of the comment*. Keith Lundin (06-BK-009, at 15-16) suggests that Line 30 of Form 22C be amended to remove the exclusion of real estate and sales taxes from deductible tax payments and that Line 47 be amended to instruct debtors to deduct all real estate taxes at Line 30.

b. *Suggested response*. None of the actions suggested by the comment should be implemented. Instead, Line 47 should be amended to allow deduction only of principal and interest payments involved in a mortgage.

c. *Explanation*. (a) The IRS Local Standards provide an allowance for all housing expenses, including real estate taxes. *See* Internal Revenue Manual § 5.15.1.9(1A) ("Local standards include the following expenses: . . . mortgage or rent, property taxes, interest, parking, necessary maintenance and repair, homeowner's or renter's insurance, homeowner dues and condominium fees."). This Local Standard deduction for housing is provided for in Lines 25A-26 of Form 22C. Line 30 of the form provides a separate deduction reflecting the IRS's "Other Necessary Expense" category for tax payments, described in the Internal Revenue Manual at § 5.15.1.10(3) as involving "current federal, FICA, Medicare, state and local taxes."[3] Similarly, real estate taxes on income producing property would have been removed from rental income in Line 4. The Advisory Committee has adopted a

[3] The complete text of § 5.15.1.10 is set out in the Appendix to this memorandum. The tax category is the twelfth listed.

policy of reading the "Other Necessary Expense" categories of the Internal Revenue Manual as not providing for duplicative expense deductions. This policy is based on the understanding that "other" expenses are meant to be expenses that are not covered by the IRS's National and Local Standards. Consistent with this policy, the Committee has previously decided that the Line 30 deduction should not include real estate taxes.

(b) The IRS National Standards provide an allowance for general living expenses (food, clothing, personal care, entertainment, etc.). This allowance is based on a survey conducted by the Bureau of Labor Statistics, which reports "transaction costs, including excise and sales taxes, of goods and services acquired during the interview period." Thus, again consistent with the policy of avoiding duplicate deductions, Line 30 instructs debtors not to include sales taxes.

(c) Judge Lundin's comment points out that Line 47 is inconsistent with the non-duplication policy, because it allows deduction of property taxes included in a mortgage. The Advisory Committee may have provided that deduction for simplicity, allowing a deduction of the debtor's entire monthly mortgage payment rather than only the principal and interest portion. The comment would have the inconsistency resolved by allowing double deduction of all property taxes; a better resolution would be to change Line 47 to allow deduction only of the principal and interest payments on the mortgage. In addition to avoiding double deduction, limiting Line 47 to the principal and interest payable on a mortgage would better implement the secured debt deduction provided by § 707(b)(2)(A)(iii), which is based on "amounts scheduled as contractually due to secured creditors." Property taxes are not due "to secured creditors" under a contract, but rather are due to governmental bodies under applicable law.

10. "Other Necessary Expense" deduction for employment expenses.

a. *Substance of the comments.* Keith Lundin (06-BK-009, at 16-17) and Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 13) suggest that Line 31 of Form 22C be amended to be titled "involuntary deductions" rather than "mandatory deductions" and that the word "payroll" be omitted from the instruction,

b. *Suggested response.* The suggestion should be implemented.

c. *Explanation*. Judge Lundin correctly points out that the IRS "Other Necessary Expense" category implemented by Line 31 is titled "Involuntary Deductions" and is not limited to "payroll" deductions. See item 8 in § 5.15.1.10(3) of the Internal Revenue Manual, set out in the Appendix hereto. The Advisory Committee has previously adopted a policy of tracking, to the extent reasonable, the language of the Manual describing the "Other Necessary Expense" categories. To effectuate this policy in Line 31, the line would be titled "Other Necessary Expenses: involuntary deductions for employment" and the instruction would begin "Enter the total average monthly deductions that are required for your employment . . . ." The same change should be made in the corresponding line of Form 22A.

11. "Other Necessary Expense" deduction for life insurance.

a. *Substance of the comment*. Keith Lundin (06-BK-009, at 17) suggests that Line 32 of Form 22C be amended to remove the limitation to term insurance and to allow a deduction for the debtor's spouse in a joint case.

b. *Suggested response*. No action.

c. *Explanation*. The IRS "Other Necessary Expense" category for insurance is expressly limited to term life insurance. See item 9 in § 5.15.1.10(3) of the Internal Revenue Manual, set out in the Appendix hereto. None of the expense lines in Forms 22A and 22C distinguish between "debtor" and "debtor's spouse" in a joint case; rather, if both spouses are debtors the word "you" in the line instructions would plainly refer to both.

12. "Other Necessary Expense" deduction for court ordered payments.

a. *Substance of the comments*. Keith Lundin (06-BK-009 at 17-18) and Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 513-14) suggest that the instruction for Line 33 of Form 22C be amended (i) to include payments ordered by an administrative agency as well as by a court, and (ii) to eliminate the exclusion of past due payments or else to remove a perceived overlap with the priority debt deduction of Line 49.

b. *Suggested response*. The addition of agency-ordered payments is appropriate; however, the restriction of Line 33 to

current payments is correct; a clarification to the instruction in Line 49 would be helpful to avoid the perception of overlap.

c. *Explanation*. (i) As Judge Lundin points out, the IRS category for court ordered payments includes "orders made by the state," a phrase which reasonably covers agency-ordered support payments. The instruction in Line 33 should thus be amended to refer to "the total monthly amount that you are paying for current obligations pursuant to the order of a court or administrative agency, such as spousal or child support payments."

(ii) All of the IRS expense deductions (National Standards, Local Standards, and Other Necessary Expenses) are employed in the means test subject to the proviso of § 707(b)(2)(A)(ii)(I) that "[n]otwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts." Any payments that a debtor made pursuant to court order reflecting past-due amounts would be "payments for debts" and so cannot be deducted in Line 33. The instruction in Line 33 reflects this limitation, but refers only to spousal or child support payments. It should not be so limited. Any court-ordered payments on account of a past due obligations would refer to debt payment and so should not be included in Line 33. Accordingly, the last sentence of the instruction should read "Do not include payments on past due obligations included in Line 49." Finally, as Judge Lundin points out, a debtor might conclude that current support obligations (properly deducted in Line 33) are also "priority claims" deductible in Line 49. To avoid that error, the instruction in Line 49 should be amended to read "Enter the total amount, divided by 60, of all priority claims, including only past due obligations. Do not include current obligations set out in Line 33."

13. "Other Necessary Expense" deduction for education.

a. *Substance of the comment*. Keith Lundin (06-BK-009 at 18-19) suggests that the instruction for Line 34 of Form 22C be amended (i) to include payments for education that would increase a debtor's wages, and (ii) to include payments for education expenses of a non-filing spouse's physically or mentally challenged child.

b. *Suggested response*. No action.

c. *Explanation*. The instruction properly reflects the content of the IRS "Other Necessary Expense" category for education. See item 6 in § 5.15.1.10(3) of the Internal Revenue Man-

ual, set out in the Appendix hereto. It is not appropriate to allow a deduction for educational expenses of a non-filing spouse's dependents. For purposes of applying the means test (with its IRS deductions), the income of a non-filing spouse is included in current monthly income of the debtor only to the extent it is paid for the household expenses of the debtor or the debtor's dependents. *See* Lines 19, 20, and 53 of Form 22C.

14. "Other Necessary Expense" deduction for health care.

a. *Substance of the comments*. Keith Lundin (06-BK-009 at 19) suggests that the instruction for Line 36 of Form 22C is accurate in excluding reimbursed medical expenses only if insurance reimbursement is excluded from income in Line 7. Conversely, Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 14) suggests that the instruction limit the deduction to those health care expenses "required for the health and welfare of the family" and that the debtor be required to provide proof of such payments.

b. *Suggested response*. The instruction for Line 36 should be amended to include the limitation to necessary health care: "Enter the average monthly amount that you actually expend on health care that is necessary for the welfare of yourself or your dependents and that is not reimbursed by insurance or paid by a health savings account." A similar change should be made in the corresponding line of Form 22A.

c. *Explanation*. The instruction for Line 36, in main part, reflects the content of the IRS "Other Necessary Expense" category for health care. See item 7 in § 5.15.1.10(3) of the Internal Revenue Manual, set out in the Appendix hereto ("Ensure that the amount used is out of pocket after insurance claims are paid."). The forms are not reasonably able to address the question of whether particular insurance proceeds are within the definition of "current monthly income" as payments made on a regular basis for the household expenses of the debtor or the debtor's dependents, and so Judge Lundin's suggestion cannot be implemented. Mr. Froisland is correct in reading the Internal Revenue Manual's discussion of health care expenses as limited to "necessary" expenses. The question of what proof should be required for such expenses, however, is not addressed by the Code (in contrast to other specified deductions) and there is no reason why documentation required by the Manual should be referenced in the form. (Of course, a Chapter 13 trustee or interested party may obtain relevant documentation from the debtor

whenever a question arises regarding the debtor's financial condition.)

15. Consistent use of "total" in "Other Necessary Expense" deduction instructions.

a. *Substance of the comment*. Keith Lundin (06-BK-009 at 19) suggests that the word "total" should be used for applicable deductions in all of the instructions for Lines 30 through 37 of Form 22C.

b. *Suggested response*. The suggestion should be implemented.

c. *Explanation*. The instructions for several of the IRS "Other Necessary Expense" categories (Lines 30-37 of Form 22C) refer to the "total" expense that the debtor incurs in the given category, but Lines 32, 35, 36, and 37 do not. There is no reason for the distinction. The word can properly be added to each of these lines, and to the corresponding lines of Form 22A.

16. "Other Necessary Expense" deductions for optional telephone and internet service.

a. *Substance of the comments*. Keith Lundin (06-BK-009 at 19-20) suggests (i) that the instruction for Line 37 of Form 22C should be divided into separate lines for optional telephones and telephone service and for internet provider /email and (ii) that the instruction for Line 37 should be amended to remove both the exclusion of basic telephone service and the limitation of other service to that necessary for the health or welfare of the debtor and the debtor's dependents. Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 14-15) makes similar suggestions.

b. *Suggested response*. No action.

c. *Explanation*. (i) The combination of the two IRS "Other Necessary Expense" categories was done to avoid changing line numbers when internet service was added to an earlier version of the form. It has no substantive impact. (ii) Basic telephone service is included in the Local Standard for housing/utilities and so cannot be deducted in Line 37 without violating the policy against duplicative deductions. The limitation to services necessary for health and welfare is part of the Internal Revenue Manual's "necessary expense test" which is expressly applicable

to both the phone and internet categories. See items 13 and 15 in § 5.15.1.10(3) of the Internal Revenue Manual, set out in the Appendix hereto. The necessary expense test is set out in § 5.15.1.10(1) of the Manual, also in the Appendix. The test allows expenses for both health and welfare and income-generating purposes, but the use of the optional phone and internet services for business is taken into consideration in the netting of business and rental income provided for in Lines 3 and 4.

17. Omitted "Other Necessary Expense" categories

a. *Substance of the comments.* Keith Lundin (06-BK-009 at 20-21) and Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 9-13) suggest that Form 22C be amended to include additional lines (or perhaps a single line) to accommodate several categories of IRS "Other Necessary Expense" categories not now included in the form.

b. *Suggested response.* No action.

c. *Explanation.* This issue was previously discussed by the Advisory Committee. As described in the Internal Revenue Manual, none of the categories omitted would generate an appropriate deduction for purposes of the means test. The omitted categories, set out in § 5.15.1.10(3) of the Manual and included in the Appendix to this memorandum, are the following:

[1] accounting and legal fees, omitted because the Manual limits the category to fees generated in connection with representation before the IRS, with any other accounting or legal fees disallowed;

[2] charitable contributions, omitted because separately treated in Line 45 (and discussed below in connection with Judge Lundin's comment regarding Line 45);

[10] secured or legally perfected debts, omitted pursuant to the proviso of § 707(b)(2)(A)(ii)(I) that IRS expense allowances in the means test "shall not include any payments for debts";

[11] unecured debts, omitted pursuant to the § 707(b)(2)(A)(ii)(I) proviso;

[14] student loans, omitted pursuant to the § 707(b)(2)(A)(ii)(I) proviso;

[16] repayment of loans made for payment of Federal Taxes, omitted pursuant to the § 707(b)(2)(A)(ii)(I) proviso.

18. Headings for Deduction Sections

a. *Substance of the comment*. Keith Lundin (06-BK-009 at 21) suggests that the heading for Subpart B of Part IV of Form 22C be changed from "Additional Expense Deductions under § 707(b)" to "Additional Expense Deductions under § 707(b)(2)".

b. *Suggested response*. Rather than the suggested action, the heading of Part IV should be changed to "CALCULATION OF DEDUCTIONS FROM CURRENT MONTHLY INCOME," the heading for Subpart B should be changed to "Additional Living Expense Deductions," and the heading for Subpart D should be changed to "Total Deductions from Current Monthly Income."

c. *Explanation*. The deduction for charitable contributions does not appear in § 707(b)(2). In determining abuse under § 707(b), the court is prohibited from giving consideration to the debtor's charitable contributions by a provision in § 707(b)(1). For determining disposable income for above-median income debtors in Chapter 13, a charitable contribution allowance of up to 15% of gross income is allowed by § 1325(b)(3). See Religious Liberty and Charitable Donation Clarification Act of 2006, Pub.L. 109-439, 120 Stat. 3285, effective December 20, 2006).[4] To be accurate, then, a limiting reference to § 707(b)(2) should be eliminated both in the heading of Part IV and the headings of Subparts B and D. The same changes should be made in the corresponding headings of Form 22A.

19. Deduction for Health Insurance, Disability Insurance, and Health Savings Account Expenses.

a. *Substance of the comments*. Keith Lundin (06-BK-009 at 21) suggests that the instruction for Line 39 of Form 22C be changed to remove the limitation allowing a deduction only for

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[4] As amended by this enactment, § 1325(b)(3) now provides, for above-median income debtors that "[a]mounts reasonably necessary to be expended under paragraph (2), <u>other than subparagraph (A)(ii) of paragraph (2),</u> shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2)." In turn, § 1325(b)(2)(A)(ii) provides a charitable donation deduction "in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made."

expenses actually paid. Similarly, Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 15) suggests that the deduction be limited to "reasonably necessary" expenditures.

b. *Suggested response*. The suggestions should be implemented.

c. *Explanation*. Section 707(b)(2)(A)(ii)(I), after directing that the debtor's monthly expenses are to be determined under IRS standards, states, "Such expenses shall include reasonably necessary health insurance, disability insurance, and health savings account expenses for the debtor, the spouse of the debtor, or the dependents of the debtor." Because the IRS standards make no explicit allowance for such expenses, Forms 22A and 22C set out a separate line item covering them. The instruction for this line allows a deduction for amounts "that you actually pay." That limitation does not appear in the statutory language; a debtor could argue that a reasonable amount should be allowed for health and disability insurance and a health savings account even if the debtor does not actually make use of the allowance—the approach taken by the IRS National Standards for food and clothing. In keeping with the policy of the Advisory Committee not to resolve interpretative questions unnecessarily, the phrase "that you actually pay" should be removed from the instruction in Line 39 of Form 22C and in the corresponding line of Form 22A. The revised instruction would state, tracking the statutory language: "List and total the monthly expenses reasonably necessary for health insurance, disability insurance, and health savings account expenses for yourself, your spouse, or your dependents." It may be appropriate, if this suggestion is implemented, to provide a check box for the debtor to indicate whether these expenses are actually paid.

20. Deduction for contributions to the care of household or family members.

a. *Substance of the comment*. Keith Lundin (06-BK-009 at 21-22) suggests that the instruction for Line 40 of Form 22C be changed to remove the prohibition against double deductions.

b. *Suggested response*. No action

c. *Explanation*. The Advisory Committee has consistently interpreted the expense deductions of the means test so as to avoid duplicative deductions. Section 707(b)(2)(A)(ii)(II), allows a deduction for continued payments for the care and support of certain household members. Judge Lundin suggests that this

deduction, provided for in Line 40 of Form 22C, can reasonably be taken even if the debtor has already deducted the payments in Line 34 (dealing with an IRS "Other Necessary Expense: deduction for the education of a physically or mentally challenged child). However, in keeping with the statute's general prohibition against duplicative deductions, the words "in addition"—which introduce § 707(b)(2)(A)(ii)(II)—can only reasonably be read as adding a deduction that was not already covered by the IRS expense allowances. Also, if the suggestion were implemented, it would be necessary—in order to identify the issue for judicial determination—to direct the debtor to indicate whether there was a duplication in the deductions and to specify the amount of the duplication, adding further complexity to the forms.

21. Deduction for home energy costs.

a. *Substance of the comments.* Keith Lundin (06-BK-009 at 22) suggests that the instruction for Line 42 of Form 22C be changed to employ the actual wording of § 707(b)(2)(A)(ii)(V): "an allowance for housing and utilities, in excess of the allowance specified by the Local Standards for housing and utilities issued by the Internal Revenue Service, based on the actual expenses for home energy costs if the debtor provides documentation of such actual expenses and demonstrates that such actual expenses are reasonable and necessary." Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 15-16) suggests a clarification of the documentation instruction.

b. *Suggested response.* The documentation instruction should be modified to track the statutory language more closely.

c. *Explanation.* The statutory language is fairly summarized in the first sentence of the present instruction: "Enter the average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs." There is no indication, as suggested by Judge Lundin, that the statutory language allows a deduction for home energy costs duplicative of the IRS Local Standards. However, the second sentence—"You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary"—deviates somewhat from the statute. To track the statutory language more closely, the instruction should read: "You must provide your case trustee with documentation of your actual expenses and demonstrate that the additional amount claimed is reasonable and necessary." The same change should be made in the corresponding line of Form 22A.

22. Deduction for educational expenses for dependent children under 18.

a. *Substance of the comments*. Keith Lundin (06-BK-009 at 22-23) suggests that the instruction for Line 43 of Form 22C be changed to refer to the expenses for a child "to attend" a private or public elementary or secondary school rather than the current reference to "providing" elementary and secondary education. Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 16-17) makes the same suggestion and also suggests a clarification of the documentation instruction.

b. *Suggested response*. Implement the suggestions.

c. *Explanation*. Although it is not clear that it produces any substantive effect, the comments correctly note a difference between the instruction and the statutory language of § 707(b)(2)(A)(ii)(IV). The Advisory Committee has decided to track the statutory language where this can reasonably be done. The substantive relevant portion of the revised instruction should state: "Enter the average monthly expenses that you actually incur, not to exceed $125 per child, for attendance at a private or public elementary school by your dependent children less than 18 years of age." The remainder of the instruction would read: "You must provide your case trustee with documentation of your actual expenses and explain why the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards." These changes should also be made in the corresponding line of Form 22A.

23. Deduction for additional food and clothing expense.

a. *Substance of the comment.* Keith Lundin (06-BK-009 at 23) suggests that the instruction for Line 43 of Form 22C be changed to include "and services" in the description of the allowable additional expense for clothing. Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 17-18) suggests a correction of the documentation instruction.

b. *Suggested response.* The documentation instruction should be modified to track the statutory language more closely.

c. *Explanation.* The language of § 707(b)(2)(A)(ii)(I) implemented by Line 44 allows an additional expense deduction only for "food and clothing," not services connected with clothing. The additional expense deduction is capped at 5% of the IRS National Standards allowance for "food and clothing," and, for clothing, the National Standards only have an "apparel and services" category. That category therefore figures into the cap on additional expenses, but it does define the type of additional expense subject to the cap. The present instruction correctly implements the statutory language. However, the statute does not require "documentation," but only a "demonstration" that the additional expense is reasonable and necessary. The corrected instruction should read: "You must demonstrate that the additional amount claimed is reasonable and necessary." This change should also be made in the corresponding line of Form 22A.

24. Deduction for charitable contributions.

a. *Substance of the comment.* Keith Lundin (06-BK-009 at 24) and Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at18) make suggestions regarding Line 45 of Form 22C that have been rendered obsolete by the enactment of Religious Liberty and Charitable Donation Clarification Act of 2006, Pub.L. 109-439, 120 Stat. 3285, effective December 20, 2006).

b. *Suggested response.* Line 45 must be revised substantially to comply with the Religious Liberty and Charitable Donation Clarification Act.

c. *Explanation.* As noted above (at 13 n.4), the Religious Liberty and Charitable Donation Clarification Act adds language to § 1325(b)(3) to provide, for above-median income debtors, that '[a]mounts reasonably necessary to be expended under paragraph (2), *other than subparagraph (A)(ii) of paragraph (2),*

shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2)." In turn, § 1325(b)(2)(A)(ii) provides a deduction "for charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made."

Accordingly, the otherwise applicable means test deductions of § 707(b)(2) are overridden by the capped allowance of § 1325(b)(2)(A)(ii). To reflect this change, the instruction for Line 45 should read as follows:

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

This instruction does not precisely track the language of § 1325(b)(2), which literally caps the debtor's monthly charitable contributions at 15% of the debtor's annual gross income—substantially more than an entire month's average income (8.33% of annual income). The only reasonable interpretation is that the 15% cap is intended to apply to monthly income, as the proposed instruction provides. It is not possible to provide guidance as to the meaning of "gross income," as discussed above at Point 8. The reference to cash and financial instruments comes from § 548(d)(3); the reference to the Internal Revenue Code comes from § 548(d)(4), both specified in § 1325(b)(3). No change is required in the corresponding line of Form 22A.

25. Deduction for future payments on secured claims.

a. *Substance of the comments*. Keith Lundin (06-BK-009 at 24) and Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 18) suggest that the instruction in Line 47 of Form 22C include the phrase "as scheduled" in describing future secured debt payments.

b. *Suggested response*. The suggestion should be implemented.

c. *Explanation*. Judge Lundin correctly points out that the phrase "scheduled as" appears in § 707(b)(2)(A)(iii) and has

been addressed in judicial decisions. Consistent with the Advisory Committee's policy of tracking statutory language where reasonably possible, the phrase should be added to the instruction, which would then read, in relevant part, as follows: "The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor . . . ." The same change should be made in the corresponding line of Form 22A.

Judge Lundin made additional suggestions regarding Line 47 that are discussed at Point 9, above.

26. Deduction for other payments on secured claims.

a. *Substance of the comment.* Keith Lundin (06-BK-009 at 25) suggests that the instruction in Line 48 of Form 22C direct debtors that they may include in the amount needed to maintain possession of necessary collateral "creditor's attorney's fees, foreclosure expenses and the like."

b. *Suggested response.* No action.

c. *Explanation.* The instruction merely gives payment of amounts in default as an example of amounts that would have to be paid (in addition to contractually scheduled future payments) in order to retain collateral. It is unclear how a debtor could know the amounts that might be charged in attorney's fees or foreclosure costs, and suggesting these items as additional examples would likely be confusing. If a debtor is aware of such charges, nothing in the instruction would prevent their being included in the deduction.

27. Deduction for priority claims.

a. *Substance of the comment*. Keith Lundin (06-BK-009 at 26) suggests that the instruction in Line 49 of Form 22C direct debtors that they may include anticipated tax liabilities and attorneys' fees as priority claims. Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 18) makes the same suggestion regarding anticipated attorney fees.

b. *Suggested response*. The instruction should be amended to clarify that only existing priority claims are subject to the deduction. See Point 12, above.

c. *Explanation*. See Point 12, above.

28. Deduction for Chapter 13 administrative claims.

a. *Substance of the comment*. Keith Lundin (06-BK-009 at 26-27) suggests changes to Line 50 of Form 22C that are discussed in connection with Point 1, above.

b. *Suggested response*. No action.

c. *Explanation*. See Point 1, above.

29. Deduction for special circumstances.

a. *Substance of the comment*. Keith Lundin (06-BK-009 at 27-28) suggests the addition of a new line item allowing deduction for "special circumstances." The National Bankruptcy Conference (06-BK-018 at 4) similarly suggests that Form 22C be amended to allow the debtor to deduct from disposable income "any adjustment to which the debtor claims entitlement, together with an explanation citing authority." Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 20) questions the propriety of current Part VI, which allows a non-computation deduction for additional expense claims, and a group of organizations representing consumer credit providers (06-BK-055) suggests that Part VI (and the corresponding Part V of Form 22A) be omitted.

b. *Suggested response*. Judge Lundin's suggestion should be implemented.

c. *Explanation*. For calculating disposable income for above-median income Chapter 13 debtors, § 1326(b)(3) directs that debtors' expense deductions be "determined in accordance

with subparagraphs (A) and (B) of section 707(b)(2)." Section 707(b)(2)(A) sets out the means test deductions, currently implemented by Form 22C. Section 707(b)(2)(B) allows a Chapter 7 debtor to rebut a presumption of abuse arising under the means test by "by demonstrating special circumstances, such as a serious medical condition or a call or order to active duty in the Armed Forces." Because this "special circumstances" provision is expressly included in the formula for determining disposable income, it should be included as a potential deduction prior to the determination of disposable income in Part V of Form 22C. Such an addition would eliminate the need for Part VI. Line numbers in Part V would have to be adjusted.

There is no need for a parallel change in Form 22A. Part VII of that form merely gives the debtor an opportunity to assert claims that arguably fall within the IRS's "Other Necessary Expense" test, but are not within one of the categories specified in the Internal Revenue Manual. Part VII reflects a compromise reached by the Advisory Committee to deal with this issue.

30. Exclusion of support income.

a. *Substance of the comment*. Keith Lundin (06-BK-009 at 28) suggests that the instruction in Line 54 of Form 22C be amended to eliminate the cross-reference to Line 7.

b. *Suggested response*. The instruction should be changed to provide for exclusion of any of the defined types of income that are reported in Part I of the form.

c. *Explanation*. It is unlikely that support income of the sort excluded from disposable income by §1325(b)(2) would be reported anywhere but in Line 7. However, because a debtor might report such income in another line of Part I, it would be appropriate to change the instruction in Line 54 to allow exclusion of any of the defined income "reported in Part I" rather than "included in Line 7." There is no corresponding issue in Form 22A.

31. Retirement plan deductions.

a. *Substance of the comments*. Keith Lundin (06-BK-009 at 28-29) and Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 19-20) suggest changing the instruction in Line 55 of Form 22C to more closely track the language of § 541(b)(7).

b. *Suggested response*. The suggestions should be implemented.

c. *Explanation*. Section 541(b)(7) requires deductions from disposable income in Chapter 13 for specified contributions and loan repayments to retirement plans. Judge Lundin has suggested that the instruction in Line 55 more closely follow the statutory language. He also points out that the use of the term "average" in the instruction may be contrary to the requirement that a Chapter 13 plan may not modify loans to qualified pension plans. Beyond that concern, the instruction does not define how an average payment would be calculated. The instruction should be amended to read as follows: "Enter the monthly total of (a) all amounts withheld by your employer from wages or received by your employer as contributions for qualified retirement plans, as specified in § 541(b)(7) and (b) all required repayments of loans from retirement plans, as specified in § 362(b)(19)." There is no corresponding issue in Form 22A.

32. Limitation of income to that "received by" the debtor.

a. *Substance of the comment*. Keith Lundin (06-BK-009 at 30) suggests that a new line item be added to Form 22C allowing a debtor to deduct income that was paid directly to suppliers of goods and services benefiting the debtor or the debtor's dependents, rather than "received" by the debtor directly.

b. *Suggested response*. No action.

c. *Explanation*. Judge Lundin's suggestion is based on the language of § 1325(b)(2) that calculates disposable income by providing for deductions from "current monthly income received by the debtor." A distinction between income "received by" the debtor directly, on one hand, and paid by others on behalf of the debtor or the debtors dependents, on the other, does not appear to be supportable by any legislative purpose and would create completely arbitrary distinctions. Accommodating this unlikely interpretation would add substantial complexity to the form.

33. Debtors without primarily consumer debts.

a. *Substance of the comment*. Wesley Steen and Marvin Isgur (06-BK-014 at 30) suggest that Form 22A include an additional check box allowing debtors to represent that their debts are not primarily consumer debts (and thus that they are not required to

complete the remainder of the form), with the check box also constituting a request for "an extension of time to file the form if the Court subsequently determines that the representation is incorrect." The suggestion requests an appropriate change in the rules.

b. *Suggested response*. (1) Amend Rule 1007(b)(4) to delete the phrase "with primarily consumer debts," thus requiring all individual Chapter 7 debtors to complete Form 22A. (2) Include a check box at the beginning of Form 22A allowing debtors to represent that their debts are not primarily consumer debts and directing them not to complete the balance of the form in that event.

c. *Explanation*. The suggestion properly notes that current Rule 1007(b)(4) can present a problem for debtors without primarily consumer debts. In its present version, this provision excepts such debtors from the requirement of filing Form 22A. However, if it were later determined that a debtor is incorrect in asserting am absence of primarily consumer debts, the debtor will likely be beyond the deadline for filing the form (15 days under Rule 1007(c)), and so in danger of having the case dismissed—arguably automatically dismissed under § 521(i)(1).

This situation should be addressed by amendment to Rule 1107(b)(4) and Form 22A, but a simple requirement that all individual Chapter 7 debtors complete Form 22A, amended to include a non-consumer debt check-off, should be sufficient. Filing the form with the checked representation of primarily non-consumer debts will satisfy the requirement of § 707(b)(2)(C) that the debtor file a statement reflecting whether the presumption of abuse arises. If the representation is determined to be incorrect, the debtor can be required to amend the form; however, the initial timely filing would avoid any difficulty with automatic dismissal.

34. Limitation of deductions to actual expenses.

a. *Substance of the comments*. Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 8-10); Steve Bartlett, on behalf of the Financial Services Roundtable (06-BK-051); and a group of organizations representing consumer credit providers (06-BK-055) suggest that Forms 22A and 22C be amended to allow expense deductions no greater than the debtor's actual expenses.

b. *Suggested response*. No action.

c. *Explanation*. The issues raised by the comment were thoroughly discussed in prior Advisory Committee meetings. The Committee has determined to apply the language of § 707(b)(2)(A)(ii)(I) granting a deduction in "amounts specified under the National Standards and Local Standards . . . issued by the internal Revenue Service" without limitation to actual expenses.

35. Additional detail for "Other Income."

a. *Substance of the comments*. Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019) suggests that Line 9 of Form 22C be amended either to eliminate the "a and b boxes" for identifying other sources of income or else to provide, in cases of married debtors, some means of identifying which spouse has received the income listed in the boxes. This would affect the parallel line of Form 22C.

b. *Suggested response*. The to "Total and enter on Line 9" should be amended to state "Enter on Line 9 the total income. In cases of married debtors, divide this income between Columns A and B to reflect the person to whom the income is attributed."

c. *Explanation*. The total income listed in boxes a and b is intended to be divided by spouse in Columns A and B. A clarifying instruction would remove any ambiguity here.

36. Instruction for deduction for protection against family violence.

a. *Substance of the comments*. Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 15) suggests that Line 41 of Form 22C be amended to include a limitation of expenses for protection against family violence to those that are "reasonably necessary." A parallel change would be required for Form 22A.

b. *Suggested response*. The suggestion should be implemented.

c. *Explanation*. To more closely tract the statutory language (§707(b)(2)(A)(ii)(I)), the instruction for Line 41 (and the parallel provision of Form 22A) should be amended to refer to "the average reasonably necessary expenses that you actually incur."

37. Computation of the applicable commitment period.

a. *Substance of the comments.* Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 5) suggests that Part II of Form 22C be amended to specify that an applicable commitment period may be shorter than the 3 or 5 years otherwise provided for if the debtor pays all allowed claims within the shorter period. The comment also suggests that Part II improperly excludes support, foster care, and disability payments from the calculation of the applicable commitment period.

b. *Suggested response.* The instruction in the box at the beginning of the form can be amended to track the statutory language more closely.

c. *Explanation.* Section 1325(b)(4)(B) allows a shorter applicable commitment period in cases of full payment of all allowed unsecured claims. Although it is unlikely that a debtor would read Form 22C as extending a commitment period beyond the time of full claim payment, the instruction at the beginning of the form could be made more accurate, by introducing the check boxes for applicable commitment period with the statement that they apply "unless the debtor's plan pays all allowed unsecured claims in full."

Contrary to the comment, Part II of Form 22C does not exclude support, foster care, and disability payments from the calculation of the applicable commitment period. The income items are separately deducted in Part V the form, only in connection with the calculation of disposable income.

38. Necessity for subtotals in disposable income computation.

a. *Substance of the comments.* Eric Froisland, on behalf of Standing Trustee Kevin Anderson (06-BK-019 at 19-20) suggests that Lines 53 and 56 of Form 22C be eliminated as unnecessary.

b. *Suggested response.* No action.

c. *Explanation.* Line 53 totals deductions from income set out in § 707(b)(2) for use in the means test. (These deductions are required to be used in calculating disposable income for above median income Chapter 13 debtors, pursuant to § 1325(b)(3).) The total deductions are then added to statutory exclusions from current monthly income in Line 56 and 57. Although the subtotals in Lines 53 and 56 are not necessary (and

serve no purpose when the form is completed using computer software), the subtotals do assist in manual computations.

39. Requests for reconsideration from organizations of consumer finance providers.

a. *Substance of the comments*. In addition to the matters discussed in Point 3, 29, and 34, above, a group consisting of The American Bankers Association, the American Financial Services Association, America's Community Bankers, the Consumer Bankers Association, The Financial Services Roundtable, and the Independent Community Bankers of America (06-BK-055 at 3-8) requests reconsideration of the following issues previously decided by the Advisory Committee:

i. Unemployment compensation (Form 22A, Line 9; Form 22C, Line 8). The group suggests removing the option to claim that unemployment compensation is a benefit received under the Social Security Act and so excluded from current monthly income.

ii. Application of the § 707(b)(7) safe harbor (Form 22A, Line 15). The group suggests that below median income debtors (against whom no means test presumption can be asserted) be required to complete the entire means test form.

iii. Challenge to the split Local Standard for housing (Form 22A, Line 21; Form 22C, Line 26). The group suggests that debtors not be allowed to challenge the division of the IRS Local Standard for housing into mortgage and non-mortgage components, despite the fact that this division is not issued by the IRS as part of the Local Standard for purposes of tax collection.

iv. Express limitation of Chapter 13 administrative expenses (Form 22A, Line 45; Form 22C, Line 50). The organizations suggest an express instruction limiting administrative expenses for a potential Chapter 13 case to no more than 10% of projected plan payments, even though the instructions require use of allowances set by the Executive Office for United States Trustees, which never exceed 10%).

b. *Suggested response*. No action.

c. *Explanation*. Each of these matters has been thoroughly discussed by the Advisory Committee, and no new arguments are advanced by the comment.

Appendix

Additional discussion of Point 3: Treatment of Spousal Income

The principal question involving spousal income Form 22C is how to calculate current monthly income ("CMI") for purposes of determining whether the "applicable commitment period" for the debtor's Chapter 13 plan is three years or five.

"Applicable commitment period," as used in § 1325(b)(1)(B), is the period during which projected disposable income must be applied to plan payments to unsecured creditors. Section 1325(b)(4) provides that the applicable commitment period is five years if "the current monthly income of the debtor and the debtor's spouse combined" is not less than a defined median income level. If the "combined" CMI is less than that median, the applicable commitment period is three years.

BAPCPA uses CMI for other purposes without combining spousal income. For example, § 1325(b)(3) requires use of the Chapter 7 means test to determine disposable income if the CMI that "the debtor has" exceeds the defined median.

Thus, a fair reading of § 1325(b)(4) is that the calculation of CMI for determining the applicable commitment period includes spousal income that is not included in the calculation of CMI for determining disposable income. The current version of Form 22C accommodates this reading. Part I of the form reports the CMI of both spouses, Part II compares the combined spousal CMI to the defined median in order to determine the applicable commitment period under § 1325(b)(4). Part III removes the CMI of a non-filing spouse to determine disposable income under § 1325(b)(3).

However, there is another possible interpretation of § 1325(b)(4), which the form also accommodates. This reading looks to the definition of CMI in § 101(10A), which provides that CMI is specified "income . . . that the debtor receives (or in a joint case the debtor and the debtor's spouse receive)," together with "any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent)." Based on this definition, it has been contended that income of a non-filing spouse should not be counted under § 1325(b)(4). The form allows a debtor to use this "definitional" interpretation of § 1325(b)(4) by deducting the

CMI of a non-filing spouse in Part II (for § 1326(b)(4)'s computation of the applicable commitment period) as well as in Part III (for § 1326(b)(3)'s determination of how to calculate disposable income).

The proposal to reverse ("flip") the order of Parts II and III does not challenge the concept underlying the existing form: that information regarding spousal income should be presented in all cases of married Chapter 13 debtors, whether or not there is a joint filing, and that both readings of § 1325(b)(4) should be accommodated. Rather the proposal is that the form should start with the income of individual spousal income, and add to it the income of a non-filing spouse if the debtor accepts the "combined" reading. In other words, the debate is over which reading should be the "default," for which adjustments are permitted.

There are at least three reasons for preferring the current form's treatment of the issue. First, this version of the form will have been in use for several years before any new form could be implemented, and the changes caused by the recommended "flipping" would be confusing. New instructions and entry lines would be required, since joint filers would begin their calculations of disposable income with a CMI different from married debtors not filing jointly. Because the actual information being reported does not change, there is no compelling reason to make these changes in the form.

Second, the proposed changes would make it more difficult to determine when a debtor was using the definitional interpretation of § 1326(a)(4). In the current form, a debtor's decision to employ this interpretation is obvious, because the debtor must enter a deduction in Line 13 for income that would otherwise be counted. The debtor has an incentive to complete the line because it is to the debtor's benefit to have a lower CMI and a potentially shorter applicable commitment period. Under the proposal, the debtor would have to add income if the debtor "believes" that this is required. If there is nothing filled in, it may simply mean that the spouse has no income not otherwise paid for household expenses (and so part of the debtor's CMI in any event). To determine whether the debtor is asserting the definitional interpretation, one would have to compare the spousal income added to CMI as payment of expenses to the total spousal income shown on another page of the form.

Third, although the definitional interpretation of § 1325(a)(5) is supportable, "combining" spousal CMI is probably

more consistent with the statutory language and so provides the more appropriate default. The definition's designation of the relevant income recipient—"the debtor . . . or in a joint case the debtor and the debtor's spouse"—is never adopted in the substantive provisions of BAPCPA. Rather, these provisions themselves always state the relevant income recipient, usually referring to "the debtor's" CMI (as in § 707(b)(2)(C)), but sometimes referring to CMI of the debtor's spouse (as in § 707(b)(6) and (7)). Literally, this produces a double designation of the income recipient, resulting in linguistic nonsense. If the definition of CMI is used in place of the term itself in the substantive provisions, the phrase "the debtor's current monthly income," becomes "the debtor's income received by the debtor and in a joint case the debtor and the debtor's spouse." Similarly the phrase "the current monthly income of the debtor's spouse" would literally mean "the income of the debtor's spouse received by the debtor and in a joint case the debtor and the debtor's spouse." This meaningless duplication could not have been intended; the drafters of the substantive provisions apparently designated the individual whose income was to be considered in determining CMI without regard to the fact that the definition already contained such a designation. The usual way of resolving such conflicts is to use the designations contained in the specific substantive provisions rather than the general definition. *See Fourco Glass Co. v. Transmirra Prod. Corp*, 353 U.S. 222, 228 (1957) (quoting authority for the rule that "[h]owever inclusive may be the general language of a statute, it will not be held to apply to a matter specifically dealt with in another part of the same enactment").[5]

Additional discussion of Point 6: References to the website of the Executive Office for United States Trustees

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[5] The conflict between the definition of CMI and the substantive provisions using CMI is particularly evident in § 707(b)(7). Section 707(b)(7)(A) bases a safe harbor from the means test on "the current monthly income of the debtor . . . and the debtor's spouse combined"—the same language used in § 1325(b)(4). Section 707(b)(7)(B) contains an exception: the spousal CMI is not included if the debtor makes a defined declaration of separation. The exception only applies "[i]n a case that is not a joint case." This necessarily means that the phrase requiring a combining of the CMI of the debtor and the debtor's spouse requires spousal CMI to be computed in non-joint cases unless the exception for separated spouses applies—despite the definition limiting spousal CMI to joint cases.

Forms 22A and 22C consistently avoid allowance of double deductions for expenses covered by the IRS Local Standards and payments on secured claims, as required by § 707(b)(2)(A)(ii)(I), which allows deductions in the amounts specified by the Local Standards but also provides "Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts."

In order to avoid a double deduction for payment of a mortgage and the IRS Local Standard allowance for housing, the amount paid on a mortgage must be deducted from the amount that the IRS Local Standard would provide for obtaining housing (mortgage or rent). The mortgage payment, however, should not be deducted from whatever amount the IRS Local Standard would provide for other expenses—utilities, maintenance, insurance, etc.—that must be paid separately from the mortgage. Unfortunately, the IRS's Local Standards, specified for use in § 707(b)(2)(A)(ii)(I), present a single undifferentiated housing allowance, which does not distinguish between the costs of obtaining housing and the other expenses. However, in response to requests from the EOUST, the IRS provided information necessary to make such a division for bankruptcy purposes. Lines 25A and 25B of Form 22C (and parallel lines in Form 22A) set out a formula for deducting mortgage payments from the IRS housing expense allowance using the division of that allowance issued by the EOUST. However, recognizing the argument that this division is inappropriate (because not part of the Local Standard issued by the IRS), the forms permit debtors to claim a special deduction for housing expenses in excess of the formula otherwise set out in the forms.

Additional material for Point 8: Determining "gross monthly income" for application of the IRS National Standards

Internal Revenue Manual § 5.15.1.11 (05-01-2004)

Determining Individual Income

1. For purposes of determining the taxpayers' ability to pay, total household income must first be determined. Refer to Section 5.1.15.1.4, Shared Expenses for a complete explanation of determining proportionate income and expense calculations. If the taxpayer refuses to provide total household income, allocate 50% (or an appropriate percentage based on the number of household individuals) of household expenses to the taxpayer.

2. Income consists of the following:

A. Wages - Wages include salary, tips, meal allowance, parking allowance or any other money or compensation received by the taxpayer as an employee for services rendered. This includes the taxpayer and spouse. Note: Use the following formulas to calculate gross monthly wages or salaries: If paid weekly, multiply weekly gross wages by 4.3. If paid bi-weekly (every 2 weeks), multiply bi-weekly gross wages by 2.17. If income is sporadic or seasonal, use the annual income figure from the W-2 or the 1040 and divide by 12 to determine the average monthly income.

B. Interest and Dividends. Includes any interest or dividends that the taxpayer receives or that is credited to an account and can be withdrawn by the taxpayer and used for household expenses. The annual total should be divided by 12 to determine the average monthly income Look for brokerage accounts for dividends from publicly traded corporations and look for undisclosed bank accounts for interest payers. Note: If the interest bearing accounts are used as an asset, and the taxpayer will be withdrawing the funds from the account to reduce the tax liability, the dividends or interest would not be used in the income stream.

C. Net Income from Self-Employment or Schedule C. The amount the taxpayer earned after paying ordinary and necessary business expenses. This amount may be determined from an analysis of the Form 433-B or the Schedule C from the most current Form 1040. If the net business is a loss, enter " zero". Do not enter a negative number.

Note: If the 433-B is used or the taxpayer provides their own income and expense statement, it must reflect a sufficient time frame to accurately determine the monthly average that could be expected for the entire year.

D. Net Rental Income. The amount earned after paying ordinary and necessary monthly rental expenses. If it is a loss, enter a "zero" . Do not enter a negative number.

E. Pensions. Includes social security, IRA, profit sharing plans, etc. Pensions could be used as an asset or as part of the income stream. Refer to IRM 5.15.1.13, Business Expenses.

F. Child Support. Include the actual amount received in addition to other debts or bills the spouse is paying. For example, the court order assigns $200 a week for support but also requires all medical bills to be paid. In determining total expense, adjust the expense accordingly.

G. Alimony. Includes the assigned payments made by the non-resident spouse. However, consider if other bills are being paid, such as the mortgage, and adjust the expense accordingly.

H. Other. This could include payments from a trust account, royalties, renting a room, gambling winnings, sale of property, etc. Tax return information could include various sources of income.

Additional material for Points 9-17, dealing with the IRS "Other Expense" categories

Internal Revenue Manual § 5.15.1.10 (05-01-2004)

Other Expenses

1. Other expenses may be considered if they meet the necessary expense test - they must provide for the health and welfare of the taxpayer and/or his or her family or they must be for the production of income. This is determined based on the facts and circumstances of each case.

2. If other expenses are determined to be necessary and, therefore allowable, document the reasons for the decision in your history.

3. The amount allowed for necessary or conditional expenses depends on the taxpayer's ability to full pay the liability within five years and on the taxpayer's individual facts and circumstances. If the liability can be paid within 5 years, it may be appropriate to allow the taxpayer the excessive necessary and conditional expenses. If the taxpayer cannot pay within 5 years, it may be appropriate to allow the taxpayer the excessive necessary and conditional expenses for up to one year in order to modify or eliminate the expense. (See IRM 5.14, Installment Agreements)

Expense Item	**Expense is Necessary if:**	**Notes/Tips**
[1] Accounting and legal fees.	Representation before the Service is needed or meets the necessary expense tests. Amount must be reasonable.	Disallow any other accounting or legal fees. Disallow costs not related to solving current liability.
[2] Charitable contributions *(Donations to tax exempt organizations)*	If it is a condition of employment or meets the necessary expense tests. Example: A minister is required to tithe according to his employment contract.	Disallow any other charitable contributions that are not considered necessary. Example: Review the employment contract.
[3] Child Care*(Baby-sitting, day care, nursery and preschool)*	It meets the necessary expense test. Only reasonable amounts are allowed.	Cost of child care can vary greatly. Do not allow unusually large child care expense if more reasonable alternatives are available. Consider the age of the child and if both parents work.

[4] Court-Ordered Payments*(Alimony, child support, including orders made by the state, and other court ordered payments)*	If court ordered and being paid, they are allowable. If payments are not being made, do not allow the expense. Child support payments for natural children or legally adopted dependents may be allowed.	Review the court order.
[5] Dependent Care*(For the care of the elderly, invalid, or handicapped.)*	If there is no alternative to the taxpayer paying the expense.	
[6] Education	It is required for a physically or mentally challenged child and no public education providing similar services is available. Also allowed only for the taxpayer and only if required as condition of employment.	**Example:** An attorney must take so many education credits each year or they will not be accredited and could eventually lose their license to practice before the State Bar. A teacher could lose their position or in some States their pay is commensurate with their education credits.
[7] Health Care	Required for the health and welfare of the family. Elective surgery would not be allowed such as plastic surgery or elective dental work. The taxpayer must provide proof of excessive out of pocket medical expenses.	To determine monthly expenses, the total out of pocket expenses would be divided by 12. The Schedule A may also be used to determine the yearly expense. Ensure that the amount used is out of pocket after insurance claims are paid. Substantiate that payments are being made.
[8] Involuntary Deductions	If it is a requirement of the job; i.e. union dues, uniforms, work shoes.	To determine monthly expenses, the total out of pocket expenses would be divided by 12.
[9] Life Insurance	If it is a term policy on the life of the taxpayer only.	If there are whole life policies, these should be reviewed as an asset for borrowing against or liquidating. Life insurance used as an investment is not a necessary expense.

[10] Secured or legally perfected debts	If it meets the necessary expense test.	Taxpayer must substantiate that the payments are being made.
[11] Unsecured Debts	If the taxpayer substantiates and justifies the expense, the minimum payment may be allowed.	The necessary expense test of health and welfare and/or production of income must be met. Except for payments required for the production of income, payments on unsecured debts will not be allowed if the tax liability, including projected accruals, can be paid in full within 90 days. [Example omitted.]
[12] Taxes	It is for current federal, FICA, Medicare, state and local taxes.	Current taxes are allowed regardless of whether the taxpayer made them in the past or not. Delinquent state and local taxes are allowable depending on the priority of the FTL and/or Service agreement with the state and local taxing agencies.
[13] Optional Telephones and Telephone Services *(Cell phone, pager, Call waiting, caller identification or long distance)*	It must meet the necessary expense test.	
[14] Student Loans	If it is secured by the federal government and only for the taxpayer's education.	Taxpayer must substantiate that the payments are being made.
[15] Internet Provider/E-mail	If it meets the necessary expense test - generally for production of income.	
[16] Repayment of loans made for payment of Federal Taxes	If the loan is secured by the taxpayer's assets when those assets are of reasonable value and are necessary to provide for the health and welfare of the family.	

Official Form 22A (Chapter 7) (12/08)

In re _____
Debtor(s)

Case Number: _____
(If known)

According to the calculations required by this statement:
☐ **The presumption arises.**
☐ **The presumption does not arise.**
(Check the box as directed in Parts I, III, and VI of this statement.)

CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME AND MEANS-TEST CALCULATION

In addition to Schedules I and J, this statement must be completed by every individual Chapter 7 debtor, whether or not filing jointly, whose debts are primarily consumer debts. Joint debtors may complete one statement only.

Part I. EXCLUSION FOR DISABLED VETERANS AND NON-CONSUMER DEBTORS

1A	If you are a disabled veteran described in the Veteran's Declaration in this Part I, (1) check the box at the beginning of the Veteran's Declaration, (2) check the box for "The presumption does not arise" at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement. ☐ **Veteran's Declaration.** By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. §901(1)).
1B	If your debts are not primarily consumer debts, check the box below and complete the verification in Part VIII. Do not complete any of the remaining parts of this statement. ☐ **Declaration of non-consumer debts.** By checking this box, I declare that my debts are not primarily consumer debts.

Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION

2	**Marital/filing status.** Check the box that applies and complete the balance of this part of this statement as directed. a. ☐ Unmarried. **Complete only Column A ("Debtor's Income") for Lines 3-11.** b. ☐ Married, not filing jointly, with declaration of separate households. By checking this box, debtor declares under penalty of perjury: "My spouse and I are legally separated under applicable non-bankruptcy law or my spouse and I are living apart other than for the purpose of evading the requirements of § 707(b)(2)(A) of the Bankruptcy Code." **Complete only Column A ("Debtor's Income") for Lines 3-11.** c. ☐ Married, not filing jointly, without the declaration of separate households set out in Line 2.b above. **Complete both Column A ("Debtor's Income") and Column B (Spouse's Income) for Lines 3-11.** d. ☐ Married, filing jointly. **Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.**		
	All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.	**Column A Debtor's Income**	**Column B Spouse's Income**
3	**Gross wages, salary, tips, bonuses, overtime, commissions.**	$	$
4	**Income from the operation of a business, profession or farm.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. If more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. **Do not include any part of the business expenses entered on Line b as a deduction in Part V.** a. Gross receipts $ b. Ordinary and necessary business expenses $ c. Business income Subtract Line b from Line a	$	$
5	**Rent and other real property income.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 5. Do not enter a number less than zero. **Do not include any part of the operating expenses entered on Line b as a deduction in Part V.** a. Gross receipts $ b. Ordinary and necessary operating expenses $ c. Rent and other real property income Subtract Line b from Line a	$	$
6	**Interest, dividends and royalties.**	$	$
7	**Pension and retirement income.**	$	$

8	**Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child support.** Do not include alimony or separate maintenance payments or amounts paid by the debtor's spouse if Column B is completed.	$	$
9	**Unemployment compensation.** Enter the amount in the appropriate column(s) of Line 9. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below: Unemployment compensation claimed to be a benefit under the Social Security Act — Debtor $ _____ Spouse $ _____	$	$
10	**Income from all other sources.** Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. **Include all payments of alimony or separate maintenance. Do not include** any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. a. $ b. $ Total and enter on Line 10	$	$
11	**Subtotal of Current Monthly Income for § 707(b)(7).** Add Lines 3 thru 10 in Column A, and, if Column B is completed, add Lines 3 through 10 in Column B. Enter the total(s).	$	$
12	**Total Current Monthly Income for § 707(b)(7).** If Column B has been completed, add Line 11, Column A to Line 11, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 11, Column A.	$	

Part III. APPLICATION OF § 707(b)(7) EXCLUSION

13	**Annualized Current Monthly Income for § 707(b)(7).** Multiply the amount from Line 12 by the number 12 and enter the result.	$
14	**Applicable median family income.** Enter the median family income for the applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	$
15	**Application of Section 707(b)(7).** Check the applicable box and proceed as directed. ☐ **The amount on Line 13 is less than or equal to the amount on Line 14.** Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete Part VIII; do not complete Parts IV, V, VI or VII. ☐ **The amount on Line 13 is more than the amount on Line 14.** Complete the remaining parts of this statement.	

Complete Parts IV, V, VI, and VII of this statement only if required. (See Line 15.)

Part IV. CALCULATION OF CURRENT MONTHLY INCOME FOR § 707(b)(2)

16	**Enter the amount from Line 12.**	$
17	**Marital adjustment.** If you checked the box at Line 2.c, enter the amount of the income listed in Line 11, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. If you did not check box at Line 2.c, enter zero.	$
18	**Current monthly income for § 707(b)(2).** Subtract Line 17 from Line 16 and enter the result.	$

Part V. CALCULATION OF DEDUCTIONS FROM CURRENT MONTHLY INCOME

Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

19	**National Standards: food, apparel and services, housekeeping supplies, personal care, and miscellaneous.** Enter in the space below your gross monthly income and the method used to determine it. Then enter in Line 19 the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable household size and income level. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) Gross Monthly Income: $ _____ | Determined by: ☐ Line 18 ☐ Schedule I ☐ Other (specify): _____	$
20A	**Local Standards: housing and utilities; non-mortgage expenses.** Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and household size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court).	$
20B	**Local Standards: housing and utilities; mortgage/rent expense.** Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and household size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 42; subtract Line b from Line a and enter the result in Line 20B. **Do not enter an amount less than zero.**	
	a. IRS Housing and Utilities Standards; mortgage/rental expense — $	
	b. Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42 — $	
	c. Net mortgage/rental expense — Subtract Line b from Line a.	$
21	**Local Standards: housing and utilities; adjustment.** if you contend that the process set out in Lines 20A and 20B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below: _____ _____ _____	$
22	**Local Standards: transportation; vehicle operation/public transportation expense.** You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation. Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 8. ☐ 0 ☐ 1 ☐ 2 or more. Enter the amount from IRS Transportation Standards, Operating Costs & Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	$
23	**Local Standards: transportation ownership/lease expense; Vehicle 1.** Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) ☐ 1 ☐ 2 or more. Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 42; subtract Line b from Line a and enter the result in Line 23. **Do not enter an amount less than zero.**	
	a. IRS Transportation Standards, Ownership Costs, First Car — $	
	b. Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42 — $	
	c. Net ownership/lease expense for Vehicle 1 — Subtract Line b from Line a.	$

24	**Local Standards: transportation ownership/lease expense; Vehicle 2.** Complete this Line only if you checked the "2 or more" Box in Line 23. Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 42; subtract Line b from Line a and enter the result in Line 24. **Do not enter an amount less than zero.** a. IRS Transportation Standards, Ownership Costs, Second Car $ b. Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42 $ c. Net ownership/lease expense for Vehicle 2 Subtract Line b from Line a.	$
25	**Other Necessary Expenses: taxes.** Enter the total average monthly expense that you actually incur for all federal, state and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. **Do not include real estate or sales taxes.**	
26	**Other Necessary Expenses: involuntary deductions for employment.** Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. **Do not include discretionary amounts, such as non-mandatory 401(k) contributions.**	$
27	**Other Necessary Expenses: life insurance.** Enter total average monthly premiums that you actually pay for term life insurance for yourself. **Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.**	$
28	**Other Necessary Expenses: court-ordered payments.** Enter the total monthly amount that you are required to pay pursuant to the order of a court or administrative agency, such as spousal or child support payments. **Do not include payments on past due obligations included in Line 44.**	$
29	**Other Necessary Expenses: education for employment or for a physically or mentally challenged child.** Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	$
30	**Other Necessary Expenses: childcare.** Enter the total average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. **Do not include other educational payments.**	$
31	**Other Necessary Expenses: health care.** Enter the total average monthly amount that you actually expend on health care that is necessary for the welfare of yourself or your dependents and that is not reimbursed by insurance or paid by a health savings account. **Do not include payments for health insurance or health savings accounts listed in Line 34.**	$
32	**Other Necessary Expenses: telecommunication services.** Enter the total average monthly amount that you actually pay for telecommunication services other than your basic home telephone service—such as cell phones, pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. **Do not include any amount previously deducted.**	$
33	**Total Expenses Allowed under IRS Standards.** Enter the total of Lines 19 through 32.	$
	Subpart B: Additional Living Expense Deductions **Note: Do not include any expenses that you have listed in Lines 19-32**	
34	**Health Insurance, Disability Insurance, and Health Savings Account Expenses.** List the monthly expenses in the categories set out in lines a-c below that are reasonably necessary for yourself, your spouse, or your dependents, and enter the total in Line 34. If you do not actually expend this total amount, indicate your actual average monthly expenditures in line d below a. Health Insurance $ b. Disability Insurance $ c. Health Savings Account $ Total: Add Lines a, b, and c d. Actual monthly expenditure (if different from total) $	$
35	**Continued contributions to the care of household or family members.** Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.	$

36	**Protection against family violence.** Enter any average monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.	$
37	**Home energy costs.** Enter the average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. **You must provide your case trustee with documentation of your actual expenses and demonstrate that the additional amount claimed is reasonable and necessary.**	$
38	**Education expenses for dependent children less than 18.** Enter the average monthly expenses that you actually incur, not to exceed $137.50 per child, for attendance at a private or public elementary school by your dependent children less than 18 years of age. **You must provide your case trustee with documentation of your actual expenses and explain why the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.**	$
39	**Additional food and clothing expense.** Enter the average monthly amount by which your food and clothing expenses exceed the combined allowances for food and clothing (apparel and services) in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) **You must demonstrate that the additional amount claimed is reasonable and necessary.**	$
40	**Continued charitable contributions.** Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).	$
41	**Total Additional Expense Deductions under § 707(b).** Enter the total of Lines 34 through 40	$

Subpart C: Deductions for Debt Payment

42 **Future payments on secured claims.** For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, and state the Average Monthly Payment. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. Mortgage debts should include only payments of principal and interest. If necessary, list additional entries on a separate page.

	Name of Creditor	Property Securing the Debt	60-month Average Payment
a.			$
b.			$
c.			$
			Total: Add Lines a, b and c.

$

43 **Other payments on secured claims.** If any of debts listed in Line 42 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 42, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.

	Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount
a.			$
b.			$
c.			$
			Total: Add Lines a, b and c

$

44	**Payments on priority claims.** Enter the total amount, divided by 60, of all priority claims, such as priority tax, child support and alimony claims, including only past due obligations. **Do not include current obligations set out in Line 33.**	$

45	**Chapter 13 administrative expenses.** If you are eligible to file a case under Chapter 13, complete the following chart, multiply the amount in line a by the amount in line b, and enter the resulting administrative expense. a. Projected average monthly Chapter 13 plan payment. $ b. Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) x c. Average monthly administrative expense of Chapter 13 case Total: Multiply Lines a and b	$
46	**Total Deductions for Debt Payment.** Enter the total of Lines 42 through 45.	$

Subpart D: Total Deductions from Current Monthly Income

47	**Total of all deductions allowed under § 707(b)(2).** Enter the total of Lines 33, 41, and 46.	$

Part VI. DETERMINATION OF § 707(b)(2) PRESUMPTION

48	**Enter the amount from Line 18 (Current monthly income for § 707(b)(2))**	$
49	**Enter the amount from Line 47 (Total of all deductions allowed under § 707(b)(2))**	$
50	**Monthly disposable income under § 707(b)(2).** Subtract Line 49 from Line 48 and enter the result	$
51	**60-month disposable income under § 707(b)(2).** Multiply the amount in Line 50 by the number 60 and enter the result.	$
52	**Initial presumption determination.** Check the applicable box and proceed as directed. ☐ **The amount on Line 51 is less than $6,575** Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. Do not complete the remainder of Part VI. ☐ **The amount set forth on Line 51 is more than $10,950**. Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII. Do not complete the remainder of Part VI. ☐ **The amount on Line 51 is at least $6,575, but not more than $10,950.** Complete the remainder of Part VI (Lines 53 through 55).	
53	**Enter the amount of your total non-priority unsecured debt**	$
54	**Threshold debt payment amount.** Multiply the amount in Line 53 by the number 0.25 and enter the result.	$
55	**Secondary presumption determination.** Check the applicable box and proceed as directed. ☐ **The amount on Line 51 is less than the amount on Line 54.** Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. ☐ **The amount on Line 51 is equal to or greater than the amount on Line 54.** Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII.	

Part VII: ADDITIONAL EXPENSE CLAIMS

56 **Other Expenses.** List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.

	Expense Description	Monthly Amount
a.		$
b.		$
c.		$
	Total: Add Lines a, b and c	$

Part VIII: VERIFICATION	
57	I declare under penalty of perjury that the information provided in this statement is true and correct. *(If this is a joint case, both debtors must sign.)* Date: _____ Signature: _____ (Debtor) Date: _____ Signature: _____ (Joint Debtor, if any)

Official Form 22C (Chapter 13) (12/08)

In re _____
Debtor(s)

Case Number: _____
(If known)

According to the calculations required by this statement, unless the debtor's plan pays all unsecured claims in full:
☐ **The applicable commitment period is 3 years.**
☐ **The applicable commitment period is 5 years.**
☐ **Disposable income is determined under § 1325(b)(3).**
☐ **Disposable income is not determined under § 1325(b)(3).**
(Check the boxes as directed in Lines 17 and 23 of this statement.)

CHAPTER 13 STATEMENT OF CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD AND DISPOSABLE INCOME

In addition to Schedules I and J, this statement must be completed by every individual Chapter 13 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. REPORT OF INCOME

		Column A Debtor's Income	Column B Spouse's Income
1	**Marital/filing status.** Check the box that applies and complete the balance of this part of this statement as directed. a. ☐ Unmarried. **Complete only Column A ("Debtor's Income") for Lines 2-10.** b. ☐ Married. **Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.**		
	All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.		
2	**Gross wages, salary, tips, bonuses, overtime, commissions.**	$	$
3	**Income from the operation of a business, profession, or farm.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 3. If more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. **Do not include any part of the business expenses entered on Line b as a deduction in Part IV.** a. Gross receipts $ b. Ordinary and necessary business expenses $ c. Business income Subtract Line b from Line a	$	$
4	**Rent and other real property income.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. Do not enter a number less than zero. **Do not include any part of the operating expenses entered on Line b as a deduction in Part IV.** a. Gross receipts $ b. Ordinary and necessary operating expenses $ c. Rent and other real property income Subtract Line b from Line a	$	$
5	**Interest, dividends, and royalties.**	$	$
6	**Pension and retirement income.**	$	$
7	**Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child support.** Do not include alimony or separate maintenance payments or amounts paid by the debtor's spouse.	$	$
8	**Unemployment compensation.** Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below: Unemployment compensation claimed to be a benefit under the Social Security Act — Debtor $ _____ Spouse $ _____	$	$
9	**Income from all other sources.** Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. **Include all payments of alimony or separate maintenance. Do not include** any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. a. $ b. $	$	$
10	**Subtotal.** Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).	$	$

11	**Total.** If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.	$

Part II. CALCULATION OF § 1325(b)(4) COMMITMENT PERIOD		
12	**Enter the amount from Line 11.**	
13	**Marital adjustment.** If you are married, but are not filing jointly with your spouse, AND if you contend that calculation of the commitment period under § 1325(b)(4) does not require inclusion of the income of your spouse, enter the amount of the income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of you or your dependents. Otherwise, enter zero.	
14	**Subtract Line 13 from Line 12 and enter the result.**	
15	**Annualized current monthly income for § 1325(b)(4).** Multiply the amount from Line 14 by the number 12 and enter the result.	$
16	**Applicable median family income.** Enter the median family income for applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	$
17	**Application of § 1325(b)(4).** Check the applicable box and proceed as directed. ☐ **The amount on Line 15 is less than the amount on Line 16.** Check the box for "The applicable commitment period is 3 years" at the top of page 1 of this statement and continue with this statement. ☐ **The amount on Line 15 is not less than the amount on Line 16.** Check the box for "The applicable commitment period is 5 years" at the top of page 1 of this statement and continue with this statement.	

Part III. APPLICATION OF § 1325(b)(3) FOR DETERMINING DISPOSABLE INCOME		
18	**Enter the amount from Line 11.**	$
19	**Marital adjustment.** If you are married, but are not filing jointly with your spouse, enter the amount of the income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of you or your dependents. If you are unmarried or married and filing jointly with your spouse, enter zero.	$
20	**Current monthly income for § 1325(b)(3).** Subtract Line 19 from Line 18 and enter the result.	
21	**Annualized current monthly income for § 1325(b)(3).** Multiply the amount from Line 20 by the number 12 and enter the result.	$
22	**Applicable median family income.** Enter the amount from Line 16.	$
23	**Application of § 1325(b)(3).** Check the applicable box and proceed as directed. ☐ **The amount on Line 21 is more than the amount on Line 22.** Check the box for "Disposable income is determined under § 1325(b)(3)" at the top of page 1 of this statement and complete the remaining parts of this statement. ☐ **The amount on Line 21 is not more than the amount on Line 22.** Check the box for "Disposable income is not determined under § 1325(b)(3)" at the top of page 1 of this statement and complete Part VII of this statement. **Do not complete Parts IV, V, or VI.**	

Part IV. CALCULATION OF DEDUCTIONS FROM CURRENT MONTHLY INCOME		
Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)		
24	**National Standards: food, apparel and services, housekeeping supplies, personal care, and miscellaneous.** Enter in the space below your gross monthly income and the method used to determine it. Then enter in Line 24 the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable household size and income level. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) Gross Monthly Income: $ _____ Determined by: ☐ Line 14 ☐ Schedule I ☐ Other (specify): _____	$
25A	**Local Standards: housing and utilities; non-mortgage expenses.** Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and household size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court).	$

25B	**Local Standards: housing and utilities; mortgage/rent expense.** Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and household size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 47; subtract Line b from Line a and enter the result in Line 25B. **Do not enter an amount less than zero.**	
	a. IRS Housing and Utilities Standards; mortgage/rent expense — $	
	b. Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47 — $	
	c. Net mortgage/rental expense — Subtract Line b from Line a.	$
26	**Local Standards: housing and utilities; adjustment.** if you contend that the process set out in Lines 25A and 25B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below: _____	$
27	**Local Standards: transportation; vehicle operation/public transportation expense.** You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation. Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 7. ☐ 0 ☐ 1 ☐ 2 or more. Enter the amount from IRS Transportation Standards, Operating Costs & Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	$
28	**Local Standards: transportation ownership/lease expense; Vehicle 1.** Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) ☐ 1 ☐ 2 or more. Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 47; subtract Line b from Line a and enter the result in Line 28. **Do not enter an amount less than zero.**	
	a. IRS Transportation Standards, Ownership Costs, First Car — $	
	b. Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47 — $	
	c. Net ownership/lease expense for Vehicle 1 — Subtract Line b from Line a.	$
29	**Local Standards: transportation ownership/lease expense; Vehicle 2.** Complete this Line only if you checked the "2 or more" Box in Line 28. Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 47; subtract Line b from Line a and enter the result in Line 29. **Do not enter an amount less than zero.**	
	a. IRS Transportation Standards, Ownership Costs, Second Car — $	
	b. Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47 — $	
	c. Net ownership/lease expense for Vehicle 2 — Subtract Line b from Line a.	$
30	**Other Necessary Expenses: taxes.** Enter the total average monthly expense that you actually incur for all federal, state, and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. **Do not include real estate or sales taxes.**	$
31	**Other Necessary Expenses: involuntary deductions for employment.** Enter the total average monthly deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. **Do not include discretionary amounts, such as non-mandatory 401(k) contributions.**	$

32	**Other Necessary Expenses: life insurance.** Enter total average monthly premiums that you actually pay for term life insurance for yourself. **Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.**	$
33	**Other Necessary Expenses: court-ordered payments.** Enter the total monthly amount that you are required to pay pursuant to the order of a court or administrative agency, such as spousal or child support payments. **Do not include payments on past due obligations included in Line 49.**	$
34	**Other Necessary Expenses: education for employment or for a physically or mentally challenged child.** Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	
35	**Other Necessary Expenses: childcare.** Enter the total average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. **Do not include other educational payments.**	$
36	**Other Necessary Expenses: health care.** Enter the total average monthly amount that you actually expend on health care that is necessary for the welfare of yourself or your dependents and that is not reimbursed by insurance or paid by a health savings account. **Do not include payments for health insurance or health savings accounts listed in Line 39.**	$
37	**Other Necessary Expenses: telecommunication services.** Enter the total average monthly amount that you actually pay for telecommunication services other than your basic home telephone service—such as cell phones, pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. **Do not include any amount previously deducted.**	$
38	**Total Expenses Allowed under IRS Standards.** Enter the total of Lines 24 through 37.	$

Subpart B: Additional Living Expense Deductions

Note: Do not include any expenses that you have listed in Lines 24-37

39	**Health Insurance, Disability Insurance, and Health Savings Account Expenses.** List the monthly expenses in the categories set out in lines a-c below that are reasonably necessary for yourself, your spouse, or your dependents, and enter the total in Line 39. If you do not actually expend this total amount, indicate your actual average monthly expenditures in line d below	$
40	**Continued contributions to the care of household or family members.** Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. **Do not include payments listed in Line 34.**	$
41	**Protection against family violence.** Enter any average reasonably necessary monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.	$
42	**Home energy costs.** Enter the average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. **You must provide your case trustee with documentation of your actual expenses and demonstrate that the additional amount claimed is reasonable and necessary.**	$
43	**Education expenses for dependent children under 18.** Enter the average monthly expenses that you actually incur, not to exceed $137.50 per child, for attendance at a private or public elementary school by your dependent children less than 18 years of age. **You must provide your case trustee with documentation of your actual expenses and explain why the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.**	$

a.	Health Insurance	$
b.	Disability Insurance	$
c.	Health Savings Account	$
		Total: Add Lines a, b, and c
d.	Actual monthly expenditure (if different from total)	$

44	**Additional food and clothing expense.** Enter the average monthly amount by which your food and clothing expenses exceed the combined allowances for food and clothing (apparel and services) in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) **You must demonstrate that the additional amount claimed is reasonable and necessary.**	$
45	**Charitable contributions.** Enter the amount reasonably necessary for you to expend on charitable contributions in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2). **Do not include any amount in excess of 15% of your gross monthly income.**	$
46	**Total Additional Expense Deductions under § 707(b).** Enter the total of Lines 39 through 45.	$

Subpart C: Deductions for Debt Payment

47 **Future payments on secured claims.** For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, and state the Average Monthly Payment. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. Mortgage debts should include only payments of principal and interest. If necessary, list additional entries on a separate page.

	Name of Creditor	Property Securing the Debt	60-month Average Payment
a.			$
b.			$
c.			$
			Total: Add Lines a, b, and c

$

48 **Other payments on secured claims.** If any of debts listed in Line 47 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 47, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.

	Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount
a.			$
b.			$
c.			$
			Total: Add Lines a, b, and c

$

49	**Payments on priority claims.** Enter the total amount, divided by 60, of all priority claims, such as priority tax, child support and alimony claims, including only past due obligations. **Do not include current obligations set out in Line 33.**	$

50 **Chapter 13 administrative expenses.** Multiply the amount in Line a by the amount in Line b, and enter the resulting administrative expense.

a.	Projected average monthly Chapter 13 plan payment.	$
b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x
c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b

$

51	**Total Deductions for Debt Payment.** Enter the total of Lines 47 through 50.	$

Subpart D: Total Deductions from Current Monthly Income

52	**Total of all deductions allowed under § 707(b)(2).** Enter the total of Lines 38, 46, and 51.	$

Part V. DETERMINATION OF DISPOSABLE INCOME UNDER § 1325(b)(2)

53	**Total current monthly income.** Enter the amount from Line 20.	$
54	**Support income.** Enter the monthly average of any child support payments, foster care payments, or disability payments for a dependent child, reported in Part I, that you received in accordance with applicable nonbankruptcy law, to the extent reasonably necessary to be expended for such child.	$
55	**Qualified retirement deductions.** Enter the monthly total of (a) all amounts withheld by your employer from wages or received by your employer as contributions for qualified retirement plans, as specified in § 541(b)(7) and (b) all required repayments of loans from retirement plans, as specified in § 362(b)(19).	$
56	**Total of all deductions allowed under § 707(b)(2).** Enter the amount from Line 52.	$
57	**Deduction for special circumstances.** If there are special circumstances that justify additional expenses or reductions of current monthly income for which there is no reasonable alternative, describe the special circumstances and the resulting expenses and income reductions in lines a-c below. If necessary, list additional entries on a separate page. Total the expenses and income reductions and enter the total in Line 57. **You must provide your case trustee with documentation of these expenses or income reductions and provide a detailed explanation of the special circumstances that makes such expenses or income reductions necessary and reasonable.**	

	Nature of special circumstances	Amount of expense or income reduction
a.		$
b.		$
c.		$
		Total: Add Lines a, b, and c

58	**Total adjustments to determine disposable income.** Add the amounts on Lines 54, 55, 56, and 57 and enter the result.	$
59	**Monthly Disposable Income Under § 1325(b)(2).** Subtract Line 58 from Line 53 and enter the result.	$

Part VI: VERIFICATION

60 I declare under penalty of perjury that the information provided in this statement is true and correct. *(If this is a joint case, both debtors must sign.)*

Date: _____ Signature: _____ (Debtor)

Date: _____ Signature: _____ (Joint Debtor, if any)

Item 5B will be distributed separately

Item 5

Official Form 23 (10/06)

United States Bankruptcy Court

_____ District Of _____

Add chapter 11 as in:

", 11,"

In re _____, Case No. _____

Debtor

Chapter _____

DEBTOR'S CERTIFICATION OF COMPLETION OF INSTRUCTIONAL COURSE CONCERNING PERSONAL FINANCIAL MANAGEMENT

Every individual debtor in a chapter 7 or chapter 13 case must file this certification. If a joint petition is filed, each spouse must complete and file a separate certification. Complete one of the following statements and file by the deadline stated below:

☐ I, _____, the debtor in the above-styled case, hereby
(Printed Name of Debtor)
certify that on _____ (Date), I completed an instructional course in personal financial management provided by _____, an approved personal financial
(Name of Provider)
management provider.

Certificate No. : _____.

☐ I, _____, the debtor in the above-styled case, hereby
(Printed Name of Debtor)
certify that no personal financial management course is required because of *[Check the appropriate box.]*:

☐ Incapacity or disability, as defined in 11 U.S.C. § 109(h);
☐ Active military duty in a military combat zone; or
☐ Residence in a district in which the United States trustee (or bankruptcy administrator) has determined that the approved instructional courses are not adequate at this time to serve the additional individuals who would otherwise be required to complete such courses.

Signature of Debtor: _____

Date: _____

Instructions: Use this form only to certify whether you completed a course in personal financial management. (Fed. R. Bankr. P. 1007(b)(7).) Do NOT use this form to file the certificate given to you by your prepetition credit counseling provider and do NOT include with the petition when filing your case.

Filing Deadlines. In a chapter 7 case, file within 45 days of the first date set for the meeting of creditors under § 341 of the Bankruptcy Code. In a chapter 13 case, file no later than the last payment made by the debtor as required by the plan or the filing of a motion for entry of a discharge under § 1328(b) of the Code. (See Fed. R. Bankr. P. 1007(c).)

MEMORANDUM

TO: SUBCOMMITTEE ON BUSINESS ISSUES

FROM: JEFF MORRIS, REPORTER

RE: ACTIONS AND RECOMMENDATIONS DEVELOPED DURING CONFERENCE CALL AND SUBSEQUENT EMAIL VOTE

DATE: FEBRUARY 26, 2007 / Revised 3/3/07 (LTS)

This memorandum summarizes the actions and recommendations of the Subcommittee relating to comments received on proposed Rules, and certain further Rules amendments suggested by the Internal Revenue Service, as developed during the conference call on February 12, 2007, and in a subsequent email vote.

Issues 1-3:

The first three issues considered by the Committee relate to comments concerning the scope of proposed Rule 6004(g). The comments were as follows:

Comment 05-BR-037. This comment was submitted by the Insolvency Law Committee of the Business Law Section of the State Bar of California (the "Insolvency Committee").

The Insolvency Committee proposes changes to proposed Rule 6004(g). That rule governs sales of personally identifiable information. Under § 363(b)(1) of the Code, the trustee cannot sell such information if the debtor had agreed not to transfer the information to third parties, unless the transfer is conducted in a manner consistent with the debtor's privacy policy (a § 363(b)(1)(A) transfer) or, where the proposed transfer is inconsistent with the existing policy, if the court first appoints a consumer privacy ombudsman (a § 363(b)(1)(B) transfer). The proposed Rule addresses the appointment of an ombudsman for a § 363(b)(1)(B) transfer.

The Insolvency Committee suggests that the rule should address both kinds of transfers rather than just the § 363(b)(1)(B) transfer. It suggests adding a subdivision to the rule that would require that a § 363(b)(1)(A) motion include evidence to support a finding by the court that the transfer is consistent with the debtor's privacy policy.

The Insolvency Committee also proposes that the rule include a provision that, absent a court order to the contrary, that the motion for the appointment of a consumer privacy ombudsman must be filed and served at least 45 days prior to the hearing on the underlying sale

motion. Under current Rule 6004(a), there is a 20 day notice requirement of the sale under Rule 2002(a)(2), although that notice requirement explicitly applies only to the debtor, the trustee, all creditors, and indenture trustees. The Insolvency Committee argues that the ombudsman would need 45 days to review the matter prior to the sale. Under Proposed Rule 6004(g)(2), the sale could take place as soon as 5 days after the United States trustee files and serves the notice of the appointment of the ombudsman. The Insolvency Committee also recommends that proposed Rule 6004(g)(2) be amended to require the United States trustee to serve the notice of appointment of the ombudsman on all creditors and parties in interest in addition to filing it. They suggest that these other parties should be informed directly of the appointment unless the court orders otherwise.

Comment 05-BR-038. The Commercial Law League submitted this comment.
The Commercial Law League also recommends a change to Proposed Rule 6004(g). The recommendation is to have the rule apply to all motions for authority to sell property under § 363(b)(1) rather than only to those under § 363(b)(1)(B). This comment is similar to one offered by the Insolvency Committee.

* * * *

The Subcommittee discussed these comments and determined that it would not recommend a requirement that notice of the appointment of an ombudsman be served on all creditors and parties in interest because such a notice requirement would be cumbersome and would likely fail to reach those most directly affected by the treatment of the personally identifiable information (i.e., those persons whose information is in the possession of the debtor but who are not otherwise creditors or parties in interest within the meaning of the Code). The Subcommittee determined that the ombudsman's function was sufficient to protect the interest of such parties, and that the cost of requiring notice to all creditors and parties in interest outweighed the benefit of such a broadened notice requirement.

The Subcommittee framed the remaining issues raised by the comments on proposed Rule 6004(g), and makes recommendations, as follows:

ISSUE 1: Whether proposed Rule 6004(g), which currently applies only in a sale under § 363(b)(1)(B), should be amended to address sales under subparagraph (A) of that section as well.

After discussing the comments submitted by the California State Bar Insolvency Law Committee and the Commercial Law League regarding sales under § 363(b)(1)(A), the Subcommittee initially concluded that the proposed rule should be revised to apply to all § 363(b)(1) sales to the extent that it should require a statement regarding whether the sale is consistent with the debtor's personally identifiable information transfer policy. After further consideration of the reference in existing Rule 6004(a) to Rule 2002(c)(1) (which, with our currently-proposed amendment, already includes a requirement that the notice of a § 363(b)(1)

sale include a statement as to consistency with the debtor's policy concerning the transfer of personally identifiable information), the Subcommittee subsequently concluded that there is no need for a similar amendment to Rule 6004.

The Subcommittee recommends that no amendment be made to broaden proposed Rule 6004(g) to address § 363(b)(1)(A) sales.

ISSUE 2: Should the Committee Notes to the proposed amendments to Rules 2002 and 6004 (each of which includes provisions relating to the § 363(b)(1) procedures for asset sales involving personally identifiable information) be revised to include a cross reference in each Committee Note to the other Rule?

The Subcommittee recommends revising the proposed Committee Note to Rule 2002 to read as set out below. The Subcommittee concluded that the cross-reference to the Rule 6004(g) procedures for the appointment of a privacy ombudsman for a sale that is inconsistent with the debtor's information transfer policy will facilitate statutory compliance in connection with such sales.

The Subcommittee recommends that the proposed Committee Note to Rule 6004 not be revised to include a cross reference to Rule 2002. The Subcommittee concluded that the reverse cross-reference would not be helpful. Rule 6004(a) already clearly states that notice must be given pursuant to Rule 2002(c)(1).

PROPOSED RULE 2002 COMMITTEE NOTE
[(recommended changes are marked)]

Subdivision (c)(1) is amended to require that a trustee leasing or selling personally identifiable information under § 363(b)(1)(A) or (B) of the Code, as amended in 2005, include in the notice of the lease or sale transaction a statement as to whether the lease or sale is consistent with a policy prohibiting the transfer of the information. <u>If the sale is inconsistent with the terms of a policy prohibiting the transfer of personally identifiable information, compliance with Rule 6004(g) is required.</u>

ISSUE 3: Whether a new subdivision (g)(3) should be added to Rule 6004, to expressly provide for a continuance of the hearing on the sale where necessary to enable a privacy ombudsman to perform his or her duties in connection with the proposed transaction.

After considering the time needed to review the debtor's policy concerning the transfer of personally identifiable information and the terms of the proposed sale, the Subcommittee concluded that expressly providing for the continuance of a sale hearing to allow for full

participation by a privacy ombudsman would be useful. **The Subcommittee recommends the inclusion of a new subdivision 6004(g)(3) as set out below.**

As an alternative, if the new subdivision (g)(3) is not added to the proposed rule, the Committee Note could be revised as set out below in the Alternative Committee Note.

Rule 6004. Use, Sale, or Lease of Property [(recommended changes are marked)]

1 * * * * *

2 (g) SALE OF PERSONALLY IDENTIFIABLE

3 INFORMATION.

4 (1) *Motion.* A motion for authority to sell or lease

5 personally identifiable information under § 363(b)(1)(B) shall

6 include a request for an order directing the United States trustee to

7 appoint a consumer privacy ombudsman under § 332. Rule 9014

8 governs the motion which shall be served on: any committee elected

9 under § 705 or appointed under § 1102 of the Code, or if the case is a

10 chapter 11 reorganization case and no committee of unsecured

11 creditors has been appointed under § 1102, on the creditors included

12 on the list of creditors filed under Rule 1007(d), and on such other

13 entities as the court may direct. The motion shall be transmitted to

14 the United States trustee.

15 (2) *Appointment.* If a consumer privacy ombudsman is

16 appointed under § 332, no later than 5 days before the hearing on the

17 motion under § 363(b)(1)(B), the United States trustee shall file a

18 notice of the appointment, including the name and address of the
19 person appointed. The United States trustee's notice shall be
20 accompanied by a verified statement of the person appointed setting
21 forth the person's connections with the debtor, creditors, any other
22 party in interest, their respective attorneys and accountants, the
23 United States trustee, or any person employed in the office of the
24 United States trustee.

25 (3) *Continuation of Hearing.* Upon the consumer privacy
26 ombudsman's request made at any time prior to the conclusion of the
27 hearing on the motion under § 363(b)(1)(B) or on its own motion,
28 the court may continue the hearing for a reasonable time to permit
29 the ombudsman to perform the ombudsman's duties under § 332.

30 ~~(g)~~ (h) STAY OF ORDER AUTHORIZING USE, SALE, OR
31 LEASE OF PROPERTY. An order authorizing the use, sale, or
32 lease of property other than cash collateral is stayed until the
33 expiration of 10 days after entry of the order, unless the court orders
34 otherwise.

COMMITTEE NOTE

The rule is amended by inserting a new subdivision (g) to implement §§ 332 and 363(b)(1)(B) of the Code, added by the 2005 amendments. This rule governs proposed sales of personally identifiable information that are inconsistent with the debtor's policy covering the transfer of such information. The rule also provides that the court may, upon a request by the ombudsman or upon its own motion, continue the hearing on the proposed sale if additional

time is needed to perform the tasks required of the ombudsman by § 332 of the Code.

Former subdivision (g) is redesignated as subdivision (h).

ALTERNATIVE COMMITTEE NOTE
(if proposed subdivision (g)(3) is not included in the rule)

The rule is amended by inserting a new subdivision (g) to implement §§ 332 and 363(b)(1)(B) of the Code, added by the 2005 amendments. This rule governs proposed sales of personally identifiable information that are inconsistent with the debtor's policy covering such information. Section 332 of the Code provides that the ombudsman must be appointed at least 5 days prior to the hearing on the sale of the property. In an appropriate case, the court can continue the hearing on the proposed sale to the extent additional time is needed to perform the tasks required of the ombudsman by § 332 of the Code.

Former subdivision (g) is redesignated as subdivision (h).

* * * * *

Issues 4-8: The other five issues considered by the Committee relate to comments by the Internal Revenue Service.

ISSUE 4: Whether proposed Rule 2002(g)(2) should be amended to ensure that a designated address filed by a governmental unit under Rule 5003(e) will be effective.

In Comment 05-BK-015, The IRS takes the position that, in light of newly-enacted § 342(f) (which permits creditors to file a statement with the court designating their address for use in chapter 7 and 13 cases), an amendment to Rule 2002(g)(2) is necessary to ensure that the designated address that a governmental unit files with the court under Rule 5003(e) will continue to be effective. After discussion, the Subcommittee agreed that Rule 5003(e) rather than Rule 2002(g)(2) should govern as to the proper address for a governmental unit and that an amendment to Rule 2000(g)(2) is necessary to make it clear that the Rule 5003(e) address applies for a governmental unit.

The Subcommittee recommends approval of the proposed amendment set

out below. The Subcommittee does not believe that the amendment necessitates republication of the proposed rule, because it is simply a conforming or clarifying amendment.

1 (g) ADDRESSING NOTICES [(recommended changes are marked)]

2 * * * * *

3 (2) If a creditor or indenture trustee has not filed a request designating a

4 mailing address under § 342(f) of the Code, Rule 2002(g)(1), or Rule 5003(e), the

5 notices shall be mailed to the address shown on the list of creditors or schedule of

6 liabilities, whichever is filed later. If an equity security holder has not filed a

7 request designating a mailing address under Rule 2002(g)(1), the notices shall be

8 mailed to the address shown on the list of equity security holders.

COMMITTEE NOTE

Subdivision (g)(2) of the rule is amended because the 2005 amendments to § 342(f) of the Code permit creditors in chapter 7 and 13 individual debtor cases to file a notice with any bankruptcy court of the address to which the creditor wishes all notices to be sent. This provision does not apply in cases of nonindividuals in chapter 7 and in cases under chapters 11 and 12, so Rule 2002(g)(2) still operates in those circumstances. It also continues to apply in cases under chapters 7 and 13 if the creditor has not filed a notice under § 342(f). The amendment to Rule 2002(g)(2) therefore only limits that subdivision when a creditor files a notice under § 342(f).

Subdivision (g)(2) is also amended to recognize that the address designated by governmental units under Rule 5003(e) is the proper address to which notices must be sent to that governmental unit in cases under all chapters. If a governmental unit has not designated an address under Rule 5003(e), then notices to it are sent to the address that Rule 2002 otherwise requires.

ISSUE 5: Whether Proposed Rule 3002(c) should be revised to permit taxing authorities to request additional time to file claims relating to tax returns required to be filed under § 1308 ("§ 1308 claims") as well as

other claims.

Section 1308 was added to the Code in 2005. It requires debtors to file all tax returns for the taxable periods ending during the 4 years prior to the commencement of the case no later than the first date set for the § 341 meeting of creditors. The section also provides that, if the returns are not filed by that date, the trustee may hold open the meeting for a limited time. Section 1325(a)(9) also makes the filing of these tax returns a condition of confirmation. An amendment to Rule 3002(c) was published in August 2006 to address the problem of the filing of these tax returns during the case. That proposed amendment to the rule provides that the IRS has the later of 180 days after the commencement of the case, or 60 days after the filing of the return, within which to file a proof of claim for those taxes, and does not provide any mechanism for the IRS to obtain an extension of time for the filing of a § 1308 claim. The rule permits requests for extensions of the time for filing other kinds of claims as long as the enlargement is sought prior to the expiration of the filing period. In its comment, the IRS asserts that it should be given the same opportunity to seek an extension, for cause, to file a § 1308 claim.

The Subcommittee agrees that there is no reason to treat § 1308 claims differently in terms of the enlargement of time, and recommends adoption of the proposed further amendment set out below.

Rule 3002. Filing Proof of Claim or Interest [(recommended changes are marked)]

1 * * * * * *

2 (c) TIME FOR FILING. In a chapter 7 liquidation, chapter 12

3 family farmer's debt adjustment, or chapter 13 individual's debt

4 adjustment case, a proof of claim is timely filed if it is filed not

5 later than 90 days after the first date set for the meeting of creditors

6 called under § 341(a) of the Code, except as follows:

7 (1) A proof of claim filed by a governmental unit, other

8 than for a claim resulting from a tax return filed under § 1308, is

9 timely filed if it is filed not later than 180 days after the date of the

10 order for relief. ~~On motion of a governmental unit before the~~

11 ~~expiration of such period and for cause shown, the court may~~

12 ~~extend the time for the filing of a claim by the governmental unit.~~

13 A proof of claim filed by a governmental unit for a claim resulting

14 from a tax return filed under § 1308 is timely filed if it is filed not

15 later than 180 days after the date of the order for relief or 60 days

16 after the date of the filing of the tax return, whichever is later. On

17 motion of a governmental unit before the expiration of the period

18 in which a proof of claim may timely be filed and for cause shown,

19 the court may extend the time in which the governmental unit may

20 file a claim.

COMMITTEE NOTE

Subdivision (c)(1) is amended to reflect the addition of § 1308 to the Bankruptcy Code in 2005. This provision requires that chapter 13 debtors file tax returns during the pendency of the case, and imposes bankruptcy-related consequences if debtors fail to do so. Subdivision (c)(1) provides additional time for governmental units to file a proof of claim for tax obligations with respect to tax returns filed during the pendency of a chapter 13 case. The amendment also allows the governmental unit to move for additional time to file a proof of claim prior to the expiration of the applicable filing period.

ISSUE 6: Whether the Committee Note to Rule 4002 should be revised to state that tax returns and transcripts are treated differently from the debtor's other financial documents.

The IRS suggests that the Committee Note to Rule 4002, as published in August 2006, be revised to clarify that the debtor must obtain copies of tax returns or tax transcripts and cannot

avoid the obligation to do so by claiming that he does not currently possess the materials. Subdivisions (b)(2) and (b)(3) differ in that they both allow the debtor to state that the documents do not exist, but (b)(2) also allows the debtor to state that the documents are not in his possession. The second paragraph of the Committee Note does not make this distinction and, after discussion, the Subcommittee agreed that it should.

The Subcommittee recommends amending the proposed Committee Note to Rule 4002 as follows.

COMMITTEE NOTE [(recommended changes are marked)]

> Subdivision (b) is also amended to require the debtor to cooperate with the trustee by providing materials and documents necessary to assist the trustee in the performance of the trustee's duties. Nothing in the rule, however, is intended to limit or restrict the debtor's duties under § 521, or to limit the access of the Attorney General to any information provided by the debtor in the case. Subdivision (b)(2) of the ~~The~~ rule does not require that the debtor create documents or obtain documents from third parties; rather, the debtor's obligation is to bring to the meeting of creditors under § 341 the documents which the debtor possesses. Under subdivision (b)(3), the debtor must obtain copies of tax returns or tax transcripts and provide them to the appropriate person(s), unless no such documents exist. Any written statement that the debtor provides indicating either that documents do not exist or are not in the debtor's possession must be verified or contain an unsworn declaration as required under Rule 1008.

ISSUE 7: Whether proposed Rule 5003(e) should be revised to reflect the need for the clerk to maintain separate lists for addresses of governmental units by adding a provision for the maintenance of a list for addresses applicable in actions under § 505(b) of the Code.

The 2005 amendments to the Code included revisions to § 505. Under § 505(b), the clerk is directed to maintain a list of addresses for governmental units who are responsible for the collection of taxes in the clerk's district. The IRS's comments indicate that it is concerned that Rule 5003(e) authorizes the clerk to maintain only one address for the taxing authority, and that the need for notices under § 505 of the Code is more time sensitive than other notices being given in the case. It therefore seeks a further revision to Proposed Rule 5003(e) to ensure that a governmental unit can provide separate addresses for the different purposes

The Subcommittee adopted the suggestion of the IRS on this issue and recommends the approval of the proposed revision of the rule as set out below. The Subcommittee concluded that the statute requires a separate register for § 505(b) addresses. The revision breaks the rule into subparagraphs and is intended to create two registers and to limit governmental units to one address per register.

Rule 5003. Records Kept By the Clerk [(recommended changes are marked)]

1 * * * * *

2 (e) REGISTER OF MAILING ADDRESSES OF FEDERAL

3 AND STATE GOVERNMENTAL UNITS AND CERTAIN

4 TAXING AUTHORITIES. The United States or the state or

5 territory in which the court is located may file a statement

6 designating its mailing address. The United States, state, territory,

7 or local governmental unit responsible for the collection of taxes

8 within the district in which the case is pending may also file a

9 statement designating an address for service of requests under §

10 505(b) of the Code, and the designation shall describe where

11 further information concerning additional requirements for filing

12 such requests may be found. The clerk shall keep, in the form and

13 manner as the Director of the Administrative Office of the United

14 States Courts may prescribe, a register that includes ~~these~~ the

15 mailing addresses designated under the first sentence of this

16 subdivision, and a register of the addresses designated for the

17 service of requests under § 505(b) of the Code, but the clerk is not

18 required to include in ~~the register~~ each of these registers more than
19 one mailing address for each department, agency, or
20 instrumentality of the United States or the state or territory. If
21 more than one address for a department, agency, or instrumentality
22 is included in the register, the clerk shall also include information
23 that would enable a user of the register to determine the
24 circumstances when each address is applicable, and mailing notice
25 to only one applicable address is sufficient to provide effective
26 notice. The clerk shall update the register annually, effective
27 January 2 of each year. The mailing address in the register is
28 conclusively presumed to be a proper address for the governmental
29 unit, but the failure to use that mailing address does not invalidate
30 any notice that is otherwise effective under applicable law.
31 * * * * *

COMMITTEE NOTE

The rule is amended to implement the addition of § 505(b)(1) to the Code in 2005, which allows taxing authorities to designate addresses to use for the service of a request under that subsection. Under the amendment, the clerk is directed to maintain a separate register for mailing addresses of governmental units solely for the service of requests under § 505(b). This register is in addition to the register of addresses of governmental units already maintained by the clerk. The clerk is required to keep only one address for a governmental unit in a register. That is, the address of the governmental unit may differ between the two registers, but only one address is required for any governmental unit within a register.

ISSUE 8: Whether existing Rule 3007 should be amended to prohibit the filing of an objection to a § 1308 claim unless the debtor has filed a return for those taxes.

The IRS offered two suggestions regarding rules that are not in the group of rules for which amendments have been published. They believe that Rules 3007 and 3015 should be amended to implement the Sense of Congress set out in § 716(e) of BAPCPA, which provides as follows:

> (e) RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.--
> It is the sense of Congress that the Judicial Conference of the United States should, as soon as practicable after the date of enactment of this Act, propose amended Federal Rules of Bankruptcy Procedure that provide--
> (1) notwithstanding the provisions of Rule 3015(f), in cases under chapter 13 of title 11, United States Code, that an objection to the confirmation of a plan filed by a governmental unit on or before the date that is 60 days after the date on which the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code, shall be treated for all purposes as if such objection had been timely filed before such confirmation; and
> (2) in addition to the provisions of Rule 3007, in a case under chapter 13 of title 11, United States Code, that no objection to a claim for a tax with respect to which a return is required to be filed under section 1308 of title 11, United States Code, shall be filed until such return has been filed as required.

The IRS proposes an amendment to Rule 3015 regarding the timeliness of objections to confirmation of chapter 13 plans. The sense of Congress is that governmental units should have 60 days after the day when the debtor files all required tax returns within which to object to a debtor's plan, even if the plan has already been confirmed by that time. **The Subcommittee concluded, after discussion, that it would not be appropriate to amend Rule 3015 to permit the IRS to file an objection to confirmation after a Chapter 13 plan has already been confirmed. The Code already provides for motions to modify confirmed plans and to dismiss cases. The Subcommittee will study BAPCPA § 716(e) further, with a view to determining whether another approach to the problem may be viable, and intends to report to the Advisory Committee on its further deliberations at the September meeting.**

The IRS also suggests that Rule 3007 could be amended simply by adding a sentence to the rule. They suggest: "In a chapter 13 case, no objection to a claim for a tax with respect to which a return is required to be filed under § 1308 may be filed until after such return has been filed." **The Subcommittee approved the IRS proposal. The recommended proposed amendment, as set out below, would be sent to the Advisory Committee with a recommendation that it be forwarded to the Standing Committee for its approval to publish the proposed amendment to the rule in August 2007.**

Rule 3007. Objections to Claims[1] [(recommended changes are marked)]

1 (a) An objection to the allowance of a claim shall be in
2 writing and filed. A copy of the objection with notice of the
3 hearing thereon shall be mailed or otherwise delivered to the
4 claimant, the debtor or debtor in possession and the trustee at least
5 30 days prior to the hearing. In a chapter 13 case, no objection to a
6 claim for a tax with respect to which a return is required to be filed
7 under § 1308 may be filed until after such return has been filed.
8 * * * * * *

COMMITTEE NOTE

Subdivision (a) is amended to bar the filing of an objection to a claim for taxes made under § 1308 of the Code until a tax return for those taxes has been filed. This amendment implements § 716(e) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, an uncodified provision, setting out the

[1] This is the version of Rule 3007 that is currently before the Supreme Court for its consideration. You may recall that the amended rule breaks the current rule into two subdivisions and restricts the use of claims objections to pursue what would otherwise need to be an adversary proceeding. The rule also includes the lengthy additions to the rule that authorize omnibus claims objections. I think it is more sensible to set out the proposed IRS revisions as they would apply to the soon to be effective version of the rule.

sense of Congress regarding this issue.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: PROPOSAL FOR RULE GOVERNING INVESTMENT OF ESTATE FUNDS

DATE: MARCH 6, 2007

Since the September meeting, the Subcommittee has considered and discussed the Baker & Hostetler proposal concerning the investment of estate funds that was Supplemental Agenda Item D for that meeting, as well as a revised version of that proposal. Because Baker & Hostetler has now withdrawn its proposal, the Subcommittee is not making a recommendation at this time on the issue of investment of estate funds. A copy of the withdrawal letter is attached.

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March 1, 2007

The Honorable Thomas S. Zilly
United States District Court
700 Stewart Street
Seattle, WA 98101

Re: *Proposal for Bankruptcy Rule*

Dear Judge Zilly:

Jeff Morris was kind enough to include me in his email correspondence regarding Baker & Hostetler's request to the Advisory Committee. There may have been a misunderstanding of my request. I had asked that the matter ***not*** be considered at the March meeting of the Advisory Committee. We are aware, as your correspondence today confirms, that the March agenda is quite full. In addition, our understanding was we would not, by that time, have received a written statement from the Business subcommittee regarding its assessment of the issues implicated by our proposal. As a result, we would have been unable to present to the Committee, prior to the March meeting, any response to those concerns.

After consultation with our client, we respectfully request that the Advisory Committee simply allow us to withdraw our proposal without reaching a final determination on its merits. Our client represents hundreds of banks and other financial institutions, all of whom are anxious to see progress made in having this product available to their customers. We are pursuing several different means of accomplishing that goal and believe that, as time passes, there will be a recognition in numerous jurisdictions of the value of a simplified procedure for establishing these kinds of safe investments.

We understand that the Advisory Committee does not wish to consider a rule change at this time. We also appreciate that, informally, many Committee members have recognized these kinds of safe investments may provide great value to bankruptcy estates. At some future time, there may be value in the Committee reconsidering this proposal. Until then, we request that the Committee allow us to withdraw our proposal, without prejudice to its reconsideration at an appropriate time.

Respectfully,

Matthew R. Goldman

cc: Clifford J. White, III, Esq. (via email and regular mail)
Professor Jeffrey W. Morris (via email and regular mail)
Peter G. McCabe, Esq. (via regular mail)

MEMORANDUM

TO: CROSS BORDER INSOLVENCY SUBCOMMITTEE

FROM: JEFF MORRIS, REPORTER

RE: RECOMMENDATIONS ON COMMENTS RELATING TO CROSS BORDER INSOLVENCY

DATE: FEBRUARY 16, 2007 / revised 2/27/07 (JHW)

The deadline for the submission of comments on the Published Rules has now passed, but it is possible that additional comments will be added due to delays in posting of the comments. I would expect that all of the comments will be received and posted for review within the next week. There are several comments addressing issues for this Subcommittee, including comments submitted in the last few days. I believe that the Subcommittee can consider the comments without the need for a teleconference, but if any member believes that a conference call is appropriate, please let me know and we will schedule one. In this memo, I will summarize the comments submitted on matters relevant to this Subcommittee and will ask for your vote on recommendations to be made to the Advisory Committee.

COMMENTS ON THE INTERIM RULES AND FORMS

Comment 05-BR-037. This comment was submitted by the Insolvency Law Committee of the Business Law Section of the State Bar of California. It addresses nine separate rules, and several of the comments relate to cross border cases. First, the Insolvency Committee recommended that the Advisory Committee consider adding a requirement to the rules that a foreign representative file a corporate ownership statement in the same manner as those statements are required of

debtors under Rule 1007(a). I could not think of any reason why the foreign representative should be excused from this obligation. **I think this is a good suggestion and would recommend that it be considered by the Subcommittee on Cross Border Cases after the March meeting of the Advisory Committee for consideration at the September meeting.**

The Subcommittee accepted the Reporter's recommendation that Rule 1007(a) be amended to require the foreign representative to file a corporate ownership statement.

The Insolvency Committee also recommends that Proposed Rule 1007(a)(4) be amended by inserting "In addition to the documents required under section 1515 of the Code" to the beginning of that subdivision of the rule. The comment does not offer any reason for including this language in the rule other than noting that this statutory requirement is in addition to the obligation under the rule to list certain parties. **Given that the statute is self executing, I do not believe it is necessary to amend the rule and recommend that the Subcommittee not support this proposal.**

The Subcommittee recommended that Proposed Rule 1007(a)(4) be amended by inserting "In addition to the documents required under section 1515 of the Code" to the beginning of that subdivision of the rule.

The Insolvence Committee also suggested amendments to Rules 1007(a)(4) and 2002(q). Those rules each make reference to "administrators in foreign proceedings of the debtor." The Insolvency Committee is concerned that the description may be too limited and could be construed to exclude entities such as receivers, trustees, and the like. The Commercial Law

League has made a similar observation[1], and those rules could be amended to parallel the Code if "administrators in foreign proceedings of the debtor" were replaced with the statutory language of "all persons or bodies authorized to administer foreign proceedings of the debtor." **I believe that this would improve the rules and recommend that the Subcommittee on Cross Border Cases consider the proposal and make an appropriate recommendation to the Advisory Committee.**

The Subcommittee accepted the Reporter's recommendation that Proposed Rules 1007(a)(4) and 2002(q) be amended to delete "administrators in foreign proceedings of the debtor" and replace it with "all persons or bodies authorized to administer foreign proceedings of the debtor".

The Insolvency Committee also recommends that Rule 5009 be amended to address the closing of chapter 15 cases. **The Advisory Committee has already taken action consistent with this suggestion and approved an amendment Rule 5009 at the Seattle meeting.**

The Insolvency Committee also recommends that the Advisory Committee study the need to amend Rule 7065 to ensure that it is consistent with § 1519(e) of the Code. It is unclear to me whether that Code provision creates a need to amend Rule 7065, but I think it should be studied

---

[1] See **Comment 05-BR-038.** The Commercial Law League submitted this comment. It addresses three different issues. The first recommendation is a series of proposed amendments to rules to substitute "persons or bodies authorized to administer foreign proceedings" for "administrators in foreign proceedings" in Proposed Rules 1007(a)(4), 2002(p)(1) and 2002(q)(1). This is consistent with the recommendation of the Insolvency Committee in its Comment 05-BR-038. **I would recommend that the Advisory Committee make that change to those rules.**

in greater detail and considered by the Subcommittee on Cross Border Cases. The comment does not address any Proposed Rule, so I think it would be more appropriate for the Subcommittee to address the matter separate from the pending rules amendments. The Subcommittee could present its recommendations on the matter to the Advisory Committee at the September 2007 meeting.

Comment 05-BR-038. The Commercial Law League submitted this comment. In addition to its proposal that parallels the recommendation of the Insolvency Committee as set out above, the League raised two other issues. It recommends that Rule 1010 be amended to include "all persons or bodies authorized to administer foreign proceedings" among the entities being served with an involuntary petition against a debtor and that Rule 1011 be amended to include those persons among the entities that can file a responsive pleading to an involuntary petition. **These are suggestions for additions to the rules and are not comments to the published rules amendments. They should be added to the suggested rules revisions and studied by the Subcommittee on Cross Border Insolvencies for consideration by the Advisory Committee at the September meeting.**

The League also suggests that Proposed Rule 2002(q)(1) and (q)(2) should be expanded to include foreign administrators among the persons entitled to lengthier notice periods. Those subdivisions implement § 1514(d) of the Code. That section requires that the Bankruptcy Rules and any court orders that require notice to creditors with foreign addresses must provide additional time "as is reasonable under the circumstances." Because the statute applies only to creditors, **I do not believe that any change should be made to those rules to include the**

debtor's foreign representative among the class of persons to whom additional time must be provided.

COMMENTS ON THE RULES PUBLISHED IN AUGUST 2006

We have received two comments on the published rules that raise matters for this Subcommittee. First, the National Conference of Bankruptcy Judges submitted **Comment 06-BK-017.** The NCBJ Board of Governors adopted a resolution encouraging courts to use the III-ALI Guidelines for Court to Court Communications in Cross Border Cases, and the resolution further encourages the various federal rules committees to consult those guidelines in considering amendments to implement chapter 15 of the Bankruptcy Code. The comment attaches a copy of the Guidelines. The guidelines are an excellent resource for the courts, and you may recall that we had at one time considered including a reference to the Guidelines in the Committee Note to Proposed Rule 5012. The Advisory Committee concluded that it would be inappropriate to refer to the Guidelines in the Note because it would appear to provide some form of "official" approval of these Guidelines, perhaps to the exclusion of others (although I am unaware of any group that has offered a competing set of guidelines or protocols). Given the recommendation of the NCBJ, the Subcommittee should reconsider that decision. The reason offered in support of including the reference to the Guidelines in the Committee Note was to educate the bench and bar regarding the existence of these materials. Arguably, the resolution by the NCBJ Board of Governors would seem to resolve that matter, at least as far as the bankruptcy bench is concerned. The issue thus seems to be whether it is necessary to include the reference in the Committee Note for the benefit of other courts and the bar. **I think that the Committee Note**

could be improved and recommend the addition of a sentence along the following lines.

> "The rule does not attempt to establish specific guidelines or protocols for these communications. Rather, this is left to case by case development by the courts who also have access to recommended guidelines for these communications prepared jointly by the International Insolvency Institute and the American Law Institute."
>
> *The Subcommittee accepted the Reporter's recommendation to revise the Committee Note to Proposed Rule 5012.*

Comment 06-BK-018 was submitted by the National Bankruptcy Conference. It raises two issues for the consideration of this Subcommittee, both of which are relatively minor. First, the NBC suggests that the instruction on Forms 9E and 9F to creditors with foreign addresses should be amended to avoid confusion. Those forms are used in chapter 11 cases where the court has not yet set a bar date for filing claims. The forms currently state that "The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline." The NBC recommends that the instruction be as follows: "The deadline for filing claims will be set in a later court order and will apply to all creditors unless the order provides otherwise. If notice of the order setting the deadline is sent to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline." **I believe this is a more accurate instruction and recommend that the Subcommittee support the proposal.**

The Subcommittee accepted the Reporter's recommendation to revise the instruction to foreign creditors on Official Forms 9E and 9F.

The second proposal of the NBC is that Proposed Rule 2002(p) and Official Form 9 be amended to uniformly use the term "creditor with a foreign address" rather than to use both "creditor with a foreign address" and "foreign creditor." Their comment notes that the Code uses both phrases, but they urge that the rules use only a single designation. I think this is a good idea, and **I recommend that the Subcommittee support the proposal that the Rule and Form identify the entity as a"creditor with a foreign address."**

The Subcommittee accepted the Reporter's recommendation to amend proposed Rule 2002(p) and Official Form 9 to identify the entity as a"creditor with a foreign address."

Item 7

Official Form 9E (Chapter 11 Individual or Joint Debtor Case) (12/08))

UNITED STATES BANKRUPTCY COURT_____ **District of**_____

Notice of
Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____ (date) and was converted to a case under chapter 11 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side for Important Explanations

Debtor(s) (name(s) and address)	Case Number Last four digits of Social Security or Individual Taxpayer ID (ITIN) No(s) /Complete EIN
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names)	Attorney for Debtor(s) (name and address) Telephone number

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Change to:

"Creditor with a Foreign Address"

in all versions of Form 9.

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:
Notice of deadline will be sent at a later time.

~~**Foreign Creditors**~~
A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Deadline to File a Complaint Objecting to Discharge of the Debtor:

First date set for hearing on confirmation of plan
Notice of that date will be sent at a later time.

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court
Hours Open:	Date:

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side *The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all *or* if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim and may be unable to vote on a plan. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. ~~**Filing Deadline for a Foreign Creditor:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.~~
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. *See* Bankruptcy Code § 1141 (d). Unless the court orders otherwise, [illegible] until completion of all payments under the plan. A discharge means t[illegible] from the debtor except as provided in the plan. If you believe that a d[illegible] Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by [illegible] office by the "Deadline to File a Complaint to Determine Dischargeab[illegible] side. The bankruptcy clerk's office must receive the complaint and a[illegible] you believe that the debtor is not entitled to receive a discharge ~~under~~ [illegible] file a complaint with the required filing fee in the bankruptcy clerk's [illegible] of the plan. You will be sent another notice [illegible]
Exempt Property	[illegible] y law to keep certain property as exempt. E[illegible] ven if the debtor's case is converted to chapt[illegible] may inspect that list at the bankruptcy clerk' [illegible] ot authorized by law, you may file an objec[illegible] e the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Offic[illegible]	[illegible] this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed [illegible] ay inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
~~Foreign Creditors~~	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer To Other Side For Important Deadlines and Notices	

Replace with:

"Filing Deadline for a Creditor with a Foreign Address: The deadline for filing claims will be set in a later court order and will apply to all creditors unless the order provides otherwise. If notice of the order setting the deadline is sent to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline."

ONLY in 9E and 9F

Change "foreign creditor" to:

"Creditor with a Foreign Address"

in ALL versions of Form 9.

Official Form 9F (Chapter 11 Corporation/Partnership Case) (12/08))

UNITED STATES BANKRUPTCY COURT_____ **District of**_____

Notice of
Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _____(date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____(date) and was converted to a case under chapter 11 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side for Important Explanations

Debtor(s) (name(s) and address)	Case Number.
	Last four digits of Social Security or Individual Taxpayer ID (ITIN) No(s) /Complete EIN
All other names used by the Debtor(s) in the last 8 years (include trade names) Telephone number	Attorney for Debtor(s) (name and address) Telephone number

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Change "foreign creditor" to:

"Creditor with a Foreign Address"

in all versions of Form 9.

Deadline to File a Proof of Claim

Proof of Claim must be *received* by the bankruptcy clerk's office by the following deadline:

Notice of deadline will be sent at a later time.

~~**Foreign Creditors**~~

A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the cou impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Cons determine your rights in this case.

Address of the Bankruptcy Clerk's Office: **Telephone number:**	**For the Court:** Clerk of the Bankruptcy Court
Hours Open:	Date:

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. *The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.* Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
Claims	A Proof of Claim is a signed statement describing a creditor's included with this notice, you can obtain one at any bankruptc schedules that have been or will be filed at the bankruptcy cle and is *not* listed as disputed, contingent, or unliquidated, it wil unless you filed a Proof of Claim or you are sent further notic claim is scheduled, you are permitted to file a Proof of Claim. your claim is listed as disputed, contingent, or unliquidated, th might not be paid any money on your claim and may be unabl yet set a deadline to file a Proof of Claim. If a deadline is set, secured creditor retains rights in its collateral regardless of wh Filing a Proof of Claim submits the creditor to the jurisdiction consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. ~~**Filing Deadline for a Foreign Creditor:** The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.~~
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. *See* (d). A discharge means that you may never try to collect the debt from the in the plan. If you believe that a debt owed to you is not dischargeable 141 (d) (6) (A), you must start a lawsuit by filing a complaint in t by the "Deadline to File a Complaint to Determine Dischargeabili on the front side. The bankruptcy clerk's office must receive the complaint by that deadline.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
~~Foreign Creditors~~	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Replace with:

"Filing Deadline for a Creditor with a Foreign Address: The deadline for filing claims will be set in a later court order and will apply to all creditors unless the order provides otherwise. If notice of the order setting the deadline is sent to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline."

ONLY in 9E and 9F

Change to:

"Creditor with a Foreign Address"

in all versions of Form 9.

Refer To Other Side For Important Deadlines and Notices

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: RECOMMENDATIONS ON COMMENTS RELATING TO APPEALS

DATE: FEBRUARY 23, 2007 / revised 2/28/07 (JHW)

We received only five comments on the rules relating to appeals. This includes comments on the Interim Rules and on the rules published for comment in August 2006. One of the comments actually addresses Rules that were not among the Interim Rules or the Published Rules, and it is essentially a suggestion that the Committee consider amending other rules governing appeals. Three other comments have already been addressed, and the final comment is one that I do not believe requires action by the Subcommittee.

We received a comment on Interim Rule 8001(f)(2) from Mark Diamond, Esq., the operations manager for the bankruptcy court for the Southern District of New York. In **Comment 05-BR-017**, he recommended that the rule be revised to apply specifically to "final orders" rather than "interlocutory orders". **The Committee responded to this comment and has revised Rule 8001(f)(2) to designate when a matter is no longer pending in a bankruptcy court by reference to the docketing of an appeal or the granting of leave to appeal under 28 U.S.C. § 158(a)(1), (2) or (3). Thus, no further action is required on this comment.**

The Commercial Law League of American submitted **Comment 05-BR-038** which included several comments on Interim Rule 8001(f). The first comment is that there should be an Official Form for certifications when they are sought either by a majority of the parties or by fewer than a majority. Those requests for certification, however, are made to the court where the

matter is pending as compared to a certification by all of the appellants and appellees. That is a certification directly to the court of appeals, so **I do not believe that an Official Form for requests for certification is necessary.** The second comment was that Interim Rule 8001(f)(3)(B) should be amended to provide that in addition to serving all of the parties required to be served under Rule 8004, the rule should require that service be made on "the party requesting certification." Service under Rule 8004 is made by the clerk on "counsel of record of each party other than the appellant", and the concern is that the plain meaning of Rule 8004 would require the clerk to serve the party requesting the certification because they are not the appellant until the court of appeals grants leave to appeal. I do not believe that the clerk will not mistakenly serve the person who has filed the request for certification with notice of that request. Therefore, **I do not believe that there is any need to amend Proposed Rule 8001 or 8004 to remedy this perceived problem.** Finally, the Commercial Law League suggests that Proposed Rule 8004(f)(4)(B) be deleted as unnecessary. Their argument is that the court's certification must contain the information set out in Proposed Rule 8001(f)(3)(C), so the supplementary statement is unnecessary. However, Proposed Rule 8004(f)(4)(B) is analogous to subdivision (f)(3)(D) and is intended to allow the parties to supplement the statement that the court provides, just as the parties can submit a statement to support or oppose a request for certification. **I believe that we should retain subdivision (f)(4)(B) and recommend that the recommendations of the Commercial Law League not be adopted.**

The Subcommittee accepted the Reporter's recommendations (1) not to create an Official Form for Requests for Certification; (2) not to amend Rules 8001 or 8004 to exclude the party requesting certification; and (3) not to delete proposed Rule 8004(f)(4)(B).

We have received three comments on appeals issues in the published rules. **Comment 06-BK-007,** submitted by Henry Sommer, a former member of the Committee, noted a problem with Official Form 24. That is the form for the certification to the court of appeals by all parties. Mr. Sommer noted that the form needed to be revised to include a signature line for the appellees as well as for the appellants. **The Forms Subcommittee has already made that correction, so no further action is required by this Subcommittee.**

The American Bankruptcy Institute's Task Force on Bankruptcy Rules submitted **Comment 06-BK-056.** The Task Force compiled comments on a number of Rules, including Proposed Rule 8001(f)(2)(B). The Task Force report states that the respondents to their survey were confused by that Rule which, they state, could be misinterpreted as requiring all of the appellants and appellees to certify the question rather than just a majority of the appellants and appellees. In fact, Rule 8001(f)(2)(B) does require all of the appellants and appellees to join in the certification under that subdivision of the rule. A certification by a majority of those parties is governed by Rule 8001(f)(3). **Given the apparent confusion, it might be appropriate to revise the second paragraph of the Committee Note. A suggested revision that sets out the specific subdivisions under which each form of certification is pursued follows.**

> Subdivision (f) is added to the rule to implement the 2005 amendments to 28 U.S.C. § 158(d). That section authorizes appeals directly to the court of appeals, with that court's consent, upon certification that a ground for the appeal exists under § 158(d)(2)(A)(i)-(iii). Certification can be made by the court on its own initiative <u>under subdivision (f)(4)</u> or in response to a request of a party <u>or a majority of the appellants and appellees (if any) under subdivision (f)(3)</u>. Certification also can be made by all of the appellants and appellees <u>under subdivision (f)(2)(B)</u>. Under subdivision (f)(1), certification is effective only when a timely appeal is commenced under subdivision (a) or (b), and a notice of appeal has been timely filed under Rule 8002. These actions will provide sufficient notice of the appeal to the circuit clerk, so the

> rule dispenses with the uncodified temporary procedural requirements set out in § 1233 (b)(4) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8.

The Subcommittee vote on revising the Committee Note was a tie.

We have also received **Comment 06-BK-016** from Bankruptcy Judge Colleen A. Brown of the District of Vermont. Judge Brown's comment addressed several of the Published Rules, and in the course of her comments she also included a suggestion for a revision of Rules 8003(b) and 8005. Rule 8005 was not amended, so her suggestion on amending the two rules to improve the procedure governing the appeals of interlocutory orders does not have to be addressed at this time. Instead, **I would recommend that it be considered by the Subcommittee after the March meeting for consideration at the September meeting.**

MEMORANDUM

TO: BANKRUPTCY RULES ADVISORY GROUP

FROM: JEFF MORRIS / FORMS SUBCOMMITTEE

RE: PROPOSED CHANGES TO THE OFFICIAL FORMS

DATE: JANUARY 26, 2007; revised February 27, 2007 (SSM)

In response to comments and suggestions received since the Interim Rules and Forms were published in October 2005 and republished in August 2006, the Forms Subcommittee recommends a number of changes to the Official Forms. (Ministerial changes to certain dollar amounts in five Official Forms and changes to the Director's Forms are addressed in separate memos).

The Subcommittee anticipates that many of its recommended changes (or recommended no action items) will be noncontroversial and will not require discussion. Accordingly, the memo below is organized into three parts.

The first four items are the only items the Subcommittee anticipates will require discussion at Marco Island. These "Discussion Calendar" items are grouped together under **section 1** and consist of: 1(a), a proposal to create a reaffirmation coversheet as an Official Form; 1(b), a recommended revision of Official Form 8 (Individual Debtor Statement of Intention); 1(c), a proposed change to the landlord notification box on the second page of Official Form 1; and 1(d), changes to the instructions on Official Forms 4, 6, and 7 with respect to minor children. *The Subcommittee proposes that these items be discussed at Marco Island.*

The next five items are grouped at **section 2** as technical or noncontroversial recommendations: 2(a), Official Form 1 - Voluntary Petition (update asset/liability ranges); 2(b), Official Form 6 – Schedules (multiple changes); 2(c) Official Form 22 (all versions) (change instruction at lines 4/3 to accommodate reporting income for more than one business, profession or farm); 2(d), Official Form 24 - Certification to Court of Appeals; and 2(e), Official Form 25A Small Business Plan of Reorganization. *The Subcommittee recommends that these items **not** be discussed at Marco Island unless a request is made.*

The final four items are grouped at **section 3** as "No Action" recommendations concerning proposed change to the following forms: 3(a), Official Form 5 Involuntary Petition (proposed change to citation referenced in form); 3(b), Official Form 6 - Statistical Summaries (proposed checkbox for corporations ; 3(c), Official Form 16A Caption (proposal to add "aka" and "dba" ; and 3(d); Official Form 23 - Certification Of Completion of Financial Management Course (proposal to separate incapacity/disability waiver options). *The Subcommittee recommends that these items **not** be discussed at Marco Island unless a request is made.*

1. DISCUSSION ITEMS

1(a). REAFFIRMATION AGREEMENT – Should it be an Official Form?

The Consumer Subcommittee has recommended that Director's Form B240, the Reaffirmation Agreement, be made an Official Form. We have also received comments from creditor groups seeking the same result. The Advisory Committee, however, has discussed and rejected this redesignation at previous meeting.

The Consumer Subcommittee concluded that the court's need for access to financial information about the debtor and the reaffirmed debt justifies the adoption of an Official Form. In that way, the court can readily identify the most significant information essential to determining whether the presumption of undue hardship has arisen under § 524(m) of the Code. Having the same form in use for all reaffirmation agreements would ensure that the courts could easily find the necessary information.

In discussing the idea of an Official Form, Judge Klein and I came upon the possibility of a reaffirmation agreement cover sheet as an Official Form rather than adopting the reaffirmation agreement itself as the Official Form. We came to this conclusion for a couple of reasons. First, there is still some disagreement in the courts as to the role of the court in approving or disapproving reaffirmation agreements. Adopting a particular reaffirmation agreement as an

Official Form might result in tacitly adopting some courts methodology and rejecting the views of other courts on substantive matters. Second, adopting the entire form as an Official Form limits the ability to change the form thereafter either to reflect legislative or case law developments, especially as compared to the more expeditious means of amending a Director's Form. Finally, because much of the discussion in the Consumer Subcommittee regarding the need for an Official Form for reaffirmations centered on the court's need to focus on specific financial information, a uniform cover sheet seemed to best address the problem. **A proposed Official Form Reaffirmation Agreement cover sheet is attached. The Subcommittee recommends that it be published for comment in August 2007.**

1(b). OFFICIAL FORM 8, CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

Judge Elizabeth Perris submitted Comment 06-BK-002 suggesting that Official Form 8 be amended to provide more effective guidance to debtors. The form requires individual debtors to state whether they intend to retain possession of property that is subject to liens, and was revised in response to BAPCPA to provide a new option covering personal property subject to an unexpired lease.

Judge Perris indicated that many debtors do not complete the form and instead simply indicate that they intend to claim the property as exempt, even though such action may not be sufficient to allow the debtor to retain the property. Additionally, § 521(a)(6) of the Code requires debtors to take specific action as set out on the form not later than 45 days after the § 341 meeting of creditors. The Consumer Subcommittee considered the matter and concluded that the form should be revised, but it left the specifics of the revision to the Forms Subcommittee.

The Forms Subcommittee concluded that the form should be substantially revised from the published version. A proposed revised version of Form 8 is attached. It is intended to take the debtor through each step of the process in determining whether to retain the property while ensuring that the debtor will check all of the applicable boxes regarding retention of the property. It also would leave open the opportunity for the debtor to claim that § 521(a)(6) is not applicable in the particular circumstances. **Because of the extensive revisions to the form, the Subcommittee recommends that the proposed amendment of Form 8 be published in August 2007, with a scheduled effective date of December 1, 2008.**

1(c). OFFICIAL FORM 1, Voluntary Petition – Landlord Notification and § 362(*l*)

The voluntary petition, Official Form 1, includes a box at the bottom of page 2 in which the debtor is directed to note whether a landlord has a judgment against the debtor for possession of the debtor residence. Under § 362(*l*) of the Code, the debtor can retain possession of the residential property if applicable nonbankruptcy law allows the debtor to cure the entire monetary default, and the debtor deposits the necessary funds with the court at the time of the filing of the voluntary petition. Judge S. Martin Teel (Bankr. D.D.C.) submitted Comment 05-BR-035 in which he noted that the Code not only requires the debtor to deposit the necessary funds with the court, but the debtor also must serve he lessor a certification under penalty of perjury that the debtor has the right to cure and has deposited the required funds. Judge Teel suggests that Official Form 1 be amended to include a certificate of service for the debtor that operates to inform the debtor of the need to serve the landlord with the certification and informs the court that the service has been made. **The Subcommittee agrees with Judge Teel and recommends revising the landlord notification box in two respects: (1), the title of the box**

should be changed from "Statement by a Debtor Who Resides as a Tenant of Residential Property" to "Vertification by a Debtor who Resides as a Tenant of Residential Property" and (2), a fourth checkbox should be added stating:

> **☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).**

1(d). OFFICIAL FORMS 4, 6, and 7, IDENTIFICATION OF MINOR CHILD

Section 112 of the Code, added by BAPCPA in 2005, provides generally that the debtor may not be required to disclose the name of a minor child in documents filed in the public records of the bankruptcy case. The rules had already taken such a position with the proposal of Rule 9037 which has been approved by the Judicial Conference of the United States and is awaiting final action by the Supreme Court. In a related matter, Rule 1007(m) was added to the rules in 2001, and it requires the debtor to include the name, address, and legal relationship of any person upon whom process would be served in an adversary proceeding against the infant.

In Comment 05-BR-008, Mr. Thomas Yerbich suggested that Official Form 6 be amended slightly to clarify the way in which a minor child should be identified on the schedules of creditors. The form currently refers to § 112 and instructs the debtor not to include a minor child's name on Schedules D through H, and the instructions also refer the debtor to Rule 1007(m) and remind the debtor to include the name, address and legal relationship to the minor of the guardian or representative. Mr. Yerbich suggests that the form could be improved by adding an example to the instructions that would be especially helpful for pro se debtors. Mr. Yerbich also points out that merely identifying a minor child as "a minor child" (as currently

required by the instructions to Official Form 4 and Official Form 7) could be insufficient to provide effective notice. **The Subcommittee recommends amending the instructions on Form 4, Form 6 (Schedules D-H) and Form 7 with respect to identification of minor children as follows** *(slight contextual variations are shown in the attachments)*:

> If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr.P. 1007(m).

2.TECHNICAL OR NONCONTROVERSIAL RECOMMENDATIONS

There are several changes that need to be made but that present but either present no real issue or are noncontroversial and do not require discussion unless there is a specific request.

2(a). OFFICIAL FORM 1, Voluntary Petition (update asset/liability ranges).

The staff suggests that the dollar ranges for assets and liabilities are inconsistent and additional ranges should be added. AO statisticians and CM/ECF staff endorse. **The Subcommittee recommends the change.**

2(b). OFFICIAL FORM 6, Schedules.

This form includes all of the schedules. Several suggestions have been submitted for amendments to the form. The suggestions and the Subcommittee's recommendations are set out below.

Schedule E - Unsecured Priority Claims, and Schedule F - Unsecured Nonpriority Claims, currently require only individual chapter 7 consumer debtors to carry the total over to

the Form 6, Statistical Summary. Schedule D - Secured Claims, requires all individual consumer debtors to carry the total to the Statistical Summary. The Statistical Summary and 28 U.S.C. § 159(a) require the information from individual consumer debtors in chapters 7, 11, and 13. The instructions on Schedules E and F should be conformed to the instructions for Schedule D, the Statistical Summary, and section 159(a) by striking the references to chapter 7 in the instructions for schedules E and F. **The Subcommittee recommends removing the references to chapter 7 cases in the instructions on Schedules E and F.**

Schedule 6I - Current Income of Individual Debtor(s). Revise instructions for line 16 to require the total of the income figures on line 15 for the debtor and the debtor's spouse. This would make Schedule I consistent with Schedule J, which includes monthly expenses for the debtor and the debtor's family. The instruction for line 16 on Schedule I was changed in 2005 for statistical reporting pursuant to 28 U.S.C. § 159. The instruction has led to confusion and some software companies ignore it. Literal compliance would result in reporting *individual* income and *family* expenses. Statisticians at the AO and the CM/ECF staff have endorsed the change in Schedule I (which would automatically carryover to the Form 6, Statistical Summary). **The Subcommittee recommends revising line 16 on Schedule I to state: "COMBINED AVERAGE MONTHLY INCOME: (Combine column totals from line 15)."**

Form 6 - Official Declaration. Clarify the following statement on the declaration form: "I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of ____ sheets (total shown on summary page plus 2), and that they are true and correct to the best of my knowledge, information, and belief." The number of pages would be different for amended schedules and for corporations, which do not file the statistical summary. Amended schedules probably require a statement more precise than the template on the form.

The Subcommittee recommends revising the statement by removing the parenthetical as follows:

> **"I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of ____ sheets, and that they are true and correct to the best of my knowledge, information, and belief."**

2(c). OFFICIAL FORM 22 (all versions) – CALCULATION OF BUSINESS, PROFESSION OR FARM INCOME IF MORE THAN ONE

Seville Drewfs of the "Legal-PRO Systems" software company suggested that space should be provided for separate calculations on line 4 of Official Forms 22A (line 3 of 22B, and 22C) for the debtor and the debtor's spouse to calculate income from the operation of a business, profession, or farm. In addition, the forms do not accommodate displaying the calculations if the debtor receives income from more than one business, profession or farm.

The Subcommittee recommends revising the instruction in line 4/3 of Official Forms 22A, 22B, and 22C as follows:

> **"If more than one business, profession or farm, enter aggregate numbers and provide details on an attachment."**

2(d). OFFICIAL FORM 24, Certification to Court of Appeals.

Rather than having two signature lines for the appellant's attorney (or a pro se appellant), the second signature line should be for the appellee's attorney (or a pro se appellee). **The Subcommittee recommends fixing the typo and making the second signature line for the appellee's attorney or a pro se appellee.**

2(e). OFFICIAL FORM 25A, Small Business Plan of Reorganization.

a. The model plan should be consistent by using either (1) "equity security holders" and "equity securities of the debtor" or (2) "equity interest holders" and "equity interests in the debtor." Section 101(17) of the Code defines an equity security holder as the holder of an equity security of the debtor. Section 101(16) defines an equity security as including stocks, interests, and warrants or rights to purchase. **The Subcommittee recommends using "equity security holders" and "equity securities of the debtor" throughout the form plan because the phrasing is more consistent with statutory usage.**

b. The title of Section 2.04 of the form plan is confusing. It now reads. "Class 4. "Equity interests in the Debtor. [If the Debtor is an individual – The interests of the individual Debtor in property of the estate. "

It is intended as an instruction to revise the title for plans filed by individual debtors. Section III.C.4., of the form disclosure statement for small business chapter 11 cases explains, "Finally, with respect to an individual who is a debtor, the Debtor is the equity interest holder." **The Subcommittee recommends revising the title to read: Class 4. Equity securities of the Debtor. [If the Debtor is an individual, change this heading to "The interests of the individual Debtor in property of the estate."**

3.NO ACTION RECOMMENDATIONS

The Subcommittee considered the following suggestions and/or comments but recommends no change.

3(a). OFFICIAL FORM 5, Involuntary Petition.

a. In Comment 06-BK-012, Ms. Robin Hunt of Colorado suggested a change to Proposed Official Form 5, the Involuntary Petition form. She suggests changing the statutory

reference in the filing fee box which refers to the waiver of certain fees for child support creditors. The form refers to § 304(g) of the Bankruptcy Reform Act of 1994, and Ms. Hunt suggests that the reference should be to § 303(g) of the Code.

The form is correct. I believe that Ms. Hunt's confusion stems from the fact that § 303 of the Code governs involuntary cases. The § 304(g) on the form is an uncodified provision and was included in Pub. L. No. 103-394. Although the form could refer to that Public Law in addition to the Bankruptcy Reform Act of 1994, the subcommittee did not believe this would avoid confusion. **The Subcommittee recommends the change.**

b, Add a tax-exempt checkbox to Form 5 (to conform with Form 1). Tax-exempt organizations may be ineligible for involuntary relief under 11 U.S.C. § 303(a) as corporations that are not moneyed, business, or commercial corporations. In any event, the category is likely to be statistically insignificant. **The Subcommittee recommends no change.**

3(b). OFFICIAL FORM 6, Statistical Summaries

Include a "Not Applicable" checkbox for corporations similar to the checkbox for individual debtors whose debts are not primarily consumer debts. The suggestion is unnecessary, if the debtor is a corporation, the case caption should make that clear. **The Subcommittee recommends no change.**

3(c). OFFICIAL FORM 16A, Caption

The suggestion is to change the form caption to include "dba" and "aka" for clarity. The suggestion is unnecessary, the form caption already states: "[Set forth here all names including married, maiden, and trade names used by debtor within last 8 years.]" **The Subcommittee recommends no change.**

3(d). OFFICIAL FORM 23, CERTIFICATION OF COMPLETION OF FINANCIAL MANAGEMENT COURSE.

In Comment 06-BK-004, Mark Diamond, Operations Manager for the US Bankruptcy Court, SDNY, notes that Form 23 currently includes a single checkbox for indicating that the debtor is incapacitated or has a disability that justifies an excuse for not completing the financial management course. He suggests that the form would be improved by splitting the options in two and by more explicitly setting forth the statutory requirements. He also suggests adding an instruction that directs the debtor to check the EOUST website before asserting a waiver based on lack of EOUST approved agencies in the district.

Mr. Diamond suggestions are summarized as follows:

INSERT IN LIEU OF THE LAST THREE CHECK BOXES ON OFFICIAL FORM 23:

_ I am incapacitated by mental illness or mental deficiency such that I am/we are incapable of making rational decisions with respect to my/our financial responsibilities.

_ I am so physically impaired that I am/we are unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under 11 U.S.C. 7 109(h)(1).

_ I am on active military duty in a military combat zone.

_ I reside a district in which the United States trustee (or bankruptcy administrator) has determined that the approved instructional courses are not adequate at this time to serve the additional individuals who would otherwise be required to complete such courses.

ADD TO INSTRUCTIONS FOR FORM:

If you believe that completion of a personal financial management course is not necessary because the United States trustee has determined that adequate courses are not available in your location, please verify that information through the website of the United States trustee, <www.usdoj.gov/ust/>.

The Subcommittee discussed the proposed changes and concluded that they were unnecessary. For the vast majority of users, the purpose of the form is simply to evidence that an approved course in personal financial management has been completed. Adding additional detail about the waiver situations would not aid such users and would unnecessarily add complexity to the form. And the Subcommittee believes the current version of the form is both accurate and adequate for the minority of debtors that use it to seek a waiver of the personal financial management course. **The Subcommittee recommends no change.**

Substitute the following for the asset and liability ranges currently on Form 1:

Estimated Assets									
☐ $0 to $50,000	☐ $50,001 to $100,000	☐ $100,001 to $500,000	☐ $500,001 to $1 million	☐ $1,000,001 to $10 million	☐ $10,000,001 to $50 million	☐ $50,000,001 to $100 million	☐ $100,000,001 to $500 million	☐ $500,000,001 to $1 billion	☐ More than $1 billion
Estimated Liabilities									
☐ $0 to $50,000	☐ $50,001 to $100,000	☐ $100,001 to $500,000	☐ $500,001 to $1 million	☐ $1,000,001 to $10 million	☐ $10,000,001 to $50 million	☐ $50,000,001 to $100 million	☐ $100,000,001 to $500 million	☐ $500,000,001 to $1 billion	☐ More than $1 billion

Voluntary Petition *(This page must be completed and filed in every case.)*	Name of Debtor(s)	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet)		
Location Where Filed	Case Number:	Date Filed:
Location Where Filed:	Case Number:	Date Filed:
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet.)		
Name of Debtor:	Case Number:	Date Filed:
District	Relationship:	Judge:

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b).

X _____

Signature of Attorney for Debtor(s) (Date)

Exhibit C

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

☐ Yes, and Exhibit C is attached and made a part of this petition

☐ No.

Exhibit D

(To be completed by every individual debtor If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)

☐ Exhibit D completed and signed by the debtor is attached and made a part of this petition

If this is a joint petition:

☐ Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition

Information Regarding the Debtor - Venue

(Check any applicable box.)

☐ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in thi tri preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this Dis

☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the U has no principal place of business or assets in the United States but is a defendant in an action or proceeding in this District, or the interests of the parties will be served in regard to the relief sought in this District.

Replace "statement" with "certification" add with option

Certification by a Debtor Who Resides as a Tenant of Residential Property

(Check all applicable boxes)

☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)

_____

(Name of landlord that obtained judgment)

_____

(Address of landlord)

☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered. and

☐ Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.

☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).

Official Form 4 (12/08)

United States Bankruptcy Court

_____ District Of _____

In re _____, Case No. _____

Debtor

Chapter _____

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [*or* chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, ~~indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112. If "a minor child" is stated, also include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m).~~

state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

(1)	(2)	(3)	(4)	(5)
Name of creditor and complete mailing address, including zip code	*Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted*	*Nature of claim (trade debt, bank loan, government contract, etc.)*	*Indicate if claim is contingent, unliquidated, disputed or subject to setoff*	*Amount of claim [if secured also state value of security]*

Date _____

_____

Debtor

[Declaration as in Form 2]

Official Form 6, Schedule D (12/08)

In re _____, **Case No.** _____
Debtor **(If known)**

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. ~~If a minor child is a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112. If "a minor child" is stated, also include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m)~~. If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H – Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

If a minor child is the creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (*See Instructions Above.*)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.			VALUE $					
ACCOUNT NO.			VALUE $					
ACCOUNT NO.			VALUE $					
_____continuation sheets attached			Subtotal ► (Total of this page)				$	$
			Total ► (Use only on last page)				$ (Report also on Summary of Schedules)	$ (If applicable, report also on Statistical Summary of Certain Liabilities and Related Data)

Official Form 6E (12/08)

In re _____, **Case No.**_____
Debtor **(if known)**

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, ~~indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112. If "a minor child" is stated, also include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m).~~

state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column la
the column labeled "Unliquidated." If the claim is disputed, place an "X" in the col
than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on
E in the box labeled "Total" on the last sheet of the completed schedule. ~~Report thi~~

Report the total of amounts entitled to priority listed on each sheet in the box la
entitled to priority listed on this Schedule E in the box labeled "Totals" on the last s
primarily consumer debts who file a case under chapter 7 or 13 report this total also
Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts ~~who file a case under chapter 7~~ report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

remove reference to C7

TYPES OF PRIORITY CLAIMS (Check the appropriate b t category are listed on the attached sheets)

☐ **Domestic Support Obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to $10,000* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

Official Form 6F (12/08)

In re _____, **Case No.** _____
Debtor **(if known)**

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, ~~indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112. If "a minor child" is stated, also include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m).~~ Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts ~~filing a case under chapter 7~~, report this total also on the Statistical Summary of Certain Liabilities and Related Data..

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

state the child's initials and the name and address of the child's parent or guardian, such as "A. B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007 (m).

remove reference to C7

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO							
ACCOUNT NO							
ACCOUNT NO							
ACCOUNT NO							
						Subtotal➤	$
						Total➤ (Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)	$

_____continuation sheets attached

Official Form 6G (12/08)

In re _____ , Case No._____
Debtor (if known)

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, ~~indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112. If "a minor child" is stated, also include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m).~~

, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT.	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.

Official Form 6H (12/08)

In re _____ , Case No. _____
Debtor (if known)

SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by the debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight-year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, ~~indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112. If "a minor child" is stated, also include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m).~~

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
	state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Official Form 6I (12/08)

In re _____ , **Case No.** _____
Debtor **(if known)**

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child.

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP(S):	AGE(S):

Employment:	DEBTOR	SPOUSE
Occupation		
Name of Employer		
How long employed		
Address of Employer		

INCOME: (Estimate of average or projected monthly income at time case filed)	DEBTOR	SPOUSE
	$_____	$_____
1. Monthly gross wages, salary, and commissions (Prorate if not paid monthly)	$_____	$_____
2. Estimate monthly overtime		
3. SUBTOTAL	$_____	$_____
4. LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	$_____	$_____
b. Insurance	$_____	$_____
c. Union dues	$_____	$_____
d. Other (Specify): _____	$_____	$_____
5. SUBTOTAL OF PAYROLL DEDUCTIONS	$_____	$_____
6 TOTAL NET MONTHLY TAKE HOME PAY	$_____	$_____
7 Regular income from operation of business or profession or farm (Attach detailed statement)	$_____	$_____
8. Income from real property	$_____	$_____
9. Interest and dividends	$_____	$_____
10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above	$_____	$_____
11. Social security or government assistance (Specify): _____	$_____	$_____
12. Pension or retirement income	$_____	$_____
13. Other monthly income (Specify): _____	$_____	$_____
14. SUBTOTAL OF LINES 7 THROUGH 13	$_____	$_____
15 AVERAGE MONTHLY INCOME (Add amounts shown on lines 6 and 14)	$_____	$_____
16. COMBINED AVERAGE MONTHLY INCOME: (Combine column totals from line 15~~, if there is only one debtor repeat total reported on line 15~~)	$ _____	

(Report also on Summary of Schedules and, if applicable, on Statistical Summary of Certain Liabilities and Related Data)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:

_____

_____

parenthetical should state only:
"Combine column totals from line 15"

In re _____ , **Case No.** _____
Debtor **(if known)**

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of _____ sheets ~~(total shown on summary page plus 2)~~, and that they are true and correct to the best of my knowledge, information, and belief

Delete parenthetical

Date _____ Signature _____
Debtor

Date _____ Signature _____
(Joint Debtor, if any)

[If joint case, both spouses must sign.]

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that (1) I am a bankruptcy petition preparer as defined in 11 U S C § 110, (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U S C §§ 110(b), 110(h) and 342(b), and, (3) if rules or guidelines have been promulgated pursuant to 11 U S C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section

_____ _____
Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer — Social Security No *(Required by 11 U S C. § 110.)*

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document

_____
_____
_____
Address

X _____ _____
Signature of Bankruptcy Petition Preparer — Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U S C § 110, 18 U S C § 156

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, the _____ [the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership] of the _____ [corporation or partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of ___ sheets (*Total shown on summary page plus 1*), and that they are true and correct to the best of my knowledge, information, and belief

Date _____ Signature _____

_____
[Print or type name of individual signing on behalf of debtor]

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor]

Penalty for making a false statement or concealing property Fine of up to $500,000 or imprisonment for up to 5 years or both 18 U S C §§ 152 and 3571

Official Form 7 (12/08)

UNITED STATES BANKRUPTCY COURT

_____ **DISTRICT OF** _____

In re: _____, Case No. _____
Debtor (if known)

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. Do not include the name or address of a minor child in this statement. ~~Indicate payments, transfers and the like to minor children by stating "a minor child." See 11 U.S.C. § 112. If "a minor child" is stated, include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m).~~

To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that ar
must complete Questions 19 - 25. **If the answer to an applicable question is**
additional space is needed for the answer to any question, use and attach a sep
case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form
individual debtor is "in business" for the purpose of this form if the debtor is c
the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

---

1. Income from employment or operation of business

None ☐ State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT SOURCE

Form 8 (12/09)

United States Bankruptcy Court

_____ District Of _____

In re _____,
Debtor

Case No. _____
Chapter 7

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

PART A – Debts secured by property of the estate (attach additional pages if necessary)

☐ I have filed a schedule of assets and liabilities which includes debts secured by property of the estate.
☐ I intend to do the following with respect to the property of the estate which secures those debts:

Description of Property which Secures Debt: _____ **Creditor's Name:**	**Property will be (indicate one):** ____ Surrendered ____ Retained	**If Property is to be Retained, indicate one:** ___ Property will be claimed as Exempt ___ Property will not be claimed as Exempt	**If Property is to be Retained, indicate all applicable actions:** __ Property will be Redeeemed __ Debt will be Reaffirmed __ Lien will be Avoided pursuant to § 522(f) __ Property is not subject to § 521(a)(6) because _____.
Description of Property which Secures Debt: _____ **Creditor's Name:**	**Property will be (indicate one):** ____ Surrendered ____ Retained	**If Property is to be Retained, indicate one:** ___ Property will be claimed as Exempt ___ Property will not be claimed as Exempt	**If Property is to be Retained, indicate all applicable actions:** __ Property will be Redeeemed __ Debt will be Reaffirmed __ Lien will be Avoided pursuant to § 522(f) __ Property is not subject to § 521(a)(6) because _____.
Description of Property which Secures Debt: _____ **Creditor's Name:**	**Property will be (indicate one):** ____ Surrendered ____ Retained	**If Property is to be Retained, indicate one:** ___ Property will be claimed as Exempt ___ Property will not be claimed as Exempt	**If Property is to be Retained, indicate all applicable actions:** __ Property will be Redeeemed __ Debt will be Reaffirmed __ Lien will be Avoided pursuant to § 522(f) __ Property is not subject to § 521(a)(6) because _____.

All four columns of Part A (including both parts of column one) must be completed for each debt which is secured by property of the estate. Complete the four columns separately for each debt. If more boxes are needed to describe all debts secured by property of the estate, complete and number additional copies of Page 1 of Form 8 as needed.

In the second column, by checking "Surrendered," the debtor indicates that the debtor intends to relinquish possession and control of the property. By checking "Retained," the debtor indicates that the debtor intends to retain possession and control of the property.

In the fourth column, if the debtor intends to retain the property, the debtor must state what actions the debtor intends to take with respect to the property and the debt. **This may require checking more than one line.** For example:

- The debtor may intend to exempt the property pursuant to 11 U.S.C. § 522 and avoid the lien or security interest under 11 U.S.C. § 522(f).
- The debtor may intend to redeem the property under 11 U.S.C. § 722 by paying the holder of the lien or security interest the amount of the allowed secured claim in full at the time of redemption.
- The debtor may intend to enter into an agreement with the creditor under 11 U.S.C. § 524(c) to reaffirm the debt.
- The debtor may assert that personal property is not subject to the deadline in 11 U.S.C. § 521(a)(6) for reaffirmation or redemption. If so, the debtor must explain the basis of the assertion. Section 521(a)(6) provides that the debtor may not retain possession of personal property which secures an allowed claim for the purchase of the property unless the debt is reaffirmed or the property is redeemed within 45 days after the meeting of creditors under 11 U.S.C. § 341(a).

PART B – Personal property subject to unexpired leases (attach additional pages if necessary)

☐ I have filed a schedule of executory contracts and unexpired leases which includes personal property subject to an unexpired lease.
☐ I intend to do the following with respect to the personal property which is subject to an unexpired lease:

Description of Leased Property:	**Lessor's Name:**	Lease will be Assumed pursuant to 11 U.S.C. § 365(p)(2): YES_____ NO _____
Description of Leased Property:	**Lessor's Name:**	Lease will be Assumed pursuant to 11 U.S.C. § 365(p)(2): YES_____ NO _____
Description of Leased Property:	**Lessor's Name:**	Lease will be Assumed pursuant to 11 U.S.C. § 365(p)(2): YES_____ NO _____

All three columns of Part B must be completed for each unexpired lease. Complete the three columns separately for each debt. If more boxes are needed to describe all unexpired leases, complete and number additional copies of Page 2 of Form 8 as needed

Date: _____

_____
Signature of Debtor

DECLARATION OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section.

_____ _____
Printed or Typed Name, and Title, if any, of Bankruptcy Petition Preparer Social Security No. (Required under 11 U.S.C. § 110.)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person or partner who signs this document.

_____

_____
Address

X_____ _____
Signature of Bankruptcy Petition Preparer Date

Names and Social Security Numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C § 156

Official Form 22A (Chapter 7) (12/08)

In re _____
Debtor(s)

Case Number: _____
(If known)

According to the calculations required by this statement:
☐ **The presumption arises.**
☐ **The presumption does not arise.**
(Check the box as directed in Parts I, III, and VI of this statement.)

CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME AND MEANS-TEST CALCULATION

In addition to Schedules I and J, this statement must be completed by every individual Chapter 7 debtor, whether or not filing jointly, whose debts are primarily consumer debts. Joint debtors may complete one statement only.

Part I. EXCLUSION FOR DISABLED VETERANS

1	If you are a disabled veteran described in the Veteran's Declaration in this Part I, (1) check the box at the beginning of the Veteran's Declaration, (2) check the box for "The presumption does not arise" at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement. ☐ **Veteran's Declaration.** By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. §901(1)).

Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION

2	**Marital/filing status.** Check the box that applies and complete the balance of this part of this statement as directed. a. ☐ Unmarried. **Complete only Column A ("Debtor's Income") for Lines 3-11.** b. ☐ Married, not filing jointly, with declaration of separate households. By checking this box, debtor declares under penalty of perjury: "My spouse and I are legally separated under applicable non-bankruptcy law or my spouse and I are living apart other than for the purpose of evading the requirements of § 707(b)(2)(A) of the Bankruptcy Code." **Complete only Column A ("Debtor's Income") for Lines 3-11.** c. ☐ Married, not filing jointly, without the declaration of separate households set out in Line 2.b above. **Complete both Column A ("Debtor's Income") and Column B (Spouse's Income) for Lines 3-11.** d. ☐ Married, filing jointly. **Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.**		
	All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.	**Column A** **Debtor's Income**	**Column B** **Spouse's Income**
3	**Gross wages, salary, tips, bonuses, overtime, commissions.**	$	$
4	**Income from the operation of a business, profession or farm.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. Do not enter a number less than zero. **Do not include any part of the business expenses entered Line b as a deduction in Part V.**		
	a. Gross receipts $ b. Ordinary and necessary business expenses $ c. Business income Subtract Line b from Line a		
	If more than one business, profession or farm, enter aggregate numbers and provide details on an attachment.		
5	**Rent and other real property income.** Subtract Line b from Line a and enter the differen in the appropriate column(s) of Line 5. Do not enter a number less than zero. **Do not inclu any part of the operating expenses entered on Line b as a deduction in Part V.**		
	a. Gross receipts $ b. Ordinary and necessary operating expenses $ c. Rent and other real property income Subtract Line b from Line a	$	$
6	**Interest, dividends and royalties.**	$	$
7	**Pension and retirement income.**	$	$
8	**Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child or spousal support.** Do not include amounts paid by the debtor's spouse if Column B is completed.	$	$

Official Form 22B (Chapter 11) (12/08)
In re _____
Debtor(s)

Case Number: _____
(If known)

CHAPTER 11 STATEMENT OF CURRENT MONTHLY INCOME

In addition to Schedules I and J, this statement must be completed by every individual Chapter 11 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. CALCULATION OF CURRENT MONTHLY INCOME

1	**Marital/filing status.** Check the box that applies and complete the balance of this part of this statement as directed. a. ☐ Unmarried. **Complete only Column A ("Debtor's Income") for Lines 2-10.** b. ☐ Married, not filing jointly. **Complete only Column A ("Debtor's Income") for Lines 2-10.** c. ☐ Married, filing jointly. **Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.**		
	All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.	**Column A Debtor's Income**	**Column B Spouse's Income**
2	**Gross wages, salary, tips, bonuses, overtime, commissions.**	$	$
3	**Net income from the operation of a business, profession, or farm.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 3. Do not enter a number less than zero. a. Gross receipts $ b. Ordinary and necessary business expenses $ c. Business income Subtract Line b from Line a	If more than one business, profession or farm, enter aggregate numbers and provide details on an attachment.	
4	**Net rental and other real property income.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. Do not enter a number less than zero. a. Gross receipts $ b. Ordinary and necessary operating expenses $ c. Rent and other real property income Subtract Line b from Line a	$	$
5	**Interest, dividends, and royalties.**	$	$
6	**Pension and retirement income.**	$	$
7	**Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child or spousal support.** Do not include contributions from the debtor's spouse if Column B is completed.	$	$
8	**Unemployment compensation.** Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below: Unemployment compensation claimed to be a benefit under the Social Security Act — Debtor $ _____ Spouse $ _____	$	$
9	**Income from all other sources.** If necessary, list additional sources on a separate page. **Do not include** any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. Specify source and amount. a. $ b. $ Total and enter on Line 9	$	$
10	**Subtotal of current monthly income.** Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).	$	$
11	**Total current monthly income.** If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.	$	

Official Form 22C (Chapter 13) (12/08)

In re _____
Debtor(s)

Case Number: _____
(If known)

According to the calculations required by this statement:
☐ **The applicable commitment period is 3 years.**
☐ **The applicable commitment period is 5 years.**
☐ **Disposable income is determined under § 1325(b)(3).**
☐ **Disposable income is not determined under § 1325(b)(3).**
(Check the boxes as directed in Lines 17 and 23 of this statement.)

CHAPTER 13 STATEMENT OF CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD AND DISPOSABLE INCOME

In addition to Schedules I and J, this statement must be completed by every individual Chapter 13 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. REPORT OF INCOME

		Column A Debtor's Income	Column B Spouse's Income
1	**Marital/filing status.** Check the box that applies and complete the balance of this part of this statement as directed. a. ☐ Unmarried. **Complete only Column A ("Debtor's Income") for Lines 2-10.** b. ☐ Married. **Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.**		
	All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.		
2	**Gross wages, salary, tips, bonuses, overtime, commissions.**	$	$
3	**Income from the operation of a business, profession, or farm.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 3. Do not enter a number less than zero. **Do not include any part of the business expenses entered on Line b as a deduction in Part IV.** a. Gross receipts $ b. Ordinary and necessary business expenses $ c. Business income Subtract Line b from Line a If more than one business, profession or farm, enter aggregate numbers and provide details on an attachment.		
4	**Rent and other real property income.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. Do not enter a number less than zero. **Do not include any part of the operating expenses entered on Line b as a deduction in Part** a. Gross receipts $ b. Ordinary and necessary operating expenses $ c. Rent and other real property income Subtract Line b from Line a	$	$
5	**Interest, dividends, and royalties.**	$	$
6	**Pension and retirement income.**	$	$
7	**Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child or spousal support.** Do not include amounts paid by the debtor's spouse.	$	$
8	**Unemployment compensation.** Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below: Unemployment compensation claimed to be a benefit under the Social Security Act — Debtor $ _____ — Spouse $ _____	$	$
9	**Income from all other sources.** Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. **Do not include** any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. a. $ b. $	$	$
10	**Subtotal.** Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).	$	$
11	**Total.** If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.	$	

[The parties may include or attach the information specified in Rule 8001(f)(3)(C).]

Signed: *[If there are more than two signatories, all must sign and provide the information requested below. Attach additional signed sheets if needed.]*

Attorney for Appellant (or Appellant, if not represented by an attorney)	Attorney for ~~Appellant~~ (or ~~Appellant~~ if not represented by an attorney)
Printed Name of Signer	Printed Name of Signer
Address	Address
Telephone No.	Telephone No.
Date	Date

Replace "Appellant" with "Appellee"

Official Form 25A (12/08)

United States Bankruptcy Court

_____ District of _____

In re_____, Case No. _____

Debtor

Small Business Case under Chapter 11

[NAME OF PROPONENT]'S PLAN OF REORGANIZATION, DATED [INSERT DATE]

ARTICLE I
SUMMARY

This Plan of Reorganization (the "Plan") under chapter 11 of the Bankruptcy Code (the "Code") proposes to pay creditors of [insert the name of the debtor] (the "Debtor") from [specify sources of payment, such as an infusion of capital, loan proceeds, sale of assets, cash flow from operations, or future income].

This Plan provides for _____ classes of secured claims; _____ classes of unsecured claims; and _____ classes of equity security holders. Unsecured creditors holding allowed claims will receive distributions, which the proponent of this Plan has valued at approximately __ cents on the dollar. This Plan also provides for the payment of administrative and priority claims [if payment is not in full on the effective date of this Plan with respect to any such claim (to the extent permitted by the Code or the claimant's agreement), identify such claim and briefly summarize the proposed treatment.]

All creditors and equity security holders should refer to Articles III through VI of this Plan for information regarding the precise treatment of their claim. A disclosure statement that provides more detailed information regarding this Plan and the rights of creditors and equity security holders has been circulated with this Plan. **Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)**

ARTICLE II
CLASSIFICATION OF CLAIMS AND INTERESTS

2.01 Class 1. All allowed claims entitled to priority under § 507 of the Code (except administrative expense claims under § 507(a)(2), ["gap" period claims in an involuntary case under § 507(a)(3),] and priority tax claims under § 507(a)(8)).

2.02 Class 2. The claim of _____ , to the extent allowed as a secured claim under § 506 of the Code.

[Add other classes of secured creditors, if any. Note: Section 1129(a)(9)(D) of the Code provides that a secured tax claim which would otherwise meet the description of a priority tax claim under § 507(a)(8) of the Code is to be paid in the same manner and over the same period as prescribed in § 507(a)(8).]

2.03 Class 3. All unsecured claims allowed under § 502 of the Code.

[Add other classes of unsecured claims, if any.]

2.04 Class 4 . ~~Equity interests in the Debtor. [If the Debtor is an individual — "The interests of the individual Debtor in property of the estate."]~~

Equity Interests of the Debtor. [If the Debtor is an individual, change this heading to "The interests of the individual Debtor in property of the estate."]

ARTICLE III
TREATMENT OF ADMINISTRATIVE EXPENSE CLAI
U.S. TRUSTEES FEES, AND PRIORITY TAX CLAIM

3.01 Unclassified Claims. Under section §1123(a)(1), administrativ ["gap" period claims in an involuntary case allowed under § 502(f) of the Cod claims are not in classes.

3.02 Administrative Expense Claims. Each holder of an administrative expense claim allowed under § 503 of the Code [, and a "gap" claim in an involuntary case allowed under § 502(f) of the Code,] will be paid in full on the effective date of this Plan (as defined in Article VII), in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.

3.03 Priority Tax Claims. Each holder of a priority tax claim will be paid [specify terms of treatment consistent with § 1129(a)(9)(C) of the Code].

3.04 United States Trustee Fees. All fees required to be paid by 28 U.S.C. §1930(a)(6) (U.S. Trustee Fees) will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code. Any U.S. Trustee Fees owed on or before the effective date of this Plan will be paid on the effective date.

ARTICLE IV
TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN

4.01 Claims and interests shall be treated as follows under this Plan:

Class	Impairment	Treatment
Class 1 - Priority Claims	[State whether impaired or unimpaired.]	[Insert treatment of priority claims in this Class, including the form, amount and timing of distribution, if any. For example: "Class 1 is unimpaired by this Plan, and each holder of a Class 1 Priority Claim will be paid in full, in cash, upon the later of the effective date of this Plan as defined in Article VII, or the date on which such claim is allowed by a final non-appealable order. Except: _____."]
Class 2 – Secured Claim of [Insert name of secured creditor.]	[State whether impaired or unimpaired.]	[Insert treatment of secured claim in this Class, including the form, amount and timing of distribution, if any.] [Add class[es] of secured claims if applicable]
Class 3 - General Unsecured Creditors	[State whether impaired or unimpaired.]	[Insert treatment of unsecured creditors in this Class, including the form, amount and timing of distribution, if any.] [Add administrative convenience class if applicable]
Class 4 - Equity Security Holders of the Debtor	[State whether impaired or unimpaired.]	[Insert treatment of equity security holders in this Class, including the form, amount and timing of distribution, if any.]

ARTICLE V
ALLOWANCE AND DISALLOWANCE OF CLAIMS

5.01 Disputed Claim. A disputed claim is a claim that has not been allowed or disallowed [by a final non-appealable order], and as to which either: (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or (ii) no proof of claim has been filed, and the Debtor has scheduled such claim as disputed, contingent, or unliquidated.

5.02 Delay of Distribution on a Disputed Claim. No distribution will be made on account of a disputed claim unless such claim is allowed [by a final non-appealable order].

5.03 Settlement of Disputed Claims. The Debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure.

ARTICLE VI
PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES

6.01 Assumed Executory Contracts and Unexpired Leases.

(a) The Debtor assumes the following executory contracts and/or unexpired leases effective upon the [Insert "effective date of this Plan as provided in Article VII," "the date of the entry of the order confirming this Plan," or other applicable date]:

[List assumed executory contracts and/or unexpired leases.]

(b) The Debtor will be conclusively deemed to have rejected all executory contracts and/or unexpired leases not expressly assumed under section 6.01(a) above, or before the date of the order confirming this Plan, upon the [Insert "effective date of this Plan," "the date of the entry of the order confirming this Plan," or other applicable date]. A proof of a claim arising from the rejection of an executory contract or unexpired lease under this section must be filed no later than _____ (___) days after the date of the order confirming this Plan.

ARTICLE VII
GENERAL PROVISIONS

7.01 Definitions and Rules of Construction. The definitions and rules of construction set forth in §§ 101 and 102 of the Code shall apply when terms defined or construed in the Code are used in this Plan, and they are supplemented by the following definitions: [Insert additional definitions if necessary].

7.02 Effective Date of Plan. The effective date of this Plan is the eleventh business day following the date of the entry of the order of confirmation. But if a stay of the confirmation order is in effect on that date, the effective date will be the first business day after that date on which no stay of the confirmation order is in effect, provided that the confirmation order has not been vacated.

7.03 Severability. If any provision in this Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

7.04 Binding Effect. The rights and obligations of any entity named or referred to in this Plan will be binding upon, and will inure to the benefit of the successors or assigns of such entity.

7.05 Captions. The headings contained in this Plan are for convenience of reference only and do not affect the meaning or interpretation of this Plan.

[7.06 Controlling Effect. Unless a rule of law or procedure is supplied by federal law (including the Code or the Federal Rules of Bankruptcy Procedure), the laws of the State of _____ govern this Plan and any agreements, documents, and instruments executed in connection with this Plan, except as otherwise provided in this Plan.]

[7.07 Corporate Governance. [If the Debtor is a corporation include provisions required by § 1123(a)(6) of the Code.]]

ARTICLE VIII
DISCHARGE

[If the Debtor is not entitled to discharge under 11 U.S.C. § 1141(d)(3) change this heading to "**NO DISCHARGE OF DEBTOR.**"]

8.01. **[Option 1 – If Debtor is an individual and § 1141(d)(3) is not applicable]**
Discharge. Confirmation of this Plan does not discharge any debt provided for in this Plan until the court grants a discharge on completion of all payments under this Plan, or as otherwise provided in § 1141(d)(5) of the Code. The Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

[Option 2 -- If the Debtor is a partnership and section 1141(d)(3) of the Code is not applicable]
Discharge. On the confirmation date of this Plan, the debtor will be discharged from any debt that arose before confirmation of this Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code. The Debtor will not be discharged from any debt imposed by this Plan.

[Option 3 -- If the Debtor is a corporation and § 1141(d)(3) is not applicable]
Discharge. On the confirmation date of this Plan, the debtor will be discharged from any debt that arose before confirmation of this Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor will not be discharged of any debt: (i) imposed by this Plan; (ii) of a kind specified in § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure; or (iii) of a kind specified in § 1141(d)(6)(B).

[Option 4 – If § 1141(d)(3) is applicable]

No Discharge. In accordance with § 1141(d)(3) of the Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

ARTICLE IX
OTHER PROVISIONS

[Insert other provisions, as applicable.]

Respectfully submitted,

By: _____
The Plan Proponent

By: _____
Attorney for the Plan Proponent

Instructions for Small Business Plan of Reorganization Form

BACKGROUND AND GENERAL INSTRUCTIONS

1. This small business chapter 11 plan of reorganization form is promulgated pursuant to § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. It may be used in cases where the debtor (whether an individual or an artificial entity) is a small business debtor under § 101(51D) of the Code. This form is intended to be used in conjunction with the small business chapter 11 disclosure statement form (Official Form 25B). Because the type of debtor and the details of the proposed plan will vary from case to case, this form is intended to provide an illustrative format, rather than a specific prescription for the language or content of a plan in any particular case.
2. Some language in this form appears in brackets. The bracketed language sometimes instructs the plan's proponent to provide certain information and sometimes provides optional or alternative language that should be used when and where appropriate. Proponents should make the necessary insertions and/or delete inapplicable language.

SPECIFIC INSTRUCTIONS

SUMMARY

3. The first article should provide a summary of the debtor's proposed plan. It should describe the manner in which the plan will be consummated and the source of funds for payments to be made under the plan. These sources might include an infusion of capital, loan proceeds, sale of assets, cash flow from operations, or future income. The summary should also describe the treatment of the various classes of claimants under the plan.

CLASSIFICATION OF CLAIMS AND INTERESTS

4. The second article describes each class of claimants that will receive a distribution under the plan. The first class consists of claimants entitled to priority pursuant to § 507 of the Code other than those entitled to priority under § 507(a)(2), (3), or (8). The next class or group of classes consists of creditor(s) with allowed secured claims. Secured creditors are usually classified individually, with each secured creditor being placed in its own separate class. Classes of secured creditors should be added as necessary. Next, unsecured claimants, not entitled to priority, should be classified. The proponent may, to the extent allowed by law, create additional classes of unsecured claims, including an administrative convenience class pursuant to §

1122(b) of the Code. The last class comprises ~~the holders of equity interests in the debtor~~.

of equity security holders of the debtor

TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS, U.S. TRU
FEES, AND PRIORITY TAX CLAIMS

5. The treatment of certain claims, such as administrative expense claims allowed under § 503 of the Code, and priority tax claims, allowed under §507(a)(8) of the Code, is statutorily specified. These claims are not, therefore, placed into classes. Their treatment is described in the third Article.

TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN

6. The fourth article specifies the treatment accorded the various classes of claims and interests provided for under the plan.
7. Priority claimants other than those allowed under §§ 503 and 507(a)(8) must be classified and paid in full under the plan unless the claimant agrees otherwise.
8. Each secured creditor is generally placed in its own class, with a particular treatment specified for that class. Section 1129(a)(9)(D) of the Code provides that a secured tax claim which would otherwise meet the description of a priority tax claim under § 507(a)(8) of the Code is to be paid in the same manner and over the same period as prescribed in § 507(a)(8).
9. The plan should describe the treatment of the general unsecured claims. An administrative convenience class may be created pursuant to § 1122(b) of the Code, and other classes of unsecured claims may be created to the extent permitted by applicable law.
10. Finally, the plan should describe the treatment of equity ~~interests.~~

securities.

ALLOWANCE AND DISALLOWANCE OF CLAIMS

11. The fifth article addresses the treatment of disputed claims. A "disputed claim" is a claim that has not been allowed or disallowed. No distribution will be made on account of a disputed claim unless such claim is allowed. The debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019.

PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES

12. The sixth article deals with executory contracts and unexpired leases. The plan proponent should list all executory contracts and unexpired leases that it has already assumed, or which it intends to assume under the plan. All other executory contracts will be deemed rejected.

GENERAL PROVISIONS

13. The seventh article provides certain general provisions. Definitions from the Code are incorporated by reference, and any other definitions required by the plan should be listed in section 7.01 of the plan. If a governing law clause is desired, it should be included here, and if the debtor is a corporation, provisions required by §1123(a)(6) of the Code should be included.

DISCHARGE

14. The eighth article describes the effect of discharge under the plan. When and whether the debtor is entitled to a discharge will depend, among other things, upon whether the debtor is an individual, partnership, or corporation, and whether the debtor is continuing in business after consummation of the plan. The proponent should choose the appropriate language from the options provided.

OTHER PROVISIONS

15. To the extent that other provisions, not provided in the plan, are desired, they should be placed in the ninth article.

COMMITTEE NOTE

This form is new. It implements § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005). This form for a small business chapter 11 plan of reorganization may be used in cases where the debtor (whether an individual or an artificial entity) is a small business debtor under § 101(51D) of the Code. The form is intended to be used in conjunction with the small business chapter 11 disclosure statement form (Official Form 25B).

Because the type of debtor and the details of the proposed plan of reorganization may vary, the form is intended to provide an illustrative format, rather than a specific prescription for the language or content of a plan in any particular case. The form includes instructions and examples of the types of information needed to complete it.

Form 27 (12/09)

United States Bankruptcy Court

_____ District Of _____

In re _____,
Debtor

Case No. _____
Chapter ____

REAFFIRMATION AGREEMENT
COVER SHEET

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

Debtor's Name and Address _____

_____

Creditor's Name and Address _____

_____

Amount of Debt as of Commencement: of the Case _____

Amount of Debt being Reaffirmed: _____

Repayment Term of Reaffirmation: _____ months.

Monthly Payment under Reaffirmation: _____

Annual Percentage Rate under Reaffirmation _____

Debtor's Monthly Income at Reaffirmation: _____

Debtor's Monthly Expenses at Reaffirmation: _____

Income From Schedule I, Line 16: _____

Current Expenditures from Schedule J, Line 18: _____

I _____ [print name] hereby certify that the attached agreement is a true and correct copy of the reaffirmation agreement between the parties identified on this Reaffirmation Agreement Cover Sheet. The Debtor ___ was ___ was not [check one] represented by counsel in negotiating the reaffirmation agreement.

_____
Signature

COMMITTEE NOTE

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

MEMORANDUM

DATE: March 4, 2007

FROM: James H. Wannamaker

SUBJECT: Automatic Adjustment of Certain Dollar Amounts in the Bankruptcy Code and in Official Forms 6-C, 6-E, 7, 10, 22A, and 22C Pursuant to § 104(b) of the Code

TO: Advisory Committee on Bankruptcy Rules

Section 104(b), which was added to the Bankruptcy Code by the Bankruptcy Reform Act of 1994, provides for the automatic adjustment of certain dollar amounts in the Code every three years according to a formula specified in the provision. The date on which the dollar amounts were first adjusted was April 1, 1995, and another adjustment is scheduled to take effect April 1, 2007.

Several of the dollar amounts that are adjusted under § 104(b) appear in the Official Bankruptcy Forms, Form 6C, the schedule of Property Claimed as Exempt, Form 6E, the schedule of Creditors Holding Claims Entitled to Priority; Form 7, the Statement of Financial Affairs; Form 10, the Proof of Claim; Form 22A, the Statement of Current Monthly Income and Means Test Calculation; and Form 22C, the Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income.

The dollar amount adjustments reflect the change in the Consumer Price Index for All Urban Consumers published by the United States Department of Labor for the three-year period ending December 31, 2006, and rounded to the nearest $25. Application of this formula to the dollars amounts in the specified provisions of the Bankruptcy Code is purely ministerial. Accordingly, the Judicial Conference in 1995 authorized the adjustments to be made and published in the Federal Register every three years without further action by the Conference. Amendment of the official forms to conform to the automatic adjustments made to the Code also is ministerial, and the Conference likewise authorized the amendments to be made every three years without further action by the Conference.

Prior to the enactment of the Bankruptcy Abuse Prevention Act and Consumer Protection Act of 2005 (BAPCPA), five sections of the Bankruptcy Code and two official bankruptcy forms were adjusted every three years. As amended by BAPCPA, section 104(b) provides for the adjustment of the dollar amounts in 20 sections of the Code and one section of title 28. The six official forms which incorporate those dollar amounts are adjusted at the same time.

A chart showing the adjustments to be made and excerpts of the five official forms as they will appear on April 1, 2007, are attached.

Attachments

Form B6C
(10/05)

In re _____, **Case No.** _____
Debtor **(If known)**

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor claims the exemptions to which debtor is entitled under:
(Check one box)
☐ 11 U.S.C. § 522(b)(2)
☐ 11 U.S.C. § 522(b)(3)

☐ Check if debtor claims a homestead exemption that exceeds ~~$125,000~~.

$136,875

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION

Official Form 6E (10/06)

In re _____, Debtor

Case No._____ (if known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112. If "a minor child" is stated, also include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts who file a case under chapter 7 or 13 report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts who file a case under chapter 7 report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

☐ **Domestic Support Obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**

$10,950

Wages, salaries, and commissions, including vacation, ~~severance,~~ and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to ~~$10,000*~~ per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

Official Form 6E (10/06) - Cont.

In re _____ , **Case No.** _____
Debtor **(if known)**

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to ~~$4,925*~~ $5,400 per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**

Claims of individuals up to ~~$2,225*~~ $2,425 for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☐ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507 (a)(9).

☐ **Claims for Death or Personal Injury While Debtor Was Intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

* Amounts are subject to adjustment on April 1, ~~2007~~ 2010, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

____ **continuation sheets attached**

Form 7

2. Income other than from employment or operation of business

None ☐

State the amount of income received by the debtor other than from employment, trade, profession, operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE

3. Payments to creditors

Complete a. or b., as appropriate, and c.

None ☐

a. *Individual or joint debtor(s) with primarily consumer debts:* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case if the aggregate value of all property that constitutes or is affected by such transfer is not less than $600. Indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING

None ☐

b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within **90** days immediately preceding the commencement of the case if the aggregate value of all property that constitutes or is affected by such transfer is not less than ~~$5,000~~. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS/ TRANSFERS	AMOUNT PA VA TR	AMOUNT
		$5,475	

None ☐

c. *All debtors:* List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING

4. Suits and administrative proceedings, executions, garnishments and attachments

FORM 10 (Official Form 10) (10/05)

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____

PROOF OF CLAIM

Name of Debtor	Case Number

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

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

Name and address where notices should be sent:

Telephone number:

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

☐ Check box if you have never received any notices from the bankruptcy court in this case.

☐ Check box if the address differs from the address on the envelope sent to you by the court.

THIS SPACE IS FOR COURT USE ONLY

Last four digits of account or other number by which creditor identifies debtor:

Check here if this claim ☐ replaces ☐ amends a previously filed claim, dated: _____

1. Basis for Claim

- ☐ Goods sold
- ☐ Services performed
- ☐ Money loaned
- ☐ Personal injury/wrongful death
- ☐ Taxes
- ☐ Other _____
- ☐ Retiree benefits as defined in 11 U.S. C. § 1114(a)
- ☐ Wages, salaries, and compensation (fill out below)

Last four digits of your SS #: ____

Unpaid compensation for services performed

from _____ (date) to _____ (date)

2. Date debt was incurred:

3. If court judgment, date obtained:

4. Classification of Claim. Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time the case was filed. See reverse side for important explanations.

Unsecured Nonpriority Claim $ _____

☐ Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or c) none or only part of your claim is entitled to priority.

Secured Claim

☐ Check this box if your claim is secured by collateral (including a right of setoff)

Brief Description of Collateral.

☐ Real Estate ☐ Motor Vehicle ☐ Other _____

Value of Collateral: $ _____

Amount of arrearage and other charges at time case filed included in secured claim, if any: $ _____

Unsecured Priority Claim

☐ Check this box if you have an unsecured claim, all or part of which is entitled to priority.

Amount entitled to priority $ _____

Specify the priority of the claim:

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

☐ Wages, salaries, or commissions (up to ~~$10,000~~ $10,950,* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U S.C. § 507(a)(4).

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

☐ Up to ~~$2,225~~ $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).

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

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

**Amounts are subject to adjustment on ~~4/1/07~~ 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment*

5. Total Amount of Claim at Time Case Filed: $ _____ (unsecured) _____ (secured) _____ (priority) _____ (total)

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

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

7. Supporting Documents: *Attach copies of supporting documents,* such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

8. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

THIS SPACE IS FOR COURT USE ONLY

Date	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):

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

27	**Other Necessary Expenses: life insurance.** Enter average monthly premiums that you actually pay for term life insurance for yourself. **Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.**	$
28	**Other Necessary Expenses: court-ordered payments.** Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. **Do not include payments on past due support obligations included in Line 44.**	$
29	**Other Necessary Expenses: education for employment or for a physically or mentally challenged child.** Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	$
30	**Other Necessary Expenses: childcare.** Enter the average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. **Do not include other educational payments.**	$
31	**Other Necessary Expenses: health care.** Enter the average monthly amount that you actually expend on health care expenses that are not reimbursed by insurance or paid by a health savings account. **Do not include payments for health insurance or health savings accounts listed in Line 34.**	$
32	**Other Necessary Expenses: telecommunication services.** Enter the average monthly amount that you actually pay for telecommunication services other than your basic home telephone service—such as cell phones, pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. **Do not include any amount previously deducted.**	$
33	**Total Expenses Allowed under IRS Standards.** Enter the total of Lines 19 through 32.	$

Subpart B: Additional Expense Deductions under § 707(b)

Note: Do not include any expenses that you have listed in Lines 19-32

34	**Health Insurance, Disability Insurance, and Health Savings Account Expenses.** List and total the average monthly amounts that you actually pay for yourself, your spouse, or your dependents in the following categories. a. Health Insurance $ b. Disability Insurance $ c. Health Savings Account $ Total: Add Lines a, b and c	$
35	**Continued contributions to the care of household or family members.** Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.	$
36	**Protection against family violence.** Enter any average monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.	$
37	**Home energy costs.** Enter the average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. **You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.** $137.50	$
38	**Education expenses for dependent children less than 18.** Enter the average monthly expenses that you actually incur, not to exceed $1[illegible] per child, in providing elementary and secondary education for your dependent children less than 18 years of age. **You must provide your case trustee with documentation demonstrating that the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.**	$
39	**Additional food and clothing expense.** Enter the average monthly amount by which your food and clothing expenses exceed the combined allowances for food and apparel in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) **You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.**	$
40	**Continued charitable contributions.** Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).	$
41	**Total Additional Expense Deductions under § 707(b).** Enter the total of Lines 34 through 40	$

52	**Initial presumption determination.** Check the applicable box and proceed as directed. $10,950 ☐ **The amount on Line 51 is less than ~~$6,000~~** Check the box for "The presumption does page 1 of this statement, and complete the verification in Part VIII. Do not complete the remainder of Part VI. ☐ **The amount set forth on Line 51 is more than ~~$10,000~~**. Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII. Do not complete the remainder of Part VI. ☐ **The amount on Line 51 is at least ~~$6,000~~, but not more than ~~$10,000~~.** Complete the remainder of Part VI (Lines 53 through 55).
53	**Enter the amount of your total non-priority** $6,575
54	**Threshold debt pay** $6,575 **t.** Multiply the amount in Line 53 by the number 0.1 $10,950 the result. $
55	**Secondary presumption determination.** Check the applicable box and proceed as directed. ☐ **The amount on Line 51 is less than the amount on Line 54.** Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. ☐ **The amount on Line 51 is equal to or greater than the amount on Line 54.** Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII.

Part VII: ADDITIONAL EXPENSE CLAIMS

56 **Other Expenses.** List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.

	Expense Description	Monthly Amount
a.		$
b.		$
c.		$
	Total: Add Lines a, b and c	$

Part VIII: VERIFICATION

57 I declare under penalty of perjury that the information provided in this statement is true and correct. *(If this is a joint case, both debtors must sign.)*

Date: _____ Signature: _____ (Debtor)

Date: _____ Signature: _____ (Joint Debtor, if any)

32	**Other Necessary Expenses: life insurance.** Enter average monthly premiums that you actually pay for term life insurance for yourself. **Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.**	$
33	**Other Necessary Expenses: court-ordered payments.** Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. **Do not include payments on past due support obligations included in Line 49.**	$
34	**Other Necessary Expenses: education for employment or for a physically or mentally challenged child.** Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	
35	**Other Necessary Expenses: childcare.** Enter the average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. **Do not include other educational payments.**	$
36	**Other Necessary Expenses: health care.** Enter the average monthly amount that you actually expend on health care expenses that are not reimbursed by insurance or paid by a health savings account. **Do not include payments for health insurance or health savings accounts listed in Line 39.**	$
37	**Other Necessary Expenses: telecommunication services.** Enter the average monthly amount that you actually pay for telecommunication services other than your basic home telephone service—such as cell phones, pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. **Do not include any amount previously deducted.**	$
38	**Total Expenses Allowed under IRS Standards.** Enter the total of Lines 24 through 37.	$

Subpart B: Additional Expense Deductions under § 707(b)
Note: Do not include any expenses that you have listed in Lines 24-37

39	**Health Insurance, Disability Insurance, and Health Savings Account Expenses.** List and total the average monthly amounts that you actually pay for yourself, your spouse, or your dependents in the following categories. a. Health Insurance $ b. Disability Insurance $ c. Health Savings Account $ Total: Add Lines a, b, and c	$
40	**Continued contributions to the care of household or family members.** Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. **Do not include payments listed in Line 34.**	$
41	**Protection against family violence.** Enter any average monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.	$
42	**Home energy costs.** Enter the average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. **You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary**.	
43	**Education expenses for dependent children under 18.** Enter the average monthly expenses that you actually incur, not to exceed ~~$125~~ $137.50 per child, in providing elementary and secondary education for your dependent children less than 18 years of age. **You must provide your case trustee with documentation demonstrating that the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards**.	$
44	**Additional food and clothing expense.** Enter the average monthly amount by which your food and clothing expenses exceed the combined allowances for food and apparel in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) **You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary**.	$
45	**Continued charitable contributions.** Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).	$
46	**Total Additional Expense Deductions under § 707(b).** Enter the total of Lines 39 through 45.	$

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: REPORT BY FORMS SUBCOMMITTEE:
AMENDMENTS TO DIRECTOR'S PROCEDURAL FORMS

DATE: JANUARY 26, 2007; Revised February 27, 2007 (SSM)

DIRECTOR FORMS

Most of the proposed changes to Director Forms are relatively minor. As noted below, some of the changes have already been put into effect. **The Subcommittee reviewed and approved the changes described below and as annotated in the attachments.**

The Subcommittee also approved in principle a suggestion by Judge William L. Stocks of the AO Bankruptcy Judges Advisory Group (BJAG) to include the statement required by Rule 4008 in Part D of Form 240A (described below). However, because the BJAG was not scheduled to meet until after this memo was prepared, the Subcommittee has not reviewed an annotated version of the proposed change. The BJAG proposal will be distributed separately.

Director's Forms 13S, 15S, 132, 204, 205, 206, 207, 231A, 231B, 253, and 270

Staff has recommended changing the caption to require last 4 digits of social security number or Individual Taxpayer Identification Number (ITIN) as was done in the published amendment to Official Form 16A in order to comply with proposed Rule 9037; incorporating the footnote on each form into the caption as is done on Official Form 16A; and updating the footnote text to require all names used by debtor in last 8 years, in conformity with § 727(a)(8)

of the Bankruptcy Code as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8. **The Subcommittee approved all the changes.**

Director's Form 13S, Order Conditionally Approving Disclosure Statement

Staff has recommended deleting the reference to an election to be considered a small business chapter 11 case since that election was deleted by BAPCPA. **The Subcommittee approved the deletion.**

Director's Form 104, Adversary Proceeding Cover Sheet

Nature of suit code 71 is labeled "Injunctive relief – Reinstatement of stay." Bankruptcy Judge A. Jay Cristol suggested that it be revised to specify "Injunctive relief – Imposition of stay." The current label came from the Bankruptcy Judges Advisory Group, which requested data on litigation following relief from the automatic stay. **The Subcommittee approved revising the label to state "Injunctive relief – Imposition of stay."**

Director's Forms 130A and 130B, Bankruptcy Case and Adversary Proceeding Index Cards

Staff has recommended abrogating these forms because the index cards are no longer used. The Bankruptcy Court Administration Division at the AO supports the changes. **The Subcommittee approved abrogating the forms as outdated.**

Director's Form 202, Statement of Military Service

Rick Pontalion of the "ezfiling" software company noted that form does not specify whether it should be signed by the debtor, by both joint debtors, or by the debtor attorney. The Subcommittee concluded that there was no reason to limit who could file the form. Indeed, the form use is not necessarily limited only to debtors, but could be used by any defendant (a preference defendant, for example) in the military who is sued in a bankruptcy case. **The Subcommittee also approved adding a "print name" line under the signature line.**

Mr. Pontalion also asked whether joint debtors (both of whom are in the military) file separate statements? The Subcommittee concluded that they should file separate statements because the statement requires individual information about the servicemember. **To clarify this requirement, the Subcommittee approved changing the following phrase in the first paragraph, "parties to a bankruptcy case" to "each party in a bankruptcy case".**

Director's Form 204, Notice of Need to File Proof of Claim Due to Recovery of Assets

Eva B. Roeber, Chief Deputy Clerk of the Bankruptcy Court in the District of Nebraska, pointed out that following statement on the form is inaccurate under § 726(a)(3): "Creditors who do not file a proof of claim on or before this date will not share in any distribution from the debtor estate." **The Subcommittee agreed and approved revising the form to state: "Creditors who do not file a proof of claim on or before this date might not share in any distribution from the debtor's estate."**

Staff suggested revising Form 204 instructions for receiving proof of receipt to conform to the proposed revision of Official Form 10. **The Subcommittee approved.**

Director's Form 240, Reaffirmation Agreement

Deputy clerks from the bankruptcy courts in the Southern District of New York and the Eastern District of Kentucky suggested making the motion for approval of the reaffirmation a separate form. This would make the directions on page 1 easier to understand and would simplify docketing in CM/ECF. Form 240 was recently split into two forms: Form 240A (consisting of 4 subparts) and Form 240B (the Proposed Order). **The Subcommittee recommended updating the form as Forms 240A, 240B, and 240C when additional changes are made in the form.**

Chief Bankruptcy Judge William L. Stocks of the Bankruptcy Judges Advisory Group (BJAG) suggested including the statement required by Rule 4008 in Part D of Form 240A. The advisory group is scheduled to discuss how to implement this suggestion at its meeting March 8 - 9. **The BJAG proposal will be distributed separately at or before the meeting.**

Director Forms 254, 255, and 256, bankruptcy subpoenas

The Administrative Office revised Director Forms 254, 255, and 256, the subpoenas for use in Rule 2004 examinations, adversary proceedings, and bankruptcy cases to incorporate the amendment of Civil Rule 45 and AO Form 088, the civil subpoena, on December 1, 2006. **The Subcommittee reviewed the changes.**

Form B 13S
12/94

United States Bankruptcy Court

_____ District Of _____

In re

Case No _____

Debtor*
Address:
~~Social Security No(s).:~~
~~Employer's Tax Identification No(s). [if any]:~~

Chapter 11
(Small Business)

ORDER CONDITIONALLY APPROVING DISCLOSURE STATEMENT, FIXING TIME FOR FILING ACCEPTANCES OR REJECTIONS OF PLAN, AND FIXING THE TIME FOR FILING OBJECTIONS TO THE DISCLOSURE STATEMENT AND TO THE CONFIRMATION OF THE PLAN, COMBINED WITH NOTICE THEREOF AND OF THE HEARING ON FINAL APPROVAL OF THE DISCLOSURE STATEMENT AND THE HEARING ON CONFIRMATION OF THE PLAN

EXAMPLE SSN AND ITIN CHANGES FOR FORMS 13S, 15S, 132, 204, 205, 206, 207, 231A, 231B, 253, AND 270.

Caption will require last 4 digits of Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN) as was done in the published amendment to Form 16A (ATTACHED).

In addition, footnote text will be moved to the caption and changed from 6 years to 8 years (phrasing as in Form 16A - ATTACHED).

A disclosure statement under chapter 11 of the Bankruptcy Code having _____, on _____ with Code filed by _____, on _____ elected to be considered, a small business:

IT IS ORDERED, and notice is hereby given, that:

A. The disclosure statement filed by _____ is conditionally approved.

B. _____ is fixed as the last day for filing written acceptances or rejections of the plan referred to above.

C. Within _____ days after the entry of this order, the plan, the disclosure statement and a ballot conforming to Official Form 14 shall be mailed to creditors, equity security holders, and other parties in interest, and shall be transmitted to the United States trustee.

D. _____ is fixed for the hearing on final approval of the disclosure statement (if a written objection has been timely filed) and for the hearing on confirmation of the plan.

E. _____ is fixed as the last day for filing and serving written objections to the disclosure statement and confirmation of the plan.

Dated: _____

BY THE COURT

_____
United States Bankruptcy Judge

~~*Set forth all names, including trade names, used by the debtor within the last 6 years (Fed. R. Bankr. P. 1005). For joint debtors, set forth both social security numbers.~~

Official Form 16A (12/08)

Form 16A. CAPTION (FULL)

United States Bankruptcy Court

_____ District Of _____

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

[Designation of Character of Paper]

Form B 13S
12/94

United States Bankruptcy Court

_____ District Of _____

In re

Case No. _____

Debtor*
Address:
Social Security No(s).:
Employer's Tax Identification No(s). [if any]:

Chapter 11
~~(Small Business)~~

ORDER CONDITIONALLY APPROVING DISCLOSURE STATEMENT, FIXING TIME FOR FILING ACCEPTANCES OR REJECTIONS OF PLAN, AND FIXING THE TIME FOR FILING OBJECTIONS TO THE DISCLOSURE STATEMENT AND TO THE CONFIRMATION OF THE PLAN, COMBINED WITH NOTICE THEREOF AND OF THE HEARING ON FINAL APPROVAL OF THE DISCLOSURE STATEMENT AND THE HEARING ON CONFIRMATION OF THE PLAN

A disclosure statement under chapter 11 of the Bankruptcy Code having been filed by _____-_____, on _____ with respect to a plan under chapter 11 of the Code filed by _____, on _____~~; and the debtor being, and having elected to be considered, a small business~~:

DELETE REFERENCES TO SMALL BUSINESS ELECTION

IT IS ORDERED, and notice is hereby given, that:

A. The disclosure statement filed by _____ is conditionally approved.

B. _____ is fixed as the last day for filing written acceptances or rejections of the plan referred to above.

C. Within _____ days after the entry of this order, the plan, the disclosure statement and a ballot conforming to Official Form 14 shall be mailed to creditors, equity security holders, and other parties in interest, and shall be transmitted to the United States trustee.

D. _____ is fixed for the hearing on final approval of the disclosure statement (if a written objection has been timely filed) and for the hearing on confirmation of the plan.

E. _____ is fixed as the last day for filing and serving written objections to the disclosure statement and confirmation of the plan.

Dated: _____

BY THE COURT

_____
United States Bankruptcy Judge

**Set forth all names, including trade names, used by the debtor within the last 6 years (Fed R Bankr P 1005) For joint debtors, set forth both social security numbers*

B 204
7/99

United States Bankruptcy Court

_____ District Of_____

In re

Case No. _____

Debtor*
Social Security No.:
Employer's Tax ID No. [if any]:

Chapter _____

NOTICE OF NEED TO FILE PROOF OF CLAIM DUE TO RECOVERY OF ASSETS

NOTICE IS GIVEN THAT:

The initial notice in this case instructed creditors that it was not necessary to file a proof of claim. Since that notice was sent, assets have been recovered by the trustee.

Creditors who wish to share in any distribution of funds must file a proof of claim with the clerk of the bankruptcy court at the address below on or before

Date:

Creditors who do not file a proof of claim on or before this date ~~will~~ not share in any distribution from the debtor's estate.

The proof of claim form is attached to this notice. It may be filed by regular mail. If you wish to receive proof of its receipt by the bankruptcy court, enclose a photocopy of the proof of claim together with a stamped, self-addressed envelope.

There is no fee for filing the proof of claim.

Any creditor who has filed a proof of claim already need not file another proof of claim.

change "will" to "might"

Address of the Bankruptcy Court

_____
Clerk of the Bankruptcy Court

By:_____
Deputy Clerk

**Set forth all names, including trade names, used by the debtor within the last 6 years (Fed. R. Bankr. P. 1005) For joint debtors set forth both security numbers.*

Form 202 (08/06)

United States Bankruptcy Court
_____ District of _____

In re _____ Case Number _____
Chapter _____

STATEMENT OF MILITARY SERVICE

The Servicemembers' Civil Relief Act of 2003, Pub. L. No. 108-189, provides for the temporary suspension of certain judicial proceedings or transactions that may adversely affect military servicemembers, their dependents, and others. ~~Parties~~ to a bankruptcy case who might be eligible for relief under the act should complete this form and file it with the Bankruptcy Court.

change "Parties" to "Each party"

IDENTIFICATION OF SERVICEMEMBER

❑ Self (Debtor, Codebtor, Creditor, Other)
❑ Non-Filing Spouse of Debtor (name)_____
❑ Other (Name of servicemember)_____
(Relationship of filer to servicemember)_____
(Type of liability) _____

TYPE OF MILITARY SERVICE

U.S. Armed Forces (Army, Navy, Air Force, Marine Corps, or Coast Guard) or commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration (specify type of service) _____

❑ Active Service since _____(date)
❑ Inductee - ordered to report on _____(date)
❑ Retired / Discharged _____(date)

U.S. Military Reserves and National Guard

❑ Active Service since _____(date)
❑ Impending Active Service -orders postmarked _____(date)
Ordered to report on _____(date)
❑ Retired /Discharged _____(date)

U.S. Citizen Serving with U.S. ally in war or military action (specify ally and war or action)

_____

❑ Active Service since _____(date)
❑ Retired/Discharged _____(date)

DEPLOYMENT

❑ Servicemember deployed overseas on _____(date)
Anticipated completion of overseas tour-of-duty _____(date)

SIGNATURE

_____ _____
Date

This statement is for information use only Filing this statement with the Bankruptcy Court does not constitute an application for or invoke the benefits and relief available under the Servicemembers' Civil Relief Act of 2003

add "print name" line under signature line as in:

_____
(print name)

PROOF OF SERVICE

	DATE	PLACE
SERVED		

SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

_____
ADDRESS OF SERVER

Bankruptcy subpoena forms 254, 255, and 256 were updated with text from revised FRCP 45(c), (d) and (e) effective December 1, 2006. (as shown below)

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006, made applicable in cases under the Bankruptcy Code by Rule 9016, Federal Rules of Bankruptcy Procedure.

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A)

MEMORANDUM

TO: AD HOC COMMITTEE ON TIME COMPUTATION RULE

FROM: JEFF MORRIS, REPORTER

RE: PROPOSED AMENDMENTS

DATE: FEBRUARY 2, 2007

The Ad Hoc Committee met by teleconference on December 13, 2006, to discuss the need to amend the Bankruptcy Rules in a manner consistent with the recommendations of the Standing Committee's Time Computation Committee. Specifically, that Committee has recommended that time periods in the rules that equal or exceed 30 days should remain unchanged, and that time periods less than 30 days be changed to multiples of 7. This is in connection with the Time Computation Template that also would amend Rule 9006 to delete the part of the rule that excludes weekends and holidays that occur during periods of less than 8 days (or periods less than 11 days under the Civil Rules). The effect of the change is to count all of the days in the time period and to exclude a weekend or holiday only if the last day of a period falls on such a day.

The Time Computation Committee's recommendation that the Advisory Committees review their rules to consider making the shorter time periods multiples of 7 is to reduce (although not eliminate) the likelihood that the last day of a period will be a weekend or holiday. In conducting such a review, the Ad Hoc Committee looked at each period in the current Bankruptcy Rules that is less than 30 days. The bulk of these time periods were 10, 15, 20, or 35 days. Another group of time periods were 7 days or less. The Ad Hoc Committee determined that, as a general rule, 10 and 15 day periods should be changed to 14 days, 20 day periods

should become 21 day periods, and 25 day periods would become 28 day periods. The Ad Hoc Committee concluded that 5 day periods should become 7 day periods.

The Ad Hoc Committee focused more specifically on a group of 10 day periods included in the rules. There are the time periods set for the appeal of an order or judgment, and similar periods that set the effective date of court rulings. After considerable discussion, the Ad Hoc Committee concluded that these time periods should not be changed to multiples of 7. Instead, they should remain as 10 day periods under the Rules. The reason for retaining these time periods is that the these periods reflect a careful balance between providing sufficient time to appeal or otherwise react to a court ruling and the need for many matters in bankruptcy cases to be resolved expeditiously. Longer delays could jeopardize financing arrangements, sales of assets, actions taken in connection with the confirmation of plans, and many other matters. This time period, 10 days, has been in the Bankruptcy Rules since their inception, and that time limit was also included in the Bankruptcy Act prior to the advent of the rules. This need is generally much less prevalent in the resolution of civil matters, and the 10 day appeal time actually is consistent with the time period for a defendant to appeal a conviction under Appellate Rule 4(b)(1)(A).[1] Furthermore, to the extent that there is a "bankruptcy specific" reason to deviate from the template and the suggestion that the deadlines of less than 30 days be stated in multiples of 7, the Time Computation Committee expects the Advisory Committees to recommend those "nonconforming" time periods with an explanation of the need for those deadlines. The Ad Hoc

[1] I do not know whether the Appellate Rules Committee is proposing to change this deadline. However, since intervening weekends and holidays are excluded in periods of less than 11 days under Appellate Rule 26(a)(2), it seems likely that they would recommend that it become a 14 day period. That would result in effectively no change in the deadline under the current Appellate Rules.

Committee concluded that these kinds of deadlines should remain at 10 days to continue the treatment of these matters consistent with their treatment under the Bankruptcy Rules and practice. The Ad Hoc Committee rejected the solution that the deadline be changed to 14 on the basis that this would extend the period too much given the need for the expeditious resolution of many of these matters. The Ad Hoc Committee also concluded that changing these deadlines to 7 days would be too short, especially since intervening weekends and holidays would not be excluded from the calculation. This could result in a person having only three or fours days in which to file a notice of appeal, and that assumes that the person receives notice of the order being appealed on the day that it is entered. Consequently, the Ad Hoc Committee concluded that the 10 day periods should be retained for these deadlines.

STATUTORY DEADLINES

The Ad Hoc Committee did not discuss the application of the Time Computation Template to statutory deadlines. The Time Computation Committee is still addressing the matter, and I have spoken with Prof. Struve, the Reporter for the Project, and informed her that Rule 9006 has long provided the counting mechanism for time periods set out in the Bankruptcy Code as well as in many state statutes. A review of the Bankruptcy Code and the provisions of titles 11 and 28 of the U.S. Code reveals approximately 15 or so sections that include time periods of less than 30 days. Time periods in excess of 30 days would not be affected by any of the proposed changes to Rule 9006. These sections and the time periods contained therein are set out below. Two of the time periods, those set out in §§ 527(a)(2) and 528(a)(1) are described in the statutes as "business days," so the time computation rule would not apply to those provisions.

If the remaining statutory provisions are not changed, then they will effectively be shortened by the Time Computation Template provision that counts all time periods the same. The five day periods could be as short as five days under the new system, while they were always at least seven days under current Rule 9006. It is unrealistic to think that Congress would enact amendments to each of these sections to add days to the time periods. Instead, the Ad Hoc Committee might want to consider an amendment to Rule 9006 that would retain the current time computation process for statutory deadlines but would impose the new system for deadlines in the Rules. This would have the benefit of continuing the time periods that it would seem that Congress anticipated for these periods when they were enacted under the computation system set out in current Rule 9006. This would require a separate subdivision for the rule that would apply only to the computation of time periods established under any statute, state or federal.

Title 11 Deadlines of Less Than 8 Days:

11 USC § 109(h)(3)(A)	5 days
11 USC § 322(a)	5 days
11 USC § 332(a)	5 days
11 USC § 342(e)(2)	5 days
11 USC § 521(e)(2)(A)(i)	7 days
11 USC § 521(e)(3)(B)	5 days
11 USC § 521(i)(2)	5 days
11 USC § 527(a)(2)	3 <u>business</u> days
11 USC § 528(a)(1)	5 <u>business</u> days
11 USC § 704(b)(1)(B)	5 days

11 USC § 764(b)	5 days
11 USC § 1113(d)(1)	7 days
11 USC § 1114(k)(1)	7 days
11 USC § 1116(1)	7 days

Delayed Implementation

The Ad Hoc Committee also discussed the possibility of delaying the implementation of the Time Computation Template publication. The Committee was concerned that the number of changes to the Rules and the Interim Rules could be confusing to the bench, the bar, and the public. If changes were recommended for publication in August of 2007, the changes would have to be set out in the existing rules which are already in the process of being amended. Delaying the changes to Rule 9006 and the adjustments throughout the Bankruptcy Rules as to deadlines of less than 30 days would be much less confusing and would allow the bench and bar to "digest" all of the more significant changes in the rules that are currently out for publication. The publication of new deadlines could be limited to just that issue, and the focus of the bench and bar on just that issue would enhance their ability and opportunity to consider the proposals and offer comments. The Time Computation Committee is aware of the suggestion that the publication process be delayed to avoid the overlapping publication of significant amendments to the Bankruptcy Rules, and the issue of delayed publication will probably be considered by the Standing Committee at its January meeting. In the meantime, the Ad Hoc Committee recommended that the amendments to the rules necessary to adjust the deadlines of less than 30 days be prepared and presented to the Advisory Committee for its consideration at the March meeting.

ACTION BY THE STANDING COMMITTEE AT ITS JANUARY 11-12, 2007 MEETING

At the Standing Committee meeting in Phoenix, the Time Computation Committee presented its proposal for amendments to the time computation rule. Among the most significant matters for consideration by the Standing Committee was whether Rule 9006 should be included with the civil, criminal, and appellate rules for publication in August 2007. The problem with going forward with the proposal at this time is that there would be approximately 60 rules deadlines that would be changed, and these changes would be following on the currently pending amendments to 40 rules. Thus, it could be that the time computation amendments would be made to the pending *proposed* rules amendments and would be published before those rules were even accepted by the Judicial Conference, not to mention the Supreme Court and Congress. Moreover, the proposed amendments arguably would be to the existing rules rather than the currently pending proposals, so one might even argue that there would need to be parallel versions of the proposed deadline changes for the consideration of the bench, the bar, and the public. This could be confusing to the readers of the published amendments. Consequently, the Standing Committee concluded that the project could go forward without Rule 9006 if the Advisory Committee on Bankruptcy Rules reaches that conclusion at the March meeting. The Standing Committee's action was not to delay the publication of the time computation and deadline amendments to the Bankruptcy Rules, but only to put that issue first to the Advisory Committee for its consideration. The Time Computation Committee and the Standing Committee each indicated that they would accept whatever recommendation that the Advisory Committee might make.

Impact of Amendments to Civil Rule 6 on Time Computation in Adversary Proceedings

The change in the computation method under Civil Rule 6 will not affect the computation of time periods under the Part VII Bankruptcy Rules even if Civil Rule 6 is amended as a part of the Time Computation Rule effort. Since 1991, Rule 9006(a) has provided that it, and not Civil Rule 6(a), establishes the method of calculating time periods even for periods set out in the Civil Rules. Thus, the exclusion of weekends and holidays for periods of less than eight days would continue in adversary proceedings even if Civil Rule 6(a) would not exclude those days. Nevertheless, if the specific deadlines set out in the Civil Rules change as a part of the Time Computation process, those new deadlines will apply to the extent that the specific Civil Rule is incorporated into the Part VII Bankruptcy Rules.

COMPUTATION OF STATUTORY DEADLINES

Another issue that has not received significant attention is the lack of supercession authority in the bankruptcy rules enabling act, 28 U.S.C. § 2075. Under the civil rules enabling act, "[a]ll laws in conflict with such rules shall be of no further force or effect after such rules have taken effect". 28 U.S.C. § 2072(b). The absence of a similar grant of authority to the bankruptcy rules means that statutory provisions that set procedural deadlines override any deadlines set by the Bankruptcy Rules. Nevertheless, Rule 9006(a) governs the computation of time periods under statutes as well as under the rules and court orders. Many courts have applied the rule to a variety of statutory time periods. See, e.g., Nelson Co. v. Counsel for the Official Committee of Unsecured Creditors (In re Nelson Co.), 959 F.2d 1260, 1265 (3d Cir. 1992); Harbor Nat'l Bank v. Sid Kumins, Inc., 696 F.2d 9, 10 & n. 1 (1st Cir. 1982); Prior v. Farm Bureau Oil Co. (In re Prior), 176 B.R. 485, 496 n. 9 (Bankr. S.D.Ill. 1995); Levinson v. Security

Sav. Bank, SLA (In re Levinson), 128 B.R. 365, 368 (Bankr. S.D.N.Y. 1991); Pineo v. Charley Bros. Co. (In re J.A.S. Markets, Inc.), 113 B.R. 193, 197-98 (Bankr. W.D.Pa. 1990); Wilmington Nursery Co., Inc. v. Burkert (In re Wilmington Nursery Co.), 36 B.R. 813 (Bankr. E.D.N.C. 1984); Meister v. State Nat'l Bank (In re Mailbag Int'l, Inc.), 28 B.R. 905, 909 (Bankr. D. Conn. 1983) (applying Bankruptcy Rule 906(a), precursor to Rule 9006(a), to the preference period); Grimaldi v. John A. Ruell, Inc. (In re Grimaldi), 3 B.R. 533, 535 (Bankr. D.Conn. 1980) (same). In a different context, the Sixth Circuit reversed its prior position that time computation rules could not operate to add a day to the end of a statutory period and instead concluded that the rules could be applied without violating the Rules Enabling Act. In Bartlik v. United States Dept. of Labor, 62 F.3d 165 (6th Cir. 1995), the en banc court reversed prior decisions, including bankruptcy decisions, and held that

> the application of Appellate Rule 26(a), and likewise its counterpart Civil Rule 6(a), to calculate a limitations period does not "expand" or "enlarge" our jurisdiction. [FN1] Both of these rules do nothing more than provide the court and the parties with a means of determining the beginning and end of a statute of limitations prescribed elsewhere in law. Accordingly, a petition for review of an agency decision that is due on a Saturday, Sunday, federal holiday, or a day on which the court clerk's office is closed will be timely if filed on the next day the courthouse, or other designated place for filing, is open for business.

The Ninth Circuit has taken the opposite position in In re Greene, 223 F.3d 1064 (9th Cir. 2000). There, the court held that the computation provisions of Rule 9006 could not be applied to determine the 90 day preference period set out in § 547(b)(4) of the Code. The court stated that applying the rule to compute the 90 day period would extend the deadline as a part of the substantive right of the trustee to recover preferential transfers. The court also noted that the time period under the statute is just that, a time period, and it does not require some act nor does

it create a need to determine when some act must occur. Therefore, Rule 9006(a) arguably did not apply. At best, there is a split of authority as to the application of Rule 9006(a) to statutory periods. The same is true for the application of Civil Rule 6(a), although as regards statutes of limitations that are silent as to the manner of computing time, the majority of courts have used the rule to compute the periods. Daniel Coquillette, et. al., Moore's Federal Practice, ¶ 6.03[2] at 6-15 n.10 (3d Ed. 2006).

The Time Computation Committee, as well as the other Advisory Committees, are generally of the view that attorneys do not believe that the procedural rules such as Civil Rule 6 govern the computation of time periods in statutes notwithstanding that specific directive in the rule. It has been my personal experience, and I believe it is generally the case, that bankruptcy attorneys have long applied the time computation provision of Rule 9006 (and its predecessor rule, Rule 906) to compute statutory time periods. That this is so is also reflected in the experience of the Bankruptcy Rules Committee from 1987 to 1989. In 1987, the various rules were amended to change the computation of short time periods with respect to intervening weekends and holidays. Prior to 1987, intervening weekends and holidays were excluded when computing time periods of less than 8 days. In 1987, the rules were amended to provide that those weekends and holidays were excluded for periods of less than 11 days. Almost immediately after that amendment to Rule 9006 became effective, there was a call for a repeal of the amendment and the reinstatement of the "less than 8 day" provision that Rule 9006 had included up to 1987. The impact of the change was particularly noticeable in two areas: preference litigation and bankruptcy appeals.

In 1987, § 547 (e)(2)(A) and (C) provided that transfers were deemed to be made at the

time they took effect between the parties if they were perfected on or within 10 days of that time. The 1987 amendment to Rule 9006 effectively extended that 10 day period to 14 days because of the rules exclusion of the intervening weekends. This became immediately apparent, and it rendered may more transactions subject to preference attack than would have been vulnerable under the "8 day" rule that Rule 9006(a) provided up to 1987. Similarly, 10 days is the time set for the filing of a notice of appeal under Rule 8002(a). While this is obviously not a statutory deadline[2], the impact of the change in Rule 9006(a) from a "less than 8 day" world to a "less than 11 day" world on appeals was significant. Consequently, Rule 9006(a) was amended in 1989 to return to its former computation rule. The repeal seems to have occurred about as quickly as it possibly could have under the rules enabling act process. The change was made in the interest of uniformity among the various sets of federal rules; however, its adverse impact on the application of the preference provisions of the Bankruptcy Code and the time to appeal provided a sufficient justification for the nonuniform time computation provision. Significantly, one of those deadlines is statutory (§ 547(e)(2)), and no objection appears to have been raised that the rules enabling act prevented the promulgation of the rule as regards statutory time periods.

BAPCPA has introduced another wrinkle into the interaction of Rule 9006(a) and the Bankruptcy Code and the question of whether the rule violates the rules enabling act admonition

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[2] The ten day deadline for filing a notice of appeal was a statutory provision in the Bankruptcy Act for many years. Even though it was included in Title 11, it was also included in the Bankruptcy Rules. The deadline for filing a notice of appeal was included in a number of the bills that were introduced in Congress from 1971 until the very latest stages of the consideration of bankruptcy reform legislation in 1978. I have not been able to determine why the 10 day deadline was removed from the bills toward the end of the process, but it is certainly plausible that Congress viewed the statutory deadline as unnecessary given that the Bankruptcy Rules already included that deadline.

that the rules may not abridge or modify substantive rights. Moreover, the bankruptcy rules enabling act, as compared to the civil rules enabling act, does not include a supercession provision. Under 28 U.S.C. § 2072, all laws in conflict with a rule of civil procedure are superceded by the rule. Thus, if a statute were to provide that intervening weekends and holidays were excluded for any period less than 30 days, Civil Rule 6(a) would render that statutory provision ineffective as to periods of more than 10 days. The absence of a comparable provision in 28 U.S.C. § 2075 creates the potential for an argument that Rule 9006(a) already violates § 2075. Previously, it could be argued that the rule simply sets out a counting mechanism where Congress has failed to provide one. By enacting a Bankruptcy Code that referred throughout only to "days" with no reference to any particular computation system, it seems likely that Congress relied on the existence of Rule 9006 and its predecessor when it enacted time periods in title 11. In the 2005 amendments to the Bankruptcy Code, however, Congress introduced for the first time the notion of "business days" into the Bankruptcy Code. Sections 527 and 528, each of which apply to "debt relief agencies," and govern the time within which these agencies must provide notices to assisted persons or must execute written contracts with the assisted person. The inclusion of "business days" in these two new sections of the Code arguably could be viewed as meaning that Congress specifically means all days, including weekends and holidays that would be excluded under Rule 9006(a), when it enacts deadlines that are not set out as "business days." While this is a colorable argument, I believe that a contrary argument is more persuasive. Congress has included approximately 233 deadlines in the Bankruptcy Code. They range from 2 days to many years. It is inconceivable that Congress would want all of these deadlines to fall only on the specific day that a computation based only on a calendar would provide. If that were

so, a 10 day court filing deadline that falls on Monday, January 15, 2007, would require a person to file a paper on Friday, January 12, 2007, because the clerk's office would be closed on Saturday, Sunday, and Monday. The so-called 10 day deadline running from Friday, January 5, would effectively expire in seven days. There is no indication in the legislation that Congress intended such a result. Thus, it seems clear that Congress anticipates that Rule 9006 would provide the counting mechanism for determining the last day of the statutory deadline. If the rule is being used in that manner, the rest of its counting directives should apply as well. The inclusion of "business days" in §§ 527 and 528 are better viewed as a drafting oversight in two instances as compared to the more than 230 other statutory deadlines that Congress included in the Code. I have reviewed a number of the Congressional reports that were created during the period in which the bankruptcy reform legislation was pending, and I have not found any specific reference to the choice of "business days" in the sections governing debt relief agencies. The reports note that debt relief agencies have three or five business days to provide notices or execute contracts, but they do not indicate any specific reason why "business days" were the timing mechanism selected for those two provisions.

MEMORANDUM

DATE: March 6, 2007

TO: Time-Computation Subcommittee
Committee Reporters

FROM: Judge Mark R. Kravitz

CC: Judge David F. Levi
John K. Rabiej

RE: Newly revised template draft for use in connection with Advisory Committee meetings

Thank you for your input on the template drafts we circulated on January 24 and February 6. Attached are both clean and redlined copies of the draft, showing the changes we have made (since February 6) in response to your feedback. We ask that you use the attached version of the template for the purpose of your spring Advisory Committee meetings.

The major change to the text of the Rule (since the February 6 draft) is that we have moved former subdivision (a)(6) – concerning inaccessibility – earlier in the Rule; it now is subdivision (a)(3). We have also made some minor changes to the Rule's wording and we have made some alterations in the Note.

We welcome your further reactions to these revisions. Thank you.

Encls.

1 **Rule 6. Computing and Extending Time**

2 **(a)** **Computing Time.** The following rules apply in computing any time period specified in

3 these rules or in any statute, local rule, or court order.

4 **(1)** ***Period Stated in Days or a Longer Unit.*** When the period is stated in days or a

5 longer unit of time:

6 **(A)** exclude the day of the event that triggers the period;

7 **(B)** count every day, including intermediate Saturdays, Sundays, and legal

8 holidays; and

9 **(C)** include the last day of the period, but if the last day is a Saturday, Sunday,

10 or legal holiday, the period continues to run until the end of the next day

11 that is not a Saturday, Sunday, or legal holiday.

12 **(2)** ***Period Stated in Hours.*** When the period is stated in hours:

13 **(A)** begin counting immediately on the occurrence of the event that triggers the

14 period;

15 **(B)** count every hour, including hours during intermediate Saturdays, Sundays,

16 and legal holidays; and

17 **(C)** if the period would end on a Saturday, Sunday, or legal holiday, then

18 continue the period until the same time on the next day that is not a

19 Saturday, Sunday, or legal holiday.

20 **(3)** ***Inaccessibility of Clerk's Office.*** Unless the court orders otherwise, if the clerk's

21 office is inaccessible:

1 **(A)** on the last day of a filing period computed under Rule 6(a)(1), then the
2 time for filing is extended to the first day when the clerk's office is
3 accessible that is not a Saturday, Sunday, or legal holiday; or
4 **(B)** during the last hour of a filing period computed under Rule 6(a)(2), then
5 the time for filing is extended to the same time on the first day when the
6 clerk's office is accessible that is not a Saturday, Sunday, or legal holiday.
7 **(4)** ***"Last Day" Defined.*** Unless a different time is set by a statute, local rule, or
8 order in the case, the last day ends:
9 (A) for electronic filing, at midnight in the court's time zone; and
10 (B) for filing by other means, when the clerk's office is scheduled to close.
11 **(5)** ***"Next Day" Defined.*** The "next day" is determined by continuing to count
12 forward when the period is measured after an event and backward when measured
13 before an event.
14 **(6)** ***"Legal Holiday" Defined.*** "Legal holiday" means:
15 **(A)** the day set aside by statute for observing New Year's Day, Martin Luther
16 King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence
17 Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or
18 Christmas Day; and
19 **(B)** any other day declared a holiday by the President, Congress, or the state
20 where the district court is located.
21

Committee Note

Subdivision (a). Subdivision (a) has been amended to simplify and clarify the provisions that describe how deadlines are computed. Subdivision (a) governs the computation of any time period found in a Federal Rule of Civil Procedure, a statute, a local rule, or a court order. In accordance with Rule 83(a)(1), a local rule may not direct that a deadline be computed in a manner inconsistent with subdivision (a).

The time-computation provisions of subdivision (a) apply only when a time period must be computed. They do not apply when a fixed time to act is set. The amendments thus carry forward the approach taken in *Violette v. P.A. Days, Inc.*, 427 F.3d 1015, 1016 (6th Cir. 2005) (holding that Civil Rule 6(a) "does not apply to situations where the court has established a specific calendar day as a deadline"), and reject the contrary holding of *In re American Healthcare Management, Inc.*, 900 F.2d 827, 832 (5th Cir. 1990) (holding that Bankruptcy Rule 9006(a) governs treatment of date-certain deadline set by court order). If, for example, the date for filing is "no later than November 1, 2007," subdivision (a) does not govern. But if a filing is required to be made "within 10 days" or "within 72 hours," subdivision (a) describes how that deadline is computed.

Subdivision (a)(1). New subdivision (a)(1) addresses the computation of time periods that are stated in days. It also applies to time periods that are stated in weeks, months, or years. See, e.g., Rule 60(b).

Under former Rule 6(a), a period of 11 days or more was computed differently than a period of less than 11 days. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 6(a) thus made computing deadlines unnecessarily complicated and led to counterintuitive results. For example, a 10-day period and a 14-day period that started on the same day usually ended on the same day — and, not infrequently, the 10-day period actually ended later than the 14-day period. *See Miltimore Sales, Inc. v. Int'l Rectifier, Inc.*, 412 F.3d 685, 686 (6th Cir. 2005).

Under new subdivision (a)(1), all deadlines stated in days (no matter the length) are computed in the same way. The day of the event that triggers the deadline is not counted. All other days — including intermediate Saturdays, Sundays, and legal holidays — are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. An illustration is provided below, in the discussion of subdivision (a)(5). Subdivision (a)(3) addresses filing deadlines that expire on a day when the clerk's office is inaccessible.

Where subdivision (a) formerly referred to the "act, event, or default" that triggers the deadline, new subdivision (a) refers simply to the "event" that triggers the deadline; this change in terminology is adopted for brevity and simplicity, and is not intended to change meaning.

Periods previously expressed as less than 11 days will be shortened as a practical matter by the decision to count intermediate Saturdays, Sundays, and legal holidays in computing all periods. Many of those periods have been lengthened to compensate for the change. See, e.g., [CITE].

Subdivision (a)(2). New subdivision (a)(2) addresses the computation of time periods that are stated in hours. No such deadline currently appears in the Federal Rules of Civil Procedure. But some statutes contain deadlines stated in hours, as do some court orders issued in expedited proceedings.

Under new subdivision (a)(2), a deadline stated in hours starts to run immediately on the occurrence of the event that triggers the deadline. The deadline generally ends when the time expires. If, however, the time period expires at a specific time (say, 2:17 p.m.) on a Saturday, Sunday, or legal holiday, then the deadline is extended to the same time (2:17 p.m.) on the next day that is not a Saturday, Sunday, or legal holiday. Periods stated in hours are not to be "rounded up" to the next whole hour. Subdivision (a)(3) addresses situations when the clerk's office is inaccessible during the last hour before a filing deadline expires.

Subdivision (a)(2)(B) directs that every hour be counted. Thus, for example, a 72-hour period that commences at 10:23 a.m. on Friday, November 2, 2007, will run until 9:23 a.m. on Monday, November 5; the discrepancy in start and end times in this example results from the intervening shift from daylight saving time to standard time.

Subdivision (a)(3). When determining the last day of a filing period stated in days or a longer unit of time, a day on which the clerk's office is not accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal holiday. When determining the end of a filing period stated in hours, if the clerk's office is inaccessible during the last hour of the filing period computed under subdivision (a)(2) then the period is extended to the same time on the next day that is not a weekend, holiday or day when the clerk's office is inaccessible.

Subdivision (a)(3)'s extensions apply "[u]nless the court orders otherwise." In some circumstances, the court might not wish a period of inaccessibility to trigger a full 24-hour extension; in those instances, the court can specify a briefer extension.

The text of the rule no longer refers to "weather or other conditions" as the reason for the inaccessibility of the clerk's office. The reference to "weather" was deleted from the text to underscore that inaccessibility can occur for reasons unrelated to weather, such as an outage of the electronic filing system. Weather can still be a reason for inaccessibility of the clerk's office. The rule does not attempt to define inaccessibility; the concept of inaccessibility will continue to develop through caselaw, *see, e.g.*, William G. Phelps, *When Is Office of Clerk of Court Inaccessible Due to Weather or Other Conditions for Purpose of Computing Time Period for Filing Papers under Rule 6(a) of Federal Rules of Civil Procedure*, 135 A.L.R. Fed. 259 (1996) (collecting cases), while many local provisions address inaccessibility for purposes of electronic

filing, *see, e.g.*, D. Kan. Rule 5.4.11 ("A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.").

Subdivision (a)(4). New subdivision (a)(4) defines the end of the last day of a period for purposes of subdivision (a)(1). Subdivision (a)(4) does not apply to the computation of periods stated in hours under subdivision (a)(2). Subdivision (a)(4)'s definition does not apply if a different time is set by a statute, local rule, or order in the case. A local rule may provide, for example, that papers filed in a drop box after the normal hours of the clerk's office are filed as of the day that is date-stamped on the papers by a device in the drop box.

28 U.S.C. § 452 provides that "[a]ll courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders." A corresponding provision exists in Rule 77(a). Some courts have held that these provisions permit an after-hours filing by handing the papers to an appropriate official. *See, e.g.*, *Casalduc v. Diaz*, 117 F.2d 915, 917 (1st Cir. 1941). Subdivision (a)(4) does not address the court's authority to permit such a filing under the statute; instead, the rule is designed to deal with the ordinary course of events.

Subdivision (a)(5). New subdivision (a)(5) defines the "next" day for purposes of subdivisions (a)(1)(C) and (a)(2)(C). The Federal Rules of Civil Procedure contain both forward-looking time periods and backward-looking time periods. A forward-looking time period requires something to be done within a period of time *after* an event. See, e.g., Rule 59(b) (motion for new trial "shall be filed no later than 10 days after entry of the judgment"). A backward-looking time period requires something to be done within a period of time *before* an event. *See, e.g.*, Rule 26(f) (parties must hold Rule 26(f) conference "as soon as practicable and in any event at least 21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b)"). In determining what is the "next" day for purposes of subdivisions (a)(1)(C) and (a)(2)(C), one should continue counting in the same direction — that is, forward when computing a forward-looking period and backward when computing a backward-looking period. If, for example, a filing is due within 10 days *after* an event, and the tenth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, is Labor Day). But if a filing is due 10 days *before* an event, and the tenth day falls on Saturday, September 1, then the filing is due on Friday, August 31.

Subdivision (a)(6). New subdivision (a)(6) defines "legal holiday" for purposes of the Federal Rules of Civil Procedure, including the time-computation provisions of subdivisions (a)(1) and (a)(2).

1 **Rule 6. Computing and Extending Time**

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3 these rules or in any statute, local rule, or court order.

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5 longer unit of time:

6 **(A)** exclude the day of the event that triggers the period;

7 **(B)** count every day, including intermediate Saturdays, Sundays, and legal

8 holidays; and

9 **(C)** include the last day of the period, but if the last day is a Saturday, Sunday,

10 or legal holiday, the period continues to run until the end of the next day

11 that is not a Saturday, Sunday, or legal holiday.

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16 and legal holidays; and

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21 office is inaccessible:

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4
5 Text Moved Here:]
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9 End Of Moved Text
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19 King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence
20 Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or
21 Christmas Day; and

(B) any other day declared a holiday by the President, Congress, or the state where the district court is located.

~~**(6)** ***Inaccessibility of clerk's office.*** Unless the court otherwise orders, if the clerk's office is inaccessible:~~

~~**(A)** on the last day of a filing period computed under (a)(1), then the time for filing is extended to the first day when the clerk's office is accessible that is not a Saturday, Sunday or legal holiday.~~

[Not Approved from Here]

Committee Note

Subdivision (a). Subdivision (a) has been amended to simplify and clarify the provisions that describe how deadlines are computed. Subdivision (a) governs the computation of any time period found in a Federal Rule of Civil Procedure, a statute, a local rule, or a court order. In accordance with Rule 83(a)(1), a local rule may not direct that a deadline be computed in a manner inconsistent with subdivision (a).

The time-computation provisions of subdivision (a) apply only when a time period must be computed. They do not apply when a fixed time to act is set. The amendments thus carry forward the approach taken in *Violette v. P.A. Days, Inc.*, 427 F.3d 1015, 1016 (6th Cir. 2005) (holding that Civil Rule 6(a) "does not apply to situations where the court has established a specific calendar day as a deadline"), and reject the contrary holding of *In re American Healthcare Management, Inc.*, 900 F.2d 827, 832 (5th Cir. 1990) (holding that Bankruptcy Rule 9006(a) governs treatment of date-certain deadline set by court order). If, for example, ~~a~~the date for filing is ~~required to be made~~ "no later than November 1, 2007," subdivision (a) does not govern. But if a filing is required to be made "within 10 days" or "within 72 hours," subdivision (a) describes how that deadline is computed.

Subdivision (a)(1). New subdivision (a)(1) addresses the computation of time periods that are stated in days. It also applies to time periods that are stated in weeks, months, or years. See, e.g., Rule 60(b).

Under former Rule 6(a), a period of 11 days or more was computed differently than a period of less than 11 days. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 6(a) thus made computing deadlines unnecessarily complicated and led to counterintuitive results. For example, a 10-day period and a 14-day period that started on the same day usually ended on the same day — and, not infrequently, the 10-day period actually ended later than the 14-day period. *See Miltimore Sales, Inc. v. Int'l Rectifier, Inc.*, 412 F.3d 685, 686 (6th Cir. 2005).

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Where subdivision (a) formerly referred to the "act, event, or default" that triggers the deadline, new subdivision (a) refers simply to the "event" that triggers the deadline; this change in terminology is adopted for brevity and simplicity, and is not intended to change meaning.

Periods previously expressed as less than 11 days will be shortened as a practical matter by the decision to count intermediate Saturdays, Sundays, and legal holidays in computing all periods. Many of those periods have been lengthened to compensate for the change. See, e.g., [CITE].

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Subdivision (a)(2). New subdivision (a)(2) addresses the computation of time periods that are stated in hours. No such deadline currently appears in the Federal Rules of Civil Procedure. But some statutes contain deadlines stated in hours, as do some court orders issued in expedited proceedings.

Under new subdivision (a)(2), a deadline stated in hours starts to run immediately on the occurrence of the event that triggers the deadline. The deadline generally ends when the time expires. If, however, the time period expires at a specific time (say, 2:17 p.m.) on a Saturday, Sunday, or legal holiday, then the deadline is extended to the same time (2:17 p.m.) on the next day that is not a Saturday, Sunday, or legal holiday. Periods stated in hours are not to be "rounded up" to the next whole hour. Subdivision (a)(~~6~~3) addresses situations when the clerk's office is inaccessible during the last hour before a filing deadline expires.

Subdivision (a)(2)(B) directs that every hour be counted. Thus, for example, a 72-hour period that commences at 10:23 a.m. on Friday, November 2, 2007, will run until 9:23 a.m. on Monday, November 5; the discrepancy in start and end times in this example results from the intervening shift from ~~D~~daylight ~~S~~saving ~~T~~time to standard time.

~~**Subdivision (a)(3).** New subdivision (a)(3) defines the end of the last day of a period for purposes of subdivision (a)(1). Subdivision (a)(3) does not apply to the computation of periods stated in hours under subdivision (a)(2). Subdivision (a)(3)'s definition does not apply if a different time is set by a statute, local rule, or order in the case.~~

~~28 U.S.C. § 452 provides that "[a]ll courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders." A corresponding provision exists in Rule 77(a). Some courts have held that these provisions permit an after-hours filing to be made by locating an appropriate official and handing the papers to that official. *See, e.g.*, *Casalduc v. Diaz*, 117 F.2d 915, 917 (1st Cir. 1941). Subdivision (a)(3) does not address the court's authority to permit such a filing under the statute; instead, the rule is designed to deal with the ordinary course of events.~~

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~~**Subdivision (a)(5).** New subdivision (a)(5) defines "legal holiday" for purposes of the Federal Rules of Civil Procedure, including the time-computation provisions of subdivisions (a)(1) and (a)(2).~~

Subdivision (a)(6~~2~~3). When ~~computing~~determining the last day of a filing period stated in days or a longer unit of time, a day on which the clerk's office is not accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal holiday. When ~~computing~~determining the end of a filing period stated in hours, if the clerk's office is inaccessible during the last hour of the filing period computed under subdivision (a)(2) then the period is extended to the same time on the next day that is not a weekend, holiday or day when the clerk's office is inaccessible.

Subdivision (a)(6~~2~~3)'s extensions apply "[u]nless the court orders otherwise~~ orders~~." In some circumstances, the court might not wish a period of inaccessibility to trigger a full 24-hour extension; in those instances, the court can specify a briefer extension.

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Subdivision (a)(4). New subdivision (a)(4) defines the end of the last day of a period for purposes of subdivision (a)(1). Subdivision (a)(4) does not apply to the computation of periods stated in hours under subdivision (a)(2). Subdivision (a)(4)'s definition does not apply if a different time is set by a statute, local rule, or order in the case. A local rule may provide, for

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Text Moved Note 2

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~~, and~~

Subdivision (a)(6). New subdivision (a)(6) defines "legal holiday" for purposes of the ~~deletion from~~Federal Rules of Civil Procedure, including the ~~text is not meant to suggest otherwise.~~time-computation provisions of subdivisions (a)(1) and (a)(2).

MEMORANDUM

DATE: March 13, 2007

TO: Time Computation Subcommittee
Committee Reporters

FROM: Judge Mark R. Kravitz
Catherine T. Struve

CC: Judge David F. Levi
John K. Rabiej

RE: Two additional template issues

Since circulating the template draft last week, we have become aware of two issues that we would like to bring to your attention in advance of the Advisory Committee meetings this spring. At least one of those issues will require a change to the language of the proposed time-counting Rule.

The first issue concerns the template's effect on statutory provisions that both set a time period for use in litigation and provide explicit instructions on how the period should be computed. The second issue relates to the application of the "legal holidays" definition to litigation that takes place in the Territories, the District of Columbia or Puerto Rico. These issues are addressed in parts I and II below.

I. Statutory periods expressed in "business days" or similar language

Our subcommittee's master list of short statutory time periods omits periods that explicitly instruct that weekends and holidays not be counted. Those periods were omitted based on the assumption that since the statute specifies the manner of counting, no court would apply a contrary time-counting Rule. But it occurred to us recently that this assumption might have been hasty.

Most statutes that set time periods relating to litigation fail to specify how the periods should be counted. Some other statutes set periods in "calendar days";[1] those provisions are omitted from our master list on the assumption that they will continue to be counted the same way under the Rules' new days-are-days approach. And – of greatest relevance to this memo – a few statutes specify a time-counting method that is different from the one that will apply under the proposed template's approach; those provisions (13 statutes and one regulation) are listed in the enclosed spreadsheet.

As you know, the template states that its "rules apply in computing any time period specified in ... any statute...." And subdivision (a)(1) instructs that "[w]hen the period is stated in days or a longer unit of time" one must "count every day, including intermediate Saturdays, Sundays, and legal holidays." For all sets of Rules other than the Bankruptcy Rules, the supersession authority granted to the rulemakers means that once the template is adopted as part of the Rules, all statutory provisions to the contrary will be of no force and effect. So the question is whether any court would interpret the Rules' days-are-days time-counting directive to supersede an explicit statutory directive to use a non-days-are-days approach. As a policy matter, we believe it would be undesirable for the Rules to trump such directives. Those directives may have arisen, for example, from a legislative desire to set a short period but to avoid imposing hardship in the event that the period includes a weekend or holiday.

It is informative to consider the rationales that courts have used when applying existing or prior versions of the time-counting Rules to compute statutory periods. Some courts have applied those Rules as gap-filling measures in the absence of any contrary indication from Congress.[2] In some instances, courts have applied a time-counting Rule "by analogy," or as a reasonable estimation of congressional intent in enacting the relevant statutory scheme, rather

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[1] See, e.g., 12 U.S.C. § 3410(b) ("All such proceedings shall be completed and the motion or application decided within seven calendar days of the filing of the Government's response.").

[2] For example, the Third Circuit reasoned as follows in a Federal Tort Claims Act case: "Section 2401(b) does not contain a time computation rule. It does not say whether the day of the liability causing event is included or excluded. It says nothing about weekends or holidays at the end of the two year period. Both with its beginning and with its end interpretation is required. Aside from the government's rule of interpretation that the claimant ought always to lose, no more satisfactory rule has been called to our attention than that, approved by Congress, and announced in Rule 6(a)." Frey v. Woodard, 748 F.2d 173, 175 (3d Cir. 1984). See also United Mine Workers of America, Intern. Union v. Dole, 870 F.2d 662, 665 (D.C. Cir. 1989) ("The [Mine Safety and Health Act of 1977] ... makes no separate provision for the computation of time and was enacted subsequent to the adoption of Rule 26(a); we conclude therefore that Congress intended its time periods to be computed in accordance with the federal rule.").

than indicating that the Rule controls of its own force.[3] In other cases, courts have applied a time-counting Rule to compute a statutory period without giving much or any explanation for that application. But courts confronted with a specific statutory counting method have refused to apply a contrary directive in the relevant time-counting Rule.[4]

Clearly, courts applying a time-counting Rule as a gap-filling measure will not apply the Rule when the statute specifies a contrary time-counting method, for in that event there is no gap to be filled. Likewise, courts that look to congressional intent would infer from the statute's specification of a time-counting method that Congress did not intend them to use the time-counting Rule's contrary method. And courts that already reject the time-counting Rule when faced with a statutorily-specified time-counting method would continue to do so.

Nonetheless, a technical argument could be made that says that, as to statutes that predate the adoption of the template in the time-counting Rules, the later-adopted Rule trumps the previously-adopted statutory time-counting provision.[5] It would arguably rise to the level of absurdity to apply a days-are-days time-counting Rule to calculate a period explicitly set in

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[3] *See, e.g.*, Tribue v. U.S., 826 F.2d 633, 635 (7th Cir. 1987) (reasoning in Federal Torts Claims Act case that "if we found § 2401(b) ambiguous regarding whether to exclude the mailing date, we would exclude the mailing date by analogy to Rule 6(a)"); Pearson v. Furnco Const. Co., 563 F.2d 815, 819 (7th Cir. 1977) (holding "that in the light of the purposes intended to be served by Title VII, it is a sound interpretation of congressional intent" to apply Civil Rule 6(a)'s approach to the computation of the limitations period). Likewise, in an early decision interpreting the time limit for petitions for certiorari under 28 U.S.C. § 2101, the Supreme Court drew upon the approach stated in Civil Rule 6(a): "Since [Rule 6(a)] had the concurrence of Congress, and since no contrary policy is expressed in the statute governing this review, we think that the considerations of liberality and leniency which find expression in Rule 6(a) are equally applicable to 28 U.S.C. s 2101(c)." Union Nat. Bank of Wichita, Kan. v. Lamb, 337 U.S. 38, 41 (1949).

[4] See F.D.I.C. v. Enventure V, 77 F.3d 123, 126 (5th Cir. 1996) ("In § 1821(d)(14)(A), Congress provided that the limitations period began 'on the date the claim accrues.' The use of the word 'on' is clear and creates a more specific rule which overrides the application of Rule 6(a)."); Slinger Drainage, Inc. v. E.P.A., 237 F.3d 681, 683 (D.C. Cir. 2001) (refusing to apply Rule 26(a) to determine the period's start date because "the statute currently before us clearly establishes a separate provision for the computation of time: a person may obtain review by filing 'within the 30-day period *beginning on the date the civil penalty issued.*' 33 U.S.C. § 1319(g)(8)(B) (emphasis added)").

[5] This argument assumes that the time-counting Rules' application to the relevant time period is valid under the Rules Enabling Act's scope limitation. That assumption may not always hold true. For example, 18 U.S.C. § 3142(d)'s time limit on detention may implicate substantive rights.

"business days" or "working days." If such applications are absurd, it seems a small step to conclude that it would likewise be absurd to apply the time-counting Rules' days-are-days approach when the statute explicitly directs one to exclude weekends and holidays. But even if this line of reasoning ultimately leads courts to reject the notion that the new time-counting Rules supersede explicit statutory directives concerning the method of computation, it would be best if we could draft the Rules to preempt litigation on this point.

We therefore suggest amending the first sentence in the template Rule as follows:

> The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute[, local ru...urt order.] that does not specify a time-computation method.

We also favor adding a sentence to the Note to observe that state-court interpretations of state statutes count as specifying a statutory method.

II. Legal holidays in the Territories, the District of Columbia or Puerto Rico

As you know, the Rules apply not only to district court proceedings held within states, but also to district court proceedings held within the District of Columbia and Puerto Rico. Moreover, the Rules apply in proceedings in various territorial courts.[6] The template rule defines "legal holiday" to include the listed holidays plus "any other day declared a holiday by the President, Congress, or the state where the district court is located." This provision may require amendment in order to ensure that the "legal holiday" definition functions appropriately in proceedings within the Territories, the District of Columbia, or Puerto Rico.[7]

The background definitional principles vary. Civil Rule 81(e) provides that "When the word 'state' is used, it includes, if appropriate, the District of Columbia." Our understanding is that the Civil Rules Committee may be considering whether this definition should be expanded

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[6] See, e.g., Criminal Rule 1(a)(1) (subject to certain exceptions, Criminal Rules govern criminal proceedings in district courts in Guam, Northern Mariana Islands, and Virgin Islands); Am. Jur. Federal Courts § 2585 ("[W]hile the District Courts of Guam, the Northern Mariana Islands, and the Virgin Islands are constituted by the respective Organic Acts for such territories, rather than by Chapter 5 of the Judicial Code, it is expressly provided in such acts that the Federal Rules of Civil Procedure apply in such courts.").

[7] Admittedly, courts may decide to interpret the existing language to include more than just states. Cf. Reyes-Cardona v. J. C. Penney Co., Inc., 690 F.2d 1, 1 (1st Cir. 1982) ("But that day was a legal holiday in Puerto Rico honoring Eugenio Maria de Hostos. See 1 L.P.R.A. s 75. As such it is not counted in the computation of time. Rule 6(a) F.R.Civ.P...."). But it seems advisable to clarify the matter in rule text.

to include more than the District of Columbia. Criminal Rule 1(b)(9) could provide a model for such expansion; that Rule provides that "'State' includes the District of Columbia, and any commonwealth, territory, or possession of the United States." The Appellate Rules contain no such definitional provision, and the Bankruptcy Rules appear to contain no relevant definition either.

We therefore would ask the Advisory Committees (other than the Criminal Rules Committee)[8] to consider whether they wish to adopt a general definition such as that in Criminal Rule 1(b)(9). If each set of Rules is amended to contain such a definition, then no change to the template's definition of "legal holiday" would be required. If such a definition is not adopted, however, then seems advisable to add the following at the end of the template's subdivision (a)(6)(B):

> The word 'state,' as used in this Rule, includes the Territories, the District of Columbia and the Commonwealth of Puerto Rico.

* * *

We regret that these changes did not surface before we circulated the official version of the template last week for use in the Advisory Committee meetings this spring. Generally, our plan is to hold any smaller suggestions for change (such as small changes to Note wording) until later, so that the Advisory Committees and Reporters do not have to work with a moving target for purposes of their spring meetings. But these two changes seemed to us to warrant an exception to that policy, and we wanted to place these issues before the Advisory Committees for discussion at the spring meetings.

Thank you for your work on this project.

Encl.

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[8] Obviously, this request is relevant to the Evidence Rules Committee only if it decides to recommend adopting a time-computation provision in the Evidence Rules.

Title	Section	Subsection	Nature of deadline	Type	App	Bnkr	Civil	Crim	Length - Unit	Length - Number	Comments
2	386	(c)	(c) Order and time of taking testimony The order in which the parties may take testimony shall be as follows: (1) Contestant may take testimony within thirty days after service of the answer, or, if no answer is served within the time provided in section 383 of this title, within thirty days after the time for answer has expired. (2) Contestee may take testimony within thirty days after contestant's time for taking testimony has expired. (3) If contestee has taken any testimony or has filed testimonial affidavits or stipulations under section 387(c) of this title, contestant may take rebuttal testimony within ten days after contestee's time for taking testimony has expired.	Time for litigant to act			Y		Day	10	this provision is included only for completeness, because of its relation to sections 388 and 394. even though this concerns election challenges in House of Representatives under Federal Contested Elections Act, this 10-day period concerns the time for obtaining a subpoena from a federal district court. See 2 USC 388(a). Currently, a time computation method is explicitly provided by 2 USC 394.
2	388	(b)	(a) Issuance Upon application of any party, a subpena for attendance at a deposition shall be issued by: (1) a judge or clerk of the United States district court for the district in which the place of examination is located; ... (b) Time, method, and proof of service Service of the subpena shall be made upon the witness no later than three days before the day on which his attendance is directed. A subpena may be served by any person who is not a party to the contested election case and is not less than eighteen years of age. Service of a subpena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fee for one day's attendance and the mileage allowed by section 389 of this title. Written proof of service shall be made under oath by the person making same and shall be filed with the Clerk.	Notice to litigants or other entities			Y		[Business day]	3	Currently, a time computation method is explicitly provided by 2 USC 394. I've omitted 2 USC 387, since that appears to concern procedure when no subpoena is used, and thus when no court is involved.

2	394	(a)	(a) Method of computing time In computing any period of time prescribed or allowed by this chapter or by the rules or any order of the committee, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. For the purposes of this chapter, "legal holiday" shall mean New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.	Computation method			Y				
15	78eee	(b)(1)	Upon receipt of an application by SIPC under subsection (a)(3) of this section, the court shall forthwith issue a protective decree if the debtor consents thereto, if the debtor fails to contest such application, or if the court finds that such debtor-- [* * *] Unless the debtor consents to the issuance of a protective decree, the application shall be heard three business days after the date on which it is filed, or at such other time as the court shall determine, taking into consideration the urgency which the circumstances require.	Time for court to act			Y		Business day	3	

18	2704	(a)	(a) Backup preservation.--(1) A governmental entity acting under section 2703(b)(2) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.	Time for third party to act				Y	Business day	2	
18	3142	(d)	(d) Temporary detention to permit revocation of conditional release, deportation, or exclusion.--If the judicial officer determines that-- (1) such person-- (A) is, and was at the time the offense was committed, on-- (i) release pending trial for a felony under Federal, State, or local law; (ii) release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under Federal, State, or local law; or (iii) probation or parole for any offense under Federal, State, or local law; or (B) is not a citizen of the United States or lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); and (2) such person may flee or pose a danger to any other person or the community; such judicial officer shall order the detention of such person, for a period of not more than ten days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the Government to notify the appropriate court, probation or parole official, or State or local law enforcement official, or the	Limit on detention				Y	[Business day]	10	

18	3142	(f)	(f) Detention hearing.--The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community-- * * * The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of such person may not exceed five days (not including any intermediate Saturday, Sunday, or legal holiday), and a continuance on motion of the attorney for the Government may not exceed three days (not including any intermediate Saturday, Sunday, or legal holiday). During a continuance, such person shall be detained, and the judicial officer, on motion of the attorney for the Government or sua sponte, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether such person is an addict. At the hearing, s	Limit on continuance				Y	[Business day]	3, 5	). Pub.L. 104-132, § 729, added "(not including any intermediate Saturday, Sunday, or legal holiday)" following "five days" and following "three days".
18	3612	(d) & (e)	(d) Notification of delinquency.--Within ten working days after a fine or restitution is determined to be delinquent as provided in section 3572(h), the Attorney General shall notify the person whose fine or restitution is delinquent, to inform the person of the delinquency. (e) Notification of default.--Within ten working days after a fine or restitution is determined to be in default as provided in section 3572(i), the Attorney General shall notify the person defaulting to inform the person that the fine or restitution is in default and the entire unpaid balance, including interest and penalties, is due within thirty days.	Time for government to act				Y	Working day	10	

20	7711	(b)	(b) Judicial review of Secretarial action (1) In general A local educational agency or a State aggrieved by the Secretary's final decision following an agency proceeding under subsection (a) of this section may, within 30 working days (as determined by the local educational agency or State) after receiving notice of such decision, file with the United States court of appeals for the circuit in which such agency or State is located a petition for review of that action. The clerk of the court shall promptly transmit a copy of the petition to the Secretary. The Secretary shall then file in the court the record of the proceedings on which the Secretary's action was based, as provided in section 2112 of Title 28.	Time to seek review of agency action	Y				Working day as determined by local agency or state	30	
24	326	(a)	(a) Request; determination of right to retain; retention after request If a person who is a patient hospitalized under section 322 or 324 of this title, or his legal guardian, spouse, or adult next of kin, requests the release of such patient, the right of the Secretary, or the head of the hospital, to detain him for care and treatment shall be determined in accordance with such laws governing the detention, for care and treatment, of persons alleged to be mentally ill as may be in force and applicable generally in the State in which such hospital is located, but in no event shall the patient be detained more than forty-eight hours (excluding any period of time falling on a Sunday or legal holiday) after the receipt of such request unless within such time (1) judicial proceedings for such hospitalization are commenced or (2) a judicial extension of such time is obtained, for a period of not more than five days, for the commencement of such proceedings.	Limit on detention			Y?		Hours, excluding Sundays & holidays	48	

29	1342	(b)	(b) Appointment of trustee (1) Whenever the corporation makes a determination under subsection (a) of this section with respect to a plan or is required under subsection (a) of this section to institute proceedings under this section, it may, upon notice to the plan, apply to the appropriate United States district court for the appointment of a trustee to administer the plan with respect to which the determination is made pending the issuance of a decree under subsection (c) of this section ordering the termination of the plan. If within 3 business days after the filing of an application under this subsection, or such other period as the court may order, the administrator of the plan consents to the appointment of a trustee, or fails to show why a trustee should not be appointed, the court may grant the application and appoint a trustee to administer the plan in accordance with its terms until the corporation determines that the plan should be terminated or that termination is unnecessary. The corporation may request that it be appointed as trustee of a plan in any case.	Time for court to act			Y		Business day	3	
29	1342	(d)	(d) Powers of trustee (1)(A) A trustee appointed under subsection (b) of this section shall have the power-- * * * If the court to which application is made under subsection (c) of this section dismisses the application with prejudice, or if the corporation fails to apply for a decree under subsection (c) of this section, within 30 days after the date on which the trustee is appointed under subsection (b) of this section, the trustee shall transfer all assets and records of the plan held by him to the plan administrator within 3 business days after such dismissal or the expiration of such 30-day period, and shall not be liable to the plan or any other person for his acts as trustee except for willful misconduct, or for conduct in violation of the provisions of part 4 of subtitle B of subchapter I of this chapter (except as provided in subsection (d)(1)(A)(v) of this section). The 30-day period referred to in this subparagraph may be extended as provided by agreement between the plan administrator and the corporation or by court order obtained by the corporation.	Time for trustee to act			Y		Business day	3	

30	1734		(a) Action for royalty, interest, or civil penalty; limitations; notice of suit * * * (1) A State may commence a civil action under this section against any person to recover any royalty, interest, or civil penalty which the State believes is due, based upon credible evidence, with respect to any oil and gas lease on Federal lands located within the State. (2)(A) No action may be commenced under paragraph (1) prior to 90 days after the State has given notice in writing to the Secretary of the payment required. * * * (B) If, within the 90-day period specified in subparagraph (A), the Secretary issues a demand for the payment concerned, no action may be commenced under paragraph (1) with respect to such payment during a 45-day period after issuance of such demand. * * * (C) If the Secretary refers the case to the Attorney General of the United States within the 45-day period referred to in subparagraph (B) or within 10 business days after the expiration of such 45-day period, no action may be commenced under paragraph (1) if the Attorney General,	Time for governme nt to act			Y		Business day	10	
37	CFR 1.304		(a)(1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences. * * * (b) The times specified in this section in days are calendar days. The times specified herein in months are calendar months except that one day shall be added to any two-month period which includes February 28. If the last day of the time specified for appeal or commencing a civil action falls on a Saturday, Sunday or Federal holiday in the District of Columbia, the time is extended to the next day which is neither a Saturday, Sunday nor a Federal holiday.	Time to seek review of agency action	Y				Calendar months, but extra day if includes February	2	

42	16913	(b)	(b) Initial registration The sex offender shall initially register-- (1) before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or (2) not later than 3 business days after being sentenced for that offense, if the sex offender is not sentenced to a term of imprisonment. (c) Keeping the registration current A sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1 jurisdiction involved pursuant to subsection (a) of this section and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry. That jurisdiction shall immediately provide that information to all other jurisdictions in which the offender is required to register.	Time for litigant to act				Y	Business day	3	
42	16921	(c)	(b) Program notification Except as provided in subsection (c) of this section, immediately after a sex offender registers or updates a registration, an appropriate official in the jurisdiction shall provide the information in the registry (other than information exempted from disclosure by the Attorney General) about that offender to the following: * * * (c) Frequency Notwithstanding subsection (b) of this section, an organization or individual described in subsection (b)(6) or (b)(7) of this section may opt to receive the notification described in that subsection no less frequently than once every five business days.	Time for governme nt to act				Y?	Business day	5	

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: AMENDMENTS REQUIRED BY THE CIVIL RULES RESTYLING PROJECT

DATE: FEBRUARY 16, 2007 / revised 2/26/07 (JHW)

As you may recall, the Federal Rules of Civil Procedure underwent a cover to cover restyling with the changes to become effective on December 1, 2007. The restyled rules have been approved by the Judicial Conference and are now pending before the Supreme Court which is expected to promulgate the rules in April. We have previously submitted comments (attached) on the restyled rules, and the purpose of this memorandum is to recommend conforming amendments to the Bankruptcy Rules made necessary by the reconfiguration of several of the Civil Rules to which references are made in the Bankruptcy Rules. For example, the Civil Rule 23.1 was restyled to introduce subdivisions in the rule where no had existed previously. The title of the rule is also changed. The amendment that introduced the subdivisions requires no action by us, but we do need to change the title of our Rule 7023.1. Civil Rule 22 governing interpleaders was amended such that Rule 22(1) is now Rule 22(a). Our Rule 7022 would need to be amended to reflect this change. The technical amendments necessary to conform the Bankruptcy Rules to the restyled Civil Rules are set out below. Because these amendments are entirely technical in nature and merely conform the rules to reflect the changes in cross references within the Civil Rules, I do not believe that it is necessary to publish these changes for comment. Instead, I recommend that we propose the following changes to the Standing Committee for its adoption and recommendation thereafter to the Judicial Conference for its

approval and transmission to the Supreme Court without publication or comment. There are only four rules that require amendment.

Rule 7012. Defenses and Objections--When and How Presented--By Pleading or Motion--Motion for Judgment on the Pleadings

1 * * * * *

2 (b) Applicability of Rule 12(b)-~~(h)~~ (i) F.R.Civ.P.

3 Rule 12(b)-~~(h)~~ (i) F.R.Civ.P. applies in adversary proceedings. A
4 responsive pleading shall admit or deny an allegation that the
5 proceeding is core or non- core. If the response is that the
6 proceeding is non-core, it shall include a statement that the party
7 does or does not consent to entry of final orders or judgment by
8 the bankruptcy judge. In non-core proceedings final orders and
9 judgments shall not be entered on the bankruptcy judge's order
10 except with the express consent of the parties.

COMMITTEE NOTE

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

Rule 7022. Interpleader

1 Rule 22 ~~(1)~~ (a) F.R.Civ.P. applies in adversary proceedings.

COMMITTEE NOTE

The rule is amended to conform to the changes made to the

Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

Rule 7023.1. Derivative ~~Proceedings by Shareholders~~ Actions

1 Rule 23.1 F.R.Civ.P. applies in adversary proceedings.

COMMITTEE NOTE

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

Rule 9024. Relief from Judgment or Order

1 Rule 60 F.R.Civ.P. applies in cases under the Code except that
2 (1) a motion to reopen a case under the Code or for the
3 reconsideration of an order allowing or disallowing a claim
4 against the estate entered without a contest is not subject to the
5 one year limitation prescribed in Rule 60 ~~(b)~~ (c), (2) a complaint
6 to revoke a discharge in a chapter 7 liquidation case may be filed
7 only within the time allowed by § 727(e) of the Code, and (3) a
8 complaint to revoke an order confirming a plan may be filed only
within the time allowed by § 1144, § 1230, or § 1330.

COMMITTEE NOTE

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007.

RESTYLED RULES NOT REQUIRING AMENDMENTS

The restyled Civil Rule 12(d) is essentially the last sentence of existing Civil Rule 12(b). Former subdivision 12(d) becomes 12(i) in the restyled rules. Notwithstanding these

amendments, I do not believe that we need to amend Bankruptcy Rule 1011(c) which refers to Civil Rule 12(b). The portion of Rule 12(b) that is moved to subdivision (d) simply provides that a Rule 12(b)(6) motion that includes matters outside of the pleadings is treated as a summary judgment motion. The text of Rule 1011(c) and the portion of Rule 7012 that refers to Civil Rule 12(b) are not affected by this change in Civil Rule 12.

Existing Civil Rules 43(d), (e), and (f) are renumbered as restyled Rules 43(b), (c), and (d). This has the potential of causing confusion since the Advisory Committee Note to the 2002 amendment to Bankruptcy Rule 9014 contains a statement that Civil Rule 43(a), rather than Rule 43(e), governs the evidentiary hearing on disputed material factual issues. The cross reference is not a problem, however, because Bankruptcy Rule 9017 incorporates Civil Rule 43 in its entirety and Rule 43(a) continues to apply to taking the testimony of witnesses.

MEMORANDUM

TO: ADVISORY COMMITTEE ON CIVIL RULES

05-CV- 016

FROM: THOMAS S. ZILLY, CHAIR
ADVISORY COMMITTEE ON BANKRUPTCY RULES

RE: RESTYLED CIVIL RULES

DATE: DECEMBER 15, 2005

The Advisory Committee on Bankruptcy Rules conducted a review of the restyled Federal Rules of Civil Procedure. Six subgroups of the Committee studied Rules 1-16, 17-25, 26-37, 38-53, 54-63, and 64-82, respectively. The primary purpose of the review was to determine whether the restyling of the Civil Rules, once effective, will require any amendments to the Bankruptcy Rules to conform to the changes made to the Civil Rules. The review also was intended to determine whether any of the stylistic changes might have any substantive impact on the Bankruptcy Rules either in Part VII of those Rules or otherwise.

The Advisory Committee on Bankruptcy Rules congratulates the Advisory Committee on Civil Rules and its consultants for the exceptional effort in the restyling project. The restyling significantly improves the Civil Rules both as to their clarity and readability. We thank the Civil Rules Committee for its contribution to the fair and efficient administration of justice in civil and bankruptcy cases.

Our initial review of the restyled Civil Rules suggests that approximately ten Bankruptcy Rules may need to be amended to conform to the changes in the Civil Rules, and we will be proposing those amendments to the Standing Committee in due course. As to the Civil Rules, our Committee offers the following comments and suggestions for your consideration. In no

instance did we find any change in the language of the rules that created specific problems for the application of these rules in bankruptcy cases and proceedings. We did, however, make several observations about the rules and offer them to you for your consideration.

Civil Rule 12

The restyling of this rule includes reconfiguring former subdivision (c) into subdivisions (c) and (d) with former subdivision (d) becoming new subdivision (i). This does the least damage to the structure of the subdivisions, but it still creates a problem for persons who are conducting research under this rule and Bankruptcy Rule 7012. We will be proposing a conforming amendment to Rule 7012, and in the Committee Note to that rule amendment we will refer specifically to the changed configuration of Civil Rule 12. We think that the Committee Note to restyled Civil Rule 12 should include a specific statement that subdivision (c) is being split into subdivisions (c) and (d) and that restyled subdivision (i) is former subdivision (d). The side by side form of the published restyled rules makes these changes abundantly clear, but in the future, only the final version of the rules will published. Those rules generally include the dated Committee Notes, and if the Note were to include a description that warns the reader of the changes in the subdivision numbering it may avoid confusion in the future.

Civil Rule 40

The proposed style amendment to Civil Rule 40 deletes from the options the court has for scheduling trials the alternative of "such other manner as the courts deem expedient." The two options that would be left appear to permit either (i) the court to set trial on its own, or (ii) a party to request a trial date "with notice to the other parties." This potentially might interfere with "self calendaring" systems, in which a party can select an available date, without prior notice to other

parties. The separate Style-Substance Track amendment to Civil Rule 40, however, may be intended to resolve the matter by deleting the language about parties making requests and providing notice. We bring this to the attention of the Advisory Committee only to make sure that the Committee intends the change to permit a court to operate self calendaring systems, if the court believes that such systems are desirable.

Civil Rule 43

The proposed restyling of Civil Rule 43 would, among other things, renumber existing Rules 43(d), (e), and (f) as (b), (c), and (d), respectively. This has the potential of creating confusion, particularly since the Advisory Committee Notes to Civil Rule 43 and Bankruptcy Rule 9014 would contain outdated references (for example, the 2002 Committee Note to Rule 9014 refers to Civil Rule 43(e), which would be changed to Rule 43(c)). Some of the confusion would be alleviated if the proposed Committee Note to Civil Rule 43 made express reference to the renumbering of the sections. A sentence to that effect could be added to the proposed Committee Note in a manner comparable to that suggested for restyled Civil Rule 12.

Civil Rule 45

The last sentence of restyled Civil Rule 45(b)(1) would require some prior notice to other parties "before [a subpoena] is served." We have two concerns about this proposed amendment. First, the requirement of service of notice of the subpoena on other parties "before" the subpoena is served on the person from whom documents are requested without any further guidance, may lead to confusion and potential litigation. For example, would service 30 seconds "before" suffice, or would service have to be sufficiently "before" so that opposing parties would have an opportunity to act before the subject of the subpoena is served? The consensus of our Committee

was that service on other parties should be "with" or "contemporaneously with" service on the subpoenaed party.

Second, our Committee was concerned that this amendment was more than merely "stylistic." Indeed, the proposed Committee Note suggests that its purpose is to resolve conflicting interpretations of the current rule. We have not conducted a review of the case law in the area. We simply note that the Committee Note seems to suggest that the style change is intended to resolve at least some degree of conflict among the courts.

Civil Rule 59

The Committee may wish to consider revising the title of the rule to "New Trial; Altering or Amending a Judgment" in order to reflect the full subject matter of the rule. Rule 59(e) includes both altering and amending judgments, and adding that reference in the title of the rule would make it consistent with the text of the subsection.

Civil Rule 64

Rule 64(a) refers to remedies that provide "for seizing a person or property to satisfy a potential judgment." We would suggest that this portion of the rule be revised slightly to state that every remedy is available that "provides for seizing a person or property to secure satisfaction of the potential judgment." The change would make clear that the seizure of the person is not to satisfy the potential judgment, but rather to secure the satisfaction of the judgment.

The Committee questioned whether it is necessary for Rule 64(e) to include the descriptions of subject matter of 28 U.S.C. § 2361 and 28 U.S.C. § 2284. Since these provisions contain nothing beyond the matters included in the Rule's description, a simple reference to the

particular sections seems sufficient.

Civil Rule 68

The second sentence of subdivision (c) of the rule begins with "It must be served ..." The use of "it" refers to the offer of judgment, but the preceding sentence in the subdivision includes other matters. The second sentence could avoid any ambiguity by stating that "The offer must be served ..."

Civil Rule 69

The restyled rule changes the word "directs" in subdivision (a)(1) to "orders". In the bankruptcy rules, we use "directs" as a broader term that covers standing orders and local rules, so that stylistic choice may be significant if applied to our rules. The Global Drafting Issues table indicates that the Advisory Committee prefers the use of "orders" rather than "directs", but we have some concern that it may leave open some question about the application of local rules or other directives by courts when the rule refers only to orders as compared to the language in the existing version of Rule 69(a)(1).

Bankruptcy Rules Tracking Docket (By Rule Number) 3/2/07

Active Items

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

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 1006 Installment payments, waiver of filing fee	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 1006 Payments to petition preparers	Judge Geraldine Mund 8/14/06	9/06 - Referred to Subcommittee on Consumer Matters 12/06 - Subcommittee considered 3/07 - Committee to consider	
Rule 1007(a),(b),(c) Required documents	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 9/05 - Amended by Committee 3/06 - Committee approved for publication with changes as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 1007(b)(7),(c) Extension of time to file statement on completion of financial management course	Judge Christopher Klein 8/8/06	9/06 - Referred to Subcommittee on Consumer Matters 12/06 - Subcommittee considered 3/07 - Committee to consider	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 1009(b) Amended Statement of Intention	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 1010 Service of petition for recognition of foreign nonmain proceeding	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 1010 Service of petition for recognition of all foreign proceedings	05-BK-B Judge Samuel Bufford 1/20/06	3/06 - Referred to Subcommittee on Technology and Cross Border Insolvency 5/06 - Subcommittee discussed 6/06 - Subcommittee approved revised amendments 9/06 - Committee approved for publication	

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

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 1011(f) Rule 7007.1 applied to responses to involuntary and chapter 15 cases	Committee proposal	9/04 - Committee considered, referred to Reporter 3/05 - Committee considered, tabled to 9/05 9/05 - Referred to Business Subcommittee 3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 1014 Clarifies that court may act *sua sponte* to dismiss or transfer a case	Joint Subcommittee on Venue and Chapter 11 Matters	8/04 - Approved by Joint Subcommittee 9/04 - Committee approved for publication 1/05 - Standing Committee approved for publication 8/05 - Published for public comment 3/06 - Committee approved 6/06 - Standing Committee approved 9/06 - Judicial Conference approved	12/1/07
Rule 1015(b) Cross reference to § 522(b)	Committee proposal (technical amendment) to implement BAPCPA	3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 1017(e) Dismissal or conversion for abuse	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rules 1019(2) New filing periods in converted case	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 1020 Small business chapter 11 case	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08

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

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 2002(k) Notice to U.S. trustee of petition for recognition	Committee proposal to implement BAPCPA	3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 2002 Determination of mailing address of a foreign creditor	05-BK-B Judge Samuel Bufford 1/20/06	3/06 - Referred to Subcommittee on Technology and Cross Border Insolvency 5/06 - Subcommittee discussed 6/06 - Subcommittee approved revised amendments 9/06 - Committee approved for publication	
Rule 2003(a) Meeting of creditors not convened	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 2007.1 Election of trustee in chapter 11 case	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 2007.2 (new) Appointment of patient care ombudsman	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 2015 Notice by foreign representative	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 2015(a)(6) Periodic financial reports by small business debtor	Business Subcommittee to implement BAPCPA	8/05 - Approved in principle by Committee as national rule 3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 2015.1 (new) Patient care ombudsman	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 2015.2 (new) Patient transfer in health care business case	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 2015.3 (new) Periodic reports on related entities	Business Subcommittee to implement BAPCPA	8/05 - Approved in principle by Committee as national rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08

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

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 3007(b) Procedure for objection to claim - no affirmative relief at same time	Committee proposal	9/04 - Committee approved for publication 1/05 - Standing Committee approved for publication 8/05 - Published for public comment 3/06 - Committee approved 6/06 - Standing Committee approved 9/06 - Judicial Conference approved	12/1/07
Rule 3007(c)-(f) Omnibus objections to claims	Joint Subcommittee on Venue and Chapter 11 Matters	8/04 - Considered by Joint Subcommittee 9/04 - Approved in principle by Committee 1/05 - Revised by Joint Subcommittee. 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for public comment 3/06 - Committee approved with changes 6/06 - Standing Committee approved 9/06 - Judicial Conference approved	12/1/07

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

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

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

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

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 4003(d) Lien holder's objection to avoidance notwithstanding the 30-day limit	04-BK-B Judge Eugene R. Wedoff 2/17/04	9/04 - Committee considered along with Rule 4003(b) amendment, referred to Consumer Subcommittee 3/05 - Committee considered, referred to Consumer Subcomt. 9/05 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 4004(c) Requirements for discharge	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 9/05 - Amended by Committee 3/06 - Committee approved for publication with changes as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 4004(a) Application of section 1328(f)	Committee proposal 8/22/06	9/06 - Referred to Subcommittee on Consumer Matters 12/06 - Subcommittee discussed 3/07 - Committee to consider	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 4006 Notice that case closed without discharge	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 4007 Time to file dischargeability action	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 4008 Filing deadline for reaffirmation agreement	01-BK-E Bankruptcy Judges Advisory Group 11/30/01	1/02 - Referred to chair and reporter 3/02 - Committee considered, referred to subcommittee. 10/02 - Committee approved for publication 1/03 - Standing Committee approved for publication 8/03 - Published for public comment 3/04 - Committee approved 6/04 - Standing Committee approved 9/04 - Judicial Conference approved 4/05 -Withdrawn from Supreme Court at request of Committee and Executive Committee due to conflicting BAPCPA provisions 3/06 - Committee approved revised draft for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 4008 Debtor's § 524(k) statement in support of reaffirmation	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 5001(b) Holding court outside the district in an emergency	Committee Proposal	9/03 - Committee approved in principle; further action deferred 9/05 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 5003 Mailing addresses of certain tax authorities	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 5008 (new) Notice regarding presumption of abuse	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 5009 Closing chapter 15 cases	05-BK-B Judge Samuel Bufford 1/20/06	3/06 - Referred to Subcommittee on Technology and Cross Border Insolvency 5/06 - Subcommittee discussed 6/06 - Subcommittee approved revised amendments 9/06 - Committee approved for publication	
Rule 5012 (new) Communications with foreign courts	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 5012 (new) Agreements concerning coordination of chapter 15 cases and foreign proceedings	05-BK-B Judge Samuel Bufford 1/20/06	3/06 - Referred to Subcommittee on Technology and Cross Border Insolvency 5/06 - Subcommittee discussed 6/06 - Subcommittee approved revised amendments 9/06 - Committee approved for publication as revision of amendment published 08/06	

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

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

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 7007.1 Corporate ownership statement with initial filing	Committee proposal	9/04 - Committee approved as technical amendment without publication 1/05 - Standing Committee approved publication 8/05 - Published for public comment 3/06 - Committee approved 6/06 - Standing Committee approved 9/06 - Judicial Conference approved	12/1/07
Rules 7012, 7022, 7023.1, and 9024 Conforming amendments	Committee proposal in response to restyling of Civil Rules	2/05 - Restyled Civil Rules published for comment 9/05 - Committee discussed impact on Bankruptcy Rules 12/05 - Committee submitted comment on restyled Civil Rules 9/06 - Restyled Civil Rules approved by Judicial Conference 9/06 - Committee discussed need to amend Bankruptcy Rules 2/07 - Reporter drafted conforming amendments 3/07 - Committee to consider	
Rule 7052 Reference to entry of judgment under Civil Rule 58 deemed reference to entry under Rule 5003(a)	Committee proposal	9/06 - Committee approved for publication	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 7058 (new) Entry of judgment in adversary proceeding	Committee proposal	7/06 - Subcommittee on Privacy, Public Access and Appeals Subcommittee approved 9/06 - Committee approved for publication	
Rule 8001 Direct appeals	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 9/05 - Amended by Committee 3/06 - Committee approved for publication with changes as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 8003(d) Authorization of direct appeal as leave to appeal	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 3/06 - Committee approved for publication as national rule 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Rule 9001 Add § 1502	Committee proposal	9/06 - Committee approved for publication	

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

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

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

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 9037 (new) Template privacy rule	E-Government Act § 205(c)(3)	9/04 - Committee considered and referred to Reporter, Judge Swain 3/05 - Committee approved for publication 6/05 - Standing Committee approved for publication 8/05 - Published for public comment 3/06 - Committee approved with changes 6/06 - Standing Committee approved with changes 9/06 - Judicial Conference approved	12/1/07
New Rule Require electronic filers to use data-enabled forms	Donald Walton for EOUST	3/06 - Sent to chair and reporter 6/06 - Discussed by chair, reporter, Forms Subcommittee chair, and Mr. Walton 9/06 - Committee endorsed the concept and recommended treating as a technical standard under Rule 5005(a)(2) 10/07 - Considered by Automation Subcommittee of Bankruptcy Administration Committee 12/07 - Considered by Judicial Conference IT Committee 1/07 - Considered by Bankruptcy Administration Committee	
New Rule Investment of estate funds	06-BK-E Baker & Hostetler LLP 8/25/06	9/06 - Referred to Subcommittee on Business Matters 12/06 - Revised B&H proposal 1/06 - Subcommittee discussed 3/07 - Committee to consider	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
New Rule Authority of bankruptcy courts to discipline attorneys	06-BK-F American Bar Association 8/24/06	9/05 - Referred to Subcommittee on Attorney Conduct and Health Care 3/06 - Committee took no action 12/06 - Subcommittee considered 3/07 - Committee to consider	
Official Forms 1, 1-Exh. D, 3A, 3B, 4, 5, 6-Summary, 6A-J, 6-Declaration, 7, 8, 9A-I, 10, 16A, 18, 19A, 19B, 22A, 22B, 22C, 23, 24 Implement BAPCPA	Forms Subcommittee to implement BAPCPA	8/05 - Approved by Committee 8/05 - Approved by Standing Committee and Executive Committee as Official Forms 9/05 - Official Forms 1, 22A, and 22C amended by Committee 10/05 - Amended Official Forms approved by Standing Committee and Executive Committee 3/06 - Committee approved for publication with changes as permanent forms 5/06 - Committee approved (by email) publication of new Exh. D to Official Form 1 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Official Form 1 Add § 707(b)(4)(D) warning for debtor's attorney	Committee proposal to implement BAPCPA	9/06 - Committee approved for publication 12/06 - Attorney Conduct and Health Care Subcommittee discussed revised amendment 3/07 - Committee to consider	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Official Forms 6E, 7, 10, 22A, and 22C Adjust $$ amts. Every 3 years	11 U.S.C. § 104(b)	1/07 - Reviewed by Forms Subcommittee 2/07 - Administrative Office issued $$ amounts for 4/1/07 3/07 - Committee to review	4/1/07
Official Form 8 Clarify that debtor must complete entire form	Judge Elizabeth L. Perris 8/3/06	9/06 - Referred to Subcommittee on Consumer Affairs 12/06 - Subcommittee considered revision 1/07 - Forms Subcommittee made further revisions 3/07 - Committee to consider	
Official Form 10 Revised to clarify requirements for attachments	04-BK-A Glen K. Palman 2/19/04	3/04 - Referred to reporter, chair and Forms Subcommittee 9/04 - Discussed by Committee, referred to Forms Subcommittee 12/05 - Approved by Subcommittee 3/05 - Committee approved for publication 6/05 - Committee deferred action 9/05 - Referred to Forms Subcomt. 3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Official Form 10 Revise in light of 11 U.S.C. § 1325	Committee proposal	8/06- Referred to Forms Subcommittee 8/06 - Subcommittee discussed 9/06 - Committee took no action 12/06 - Consumer Subcommittee considered 3/07 - Committee to consider	
Official Form 19A Form 19A not needed if petition preparers must use Form 19B	Debbie Lewis, deputy clerk FL-S bankruptcy court 4/06	8/06 - Referred to Forms Subcommittee 8/06 - Subcommittee discussed 9/06 - Committee approved new combined form for publication	
Official Form 21 Implement privacy rule	Forms Subcommittee	3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Official Forms 25A, 25B (new) Form plan and disclosure statement	Business Subcommittee to implement BAPCPA	9/05 - Model plan approved in principle 9/05 - Model plan and disclosure statement referred to Business Subcommittee 3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 1/07 - Forms Subcommittee approved technical amendments 3/07 - Committee to review comments and amendments	12/1/08

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Official Form 25C (new) Periodic financial report by small business debtor	Business Subcommittee to implement BAPCPA	9/05 - Referred to Business Subcommittee 3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Official Form 26 (new) Periodic report on related entities	Business Subcommittee to implement BAPCPA	9/05 - Referred to Business Subcommittee 3/06 - Committee approved for publication 6/06 - Standing Committee approved for publication 8/06 - Published for public comment 3/07 - Committee to review comments	12/1/08
Official Form 27 (new) Cover sheet for reaffirmation or Form 240 as Official Form	Committee proposal	3/06 - Designation as Official Form referred to Forms Subcommittee 8/06 - Subcommittee discussed 9/06 - Committee tabled for 1 year 1/07 - Forms Subcommittee proposed cover sheet 3/07 - Committee to consider	
Official Forms Alternatives to paper-based format for forms	Judge James D. Walker, Jr. 5/24/06	9/06 - Committee will coordinate a study with the Administrative Office	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Official Forms, Director's Forms Forms should be distributed as fillable PDFs	Chief Deputy Clerk Douglas Young, ALM 07-BK-B	6/06 - Fillable forms approved by Bankruptcy Admin. Comt. 3/06 - Fillable forms approved by this Committee 2/07 - AO begins converting bankruptcy forms 3/07 - Fillable Form 10 posted	1/06
Director's Forms 13S, 15S, 132, 204, 205, 206, 207, 231A, 231B, 253, and 270 Revised caption requires only last 4 digits of debtor's social security number	Judiciary Privacy Policy and proposed Rule 9037	1/07 - Approved by Forms Subcommittee 3/07 - Committee to review	5/1/07
Director's Forms 13S, 104, 130A, 130B, 202, 204, and 240 Technical amendments	Comments on the forms	1/07 - Approved by Forms Subcommittee 3/07 - Committee to review	5/1/07
Director's Form 104 Adversary Proceeding Cover Sheet	Bankruptcy Administration Committee statistics initiative	9/06 - Committee reviewed 10/06 - Issued by Director of Administrative Office 1/07 - Forms Subcommittee approved technical amendment 3/07 - Committee to review	5/1/07

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

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 1007(b)(7),(c) Required documents	Interim Rule to implement BAPCPA	3/06 - Committee approved changes in Interim Rule for adoption in 2006 6/06 - Standing Committee approved as amendment to Suggested Interim Rule 9/06 - Judicial Conference approved amended Interim Rule	10/1/06
Rule 1009 Social security number - amended statement		4/04 - Committee approved for publication 6/04 - Standing Committee approved for publication 8/04 - Published for public comment 3/05 - Committee approved 6/05 - Standing Committee approved 9/05 - Judicial Conference approved 4/06 - Supreme Court approved 12/06 - Effective date, no Congressional action	12/1/06
Rule 3007 Service of objections to claims	Judge Christopher M. Klein	9/05 - Referred to Business Subcommittee 3/06 - Committee took no action	
Rule 3019 Confirmation of modified plan	06-BK-C Judge Wesley Steen 6/26/06	6/06 - Sent to Chair & Reporter 9/06 - Committee took no action	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 5005(a)(2) Court may permit or require electronic filing	04-BK-D Judge John W. Lungstrum 8/2/04	8/04 - Referred to reporter and chair 9/04 - Committee approved for publication 11/04 - Publication on "Fast Track" (3 month comment period) 3/05 - Committee approved (as modified) 6/05 - Standing Committee approved 9/05 - Judicial Conference approved 4/06 - Supreme Court approved 12/06 - Effective date; no Congressional action	12/1/06
Rule 5005(c) Add Clerk of the Bankruptcy Appellate Panel and District Judge to entities already listed	03-BK-B Judge Robert J. Kressel 7/2/03	7/03 - Referred to chair and reporter 9/03 - Committee approved for publication 1/04 - Standing Committee approved for publication 8/04 - Published for public comment 3/05 - Committee approved 6/05 - Standing Committee approved 9/05 - Judicial Conference approved 4/06 - Supreme Court approved 12/06 - Effective date; no Congressional action	12/1/06

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Rule 7004(b)(9), (g) Service of summons and complaint on attorney for debtor	Committee proposal	3/04 - Committee approved for publication 6/04 - Standing Committee approved for publication 8/04 - Published for public comment 3/05 - Committee approved (as modified) 6/05 - Standing Committee approved 9/05 - Judicial Conference approved 4/06 - Supreme Court approved 12/06 - Effective date; no Congressional action	12/1/06
Rules 8006, 8007 Transmission of record on appeal	06-BK-D Dana C. McWay on behalf of Bankruptcy CM/ECF Working Group 8/18/06	9/06 - Referred to Subcommittee on Privacy, Public Access, and Appeals 11/06 - AO and Working Group refer proposal to selected clerks	
Rule 9009 References to Interim Rules in Official Forms	Interim Rule to implement BAPCPA	8/05 - Approved by Committee as Suggested Interim Rule 12/08 - Expires when Interim Rules become national rules	10/17/05
New Rule Representation of corporations when less than $5,000 at issue	06-BK-A (see also 05-BK-A, 00-BK-D, 98-BK-A) Judge Paul Mannes 3/16/06	7/06 - Referred to Subcommittee on Attorney Conduct and Health Care 6/06 - Subcommittee discussed 9/06 - Committee took no action	

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Official Forms 1, 1-Exh. D, 5, 6-Summary, 6D, 6E, 6F, 6I, 6J, 6-Declaration, 9G, 9H, 9I, 22A, 22C, 23 Statistics, practice under BAPCPA	Forms Subcommittee to implement BAPCPA	3/06 - Committee approved "immediate" changes in several 10/05 forms 5/06 - Committee approved (by email) new Exh. D as "immediate change" to Official Form 1 6/06 - Standing Committee approved 9/06 - Judicial Conference approved 10/06 - Effective date	10/1/06
Director's Forms 18J, 18JO, 18F, 18FH, 18W, 18WH, 200, 201, 240, 280 Conforming amendments	Forms Subcommittee to implement BAPCPA	9/05 - Reviewed by Committee 10/05 - Issued by Director of Administrative Office	10/17/05
Director's Form 210 Notice of Transfer of Claim Other Than for Security	CM/ECF Working Group	3/04 - Committee discussed, referred to Forms Subcommittee 9/04 - Committee reviewed revised form 12/04 - Issued by Director of Administrative Office 1/05 - CM/ECF project requested revised form 3/05 - Committee reviewed revised form 3/06 - CM/ECF project requested deferral to 10/06 10/06 - Issued by Director of Administrative Office	10/17/06

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
Director's Form 271 Final Decree	Committee proposal	9/04 - Committee reviewed 8/06 - Issued by Director of Administrative Office	8/1/06
Director's Form 281 Appearance of Child Support Creditor	Committee proposal to implement privacy policy	8/06 - Amended form issued by Director of Administrative Office 9/06 - Committee reviewed	8/1/06

Proposed chapter 15 amendments to Rules 1004.2, 1010, 2002(p), 5009, 5012, and 9001 and the proposed combination of Official Forms 19A and 19B are in the "bull pen" awaiting transmission to the Standing Committee.

RULE 1004.2. Petition in Ancillary or Other Cross-Border Cases[1]

1 (a) CENTER OF MAIN INTEREST DESIGNATION.

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

3 shall state whether the case pending in another country is a foreign

4 main proceeding or a foreign nonmain proceeding. The petition

5 also shall state the country where the debtor has the center of its

6 main interests.

7 (b) MOTION. The United States trustee or a party in

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

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

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

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

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

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

14 debtor, all persons or bodies authorized to administer foreign

15 proceedings of the debtor, all entities against whom provisional

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

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

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

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

19 special notice[2], and such other entities as the court may direct.

COMMITTEE NOTE

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

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

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

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

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[2] Although it was not raised at the meeting in connection with this rule, I have inserted among the entities entitled to notice those entities that "requested special notice." I borrowed that phrase from Local Bankruptcy Rule 9013-1(c)(2) of the Bankruptcy Court for the Western District of Washington. The local rule actually provides that notice must be given to "any persons requesting special notice under Rule 2002(i), Fed.R.Bankr.P." Rule 2002(i), however, does not seem to apply. This phrase is also inserted into Rules 5012 and 5009 which follow. I could not find anything in the National Rules that approximates this language. Rather, the National Rules regularly provide that notices must be given to "such other entities as the court may direct." That phrase was already included in the proposed rule.

2 agreement concerning the coordination of proceedings under §§
3 1525-1527 of the Code shall seek such approval by motion. The
4 movant shall attach to the motion a copy of the proposed protocol
5 and, unless the court directs otherwise, give at least 30 days notice
6 of any hearing on the motion by transmitting the motion to the
7 United States trustee, and serving it on the debtor, all persons or
8 bodies authorized to administer foreign proceedings of the debtor,
9 all entities against whom provisional relief is being sought under §
10 1519 of the Code, all parties to litigation pending in the United
11 States in which the debtor is a party at the time of the filing of the
12 petition, each entity requesting special notice, and such other
13 entities as the court may direct.

COMMITTEE NOTE

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

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

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

COMMITTEE NOTE

The rule is amended to redesignate the former rule as

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

Rule 1010. Service of Involuntary Petition and Summons; Service of Petition for Recognition of Foreign Proceeding and Summons ~~Commencing Ancillary Case~~

1 (a) SERVICE OF PETITION AND SUMMONS. On the
2 filing of an involuntary petition or a petition for recognition of a
3 foreign proceeding ~~commencing a case ancillary to a foreign~~
4 ~~proceeding~~, the clerk shall forthwith issue a summons for service.
5 When an involuntary petition is filed, service shall be made on the
6 debtor. When a petition for recognition of a foreign proceeding is
7 filed, ~~commencing an ancillary case is filed,~~ service shall be made
8 on the debtor, all persons or bodies authorized to administer
9 foreign proceedings of the debtor, ~~parties against whom relief is~~
10 ~~sought pursuant to § 304(b) of the Code~~ and on any other ~~parties~~
11 entities as the court may direct. The summons shall be served with
12 a copy of the petition in the manner provided for service of a
13 summons and complaint by Rule 7004(a) or (b). If service cannot
14 be so made, the court may order that the summons and petition be
15 served by mailing copies to the party's last known address, and by

16 at least one publication in a manner and form directed by the court.

17 The summons and petition may be served on the party anywhere.

18 Rule 7004(e) and Rule 4(*l*) F.R.Civ.P. apply when service is made

19 or attempted under this rule.

20 (b) CORPORATE OWNERSHIP STATEMENT. Each

21 petitioner that is a corporation shall file with the involuntary

22 petition a corporate ownership statement containing the

23 information described in Rule 7007.1.

COMMITTEE NOTE

The rule is amended to require service of a summons and the petition in all chapter 15 cases, whether they be a foreign nonmain proceeding or a foreign main proceeding. Service must be made on the debtor and any other entity that the court directs. General notice of the petition for recognition of the foreign proceeding is given to creditors under Rule 2002(q).

RULE 9001. General Definitions

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

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

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

4 phrases used in these rules have the meanings indicated:

5 * * * * * *

COMMITTEE NOTE

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

RULE 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

1 * * * * *

2 (p) NOTICE TO A FOREIGN CREDITOR

3 * * * * *

4 (3) Unless the court for cause orders otherwise, the

5 mailing address of a foreign creditor shall be determined under

6 Rule 2002(g).

COMMITTEE NOTE

The rule is amended by adding subparagraph (3) to subdivision (p). The new subparagraph provides that the court may, for cause, override a creditor's designation of a foreign address under Rule 2002(g). For example, if a party in interest believes that a creditor has wrongfully designated a foreign address to obtain additional time when it has a significant presence in the United States, the party can ask the court to order that notices to that creditor be sent to an address other than the one designated by the foreign creditor.

The next meeting of the Committee will take place

September 6-7, 2007,

at the Teton Mountain Lodge, Jackson Hole, WY

Posting Instructions for Additional materials

Agenda dated 3/26/07. **Replaces draft agendas dated 3/23/07 and 3/14/07.**

Memo dated 3/23/07 on the published rules which were unchanged, either because there were no comments on the rule or because the appropriate subcommittee recommended that there be no change in the published rule. **Insert behind tab 3.**

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

Memo of 3/22/07 on creditor attorneys under Rule 9011. **Insert behind tab 4A.**

Proposed attorney certification amendment to page 3 of Official Form 1. **Insert behind tab 4A.**

Memo dated 3/23/07 on the Consumer Subcommittee's recommendations on the means test and copies of mark-ups of forms 22A, 22B, and 22C. The copies of Forms 22A, 22B, and 22C **replace the copies of Forms 22A and 22C in the binder. Insert behind tab 5A.**

Memo dated 3/23/07 as revised 3/26/07 on the Consumer Subcommittee's other recommendations. **Insert behind tab 5B.**

Addendum dated 3/23/07 to the Business Subcommittee report. **Insert behind tab 6A.**

Memo of 3/15/07 on business forms. **Insert behind tab 6A.**

Addendum dated 3/23/07 to the Cross Border Subcommittee report. **Insert behind tab 7.**

Memo of 3/4/07 as revised 3/23/07 on dollar adjustments in seven Official Forms, list of the dollar amounts adjusted, and excerpt from Official Form 1. **Replaces materials behind tab 9B.**

Memo of 12/8/06 as revised 3/23/07 on time computation, list of deadlines in the bankruptcy rules, list of deadlines in proposed amendments. **Insert behind tab 10.**

Revised combination of Official Forms 19A and 19B and proposed Committee Note. **Replaces the copy of proposed Form 19 transmitted on 3/23/07. Insert in the "Bull Pen" behind tab 13.**

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of March 29-30, 2007
Marco Island, Florida

Agenda (3/26/07)

Introductory Items

1. Approval of minutes of Seattle meeting of September 14-15, 2006 (Judge Zilly)

2. Oral reports on meetings of other Rules Committees:

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

Possible revision of proposed amendments to Rules 7052 and 9021, and new Rule 7058.
Draft minutes of the Standing Committee meeting will be distributed separately.

(B) November 2006 meeting of the Advisory Committee on Appellate Rules Committee. (Judge Zilly)
(C) January 2007 meeting of the Committee on the Administration of the Bankruptcy System. (Judge Klein)
(D) September 2006 meeting of Advisory Committee on Civil Rules. (Judge Walker)
(E) November 2006 meeting of Advisory Committee on Evidence. (Judge Klein)
(F) Bankruptcy CM/ECF Working Group (Judge McFeeley)

Action Items

3. Report on comments to proposed amendments to the Bankruptcy Rules and Official forms published in August 2006. Memo of 2/28/07 concerning comments submitted prior to January 10, 2007; memo of 2/28/07 concerning comments submitted after January 10. Lists of the 2005 comments on the Interim Rules and Forms and 2006/2007 comments on the published Rules and Forms. (Professor Morris).

(A) No comments were submitted on the following published rules:

Bankruptcy Rules 1005, 1009, 1015, 2007.1, 2015, 3003, 3017.1, 3019, 5001, 9006, and 9009, and new Bankruptcy Rule 2015.2.

(B) No comments were submitted on the following published Official Forms:

Official Forms 3A, 3B, 10, 16A, 19A, 19B.

(C) Comments were submitted on the following rules but the subcommittee to which each comment was assigned recommends that no change be made in the published rule:

Bankruptcy Rules 1006, 1010, 1011, 1017, 1020, 2003, 3016, 3017.1, 4006, 4007, 4008, and 8001; and new Bankruptcy Rules 1021, 2007.2, 2015.1, and 5008.

Comments in which changes in the published rule or Committee Note are recommended are set out below by subcommittee. Comments on the Interim Rules and Forms are included with the discussion of the comments on the published rules and forms.

(D) Comments or suggested changes to the following existing rules **(not published for comment in August 2006)** have been received and are recommended for referral to the following subcommittees for study. See comments after 1/10/07 memo of 2/28/07 at pp.7, 24, cross border memo of 2/16/07 as revised 2/27/07 p.4; appeals memo of 2/23/07 as revised 2/28/07 p.4.

Rule 2003	Subcommittee on Business Issues
Rule 5009	Subcommittee on Consumer Issues
Rule 7065	Subcommittee on Technology and Cross Border Insolvency
Rule 8003(b)	Subcommittee on Privacy, Public Access, and Appeals
Rule 8005	Subcommittee on Privacy, Public Access, and Appeals.

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

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

(A) Comments on the attorney conduct rules and proposed amendments. Memo of 1/10/07 as revised 2/27/07, memo of 3/22/07.

Existing Rule 9011	p.4 (2/27/07 memo)	(Will require publication)
	p.1 (3/22/07 memo)	(Will require publication)
Official Form 1	p.4 (2/27/07 memo)	(May require republication)

(B) Comments on the proposed health care rules and possible amendment. Memo of 2/23/07.

Rule 6011(b)	p.4

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

(A) Comments on the means test and forms. Proposed amendments; memo of 3/23//07;

Judge Wedoff's analysis of 3/5/07; annotated copies of the forms including proposed changes.

Official Forms 22A, 22B, and 22C

(B) Additional comments on the consumer rules and proposed amendments. Memo of 3/23/07.

Rule 1007(b)(4)	p.1	(May require republication)
Rule 1007(b)(7),(c)	p.1	(May require publication)
Rule 1007(b)(8)	p.1	(May require republication)
Committee Note to Rule 1007	p.x	
New Rule 1017.1	p.10	(Will require publication)
Committee Note to Rule 1019	p.12	
Rule 4002(b)(2)	p.9 of business memo of 2/26/07 as revised 3/3/07	
	(No recommendation)	(May require republication)
Rule 4002(b)(4)	p.13	
	(No recommendation)	(May require republication)
Rule 4003(b)(2)	p.17	(May require republication)
Rule 4003(b)(3)	p.17	(May require republication)
Committee Rule to Rule 4003	p.17	
Rule 4004(a)	p.20	(Will require publication)
Rule 4004(c)(1),(c)(4),(c)(5)	p.20	(Will require republication)
Existing Rule 7001	p.20	(Will require publication)
Exhibit D to Official Form 1	p.26	(May require republication)
Official Forms 6I and 6J	p.28	(May require republication)
Official Form 23	p.29	
Procedure to implement "automatic dismissal" under § 521		
	p.29	(Will require publication)

(C) Additional comments on consumer amendments, no changes recommended.

Rule 1007(b)(1)(F)	p.11 of comments after 1/10/07 memo of 2/28/07
Others	

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

(A) (1) Comments on the business rules and proposed amendments. Memo of 2/26/07 as revised 3/3/07. Addendum dated 3/23/07.

Rule 2002(g)(2)	p.6
Rule 2015.3(e)	p.16 of comments after 1/10/07 memo of 2/28/07 (No subcommittee recommendation)

Rule 3002(c)(1)	p.7	(May require republication)
Existing Rule 3007(a)	p.13	(Will require publication)
Rule 5003(e)	p.10	
Rule 6004(g)(3)	p.3	(May require republication)
Committee Note to Rule 2002	p.3	
Committee Note to Rule 4002	p.9	

(2) Comments on business forms. Memo of 3/15/07.

Official Forms 25A and 25B	p.2
Official Forms 25C and 26	p.6

(4) Other comments on proposed business rules and forms - no changes recommended.

(B) The revised Baker & Hostetler proposal on investing estate funds has been withdrawn.

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

Comments on the proposed cross border rules and proposed amendments. Memo of 2/16/07 as revised 2/27/07. Addendum dated 3/23/07.

Rule 1007(a)(1)	p.1	(May require republication)
Rule 1007(a)(4)	p.2	
Existing Rules 1010, 1011	p.4	(Will require publication)
Rule 2002(p)	p.7	
Rule 2002(q)	p.2	
Committee Note for new Rule 5012	p.5	(also see Rule 5012 in the Bull Pen)
Official Forms 9E - F	p.6	
Official Forms 9A - I	p.7	

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

No proposed rules amendments as a result of the comments on the proposed appeals rules. Possible change in one Committee Note. Memo of 2/23/07 as revised 2/28/07.

Committee Note for Rule 8001(f)(3) p.3

9. Report of Subcommittee on Forms. (Judge Klein, Professor Morris)

(A) Comments on the Official Forms. Memo of 1/26/07 as revised 2/27/07 with copies of proposed changes. (Judge Klein, Professor Morris)

Discussion items:

New Official Form 27	p.2	(Will require publication)
Official Form 8	p.3	(Will require republication)
Official Form 1	p.4	(May require publication)
Official Forms 4, 6, and 7	p.5	

Technical or noncontroversial recommendations:

Official Form 1	p.6
Official Form 6E and 6F	p.6
Official Form 6I	p.7
Official Form 6 - Declaration	p.7
Official Forms 22A, 22B, and 22C	p.8
Official Form 24	p.8
Official Form 25A	p.9

No action recommendations. p.9

(B) Automatic, statutory adjustments to certain dollar amounts on Official Forms 1, 6C, 6E, 7, 10, 22A, and 22C on April 1, 2007. Memo of 3/4/07 as revised 3/23/07, list of the dollar amounts adjusted, and excerpts from the revised Official Forms. (Mr. Wannamaker)

(C) Proposed amendments to Director's Procedural Forms. Memo of 1/26/07 as revised 2/27/07. Mr. Wannamaker.

Privacy amendments to the captions of Forms 13S, 15S, 132, 204, 205, 206, 207, 231A, 231B, 253, and 270	p.1
Revision of bankruptcy subpoena forms 254, 255, and 256	p.4
Abrogation of Forms 130A and 130B	p.2
Additional amendments to Forms 13S, 104, 202, 204, and 240	p.2,3

Discussion Items

10. Report of the ad hoc group on time computation and the discussion of time computation at the Standing Committee meeting. Reporter's memos of 2/2/07 and 12/8/06. Memos from Judge Mark R. Kravitz, chair of the Standing Committee's Time Computation Committee, and Professor Catherine T. Struve, reporter for the Appellate Rules Committee, and copies of the revised draft template rules are attached. (Judge Zilly and Professor Morris)

(A) Proposed amendments to template rule.
(B) Timing and procedure for Bankruptcy Rules.

11. Proposed amendments to the Bankruptcy Rules as a result of the restyling of the Civil Rules. Memo of 2/16/07 as revised 2/26/07; draft amendments to Rules 7012, 7022, 7023.1, and 9024. A copy of the Advisory Committee's December 15, 2005, comment to the Civil Committee on the restyled rules is attached. (Professor Morris)

Information Items

12. Rules Docket.

13. *Bull Pen*: Proposed chapter 15 amendments to Rules 1004.2, 1010, 2002(p), 5009, 5012, and 9001 and the proposed combination of Official Forms 19A and 19B are in the "bull pen" awaiting transmission to the Standing Committee. Text of the proposed rules amendments; proposed Official Form 19 and Committee Note.

14. Next meeting reminder: September 6-7, 2007, at the Teton Mountain Lodge, Jackson Hole, WY.

MEMORANDUM

TO: ADVISORY COMMITTEE ON THE BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: RULES RECOMMENDED FOR ADOPTION WITHOUT CHANGE

DATE: MARCH 23, 2007

This memo first lists those rules on which we received no comments during the August 2006 to February 15, 2007 comment period. The memo then sets out the text of those rules as they were published. The Advisory Committee is asked to approve those rules as published. The memo then lists the rules on which some comments were received, but for which the appropriate Subcommittee recommends that no change be made to the rules and that they be approved as published.

I. NO COMMENTS WERE SUBMITTED ON THE FOLLOWING PUBLISHED RULES:

Bankruptcy Rules 1005, 1009, 1015, 2007.1, 2015, 3003, 3017.1, 3019, 5001, 9006, and 9009, and new Bankruptcy Rule 2015.2.

These rules are recommended for presentation to the Standing Committee for its approval and further recommendation for adoption by the Judicial Conference.

Rule 1005. Caption of Petition

1 The caption of a petition commencing a case under the Code
2 shall contain the name of the court, the title of the case, and the
3 docket number. The title of the case shall include the following
4 information about the debtor: name, employer identification
5 number, last four digits of the social-security number or individual
6 debtor's taxpayer-identification number, any other federal ~~tax~~
7 taxpayer-identification number, and all names used within ~~six~~ eight

8 years before filing the petition. If the petition is not filed by the

9 debtor, it shall include all names used by the debtor which are

10 known to the petitioners.

COMMITTEE NOTE

The rule is amended to require the disclosure of all names used by the debtor in the past eight years. Section 727(a)(8) was amended in 2005 to extend the time between chapter 7 discharges from six to eight years, and the rule is amended to implement that change. The rule also is amended to require the disclosure of the last four digits of an individual debtor's taxpayer-identification number. This truncation of the number applies only to individual debtors. This is consistent with the requirements of Rule 9037.

INTERIM RULES COMPARISON:

This Rule was not included in the Interim Rules.

Rule 1009. Amendments of Voluntary Petitions, Lists, Schedules and Statements

1 * * * * *

2 (b) STATEMENT OF INTENTION. The statement of

3 intention may be amended by the debtor at any time before the

4 expiration of the period provided in § 521(a) ~~521(2)(B)~~ of the

5 Code. The debtor shall give notice of the amendment to the trustee

6 and to any entity affected thereby.

7 * * * * *

COMMITTEE NOTE

Subdivision (b) is amended to conform to the 2005 amendments to § 521 of the Code.

INTERIM RULES COMPARISON:

No change from the Interim Rule.

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

1 * * * * *

2 (b) CASES INVOLVING TWO OR MORE RELATED

3 DEBTORS. If a joint petition or two or more petitions are pending

4 in the same court by or against (1) a husband and wife, or (2) a

5 partnership and one or more of its general partners, or (3) two or

6 more general partners, or (4) a debtor and an affiliate, the court

7 may order the joint administration of the estates. Prior to entering

8 an order the court shall give consideration to protecting creditors of

9 different estates against potential conflicts of interest. An order

10 directing joint administration of individual cases of a husband and

11 wife shall, if one spouse has elected the exemptions under § 522(b)

12 ~~(1)~~ (2) of the Code and the other has elected the exemptions under

13 § 522 (b)~~(2)~~ (3), fix a reasonable time within which either may

14 amend the election so that both shall have elected the same

15 exemptions. The order shall notify the debtors that unless they

16 elect the same exemptions within the time fixed by the court, they

17 will be deemed to have elected the exemptions provided by §

18 522(b)~~(1)~~ (2).

19 * * * * *

COMMITTEE NOTE

The rule is amended to conform to the change in the numbering of § 522(b) of the Code that was made as a part of the 2005 amendments. Former subsections (b)(1) and (b)(2) of § 522 were renumbered as subsections (b)(2) and (b)(3), respectively. The rule is amended to make to the parallel change.

INTERIM RULES COMPARISON:

No change from the Interim Rule.

Rule 2007.1. Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case

1 * * * * *

2 (b) ELECTION OF TRUSTEE.

3 * * * * *

4 (3) *Report of Election and Resolution of Disputes.*

5 (A) Report of Undisputed Election. If no dispute arises

6 out of the election ~~is not disputed~~, the United States trustee shall

7 promptly file a report ~~of~~ certifying the election, including the name

8 and address of the person elected and a statement that the election is

9 undisputed. The report shall be accompanied by a verified statement

10 of the person elected setting forth that person's connections with the

11 debtor, creditors, any other party in interest, their respective attorneys

12 and accountants, the United States trustee, or any person employed in

the office of the United States trustee. ~~The United States trustee shall file with the report an application for approval of the appointment in accordance with subdivision (c) of this rule. The report constitutes appointment of the elected person to serve as trustee, subject to court approval, as of the date of entry of the order approving the appointment.~~

(B) Dispute Arising Out of an ~~Disputed~~ Election. If a dispute arises out of an ~~the~~ election ~~is disputed~~, the United States trustee shall promptly file a report stating that the election is disputed, informing the court of the nature of the dispute, and listing the name and address of any candidate elected under any alternative presented by the dispute. The report shall be accompanied by a verified statement by each candidate elected under each alternative presented by the dispute, setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, ~~and~~ or any person employed in the office of the United States trustee. 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. ~~Unless a motion for~~

35 ~~the resolution of the dispute is filed not later than 10 days after the~~
36 ~~United States trustee files the report, any person appointed by the~~
37 ~~United States trustee under § 1104(d) and approved in accordance~~
38 ~~with subdivision (c) of this rule shall serve as trustee. If a motion for~~
39 ~~the resolution of the dispute is timely filed, and the court determines~~
40 ~~the result of the election and approves the person elected, the report~~
41 ~~will constitute appointment of the elected person as of the date of~~
42 ~~entry of the order approving the appointment.~~
43 (c) APPROVAL OF APPOINTMENT. An order approving the
44 appointment of a trustee ~~elected under § 1104(b) or appointed under~~
45 ~~§ 1104(d),~~ or ~~the appointment of~~ an examiner under §1104(d) of the
46 Code, shall be made on application of the United States trustee. The
47 application shall state the name of the person appointed and, to the
48 best of the applicant's knowledge, all the person's connections with
49 the debtor, creditors, any other parties in interest, their respective
50 attorneys and accountants, the United States trustee, ~~and~~ <u>or</u> persons
51 employed in the office of the United States trustee. ~~Unless the person~~
52 ~~has been elected under § 1104(b), the~~ <u>The</u> application shall state the
53 names of the parties in interest with whom the United States trustee
54 consulted regarding the appointment. The application shall be
55 accompanied by a verified statement of the person appointed setting
56 forth the person's connections with the debtor, creditors, any other

57 party in interest, their respective attorneys and accountants, the

58 United States trustee, ~~and~~ or any person employed in the office of the

59 United States trustee.

COMMITTEE NOTE

Under § 1104(b)(2) of the Code, as amended in 2005, if an eligible, disinterested person is elected to serve as trustee in a chapter 11 case, the United States trustee is directed to file a report certifying the election. The person elected does not have to be appointed to the position. Rather, the filing of the report certifying the election itself constitutes the appointment. The section further provides that in the event of a dispute in the election of a trustee, the court must resolve the matter. The rule is amended to be consistent with § 1104(b)(2).

When the United States trustee files a report certifying the election of a trustee, the person elected must provide a verified statement, similar to the statement required of professional persons under Rule 2014, disclosing connections with parties in interest and certain other persons connected with the case. Although court approval of the person elected is not required, the disclosure of the person's connections will enable parties in interest to determine whether the person is disinterested.

INTERIM RULES COMPARISON:

No change from the Interim Rule.

Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status

1 (a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee or

2 debtor in possession shall:

3 (1) in a chapter 7 liquidation case and, if the court directs, in a

4 chapter 11 reorganization case file and transmit to the United States

5 trustee a complete inventory of the property of the debtor within 30

6 days after qualifying as a trustee or debtor in possession, unless such
7 an inventory has already been filed;
8 (2) keep a record of receipts and the disposition of money and
9 property received;
10 (3) file the reports and summaries required by § 704(8) of the
11 Code which shall include a statement, if payments are made to
12 employees, of the amounts of deductions for all taxes required to be
13 withheld or paid for and in behalf of employees and the place where
14 these amounts are deposited;
15 (4) as soon as possible after the commencement of the case, give
16 notice of the case to every entity known to be holding money or
17 property subject to withdrawal or order of the debtor, including every
18 bank, savings or building and loan association, public utility
19 company, and landlord with whom the debtor has a deposit, and to
20 every insurance company which has issued a policy having a cash
21 surrender value payable to the debtor, except that a notice need not be
22 given to any entity who has knowledge or has previously been
23 notified of the case;
24 (5) in a chapter 11 reorganization case, on or before the last day
25 of the month after each calendar quarter during which there is a duty
26 to pay fees under 28 U.S.C. § 1930(a)(6), file and transmit to the
27 United States trustee a statement of any disbursements made during

28 that quarter and of any fees payable under 28 U.S.C. § 1930 (a)(6) for
29 that quarter; and
30 (6) in a chapter 11 small business case, unless the court, for cause,
31 sets another reporting interval, file and transmit to the United States
32 trustee for each calendar month after the order for relief, on the
33 appropriate Official Form, the report required by § 308. If the order
34 for relief is within the first 15 days of a calendar month, a report shall
35 be filed for the portion of the month that follows the order for relief.
36 If the order for relief is after the 15th day of a calendar month, the
37 period for the remainder of the month shall be included in the report
38 for the next calendar month. Each report shall be filed no later than
39 20 days after the last day of the calendar month following the month
40 covered by the report. The obligation to file reports under this
41 subparagraph terminates on the effective date of the plan, or
42 conversion or dismissal of the case.
43 * * * * *
44 (d) FOREIGN REPRESENTATIVE. In a case in which the court
45 has granted recognition of a foreign proceeding under chapter 15, the
46 foreign representative shall file any notice required under § 1518 of
47 the Code within 15 days after the date when the representative
48 becomes aware of the subsequent information.
49 ~~(d)~~ (e) TRANSMISSION OF REPORTS. In a chapter 11 case the

50 court may direct that copies or summaries of annual reports and
51 copies or summaries of other reports shall be mailed to the creditors,
52 equity security holders, and indenture trustees. The court may also
53 direct the publication of summaries of any such reports. A copy of
54 every report or summary mailed or published pursuant to this
55 subdivision shall be transmitted to the United States trustee.

COMMITTEE NOTE

Subparagraph (a)(6) implements § 308 of the Code, added by the 2005 amendments. That section requires small business chapter 11 debtors to file periodic financial and operating reports, and the rule sets the time for filing those reports and requires the use of an Official Form for the report. The obligation to file reports under this rule does not relieve the trustee or debtor of any other obligations to provide information or documents to the United States trustee.

The rule also is amended to fix the time for the filing of notices under § 1519, added to the Code in 2005. Former subdivision (d) is renumbered as subdivision (e).

Other changes are stylistic.

INTERIM RULES COMPARISON:

Subparagraph (a)(6) was not included in the Interim Rules. It is added to implement a provision of the 2005 Act, but that provision explicitly directed that it would not become effective until the proper rules and form were adopted under the Rules Enabling Act process. Therefore, this subdivision was not included in the Interim Rules. The remainder of the Rule is unchanged from the Interim Rules.

Rule 2015.2. Transfer of Patient in Health Care Business Case

1 Unless the court orders otherwise, if the debtor is a health care
2 business, the trustee may not transfer a patient to another health care

3 business under § 704(a)(12) of the Code unless the trustee gives at

4 least 10 days' notice of the transfer to the patient care ombudsman, if

5 any, the patient, and any family member or other contact person

6 whose name and address has been given to the trustee or the debtor

7 for the purpose of providing information regarding the patient's

8 health care. The notice is subject to applicable nonbankruptcy law

9 relating to patient privacy.

COMMITTEE NOTE

This rule is new. Section 704(a)(12), added to the Code by the 2005 amendments, authorizes the trustee to relocate patients when a health care business debtor's facility is in the process of being closed. The Code permits the trustee to take this action without the need for any court order, but the notice required by this rule will enable a patient care ombudsman appointed under § 333, or a patient who contends that the trustee's actions violate § 704(a)(12), to have those issues resolved before the patient is transferred.

This rule also permits the court to enter an order dispensing with or altering the notice requirement in proper circumstances. For example, a facility could be closed immediately, or very quickly, such that 10 days' notice would not be possible in some instances. In that event, the court may shorten the time required for notice.

Notices given under this rule are subject to the provisions of applicable federal and state law that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA).

INTERIM RULES COMPARISON:

The Rule is rewritten in lines 5-7 to clarify the identities of persons to whom notices must be sent.

Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases

1 * * * * *

2 (c) FILING PROOF OF CLAIM.

3 (1) *Who May File.* Any creditor or indenture trustee may file
4 a proof of claim within the time prescribed by subdivision (c)(3) of
5 this rule.

6 (2) *Who Must File.* Any creditor or equity security holder
7 whose claim or interest is not scheduled or scheduled as disputed,
8 contingent, or unliquidated shall file a proof of claim or interest
9 within the time prescribed by subdivision (c)(3) of this rule; any
10 creditor who fails to do so shall not be treated as a creditor with
11 respect to such claim for the purposes of voting and distribution.

12 (3) *Time for Filing.* The court shall fix and for cause shown
13 may extend the time within which proofs of claim or interest may be
14 filed. Notwithstanding the expiration of such time, a proof of claim
15 may be filed to the extent and under the conditions stated in Rule
16 3002(c)(2), (c)(3), ~~and~~ (c)(4), and (c)(6).

17 (4) *Effect of Filing Claim or Interest.* A proof of claim or
18 interest executed and filed in accordance with this subdivision shall
19 supersede any scheduling of that claim or interest pursuant to §
20 521(a)(1) of the Code.

21 (5) *Filing by Indenture Trustee.* An indenture trustee may

22 file a claim on behalf of all known or unknown holders of securities

23 issued pursuant to the trust instrument under which it is trustee.

24 * * * * *

COMMITTEE NOTE

Subdivision (c)(3) is amended to implement § 1514(d) of the Code, which was added by the 2005 amendments. It makes the new Rule 3002(c)(6) applicable in chapter 9 and chapter 11 cases. This change was necessary so that creditors with foreign addresses be provided such additional time as is reasonable under the circumstances to file proofs of claims.

INTERIM RULES COMPARISON:

No change from the Interim Rule.

Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case

1 (a) CONDITIONAL APPROVAL OF DISCLOSURE

2 STATEMENT. ~~If the debtor is~~ In a small business case ~~and has made~~

3 ~~a timely election to be considered a small business in a chapter 11~~

4 ~~case~~, the court may, on application of the plan proponent or on its

5 own initiative, conditionally approve a disclosure statement filed in

6 accordance with Rule 3016~~(b)~~. On or before conditional approval of

7 the disclosure statement, the court shall:

8 (1) fix a time within which the holders of claims and interests

9 may accept or reject the plan;

10 (2) fix a time for filing objections to the disclosure statement;

11 (3) fix a date for the hearing on final approval of the

12 disclosure statement to be held if a timely objection is filed; and

13 (4) fix a date for the hearing on confirmation.

14 * * * * *

COMMITTEE NOTE

Section 101 of the Code, as amended in 2005, defines a "small business case" and "small business debtor,"and eliminates any need to elect that status. Therefore, the reference in the rule to an election is deleted.

As provided in the amendment to Rule 3016(b), a plan intended to provide adequate information in a small business case under § 1125(f)(1) may be conditionally approved and is otherwise treated as a disclosure statement under this rule.

INTERIM RULES COMPARISON:

No change from the Interim Rule.

Rule 3019. Modification of Accepted Plan Before <u>or After</u> Confirmation in a Chapter 9 Municipality or Chapter 11 Reorganization Case

1 <u>(a) MODIFICATION OF PLAN BEFORE</u>

2 <u>CONFIRMATION.</u> In a chapter 9 or chapter 11 case, after

3 a plan has been accepted and before its confirmation, the

4 proponent may file a modification of the plan. If the court

5 finds after hearing on notice to the trustee, any committee

6 appointed under the Code, and any other entity designated

7 by the court that the proposed modification does not
8 adversely change the treatment of the claim of any creditor
9 or the interest of any equity security holder who has not
10 accepted in writing the modification, it shall be deemed
11 accepted by all creditors and equity security holders who
12 have previously accepted the plan.
13 (b) MODIFICATION OF PLAN AFTER
14 CONFIRMATION IN INDIVIDUAL DEBTOR CASE. If
15 the debtor is an individual, a request to modify the plan
16 under § 1127(e) of the Code shall identify the proponent
17 and shall be filed together with the proposed modification.
18 The clerk, or some other person as the court may direct,
19 shall give the debtor, the trustee, and all creditors not less
20 than 20 days' notice by mail of the time fixed to file
21 objections and, if an objection is filed, the hearing to
22 consider the proposed modification, unless the court orders
23 otherwise with respect to creditors who are not affected by
24 the proposed modification. A copy of the notice shall be
25 transmitted to the United States trustee, together with a
26 copy of the proposed modification. Any objection to the
27 proposed modification shall be filed and served on the
28 debtor, the proponent of the modification, the trustee, and

29 any other entity designated by the court, and shall be

30 transmitted to the United States trustee. An objection to a

31 proposed modification is governed by Rule 9014.

COMMITTEE NOTE

Section 1127 of the Code, amended by the 2005 amendments, provides for modification of a confirmed plan in a chapter 11 case of an individual debtor. The rule is amended to establish the procedure for filing and objecting to a proposed modification of a confirmed plan.

INTERIM RULES COMPARISON:

Headings were inserted for the subdivisions of the Rule, and no other changes were made from the Interim Rule.

Rule 5001. Courts and Clerks' Offices

1 * * * * *

2 (b) TRIALS AND HEARINGS; ORDERS IN CHAMBERS.

3 All trials and hearings shall be conducted in open court and so far

4 as convenient in a regular court room. Except as otherwise

5 provided in 28 U.S.C. § 152(c), all ~~All~~ other acts or proceedings

6 may be done or conducted by a judge in chambers and at any place

7 either within or without the district; but no hearing, other than one

8 ex parte, shall be conducted outside the district without the consent

9 of all parties affected thereby.

COMMITTEE NOTE

The rule is amended to permit bankruptcy judges to hold

hearings outside of the district in which the case is pending to the extent that the circumstances lead to the authorization of the court to take such action under the 2005 amendment to 28 U.S.C. § 152(c). Under that provision, bankruptcy judges may hold court outside of their districts in emergency situations and when the business of the court otherwise so requires. This amendment to the rule is intended to implement the legislation.

INTERIM RULES COMPARISON:

This Rule was not included in the Interim Rules.

Rule 9006. Time

1 * * * * *

2 (b) ENLARGEMENT.

3 (1) *In General.* Except as provided in paragraphs (2) and

4 (3) of this subdivision, when an act is required or allowed to be

5 done at or within a specified period by these rules or by a notice

6 given thereunder or by order of court, the court for cause shown

7 may at any time in its discretion (1) with or without motion or

8 notice order the period enlarged if the request therefor is made

9 before the expiration of the period originally prescribed or as

10 extended by a previous order or (2) on motion made after the

11 expiration of the specified period permit the act to be done where

12 the failure to act was the result of excusable neglect.

13 (2) *Enlargement Not Permitted.* The court may not enlarge

14 the time for taking action under Rules 1007(d), 2003(a) and (d),

15 7052, 9023, and 9024.

16 (3) *Enlargement Limited.* The court may enlarge the time

17 for taking action under Rules 1006(b)(2), 1007(c) with respect to

18 the time to file schedules and statements in a small business case,

19 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 4008(a), 8002 and

20 9033, only to the extent and under the conditions stated in those

21 rules.

22 (c) REDUCTION.

23 * * * * *

24 (2) *Reduction Not Permitted.* The court may not reduce the

25 time for taking action under ~~pursuant to~~ Rules 2002(a)(7), 2003(a),

26 3002(c), 3014, 3015, 4001(b)(2, (c)(2), 4003(a), 4004(a), 4007(c),

27 4008(a), 8002, and 9033(b).

28 * * * * *

COMMITTEE NOTE

Section 1116(3) of the Code, as amended by the 2005 amendments, places specific limits on the time for filing schedules and a statement of affairs in small business cases. The rule is amended to recognize that extensions of time for filing these documents are governed by Rule 1007(c), which is amended to recognize restrictions on expanding the time to file these documents in small business cases.

Subdivisions (b)(3) and (c)(2) are also amended to provide that enlargement or reduction of the time to file a reaffirmation agreement is governed by Rule 4008(a).

Other amendments are stylistic.

INTERIM RULES COMPARISON:

Rule 4008(a) is added to the list of subdivisions for which enlargement or reduction of time is limited under subdivisions (b)(3) and (c)(2) of this Rule.

Rule 9009. Forms

1 Except as otherwise provided in Rule 3016(d), the ~~The~~ Official
2 Forms prescribed by the Judicial Conference of the United States
3 shall be observed and used with alterations as may be appropriate.
4 Forms may be combined, and their contents rearranged to permit
5 economies in their use. The Director of the Administrative Office
6 of the United States Courts may issue additional forms for use
7 under the Code. The forms shall be construed as consistent with
8 these Rules and the Code.

COMMITTEE NOTE

The rule is amended to provide that a plan proponent in a small business chapter 11 case need not use an Official Form of a plan of reorganization and disclosure statement. The use of those forms is optional, and under Rule 3016(d) the proponent may submit a plan and disclosure statement in those cases that does not conform to the Official Forms.

INTERIM RULES COMPARISON:

There are two changes from the Interim Rule. First, the last sentence of the Interim Rule is deleted because the Interim Rules will no longer be effective when these Rules are finally promulgated and effective. Second, an exception is added to the Rule to prevent the promulgation of a form plan and disclosure

statement in small business chapter 11 cases from prohibiting the use of other plans and disclosure statements in those cases as contemplated by the 2005 Act.

II. RULES FOR WHICH COMMENTS WERE RECEIVED BUT WHICH THE APPROPRIATE SUBCOMMITTEE RECOMMENDS FOR APPROVAL WITHOUT CHANGE FROM THE PUBLISHED VERSION

We received comments or suggestions for changes to the following published rules, but after considering the comments and suggestions, the appropriate Subcommittee recommends that these rules be approved without change and be forwarded to the Standing Committee for it approval and further recommendation for adoption by the Judicial Conference:

Bankruptcy Rules 1006, 1010, 1011, 1017, 1020, 2003, 3016, 3017.1, 4006, 4007, 4008, and 8001; and new Bankruptcy Rules 1021, 2007.2, 2015.1, and 5008.

Comment 06-BK-001 (Bankruptcy Judge Geraldine Mund) (See Page 1 of memo behind Tab 3 titled Comments Submitted Prior to January 10, 2007 on Proposed Rules and Forms) Judge Mund commented that the Proposed Rule results in cases being processed for which the court receives no fees, but a petition preparer may have been paid in full. The Consumer Subcommittee concluded that the rule should not be changed because the debtor should not be precluded from obtaining bankruptcy relief simply because the debtor has previously paid a petition preparer for services rendered in connection with the case.

Rule 1006. Filing Fee

1 (a) GENERAL REQUIREMENT. Every petition shall be
2 accompanied by the filing fee except as provided in subdivisions
3 (b) and (c) of this rule. For the purpose of this rule, "filing fee"
4 means the filing fee prescribed by 28 U.S.C. § 1930(a)(1)-(a)(5)
5 and any other fee prescribed by the Judicial Conference of the
6 United States under 28 U.S.C. § 1930(b) that is payable to the clerk
7 upon the commencement of a case under the Code.
8 (b) PAYMENT OF FILING FEE IN INSTALLMENTS.

9 (1) *Application ~~for Permission~~ to Pay Filing Fee in*

10 *Installments.* A voluntary petition by an individual shall be

11 accepted for filing if accompanied by the debtor's signed

12 application, prepared as prescribed by the appropriate Official

13 Form, stating that the debtor is unable to pay the filing fee except

14 in installments. ~~The application shall state the proposed terms of~~

15 ~~the installment payments and that the applicant has neither paid~~

16 ~~any money nor transferred any property to an attorney for services~~

17 ~~in connection with the case.~~

18 * * * * *

19 (3) *Postponement of Attorney's Fees.* ~~The filing fee~~ All

20 installments of the filing fee must be paid in full before the debtor

21 or chapter 13 trustee may make further payments ~~pay an~~ to an

22 attorney or any other person who renders services to the debtor in

23 connection with the case.

24 (c) WAIVER OF FILING FEE. A voluntary chapter 7 petition

25 filed by an individual shall be accepted for filing if accompanied

26 by the debtor's application requesting a waiver under 28 U.S.C. §

27 1930(f), prepared as prescribed by the appropriate Official Form.

COMMITTEE NOTE

Subdivision (a) is amended to include a reference to new subdivision (c), which deals with fee waivers under 28 U.S.C.

§ 1930(f), which was added in 2005.

Subdivision (b)(1) is amended to delete the sentence requiring a disclosure that the debtor has not paid an attorney or other person in connection with the case. Inability to pay the filing fee in installments is one of the requirements for a fee waiver under the 2005 revisions to 28 U.S.C. § 1930(f). If the attorney payment prohibition were retained, payment of an attorney's fee would render many debtors ineligible for installment payments and thus enhance their eligibility for the fee waiver. The deletion of this prohibition from the rule, which was not statutorily required, ensures that debtors who have the financial ability to pay the fee in installments will do so rather than request a waiver.

Subdivision (b)(3) is amended in conformance with the changes to subdivision (b)(1) to reflect the 2005 amendments. The change is meant to clarify that subdivision (b)(3) refers to payments made after the debtor has filed the bankruptcy case and after the debtor has received permission to pay the fee in installments. Otherwise, the subdivision may conflict with the intent and effect of the amendments to subdivision (b)(1).

INTERIM RULES COMPARISON:

Comment 05-BR-038 (Commercial Law League of America) (See page 4 of the memo behind Tab 7 titled Recommendations on Comments Relating to Cross Border Insolvency) The CLLA recommended that Rules 1010 and 1011 be amended to include "all persons or bodies authorized to administer foreign proceedings" among the entities being served with an involuntary petition against a debtor under Rule 1010, and that Rule 1011 be amended to include those persons among the entities that can file a responsive pleading to an involuntary petition. These amendments may not be necessary because the court can direct service on other parties if appropriate under Rule 1010, and Rule 1011 permits any party in interest to contest the petition.

Rule 1010. Service of Involuntary Petition and Summons; Petition ~~Commencing Ancillary Case~~ <u>For Recognition of a Foreign Nonmain Proceeding</u>

1 <u>(a) SERVICE OF INVOLUNTARY PETITION AND</u>

2 <u>SUMMONS; SERVICE OF PETITION FOR RECOGNITION OF</u>

3 FOREIGN NONMAIN PROCEEDING. On the filing of an
4 involuntary petition or a petition ~~commencing a case ancillary to~~
5 for recognition of a foreign nonmain proceeding, the clerk shall
6 forthwith issue a summons for service. When an involuntary
7 petition is filed, service shall be made on the debtor. When a
8 petition ~~commencing an ancillary case~~ for recognition of a foreign
9 nonmain proceeding is filed, service shall be made on the ~~parties~~
10 ~~against whom relief is sought pursuant to § 304(b)~~ debtor, any
11 entity against whom provisional relief is sought under § 1519 of
12 the Code, and on any other ~~parties~~ party as the court may direct.
13 The summons shall be served with a copy of the petition in the
14 manner provided for service of a summons and complaint by Rule
15 7004(a) or (b). If service cannot be so made, the court may order
16 that the summons and petition be served by mailing copies to the
17 party's last known address, and by at least one publication in a
18 manner and form directed by the court. The summons and petition
19 may be served on the party anywhere. Rule 7004(e) and Rule 4(*l*)
20 F.R.Civ.P. apply when service is made or attempted under this
21 rule.
22 (b) CORPORATE OWNERSHIP STATEMENT. Each
23 petitioner that is a corporation shall file with the involuntary
24 petition a corporate ownership statement containing the

25 information described in Rule 7007.1.

COMMITTEE NOTE

This rule is amended to implement the 2005 amendments to the Code, which repealed § 304 and replaced it with chapter 15 governing ancillary and other cross-border cases. Under chapter 15, a foreign representative commences a case by filing a petition for recognition of a pending foreign nonmain proceeding. The amendment requires service of the summons and petition on the debtor and any entity against whom the representative is seeking provisional relief. Until the court enters a recognition order under § 1517, no stay is in effect unless the court enters some form of provisional relief under § 1519. Thus, only those entities against whom specific provisional relief is sought need to be served. The court may, however, direct that service be made on additional entities as appropriate.

This rule does not apply to a petition for recognition of a foreign main proceeding.

The rule is also amended by renumbering the prior rule as subdivision (a) and adding a new subdivision (b) requiring any corporate creditor that files or joins an involuntary petition to file a corporate ownership statement.

INTERIM RULES COMPARISON:

Rule 1011. Responsive Pleading or Motion in Involuntary and ~~Ancillary~~ Cross-Border Cases

1 (a) WHO MAY CONTEST PETITION. The debtor named in

2 an involuntary petition, or a party in interest to a petition

3 ~~commencing a case ancillary to a~~ for recognition of a foreign

4 proceeding, may contest the petition. In the case of a petition

5 against a partnership under Rule 1004, a nonpetitioning general

6 partner, or a person who is alleged to be a general partner but

7 denies the allegation, may contest the petition.

8 * * * * *

9 (f) CORPORATE OWNERSHIP STATEMENT. If the entity

10 responding to the involuntary petition or the petition for

11 recognition of a foreign proceeding is a corporation, the entity shall

12 file with its first appearance, pleading, motion, response, or other

13 request addressed to the court a corporate ownership statement

14 containing the information described in Rule 7007.1.

COMMITTEE NOTE

The rule is amended to reflect the 2005 amendments to the Code, which repealed § 304 and added chapter 15. Section 304 covered cases ancillary to foreign proceedings, while chapter 15 governs ancillary and other cross-border cases and introduces the concept of a petition for recognition of a foreign proceeding.

The rule is also amended in tandem with the amendment to Rule 1010 to require the parties responding to an involuntary petition and a petition for recognition of a foreign proceeding to file corporate ownership statements to assist the court in determining whether recusal is necessary.

INTERIM RULES COMPARISON:

The Interim Rule 1011(a) was not changed. Subdivision (f) is new. It requires the filing of a corporate ownership statement with the first paper filed in response to an involuntary petition. This change is not required by the 2005 Act.

Comments 06-BK-051 (Financial Services Roundtable), 06-BK-055 (American Bankers Association, et. al.), 05-BR-001 (Senator Chuck Grassley, 05-BR-032 (Financial Services Roundtable, 05-BR-033 (Senators Chuck Grassley and Jeff Sessions) 05-BR-034 (American Bankers Association, et. al.) (See page 18 of memo behind Tab 3 titled Comments Submitted After January 10, 2007 on Proposed Rules and Forms) These comments each suggest that

creditors should not be required to plead with specificity the circumstances that are alleged to constitute an abuse under § 707(b)(1) or (3). The Committee has considered these comments and concluded that there is a need for greater specificity in these motions to provide the debtor with some indication of the nature of the creditor's position. The statute permits dismissal under the totality of the circumstances, and the Committee concluded that debtors need to know what those circumstances are in order to properly respond to the motion.

Rule 1017. Dismissal or Conversion of Case; Suspension

1 * * * * *

2 (e) DISMISSAL OF AN INDIVIDUAL DEBTOR'S

3 CHAPTER 7 CASE, OR CONVERSION TO A CASE UNDER

4 CHAPTER 11 or 13, FOR ~~SUBSTANTIAL~~ ABUSE. The court

5 may dismiss or, with the debtor's consent, convert an individual

6 debtor's case for ~~substantial~~ abuse under § 707(b) only on motion

7 ~~by the United States trustee or on the court's own motion~~ and after

8 a hearing on notice to the debtor, the trustee, the United States

9 trustee, and any other ~~entities~~ entity as the court directs.

10 (1) Except as otherwise provided in § 704(b)(2), a ~~A~~

11 motion to dismiss a case for ~~substantial~~ abuse under § 707(b) or (c)

12 may be filed ~~by the United States trustee~~ only within 60 days after

13 the first date set for the meeting of creditors under § 341(a), unless,

14 on request filed ~~by the United States trustee~~ before the time has

15 expired, the court for cause extends the time for filing the motion

16 to dismiss. The ~~United States trustee~~ party filing the motion shall

17 set forth in the motion all matters to be considered ~~submitted to the~~

18 ~~court for its consideration~~ at the hearing. In addition, a motion to

19 dismiss under § 707(b)(1) and (3) shall state with particularity the

20 circumstances alleged to constitute abuse.

21 * * * * *

COMMITTEE NOTE

Subdivision (e) is amended to implement the 2005 amendments to § 707 of the Code. These statutory amendments permit conversion of a chapter 7 case to a case under chapter 11 or 13, change the basis for dismissal or conversion from "substantial abuse" to "abuse," authorize parties other than the United States trustee to bring motions under § 707(b) under certain circumstances, and add § 707(c) to create an explicit ground for dismissal based on the request of a victim of a crime of violence or drug trafficking. The conforming amendments to subdivision (e) preserve the time limits already in place for § 707(b) motions, except to the extent that § 704(b)(2) sets the deadline for the United States trustee to act. In contrast to the grounds for a motion to dismiss under § 707(b)(2), which are quite specific, the grounds under § 707(b)(1) and (3) are very general. Therefore, to enable the debtor to respond, subdivision (e) requires that motions to dismiss under § 707(b)(1) and (3) state with particularity the circumstances alleged to constitute abuse.

INTERIM RULES COMPARISON:

No change from the Interim Rules.

Comments 06-BK-055 and 05-BR-034 (American Bankers Association, et. al.) (See page 20 of memo behind Tab 3 titled Comments Submitted After January 10, 2007 on Proposed Rules and Forms) These comments each asserted that Rule 1020 should allow parties in interest 60 days to object to the debtor's designation under subdivision (b) of the rule rather than the 30 days provided. The Business Subcommittee concluded that 30 days was sufficient, and that extending the objection period to 60 days may also have negative consequences on the debtor and the case given the time limits for certain actions by a small business debtor that are included in the Code.

Rule 1020. ~~Election to be Considered a Small Business in a Chapter 11 Reorganization Case~~ Small Business Chapter 11

Reorganization Case

1 ~~In a chapter 11 reorganization case, a debtor that is a small~~
2 ~~business may elect to be considered a small business by filing a~~
3 ~~written statement of election not later than 60 days after the date of~~
4 ~~the order for relief.~~
5 (a) SMALL BUSINESS DEBTOR DESIGNATION. In a
6 voluntary chapter 11 case, the debtor shall state in the petition
7 whether the debtor is a small business debtor. In an involuntary
8 chapter 11 case, the debtor shall file within 15 days after entry of
9 the order for relief a statement as to whether the debtor is a small
10 business debtor. Except as provided in subdivision (c), the status
11 of the case as a small business case shall be in accordance with the
12 debtor's statement under this subdivision, unless and until the court
13 enters an order finding that the debtor's statement is incorrect.
14 (b) OBJECTING TO DESIGNATION. Except as provided in
15 subdivision (c), the United States trustee or a party in interest may
16 file an objection to the debtor's statement under subdivision (a) no
17 later than 30 days after the conclusion of the meeting of creditors
18 held under § 341(a) of the Code, or within 30 days after any
19 amendment to the statement, whichever is later.
20 (c) APPOINTMENT OF COMMITTEE OF UNSECURED
21 CREDITORS. If a committee of unsecured creditors has been

22 appointed under § 1102(a)(1), the case shall proceed as a small
23 business case only if, and from the time when, the court enters an
24 order determining that the committee has not been sufficiently
25 active and representative to provide effective oversight of the
26 debtor and that the debtor satisfies all the other requirements for
27 being a small business. A request for a determination under this
28 subdivision may be filed by the United States trustee or a party in
29 interest only within a reasonable time after the failure of the
30 committee to be sufficiently active and representative. The debtor
31 may file a request for a determination at any time as to whether the
32 committee has been sufficiently active and representative.
33 (d) PROCEDURE FOR OBJECTION OR
34 DETERMINATION. Any objection or request for a determination
35 under this rule shall be governed by Rule 9014 and served on: the
36 debtor; the debtor's attorney; the United States trustee; the trustee;
37 any committee appointed under § 1102 or its authorized agent, or,
38 if no committee of unsecured creditors has been appointed under §
39 1102, on the creditors included on the list filed under Rule
40 1007(d); and on any other entity as the court directs.

COMMITTEE NOTE

Under the Code, as amended in 2005, there are no longer any provisions permitting or requiring a small business debtor to elect to be treated as a small business. Therefore, the election

provisions in the rule are eliminated.

The 2005 amendments to the Code include several provisions relating to small business cases under chapter 11. Section 101 includes definitions of "small business debtor" and "small business case." The purpose of the new language in this rule is to provide a procedure for informing the parties, the United States trustee, and the court of whether the debtor is a small business debtor, and to provide procedures for resolving disputes regarding the proper characterization of the debtor. Because it is important to resolve such disputes early in the case, a time limit for objecting to the debtor's self-designation is imposed. Rule 9006(b)(1), which governs enlargement of time, is applicable to the time limits set forth in this rule.

An important factor in determining whether the debtor is a small business debtor is whether the United States trustee has appointed a committee of unsecured creditors under § 1102, and whether such a committee is sufficiently active and representative. Subdivision (c), relating to the appointment and activity of a committee of unsecured creditors, is designed to be consistent with the Code's definition of "small business debtor."

INTERIM RULES COMPARISON:

Several stylistic changes were made to the Rule. Since only the United States trustee can appoint a committee of unsecured creditors under § 1102, the reference to the United States trustee in subdivision (a) was deleted. The commas that set off the list of entities on whom service must be made under subdivision (d) was changed to a colon followed by semicolons to separate the entities.

Comment 06-BK-010 (Jack E. Horsley) (See Page 3 of memo behind Tab 3 titled Comments Submitted Prior to January 10, 2007 on Proposed Rules and Forms) Mr. Horsley noted the desirability of rules governing health care businesses given the longevity of the population. The National Bankruptcy Conference submitted **Comment 06-BK-018)** (See Page 8-9 of memo behind Tab 3 titled Comments Submitted After January 10, 2007 on Proposed Rules and Forms) which included a comment that Rule 1021 should be amended to require that whenever a petition is filed in which the debtor or the petitioning creditors in an involuntary case identify the debtor as a health care business, that notice of that status be sent to the persons listed in Proposed Rule 1021(b). Parties in interest would know that a patient care ombudsman had been appointed, and they could act under Proposed Rule 2007.2 to move to terminate the appointment if they wished

to do so. The lack of notice would not seem likely to create a problem in the cases. Finally, the ABI survey (**Comment 06-BK-056**) (Page 3 of memo behind Tab 4B) included responses that supported the insertion of deadlines in the rule for the designation of the business. The Committee had considered that issue at the time of its initial adoption and determined that there should be no specific deadline for such motions. The survey offered no reasons why the deadlines should be inserted, so it is not possible to determine if the respondents reached their decisions on the basis of arguments not already considered by the Advisory Committee.

Rule 1021. Health Care Business Case

1 (a) HEALTH CARE BUSINESS DESIGNATION. Unless the
2 court orders otherwise, if a petition in a case under chapter 7,
3 chapter 9, or chapter 11 states that the debtor is a health care
4 business, the case shall proceed as a case in which the debtor is a
5 health care business.
6 (b) MOTION. The United States trustee or a party in interest
7 may file a motion to determine whether the debtor is a health care
8 business. The motion shall be transmitted to the United States
9 trustee and served on: the debtor; the trustee; any committee
10 elected under § 705 or appointed under § 1102 of the Code or its
11 authorized agent, or, if the case is a chapter 9 municipality case or
12 a chapter 11 reorganization case and no committee of unsecured
13 creditors has been appointed under § 1102, on the creditors
14 included on the list filed under Rule 1007(d); and any other entity
15 as the court directs. The motion shall be governed by Rule 9014.

COMMITTEE NOTE

Section 101(27A) of the Code, added by the 2005

amendments, defines a health care business. This rule provides procedures for designating the debtor as a health care business. The debtor in a voluntary case, or petitioning creditors in an involuntary case, make that designation by checking the appropriate box on the petition. The rule also provides procedures for resolving disputes regarding the status of the debtor as a health care business.

INTERIM RULES COMPARISON:

The commas that set off the list of entities on whom service must be made under subdivision (b) was changed to a colon followed by semicolons to separate the entities.

Mr. Jack Horsley submitted **Comment 06-BK-010**. (Page 3 of memo behind Tab 3 titled Comments Submitted Prior to January 10, 2007 on Proposed Rules and Forms) He suggests that a portion of Rule 2003 that was not recommended for change be altered by clarifying that locations other than courtrooms might be appropriate to include in the rule. The rule concerns the location of meetings of creditors, and it already includes locations other than courtrooms, so there is no need to adopt this recommendation.

Rule 2003. Meeting of Creditors or Equity Security Holders

1 (a) DATE AND PLACE. Except as otherwise provided in §
2 341(e) of the Code, in ~~In~~ a chapter 7 liquidation or a chapter 11
3 reorganization case, the United States trustee shall call a meeting
4 of creditors to be held no fewer than 20 and no more than 40 days
5 after the order for relief. In a chapter 12 family farmer debt
6 adjustment case, the United States trustee shall call a meeting of
7 creditors to be held no fewer than 20 and no more than 35 days
8 after the order for relief. In a chapter 13 individual's debt
9 adjustment case, the United States trustee shall call a meeting of
10 creditors to be held no fewer than 20 and no more than 50 days

11 after the order for relief. If there is an appeal from or a motion to

12 vacate the order for relief, or if there is a motion to dismiss the

13 case, the United States trustee may set a later date for the meeting.

14 The meeting may be held at a regular place for holding court or at

15 any other place designated by the United States trustee within the

16 district convenient for the parties in interest. If the United States

17 trustee designates a place for the meeting which is not regularly

18 staffed by the United States trustee or an assistant who may preside

19 at the meeting, the meeting may be held not more than 60 days

20 after the order for relief.

21 * * * * *

COMMITTEE NOTE

If the debtor has solicited acceptances to a plan before commencement of the case, § 341(e), which was added to the Code by the 2005 amendments, authorizes the court, on request of a party in interest and after notice and a hearing, to order that a meeting of creditors not be convened. The rule is amended to recognize that a meeting of creditors might not be held in those cases.

INTERIM RULES COMPARISON:

No change from the Interim Rule.

Comment 05-BK-014 (William Redden, the Clerk of the Bankruptcy Court for the Eastern District of Virginia). (See page 1 of memo behind Tab 4B.) Mr. Redden correctly noted that Interim Rules 2007.2 and 2015.1 should refer to a "patient care ombudsman" rather than a "health care ombudsman." **That change has been made, so no further action is necessary regarding that comment. Comment 05-BK-037**, was submitted by the Insolvency Law Committee of the Business Law Section of the California State Bar. (See page 1-2 of memo

behind Tab 4B.) The comment suggests that Interim Rule 2007.2 should include a reference to the interests of patients as well as the quality of health care. The State Bar Committee states that § 333 of the Code provides that the ombudsman has the responsibility to consider the interests of patients. While that is true, the statute also provides that the determination of whether the appointment of an ombudsman is not necessary is based only on whether the appointment is "not necessary for the protection of patients under the specific circumstances of the case." Thus, the rule adopts the direct language of the statute, and the Insolvency Law Committee's reference to another portion of the statute is not relevant to the specific action governed by Rule 2007.2.

Rule 2007.2. Appointment of Patient Care Ombudsman in a Health Care Business Case

1 (a) ORDER TO APPOINT PATIENT CARE OMBUDSMAN.

2 In a chapter 7, chapter 9, or chapter 11 case in which the debtor is a

3 health care business, the court shall order the appointment of a

4 patient care ombudsman under § 333 of the Code, unless the court,

5 on motion of the United States trustee or a party in interest filed no

6 later than 20 days after the commencement of the case or within

7 another time fixed by the court, finds that the appointment of a

8 patient care ombudsman is not necessary under the specific

9 circumstances of the case for the protection of patients.

10 (b) MOTION FOR ORDER TO APPOINT OMBUDSMAN. If

11 the court has found that the appointment of an ombudsman is not

12 necessary, or has terminated the appointment, the court, on motion

13 of the United States trustee or a party in interest, may order the

14 appointment at a later time if it finds that the appointment has

15 become necessary to protect patients.

16 (c) NOTICE OF APPOINTMENT. If a patient care
17 ombudsman is appointed under § 333, the United States trustee
18 shall promptly file a notice of the appointment, including the name
19 and address of the person appointed. Unless the person appointed
20 is a State Long-Term Care Ombudsman, the notice shall be
21 accompanied by a verified statement of the person appointed
22 setting forth the person's connections with the debtor, creditors,
23 patients, any other party in interest, their respective attorneys and
24 accountants, the United States trustee, and any person employed in
25 the office of the United States trustee.
26 (d) TERMINATION OF APPOINTMENT. On motion of the
27 United States trustee or a party in interest, the court may terminate
28 the appointment of a patient care ombudsman if the court finds that
29 the appointment is not necessary to protect patients.
30 (e) MOTION. A motion under this rule shall be governed by
31 Rule 9014. The motion shall be transmitted to the United States
32 trustee and served on: the debtor; the trustee; any committee
33 elected under § 705 or appointed under § 1102 of the Code or its
34 authorized agent, or, if the case is a chapter 9 municipality case or
35 a chapter 11 reorganization case and no committee of unsecured
36 creditors has been appointed under § 1102, on the creditors
37 included on the list filed under Rule 1007(d); and such other

38 entities as the court may direct.

COMMITTEE NOTE

Section 333 of the Code, added by the 2005 amendments, requires the court to order the appointment of a health care ombudsman within the first 30 days of a health care business case, unless the court finds that the appointment is not necessary for the protection of patients. The rule recognizes this requirement and provides a procedure by which a party may obtain a court order finding that the appointment of a patient care ombudsman is unnecessary. In the absence of a timely motion under subdivision (a) of this rule, the court will enter an order directing the United States trustee to appoint the ombudsman.

Subdivision (b) recognizes that, despite a previous order finding that a patient care ombudsman is not necessary, circumstances of the case may change or newly discovered evidence may demonstrate the necessity of an ombudsman to protect the interests of patients. In that event, a party may move the court for an order directing the appointment of an ombudsman.

When the appointment of a patient care ombudsman is ordered, the United States trustee is required to appoint a disinterested person to serve in that capacity. Court approval of the appointment is not required, but subdivision (c) requires the person appointed, if not a State Long-Term Care Ombudsman, to file a verified statement similar to the statement filed by professional persons under Rule 2014 so that parties in interest will have information relevant to disinterestedness. If a party believes that the person appointed is not disinterested, it may file a motion asking the court to find that the person is not eligible to serve.

Subdivision (d) permits parties in interest to move for the termination of the appointment of a patient care ombudsman. If the movant can show that there no longer is any need for the ombudsman, the court may order the termination of the appointment.

INTERIM RULES COMPARISON:

A stylistic change was made in subdivision (a) by reordering the words in lines 9-10. Subdivision (c) was renamed "NOTICE

OF APPOINTMENT" as compared to "APPOINTMENT OF OMBUDSMAN." Subdivision (d) changed "not necessary for the protection of patients" to "not necessary to protect patients" on lines 16-17. The list in subdivision (e) is now set out by a colon and semicolons as compared to the separation of the listed items by commas in the Interim Rules.

Comment 05-BK-014 (William Redden, the Clerk of the Bankruptcy Court for the Eastern District of Virginia). (See page 1 of memo behind Tab 4B.) Mr. Redden correctly noted that Interim Rules 2007.2 and 2015.1 should refer to a "patient care ombudsman" rather than a "health care ombudsman." **That change has been made, so no further action is necessary regarding that comment. Comment 06-BK-018** submitted by the National Bankruptcy Conference proposes that Rule 2015.1 be amended to provide that the court should be allowed to restrict notice to patients when that would be in the best interests of the patient. While the sentence in the rule that identifies the recipients of the notice does not specifically authorize the court to order that the notice not be given to the patients, Rule 2015.1(a) begins with a recognition that the court can order otherwise as to the required notice. Therefore, it is not necessary to amend the rule to accomplish the purpose suggested by the comment.

Rule 2015.1. Patient Care Ombudsman

1 (a) REPORTS. Unless the court orders otherwise, a patient
2 care ombudsman, at least 10 days before making a report under §
3 333(b)(2) of the Code, shall give notice that the report will be
4 made to the court. The notice shall be transmitted to the United
5 States trustee, posted conspicuously at the health care facility that
6 is the subject of the report, and served on: the debtor; the trustee;
7 all patients; and any committee elected under § 705 or appointed
8 under § 1102 of the Code or its authorized agent, or, if the case is a
9 chapter 9 municipality case or a chapter 11 reorganization case and
10 no committee of unsecured creditors has been appointed under
11 § 1102, on the creditors included on the list filed under Rule

12 1007(d); and such other entities as the court may direct. The notice
13 shall state the date and time when the report will be made, the
14 manner in which the report will be made, and, if the report is in
15 writing, the name, address, telephone number, email address, and
16 website, if any, of the person from whom a copy of the report may
17 be obtained at the debtor's expense.
18 (b) AUTHORIZATION TO REVIEW CONFIDENTIAL
19 PATIENT RECORDS. A motion by a health care ombudsman
20 under § 333(c) to review confidential patient records shall be
21 governed by Rule 9014, served on the patient and any family
22 member or other contact person whose name and address has been
23 given to the trustee or the debtor for the purpose of providing
24 information regarding the patient's health care, and transmitted to
25 the United States trustee subject to applicable nonbankruptcy law
26 relating to patient privacy. Unless the court orders otherwise, a
27 hearing on the motion may not be commenced earlier than 15 days
28 after service of the motion.

COMMITTEE NOTE

This rule is new and implements § 333 of the Code, added by the 2005 amendments. Subdivision (a) is designed to give parties in interest, including patients or their representatives, sufficient notice so that they will be able to review written reports or attend hearings at which reports are made. The rule permits a notice to relate to a single report or to periodic reports to be given during the case. For example, the ombudsman may give notice that reports

will be made at specified intervals or dates during the case.

Subdivision (a) of the rule also requires that the notice be posted conspicuously at the health care facility in a place where it will be seen by patients and their families or others visiting the patients. This may require posting in common areas and patient rooms within the facility. Because health care facilities and the patients they serve can vary greatly, the locations of the posted notice should be tailored to the specific facility that is the subject of the report.

Subdivision (b) requires the ombudsman to notify the patient and the United States trustee that the ombudsman is seeking access to confidential patient records so that they will be able to appear and be heard on the matter. This procedure should assist the court in reaching its decision both as to access to the records and appropriate restrictions on that access to ensure continued confidentiality. Notices given under this rule are subject to the provisions of applicable federal and state law that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA).

INTERIM RULES COMPARISON:

There are minor stylistic changes to this Rule. In subdivision (a), the list of entities to be served is set off by a colon and semicolons rather than commas as in the Interim Rule. The last sentence of subdivision (b) is rewritten to clarify the limitation on the commencement of a hearing.

Comment 05-BR-034 submitted by the American Bankers Association, et. al., expressed support for Rule 3016 and notes that the rule makes adequate recognition of new Code § 1125(f)(1).

Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case

1 * * * * *

1 (b) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a

2 disclosure statement under § 1125 <u>of the Code</u> or evidence

3 showing compliance with § 1126(b) ~~of the Code~~ shall be filed with

4 the plan or within a time fixed by the court, unless the plan is

5 intended to provide adequate information under § 1125(f)(1). If

6 the plan is intended to provide adequate information under §

7 1125(f)(1), it shall be so designated and Rule 3017.1 shall apply as

8 if the plan is a disclosure statement.

9 * * * * *

10 (d) STANDARD FORM SMALL BUSINESS DISCLOSURE

11 STATEMENT AND PLAN. In a small business case, the court

12 may approve a disclosure statement and may confirm a plan that

13 conform substantially to the appropriate Official Forms or other

14 standard forms approved by the court.

COMMITTEE NOTE

Subdivision (b) is amended to recognize that, in 2005, § 1125(f)(1) was added to the Code to provide that the plan proponent in a small business case need not file a disclosure statement if the plan itself includes adequate information and the court finds that a separate disclosure statement is unnecessary. If the plan is intended to provide adequate information in a small business case, it may be conditionally approved as a disclosure statement under Rule 3017.1 and is subject to all other rules applicable to disclosure statements in small business cases.

Subdivision (d) is added to the rule to implement § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 which requires the promulgation of Official Forms for plans and disclosure statements in small business cases. Section 1125(f)(2) of the Code provides that the court may approve a disclosure statement submitted on the appropriate Official Form or on a standard form approved by the court. The rule takes no

position on whether a court may require a local standard form disclosure statement or plan of reorganization in lieu of the Official Forms.

Other amendments are stylistic.

INTERIM RULES COMPARISON:

There is no change in subdivision (b) from the Interim Rules. Subdivision (d) is new. It implements a provision of the 2005 Act that does not become effective until the applicable rules and Official Forms become effective under the Rules Enabling Act.

Comment 05-BR-034 submitted by the American Bankers Association, et. al., suggested that the Rule 3017.1 be revised to state that the deadlines for the actions set out in subdivision (1)(a) be "a reasonable time that fully protects the substantive and procedural rights of all holders of claims and interests." The courts will take such matters into their consideration when setting these deadlines, so there is no need to amend the rule to state such a requirement in the text of the rule.

Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case

1 (a) CONDITIONAL APPROVAL OF DISCLOSURE

2 STATEMENT. ~~If the debtor is~~ In a small business case ~~and has~~

3 ~~made a timely election to be considered a small business in a~~

4 ~~chapter 11 case~~, the court may, on application of the plan

5 proponent or on its own initiative, conditionally approve a

6 disclosure statement filed in accordance with Rule 3016~~(b)~~. On or

7 before conditional approval of the disclosure statement, the court

8 shall:

9 (1) fix a time within which the holders of claims and

10 interests may accept or reject the plan;

11 (2) fix a time for filing objections to the disclosure

12 statement;

13 (3) fix a date for the hearing on final approval of the

14 disclosure statement to be held if a timely objection is filed; and

15 (4) fix a date for the hearing on confirmation.

16 * * * * *

COMMITTEE NOTE

Section 101 of the Code, as amended in 2005, defines a "small business case" and "small business debtor,"and eliminates any need to elect that status. Therefore, the reference in the rule to an election is deleted.

As provided in the amendment to Rule 3016(b), a plan intended to provide adequate information in a small business case under § 1125(f)(1) may be conditionally approved and is otherwise treated as a disclosure statement under this rule.

INTERIM RULES COMPARISON:

No change from the Interim Rule.

Comment 06-BK-051 submitted by the Financial Services Roundtable suggests that Rule 4006 should be amended to require debtors to file a certificate or provide other proof of completion of the postpetition personal financial management course. **Comment 05-BR-001** submitted by Senator Grassley also asserted that the rule should require debtors to file a certificate. The Committee considered this position and concluded that the language of Code distinguishes between prepetition credit counseling for which the debtor is required to file a certificate, and the postpetition personal financial management course for which the Code contains no requirement of the filing of a certificate.

Rule 4006. Notice of No Discharge

1 If an order is entered: denying a discharge; ~~or~~ revoking a

2 discharge; ~~or if~~ approving a waiver of discharge; ~~is filed~~ or, in the

3 case of an individual debtor, closing the case without the entry of a

4 discharge, the clerk ~~, after the order becomes final or the waiver is~~

5 ~~filed~~ shall promptly ~~give notice thereof to~~ notify all ~~creditors~~

6 parties in interest in the manner provided ~~in~~ by Rule 2002.

COMMITTEE NOTE

This amendment was necessary because the 2005 amendments to the Code require that individual debtors in a chapter 7 or 13 case complete a course in personal financial management as a condition to the entry of a discharge. If the debtor fails to complete the course, the case may be closed and no discharge will be entered. Reopening the case is governed by § 350 and Rule 5010. The rule is amended to provide notice to parties in interest, including the debtor, that no discharge was entered.

INTERIM RULES COMPARISON:

Several minor stylistic changes were made from the Interim Rule. The initial list in the Rule is revised slightly to make it consistent, and "give notice thereof" is changed to "notify" on lines 6-7.

Comment 06-BK-055 (American Bankruptcy Institute). The survey conducted by the ABI included a strong response where 85 of 90 responders suggest that the rule include a specific deadline for objections to the dischargeability of a debt under § 1328(a)(4). The Consumer Subcommittee has not considered this suggestion.

Rule 4007. Determination of Dischargeability of a Debt

1 * * * * *

2 (c) TIME FOR FILING COMPLAINT UNDER § 523(c) IN A

3 CHAPTER 7 LIQUIDATION, CHAPTER 11

4 REORGANIZATION, ~~OR~~ CHAPTER 12 FAMILY FARMER'S

5 DEBT ADJUSTMENT CASE, OR CHAPTER 13

6 INDIVIDUAL'S DEBT ADJUSTMENT CASE; NOTICE OF

7 TIME FIXED. Except as otherwise provided in subdivision (d), a

8 ~~A~~ complaint to determine the dischargeability of a debt under §

9 523(c) shall be filed no later than 60 days after the first date set for

10 the meeting of creditors under § 341(a). The court shall give all

11 creditors no less than 30 days' notice of the time so fixed in the

12 manner provided in Rule 2002. On motion of a party in interest,

13 after hearing on notice, the court may for cause extend the time

14 fixed under this subdivision. The motion shall be filed before the

15 time has expired.

16 (d) TIME FOR FILING COMPLAINT UNDER § ~~523(c)~~

17 523(a)(6) IN CHAPTER 13 INDIVIDUAL'S DEBT

18 ADJUSTMENT CASE; NOTICE OF TIME FIXED. On motion

19 by a debtor for a discharge under § 1328(b), the court shall enter an

20 order fixing the time to file a complaint to determine the

21 dischargeability of any debt under § ~~523(c)~~ 523(a)(6) and shall give

22 no less than 30 days' notice of the time fixed to all creditors in the

23 manner provided in Rule 2002. On motion of any party in interest

24 after hearing on notice the court may for cause extend the time

25 fixed under this subdivision. The motion shall be filed before the

26 time has expired.

* * * * *

COMMITTEE NOTE

Subdivision (c) is amended because of the 2005 amendments to § 1328(a) of the Code. This revision expands the exceptions to discharge upon completion of a chapter 13 plan. Subdivision (c) extends to chapter 13 the same time limits applicable to other chapters of the Code with respect to the two exceptions to discharge that have been added to § 1328(a) and that are within § 523(c).

The amendment to subdivision (d) reflects the 2005 amendments to § 1328(a) that expands the exceptions to discharge upon completion of a chapter 13 plan, including two out of three of the provisions that fall within § 523(c). However, the 2005 revisions to § 1328(a) do not include a reference to § 523(a)(6), which is the third provision to which § 523(c) refers. Thus, subdivision (d) is now limited to that provision.

INTERIM RULES COMPARISON:

No change from the Interim Rule.

Comments 06-BK-055 and 05-BR-034 (American Bankers Association, et. al.) each suggest that reaffirmation agreements be uniform and that the rule require the use of a standard form that implements the 2005 statutory changes. The National Bankruptcy Conference submitted **Comment 06-BK-018)** (see page 7 of memo behind Tab 3 titled Comments Submitted After January 10, 2007 on Proposed Rules and Forms) and it also suggests that an Official Form for reaffirmation agreements be adopted. These suggestions each address a forms issue rather than a rules issue, so no change is required in the rule as it was published. The Forms Subcommittee has recommended an Official Form for reaffirmation agreements.

Rule 4008. ~~Discharge and Reaffirmation Hearing~~ Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement

1 (a) FILING OF REAFFIRMATION AGREEMENT. A

2 reaffirmation agreement shall be filed no later than 60 days after

3 the first date set for the meeting of creditors under § 341(a) of the
4 Code. The court may, at any time and in its discretion, enlarge the
5 time to file a reaffirmation agreement. ~~Not more than 30 days~~
6 ~~following the entry of an order granting or denying a discharge, or~~
7 ~~confirming a plan in a chapter 11 reorganization case concerning~~
8 ~~an individual debtor and on not less than 10 days notice to the~~
9 ~~debtor and the trustee, the court may hold a hearing as provided in~~
10 ~~§ 524(d) of the Code. A motion by the debtor for approval of a~~
11 ~~reaffirmation agreement shall be filed before or at the hearing.~~
12 (b) STATEMENT IN SUPPORT OF REAFFIRMATION
13 AGREEMENT. The debtor's statement required under §
14 524(k)(6)(A) shall be accompanied by a statement of the total
15 income and expenses stated on schedules I and J. If there is a
16 difference between the total income and expenses stated on those
17 schedules and the statement required under § 524(k)(6)(A), the
18 statement required by this subdivision shall include an explanation
19 of the difference.

COMMITTEE NOTE

This rule is amended to establish a deadline for filing reaffirmation agreements. The Code sets out a number of prerequisites to the enforceability of reaffirmation agreements. Among those requirements, § 524(k)(6)(A) provides that each reaffirmation agreement must be accompanied by a statement indicating the debtor's ability to make the payments called for by the agreement. In the event that this statement reflects an

insufficient income to allow payment of the reaffirmed debt, § 524(m) provides that a presumption of undue hardship arises, allowing the court to disapprove the reaffirmation agreement, but only after a hearing conducted prior to the entry of discharge. Rule 4004(c)(1)(K) accommodates this provision by delaying the entry of discharge where a presumption of undue hardship arises. However, in order for that rule to be effective, the reaffirmation agreement itself must be filed before the entry of discharge. Under Rule 4004(c)(1) discharge is to be entered promptly after the expiration of the time for filing a complaint objecting to discharge, which, under Rule 4004(a), is 60 days after the first date set for the meeting of creditors under § 341(a). Accordingly, that date is set as the deadline for filing a reaffirmation agreement.

Any party may file the agreement with the court. Thus, whichever party has a greater incentive to enforce the agreement usually will file it. In the event that the parties are unable to file a reaffirmation agreement in a timely fashion, the rule grants the court broad discretion to permit a late filing. A corresponding change to Rule 4004(c)(1)(J) accommodates such an extension by providing for a delay in the entry of discharge during the pendency of a motion to extend the time for filing a reaffirmation agreement.

Rule 4008 is also amended by deleting provisions regarding the timing of any reaffirmation and discharge hearing. As noted above, § 524(m) itself requires that hearings on undue hardship be conducted prior to the entry of discharge. In other respects, including hearings to approve reaffirmation agreements of unrepresented debtors under § 524(c)(6), the rule leaves discretion to the court to set the hearing at a time appropriate for the particular circumstances presented in the case and consistent with the scheduling needs of the parties.

INTERIM RULES COMPARISON:

This Rule is rewritten to change the deadline for filing a reaffirmation agreement from "30 days following the entry of a discharge" to "60 days after the first date set for the § 341 meeting of creditors." The earlier deadline is necessary to permit the court to hold a timely hearing on the enforceability of reaffirmation agreements when the debtor's income appears insufficient to meet the reaffirmation obligation.

Comment 06-BK-052 submitted by the Federal Courts Committee of the California State Bar (see page 15 of memo behind Tab 3 titled Comments Submitted After January 10, 2007 on Proposed Rules and Forms) suggests that the debtor and not the court send the notice of a presumption of abuse if the notice is required by the debtor's late submission of the necessary documents. The Consumer Subcommittee concluded that no change in the rule was necessary both because there are relatively few situations in which the issue arises so that the expense is not significant. Furthermore, notice from the court as opposed to being from the debtor (who may oftentimes be unrepresented) will be more reliable.

Rule 5008. Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors

1 If a presumption of abuse has arisen under § 707(b) in a chapter
2 7 case of an individual with primarily consumer debts, the clerk
3 shall within 10 days after the date of the filing of the petition notify
4 creditors of the presumption of abuse in accordance with Rule
5 2002. If the debtor has not filed a statement indicating whether a
6 presumption of abuse has arisen, the clerk shall within 10 days
7 after the date of the filing of the petition notify creditors that the
8 debtor has not filed the statement and that further notice will be
9 given if a later filed statement indicates that a presumption of
10 abuse has arisen. If a debtor later files a statement indicating that a
11 presumption of abuse has arisen, the clerk shall notify creditors of
12 the presumption of abuse as promptly as practicable.

COMMITTEE NOTE

This rule is new. The 2005 amendments to § 342 of the Code require that clerks give written notice to all creditors not later than 10 days after the date of the filing of the petition that a presumption of abuse has arisen under § 707(b). A statement filed by the debtor will be the source of the clerk's information about the

presumption of abuse. This rule enables the clerk to meet its obligation to send the notice within the statutory time period set forth in § 342. In the event that the court receives the debtor's statement after the clerk has sent the first notice, and the debtor's statement indicates a presumption of abuse, the rule requires that the clerk send a second notice.

INTERIM RULES COMPARISON:

The order of the wording in the first sentence of the Rule is changed to emphasize that the subdivision applies when a specific presumption arises. In lines 14-15, the words "shall notify" are substituted for "shall give notice to."

Comment 06-BK-057 (Ms. Margaret Grammar Gay, Chief Deputy Clerk of the Bankruptcy Court for the District of New Mexico) (see pages 23-24 of memo behind Tab 3 titled Comments Submitted After January 10, 2007 on Proposed Rules and Forms). Ms. Grammar Gay asserts that the change in the rule to establish the docketing of the case as the triggering date for determining the court to which a certification request should be made may not establish a bright line. She notes that there is some confusion as to when the appeal is docketed because the clerk of the district court in New Mexico apparently "dockets" the matter when it receives the certificate of service of the notice of appeal rather than when the clerk of the bankruptcy court transmits a copy of the complete record in the case. This does seem to create some uncertainty, but it would appear that the uncertainty is a consequence of the clerk of the district court moving more quickly than Rule 8007(b) anticipates in the docketing of appeals. In **Comment 05-BK-017**, Mr. Mark Diamond asserted that the language of subdivision (f)(1) of the Interim Rule be revised, and that language was changed such that the ambiguity concerning interlocutory and final orders is resolved. Thus, no further changes were made.

Rule 8001. Manner of Taking Appeal; Voluntary Dismissal; Certification to Court of Appeals

1 * * * * *

2 (e) ELECTION TO HAVE APPEAL HEARD BY DISTRICT

3 COURT INSTEAD OF BANKRUPTCY APPELLATE PANEL;

4 WITHDRAWAL OF ELECTION.

5 (1) *Separate Writing for Election.* An election to have an
6 appeal heard by the district court under 28 U.S.C. § 158(c)(1) may
7 be made only by a statement of election contained in a separate
8 writing filed within the time prescribed by 28 U.S.C. § 158(c)(1).
9 (2) *Withdrawal of Election.* A request to withdraw the
10 election may be filed only by written stipulation of all the parties to
11 the appeal or their attorneys of record. Upon such a stipulation, the
12 district court may either transfer the appeal to the bankruptcy
13 appellate panel or retain the appeal in the district court.
14 (f) CERTIFICATION FOR DIRECT APPEAL TO COURT OF
15 APPEALS.
16 (1) *Timely Appeal Required.* A certification of a judgment,
17 order, or decree of a bankruptcy court to a court of appeals under
18 28 U.S.C. § 158(d)(2) shall not be effective until a timely appeal
19 has been taken in the manner required by subdivisions (a) or (b) of
20 this rule and the notice of appeal has become effective under Rule
21 8002.
22 (2) *Court Where Certification Made and Filed.* A
23 certification that a circumstance specified in 28 U.S.C. §
24 158(d)(2)(A)(i)-(iii) exists shall be filed in the court in which a
25 matter is pending for purposes of 28 U.S.C. § 158(d)(2) and this
26 rule. A matter is pending in a bankruptcy court until the docketing,

27 in accordance with Rule 8007(b), of an appeal taken under 28
28 U.S.C. § 158(a)(1) or (2), or the grant of leave to appeal under 28
29 U.S.C. § 158(a)(3). A matter is pending in a district court or
30 bankruptcy appellate panel after the docketing, in accordance with
31 Rule 8007(b), of an appeal taken under 28 U.S.C. § 158(a)(1) or
32 (2), or the grant of leave to appeal under 28 U.S.C. § 158(a)(3).
33 (A) Certification by Court on Request or Court's Own
34 Initiative.
35 (i) Before Docketing or Grant of Leave to Appeal.
36 Only a bankruptcy court may make a certification on request or on
37 its own initiative while the matter is pending in the bankruptcy
38 court.
39 (ii) After Docketing or Grant of Leave to Appeal.
40 Only the district court or bankruptcy appellate panel involved may
41 make a certification on request of the parties or on its own
42 initiative while the matter is pending in the district court or
43 bankruptcy appellate panel.
44 (B) Certification by All Appellants and Appellees
45 Acting Jointly. A certification by all the appellants and appellees,
46 if any, acting jointly may be made by filing the appropriate Official
47 Form with the clerk of the court in which the matter is pending.
48 The certification may be accompanied by a short statement of the

49 basis for the certification, which may include the information listed

50 in subdivision (f)(3)(C) of this rule.

51 (3) *Request for Certification; Filing; Service; Contents.*

52 (A) A request for certification shall be filed, within the

53 time specified by 28 U.S.C. § 158(d)(2), with the clerk of the court

54 in which the matter is pending.

55 (B) Notice of the filing of a request for certification

56 shall be served in the manner required for service of a notice of

57 appeal under Rule 8004.

58 (C) A request for certification shall include the

59 following:

60 (i) the facts necessary to understand the question

61 presented;

62 (ii) the question itself;

63 (iii) the relief sought;

64 (iv) the reasons why the appeal should be allowed

65 and is authorized by statute or rule, including why a circumstance

66 specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists; and

67 (v) an attached copy of the judgment, order, or

68 decree complained of and any related opinion or memorandum.

69 (D) A party may file a response to a request for

70 certification or a cross request within 10 days after the notice of the

71 request is served, or another time fixed by the court.

72 (E) Rule 9014 does not govern a request, cross request,

73 or any response. The matter shall be submitted without oral

74 argument unless the court otherwise directs.

75 (F) A certification of an appeal under 28 U.S.C. §

76 158(d)(2) shall be made in a separate document served on the

77 parties.

78 (4) *Certification on Court's Own Initiative.*

79 (A) A certification of an appeal on the court's own

80 initiative under 28 U.S.C. § 158(d)(2) shall be made in a separate

81 document served on the parties in the manner required for service

82 of a notice of appeal under Rule 8004. The certification shall be

83 accompanied by an opinion or memorandum that contains the

84 information required by subdivision (f)(3)(C)(i)-(iv) of this rule.

85 (B) A party may file a supplementary short statement

86 of the basis for certification within 10 days after the certification.

87 (5) *Duties of Parties After Certification.* A petition for

88 permission to appeal in accordance with F. R. App. P. 5 shall be

89 filed no later than 30 days after a certification has become effective

90 as provided in subdivision (f)(1).

COMMITTEE NOTE

Subdivision (e) is amended by redesignating the subdivision as

(e)(1) and adding new subdivision (e)(2). Subdivision (e)(2) explicitly recognizes the district court's authority to transfer an appeal to the bankruptcy appellate panel on two conditions: first, all of the parties to the appeal must have agreed to request the withdrawal of the election to have the district court hear the appeal; and, second, the district court must decide whether to grant the request for withdrawal. The district court has discretion either to keep the case or transfer it to the bankruptcy appellate panel, which will prevent strategic behavior by parties and avoid the wasting of judicial resources.

Subdivision (f) is added to the rule to implement the 2005 amendments to 28 U.S.C. § 158(d). That section authorizes appeals directly to the court of appeals, with that court's consent, upon certification that a ground for the appeal exists under § 158(d)(2)(A)(i)-(iii). Certification can be made by the court on its own initiative or in response to a request of a party. Certification also can be made by all of the appellants and appellees. Under subdivision (f)(1), certification is effective only when a timely appeal is commenced under subdivision (a) or (b), and a notice of appeal has been timely filed under Rule 8002. These actions will provide sufficient notice of the appeal to the circuit clerk, so the rule dispenses with the uncodified temporary procedural requirements set out in § 1233 (b)(4) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8.

The rule adopts a bright-line test for identifying the court in which a matter is pending. Under subdivision (f)(2), the bright-line chosen is the "docketing" under Rule 8007(b) of an appeal of an interlocutory order or decree under 28 U.S.C. § 158(a)(2) or a final judgment, order or decree under 28 U.S.C. § 158(a)(1), or the granting of leave to appeal any other interlocutory judgment, order or decree under 28 U.S.C. § 158(a)(3), whichever is earlier.

To ensure that parties are aware of a certification, the rule requires either that it be made on the Official Form (if being made by all of the parties to the appeal) or on a separate document (whether the certification is made on the court's own initiative or in response to a request by a party). This is particularly important because the rule adopts the bankruptcy practice established by Rule 8001(a) and (b) of requiring a notice of appeal in every instance, including interlocutory orders, of appeals from bankruptcy court

orders, judgments, and decrees. Because this requirement is satisfied by filing the notice of appeal that takes the appeal to the district court or bankruptcy appellate panel in the first instance, the rule does not require a separate notice of appeal if a certification occurs after a district court or bankruptcy appellate panel decision.

A certification under subdivision (f)(1) does not place the appeal in the circuit court. Rather, the court of appeals must first authorize the direct appeal. Subdivision (f)(5) therefore provides that any party intending to pursue the appeal in the court of appeals must seek that permission under Rule 5 of the Federal Rules of Appellate Procedure. Subdivision (f)(5) requires that the petition for permission to appeal be filed within 30 days after an effective certification.

INTERIM RULES COMPARISON:

JOHN CONYERS, JR., Michigan
CHAIRMAN

LAMAR S. SMITH, Texas
RANKING MINORITY MEMBER

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515–6216
One Hundred Tenth Congress

March 22, 2007

The Honorable Thomas S. Zilly
Chairman
Advisory Committee on Bankruptcy Rules
Judicial Conference of the United States
Washington, DC 20544

Dear Judge Zilly:

We write because of two reasons. First, we want to commend the Committee for its hard work and dedication to proposing interim amendments to the Federal Bankruptcy Rules in response to the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (2005) ("Act"). These interim rules have enabled our nation's bankruptcy system to make major adjustments while continuing to serve the needs of debtors and creditors. We know that Committee expended many hours to strike the right balance in interpreting the myriad revisions to the law and practice effected by the Act.

Second, we want to share with you our continuing concern about the implementation of the Act. As you may know, we worked tirelessly to temper the harshness and one-sided aspect of many of the bill's provisions over the course of the four Congresses when the legislation was debated. We are sure you and the members of the Committee realize that it is no less critical to ensure that any implementing rules be scrutinized by the Rules Committee, the Judicial Conference, and the Supreme Court so that the historic balance struck between creditor and debtor rights be maintained in the fulfillment of Bankruptcy Rule 1001's admonition that the rules "be construed to secure the just, speedy, and inexpensive determination of every case and proceeding."

Especially in light of the Committee's current deliberations and because of previous Congressional input the Committee received from Senators Grassley and Sessions pursuant to their letter of March 13, 2006, there are several issues that we want to bring to your attention. With respect to Official Form 22, Statement of Current Monthly Income, we must respectfully disagree with the Senators. The Form, as currently drafted, faithfully carries out the Act's mandates. Section 707(b)(7) of the Bankruptcy Code, as amended by the Act, explicitly provides an exemption from the Act's means test for debtors with incomes below the stated thresholds. To require debtors who are not subject to the means test to complete many pages of irrelevant and time-consuming calculations would directly contravene section 707(b)(7) and Rule 1001.

We also disagree with the Senators' suggestion that creditors should be able to allege abuse without specifically pleading what abuse is being alleged. They apparently oppose Interim Rule 1017(e)(1), which provides that a motion under section 707(b)(1) or (3) "shall state with particularity the circumstances alleged to constitute abuse." The requirements of Rule 1017(e)(1) merely implement Rule 1001's mandate that the rules secure the "just, speedy, and inexpensive determination" of proceedings. Rule 1017(e)(1) ensures that debtors are provided an adequate explanation of the grounds for the motion and assists the court in identifying the issues to be determined.

As we already noted, many of us in Congress fought hard to reduce the burdensome documentation requirements of the Act. For example, we were able to modify the original provision that would have required the debtor to file tax returns for the three-year period before the filing of the bankruptcy case. Instead, section 521(e)(2)(A), as amended by the Act, permits the debtor, at his or her election, to provide either a copy of the tax return for the preceding year or a transcript. Accordingly, we are particularly concerned about Proposed Rule 4002(b)(2), which would require debtors to provide certain types of financial information. Not only would this Rule impose additional and burdensome document production requirements on debtors, but the Rule appears to exceed what is required by the Act. Clearly, a trustee may request such documentation based on the circumstances of a particular case. Accordingly, there is no need to impose these new burdens on all debtors in all cases.

We also want to call your attention to those who advocate that differential burdens be placed on attorneys who represent debtors as opposed to those who represent creditors or business interests. That is an unwise distinction for any court to consider – especially a court with equitable jurisdiction – and certainly no rule of procedure should suggest such a distinction. Our judicial system is predicated on the even-handed treatment of all parties before the bar, and that certainly extends to their legal representatives. Having a more onerous standard, or any different standard, for the proper certification and filing of documents by debtors' attorneys establishes a bad judicial precedent more reflective of the ideological disputes of past Congressional debates than the pursuit of justice before the law.

We appreciate your Committee's attention to these concerns and, again, commend the Committee for its leadership on ensuring that the procedural commands of the Act are implemented equitably.

Sincerely,

John Conyers, Jr.
Chairman

Linda T. Sánchez
Chairwoman, Subcommittee on Commercial and Administrative Law

cc: The Honorable Lamar S. Smith
The Honorable Chris Cannon

MEMORANDUM

TO: ADVISORY COMMITTEE ON THE BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON ATTORNEY CONDUCT

RE: RULE 9011 AND ATTORNEYS FOR CREDITORS

DATE: MARCH 22, 2007

In response to § 319 of BAPCPA and § 707(b)(4)(D) of the Code, the Subcommittee has considered several amendments to Rule 9011 as well as to Official Form 1, the Voluntary Petition. The Subcommittee concluded that the obligations of attorneys under § 707(b)(4)(D) should not be limited to chapter 7 cases because the attorney may not know the chapter under which a case may proceed at the time the attorney is conducting a review of the debtor's financial status. Moreover, establishing an appropriate minimum level of scrutiny by the debtor's attorney is proper whichever chapter under which the case might proceed. In the discussion of these issues, the Subcommittee also briefly considered whether Rule 9011 should be amended to include new standards applicable to all parties and attorneys participating in bankruptcy cases. Concerns were expressed that applying different standards of behavior for attorneys based on the identity of the client could create an imbalance in the adjudicative process. The Subcommittee also noted that if certain standards were established for debtors' attorneys, then such standards would be presumptively appropriate and should apply across the board to all counsel in a case. The discussion noted that problems have arisen in two primary areas. First, some creditors and their attorneys seem to be neglecting their responsibilities to submit accurate information both in the proof of claim and in supporting documents that set out the creditor's claim. Second, litigation over the automatic stay has included the submission of false information in situations in

which the courts are likely to rely on the information in granting relief.

The Subcommittee has decided to recommend to the Advisory Committee that Rule 9011 be amended to provide that a consumer debtor's attorney "has no knowledge after an inquiry that the information in the schedule or amended schedule is incorrect." This standard for a debtor's attorney's conduct is in addition to the more general standards that apply to all attorneys under existing Rule 9011. It is a more stringent standard than the requirement under current Rule 9011(b)(3) which provides that "allegations and other factual contentions have evidentiary support of, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery."

The issue raised briefly in the Subcommittee's previous discussion is whether Rule 9011 should be amended in some manner to address concerns about some practices of counsel for consumer creditors in connection with the submission of proofs of claims. The Subcommittee noted that problems have arisen in some parts of the country over the sufficiency and accuracy of claims submitted in cases leading to extensive claims objection litigation. The courts have not resolved the issue of the failure of creditors to attach supporting documentation to a proof of claim form, compare In re Heath, 331 B.R. 424 (9th Cir. BAP 2006) (lack of documentation attached to proof of claim filed by credit card issuer does not constitute a ground for denying a claim under § 502 of the Code) with In re Kirkland, 2007 B.R.118197 (Bankr. D.N.M., January 9, 2007) (when the claim objection is brought by the trustee, the absence of any documentation to support a claim results in the disallowance of the claim because the creditor has not met its burden of going forward due to the lack of the presumption of the validity of the claim that arises under Rule 3001(f)). While persons filing a proof of claim are subject to punishment under Title

18 of the United States Code, the likelihood of a criminal prosecution is minimal, especially for the filing of a single false claim. Nonetheless, that false claim has an impact on the case in which it is filed, so it may be proper to consider additional restrictions on the behavior of creditors and their counsel.

Another area in which the courts have noted problems with the submission of documents or other evidentiary statements is in contested matters for relief from the automatic stay. Every bankruptcy court faces hundreds of stay relief motions on a regular basis. The sheer volume of these matters creates a need for efficiency in the resolution of these requests for relief.[1] The process for resolving the matters has evolved into a very summary one in many courts. As one court described its process,

> In this Court it has not been the practice to require affidavits based upon personal knowledge in routine motion practice. Thus, in motions by secured creditors for relief from the automatic stay in cases under Chapter 7 or Chapter 13, the facts are customarily presented in the form of an affidavit, affirmation or other pleading signed by an attorney for the secured creditor. Institutional creditors with computerized data systems and trained staff and their counsel generally do not make mistakes in the relatively simply task of accounting for a debtor's payments, and the facts concerning the debtor's default are rarely contested. Where the debtor and the creditor do disagree as to amounts due, the differences will almost always be reconciled by both sides sitting down and going over their respective records and accounts. Thus,

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[1] The court in In re Porcheddu, 338 B.R. 729, 734 (Bankr. S.D. Tex. 2006), noted that "In 2005, there were 18,355 motions for relief from the automatic stay filed in chapter 7 or chapter 13 cases in the United States Bankruptcy Court for the Southern District of Texas." There are six bankruptcy judges in that district, so each judge faces an average of over 3,100 such motions annually. In the case, the court found that an attorney had falsely testified regarding the firm's time records that were submitted to the court in support of a motion for the payment of those fees in connection with an action for relief from the stay.

> in most routine lift stay motions in Chapter 7 and 13 cases the practice of using attorney submissions to present "client facts" is more expeditious and cost effective than requiring a client affidavit and generally does not jeopardize fundamental rights or notions of fairness.

In re Gorshtein, 285 B.R. 118, 121 (Bankr. S.D.N.Y. 2002). After describing this process, the court noted that it "*relies,* as it must, on the secured creditor's written submission in granting relief." Id. This reliance is problematic if the information being provided to the court in the form of attorney affidavits or certifications is inaccurate. During the Subcommittee's previous discussion, reference was made to situations in which the information asserted to being supplied by a particular person employed by a creditor in fact was not being supplied by that person at all. Instead, the creditor's counsel used "pre-signed" certifications which were then attached to the attorney's affidavits regarding the status of a debtor's account. In that case, In re Rivera, 342 B.R. 435 (Bankr. D.N.J. 2006), the court found that

> It is now clear that the respondent law firm, Shapiro & Diaz, LLP ("S & D"), had for an extended period engaged in the practice of preparing certifications in support of bankruptcy stay relief motions and applications, knowingly attaching presigned statements of certification. The actual signatories to the "on-file" forms were in many instances not the client-providers of the information contained in the certifications as submitted, nor did those signatories (whether or not the information providers) actually review the final form of the certifications before the documents were filed with this court. In fact, in the immediate matter which sparked the court's interest, the "signatory" (one "Amirah Shahied") had not been in the employ of anyone related to the client-secured party for over a year before the certification was filed. Moreover, in that period when no relevant client relationship existed with Amirah Shahied, her warehoused statement of certification was appended to the tail end of accountings of default in mortgage payments and filed with this court by S & D approximately 250 times.

Id. at 438-39. In the face of this practice, the court fined the law firm in the amount of $125,000

for its repeated violations of Rule 9011. The submission of a pre-signed certification violated Rule 9011(b)(1) and (3). It was submitted for an improper purpose (to make the court believe that the information had been properly obtained and reviewed) and contained factual contentions that were unsupported by any facts (such as that a specific person had signed the certification of the status of the debtor's mortgage account). The court had no difficulty in finding violations of Rule 9011.

Mr. Rao also noted that there is a pending class action in the Bankruptcy Court for the Southern District of Alabama which includes allegations that are substantially similar to the allegations that supported the imposition of sanctions in the Gorshtein case. In Thigpen v. Matrix Financial Services, (Adversary No. 04-01035, May 25, 2004), the court denied the defendant's motion to dismiss a class action against the financial company. The court relied principally on § 105 of the Code and did not rely on Rule 9011 because the action was against the creditor and not the attorney. Since 9011(b) applies to "an attorney or unrepresented party," the Rule does not apply directly to the client who is represented by an attorney in the matter. Nonetheless, the case demonstrates that there seems to be at least some problem with the system which may not sufficiently deter such actions.

To address this problem, it might be appropriate to amend Rule 9011 to include a specific directive to attorneys representing creditors in cases in which the debtor's debts are primarily consumer debts. The debtor must make a declaration to that effect on the petition, so that information is available to the creditor's attorney. The Subcommittee previously concluded that the provisions of Rule 9011 should be expanded to increase the obligations of consumer debtors' attorneys to ensure the accuracy of the information on which the bankruptcy system must operate.

It accomplished this by adopting an expanded application of § 707(b)(4)(D) which requires attorneys representing consumer debtors in all chapters, not just chapter 7, to certify after an inquiry that they have no knowledge that the information is incorrect. If the Subcommittee believes that the need for accuracy of information supplied by creditors either in a proof of claim or in documents filed in an action for relief from the stay requires a similar obligation for their attorneys, then Rule 9011 could be amended to add such a requirement. This requirement would apply only to documents submitted by attorneys in stay relief actions and to a proof of claim filed by an attorney on behalf of a client. This would be accomplished by adding a new subparagraph (2)(B) to the end of the Proposed Rule 9011 that the Subcommittee previously considered.

The rule does not make this obligation applicable to all areas of practice in bankruptcy cases. For example, attorneys for the debtor and the creditor are each governed by Proposed Rule 9011(b)(1) in actions to determine the dischargeability of a debt or to object to the debtor's discharge. An argument exists that these actions are similar to the stay relief matters, and that there is an opportunity for wrongdoing by creditors and their attorneys in those matters that is comparable to the stay litigation. There does not seem to be as much evidence of impropriety in those actions as in the area of stay relief, so the need for change seems less urgent.

The following version of Rule 9011 is taken from the memo that was attached to the notice of the teleconference to be held on March 16.

Rule 9011. Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers

1 (a) SIGNING OF PAPERS. Every petition, pleading, written

2 motion, and other paper, except a list, schedule, or statement, or

amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) REPRESENTATIONS TO THE COURT

(1) REPRESENTATIONS BY ALL PARTIES AND THEIR ATTORNEYS. By presenting to the court, whether by signing, submitting, or later advocating a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, –

~~(1)~~ (A) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

~~(2)~~ (B) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

25 ~~(3)~~ (C) the allegations and other factual contentions have
26 evidentiary support or, if specifically so identified, are likely to
27 have evidentiary support after a reasonable opportunity for further
28 investigation or discovery; or
29 ~~(4)~~ (D) the denials of factual contentions are warranted on the
30 evidence or, if specifically so identified, are reasonably based on a
31 lack of information or belief.
32 (2) REPRESENTATIONS IN CASES IN WHICH THE
33 DEBTOR HAS PRIMARILY CONSUMER DEBTS. In a case in
34 which the debtor is an individual whose debts are primarily
35 consumer debts,
36 (A) any schedule or amended schedule shall be
37 accompanied by a certification by the debtor's attorney that the
38 attorney has no knowledge after an inquiry that the information in
39 the schedule or amended schedule is incorrect; and
40 (B) any proof of claim or motion seeking relief from the
41 automatic stay shall be accompanied by a certification by the filing
42 attorney that the attorney has no knowledge after an inquiry that the
43 information in the filing is incorrect.
44 * * * * * *

COMMITTEE NOTE

Subdivision (b) of the rule is amended by adding a new

subparagraph that establishes obligations on counsel for debtors whose debts are primarily consumer debts. The former provisions of subdivision (b) are renumbered as subparagraphs (b)(1)(A) through (D), and a new subparagraph (2) is added to the subdivision. Subparagraph (b)(1) continues to apply to all attorneys and unrepresented parties. Subparagraph (b)(2)(A) makes the standards of § 707(b)(4)(D) applicable to all cases under all chapters as long as the debtor has primarily consumer debts. Thus, counsel for consumer debtors in chapter 7, 11 and chapter 13 cases each have the same standard of conduct in submitting the petition regarding the information contained in the schedules submitted with the petition.

Subparagraph (b)(2)(B) is also added to the subdivision. It sets the same standard for a creditor's attorney conduct in the filing of a proof of claim and in any allegations or factual contentions made by the attorney in an action for relief from the stay. This standard applies only in cases in which the debtor has primarily consumer debts. This obligation is in addition to the obligations set out in subdivision (b)(1) which apply to all attorneys and unrepresented parties throughout the case.

Voluntary Petition
(This page must be completed and filed in every case.)

Name of Debtor(s)

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.
[If no attorney represents me and no bankruptcy petition preparer signs the petition] 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.

X _____
Signature of Debtor

X _____
Signature of Joint Debtor

_____
Telephone Number (if not represented by attorney)

_____
Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only **one** box)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.

☐ Pursuant to 11 U.S.C § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X _____
(Signature of Foreign Representative)

_____
(Printed Name of Foreign Representative)

_____
Date

Signature of Attorney

In a case in which § 707(b)(4)(D) applies, this signature constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

X _____
Signature of Attorney for Debtor(s)

_____
Printed Name of Attorney for Debtor(s)

_____
Firm Name

_____
Address

_____

_____

_____
Telephone Number

_____
Date

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor

The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Authorized Individual

_____
Printed Name of Authorized Individual

_____
Title of Authorized Individual

_____
Date

Signature of Non-Attorney Bankruptcy Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19B is attached

_____
Printed Name and title, if any, of Bankruptcy Petition Preparer

_____
Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

_____
Address

_____

X _____

_____
Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

MEMORANDUM

TO: **Advisory Committee On Bankruptcy Rules**

FROM: **Subcommittee on Consumer Issues**

RE: **Means Test Issues for Presentation at the Advisory Committee Meeting**

DATE: **March 23, 2007**

This memorandum sets out the issues that will be presented for discussion at the meeting of the Advisory Committee on Marco Island. These issues include all of the changes recommended by the consumer subcommittee to the current monthly income/means test forms (Forms 22A, 22B, and 22C), as well as three suggested changes as to which the subcommittee has not made a recommendation for action.[1] The subcommittee's recommendations are the product of more than seven hours of telephone conferences, conducted on February 8, February 22, and March 13. During these conferences the subcommittee considered each of the discrete suggestions made in comments submitted to Advisory Committee in 2006, as set out in an analysis prepared by Judge Wedoff (the "Comment Analysis"), included at Tab 5 of the meeting binder. The subcommittee's recommendations resulting from the submitted comments are reflected in highlighted copies of Forms 22A, 22B and 22C that accompany this memorandum. In discussing the subcommittee's recommendations, this memorandum uses the issue numbers from the Comment Analysis, which can be consulted for a fuller explanation.

Several suggestions discussed in the Comment Analysis were determined by the subcommittee, unanimously, not to provide a basis for action. These suggestions will not be presented for discussion at the Advisory Committee meeting unless a committee member requests discussion. See Judge Zilly's emailed status report of March 22. The unanimous no-action recommendations fall into two categories:

In the first category is a group of suggestions that the subcommittee either (1) found to be inconsistent with applicable statutory or administrative provisions or (2) determined to have been previously considered and disapproved by the full Advisory Committee. The suggestions in this category are Comment Analysis Issue Nos. 3 (calculation of spousal current monthly income), 4 (treatment of business and rental expenses), 6 (references to the website of the U.S. Trustee program), 11 (IRS deduction for life insurance), 13 (IRS deduction for education), 17 (omitted categories of "other necessary expenses"), 20 (deduction for card of household or family members), 28 (expanded deduction for Chapter 13 administrative expenses), 34 (limitation of deductions to actual expense), and 39 (unemployment compensation, completion of forms by all debtors, computation of housing deduction, and express limitation of deduction for Chapter 13 administrative expenses).

In the second category are several suggestions that, although found by the subcommittee not inconsistent with the applicable provisions, made no substantial improvement in the forms.

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[1] The only changes to the forms not proposed to be discussed are changes in monetary amounts required to be implemented under § 104 and a change in the format of Form 22A, Line 10 to make it consistent with the format of the corresponding lines of Forms 22B and 22C.

The suggestions in this category are Comment Analysis Issue Nos. 2 (deductions from current monthly income in Chapter 11), 16 (IRS deduction for telephone and internet service), 26 (deductions for other payments on secured claims), 35 (additional detail for "other income"), 37 (length of applicable commitment period), and 38 (removal of subtotal lines).

The comments as to which the subcommittee does suggest action are set out below in the order in which they will be discussed at the Advisory Committee meeting: first, suggested changes in Form 22C (and, where applicable, corresponding changes in Forms 22A and 22B) and second, a change suggested only for Form 22A.

The subcommittee's recommendations are followed by three additional suggestions as to which the subcommittee has not made a recommendation: (1) a suggestion for additional income information proposed by the Administrative Office of the United States Courts, (2) a suggestion for additional income information proposed by the Executive Office for United States Trustees (neither of which suggestions have been considered by the consumer subcommittee), and finally, (3) a suggestion for a new deduction from disposable income in Chapter 13, as to which a majority of the subcommittee has recommended no action, but without consensus.

For each item, references are to the issue and page numbers of the Comment Analysis set out at Tab 5 of the meeting binder.

A. Recommended changes in Form 22C (with corresponding changes in Forms 22A and 22B)

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

Issue No.5, pp. 6-8: household expenses paid by persons other than the debtor, comments 06-BK-009 and 06-BK-019.

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

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

Issue No. 18, p. 18: comment 06-BK-009: accuracy of headings.

The problem addressed here is that the existing headings are inaccurate in limiting to "§ 707(b)(2)" the deductions from current monthly income included in the sections that they introduce. One of the included deductions—the one for charitable contributions—is not set out in § 707(b)(2) but rather is found in §1325(b)(3) (for Form 22C) and § 707(b)(1) (for Form

22A). To avoid this inaccuracy, **the subcommittee recommends that the headings be changed as follows:** the heading for Part V of Form 22A and Part IV of Form 22C should be "CALCULATION OF DEDUCTIONS FROM INCOME," the heading for Subpart B should be "Additional Living Expense Deductions," and the heading for Subpart D should be "Total Deductions from Income."

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

Issue No. 7, p. 9: references to the content of the National Standards for living expenses.

In order to conform more closely to the language used in the Internal Revenue Manual, **the subcommittee recommends changing the "clothing" reference in the instruction for applying the National Standards to "apparel and services," changing the "household supplies" reference to "housekeeping supplies," and the "food and apparel" reference to "food and clothing (apparel and services)."**

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

Issue No.8, pp. 9-10: use of the debtor's "household" instead of "family" size in instructions for determining applicable deductions.

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

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

Issue No.8, pp. 9-11: determination of "gross monthly income" in the application of the IRS national standards, comments 06-BK-009 and 06-BK-019.

The comments suggested that the means test form should instruct debtor how to determine the "gross monthly income" used to determine the proper National Standard deduction or to require debtors to disclose the gross monthly income that they actually used. Because there is no clear indication in the Code as to how gross monthly income should be determined, the subcommittee recommends against a definition and also recommends against a required disclosure of the amount of current monthly income, because of concerns that this would confuse debtors. However, t**he subcommittee concluded that the source used by the debtor to determine gross monthly income should be disclosed, through a check list setting out the most likely sources.**

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

Issue No. 10, pp. 12-13: IRS "other necessary expense" for employment expenses, comments 06-BK-009 and 06-BK-019.

The comments suggest changing the language of the form to correspond more closely to the language contained in the Internal Revenue Manual. **The subcommittee agreed that the recommended changes should be made, with the phrase "payroll deductions" changed to "deductions for employment", and "mandatory" changed to "involuntary."**

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

Issue No. 15, p. 16: consistent use of the word "total average" on the means test forms, comment 06-BK-009:

The comment points out that the forms are inconsistent in the use of the words "total average" to describe debtors' expenses. Wherever there may be multiple expenditures within a given expense category, the subcommittee determined that the instruction should direct debtors to total these expenditures. Wherever the amount of the expenditure may vary from month to month, the subcommittee determined that the instruction should direct debtors to average the monthly expenditures. Accordingly, t**he subcommittee recommends that the words "total" or "average" be added to several of the instructions for expense deductions.**

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

Issue No. 12, pp. 13-14: IRS "other necessary expense" for court ordered payments, comments 06-BK-009 and 06-BK-019.

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

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

Issue No. 14, pp. 15-16 (and Appendix, p. 8): IRS "other necessary expense" for health care, comments 06-BK-009 and 06-BK-019.

Comment 06-BK-019 notes that the Internal Revenue Manual limits health care expenses to those "required for the health and welfare of the family," but that the current instruction for Line 36 fails to include this limitation. **The subcommittee recommends that the instructions be amended to include the limitation to "required" expenses.**

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

Issue No. 19, pp. 18-19: statutory deduction for health insurance, disability insurance, and health savings account expenses, comments 06-BK-009 and 06-BK-019.

The comments note that the forms' instructions currently limit the debtor's deduction for health insurance, disability insurance, and health savings account expenses to amounts actually expended, but that § 707(b)(2)(A)(ii)(I), which provides for the deduction, does not contain this limitation. **The subcommittee recommends that the instructions be amended to allow the debtor, consistent with § 707(b)(2)(A)(ii)(I), to deduct "reasonably necessary" expenditures, without limitation to amounts actually expended. However, the subcommittee also recommends that the debtor be required to state actual expenditures when these differ from the amounts claimed as reasonably necessary.** The subcommittee directed that the form of the instructions avoid confusion about the number to be entered in the computational column. The subcommittee has not reviewed the implementation of its directive contained in the forms accompanying this memorandum.

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

Issue No. 36, p. 29: expense deduction for protection against family violence, comment 06-BK-019.

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

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

Issue No. 21, p. 20: home energy costs, comments 06-BK-009 and 06-BK-019.

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

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

Issue No. 22, p. 21: educational expenses for dependent children, comments 06-BK-009 and 06-BK-019.

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

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

Issue No. 23, p. 22: additional food and clothing expense, comments 06-BK-009 and 06-BK-019.

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

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

Issue No. 24, pp. 22-23: charitable contributions, comments 06-BK-009 and 06-BK-019.

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

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

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

Issue Nos. 9, 25, pp. 11-12, 23-24: future payments on secured claims, comments 06-BK-009 and 06-BK-019.

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

17. Form 22C, Line 49 (Form 22A, Line 45)

Issue No. 1, expense of Chapter 13 attorney fees, pp. 1-3: comments 06-BK-009 and 06-BE-019.

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

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

Issue No. 30, p. 26: exclusion of support income from disposable income, comment 06-BK-009.

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

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

Issue No. 31, pp. 26-27: qualified retirement deductions, comments 06-BK-009 and 06-BK-019.

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

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

Issue No. 29, pp. 25-26: deduction for expenses arising from special circumstances, comments 06-BK-009, 06-BK-018, and 06-BK-019.

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

B. Recommended change in Form 22A only

21. Form 22A, Line 1

Issue No. **33, pp. 27-28: non-consumer debtors, comment 06-BK-014.**

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

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

C. Items without subcommittee recommendation

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

Income from self-employment; not addressed in the Comment Analysis or formal comments.

The Administrative Office of the United States Courts has suggested an addition to the instructions for reporting income from the operation of a business, profession, or farm, to deal with situations in which debtors operate more than one such entity. The addition states: "If more than one business, profession or farm, enter aggregate numbers and provide details on an attachment." The Forms Subcommittee has approved this addition. However, to maintain consistency with other instructions, the addition might be rephrased to state ""If <u>you operate</u> more than one business, profession or farm, enter aggregate numbers and provide details on an attachment." The attached forms reflect the original language proposed by the AO.

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

Marital adjustment; not addressed in the Comment Analysis or formal comments.

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

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

a.		$
b.		$
c.		$

Total and enter on Line 17.

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

> If you are married, but are not filing jointly with your spouse, AND if you contend that calculation of the commitment period under § 1325(b)(4) does not require inclusion of the income of your spouse, enter the amount of the income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of you or your dependents and specify, in the lines below, each use to which your spouse put the excluded Column B income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each use. If necessary, list additional uses on a separate page. If the conditions for entering a marital adjustment do not apply, enter zero.

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

Issue No. 32, p. 27: disposable income "received by" the debtor, comment 06-BK-009:

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

If the proposed deduction were adopted, the new deduction line would be included in Part V of the form. No specific instruction has been suggested to implement the new deduction. It would probably not be possible to define in an instruction what is meant by "receipt" of current monthly income. Thus, a provision for deduction of current monthly income not received by the debtor would likely require that the debtor specify the items of non-received income and the basis for asserting non-receipt, perhaps as follows:

58

Income not received. If you contend that any of the income you reported in Part I should not be included in determining your disposable income because it was not "received" by you within the meaning of § 1325(b)(2), specify in the lines below each item of non-received income and the basis for asserting that you did not receive it. If necessary, list additional income items on a separate page..

	Income item	Basis for asserting non-receipt	
a.			$
b.			$
c.			$

Total and enter on Line 58.

Official Form 22A (Chapter 7) (12/08)

In re _____
Debtor(s)

Case Number: _____
(If known)

According to the calculations required by this statement:
☐ **The presumption arises.**
☐ **The presumption does not arise.**
(Check the box as directed in Parts I, III, and VI of this statement.)

CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME AND MEANS-TEST CALCULATION

In addition to Schedules I and J, this statement must be completed by every individual Chapter 7 debtor, whether or not filing jointly, whose debts are primarily consumer debts. Joint debtors may complete one statement only.

Part I. EXCLUSION FOR DISABLED VETERANS AND NON-CONSUMER DEBTORS

1A	If you are a disabled veteran described in the Veteran's Declaration in this Part I, (1) check the box at the beginning of the Veteran's Declaration, (2) check the box for "The presumption does not arise" at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement. ☐ **Veteran's Declaration.** By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. §901(1)).
1B	If your debts are not primarily consumer debts, check the box below and complete the verification in Part VIII. Do not complete any of the remaining parts of this statement. ☐ **Declaration of non-consumer debts.** By checking this box, I declare that my debts are not primarily consumer debts.

Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION

2	**Marital/filing status.** Check the box that applies and complete the balance of this part of this statement as directed. a. ☐ Unmarried. **Complete only Column A ("Debtor's Income") for Lines 3-11.** b. ☐ Married, not filing jointly, with declaration of separate households. By checking this box, debtor declares under penalty of perjury: "My spouse and I are legally separated under applicable non-bankruptcy law or my spouse and I are living apart other than for the purpose of evading the requirements of § 707(b)(2)(A) of the Bankruptcy Code." **Complete only Column A ("Debtor's Income") for Lines 3-11.** c. ☐ Married, not filing jointly, without the declaration of separate households set out in Line 2.b above. **Complete both Column A ("Debtor's Income") and Column B (Spouse's Income) for Lines 3-11.** d. ☐ Married, filing jointly. **Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.**		
	All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.	**Column A Debtor's Income**	**Column B Spouse's Income**
3	**Gross wages, salary, tips, bonuses, overtime, commissions.**	$	$
4	**Income from the operation of a business, profession or farm.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. If more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. **Do not include any part of the business expenses entered on Line b as a deduction in Part V.** a. Gross receipts $ b. Ordinary and necessary business expenses $ c. Business income Subtract Line b from Line a	$	$
5	**Rent and other real property income.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 5. Do not enter a number less than zero. **Do not include any part of the operating expenses entered on Line b as a deduction in Part V.** a. Gross receipts $ b. Ordinary and necessary operating expenses $ c. Rent and other real property income Subtract Line b from Line a	$	$
6	**Interest, dividends and royalties.**	$	$
7	**Pension and retirement income.**	$	$

8	**Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child support.** Do not include alimony or separate maintenance payments or amounts paid by the debtor's spouse if Column B is completed.	$	$
9	**Unemployment compensation.** Enter the amount in the appropriate column(s) of Line 9. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below: Unemployment compensation claimed to be a benefit under the Social Security Act — Debtor $ _____ Spouse $ _____	$	$
10	**Income from all other sources.** Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 10. **Include all payments of alimony or separate maintenance. Do not include** any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. a. $ b. $	$	$
11	**Subtotal of Current Monthly Income for § 707(b)(7).** Add Lines 3 thru 10 in Column A, and, if Column B is completed, add Lines 3 through 10 in Column B. Enter the total(s).	$	$
12	**Total Current Monthly Income for § 707(b)(7).** If Column B has been completed, add Line 11, Column A to Line 11, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 11, Column A.	$	

Part III. APPLICATION OF § 707(b)(7) EXCLUSION

13	**Annualized Current Monthly Income for § 707(b)(7).** Multiply the amount from Line 12 by the number 12 and enter the result.	$
14	**Applicable median family income.** Enter the median family income for the applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	$
15	**Application of Section 707(b)(7).** Check the applicable box and proceed as directed. ☐ **The amount on Line 13 is less than or equal to the amount on Line 14.** Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete Part VIII; do not complete Parts IV, V, VI or VII. ☐ **The amount on Line 13 is more than the amount on Line 14.** Complete the remaining parts of this statement.	

Complete Parts IV, V, VI, and VII of this statement only if required. (See Line 15.)

Part IV. CALCULATION OF CURRENT MONTHLY INCOME FOR § 707(b)(2)

16	**Enter the amount from Line 12.**	$
17	**Marital adjustment.** If you checked the box at Line 2.c, enter the amount of the income listed in Line 11, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. If you did not check box at Line 2.c, enter zero.	$
18	**Current monthly income for § 707(b)(2).** Subtract Line 17 from Line 16 and enter the result.	$

Part V. CALCULATION OF DEDUCTIONS FROM INCOME

Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

19	**National Standards: food, apparel and services, housekeeping supplies, personal care, and miscellaneous.** Enter in the space below your gross monthly income and the method used to determine it. Then enter in Line 19 the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable household size and income level. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) Gross monthly income determined using: ☐ Line 11 ☐ Line 14 ☐ Schedule I ☐ Other (specify): _____	$
20A	**Local Standards: housing and utilities; non-mortgage expenses.** Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and household size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court).	$
20B	**Local Standards: housing and utilities; mortgage/rent expense.** Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and household size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 42; subtract Line b from Line a and enter the result in Line 20B. **Do not enter an amount less than zero.**	
	a. IRS Housing and Utilities Standards; mortgage/rental expense — $	
	b. Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42 — $	
	c. Net mortgage/rental expense — Subtract Line b from Line a.	$
21	**Local Standards: housing and utilities; adjustment.** If you contend that the process set out in Lines 20A and 20B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below: _____ _____ _____	$
22	**Local Standards: transportation; vehicle operation/public transportation expense.** You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation. Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 8. ☐ 0 ☐ 1 ☐ 2 or more. Enter the amount from IRS Transportation Standards, Operating Costs & Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	$
23	**Local Standards: transportation ownership/lease expense; Vehicle 1.** Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) ☐ 1 ☐ 2 or more. Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 42; subtract Line b from Line a and enter the result in Line 23. **Do not enter an amount less than zero.**	
	a. IRS Transportation Standards, Ownership Costs, First Car — $	
	b. Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42 — $	
	c. Net ownership/lease expense for Vehicle 1 — Subtract Line b from Line a.	$

24	**Local Standards: transportation ownership/lease expense; Vehicle 2.** Complete this Line only if you checked the "2 or more" Box in Line 23. Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 42; subtract Line b from Line a and enter the result in Line 24. **Do not enter an amount less than zero.** a. IRS Transportation Standards, Ownership Costs, Second Car $ b. Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42 $ c. Net ownership/lease expense for Vehicle 2 Subtract Line b from Line a.	$
25	**Other Necessary Expenses: taxes.** Enter the total average monthly expense that you actually incur for all federal, state and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. **Do not include real estate or sales taxes.**	
26	**Other Necessary Expenses: involuntary deductions for employment.** Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. **Do not include discretionary amounts, such as non-mandatory 401(k) contributions.**	$
27	**Other Necessary Expenses: life insurance.** Enter total average monthly premiums that you actually pay for term life insurance for yourself. **Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.**	$
28	**Other Necessary Expenses: court-ordered payments.** Enter the total monthly amount that you are required to pay pursuant to the order of a court or administrative agency, such as spousal or child support payments. **Do not include payments on past due obligations included in Line 44.**	$
29	**Other Necessary Expenses: education for employment or for a physically or mentally challenged child.** Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	$
30	**Other Necessary Expenses: childcare.** Enter the total average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. **Do not include other educational payments.**	$
31	**Other Necessary Expenses: health care.** Enter the total average monthly amount that you actually expend on health care that is necessary for the welfare of yourself or your dependents and that is not reimbursed by insurance or paid by a health savings account. **Do not include payments for health insurance or health savings accounts listed in Line 34.**	$
32	**Other Necessary Expenses: telecommunication services.** Enter the total average monthly amount that you actually pay for telecommunication services other than your basic home telephone service—such as cell phones, pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. **Do not include any amount previously deducted.**	$
33	**Total Expenses Allowed under IRS Standards.** Enter the total of Lines 19 through 32.	$

Subpart B: Additional Living Expense Deductions

Note: Do not include any expenses that you have listed in Lines 19-32

39	**Health Insurance, Disability Insurance, and Health Savings Account Expenses.** List the monthly expenses in the categories set out in lines a-c below that are reasonably necessary for yourself, your spouse, or your dependents. Health Insurance $ b. Disability Insurance $ c. Health Savings Account $ Total and enter on Line 39	$
	If you do not actually expend this total amount, state your actual total average monthly expenditures in the space below: $ _____	
35	**Continued contributions to the care of household or family members.** Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.	$

36	**Protection against family violence.** Enter the total average reasonably necessary monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.	$
37	**Home energy costs.** Enter the total average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. **You must provide your case trustee with documentation of your actual expenses and demonstrate that the additional amount claimed is reasonable and necessary.**	$
38	**Education expenses for dependent children less than 18.** Enter the total average monthly expenses that you actually incur, not to exceed $137.50 per child, for attendance at a private or public elementary school by your dependent children less than 18 years of age. **You must provide your case trustee with documentation of your actual expenses and explain why the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.**	$
39	**Additional food and clothing expense.** Enter the total average monthly amount by which your food and clothing expenses exceed the combined allowances for food and clothing (apparel and services) in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) **You must demonstrate that the additional amount claimed is reasonable and necessary.**	$
40	**Continued charitable contributions.** Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).	$
41	**Total Additional Expense Deductions under § 707(b).** Enter the total of Lines 34 through 40	$

Subpart C: Deductions for Debt Payment

42 **Future payments on secured claims.** For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, and state the Average Monthly Payment. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. Mortgage payments must be limited to payments of principal and interest. If necessary, list additional entries on a separate page.

	Name of Creditor	Property Securing the Debt	60-month Average Payment
a.			$
b.			$
c.			$
			Total: Add Lines a, b and c.

$

43 **Other payments on secured claims.** If any of debts listed in Line 42 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 42, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.

	Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount
a.			$
b.			$
c.			$
			Total: Add Lines a, b and c

$

44	**Payments on priority claims.** Enter the total amount, divided by 60, of all priority claims, such as priority tax, child support and alimony claims, including only past due obligations. **Do not include current obligations set out in Line 33.**	$

45	**Chapter 13 administrative expenses.** If you are eligible to file a case under Chapter 13, complete the following chart, multiply the amount in line a by the amount in line b, and enter the resulting administrative expense.	
	a. Projected average monthly Chapter 13 plan payment. $	
	b. Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) x	
	c. Average monthly administrative expense of Chapter 13 case Total: Multiply Lines a and b	$
46	**Total Deductions for Debt Payment.** Enter the total of Lines 42 through 45.	$

Subpart D: Total Deductions from Income

47	**Total of all deductions allowed under § 707(b)(2).** Enter the total of Lines 33, 41, and 46.	$

Part VI. DETERMINATION OF § 707(b)(2) PRESUMPTION

48	**Enter the amount from Line 18 (Current monthly income for § 707(b)(2))**	$
49	**Enter the amount from Line 47 (Total of all deductions allowed under § 707(b)(2))**	$
50	**Monthly disposable income under § 707(b)(2).** Subtract Line 49 from Line 48 and enter the result	$
51	**60-month disposable income under § 707(b)(2).** Multiply the amount in Line 50 by the number 60 and enter the result.	$
52	**Initial presumption determination.** Check the applicable box and proceed as directed. ☐ **The amount on Line 51 is less than $6,575** Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. Do not complete the remainder of Part VI. ☐ **The amount set forth on Line 51 is more than $10,950.** Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII. Do not complete the remainder of Part VI. ☐ **The amount on Line 51 is at least $6,575, but not more than $10,950.** Complete the remainder of Part VI (Lines 53 through 55).	
53	**Enter the amount of your total non-priority unsecured debt**	$
54	**Threshold debt payment amount.** Multiply the amount in Line 53 by the number 0.25 and enter the result.	$
55	**Secondary presumption determination.** Check the applicable box and proceed as directed. ☐ **The amount on Line 51 is less than the amount on Line 54.** Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. ☐ **The amount on Line 51 is equal to or greater than the amount on Line 54.** Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII.	

Part VII: ADDITIONAL EXPENSE CLAIMS

56 **Other Expenses.** List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.

	Expense Description	Monthly Amount
a.		$
b.		$
c.		$
	Total: Add Lines a, b and c	$

Part VIII: VERIFICATION

57	I declare under penalty of perjury that the information provided in this statement is true and correct. *(If this is a joint case, both debtors must sign.)* Date: _____ Signature: _____ (Debtor) Date: _____ Signature: _____ (Joint Debtor, if any)

Form B22B (Chapter 11) (12/08)
In re _____
Debtor(s)

Case Number: _____
(If known)

CHAPTER 11 STATEMENT OF CURRENT MONTHLY INCOME

In addition to Schedules I and J, this statement must be completed by every individual Chapter 11 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. CALCULATION OF CURRENT MONTHLY INCOME

		Column A Debtor's Income	Column B Spouse's Income
1	**Marital/filing status.** Check the box that applies and complete the balance of this part of this statement as directed. a. ☐ Unmarried. **Complete only Column A ("Debtor's Income") for Lines 2-10.** b. ☐ Married, not filing jointly. **Complete only Column A ("Debtor's Income") for Lines 2-10.** c. ☐ Married, filing jointly. **Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.**		
	All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.		
2	**Gross wages, salary, tips, bonuses, overtime, commissions.**	$	$
3	**Net income from the operation of a business, profession, or farm.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 3. If more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. a. Gross receipts $ b. Ordinary and necessary business expenses $ c. Business income Subtract Line b from Line a.	$	$
4	**Net rental and other real property income.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. Do not enter a number less than zero. a. Gross receipts $ b. Ordinary and necessary operating expenses $ c. Rent and other real property income Subtract Line b from Line a.	$	$
5	**Interest, dividends, and royalties.**	$	$
6	**Pension and retirement income.**	$	$
7	**Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child or spousal support.** Do not include alimony or separate maintenance payments or amounts paid by the debtor's spouse if Column B is completed.	$	$
8	**Unemployment compensation.** Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below: Unemployment compensation claimed to be a benefit under the Social Security Act Debtor $ _____ Spouse $ _____	$	$
9	**Income from all other sources.** Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. **Include all payments of alimony or separate maintenance. Do not include** any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. a. $ b. $	$	$
10	**Subtotal of current monthly income.** Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).	$	$
11	**Total current monthly income.** If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the	$	

	amount from Line 10, Column A.	

Part II: VERIFICATION

12	I declare under penalty of perjury that the information provided in this statement is true and correct. *(If this a joint case, both debtors must sign.)* Date: _____ Signature: _____ (Debtor) Date: _____ Signature: _____ (Joint Debtor, if any)

Official Form 22C (Chapter 13) (12/08)

In re _____
Debtor(s)

Case Number: _____
(If known)

According to the calculations required by this statement:
☐ **The applicable commitment period is 3 years.**
☐ **The applicable commitment period is 5 years.**
☐ **Disposable income is determined under § 1325(b)(3).**
☐ **Disposable income is not determined under § 1325(b)(3).**
(Check the boxes as directed in Lines 17 and 23 of this statement.)

CHAPTER 13 STATEMENT OF CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD AND DISPOSABLE INCOME

In addition to Schedules I and J, this statement must be completed by every individual Chapter 13 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. REPORT OF INCOME

		Column A Debtor's Income	Column B Spouse's Income
1	**Marital/filing status.** Check the box that applies and complete the balance of this part of this statement as directed. a. ☐ Unmarried. **Complete only Column A ("Debtor's Income") for Lines 2-10.** b. ☐ Married. **Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.**		
	All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.		
2	**Gross wages, salary, tips, bonuses, overtime, commissions.**	$	$
3	**Income from the operation of a business, profession, or farm.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 3. If more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. **Do not include any part of the business expenses entered on Line b as a deduction in Part IV.** a. Gross receipts $ b. Ordinary and necessary business expenses $ c. Business income Subtract Line b from Line a	$	$
4	**Rent and other real property income.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. Do not enter a number less than zero. **Do not include any part of the operating expenses entered on Line b as a deduction in Part IV.** a. Gross receipts $ b. Ordinary and necessary operating expenses $ c. Rent and other real property income Subtract Line b from Line a	$	$
5	**Interest, dividends, and royalties.**	$	$
6	**Pension and retirement income.**	$	$
7	**Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child support.** Do not include alimony or separate maintenance payments or amounts paid by the debtor's spouse.	$	$
8	**Unemployment compensation.** Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below: Unemployment compensation claimed to be a benefit under the Social Security Act — Debtor $ _____ Spouse $ _____	$	$
9	**Income from all other sources.** Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. **Include all payments of alimony or separate maintenance. Do not include** any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. a. $ b. $	$	$
10	**Subtotal.** Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).	$	$

11	**Total.** If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.	$

Part II. CALCULATION OF § 1325(b)(4) COMMITMENT PERIOD

12	**Enter the amount from Line 11.**	
13	**Marital adjustment.** If you are married, but are not filing jointly with your spouse, AND if you contend that calculation of the commitment period under § 1325(b)(4) does not require inclusion of the income of your spouse, enter the amount of the income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of you or your dependents. Otherwise, enter zero.	
14	**Subtract Line 13 from Line 12 and enter the result.**	
15	**Annualized current monthly income for § 1325(b)(4).** Multiply the amount from Line 14 by the number 12 and enter the result.	$
16	**Applicable median family income.** Enter the median family income for applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	$
17	**Application of § 1325(b)(4).** Check the applicable box and proceed as directed. ☐ **The amount on Line 15 is less than the amount on Line 16.** Check the box for "The applicable commitment period is 3 years" at the top of page 1 of this statement and continue with this statement. ☐ **The amount on Line 15 is not less than the amount on Line 16.** Check the box for "The applicable commitment period is 5 years" at the top of page 1 of this statement and continue with this statement.	

Part III. APPLICATION OF § 1325(b)(3) FOR DETERMINING DISPOSABLE INCOME

18	**Enter the amount from Line 11.**	$
19	**Marital adjustment.** If you are married, but are not filing jointly with your spouse, enter the amount of the income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of you or your dependents. If you are unmarried or married and filing jointly with your spouse, enter zero.	$
20	**Current monthly income for § 1325(b)(3).** Subtract Line 19 from Line 18 and enter the result.	
21	**Annualized current monthly income for § 1325(b)(3).** Multiply the amount from Line 20 by the number 12 and enter the result.	$
22	**Applicable median family income.** Enter the amount from Line 16.	$
23	**Application of § 1325(b)(3).** Check the applicable box and proceed as directed. ☐ **The amount on Line 21 is more than the amount on Line 22.** Check the box for "Disposable income is determined under § 1325(b)(3)" at the top of page 1 of this statement and complete the remaining parts of this statement. ☐ **The amount on Line 21 is not more than the amount on Line 22.** Check the box for "Disposable income is not determined under § 1325(b)(3)" at the top of page 1 of this statement and complete Part VII of this statement. **Do not complete Parts IV, V, or VI.**	

Part IV. CALCULATION OF DEDUCTIONS FROM INCOME

Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

24	**National Standards: food, apparel and services, housekeeping supplies, personal care, and miscellaneous.** Enter in Line 24 the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable household size and level of gross monthly income. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) In the space below, check the appropriate box to indicate how you determined your gross monthly income. Gross monthly income determined using: ☐ Line 11 ☐ Line 14 ☐ Schedule I ☐ Other (specify): _____	$
25A	**Local Standards: housing and utilities; non-mortgage expenses.** Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and household size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court).	$

25B	**Local Standards: housing and utilities; mortgage/rent expense.** Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and household size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 47; subtract Line b from Line a and enter the result in Line 25B. **Do not enter an amount less than zero.** a. IRS Housing and Utilities Standards; mortgage/rent expense $ b. Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47 $ c. Net mortgage/rental expense Subtract Line b from Line a.	$
26	**Local Standards: housing and utilities; adjustment.** if you contend that the process set out in Lines 25A and 25B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below: _____ _____ _____	$
27	**Local Standards: transportation; vehicle operation/public transportation expense.** You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation. Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 7. ☐ 0 ☐ 1 ☐ 2 or more. Enter the amount from IRS Transportation Standards, Operating Costs & Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	$
28	**Local Standards: transportation ownership/lease expense; Vehicle 1.** Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) ☐ 1 ☐ 2 or more. Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 47; subtract Line b from Line a and enter the result in Line 28. **Do not enter an amount less than zero.** a. IRS Transportation Standards, Ownership Costs, First Car $ b. Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47 $ c. Net ownership/lease expense for Vehicle 1 Subtract Line b from Line a.	$
29	**Local Standards: transportation ownership/lease expense; Vehicle 2.** Complete this Line only if you checked the "2 or more" Box in Line 28. Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 47; subtract Line b from Line a and enter the result in Line 29. **Do not enter an amount less than zero.** a. IRS Transportation Standards, Ownership Costs, Second Car $ b. Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47 $ c. Net ownership/lease expense for Vehicle 2 Subtract Line b from Line a.	$
30	**Other Necessary Expenses: taxes.** Enter the total average monthly expense that you actually incur for all federal, state, and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. **Do not include real estate or sales taxes.**	$
31	**Other Necessary Expenses: involuntary deductions for employment.** Enter the total average monthly deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. **Do not include discretionary amounts, such as non-mandatory 401(k) contributions.**	$

32	**Other Necessary Expenses: life insurance.** Enter total average monthly premiums that you actually pay for term life insurance for yourself. **Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.**	$
33	**Other Necessary Expenses: court-ordered payments.** Enter the total monthly amount that you are required to pay pursuant to the order of a court or administrative agency, such as spousal or child support payments. **Do not include payments on past due obligations included in Line 49.**	$
34	**Other Necessary Expenses: education for employment or for a physically or mentally challenged child.** Enter the total average monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	
35	**Other Necessary Expenses: childcare.** Enter the total average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. **Do not include other educational payments.**	$
36	**Other Necessary Expenses: health care.** Enter the total average monthly amount that you actually expend on health care that is required for the welfare of yourself or your dependents and that is not reimbursed by insurance or paid by a health savings account. **Do not include payments for health insurance or health savings accounts listed in Line 39.**	$
37	**Other Necessary Expenses: telecommunication services.** Enter the total average monthly amount that you actually pay for telecommunication services other than your basic home telephone service—such as cell phones, pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. **Do not include any amount previously deducted.**	$
38	**Total Expenses Allowed under IRS Standards.** Enter the total of Lines 24 through 37.	$

Subpart B: Additional Living Expense Deductions

Note: Do not include any expenses that you have listed in Lines 24-37

39	**Health Insurance, Disability Insurance, and Health Savings Account Expenses.** List the monthly expenses in the categories set out in lines a-c below that are reasonably necessary for yourself, your spouse, or your dependents. a. Health Insurance $ b. Disability Insurance $ c. Health Savings Account $ Total and enter on Line 39 **If you do not actually expend this total amount**, state your actual total average monthly expenditures in the space below: $ _____	$
40	**Continued contributions to the care of household or family members.** Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. **Do not include payments listed in Line 34.**	$
41	**Protection against family violence.** Enter the total average reasonably necessary monthly expenses that you actually incur to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.	$
42	**Home energy costs.** Enter the total average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. **You must provide your case trustee with documentation of your actual expenses and demonstrate that the additional amount claimed is reasonable and necessary.**	$
43	**Education expenses for dependent children under 18.** Enter the total average monthly expenses that you actually incur, not to exceed $137.50 per child, for attendance at a private or public elementary school by your dependent children less than 18 years of age. **You must provide your case trustee with documentation of your actual expenses and explain why the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.**	$
44	**Additional food and clothing expense.** Enter the total average monthly amount by which your food and clothing expenses exceed the combined allowances for food and clothing (apparel and services) in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) **You must demonstrate that the additional amount claimed is reasonable and necessary.**	$

45	**Charitable contributions.** Enter the amount reasonably necessary for you to expend on charitable contributions in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2). **Do not include any amount in excess of 15% of your gross monthly income.**	$
46	**Total Additional Expense Deductions under § 707(b).** Enter the total of Lines 39 through 45.	$

Subpart C: Deductions for Debt Payment

47 **Future payments on secured claims.** For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, and state the Average Monthly Payment. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. Mortgage payments must be limited to payments of principal and interest. If necessary, list additional entries on a separate page.

	Name of Creditor	Property Securing the Debt	60-month Average Payment
a.			$
b.			$
c.			$
			Total: Add Lines a, b, and c

$

48 **Other payments on secured claims.** If any of debts listed in Line 47 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 47, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.

	Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount
a.			$
b.			$
c.			$
			Total: Add Lines a, b, and c

$

49	**Payments on priority claims.** Enter the total amount, divided by 60, of all priority claims, such as priority tax, child support and alimony claims, including only past due obligations. **Do not include current obligations set out in Line 33.**	$

50 **Chapter 13 administrative expenses.** Multiply the amount in Line a by the amount in Line b, and enter the resulting administrative expense.

a.	Projected average monthly Chapter 13 plan payment.	$
b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x
c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b

$

51	**Total Deductions for Debt Payment.** Enter the total of Lines 47 through 50.	$

Subpart D: Total Deductions from Income

52	**Total of all deductions from income.** Enter the total of Lines 38, 46, and 51.	$

MEMORANDUM

TO: ADVISORY COMMITTEE ON THE BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: PUBLISHED RULES RECOMMENDED FOR APPROVAL AS REVISED BY THE CONSUMER SUBCOMMITTEE

DATE: MARCH 23, 2007, as revised 3/26/07 (JHW)

The Consumer Subcommittee has reviewed the comments and suggestions received on the following published rules, and the Subcommittee recommends that the rules be approved by the Advisory Committee as revised, and that the rules be recommended to the Standing Committee for its approval and recommendation for approval by the Judicial Conference, or for the approval of the Standing Committee for the publication of the new or amended rule in August, 2007.

The Subcommittee's recommendations on Exhibit D to Official Form 1, Schedules I and J to Official Form 6, Official Form 23, and "automatic" dismissal under section 521 of the Code are set out at the conclusion of this memorandum.

The proposed changes to the means test and the means test forms are set out in a separate memorandum.

Bankruptcy Rules 1007(b)(4); 1007(b)(7) and (c); 1007(b)(8); New Rule 1017.1; Committee Note to Rule 1019; Rule 4002(b)(2),(4), Rules 4003(b)(2); 4003(b)(3); Committee Note to Rule 4003; Rules 4004(a); 4004(c)(1), (c)(4), and (c)(5); and 7001 (not published in August 2006)

The changes in these Rules and Committee Notes are set out below. The changes are identified by strikeouts and underlining, and the only changes shown are the changes from the published version of the rule to the version of the rule being proposed for adoption.

Rule 1007 has several changes. Subdivision (b)(4) is amended in response to **Comment 06-BK-014** submitted by Bankruptcy Judges Isgur and Steen (see pages 2-3 of memo behind Tab 3 titled Comments Submitted After January 10, 2007 on Proposed Rules and Forms). The rule as proposed required only debtors whose debts were primarily consumer debts to complete the means test form. As revise, the rule would require all individual chapter 7 debtors to complete the means test form, but the form is

also amended to permit debtors whose debts are not primarily consumer debts to check a box to that effect on the form. If they check that box, they are not required to complete the rest of the form. Subdivisions (b)(7) and (c) are amended to include individual chapter 11 debtors among those who must file the form regarding the completion of the personal financial management course, and to allow the court greater time to permit the debtor to file the form. The National Bankruptcy Conference submitted **Comment 06-BK-018** (see page 8-9 of memo behind Tab 3 titled Comments Submitted After January 10, 2007 on Proposed Rules and Forms) recommending that the rules provide more leeway for debtors to comply with the requirement to file the personal financial management completion form, and the Consumer Subcommittee concluded that this was the best solution to the problem. The Consumer Subcommittee concluded that there was no need to amend subdivision (b)(8) to include a reference to a limitation on the chapter 7 discharge along with the discharge in chapters 11, 12, and 13 because Rule 4004(c)(1)(I) already includes a provision for the delay of the entry of a chapter 7 discharge if there is a pending motion under § 727(a)(12). Judge Teel had made such a suggestion in **Comment 05-BR-029.**

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

1 (a) CORPORATE OWNERSHIP STATEMENT, LIST OF
2 CREDITORS AND EQUITY SECURITY HOLDERS, AND
3 OTHER LISTS.
4 * * * * *
5 (4) *Chapter 15 Case.* Unless the court orders
6 otherwise, a foreign representative filing a petition for recognition
7 under chapter 15 shall file with the petition a list containing the
8 name and address of all administrators in foreign proceedings of
9 the debtor, all parties to litigation pending in the United States in
10 which the debtor is a party at the time of the filing of the petition,
11 and all entities against whom provisional relief is being sought
12 under § 1519 of the Code.

13 (5) *Extension of Time.* Any extension of time for
14 the filing of lists required by this subdivision may be granted only
15 on motion for cause shown and on notice to the United States
16 trustee and to any trustee, committee elected under § 705 or
17 appointed under § 1102 of the Code, or other party as the court
18 may direct.
19 (b) SCHEDULES, STATEMENTS, AND OTHER
20 DOCUMENTS REQUIRED.
21 (1) Except in a chapter 9 municipality case, the
22 debtor, unless the court orders otherwise, shall file the following
23 schedules, statements, and other documents, prepared as prescribed
24 by the appropriate Official Forms, if any:
25 (A) schedules of assets and liabilities~~;~~ ;
26 (B) a schedule of current income and
27 expenditures~~;~~;
28 (C) a schedule of executory contracts and
29 unexpired leases;
30 (D) a statement of financial affairs;
31 (E) copies of all payment advices or other
32 evidence of payment, if any, received by the debtor from an
33 employer within 60 days before the filing of the petition, with
34 redaction of all but the last four digits of the debtor's social-

35 security number or individual taxpayer-identification number; and

36 (F) a record of any interest that the debtor

37 has in an account or program of the type specified in § 521(c) of

38 the Code.

39 (2) An individual debtor in a chapter 7 case shall

40 file a statement of intention as required by § 521(a) of the Code,

41 prepared as prescribed by the appropriate Official Form. A copy of

42 the statement of intention shall be served on the trustee and the

43 creditors named in the statement on or before the filing of the

44 statement.

45 (3) Unless the United States trustee has determined

46 that the credit counseling requirement of § 109(h) does not apply in

47 the district, an individual debtor must file a statement of

48 compliance with the credit counseling requirement, prepared as

49 prescribed by the appropriate Official Form which must include

50 one of the following:

51 (A) an attached certificate and debt

52 repayment plan, if any, required by § 521(b);

53 (B) a statement that the debtor has received

54 the credit counseling briefing required by § 109(h)(1) but does not

55 have the certificate required by § 521(b);

56 (C) a certification under § 109(h)(3); or

57 (D) a request for a determination by the

58 court under § 109(h)(4).

59 (4) Unless § 707(b)(2)(D) applies, an individual

60 debtor in a chapter 7 case ~~with primarily consumer debts~~ shall file

61 a statement of current monthly income prepared as prescribed by

62 the appropriate Official Form, and, if the current monthly income

63 exceeds the median family income for the applicable state and

64 household size, the information, including calculations, required by

65 § 707(b), prepared as prescribed by the appropriate Official Form.

66 (5) An individual debtor in a chapter 11 case shall

67 file a statement of current monthly income, prepared as prescribed

68 by the appropriate Official Form.

69 (6) A debtor in a chapter 13 case shall file a

70 statement of current monthly income, prepared as prescribed by the

71 appropriate Official Form, and, if the current monthly income

72 exceeds the median family income for the applicable state and

73 household size, a calculation of disposable income made in

74 accordance with § 1325(b)(3), prepared as prescribed by the

75 appropriate Official Form.

76 (7) An individual debtor in a chapter 7, a chapter 11 in

77 which § 1141(d)(3) applies, or a chapter 13 case shall file a

78 statement of completion of a course concerning personal

79 financial management, prepared as prescribed by the
80 appropriate Official Form.
81 (8) If an individual debtor in a chapter 11, 12, or 13
82 case has claimed an exemption under § 522(b)(3)(A) in property
83 of the kind described in § 522(p)(1) with a value in excess of the
84 amount set out in § 522(q)(1), the debtor shall file a statement as to
85 whether there is any proceeding pending in which the debtor may
86 be found guilty of a felony of a kind described in § 522(q)(1)(A) or
87 found liable for a debt of the kind described in § 522(q)(1)(B).
88 (c) TIME LIMITS. In a voluntary case, the schedules,
89 statements, and other documents required by subdivision (b)(1),
90 (4), (5), and (6) shall be filed with the petition~~,~~ or within 15 days
91 thereafter, except as otherwise provided in subdivisions (d), (e), (f),
92 and (h) of this rule. In an involuntary case, the list in subdivision
93 (a)(2), and the schedules, statements, and other documents required
94 by subdivision (b)(1) shall be filed by the debtor within 15 days of
95 the entry of the order for relief. In a voluntary case, the documents
96 required by paragraphs (A), (C), and (D) of subdivision (b)(3) shall
97 be filed with the petition. Unless the court orders otherwise, a
98 debtor who has filed a statement under subdivision (b)(3)(B), shall
99 file the documents required by subdivision (b)(3)(A) within 15
100 days of the order for relief. Unless the court, at any time and in its

101 discretion, extends the time, in ~~In~~ a chapter 7 case, the debtor shall
102 file the statement required by subdivision (b)(7) within 45 days
103 after the first date set for the meeting of creditors under § 341 of
104 the Code, and in a chapter 13 case no later than the date when the
105 last payment was made by the debtor as required by the plan or the
106 filing of a motion for a discharge under § 1328(b). The debtor
107 shall file the statement required by subdivision (b)(8) no earlier
108 than the date of the last payment made under the plan or the date of
109 the filing of a motion for a discharge under §§ 1141(d)(5)(B),
110 1228(b), or 1328(b) of the Code. Lists, schedules, statements, and
111 other documents filed prior to the conversion of a case to another
112 chapter shall be deemed filed in the converted case unless the court
113 directs otherwise. Except as provided in § 1116(3), any extension
114 of time for the filing of the schedules, statements, and other
115 documents required under this rule may be granted only on motion
116 for cause shown and on notice to the United States trustee, any
117 committee elected under § 705 or appointed under § 1102 of the
118 Code, trustee, examiner, or other party as the court may direct.
119 Notice of an extension shall be given to the United States trustee
120 and to any committee, trustee, or other party as the court may
121 direct.
122 * * * * *

COMMITTEE NOTE

The title of this rule is expanded to refer to "documents" in conformity with the 2005 amendments to § 521 and related provisions of the Bankruptcy Code that include a wider range of documentary requirements.

Subdivision (a) is amended to require that any foreign representative filing a petition for recognition to commence a case under chapter 15, which was added to the Code in 2005, file a list of entities with whom the debtor is engaged in litigation in the United States. The foreign representative filing the petition for recognition must also list any entities against whom provisional relief is being sought as well as all administrators in foreign proceedings of the debtor. This should ensure that entities most interested in the case, or their representatives, will receive notice of the petition under Rule 2002(q).

Subdivision (b)(1) addresses schedules, statements, and other documents that the debtor must file unless the court orders otherwise and other than in a case under chapter 9. This subdivision is amended to include documentary requirements added by the 2005 amendments to § 521 that apply to the same group of debtors and have the same time limits as the existing requirements of (b)(1). Consistent with the E-Government Act of 2002, Pub. L. No. 107-347, the payment advices should be redacted before they are filed.

Subdivision (b)(2) is amended to conform to the renumbering of the subsections of § 521.

Subdivisions (b)(3) through (b)(7) are new and implement the 2005 amendments to the Code. Subdivision (b)(3) provides for the filing of a document relating to the credit counseling requirement provided by the 2005 amendments to § 109 in the context of an Official Form that warns the debtor of the consequences of failing to comply with the credit counseling requirement.

Subdivision (b)(4) addresses the filing of information about current monthly income, as defined in § 101, for certain chapter 7 debtors and, if required, additional calculations of expenses required by the 2005 amendments to § 707(b).

Subdivision (b)(5) addresses the filing of information about current monthly income, as defined in § 101, for individual chapter 11 debtors. The 2005 amendments to § 1129(a)(15) condition plan confirmation for individual debtors on the commitment of disposable income, as defined in § 1325(b)(2), which is based on current monthly income.

Subdivision (b)(6) addresses the filing of information about current monthly income, as defined in § 101, for chapter 13 debtors and, if required, additional calculations of expenses. These changes are necessary because the 2005 amendments to § 1325 require that the determination of disposable income begin with current monthly income.

Subdivision (b)(7) reflects the 2005 amendments to §§ 727 and 1328 of the Code that condition the receipt of a discharge on the completion of a personal financial management course, with certain exceptions. To evidence compliance with that requirement, the subdivision requires the debtor to file the appropriate Official Form certifying that the debtor has completed the personal financial management course.

Subdivision (b)(8) is amended to require an individual debtor in a case under chapter 11, 12, and 13 to file a statement that there are no reasonable grounds to believe that the restrictions on a homestead exemption as set out in § 522(q) of the Code are applicable. Sections 1141(d)(5)(C), 1228(f), and 1328(h) each provide that the court shall not enter a discharge order unless it finds that there is no reasonable cause to believe that § 522(q) applies. Requiring the debtor to submit a statement to that effect in cases under chapters 11, 12, and 13 in which an exemption is claimed in excess of the amount allowed under § 522(q)(1) provides the court with a basis to conclude, in the absence of any contrary information, that § 522(q) does not apply. Creditors receive notice under Rule 2002(f)(11) of the time to request postponement of the entry of the discharge to permit an opportunity to challenge the debtor's assertions in the Rule 1007(b)(8) statement in appropriate cases.

Subdivision (c) is amended to include time limits for the filing requirements added to subdivision (b) due to the 2005 amendments to the Code, and to make conforming amendments. Separate time limits are provided for the documentation of credit

counseling and for the statement of the completion of the financial management course. While most documents relating to credit counseling must be filed with the voluntary petition, the credit counseling certificate and debt repayment plan can be filed within 15 days of the filing of a voluntary petition if the debtor files a statement under subdivision (b)(3)(B) with the petition. The court is given broad discretion to extend the deadline for a debtor to file a statement of the completion of a personal financial management course. Sections 727(a)(11) and 1328(g) of the Code require individual debtors to complete these courses prior to the entry of a discharge. The amendment allows the court to extend the deadline for the debtor to file Official Form 23 thus allowing the debtor to receive a discharge. No party is harmed by the extension of the deadline, so no specific restriction is placed on the court's discretion to extend the deadline, even after its initial expiration.

Subdivision (c) of the rule is also amended to recognize the limitation on the extension of time to file schedules and statements when the debtor is a small business debtor. Section 1116(3), added to the Code in 2005, establishes a specific standard for courts to apply in the event that the debtor in possession or the trustee seeks an extension for filing these forms for a period beyond 30 days after the order for relief.

New Rule 1017.1 was recommended by the National Bankruptcy Conference in its Comment 06-BK-018. The Consumer Subcommittee recommends that the Advisory Committee present the rule to the Standing Committee for its approval for the publication of the rule in August 2007. The rule governs the process of determining whether to allow the postponement of the prepetition credit counseling requirement.

(TWO VERSIONS – Subcommittee version is Version 1, and Judge Swain's recommendation is Version 2)

VERSION 1

Rule 1017.1. Determination of Sufficiency of Debtor's Certification of Exigent Circumstances

1 A certification of exigent circumstances filed by an individual

2 debtor under §109(h)(3) may be determined to be insufficient only

3 upon order of the court entered within twenty-one days after the
4 filing of the certification. The court may enter such an order,
5 accompanied by a specification of the reasons for finding the
6 certification insufficient, with such notice to the debtor as the court
7 finds appropriate, or without notice. A party in interest may seek
8 entry of such an order by motion, with notice to the debtor, filed so
9 as to allow determination by the court within twenty-one days after
10 the filing of the certification.

COMMITTEE NOTE

This rule is new. It establishes a deadline for a court to rule on the sufficiency of a debtor's certification that exigent circumstances make it appropriate to allow the debtor to complete the required credit counseling after the commencement of the case rather than prior to the filing of a voluntary petition. Under § 109(h)(3) of the Code, the debtor may complete the credit counseling after the commencement of the case if the court finds that the exigent circumstances asserted by the debtor justify the postponement of the deadline for that counseling. Under that provision, however, even if the court grants the debtor's request for more time to obtain the counseling, the counseling still must be completed no later than thirty days after the commencement of the case. On a showing of cause, the court may allow the debtor an additional fifteen days, but the deadlines are relatively short. Therefore, the rule requires the court to act in time to allow the debtor an opportunity to meet the counseling obligation in the event that the court grants the relief.

VERSION 2

Rule 1017.1. Exemption from Pre-Petition Credit Counseling Requirement

1 A certification filed by an individual debtor under § 109(h)(3)

2 shall be deemed satisfactory to the court unless the court, on its

3 own motion or on a motion served on the debtor and filed by a

4 party in interest within 14 days after the filing of the certification,

5 enters an order finding the certification unsatisfactory. Any such

6 order shall be entered no later than twenty-one days after the filing

7 of the certification, and shall specify the reason for the finding that

the certification is unsatisfactory.

COMMITTEE NOTE

This rule is new. It provides that a debtor's certification under § 109(h)(3) concerning exemption from the pre-petition credit counseling requirement will be deemed satisfactory (thus permitting the debtor to obtain the counseling within thirty days after filing the petition) unless the court enters an order finding the certification unsatisfactory within twenty-one days after the certification is filed. The deadline for court action allows the debtor time to complete the counseling, or request a further extension pursuant to § 109(h)(3)(B), within the thirty-day exemption period. The rule requires that any motion for an order rejecting the certification must be made within fourteen days after the certification is filed, in order to give the court sufficient time to act on the motion within the twenty-one day period.

COMMITTEE NOTE to Rule 1019. This rule was amended to establish a deadline for filing motions under § 707(b) and (c) when a case is converted to chapter 7. Bankruptcy Judge Williamson in **Comment 05-BR-024** suggested that such a motion would be improper under the language of the Code. The Consumer Subcommittee believes that this is an unresolved matter, and did not intend by establishing a deadline to suggest whether such motions can be brought in converted cases. The amendment to the Committee Note is intended to convey that view.

COMMITTEE NOTE

Subdivision (2) is amended to include a new filing period for motions under § 707(b) and (c) of the Code when a case is

converted to chapter 7. The establishment of a deadline for filing such motions is not intended to mean that such motions are appropriate or are not appropriate under the Code.

Rule 4002 governs the debtor's duty to produce certain documents. **Comment 05-BR-022** submitted by Mr. Barry Barash suggests that the rule be amended to provide that creditors must absorb the costs incurred by debtors when the creditor requests a copy of the debtor's tax return or transcript. The Consumer Subcommittee concluded that such an amendment to the rule would be inconsistent with the language of the Code, so no change was made to this portion of the rule. The Internal Revenue Service submitted **Comment 06-BK-015** (see pages 9-10 of the memo behind Tab 6A) which included a recommendation that the Committee Note to the rule be revised to make it clear that the debtor has an obligation to obtain and provide the tax return or transcript. This is a greater duty than the duty to provide other documents which the debtor need not obtain. For those documents, the debtor can simply state that he or she does not have the documents. We have also just received correspondence from Congressman Conyers and Congresswoman Sanchez in which they suggest that Proposed Rule 4002(b)(2) may be too burdensome for debtors who are required to supply financial information to trustees. This is presumably a reference to Rule 4002(b)(2)(B) which provides that the trustee or United States trustee can instruct the debtor that they need not provide that information to the trustee or bring it to the § 341 meeting. Bracketed language is set out at the end of the second paragraph of the Committee Note to highlight this potential reduction in the burden on debtors.

Rule 4002. Duties of Debtor

1 (a) IN GENERAL. In addition to performing other duties
2 prescribed by the Code and rules, the debtor shall:
3 (1) attend and submit to an examination at the times
4 ordered by the court;
5 (2) attend the hearing on a complaint objecting to
6 discharge and testify, if called as a witness;
7 (3) inform the trustee immediately in writing as to the
8 location of real property in which the debtor has an interest and the

9 name and address of every person holding money or property
10 subject to the debtor's withdrawal or order if a schedule of property
11 has not yet been filed pursuant to Rule 1007;
12 (4) cooperate with the trustee in the preparation of an
13 inventory, the examination of proofs of claim, and the
14 administration of the estate; and
15 (5) file a statement of any change of the debtor's address.
16 (b) INDIVIDUAL DEBTOR'S DUTY TO PROVIDE
17 DOCUMENTATION.
18 (1) *Personal Identification.* Every individual debtor shall
19 bring to the meeting of creditors under § 341:
20 (A) a picture identification issued by a governmental
21 unit, or other personal identifying information that establishes the
22 debtor's identity; and
23 (B) evidence of social-security number(s), or a written
24 statement that such documentation does not exist.
25 (2) *Financial Information.* Every individual debtor shall
26 bring to the meeting of creditors under § 341, and make available
27 to the trustee, the following documents or copies of them, or
28 provide a written statement that the documentation does not exist
29 or is not in the debtor's possession:
30 (A) evidence of current income such as the most recent

31 payment advice;

32 (B) unless the trustee or the United States trustee

33 instructs otherwise, statements for each of the debtor's depository

34 and investment accounts, including checking, savings, and money

35 market accounts, mutual funds and brokerage accounts for the time

36 period that includes the date of the filing of the petition; and

37 (C) documentation of monthly expenses claimed by the

38 debtor if required by § 707(b)(2)(A) or (B).

39 (3) *Tax Return.* At least 7 days before the first date set for

40 the meeting of creditors under § 341, the debtor shall provide to the

41 trustee a copy of the debtor's federal income tax return for the most

42 recent tax year ending immediately before the commencement of

43 the case and for which a return was filed, including any

44 attachments, or a transcript of the tax return, or provide a written

45 statement that the documentation does not exist.

46 (4) *Tax Returns Provided to Creditors.* If a creditor, at

47 least 15 days before the first date set for the meeting of creditors

48 under § 341, requests a copy of the debtor's tax return that is to be

49 provided to the trustee under subdivision (b)(3), the debtor, at least

50 7 days before the first date set for the meeting of creditors under §

51 341, shall provide to the requesting creditor a copy of the return,

52 including any attachments, or a transcript of the tax return, or

53 provide a written statement that the documentation does not exist.

54 (5) *Confidentiality of Tax Information.* The debtor's

55 obligation to provide tax returns under Rule 4002(b)(3) and (b)(4)

56 is subject to procedures for safeguarding the confidentiality of tax

57 information established by the Director of the Administrative

58 Office of the United States Courts.

COMMITTEE NOTE

This rule is amended to implement § 521(a) (1)(B)(iv) and (e)(2), added to the Code by the 2005 amendments. These Code amendments expressly require the debtor to file with the court, or provide to the trustee, specific documents. The amendments to the rule implement these obligations and establish a time frame for creditors to make requests for a copy of the debtor's Federal income tax return. The rule also requires the debtor to provide documentation in support of claimed expenses under § 707(b)(2)(A) and (B).

Subdivision (b) is also amended to require the debtor to cooperate with the trustee by providing materials and documents necessary to assist the trustee in the performance of the trustee's duties. Nothing in the rule, however, is intended to limit or restrict the debtor's duties under § 521, or to limit the access of the Attorney General to any information provided by the debtor in the case. Subdivision (b)(2) of the ~~The~~ rule does not require that the debtor create documents or obtain documents from third parties; rather, the debtor's obligation is to bring to the § 341 meeting of creditors the documents which the debtor possesses. Under subdivision (b)(3), the debtor must obtain copies of tax returns or tax transcripts and provide them to the appropriate person(s), unless no such documents exist. Any written statement that the debtor provides indicating either that documents do not exist or are not in the debtor's possession must be verified or contain an unsworn declaration as required under Rule 1008. [Under subdivision (b)(2)(B), the trustee or United States trustee can instruct the debtor that there is no reason to provide the documents described in that subdivision.]

Because the amendment implements the debtor's duty to cooperate with the trustee, the materials provided to the trustee would not be made available to any other party in interest at the § 341 meeting of creditors other than the Attorney General. Some of the documents may contain otherwise private information that should not be disseminated. For example, pay stubs and financial account statements might include the social-security numbers of the debtor and the debtor's spouse and dependents, as well as the names of the debtor's children. The debtor should redact all but the last four digits of all social-security numbers and the names of any minors when they appear in these documents. This type of information would not usually be needed by creditors and others who may be attending the meeting. If a creditor perceives a need to review specific documents or other evidence, the creditor may proceed under Rule 2004.

Tax information produced under this rule is subject to procedures for safeguarding confidentiality established by the Director of the Administrative Office of the United States Courts.

Rule 4003 governs exemptions, and the National Bankruptcy Conference in **Comment 06-BK-018** (see page 7-8 of memo behind Tab 3 titled Comments Submitted After January 10, 2007 on Proposed Rules and Forms), and the National Association of Consumer Bankruptcy Attorneys in **Comment 06-BK-020** (see page 10-11 of memo behind Tab 3 titled Comments Submitted After January 10, 2007 on Proposed Rules and Forms) each opposed the expansion of the deadline for objecting to exemptions, but the Consumer Subcommittee did not accept those suggestions. The Subcommittee did, however, agree that the rule should be amended to include a provision for the providing of notice of the objection to the debtor and to any person who may have filed the exemption in the case. Also, the Committee Note was amended to respond to **Comment 06-BK-052** (see page 15 of memo behind Tab 3 titled Comments Submitted After January 10, 2007 on Proposed Rules and Forms) submitted by the Federal Courts Committee of the California State Bar which expressed concern that the deadlines set in Rule 4003(b)(2) should apply as well to exemption objections made under (b)(3). The Consumer Subcommittee recommends that the Committee Note be amended to recognize that these deadlines are applicable, but the Subcommittee does not believe that any change needs to be made to the text of the rule to address the issue.

Rule 4003. Exemptions

* * * * *

1 (b) OBJECTING TO A CLAIM OF EXEMPTIONS.

(1) A party in interest may file an objection to the list of property claimed as exempt only within 60 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

(2) Notwithstanding the time limits set forth in subdivision (b)(1), the trustee may file an objection to a claim of exemption at any time prior to one year after the closing of the case if the debtor fraudulently asserted the claim of exemption. The trustee shall deliver or mail the objection to the debtor and the debtor's attorney, and to any person filing the list of exempt property and to that person's attorney ~~person filing the list and the person's attorney~~.

(3) 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 the attorney for that person.

* * * * * *

(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY. A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall

24 be by motion in accordance with Rule 9014. Notwithstanding the

25 provisions of subdivision (b), a creditor may object to a motion filed

26 under § 522(f) by challenging the validity of the exemption asserted

27 to be impaired by the lien.

COMMITTEE NOTE

Subdivision (b) is rewritten to include four subparagraphs.

Subdivision (b)(1) is amended to extend the deadline for objections to exemptions from 30 days to 60 days after the conclusion of the meeting of creditors held under § 341(a). The deadline for objecting to exemptions is short, and the Supreme Court has held that the deadline is relatively inelastic. Taylor v. Freeland & Kronz, 503 U.S. 638 (1992). As a result of the amendment to § 522(a)(3) of the Code in 2005, the trustee and creditors may need more time to evaluate the exemptions claimed by the debtor and, in particular, whether the debtor's claimed exemption is based on the law of the appropriate jurisdiction.

Subdivision (b)(2) is added to the rule to permit the trustee to object to an exemption at any time up to one year after the closing of the case if the debtor fraudulently claimed the exemption. Extending the deadline for trustees to object to an exemption when the exemption claim has been fraudulently made will permit the court to review and, in proper circumstances, deny improperly claimed exemptions, thereby protecting the legitimate interests of creditors and the bankruptcy estate. However, similar to the deadline set in §727(e) for revoking a discharge which was fraudulently obtained, an objection to an exemption that was fraudulently claimed must be filed within one year after the closing of the case. Subdivision (b)(2) extends the objection deadline only for trustees.

Subdivision (b)(3) is added to the rule to reflect the addition of subsection (q) to § 522 of the Code by the 2005 Act. Section 522(q) imposes a $125,000 limit on a state homestead exemption if the debtor has been convicted of a felony or owes a debt arising from certain causes of action. Other revised provisions of the Code, such as § 727(a)(12) and § 1328(h), suggest that the court may consider issues relating to § 522 late in the case, and the 60-day period for

objections would not be appropriate for this provision. Under existing subdivision (b)(1), a party in interest also may object to an exemption that is first claimed by an amendment to the schedules at any time up to 60 days after the amendment or a supplemental schedule is filed

Subdivision (d) is amended to clarify that a creditor with a lien on property that the debtor is attempting to avoid on the grounds that the lien impairs an exemption may raise in defense to the lien avoidance action any objection to the debtor's claimed exemption. The right to object is limited to an objection to the exemption of the property subject to the lien and for purposes of the lien avoidance action only. The creditor may not object to other exemption claims made by the debtor. Those objections, if any, are governed by Rule 4003(b).

Other changes are stylistic.

Rule 4004(a) and (c), and Rule 7001 were revised by the Consumer Subcommittee in response to an informal comment from Bankruptcy Judge Olack regarding the procedure for objecting to a debtor's discharge based on the insufficient lapse of time between cases in which a discharge was first obtained and the commencement of the subsequent case. The rules are amended to clarify that discharge objections based on §§ 727(a)(8) or (9), or 1328(f) need not be commenced by a complaint. Instead, they can be brought by motion. This is accomplished by the amendment to Rule 7001(a)(4) and the addition of new subdivision (b) in that Rule. Rule 4004 is amended to reflect that these actions may be commenced by motion, not just by complaint, including in a chapter 13 case because of the addition of § 1328(f) to the Code. Rule 4004(c)(1)(M) is added to direct the clerk not to issue a discharge if a chapter 7 debtor is not eligible to receive a discharge under § 727 (a)(8) or (9).

Rule 7001. Scope of Rules of Part VII

1 (a) An adversary proceeding is governed by the rules of this Part VII.

2 The following are adversary proceedings:

3 (1) to recover money or property, except a proceeding to compel

4 the debtor to deliver property to the trustee, or a proceeding under §

5 554(b) or § 725 of the Code, Rule 2017, or Rule 6002,

6 (2) to determine the validity, priority, or extent of a lien or other
7 interest in property, other than a proceeding under Rule 4003(d),
8 (3) to obtain approval pursuant to § 363(h) for the sale of both the
9 interest of the estate and of a co-owner in property,
10 (4) except as provided in subdivision (b), to object to or revoke a
11 discharge,
12 (5) to revoke an order of confirmation of a chapter 11, chapter 12,
13 or chapter 13 plan,
14 (6) to determine the dischargeability of a debt,
15 (7) to obtain an injunction or other equitable relief,
16 (8) to subordinate any allowed claim or interest, except when
17 subordination is provided in a chapter 9, 11, 12, or 13 plan,
18 (9) to obtain a declaratory judgment relating to any of the
19 foregoing, or
20 (10) to determine a claim or cause of action removed pursuant to
21 28 U.S.C. § 1452.
22 (b) An objection to discharge under §§ 727(a)(8), (a)(9), or
23 1328(f), is commenced by motion and is governed by Rule 9014.

COMMITTEE NOTE

Subdivision (b) is added to the rule, and the text of the existing rule is redesignated as subdivision (a). Subdivision (b) and the amendment to subdivision (a)(4) direct that objections to discharge under § 727(a)(8) and (a)(9) and § 1328(f) be commenced by motion rather than by complaint as is the case for other objections

to discharge. Objections to discharge on these grounds typically present issues more easily resolved than other objections to discharge, so there is less need for the more extensive procedures applicable to adversary proceedings. In appropriate cases, the court can order that all of the provisions of Part VII of the rules apply to these matters under Rule 904(c).

Rule 4004. Grant or Denial of Discharge

1 (a) In a chapter 7 ~~liquidation~~ case a complaint or motion
2 objecting to the debtor's discharge under § 727(a) shall be filed no
3 later than 60 days after the first date set for the meeting of creditors
4 under § 341(a). In a chapter 11~~reorganization~~ case, the complaint
5 shall be filed no later than the first date set for the hearing on
6 confirmation. In a chapter 13 case, a motion objecting to a
7 debtor's discharge under § 1328(f) shall be filed no later than 60
8 days after the first date set for the meeting of creditors under §
9 341(a). At least 25 days, notice of the time so fixed shall be given
10 to the United States trustee and all creditors as provided in Rule
11 2002(f) and (k), and to the trustee and the trustee's attorney.
12 * * * * * *
13 (c) GRANT OF DISCHARGE.
14 (1) In a chapter 7 case, on expiration of the time fixed for
15 filing a complaint objecting to discharge and the time fixed for
16 filing a motion to dismiss the case under Rule 1017(e), the court
17 shall forthwith grant the discharge unless:

18 (A) the debtor is not an individual;

19 (B) a complaint objecting to the discharge has been filed;

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

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

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

23 objecting to the discharge is pending;

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

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

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

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

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

29 1930(b) that is payable to the clerk upon the commencement of a

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

31 U.S.C. § 1930(f);

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

33 completion of a course concerning personal financial management

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

35 (I) a motion to delay or postpone discharge under §

36 727(a)(12) is pending;

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

38 agreement under Rule 4008(a) is pending;

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

40 reaffirmation agreement is an undue hardship; ~~or~~

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

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

43 filed under § 521(f); or

44 (M) the debtor is not eligible to receive a discharge under

45 § 727(a)(8) or (a)(9).

46 * * * * *

47 (3) If the debtor is required to file a statement under Rule

48 1007(b)(8), the court shall not grant a discharge earlier than 30

49 days after the statement is filed.

50 (4) In a chapter 13 case, the court shall not grant a

51 discharge if the debtor has not filed with the court a statement of

52 completion of a course concerning personal financial management

53 as required by Rule 1007(b)(7), or if the debtor is not eligible for a

54 discharge under § 1328(f).

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

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

57 not filed with the court a statement of completion of a course

58 concerning personal financial management as required by Rule

59 1007(b)(7).

60 * * * * *

COMMITTEE NOTE

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

Subdivision (c)(1)(G) is amended to reflect the fee waiver provision in 28 U.S.C. § 1930, added by the 2005 amendments.

Subdivision (c)(1)(H) is new. It reflects the 2005 addition to the Code of §§ 727(a)(11) and 1328(g), which require that individual debtors complete a course in personal financial management as a condition to the entry of a discharge. Including this requirement in the rule helps prevent the inadvertent entry of a discharge when the debtor has not complied with this requirement. If a debtor fails to file the required statement regarding a personal financial management course, the clerk will close the bankruptcy case without the entry of a discharge.

Subdivision (c)(1)(I) is new. It reflects the 2005 addition to the Code of § 727(a)(12). This provision is linked to § 522(q). Section 522(q) limits the availability of the homestead exemption for individuals who have been convicted of a felony or who owe a debt arising from certain causes of action within a particular time frame. The existence of reasonable cause to believe that § 522(q) may be applicable to the debtor constitutes grounds for withholding the discharge.

Subdivision (c)(1)(J) is new. It accommodates the deadline for filing a reaffirmation agreement established by Rule 4008(a).

Subdivision (c)(1)(K) is new. It reflects the 2005 revisions to § 524 of the Code that alter the requirements for approval of reaffirmation agreements. Section 524(m) sets forth circumstances under which a reaffirmation agreement is presumed to be an undue hardship. This triggers an obligation to review the presumption and may require notice and a hearing. Subdivision (c)(1)(J) has been added to prevent the discharge from being entered until the

court approves or disapproves the reaffirmation agreement in accordance with § 524(m).

Subdivision (c)(1)(L) is new. It implements § 1228(a) of Public Law Number 109-8, an uncodified provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which prohibits entry of a discharge unless required tax documents have been provided to the court.

Subdivision (c)(1)(M) is new. It directs the court to withhold the entry of the discharge if the debtor is ineligible to receive a discharge under § 727(a)(8) or (a)(9).

Subdivision (c)(3) is new. It postpones the entry of the discharge of an individual debtor in a case under chapter 11, 12, or 13 if there is a question as to the applicability of § 522(q) of the Code. The postponement provides an opportunity for a creditor to file a motion to limit the debtor's exemption under that provision.

Subdivision (c)(4) is new. It directs the court to withhold the entry of the discharge if the debtor is ineligible to receive a discharge under § 1328(f).

Other changes are stylistic.

Exhibit D to Official Form 1 - Voluntary Petition

The National Bankruptcy Conference submitted **Comment 06-BK-018** (see page 5-6 of memo behind Tab 3 titled Comments Submitted After January 10, 2007, on Proposed Rules and Forms) in which it recommended that Exhibit D to Official Form 1 be revised to delete the reference to the requirement that the debtor file a motion in addition to setting out the alleged exigent circumstances that justify the postponement of the obligation to obtain prepetition credit counseling. Ms. Margaret Grammar Gay made a similar suggestion in **Comment 06-BK-057**. She suggested that if the debtor must file a motion for approval of the postponement, then there is no reason to require the debtor to also set out the allegedly exigent circumstances for the postponement on Exhibit D. I believe that if the requirement of a motion were removed, Ms. Grammar Gay would support the idea of requiring the debtor to set those circumstances out on Exhibit D. The Consumer Subcommittee concluded that paragraph 3 of Exhibit D should be amended to delete the requirement that the debtor file a separate motion. Instead, the completion of paragraph 3 of the Exhibit will be sufficient to raise the matter for the court to consider whether to permit the debtor to complete the credit counseling requirement after the filing

of the petition. Paragraph 3 of Exhibit D to Official Form 1 would be amended as set out below.

> ☐ 3. I certify that I requested credit counseling services from an approved agency but was unable to obtain the services during the five days from the time I made my request, and the following exigent circumstances merit a temporary waiver of the credit counseling requirement so I can file my bankruptcy case now. *[Must be accompanied by a motion for determination by the court.] [Summarize exigent circumstances here.]*
>
> _____
>
> _____
>
> _____.
>
> **If the court is satisfied with the ~~reasons~~ <u>exigent circumstances you have stated</u> ~~in your motion~~, it will send you an order approving your request <u>for a temporary waiver of the credit counseling requirement</u>. You must still obtain the credit counseling briefing within the first 30 days after you file your bankruptcy case and promptly file a certificate from the agency tat provided the briefing, together with a copy of any debt management plan developed through the agency. Any extension of the 30-day deadline can be granted only for cause and is limited to a maximum of 15 days. A motion for extension must be filed within the 30-day period. Failure to fulfill these requirements may result in dismissal of your case. If the court is not satisfied with your reasons for filing your bankruptcy case without first receiving a credit counseling briefing, your case may be dismissed.**

COMMITTEE NOTE

* * * * *

BAPCPA also added a new § 109(h) to the Code. To implement this provision, a section labeled "Exhibit D" is inserted on page 2 of the form, and a separate Exhibit D is added. These additions will enable individual debtors to certify that they have received budget and credit counseling prior to filing, as required by § 109(h), or request a temporary waiver of, or exemption from, the requirement, if they meet the statutory requirements for such relief. Exhibit D includes directions to attach required documentation or,

> if the debtor requests ~~a temporary waiver or~~ an exemption, a motion for determination by the court. Exhibit D also states the requirement that all debtors must obtain a briefing from an approved credit counseling agency before filing a bankruptcy case, unless one of the very limited exceptions applies, and further states the consequences that may be faced by any debtor who fails to comply.

* * * * *

Schedules I (Current Income of Individual Debtor(s)) and Schedule J (Current Expenditures of Individual Debtor(s)) to Official Form 6

Bankruptcy Judge Keith M. Lundin submitted **Comment 06-BK-009** which included a lengthy set of comments on the means test forms. Those comments are addressed elsewhere. Judge Lundin also had several suggestions regarding Schedule I. The first issue was whether the instructions on Schedule I should be amended to avoid confusion by debtors over the calculation of current monthly income and the income information set out on Schedule I. **The Subcommittee concluded that the initial instruction at the beginning of Schedule I should be amended by adding a sentence at the end as follows:**

> The average monthly income calculated on this form may differ from current monthly income calculated on Form 22A, 22B, or 22C.

The same amendment could also be made to the initial instruction at the beginning of Schedule J, Current Expenditures of Individual Debtor(s). It would state:

> The average monthly expenses calculated on this form may differ from the total deductions from income allowed on Form 22A, 22B, or 22C.

The next issue raised by Judge Lundin in his comment was that Schedule I and the means test forms should be meshed together. **The Subcommittee discussed this possibility and concluded that Schedule I and the means test forms should remain separate.** This determination rendered several other suggestions presented by Judge Lundin moot. They addressed issues regarding the proper listing of information on a form that would include both the debtor's actual income and expenses and the debtor's income and expenses applicable under the means test. Consequently, **the Subcommittee concluded that Judge Lundin's suggested changes to lines 13 and 16 should not be made.**

Official Form 23 – Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management

Ms. Margaret Grammar Gay submitted **Comment 06-BK-057** (see page 22-23 of memo behind Tab 3 titled Comments Submitted After January 10, 2007 on Proposed Rules and Forms). The Consumer Subcommittee agreed with her suggestion that the title of Official Form 23 should be amended. The new title for the official form should be **"Debtor's Certification of Completion of <u>Postpetition</u> Instructional Course Concerning Personal Financial Management."** Inserting "Postpetition" into the title of the Form will clarify for debtors that Official Form 23 applies to the postpetition course taken by the debtor as compared to the prepetition credit counseling course that debtors must take.

"Automatic" Dismissal Under § 521 of the Code

The National Association of Consumer Bankruptcy Attorneys **(Comment 06-BK-020)** (see page 11-12 of memo behind Tab 3 titled Comments Submitted After January 10, 2007, on Proposed Rules and Forms) suggested that the Subcommittee propose a rules based solution to the problem of automatic dismissals under § 521 of the Code. This is a matter that is currently of significant interest in the courts, and a variety of solutions are being offered to the problem. **The Subcommittee concluded that it would be premature to act on this problem immediately, but believes that the matter should be monitored to determine whether a consensus develops among the courts as to how such a process should be conducted. If such a consensus arises, the Subcommittee should reconsider the issue to determine if a rule should be adopted to implement the process.**

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: ADDENDUM TO REPORT ON BUSINESS ISSUES

DATE: MARCH 23, 2007

Comment 06-BK-050 (American Institute of Certified Public Accountants "AICPA") This comment addresses two new forms adopted as a response to the 2005 amendments to the Bankruptcy Code. Proposed Form 26 sets out the Value, Operations, and Profitability of entities in which the debtor owns a substantial or controlling interest. The AICPA notes that the positions taken in the forms may not comport with Generally Accepted Accounting Principles and that the trigger point for the presumption of a substantial or controlling interest (20% ownership in Proposed Rule 2015.3) differs from similar rules followed by the accounting profession. The comment points out that Form 26 is not what an accountant would adopt if writing on a clean slate. However, the forms are intended for a different audience and are likely to be completed by the debtor rather than a professional accountant. Therefore, no change is recommended to the rule. In **Comment 06-BK-052** (see page 16 of memo behind Tab 3 titled Comments Submitted After January 10, 2007 on Proposed Rules and Forms), the California State Bar's Insolvency Law Committee also suggests that Proposed Rule 2015.3(e) may be inconsistent with Rule 2003(a). Under Rule 2003(a), the initial report must be filed at least 5 days before the meeting of creditors and the meeting can be held between 20 and 40 days after the commencement of the case. Under Proposed Rule 2015.3(e), the debtor must provide at least 20 days notice to the entity about which the debtor intends to file a financial report that such a report is to be filed. This is intended to give that entity an opportunity to seek a protective order under § 107 of the Code. The Insolvency Law Committee rightly notes that it is almost impossible to provide 20 days notice, unless the notice is given on the same day as the filing of the petition. While this is possible, it would seem better to reduce the notice time to 10 days which should be a sufficient period to determine whether to seek a protective order. **I recommend that we amend Proposed Rule 2015.3 to reduce the notice period from 20 days to a shorter period, and I think 10 days would be sufficient.**

Rule 2015.3 Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest.

1 (a) REPORTING REQUIREMENT. In a chapter 11

2 case, the trustee or debtor in possession shall file periodic

3 financial reports of the value, operations, and profitability
4 of each entity that is not a publicly traded corporation or a
5 debtor in a case under title 11, and in which the estate holds
6 a substantial or controlling interest. The reports shall be
7 prepared as prescribed by the appropriate Official Form,
8 and shall be based upon the most recent information
9 reasonably available to the trustee or debtor in possession.
10 (b) TIME FOR FILING; SERVICE. The first report
11 required by this rule shall be filed no later than five days
12 before the first date set for the meeting of creditors under §
13 341 of the Code. Subsequent reports shall be filed no less
14 frequently than every six months thereafter, until the
15 effective date of a plan or the case is dismissed or
16 converted. Copies of the report shall be served on the
17 United States trustee, any committee appointed under §
18 1102 of the Code, and any other party in interest that has
19 filed a request therefor.
20 (c) PRESUMPTION OF SUBSTANTIAL OR
21 CONTROLLING INTEREST; JUDICIAL
22 DETERMINATION. For purposes of this rule, an entity of
23 which the estate controls or owns at least a 20 percent
24 interest, shall be presumed to be an entity in which the
25 estate has a substantial or controlling interest. An entity in

26 which the estate controls or owns less than a 20 percent
27 interest shall be presumed not to be an entity in which the
28 estate has a substantial or controlling interest. Upon
29 motion, the entity, any holder of an interest therein, the
30 United States trustee, or any other party in interest may
31 seek to rebut either presumption, and the court shall, after
32 notice and a hearing, determine whether the estate's interest
33 in the entity is substantial or controlling.
34 (d) MODIFICATION OF REPORTING
35 REQUIREMENT. The court may, after notice and a
36 hearing, vary the reporting requirement established by
37 subdivision (a) of this rule for cause, including that the
38 trustee or debtor in possession is not able, after a good faith
39 effort, to comply with those reporting requirements, or that
40 the information required by subdivision (a) is publicly
41 available.
42 (e) NOTICE AND PROTECTIVE ORDERS. No later
43 than 20 days before filing the first report required by this
44 rule, the trustee or debtor in possession shall send notice to
45 the entity in which the estate has a substantial or controlling
46 interest, and to all holders – known to the trustee or debtor
47 in possession – of an interest in that entity, that the trustee
48 or debtor in possession expects to file and serve financial

49 information relating to the entity in accordance with this

50 rule. The entity in which the estate has a substantial or

51 controlling interest, or a person holding an interest in that

52 entity, may request protection of the information under §

53 107 of the Code.

54 (f) EFFECT OF REQUEST. Unless the court orders

55 otherwise, the pendency of a request under subdivisions

56 (c),(d), or (e) of this rule shall not alter or stay the

requirements of subdivision (a).

COMMITTEE NOTE

This rule implements § 419 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Reports are to be made on the appropriate Official Form. While § 419 of BAPCPA places the obligation to report upon the "debtor," this rule extends the obligation to include cases in which a trustee has been appointed. The court can order that the reports not be filed in appropriate circumstances, such as when the information that would be included in these reports is already available to interested parties.

INTERIM RULES COMPARISON:

This Rule is new and was not included in the Interim Rules. It is added to implement a provision of the 2005 Act, but that provision explicitly directed that it would not become effective until the proper rules and form were adopted under the Rules Enabling Act process. Therefore, this subdivision was not included in the Interim Rules.

MEMORANDUM

TO: BUSINESS SUBCOMMITTEE

FROM: JEFF MORRIS, REPORTER

RE: COMMENTS ON AND PROPOSED REVISIONS TO FORMS 25A and 25B (Small Business Plan and Disclosure Statement), FORM 25C (Small Business Monthly Operating Report), and FORM 26 (Periodic Report Regarding Value, Operations and Profitability of Entities in Which the Estate Holds a Substantial or Controlling Interest)

DATE: MARCH 15, 2007

Most of the comments submitted on the proposed rules and forms related to consumer bankruptcy issues. Two comments, however, were addressed to the three new forms that apply in small business cases under chapter 11. Comment 06-BK-049 was submitted by the Commercial Law League (CLLA or the League), and Comment 06-BK-050 was submitted by the American Institute of Certified Public Accountants (AICPA). The CLLA comment proposed changes to the plan and disclosure statement (Forms 25A and 25B), while the AICPA comment addresses Forms 25C and 26.

Comment 06-BK-49 Commercial Law League of America (CLLA or the League)

The comment of the CLLA is addressed entirely to the form plan and disclosure statement in small business chapter 11 cases. These are Proposed Official Forms 25A and 25B, respectively. The first recommendation is that the plan and disclosure statement be amended to more specifically provide for the retention and prosecution of avoidance actions by the debtor. The recommendation is that Article IX of the plan be amended to insert a provision that explicitly provides that the reorganized debtor is retaining the right to pursue avoidance actions under §§ 542-551 of the Code with a corresponding insertion to Part VI of the disclosure

statement that describes the plan provision. Currently, Part II(F) of the disclosure statement sets out the debtor's expected actions regarding the recovery of transfers through the use of the avoiding powers. The discussion of the debtor's actions regarding the avoiding powers in the disclosure statement is intended to provide creditors with notice prior to the casting of their ballots as to whether the debtor intends to pursue avoiding power actions. The form plan does not include a provision expressly addressing the matter. Instead, the matter is left for possible inclusion in Article IX of the plan. The Business Subcommittee in preparing the form plan and disclosure statement intended to leave open the possibility of additional provisions, including a provision governing the post-confirmation prosecution of avoiding powers actions. The plan proponent can certainly include such a provision. Including some provisions and not others that might be included in Article IX of the plan could be misleading to debtors, so no examples of additional provision are given either in the instructions or the Committee Notes for the plan and disclosure statement. Here again, providing examples of possible provisions creates the risk of excluding some provisions that are also worthy of inclusion. **Consequently, I do not believe that the form plan or disclosure statement should be revised as suggested by the Commercial Law League as to the inclusion of a provision for the prosecution of avoidance actions.**

The League next suggests that the form plan and disclosure statement should include a section that describes in detail the means by which the debtor intends to implement the plan. Section 1123(a)(5) requires that the plan include adequate means for its implementation, and the plan as proposed seems more than adequate with respect to the treatment of claims and interests, but there is little besides the references to executory contracts and unexpired leases in Article VI

of the plan that sets out what the debtor intends to do to generate the funds necessary to make the payments called for under the plan. Inserting a section in the plan and disclosure statement directing the plan proponent to complete such a section would be helpful to the court and creditors. **Therefore, I believe the form plan and disclosure statement should be amended to include such a section as suggested by the Commercial Law League. I recommend that the plan be revised to insert a new Article VII with currently proposed Articles VII through IX being redesignated as Articles VIII through X. My recommendation for the new Article VII of Form 25A is as follows.**

ARTICLE VII

Means for Implementation of the Plan

> [Insert here provisions regarding how the plan will be implemented as required under § 1125(a)(5) of the Code. For example, provisions may include those that set out how the plan will be funded, as well as who will be serving as directors, officers or voting trustees of the reorganized debtor.]

The instructions for the Form will also be changed by inserting the following after paragraph 12 of the Instructions and renumbering paragraphs 13-15 as paragraphs 14-16.

> MEANS FOR IMPLEMENTATION OF THE PLAN
>
> 13. The seventh article describes how the plan will be implemented. It should indicate the source of any funds that will be used to pay claims and interests under the plan, and it should also list the persons who will be serving as the management of the debtor after the plan is confirmed.

Alternatively, this insertion could be viewed as unnecessary if you believe that the first paragraph of Article I of the plan that sets out a summary of the plan is sufficient. That paragraph directs the plan proponent to "specify sources of payment, such as an infusion of

capital, loan proceeds, sale of assets, cash flow from operations, or future income." This language is bracketed in the form signifying that the drafter is supposed to provide the information. The question for the Committee is whether this direction is sufficient, especially given the requirement that the plan must include provisions for its implementation. Nonetheless, the language does direct the plan proponent to provide this information, and that may be sufficient. Furthermore, Part III (D) of the disclosure statement (Form 25B) also includes a section for the discussion of the means of implementing the plan.

A third alternative is to leave the plan as it is, but to expand the discussion of that paragraph of the plan in the instructions that follow. Paragraph 3 of the instructions tells the plan proponent to summarize the plan. The instructions could be expanded slightly and added emphasis could be placed on the need for the summary paragraph to include sufficient detail that the court can determine how the plan will be implemented as required for confirmation under § 1123(a)(5). The following is a revised Paragraph 3 to the instructions for Form 25A. Changes from the published instructions are noted by strikeouts and underlines.

> 3. The first article should provide a summary of the ~~debtor's~~ proposed plan. It should describe the manner in which the plan will be ~~consummated~~ implemented, as required by § 1125(a)(5), and the source of the funds for payments to be made under the plan. These sources might include an infusion of capital, loan proceeds, sale of assets, cash flow from operations, or future income. The summary should also identify the persons who will be serving as directors, officers or voting trustees of the reorganized debtor, and describe the treatment of the various classes of claimants under the plan.

Thus, the issue for the Committee is whether to

1. amend Form 25A to insert a new Article VII in the plan regarding the implementation of the plan,

2. leave Form 25A unchanged because the first paragraph of the plan is sufficient, or

3. leave the text of the Form unchanged, but expand paragraph 3 of the instructions to the Form to refer more directly to the obligation under § 1123(a)(5) to provide adequate means for the implementation of the plan.

I do not believe that we would need to amend the Disclosure Statement, Form 25B, because that Form already includes such a section. Part III. D. of the Disclosure Statement (see page 11) requires the plan proponent to describe the items that I have included in the bracketed portion of the proposed Article VII of the plan. The instructions to the disclosure statement also include a discussion of the issue in Paragraph 10 of the Instructions. The issue for the Subcommittee is whether the inclusion of this information in the Disclosure Statement is sufficient, or whether it should be included in the plan as well. Since the means for implementation of the plan is a required plan provision according to § 1123(a)(5), and since the disclosure of post-confirmation management is required for confirmation of the plan under § 1129(a)(5)[1], I believe it would be appropriate for these provisions to be set out in the plan.

The CLLA also suggests that the Section 5.03 of the proposed plan be amended to

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[1] Section 1123(a) sets out the provisions that must be in a plan, so the justification for including the implementation is direct. Section 1129(a) sets out the requirements for confirmation of the plan, and many of those requirements cannot be met simply by including them in a plan. For example, a plan that states that it has been proposed in good faith and not by any means forbidden by law does not thereby meet the requirement of § 1129(a)(3). However, a plan that includes a provision that discloses the identities and affiliations of the post-confirmation management may meet that statutory requirement, and it certainly would assist the court in reaching its decision as to whether it should confirm the plan. That information would be in the disclosure statement, but setting it out in the plan would make review of the plan at confirmation slightly easier for the court.

authorize the settlement of disputed claims without court approval if they are below a certain amount or if the settlement is at or below a maximum discount of the claim. While such provisions may be sensible, and the League asserts that they may be particularly appropriate in small cases, I think that such a provision is best left to addition by plan proponents who have a specific need for the provision. **I would not recommend making the settlement without court approval provision a part of the form plan.**

Finally, the CLLA suggests that Section 6.01 of the plan be amended by inserting a new subsection (b) into the section and redesignating existing subsection (b) as a new subsection (c). The new subsection (b) would set out the dates by which the necessary payments would be made to cure any defaults under the contracts. The league points out that § 365(b) of the Code requires that any defaults be cured at the time of assumption (or at least be promptly cured), and it suggests that the cure payments be set out in the plan. Under § 1123(b)(2), the assumption, rejection, or assignment of executory contracts and unexpired leases is subject to § 365, so I do not believe it would be necessary for the plan to set out the specific payment dates for the debtor to effect a cure of defaults under executory contracts and unexpired leases. Creditors and lessors could raise the issue if they are sufficiently concerned about the timing and amount of payments. **Therefore, I would not recommend that this section of the form plan be amended as suggested by the League.**

Comment 06-BK-050 (American Institute of Certified Public Accountants "AICPA")

This comment addresses two new forms adopted as a response to the 2005 amendments to the Bankruptcy Code. The first form is Proposed Official Form 25C, the Small Business

Monthly Operating Report. The AICPA suggests that the form be expanded to provide substantially more information about the status of the debtor's tax filings including explanations for any delinquencies and the information that may be forthcoming, expanded lists of payables and receivables, accrued and unpaid expenses, and more elaborate disclosures about the debtor's inventory including aging and different values. The second form is Proposed Form 26 which sets out the Value, Operations, and Profitability of entities in which the debtor owns a substantial or controlling interest.

As to each comment, the AICPA notes that the positions taken in the forms may not comport with Generally Accepted Accounting Principles. For example, the trigger point for the presumption of a substantial or controlling interest (20% ownership in Proposed Rule 2015.3) differs from similar rules followed by the accounting profession (Generally Accepted Accounting Principles usually require a majority voting interest, so the AICPA suggests a 50% ownership as the triggering amount). This suggestion arguably ignores that Congress directed in § 419 of BAPCPA that these reports be provided whenever the debtor has a "substantial or controlling" interest in the other entity. The AICPA's comments point out that Form 26 is not what an accountant would adopt if writing on a clean slate. However, the forms are intended for a different audience and are likely to be completed by the debtor rather than a professional accountant. The Business Subcommittee worked with the United States Trustee Program to prepare the Form such that it would be accessible to the small business debtor. I believe that the Forms strike the proper balance in collecting the necessary information while still being sufficiently user friendly that the debtor will be able to complete them in a timely, efficient, and cost effective manner. **Therefore, I recommend that the Committee not adopt the changes**

proposed by the AICPA.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: ADDENDUM TO REPORT ON CROSS BORDER INSOLVENCY

DATE: MARCH 23, 2007

Comment 06-BK-017 submitted by the National Conference of Bankruptcy Judges urges the Advisory Committee to consider the III-ALI Guidelines for Court-to-Court Communications in Cross Border Cases when establishing the rules governing cross border cases. (see page 4-5 of memo behind Tab 3 titled Comments Submitted After January 10, 2007 on Proposed Rules and Forms). The Cross Border Subcommittee recommends no change to the text of the rule, but proposes a change to the Committee Note that mentions these guidelines specifically. That addition is made at the end of the Committee Note.

Rule 5012. Communication and Cooperation With Foreign Courts and Foreign Representatives

1 Except for a communication concerning scheduling or
2 administration, the court in a case commenced by a foreign
3 representative shall give at least 20 days' notice of its intent to
4 communicate with a foreign court or a foreign representative. The
5 notice shall identify the subject of the anticipated communication
6 and shall be given in the manner provided by Rule 2002(q). Any
7 entity that wishes to participate in the communication shall notify
8 the court of its intention no later than 5 days before the scheduled
9 communication.

COMMITTEE NOTE

This rule is new. It implements § 1525 which was added to the Code by the 2005 amendments. The rule provides an opportunity for parties in the case to take appropriate action prior

to the communication between courts, or between the court and a foreign representative, to establish procedures for the manner of the communication and the right to participate in the communication. Participation in the communication includes both active and passive participation. Parties wishing to participate must notify the court at least 5 days before the hearing so that ample time exists to make arrangements necessary to permit the participation. The rule does not attempt to establish specific guidelines or protocols for these communications. Rather, this is left to case by case development by the courts who also have access to recommended guidelines for these communications prepared jointly by the International Insolvency Institute and the American Law Institute.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JAMES H. WANNAMAKER

RE: AUTOMATIC ADJUSTMENT OF DOLLAR AMOUNTS IN BANKRUPTCY CODE AND OFFICIAL FORMS 1, 6C, 6E, 7, 10, 22A, AND 22C

DATE: MARCH 4, 2007, as Revised 3/23/07

Section 104(b), which was added to the Bankruptcy Code by the Bankruptcy Reform Act of 1994, provides for the automatic adjustment of certain dollar amounts in the Code every three years according to a formula specified in the provision. The date on which the dollar amounts were first adjusted was April 1, 1995, and another adjustment is scheduled to take effect April 1, 2007.

Several of the dollar amounts that are adjusted under § 104(b) appear in the Official Bankruptcy Forms, Form 1, the Voluntary Petition; Form 6C, the schedule of Property Claimed as Exempt; Form 6E, the schedule of Creditors Holding Claims Entitled to Priority; Form 7, the Statement of Financial Affairs; Form 10, the Proof of Claim; Form 22A, the Statement of Current Monthly Income and Means Test Calculation; and Form 22C, the Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income.

The dollar amount adjustments reflect the change in the Consumer Price Index for All Urban Consumers published by the United States Department of Labor for the three-year period ending December 31, 2006, and rounded to the nearest $25. Application of this formula to the dollars amounts in the specified provisions of the Bankruptcy Code is purely ministerial. Accordingly, the Judicial Conference in 1995 authorized the adjustments to be made and published in the Federal Register every three years without further action by the Conference. Amendment of the official forms to conform to the automatic adjustments made to the Code also is ministerial, and the Conference likewise authorized the amendments to be made every three years without further action by the Conference.

Prior to the enactment of the Bankruptcy Abuse Prevention Act and Consumer Protection Act of 2005 (BAPCPA), five sections of the Bankruptcy Code and two official bankruptcy forms were adjusted every three years. As amended by BAPCPA, section 104(b) provides for the adjustment of the dollar amounts in 20 sections of the Code and one section of title 28. The seven Official Forms which incorporate those dollar amounts are adjusted at the same time.

A chart showing the adjustments to be made and excerpts of the seven Official Forms are attached.

Attachments

Title 28, U.S.C.	Dollar Amount to be Adjusted	New (Adjusted) Dollar Amount
1409(b) - a trustee may commence a proceeding arising in or related to a case to recover		
(1) - money judgment of or property worth less than	$1,000	$1,100
(2) - a consumer debt less than	$15,000	$16,425
(3) - a non consumer debt against a non insider less than	$10,000	$10,950
Title 11, U.S.C.		
Section 101(3) - definition of assisted person	$150,000	$164,250
Section 101(18) - definition of family farmer	$3,237,000 (each time it appears)	$3,544,525 (each time it appears)
101(19A) - definition of family fisherman	$1,500,000 (each time it appears)	$1,642,500 (each time it appears)
101(51D) - definition of small business debtor	$2,000,000 (each time it appears)	$2,190,000(each time it appears)
Section 109(e) - allowable debt limits for individual filing bankruptcy under chapter 13	$307,675 (each time it appears) $922,975 (each time it appears)	$336,900 (each time it appears) $1,010,650 (each time it appears)
Section 303(b) - minimum aggregate claims needed for the commencement of involuntary chapter 7 or chapter 11 bankruptcy		
(1) - in paragraph (1)	$12,300	$13,475
(2) - in paragraph (2)	$12,300	$13,475

Title 11, U.S.C.	Dollar Amount to be Adjusted	New (Adjusted) Dollar Amount
Section 507(a) - priority expenses and claims		
(1) - in paragraph (4)	$10,000	$10,950
(2) - in paragraph (5)	$10,000	$10,950
(3) - in paragraph (6)	$4,925	$5,400
(4) - in paragraph (7)	$2,225	$2,425
Section 522(d) - value of property exemptions allowed to the debtor		
(1) - in paragraph (1)	$18,450	$20,200
(2) - in paragraph (2)	$2,950	$3,225
(3) - in paragraph (3)	$475 $9,850	$525 $10,775
(4) - in paragraph (4)	$1,225	$1,350
(5) - in paragraph (5)	$975 $9,250	$1,075 $10,125
(6) - in paragraph (6)	$1,850	$2,025
(7) - in paragraph (8)	$9,850	$10,775
(8) - in paragraph (11)(D)	$18,450	$20,200
522(f)(3) - exception to lien avoidance under certain state laws	$5,000	$5,475
522(f)(4)- items excluded from definition of household goods for lien avoidance purposes	$500 (each time it appears)	$550 (each time it appears)
522(n) - maximum aggregate value of assets in individual retirement accounts exempted	$1,000,000	$1,095,000
522(p) - qualified homestead exemption	$125,000	$136,875

Title 11, U.S.C.	Dollar Amount to be Adjusted	New (Adjusted) Dollar Amount
522(q) - state homestead exemption	$125,000	$136,875
523(a)(2)(C) - exceptions to discharge		
in subclause (i)(I) - consumer debts, incurred ≤ 90 days before filing owed to a single creditor in the aggregate	$500	$550
in subclause (i)(II) - cash advances incurred ≤ 70 days before filing in the aggregate	$750	$825
541(b)- property of the estate exclusions		
(1) - in paragraph (5)(C) - education IRA funds in the aggregate	$5,000	$5,475
(2) - in paragraph (6)(C) - pre-purchased tuition credits in the aggregate	$5,000	$5,475
547(c)(9) - preferences, trustee may not avoid a transfer if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of property is less than	$5,000	$5,475

Title 11, U.S.C.	Dollar Amount to be Adjusted	New (Adjusted) Dollar Amount
707(b) - dismissal of a case or conversion to a case under chapter 11 or 13 (means test)		
(1) - in paragraph (2)(A)(i)(I)	$6,000	$6,575
(2) - in paragraph (2)(A)(i)(II)	$10,000	$10,950
(3) - in paragraph (2)(A)(ii)(IV)	$1,500	$1,650
(4) - in paragraph (2)(B)(iv)(I)	$6,000	$6,575
(5) - in paragraph (2)(B)(iv)(II)	$10,000	$10,950
(6) - in paragraph (5)(B)	$1,000	$1,100
(8) - in paragraph 6(C)	$525	$575
(6) - in paragraph 7(A)	$525	$575
1322(d) - contents of chapter 13 plan, monthly income	$525 (each time it appears)	$575 (each time it appears)
1325(b) - chapter 13 confirmation of plan, disposable income	$525 (each time it appears)	$575 (each time it appears)
1326(b)(3) - payments to former chapter 7 trustee	$25	$25

Official Form 1 (10/06)

United States Bankruptcy Court
_____ DISTRICT OF _____

Voluntary Petition

Name of Debtor (if individual, enter Last, First, Middle):	Name of Joint Debtor (Spouse) (Last, First, Middle)
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names)	All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names).
Last four digits of Soc Sec /Complete EIN or other Tax I D No. (if more than one, state all)	Last four digits of Soc Sec /Complete EIN or other Tax I D No (if more than one, state all):
Street Address of Debtor (No and Street, City, and State) ZIP CODE	Street Address of Joint Debtor (No and Street, City, and State) ZIP CODE
County of Residence or of the Principal Place of Business:	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address): ZIP CODE	Mailing Address of Joint Debtor (if different from street address). ZIP CODE
Location of Principal Assets of Business Debtor (if different from street address above): ZIP CODE	

Type of Debtor
(Form of Organization)
(Check **one** box.)

- ☐ Individual (includes Joint Debtors)
  See Exhibit D on page 2 of this form
- ☐ Corporation (includes LLC and LLP)
- ☐ Partnership
- ☐ Other (If debtor is not one of the above entities, check this box and state type of entity below)

Nature of Business
(Check **one** box.)

- ☐ Health Care Business
- ☐ Single Asset Real Estate as defined in 11 U.S.C. § 101(51B)
- ☐ Railroad
- ☐ Stockbroker
- ☐ Commodity Broker
- ☐ Clearing Bank
- ☐ Other

Tax-Exempt Entity
(Check box, if applicable)

- ☐ Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).

Chapter of Bankruptcy Code Under Which the Petition is Filed (Check **one** box.)

- ☐ Chapter 7
- ☐ Chapter 9
- ☐ Chapter 11
- ☐ Chapter 12
- ☐ Chapter 13
- ☐ Chapter 15 Petition for Recognition of a Foreign Main Proceeding
- ☐ Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding

Nature of Debts
(Check one box.)

$2,190,000.

☐ Debts are pr[illegible] are primarily debts, defin[illegible]ss debts § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."

Filing Fee (Check one box.)

- ☐ Full Filing Fee attached
- ☐ Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments Rule 1006(b) See Official Form 3A
- ☐ Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B

Chapter 11 Debtors

Check one box:
- ☐ Debtor is a small business debtor as defined in 11 U S C § 101(51D)
- ☐ Debtor is not a small business debtor as defined in 11 U S C § 101(51D)

Check if:
- ☐ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than ~~$2 million.~~

Check all applicable boxes:
- ☐ A plan is being filed with this petition
- ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).

Statistical/Administrative Information

- ☐ Debtor estimates that funds will be available for distribution to unsecured creditors.
- ☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors

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	Over 100,000
☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

Estimated Assets

☐ $0 to $10,000	☐ $10,000 to $100,000	☐ $100,000 to $1 million	☐ $1 million to $100 million	☐ More than $100 million

Estimated Liabilities

☐ $0 to $50,000	☐ $50,000 to $100,000	☐ $100,000 to $1 million	☐ $1 million to $100 million	☐ More than $100 million

THIS SPACE IS FOR COURT USE ONLY

Form B6C
(10/05)

In re _____,
Debtor

Case No. _____
(If known)

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor claims the exemptions to which debtor is entitled under:
(Check one box)
☐ 11 U.S.C. § 522(b)(2)
☐ 11 U.S.C. § 522(b)(3)

☐ Check if debtor claims a homestead exemption that exceeds ~~$125,000~~. $136,875

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION

Official Form 6E (10/06)

In re _____, Debtor

Case No._____ (if known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, indicate that by stating "a minor child" and do not disclose the child's name See 11 U.S C. § 112 If "a minor child" is stated, also include the name, address, and legal relationship to the minor child of a person described in Fed R. Bankr P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community " If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts who file a case under chapter 7 or 13 report this total also on the Statistical Summary of Certain Liabilities and Related Data

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule Individual debtors with primarily consumer debts who file a case under chapter 7 report this total also on the Statistical Summary of Certain Liabilities and Related Data

☐ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

☐ **Domestic Support Obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U S.C § 507(a)(1)

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C § 507(a)(3).

☐ **Wages, salaries, and commissions**

$10,950

Wages, salaries, and commissions, including vacation, ~~severance,~~ and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to ~~$10,000*~~ per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

Official Form 6E (10/06) - Cont.

In re _____ , **Case No.** _____
Debtor **(if known)**

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to ~~$4,925*~~ $5,400 per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6)

☐ **Deposits by individuals**

Claims of individuals up to ~~$2,225*~~ $2,425 for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided 11 U.S.C. § 507(a)(7).

☐ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U S.C. § 507 (a)(9).

☐ **Claims for Death or Personal Injury While Debtor Was Intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S C. § 507(a)(10).

* Amounts are subject to adjustment on April 1, ~~2007~~ 2010, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

____ **continuation sheets attached**

Form 7

2. Income other than from employment or operation of business

None ☐

State the amount of income received by the debtor other than from employment, trade, profession, operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed)

AMOUNT	SOURCE

3. Payments to creditors

Complete a. or b., as appropriate, and c.

None ☐

a. *Individual or joint debtor(s) with primarily consumer debts:* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case if the aggregate value of all property that constitutes or is affected by such transfer is not less than $600 Indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING

None ☐

b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within **90** days immediately preceding the commencement of the case if the aggregate value of all property that constitutes or is affected by such transfer is not less than ~~$5,000~~. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS/ TRANSFERS	AMOUNT PAID OR VALUE OF TRANSFERS	AMOUNT STILL OWING
		$5,475	

None ☐

c *All debtors*: List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING

4. Suits and administrative proceedings, executions, garnishments and attachments

FORM 10 (Official Form 10) (10/05)

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____

PROOF OF CLAIM

Name of Debtor	Case Number

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

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

Name and address where notices should be sent:

Telephone number

- ☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim Attach copy of statement giving particulars.
- ☐ Check box if you have never received any notices from the bankruptcy court in this case
- ☐ Check box if the address differs from the address on the envelope sent to you by the court.

THIS SPACE IS FOR COURT USE ONLY

Last four digits of account or other number by which creditor identifies debtor:

Check here if this claim ☐ replaces ☐ amends a previously filed claim, dated: _____

1. Basis for Claim

- ☐ Goods sold
- ☐ Services performed
- ☐ Money loaned
- ☐ Personal injury/wrongful death
- ☐ Taxes
- ☐ Other _____
- ☐ Retiree benefits as defined in 11 U.S C § 1114(a)
- ☐ Wages, salaries, and compensation (fill out below)
  Last four digits of your SS #: ____
  Unpaid compensation for services performed
  from _____ (date) to _____ (date)

2. Date debt was incurred:

3. If court judgment, date obtained:

4. Classification of Claim. Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time the case was filed. See reverse side for important explanations.

Unsecured Nonpriority Claim $ _____

☐ Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or c) none or only part of your claim is entitled to priority.

Unsecured Priority Claim

$10,950

☐ Check this box if you have an unsecured claim, all or part of which is entitled to priority

Amount entitled to priority $ _____

$2,425

Specify the priority of the claim:

- ☐ Domestic support obligations under 11 U.S C. § 507(a)(1)(A) or (a)(1)(B)
- ☐ Wages, salaries, or commissions (up to ~~$10,000~~),* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U S.C § 507(a)(4).
- ☐ Contributions to an employee benefit plan - 11 U.S.C § 507(a)(5).
- ☐ Up to ~~$2,225~~* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C § 507(a)(7).
- ☐ Taxes or penalties owed to governmental units - 11 U S.C § 507(a)(8)
- ☐ Other – Specify applicable paragraph of 11 U.S.C. § 507(a)(___)

Secured Claim

☐ Check this box if your claim is secured by collateral (including a right of setoff)

Brief Description of Collateral:
☐ Real Estate ☐ Motor Vehicle ☐ Other _____

Value of Collateral: $ _____

Amount of arrearage and other charges at time case filed included in secured claim, if any $ _____

**Amounts are subject to adjustment on ~~4/1/07~~ and every 3 years thereafter with respect to cases commenced on or after the date of adjustment*

4/1/10

5. Total Amount of Claim at Time Case Filed: $ _____ (unsecured) _____ (secured) _____ (priority) _____ (total)

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

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

7. Supporting Documents: *Attach copies of supporting documents,* such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS If the documents are not available, explain If the documents are voluminous, attach a summary

8. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim

THIS SPACE IS FOR COURT USE ONLY

Date	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)

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

27	**Other Necessary Expenses: life insurance.** Enter average monthly premiums that you actually pay for term life insurance for yourself. **Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.**	$
28	**Other Necessary Expenses: court-ordered payments.** Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. **Do not include payments on past due support obligations included in Line 44.**	$
29	**Other Necessary Expenses: education for employment or for a physically or mentally challenged child.** Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	$
30	**Other Necessary Expenses: childcare.** Enter the average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. **Do not include other educational payments.**	$
31	**Other Necessary Expenses: health care.** Enter the average monthly amount that you actually expend on health care expenses that are not reimbursed by insurance or paid by a health savings account. **Do not include payments for health insurance or health savings accounts listed in Line 34.**	$
32	**Other Necessary Expenses: telecommunication services.** Enter the average monthly amount that you actually pay for telecommunication services other than your basic home telephone service—such as cell phones, pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. **Do not include any amount previously deducted.**	$
33	**Total Expenses Allowed under IRS Standards.** Enter the total of Lines 19 through 32.	$

Subpart B: Additional Expense Deductions under § 707(b)

Note: Do not include any expenses that you have listed in Lines 19-32

34	**Health Insurance, Disability Insurance, and Health Savings Account Expenses.** List and total the average monthly amounts that you actually pay for yourself, your spouse, or your dependents in the following categories. a. Health Insurance $ b. Disability Insurance $ c. Health Savings Account $ Total: Add Lines a, b and c	$
35	**Continued contributions to the care of household or family members.** Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.	$
36	**Protection against family violence.** Enter any average monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.	$
37	**Home energy costs.** Enter the average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. **You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.** $137.50	$
38	**Education expenses for dependent children less than 18.** Enter the average monthly expenses that you actually incur, not to exceed $125 per child, in providing elementary and secondary education for your dependent children less than 18 years of age. **You must provide your case trustee with documentation demonstrating that the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.**	$
39	**Additional food and clothing expense.** Enter the average monthly amount by which your food and clothing expenses exceed the combined allowances for food and apparel in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) **You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.**	$
40	**Continued charitable contributions.** Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).	$
41	**Total Additional Expense Deductions under § 707(b).** Enter the total of Lines 34 through 40	$

52	**Initial presumption determination.** Check the applicable box and proceed as directed. $10,950 ☐ **The amount on Line 51 is less than ~~$6,000~~** Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. Do not complete the remainder of Part VI. ☐ **The amount set forth on Line 51 is more than ~~$10,000~~**. Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII. Do not complete the remainder of Part VI. ☐ **The amount on Line 51 is at least ~~$6,000~~, but not more than ~~$10,000~~.** Complete the remainder of Part VI (Lines 53 through 55).
53	**Enter the amount of your total non-priority** $6,575
54	**Threshold ~~debt pay~~** $6,575 Multiply the amount in Line 53 by the number 0.25 and enter the result. $10,950 $
55	**Secondary presumption determination.** Check the applicable box and proceed as directed. ☐ **The amount on Line 51 is less than the amount on Line 54.** Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. ☐ **The amount on Line 51 is equal to or greater than the amount on Line 54.** Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII.

Part VII: ADDITIONAL EXPENSE CLAIMS

56 **Other Expenses.** List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.

	Expense Description	Monthly Amount
a.		$
b.		$
c.		$
	Total: Add Lines a, b and c	$

Part VIII: VERIFICATION

57 I declare under penalty of perjury that the information provided in this statement is true and correct. *(If this is a joint case, both debtors must sign.)*

Date: _____ Signature: _____ (Debtor)

Date: _____ Signature: _____ (Joint Debtor, if any)

32	**Other Necessary Expenses: life insurance.** Enter average monthly premiums that you actually pay for term life insurance for yourself. **Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.**	$
33	**Other Necessary Expenses: court-ordered payments.** Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. **Do not include payments on past due support obligations included in Line 49.**	$
34	**Other Necessary Expenses: education for employment or for a physically or mentally challenged child.** Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	
35	**Other Necessary Expenses: childcare.** Enter the average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. **Do not include other educational payments.**	$
36	**Other Necessary Expenses: health care.** Enter the average monthly amount that you actually expend on health care expenses that are not reimbursed by insurance or paid by a health savings account. **Do not include payments for health insurance or health savings accounts listed in Line 39.**	$
37	**Other Necessary Expenses: telecommunication services.** Enter the average monthly amount that you actually pay for telecommunication services other than your basic home telephone service—such as cell phones, pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. **Do not include any amount previously deducted.**	$
38	**Total Expenses Allowed under IRS Standards.** Enter the total of Lines 24 through 37.	$

Subpart B: Additional Expense Deductions under § 707(b)

Note: Do not include any expenses that you have listed in Lines 24-37

39	**Health Insurance, Disability Insurance, and Health Savings Account Expenses.** List and total the average monthly amounts that you actually pay for yourself, your spouse, or your dependents in the following categories. a. Health Insurance $ b. Disability Insurance $ c. Health Savings Account $ Total: Add Lines a, b, and c	$
40	**Continued contributions to the care of household or family members.** Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. **Do not include payments listed in Line 34.**	$
41	**Protection against family violence.** Enter any average monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.	$
42	**Home energy costs.** Enter the average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. **You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.**	
43	**Education expenses for dependent children under 18.** Enter the average monthly expenses that you actually incur, not to exceed ~~$125~~ $137.50 per child, in providing elementary and secondary education for your dependent children less than 18 years of age. **You must provide your case trustee with documentation demonstrating that the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.**	$
44	**Additional food and clothing expense.** Enter the average monthly amount by which your food and clothing expenses exceed the combined allowances for food and apparel in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) **You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.**	$
45	**Continued charitable contributions.** Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).	$
46	**Total Additional Expense Deductions under § 707(b).** Enter the total of Lines 39 through 45.	$

MEMORANDUM

TO: AD HOC SUBCOMMITTEE ON TIME COMPUTATION

FROM: JEFF MORRIS, REPORTER

RE: RECOMMENDATIONS FOR ACTION

DATE: DECEMBER 8, 2006, as revised 3/23/07 (JHW)

Judge Zilly suggested that I provide a brief listing (one page!) of issues for discussion on the conference call for next Wednesday, and this is it.

ISSUE 1 Should we recommend to the Standing Committee that the Bankruptcy Rules not be amended as a part of the time computation changes being made to the Civil, Criminal, and Appellate Rules? The substantial number of changes to the Bankruptcy Rules over the past two years (and continuing with the approximately 350 pages of amendments currently out for publication) may well confuse the bar if we follow that up with 50 or 60 amendments that change deadlines in rules that are still in the process of being amended.

ISSUE 2 If we should proceed with making changes in the deadlines contained in the rules, what global changes should be made?

Reporter's Recommendations for global changes in the deadlines:

- 2 day periods would remain unchanged
- 5 day periods would become 7 day periods
- 10 day periods would become 14 day periods*
- 15 day periods would become 14 day periods
- 20 day periods would become 21 day periods
- 25 day periods would become 28 day periods
- Periods of 30 days or more would remain unchanged

* There are several 10 day deadlines that are either deadlines for filing a notice of appeal or serve a very similar purpose. These are identified as in need of discussion in the "comment" column of the spreadsheet previously distributed to you. These would not be among the 10 day periods that I recommend to become 14 day periods.

Rule Number	Subdivision	Bankruptcy Rules Nature of Deadline	Days	Comments	Increases Deadlines	Decreases Deadlines
1006	(b)(2)	Prior to the meeting of creditors, the court may order the filing fee paid to the clerk or grant leave to pay in installments and fix the number, amount and dates of payment The number of installments shall not exceed four, and the final installment shall be payable not later than ***120 days*** after filing the petition	120	No Change		
1006	(b)(2)	For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than ***180 days*** after filing the petition	180	No Change		
1007	(a)(2)	In an involuntary case, the debtor shall file within ***15 days*** after entry of the order for relief, a list containing the name and address of each entity included or to be included on Schedules D, E, F, G, and H as prescribed by the Official Forms	15	Change 15 days to 14 days		X
1007	(a)(3)	In a chapter 11 reorganization case, unless the court orders otherwise, the debtor shall file within ***15 days*** after entry of the order for relief a list of the debtor's equity security holders of each class showing the number and kind of interests registered in the name of each holder, and the last known address or place of business for each holder	15	Change 15 days to 14 days		X
1007	(c)	In a voluntary case, the schedules and statements, other than the statement of intention, shall be filed with the petition, or within ***15 days*** thereafter, except as otherwise provided in subdivisions (d), (e), (f), and (h) of this rule	15	Change 15 days to 14 days		X
1007	(c)	In an involuntary case, the list in subdivision (a)(2), and the schedules and statements, other than the statement of intention, shall be filed by the debtor within ***15 days*** of the entry of the order for relief	15	Change 15 days to 14 days		X
1007	(d)	In addition to the list required by subdivision (a) of this rule, a debtor in a chapter 9 municipality case or a debtor in a voluntary chapter 11 reorganization case shall file with the petition a list containing the name, address and claim of the creditors that hold the 20 largest unsecured claims, excluding insiders, as prescribed by the appropriate Official Form In an involuntary chapter 11 reorganization case, such list shall be filed by the debtor within ***2 days*** after entry of the order for relief under section 303(h) of the Code	2	No Change		
1007	(f)	An individual debtor shall submit a verified statement that sets out the debtor's social security number, or states that the debtor does not have a social security number In a voluntary case, the debtor shall submit the statement with the petition In an involuntary case, the debtor shall submit the statement within ***15 days*** after the entry of the order for relief	15	Change 15 days to 14 days		X
1007	(h)	If, as provided by section 541(a)(5) of the Code, the debtor acquires or becomes entitled to acquire any interest in property, the debtor shall within ***10 days*** after the information comes to the debtor's knowledge or within such further time the court may allow, file a supplemental schedule in the chapter 7 liquidation case, chapter 11 reorganization case, chapter 12 family debtor's adjustment case, or chapter 13 individual debt adjustment case	10	Change 10 days to 14 days	X	
1011	(b)	Defenses and objections to the petition shall be presented in the manner prescribed by Rule 12 F R Civ P and shall be filed and served within ***20 days*** after service of the summons, except that if service is made by publication on a party or partner not residing or found within the state in which the court sits, the court shall prescribe the time for filing and serving the response	20	Change 20 days to 21 days	X	
1017	(e)(1)	A motion to dismiss a case for substantial abuse may be filed by the United States trustee only within ***60 days*** after the first date set for the meeting of creditors under section 341(a), unless, on request filed by the United States trustee before the time has expired, the court for cause extends the time for filing a motion to dismiss	60	No Change		
1019	(1)(B)	If a statement of intention is required, it shall be filed within ***30 days*** after the entry of the order of conversion or before the first date set for the meeting of creditors, whichever is earlier	30	No Change		
1019	(5)(A)(i)	Unless the court directs otherwise, if a chapter 11 or chapter 12 case is converted to chapter 7, the debtor in possession or, if the debtor is not a debtor in possession, the trustee serving at the time of conversion, shall (i) not later than ***15 days*** after conversion of the case, file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim, and	15	Change 15 days to 14 days		X
1019	(5)(A)(ii)	Unless the court directs otherwise, if a chapter 11 or chapter 12 case is converted to chapter 7, the debtor in possession or, if the debtor is not a debtor in possession, the trustee serving at the time of conversion, shall (ii) not later than ***30 days*** after conversion of the case, file and transmit to the United States trustee a final report and account,	30	No Change		
1019	(5)(B)(i)	Unless the court directs otherwise, if a chapter 13 case is converted to a chapter 7, (i) the debtor, not later than ***15 days*** after conversion of the case, shall file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim, and	15	Change 15 days to 14 days		X
1019	(5)(B)(ii)	Unless the court directs otherwise, if a chapter 13 case is converted to a chapter 7, (ii) the trustee, not later than ***30 days*** after conversion of the case, shall file and transmit to the United States trustee a final report an account,	30	No Change		
1019	(6)	A request for payment of an administrative expense incurred before conversion of the case is timely filed under section 503(a) of the Code if it is filed before conversion or a time fixed by the Court If the request is filed by a governmental unit, it is timely if it is filed before conversion or within the later of a time fixed by the court or ***180 days*** after the date of conversion	180	No Change		
1020		In a chapter 11 reorganization case, a debtor that is a small business may elect to be considered a small business by filing a written statement of election not later than ***60 days*** after the date of the order for relief	60	No Change		

Rule Number	Subdivision	Bankruptcy Rules Nature of Deadline	Days	Comments	Increases Deadlines	Decreases Deadlines
2001	(d)(2)	Following qualification of the trustee selected under section 702 of the Code, the intermin trustee, unless otherwise ordered, shall (1) forthwith deliver to the trustee all the records and property of the estate in possession or subject to control of the interim trustee and, (2) within ***30 days*** thereafter file a final report and account	30	No Change		
2002	(a)	Except as provided in subdivisions (h), (i), and (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 at least ***20 days' notice*** by mail of [see (1)-(8)]	20	Change 20 days to 21 days	X	
2002	(b)	Except as provided in subdivision (1) 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 ***25 days notice*** by mail of (1) the time fixed for filing objections and teh hearing to consider approval of a disclosure statement, and (2) the time fixed for filing objections and the hearing to consider confirmation of a chapter 9, chapter 11, or chapter 13 plan	25	Change 25 days to 28 days	X	
2002	(h)	In a chapter 7 case, after ***90 days*** following the first date set for the meeting of creditors under section 341 of the Code, the court may direct that all notices require subdivision (a) of this rule by mailed only to the debtor, the trustee, all indenture trustees, creditors that hold claims for which proofs of claim have been filed, and creditors, if any, that are still permitted to file claims by reason of an extension granted pursuant to Rule 3002(c)(1) or (c)(2)	90	No Change		
2002	(h)	In a case where notice of insufficient assets to pay a divident has been given to creditors pursuant to subdivision (e) of this rule, after ***90 days*** following the mailing of a notice of the time for filing claims pursuant to Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence	90	No Change		
2002	(o)	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 ***20 days*** from the date thereof	20	Change 20 days to 21 days	X	
2003	(a)	In a chapter 7 liquidation or a chapter 11 reorganization case, the United States trustee shall call a meeting of creditors to be held no fewer than ***20*** and no more than ***40 days*** fter the order for relief	20/40	Change 20 days to 21, 40 days unchanged	X	
2003	(a)	In a chapter 12 family farmer debt adjustment case, the United States trustees shall call a meeting of creditors to be held no fewer than ***20*** and no more than ***35 days*** after the order for relief	20/35	Change 20 days to 21, 35 days unchanged	X	
2003	(a)	In a chapter 13 individual's debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than ***20*** and no more than ***50 days*** after the order for relief	20/50	Change 20 days to 21, 50 days unchnged	X	
2003	(a)	If the United States trustee designates a place for the meeting which is not regularly staffed by the United States trustee or an assistant who may preside at the meeting, the meeting may be held not more than ***60 days*** after the order for relief	60	No Change		
2003	(d)(2)	Unless a motion for the resolution of the dispute is filed no later than ***10 days*** after the United States trustee files a report of a disputed election for trustees, the interim trustee shall serve as trustee in the case	10	Change 10 days to 14 days	X	
2006	(c)(1)(C)(iii)	A proxy may be solicited only by (C) a committee of creditors selected by a majority in number and amount of claims of creditors (i) whose claims are not contingent or unliquidated, (ii) who are not disqualified from voting under section 702(a) of the Code and (iii) who were present or represented at a meeting of which all creditors having the largest claims had at least ***five days notice*** in writing and of which meeting written minutes were kept and are available reporting the names of the creditors presentor represented and voting and the amounts of their claims.	5	Change 5 days to 7 days	X	
2007	(b)(1)	The court may find that a committee organized by unsecured creditors before the commencement of a chapter 9 or chapter 11 case was fairly chosen if (1) it was selected by a majority in number and amount of claims of unsecured creditors who may vote under section 702(a) of the Code and were present in person or represented at a meeting of which all creditors have unsecured claims of over $1,000 or the 100 unsecured creditors having the largest claims had at least ***five days notice*** in writing.	5	Change 5 days to 7 days	X	
2007 1	(3)(B)	Unless a motion for the resolution of the dispute is filed no later than ***10 days*** after the United States trustee files the report, any person appointed by the United States trustee under section 1104(d) and approved in accordance with subdivision (c) of this rule shall serve as trustee	10	Change 10 days to 14 days	X	
2008		A trustee that has filed a blanket bond pursuant to Rule 2010 and has been selected as trustee in a chapter 7, chapter 12, or chapter13 case that does not notifiy the court and the United States trustee in writing of rejection of the office within ***five days*** after receipt of notice of selection shall be deemed to have accepted the office	5	Change 5 days to 7 days	X	
2008		Any other person selected as trustee shall notify the court and the United States trustee in writing of the acceptance of the office within ***five days*** after receipt of notice of selection or shall be deemed to have rejected the office	5	Change 5 days to 7 days	X	
2015	(a)(1)	A trustee or debtor in possession shall (1) in a chapter 7 liquidation case and, if the court directs, in a chapter 11 reorganization case file and transmit to the United States trustee a complete inventory of the property of the debtor within ***30 days*** after qualifying as a trustee or debtor in possession, unless such an inventory has already been filed	30	No Change		
2016	(b)	Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within ***15 days*** after the order for relief, or at another time as the court may direct, the statement required by section 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity	15	Change 15 days to 14 days		X
2016	(b)	A supplemental statement shall be filed and transmitted to the United States trustee within ***15 days*** after any payment or agreement not previously disclosed	15	Change 15 days to 14 days		X

Rule Number	Subdivision	Bankruptcy Rules Nature of Deadline	Days	Comments	Increases Deadlines	Decreases Deadlines
2016	(c)	Every bankruptcy petition preparer for a debtor shall file a declaration under penalty of perjury and transmit the declaration to the United States trustee within ***10 days*** after the date of the filing of the petition, or at another time as the court may direct, as required by section 110(h)(1)	10	Change 10 days to 14 days	X	
2016	(c)	The declaration must disclose any fee, and the source of any fee, received from or on behalf of the debtor within ***12 months*** of the filing of the case and all unpaid fees charged to the debtor		No Change		
2016	(c)	A supplemental statement shall be filed within ***10 days*** after any payment or agreement not previously disclosed	10	Change 10 days to 14 days	X	
2019	(a)(2)	In a chapter 9 municipality or chapter 11 reorganization case, except with respect to a committee appointed pursuant to section 1102 or 1114 of the Code, every entity or committee representing more than one creditor or equity security holder and, unless otherwise directed by the court, every indenture trustee, shall file a verified statement setting forth (1) the name and address of the creditor or equity security holder; (2) the nature and amount of the claim or interest and the time of acquisition thereof unless it is alleged to have been acquired more than ***one year*** prior to the filing of the petition		No Change		
3001	(e)(2)	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 ***20 days*** of the mailing of the notice or within any additional time allowed by the court	20	Change 20 days to 21 days	X	
3001	(e)(4)	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 ***20 days*** of the mailing of the notice or within any additional time allowed by the court	20	Change 20 days to 21 days	X	
3001	(e)(5)	A copy of an objection filed pursuant to paragraph (2) or (4) of a motion filed pursuant to paragraph (3) or (4) of this subdivision together with 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	30	No Change		
3002	(c)	In a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt adjustment case, a proof of claim is timely filed if it is filed not later than ***90 days*** after the first date set for the meeting of creditors called under section 341(a) of the Code, except as follows	90	No Change		
3002	(c)(1)	A proof of claim filed by a governmental unit is timely filed if it is filed not later than 180 days after the date of the order for relief	180	No Change		
3002	(c)(3)	An unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within ***30 days*** after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property	30	No Change		
3002	(c)(5)	If notice of insufficient assets to pay a dividend was given to creditors pursuant to Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall notify the creditors of that fact and that they may file proofs of claim within ***90 days*** after the mailing of the notice	90	No Change		
3004		If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), the debtor or trustee may filed a proof of the claim within ***30 days*** after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable	30	No Change		
3005		If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), any entity that is or may be liable with the debtor to that creditor, or who has secured that creditor, may file a proof of the claim within ***30 days*** after the expiration of the time for filing claims prescribed by Rule 3002(c) or Rule 3003(c) whichever is applicable	30	No Change		
3007		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 debtor in possession and the trustee at least ***30 days*** prior to the hearing	30	No Change		
3015	(b)	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 ***15 days*** thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct	15	Change 15 days to 14 days		X
3015	(b)	If a case is converted to chapter 13, a plan shall be filed within ***15 days*** thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.	15	Change 15 days to 14 days		X
3015	(g)	The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than ***20 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	20	Change 20 days to 21 days	X	
3017	(a)	Except as provided in Rule 3017 1, after a disclosure statement is filed in accordance with Rule 3016(b), the court shall hold a hearing on at least ***25 days' notice*** to the debtor, creditors, equity security holders and other parties in interest as provided in Rule 2002 to consider the disclosure statement and any objections or modifications thereto	25	Change 25 days to 28 days	X	
3017	(f)(1)	If a plan provides for an injunction against conduct not otherwise enjoined under the Code and an entity that would be subject to the injunction is not a creditor or equity security holder, at the hearing held under Rule 3017(a), the court shall consider procedures for providing the entity with (1) at least ***25 days' notice*** of the time fixed for filing objections and the hearing on confirmation of the plan containing the information described in Rule 2002(c)(3).	25	Change 25 days to 28 days	X	
3020	(e)	An order confirming a plan is stayed until the expiration of ***10 days*** after the entry of the order, unless the court orders otherwise	10	Discuss (similar to appeal rule)		

Rule Number	Subdivision	Bankruptcy Rules Nature of Deadline	Days	Comments	Increases Deadlines	Decreases Deadlines
4001	(a)(2)	The party obtaining relief under this subdivision and section 362(f) or section 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 On ***two days notice*** to the party who obtained relief from the stay without notice or on shorter notice to that party as the court may prescribe, the adverse party may appear and move reinstatement of the stay or reconsideration of the order prohibiting or conditioning the use, sale, or lease of property	2	No Change?		
4001	(a)(3)	An order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of ***10 days*** after the entry of the order, unless the court orders otherwise	10	Discuss (similar to appeal rule)		
4001	(b)(2)	The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than ***15 days*** after service of the motion	15	Change 15 days to 14 days		X
4001	(c)(2)	The court may commence a final hearing on a motion for authority to obtain credit no earlier than ***15 days*** after service of the motion	15	Change 15 days to 14 days		X
4003	(a)	If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within ***30 days*** thereafter	30	No Change		
4003	(b)	A party in interest may file an objection to the list of property claimed as exempt only within ***30 days*** after the meeting of creditors held under section 341(a) is concluded or within ***30 days*** after any amendment to the list or supplemental schedules is filed, whichever is later	30	No Change		
4004	(a)	In a chapter 7 liquidation case a complainant objecting to the debtor's discharge under section 727(a) of the Code shall be filed no later than ***60 days*** after the first date set fro the meeting of creditors under section 341(a)	60	No Change		
4004	(a)	At least ***25 days' notice*** of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k), and to the trustee and the trustee's attorney	25	Change 25 days to 28 days	X	
4004	(c)(2)	Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for ***30 days*** and, on motion within that period, the court may defer entry of the order to a date certain	30	No Change		
4007	(c)	A complaint to determine the dischargeability of a debt under section 523(c) shall be filed no later than ***60 days*** after the first set for the meeting of creditors under section 341(a)	60	No Change		
4007	(c)	The court shall give all creditors no less than ***30 days' notice*** of the time so fixed in the manner provided in Rule 2002	30	No Change		
4008		Not more than ***30 days*** following the entry of an order granting or denying a discharge, or confirming a plan in a chapter 11 reorganization case concerning an individual debtor and on not less than ***10 days*** notice to the debtor and the trustee, the court may hold a hearing as provided in section 524(d) of the Code	30/10	Change 10 days to 14 days	X	
5009		In a chapter 7, chapter 12, or chapter 13 case the trustee has filed a final report and final account and has certified that the estate has been fully administered, and if within ***30 days*** no objection has been filed but the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered	30	No Change		
6004	(b)	Except as provided in subdivisions (c) and (d) of this rule, an objection to a proposed use, sale, or lease of property shall be filed and served not less than ***five days*** before the date set for the proposed action or within the time fixed by the court	5	Chage 5 days to 7 days	X	
6004	(d)	An objection to any such sale may be filed within ***15 days*** of the mailing of the notice, or within the time fixed by the court	15	Change 15 days to 14 days		X
6004	(g)	An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of ***10 days*** after entry of the order, unless the court orders otherwise	10	Discuss (similar to appeal rule)		
6006	(d)	An order authorizing the trustee to assign an executory contract or unexpired lease under section 365(f) is stayed until the expiration of ***10 days*** after the entry of the order, unless the court orders otherwise	10	Discuss (similar to appeal rule)		
6007	(a)	A party in interest may file and serve an objection within ***15 days*** of the mailing of the notice, or within the time fixed by the court	15	Change 15 days to 14 days	X	
7004	(e)	Service made under Rule 4(e), (g), (h)(1), (i), or (j)(2) F R Civ P shall be by delivery of the summons and compaint within ***10 days*** after the summons is issued	10	Change 10 days to 14 days	X	
7004	(e)	If service is by any authorized form of mail, the summons and complaint shall be deposited in the mail within ***10 days*** after the summons issued	10	Change 10 days to 14 days	X	
7012	(a)	If a complaint is duly served, the defendant shall serve an answer within ***30 days*** after the issuance of the summons, except when a different time is prescribed by the court	30	No change		
7012	(a)	A party served with a pleading stating a cross-claim shall serve an answer thereto within ***20 days*** after service	20	Change 20 days to 21 days	X	
7012	(a)	The plaintiff shall serve a replay to a counterclaim in the answer within ***20 days*** afer service of the answer or, if a reply is ordered by the court, within ***20 days*** after service of the order, unless the order otherwise directs	20	Change 20 days to 21 days	X	
7012	(a)	The United States or an officer of agency thereof shall serve an answer to a complaint within ***35 days*** after the issuance of the summons, and shall serve an answer to a cross-claim, or a reply to a counterclaim, within ***35 days*** after service upon the United States attorney of the pleading in which the claim is asserted	35	No change		
7012	(a)	The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court (1) if the court denies the motion or postpones its disposition until the trial on the ments, the responsive pleading shall be served within ***10 days*** after notice of the court's action,	10	Change 10 days to 14 days	X	

Rule Number	Subdivision	Bankruptcy Rules Nature of Deadline	Days	Comments	Increases Deadlines	Decreases Deadlines
7012	(a)	(2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within ***10 days*** after the service of a more definite statement	10	Change 10 days to 14 days	X	
8002	(a)	The notice of appeal shall be filed with the clerk within ***10 days*** of the date of the entry of the jdugment, order, or decree appealed from	10	Discuss (similar to appeal rule)		
8002	(a)	If a timely notice of appeal is filed by a party, any other party may filed a notice of appeal within ***10 days*** of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whicheer period last expires	10	Discuss (similar to appeal rule)		
8002	(b)(4)	If any party makes a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding This provision applies to a timely motion (4) for relief under Rule 9024 if the motion is filed not later than ***10 days*** after the entry of judgment	10	Discuss (similar to appeal rule)		
8002	(c)(2)	A request to extend the time for filing a notice of appeal must be made by written motion filed before the time for filing a notice of appeal has expired, except that such a motion filed not later than ***20 days*** after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect	20	Change 20 days to 21 days	X	
8002	(c)(2)	An extension of time for filing a notice of appeal may not exceed ***20 days*** from the expiration of the time for filing a notice of appeal otherwise prescribed by this rule or ***10 days*** from the date of entry of the order granting the motion, whichever is later	20/10	Change 20 days to 21 and 10 days to 14	X	
8003	(a)	Within ***10 days*** of the service of the motion, an adverse party may file with the clerk for an answer in opposition	10	Discuss (similar to appeal rule)		
8003	(c)	Unless an order directing that a motion for leave to appeal be filed provides otherwise, the motion shall be filed within ***10 days*** of the entry of the order	10	Discuss (similar to appeal rule)		
8006		Within ***10 days*** after filing the notice of appeal as provided by Rule 8001(a), entry of an order granting leave to appeal, or entry of an order disposing of the last timely motion outstanding of a type specified in Rule 8002(b), whichever is later, the appellant shall file with the clerk and serve on the appellate a designation of the items to be included in the record on appeal and a statement of the issues to be presented	10	Discuss (similar to appeal rule)		
8006		Within ***10 days*** after the service of the appellant's statement the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal and, if the appellate has filed a cross appeal, the appellee as cross appellant shall file and serve a statement of the issues to be presented on the cross appeal and a designation of additional items to be included in the record	10	Discuss (similar to appeal rule)		
8006		A cross appellee may, within ***10 days*** of service of the cross appellant's statement, file and serve on the cross appellant a designation of additional items to be included in the record	10	Discuss (similar to appeal rule)		
8007		If the transcript cannot be completed within ***30 days*** of receipt of the request the reporter shall seek an extension of time from the clerk or the clerk of the bankruptcy appellate panel and the action of the clerk shall be entered in the docket and the parties notified	30	No Change		
8009	(a)(1)	The appellant shall serve and file a brief within ***15 days*** after entry of the appeal on the docket pursuant to Rule 8007	15	Change 15 days to 14 days		X
8009	(a)(2)	The appellee shall serve and file a brief within ***15 days*** after service of the brief of appellant	15	Change 15 days to 14 days		X
8009	(a)(3)	The appellant may serve and file a reply brief within ***10 days*** afer service of the brief of the appellee, and if the appellee has cross-appealed, the appellee may file and serve a reply brief to the response of the appellant to the issues presented in the cross appeal within ***10 days*** after service of the reply brief of the appellant	10	Discuss (similar to appeal rule)		
8015		Unless the district court or the bankruptcy appellate panel by local rule or by court order otherwise provides, a motion for rehearing may be filed within ***10 days*** after entry of the judgment of the district court or the bankruptcy appellate panel	10	Discuss (similar to appeal rule)		
8017	(a)	Judgments of the district court or the bankruptcy appellate panel are stayed until the expiration of ***10 days*** after entry, unless otherwise ordered by the district court or the bankruptcy appellate panel	10	Discuss (similar to appeal rule)		
8017	(b)	The stay shall not extend beyond 30 days after the entry of the judgment of the district court or the bankruptcy appellate panel unless the period is extended for cause shown	30	No Change		
9006	(d)	A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than ***five days*** before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court	5	Change 5 days to 7 days	X	
9011	(c)	the motion for sanctions may not be filed with or presented to the court unless, within ***21 days*** after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b)	21	No Change		
9027	(a)(2)	If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) ***90 days*** after the order for relief in the case under the Code,	90	No Change		
9027	(a)(2)	(B) ***30 days*** after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under section 362 of the Code, or	30	No Change		
9027	(a)(2)	(C) ***30 days*** after a trustee qualifies in a chapter 11 reorganization case but not later than ***180 days*** after the order for relief	30/180	No Change		
9027	(a)(3)	If a claim or cause of action is asserted in another court after the commencement of a case under the Code, a notice of removal may be filed with the clerk only within the shorter of (A) ***30 days*** after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed, or	30	No Change		

Rule Number	Subdivision	Bankruptcy Rules Nature of Deadline	Days	Comments	Increases Deadlines	Decreases Deadlines
9027	(a)(3)	(B) ***30 days*** after receipt of the summons if the initial pleading has been filed with the court but not served with the summons	30	No Change		
9027	(e)(3)	A statement required by this paragraph shall be signed pursuant to Rule 9011 and shall be filed not later than ***10 days*** after the filing of the notice of removal	10	Change 10 days to 14 days	X	
9027	(g)	In a removed action in which the defendant has not answered, the defendant shall answer or present the other defenses or objections available under the rules of Part VII within ***20 days*** following the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief on which the action or proceeding is based.	20	Change 20 days to 21 days	X	
9027	(g)	or within ***20 days*** following the service of summons on such initial pleading,	20	Change 20 days to 21 days	X	
9027	(g)	or within ***five days*** following the filing of the notice of removal, whichever period is longest.	5	Change 5 days to 7 days	X	
9033	(b)	Within 10 days after being served with a copy of the proposed findings of fact and conclusions of law a party may serve and file with the clerk written objections which identify the specific proposed findings or conclusions objected to and state the grounds for such objection	10	Change 10 days to 14 days	X	
9033	(b)	A party may respond to another party's objections within 10 days after being served with a copy thereof	10	Change 10 days to 14 days	X	
9033	(c)	The bankruptcy judge may for cause extend the time for filing objections by any party for a period not to exceed ***20 days*** from the expiration of the time otherwise prescribed by this rule	20	Change 20 days to 21 days	X	
9033	(c)	A request to extend the time for filing objections must be made before the time for filing objections has expired, except that a request made of no more than ***20 days*** after the expiration of the time for filing objections may be granted upon a showing of excusable neglect.	20	Change 20 days to 21 days	X	

Proposed Amendments to the Federal Rules of Bankruptcy Procedure

Rule Number	Subdivision	Nature of Deadline	Days	Comments
1007	(c)	Time Limits. In a voluntary case, the schedules and statements, and other documents required by subdivision (b)(1), (4), (5), and (6) shall be filed with the petition; or within 1***5 days*** thereafter, except as otherwise provided in subdivisions (d), (e), (f), and (h) of this rule.	15	will change to 14 days
1007	(c)	In an involuntary case, the list in subdivision (a)(2), and the schedules, statements, and other documents required by subdivision (b)(1), shall be filed by the debtor within ***15 days*** of the entry of the order of relief	15	will change to 14 days
1007	(c)	Unless the court orders otherwise, a debtor who has filed a statement under subdivision (b)(3)(B) shall file the documents required by (b)(3)(A) within ***15 days*** of the order for relief.	15	will change to 14 days
1020	(a)	In an involuntary chapter 11 case, the debtor shall file within ***15 days*** after entry of the order for relief a statement as to whether the debtor is a small business debtor.	15	will change to 14 days
1020	(b)	Except as provided in subdivision (c), the United States trustee or a party in interest may file an objection to the debtor's statement under subdivision (a) no later than ***30 days*** after the conclusion of the meeting of creditors held under section 341(a) of the Code, or within ***30 days*** after any amendment to the statement, whichever is later.	30	no change
2002	(p)(2)	Unless the court for cause orders otherwise, a creditor with a foreign address to which notices under this rule are mailed shall be given at least ***30 days'*** notice of the time fixed for filing a proof of claim under Rule 3002(c) or 3003(c).	30	no change
2002	(q)(1)	The clerk, or some other person as the court may direct, shall forthwith give the debtor, all administrators in foreign proceedings of the debtor, all entities against whom provisional relief is being sought under section 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 ***20 days'*** notice by mail of the hearing on the petition for recognition of a foreign proceeding.	20	will change to 21 days
2007 2	(a)	In a chapter 7, chapter 9, or chapter 11 case in which the debtor is a health care business, the court shall order the appointment of a patient care ombudsman under section 333 of the Code, unless the court, on motion of the United States trustee or a party in interest filed no later than ***20 days*** after the commencement of the case within another time fixed by the court, finds that the appointment of a patient care ombudsman is not necessary under the specific circumstances of the case for the protection of patients.	20	will change to 21 days

Rule Number	Subdivision	Proposed Amendments to the Federal Rules of Bankruptcy Procedure Nature of Deadline	Days	Comments
2015	(a)(6)	Each report shall be filed no later than 20 days after the last day of the calendar month following the month covered by the report.	20	will change to 21 days
2015	(d)	In a case in which the court has granted recognition of a foreign proceeding under chapter 15, the foreign representative shall file any notice required under section 1518 of the Code within ***15 days*** of the date when the representative becomes aware of the subsequent information.	15	will change to 14 days
2015 1	(a)	Unless the court orders otherwise, a patient care ombudsman, at least ***10 days*** before making a report under section 333(b)(2) of the Code, shall give notice that the report will be made to the court.	10	will change to 14 days
2015.1	(b)	Unless the court orders otherwise, a hearing on the motion may not be commenced earlier than 15 days after the service of the motion.	15	will change to 14 days
2015.2		Unless the court orders otherwise, if the debtor is a health care business, the trustee may not transfer a patient to another health care business under section 704(a)(12) of the Code unless the trustee gives at least ***10 days' notice*** of the transfer to the patient care ombudsman, if any, the patient, and any family member or other contact person whose name and address has been given to the trustee or the debtor for the purpose of providing information regarding the patient's health care	10	will change to 14 days, but could go to 7 given the nature of the notice that might need to be given quickly
2015.3	(b)	The first report required by this rule shall be filed no later than ***five days*** before the first date set for the meeting of creditors under section 341 of the Code.	5	will change to 7 days
2015 3	(e)	No later than ***20 days*** before filing the first report required by this rule, the trustee or debtor in possession shall send notice to the entity in which the estate has a substantial or controlling interest, and to all holders- known to the trustee or debtor in possession- of an interest in that entity, that the trustee or debtor in possession expects to file and serve financial information relating to the entity in accordance with this rule.	20	will change to 21 days
3019	(b)	The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than ***20 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.	20	will change to 21 days
4002	(b)(3)	At least ***7 days*** before the first date set for the meeting of the creditors under section 341, the debtor shall provide to the trustee a copy of the debtor's federal income tax return for the most recent tax year ending immediately before the commencement of the case and for which a return was filed, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist.	7	no change
4002	(b)(4)	If a creditor, at least ***15 days*** before the first date set for the meeting of creditors under section 341, requests a copy of the debtor's tax return that is to be provided to the trustee under subdivision (b)(3), the debtor, at least ***7 days*** before the first date set for the meeting of creditors under section 341, shall provide to the requesting creditor a copy of the return, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist.	15/7	will change to 14 days
4004	(c)(3)	If the debtor is required to file a statement under Rule 1007(b)(8), the court shall not grant a discharge earlier than ***30 days*** after the statement is filed.	30	no change

Proposed Amendments to the Federal Rules of Bankruptcy Procedure

Rule Number	Subdivision	Nature of Deadline	Days	Comments
5008		If a presumption of abuse has arisen under section 707(b) in a chapter 7 case of an individual with primarily consumer debts, the clerk shall within ***10 days*** after the date of the filing of the petition notify creditors of the presumption of abuse in accordance with Rule 2002.	10	no change because the 10 day limit is statutory
5008		If the debtor has not filed a statement indicating whether a presumption of abuse has arisen, the clerk shall within ***10 days*** after the date of the filing of the petition notify creditors that the debtor has not filed the statement and that further notice will be given if a later filed statement indicates that a presumption of abuse has arisen.	10	no change -- statute requires 10 days notice
5012		Except for a communication concerning scheduling or administration, the court in a case commenced by a foreign representative shall give at least ***20 days'*** notice of its intent to communicate with a foreign representative.	20	will change to 21 days
5012		Any entity that wishes to participate in the communication shall notify the court of its intention no later than ***5 days*** before the scheduled communication.	5	will change to 7 days
6004	(g)(2)	If a consumer privacy ombudsman is appointed under section 332, no later than ***5 days*** before the hearing on the motion under section 363(b)(1)(B), the United States trustee shall file a notice of the appointment, including the name and address of the person appointed.	5	will change to 7 days
6011	(d)	The trustee shall file, no later than ***30 days*** after the destruction of patient records under section 351(3), a report certifying that the unclaimed records have been destroyed and explaining the method used to effect the destruction.	30	no change
8001	(f)(3)(D)	A party may file a response to a request for certification or a cross request within ***10 days*** after the notice of the request is served, or another time fixed by the court.	10	will change to 7 days (could be 14)
8001	(f)(4)(B)	A party may file a supplementary short statement of the basis for concentration within ***10 days*** after the certification.	10	will change to 7 days (could be 14)
8001	(f)(5)	A petition for permission to appeal in accordance with F R. App. P. 5 shall be filed no later than ***30 days*** after a certifcation has become effective as provided in subdivision (f)(1).	30	no change

*Deadline is "

Official Form 19 (12/08)

United States Bankruptcy Court

_____ District Of _____

In re _____, Case No. _____
Debtor

Chapter _____

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (*See* 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared the accompanying document(s) listed below for compensation and have provided the debtor with a copy of the document(s) and the attached notice as required by 11 U.S.C. §§ 110(b), 110(h), and 342(b); and (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Accompanying documents:

_____

_____

_____

_____

_____

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer:

_____

Social-Security No. of Bankruptcy Petition Preparer (Required by 11 U.S.C. § 110):

_____

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social-security number of the officer, principal, responsible person, or partner who signs this document.

_____

_____
Address

X _____ _____
Signature of Bankruptcy Petition Preparer Date

Names and social-security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

NOTICE TO DEBTOR BY NON-ATTORNEY BANKRUPTCY PETITION PREPARER

[Must be filed with any document(s) prepared by a bankruptcy petition preparer.]

I am a bankruptcy petition preparer. I am not an attorney and may not practice law or give legal advice. Before preparing any document for filing as defined in § 110(a)(2) of the Bankruptcy Code or accepting any fees, I am required by law to provide you with this notice concerning bankruptcy petition preparers. Under the law, § 110 of the Bankruptcy Code (11 U.S.C. § 110), I am forbidden to offer you any legal advice, including advice about any of the following:

- whether to file a petition under the Bankruptcy Code (11 U.S.C. § 101 et seq.);
- whether commencing a case under chapter 7, 11, 12, or 13 is appropriate;
- whether your debts will be eliminated or discharged in a case under the Bankruptcy Code;
- whether you will be able to retain your home, car, or other property after commencing a case under the Bankruptcy Code;
- the tax consequences of a case brought under the Bankruptcy Code;
- the dischargeability of tax claims;
- whether you may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;
- how to characterize the nature of your interests in property or your debts; or
- bankruptcy procedures and rights.

[The notice may provide additional examples of legal advice that a bankruptcy petition preparer is not authorized to give.]

In addition, under 11 U.S.C. § 110(h), the Supreme Court or the Judicial Conference of the United States may promulgate rules or guidelines setting a maximum allowable fee chargeable by a bankruptcy petition preparer. As required by law, I have notified you of this maximum allowable fee, if any, before preparing any document for filing or accepting any fee from you.

_____		_____	
Signature of Debtor	Date	Joint Debtor (if any)	Date

[In a joint case, both spouses must sign.]

COMMITTEE NOTE

This form is new. It is derived from form 19B and replaces forms 19A and 19B (which forms are abrogated). The form contains the notice a bankruptcy petition preparer is required to give to a debtor under § 110 of the Code as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), and the bankruptcy petition preparer's signed declaration (also required by § 110 of the Code) that the notice was given to the debtor.

The notice states, in language mandated in the 2005 Act, that the bankruptcy petition preparer is not an attorney and must not give legal advice. The notice also includes examples of advice a bankruptcy petition preparer may not give that are taken from § 110(e)(2) of the Code.

Although space is provided in the declaration to list multiple documents prepared for a single filing, a new form 19 must be completed and accompany subsequent filings. For example, one form 19 listing all forms prepared by the bankruptcy petition preparer would be filed with the debtor's petition package. Another form 19 would be required if the debtor files amended schedules later in the case that were prepared by the bankruptcy petition preparer.

The form must be signed by the debtor and the bankruptcy petition preparer where indicated, and must be filed with each document for filing prepared by the bankruptcy petition preparer.