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OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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TO: Anthony J. Scirica, Chair
Committee on Rules of Practice and Procedure

FROM: A. Thomas Small, Chair
Advisory Committee on Bankruptcy Rules

DATE: December 11, 2002

RE: Report of the Advisory Committee on Bankruptcy Rules

I. INTRODUCTION

The Advisory Committee on Bankruptcy Rules met on October 10-11, 2002, in Hyannis, Massachusetts.

II. ACTION ITEMS

- A. *Preliminary Draft of Proposed Amendments to Bankruptcy Rules 3004, 3005, and 4008*

The Advisory Committee recommends that the Standing Committee approve the proposed amendments to Bankruptcy Rules 3004, 3005 and 4008 for circulation to the bench, bar and public for comment.

1. Synopsis of Proposed Amendments:

A. Rule 3004 is amended to conform the rule to Bankruptcy Code § 501(c). Under that section, the debtor or trustee can file a proof of a creditor's claim if the creditor has failed to file a claim in a timely fashion. The existing version of the rule allows the debtor or trustee to file a claim on behalf of the creditor prior to the expiration of the claim filing period. It also provides an opportunity for the creditor thereafter to file a claim that supersedes the claim filed by the trustee or debtor. The rule is amended to prohibit the debtor and trustee from filing proof of a creditor's claim until the creditor's opportunity to file has expired. The amendment to the rule also deletes the language that authorizes a creditor to file a claim after the debtor or

trustee has filed a claim on the creditor's behalf. Under the amended rule, the creditor's time to file a proof of claim must have expired before the debtor or trustee acts. Therefore, there is no need to provide the creditor with a second opportunity to file a proof of claim and the amendment deletes the language in the existing rule that permits the filing of a superseding claim by the creditor.

B. Rule 3005(a) is amended to delete the language in the existing rule that permits the filing of a superseding claim by the creditor. Under Bankruptcy Code § 501(b), a codebtor may file a claim on behalf of a creditor only if the creditor has not timely filed a proof of claim. Since the codebtor cannot file a proof of the claim until after the creditor's time to file has expired, there is no need to provide the creditor with an additional opportunity to file a proof of the claim. The existing version of the rule also allows a codebtor to file a proof of claim in the name of the creditor. The amendment makes clear that the proof of claim filed by a codebtor is not filed on behalf of or in the name of the creditor.

C. Rule 4008 is amended to establish a deadline for the filing of a reaffirmation agreement with the bankruptcy court. The existing version of the rule includes notice and time requirements for discharge and reaffirmation hearings, but it does not set a deadline for filing the reaffirmation agreement. In a number of cases, parties have requested the courts to reopen cases to permit the filing of reaffirmation agreements. By requiring the filing of the agreement by a date certain and deleting the notice requirements, the rule addresses this problem and enables the courts to schedule the necessary hearings in the most efficient manner rather than at a time set out in the rule.

The text of the proposed amendments to Bankruptcy Rules 3002, 3005 and 4008 are attached.

III. INFORMATION ITEMS

A. *Publication of Proposed Amendments*

At its June 2002 meeting, the Standing Committee authorized the publication of a preliminary draft of a proposed amendment to Bankruptcy Rule 9014. The deadline for submitting written comments on the proposals is February 15, 2003. A public hearing is scheduled for January 24, 2003, in Washington, D.C. To date, no request for a personal appearance has been received. We have received two comments on the proposed amendment to Bankruptcy Rule 9014, and these and any other comments that are received will be considered by the Advisory Committee at its April 2003 meeting. The Advisory Committee expects to present this amendment to the Standing Committee for approval by the Standing Committee at its June 2003 meeting.

B. *Proposed Bankruptcy Legislation*

Both the House and Senate passed versions of bankruptcy reform legislation. After lengthy negotiations over a provision in the legislation that addressed the dischargeability of claims resulting from a violation of a court order or decree that prohibits restricting access to a facility providing lawful goods or services, the conference committee reported a version of the bill in August. Neither the House nor the Senate passed the conference report. It seems likely that Congress will consider bankruptcy reform legislation again in the 108th Congress.

Attachments: Proposed Amendments to Bankruptcy Rules 3004, 3005 and 4008
Draft of the Minutes of the Advisory Committee Meeting of October 10-11, 2002