ADVISORY COMMITTEE
ON
BANKRUPTCY RULES

Plymouth, Massachusetts
September 13-14, 2001

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of September 13 - 14, 2001
Plymouth, Massachusetts

Agenda

Introductory Items

1. Approval of minutes of March 2001 meeting.

2. Report on the June 2001 meeting of the Committee on Rules of Practice and Procedure (Standing Committee) and subsequent actions of the Judicial Conference Executive Committee and the Chairman of the Standing Committee. The draft minutes of the June 2001 meeting of the Standing Committee are attached. (The Chairman and the Reporter also will provide an oral report.)

3. Report on the June 2001 meeting of the Committee on the Administration of the Bankruptcy System. (This will be an oral report.)

Action Items

4. Introduction: Reporter's Memorandum describing changes the pending Bankruptcy Reform Act would make to the Bankruptcy Code and the amendments to the rules and forms that would be required in the event of enactment.

5. Consideration of rules amendments and additions related to consumer bankruptcy issues necessary to implement pending bankruptcy reform legislation. Amendments to Rules 1006, 1007, 1009, 1017, 1019, 2002, 3002, 4007, and 9006 are included.

6. Consideration of amendments to Rule 1005 (Caption) amendments and additions to the official forms related to consumer bankruptcy issues necessary to implement pending bankruptcy reform legislation. Consumer-related amendments to Forms 1, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, and 19, and a new form of notice to a debtor to be furnished by a non-attorney bankruptcy petition preparer are included. A development draft of a form for the "means test" also is included. [Some forms have amendments related to both consumer bankruptcy issues and business bankruptcy issues; accordingly, there is some duplication of materials in the agenda book for the meeting. Some forms materials also may be mailed separately or distributed at the meeting.]

7. Consideration of rules amendments and additions related to business bankruptcy issues necessary to implement pending bankruptcy reform legislation. Amendments to Rules 1007, 1020, 2002, 2003, 2007.1, 2015, 2020, 3002, 3003, 3005, 3016, 3017.1, 3019, 5003, and 9006.

8. Consideration of amendments and additions to the Official Forms necessary to implement the pending bankruptcy reform legislation. Forms for the operating reports and small business plans and disclosure statements and amendments to Forms 1, 5, 6, 9, 10, 16A, and 16C will be included.

9. Consideration of amendments to Official Form 6, Schedule G - Executory Contracts and Unexpired Leases, and Official Form 10, Proof of Claim, not related to pending bankruptcy reform legislation.

10. Consideration of amendment to Rules 9011 and Part VIII of the rules (Appeals), including new rules to implement pending amendments to 28 U.S.C. § 157(d), necessary to implement pending bankruptcy reform legislation.

11. Consideration of amendments to Rule 4003 suggested by Bankruptcy Judge Barry Russell concerning allocations of burdens of proof.

Information Items

12. Proposed privacy policy regarding information in federal court case files released to the public by the Judicial Conference Executive Committee.

13. Report on implementation of electronic filing in the bankruptcy courts and the project to develop model local rules for electronic filing of documents by the Committee on Court Administration and Case Management.

14. Request by the Administrative Office that the Committee give preliminary consideration to amending Rule 9036 to remove the requirement that the sender of a notice receive positive confirmation of its receipt.

15. Progress chart of proposed amendments.

Administrative Matters

16. Next meeting reminder: March 21 - 22, 2002, Westward Look Resort, Tucson, Arizona.

17. Discussion of date and place for September 2002 meeting.

IMPORTANT NOTICE

In order to review and discuss several of the agenda items, members will need to be able to consult the pending legislation *as it would affect the existing Bankruptcy Code.*

This can be done best by using the side-by-side comparison of the House and Senate-passed legislation produced by the law firm of Davis Polk & Wardwell. This document has been used extensively in preparing the agenda materials, which contain numerous references to it. Many members have obtained copies of this document, and each member is requested to *bring that copy to the meeting.* Although the document is bulky, it is not feasible for the Rules Committee Support Office to furnish copies for use at the meeting.

Any member who does not have a copy of the Davis Polk & Wardwell document can obtain one from the firm's website: www.dpw.com. , where it is posted under the heading "Publications." The document can be downloaded and printed from the website. The document is very large and will require considerable time and more than one ream of paper to print.

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ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of March 15 -16, 2001
New Orleans, Louisiana

Draft Minutes

The following members attended the meeting:

Bankruptcy Judge A. Thomas Small, Chairman
District Judge Robert W. Gettleman
District Judge Bernice B. Donald
District Judge Norman C. Roettger, Jr.
District Judge Thomas S. Zilly
Bankruptcy Judge A. Jay Cristol
Bankruptcy Judge James D. Walker, Jr.
Bankruptcy Judge Christoper M. Klein
Professor Mary Jo Wiggins
Professor Alan N. Resnick
Eric L. Frank, Esquire
Howard L. Adelman, Esquire
K. John Shaffer, Esquire
J. Christoper Kohn, Esquire

Professor Jeffrey W. Morris, Reporter, attended the meeting. District Judge Ernest C. Torres was unable to attend. District Judge Thomas W. Thrash, Jr., liaison to the Committee on Rules of Practice and Procedure (Standing Committee), attended. District Judge Adrian G. Duplantier, former chairman of the Committee attended part of the meeting, and Bankruptcy Judge Donald E. Cordova, a former member, also attended. Bankruptcy Judge Dennis Montali attended as a representative of the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee). Peter G. McCabe, Secretary to the Standing Committee and Assistant Director of the Administrative Office of the United States Courts (Administrative Office), also attended.

The following additional persons attended the meeting: Martha L. Davis, Acting Director of the Executive Office for United States Trustees (EOUST); James J. Waldron, Clerk, United States Bankruptcy Court for the District of New Jersey; Richard G. Heltzel, Clerk, United States Bankruptcy Court for the Eastern District of California; John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office; Patricia S. Ketchum, Bankruptcy Judges Division, Administrative Office; and Robert Niemic, Research Division, Federal Judicial Center.

The following summary of matters discussed at the meeting should be read in conjunction with the various 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, and guests who were attending their first meeting.

The Committee approved the minutes of the September 2000 meeting.

The Chairman reported that he and the Reporter had attended the January 2001 meeting of the Standing Committee, but that there were no actions taken affecting the Committee.

Judge Gettleman said he and the Reporter had attended the January 2001 meeting of the Standing Committee's working group on attorney conduct. The group discussed a draft Federal Rule of Attorney Conduct (FRAC 1) that would prescribe "dynamic conformity" with the attorney conduct rules of the state in which the federal court is located. Professor Morris said that Congress may require the judiciary to prescribe rules on attorney conduct and that the Department of Justice would prefer a uniform national rule governing its attorneys. He added that if a FRAC 1 ever is prescribed there may be a need to develop a FRAC 2 for bankruptcy courts, but that the Committee does not need to take any action now.

Professor Morris said he also attended a meeting of the mass torts working group of the Advisory Committee on Civil Rules which is considering amendments to Civil Rule 23 governing class actions. The proposals the group is considering, he said, include establishing an appointment process for an attorney for a class. Other proposals include affording greater preclusive effect to a court's order refusing to certify a class and any order de-certifying a class or approving a settlement.

Action Items

The Committee took up consideration of the comments to the preliminary draft amendments that were published in August 2000.

Rule 2014. The Reporter summarized the comments the Committee had received, and noted that the proposed amendments to Rule 2014 also had been the focus of the Committee's public hearing, held January 26, 2001, in Washington, DC. Commentators who opposed the proposed amendments included Chief Judge Carolyn Dineen King, United States Court of the Appeals for the Fifth Circuit, and Judge Edith Hollan Jones, a member of that Court. Professor Morris said that Professor Todd Zywicki, George Mason University Law School, who testified at the hearing, had reiterated many of the views expressed by Judge King and Judge Jones. All had opposed revising the current rule's standard of the disclosure of "all connections" with the parties, parties in interest in the case, and the professionals employed by them to the published proposal that would require disclosure of those connections "relevant to determining whether the person is disinterested under § 101."

Some Committee members said that they were surprised that some commentators interpreted the proposed amendment as designed to restrict the disclosures a professional must make and noted that at least one witness at the hearing, Robert A.Greenfield, Esquire[1], had said he did not consider the proposed amendment to require less disclosure than the current rule. Some members noted that the existing rule is not being complied with, that professionals already screen out connections they believe are not relevant, such as "an old fraternity brother who is president of a major creditor, a credit card issued by a creditor bank that has an outstanding balance, or a life insurance policy with a creditor." One member said professionals, especially those who are members of large firms, do so to avoid filing 2-inch thick disclosures full of mostly trivial connections which can overwhelm the court and the United States trustee with information. Chairman Small said he had sent a transcript of the hearing to Judge Jones and had received a second letter from her that indicated she might be amenable to some amending of the "all connections" standard. Based on a conversation, he said, he believed Judge Jones might accept a "relevant" standard for attorneys and accountants employed by parties and parties in interest and something in between "all" and "relevant," something that is "not de minimus," as to principals.

A member pointed out that a debtor's attorney often does not know the identities of the attorneys and accountants for the various creditors and cannot appropriately obtain this information. Yet, the existing rule does not contain any mitigating phrase like "to the best of the professional's knowledge" with the respect to the disclosure statement to be submitted by the professional, although the applicant (*e.g.*, the debtor) is required to disclose only "to the best of the applicant's knowledge." (See Rule 2014(a).)

Professor Morris said the Subcommittee on Attorney Conduct, Including Rule 2014 Disclosure Requirements, had met in January by conference call and during the afternoon before the meeting and had determined that the best way to meet the comments opposing the proposed amendments was to present to the Committee the two re-drafts contained in the agenda book and certain further modifications, which Professor Morris described. The subcommittee's objectives were to propose relevancy standards for attorneys and accountants employed by creditors and other parties in interest and to reassure Judge Jones and others that the Committee is not proposing to lower the standard for disclosure. Professor Resnick expressed concern about using two standards. He asked why "relevant" would not work for creditors if it would work for attorneys. Professor Morris said the sense of the subcommittee was that a connection with a party is more serious than a connection with someone who merely represents a party. Judge Cristol said there seemed to be a clear understanding at the hearing, and among the bench and bar generally, that the attorney remains at risk should the court later determine that the person has a conflict of interest (11 U.S.C. § 327(c)) or is not disinterested (11 U.S.C. § 328(c)). Judge Gettleman said the "debacles" under the existing rules, (See In re Leslie Fay), show that the goal should be to draft a rule that will be complied with. Mr. Adelman said he disagreed with Judge

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[1]Mr. Greenfield, of Stutman, Treister & Glatt, Los Angeles, CA, appeared on behalf of the National Bankruptcy Conference.

King and Judge Jones that lawyers will underdisclose if the amendments published by the Committee are adopted. Rather, he said, they will overdisclose, and Judge Duplantier added that overdisclosure effectively equals no disclosure.

Judge Duplantier suggested borrowing the language used in 28 U.S.C. § 455 as the standard for disqualifying a judge from deciding a case, that the individual's "impartiality might reasonably be questioned." Mr. Shaffer suggested that such an adaptation possibly could be phrased as "connections that may cause the court or a party in interest reasonably to question whether the person is disinterested." **The Chairman asked the Reporter to prepare a new draft for the following day's session that would incorporate the changes approved by the subcommittee and the language suggested by Mr. Shaffer.**

Ms. Davis inquired whether, under the second draft rule developed in response to the comments, an attorney would disclose "an adverse interest." Judge Montali responded that if the adverse interest were de minimus, the judge would approve the employment anyway. More troublesome, he said, are the applications that state that the attorney is disinterested and holds no adverse interest "except," and the disclosures that follow clearly show connections that are more than de minimus and interests that are adverse.

Judge Gettleman called the Committee's attention to a provision in the re-drafts that would require the attorney or other professional to disclose the procedures used to develop the information in the statement and said the subcommittee was uncertain whether including such a provision would require republication. Ms. Davis said the United States trustees would like to have the information, but that she was unsure whether requiring it in every case would be productive. Judge Small said he does not think conflict-checking procedures should be disclosed at the time the employment is approved, because it might imply approval of the procedures and compromise any later decision that a particular undisclosed connection or conflict requires the termination of the employment and disgorgement of fees. Judge Walker said he would be unable to assess the adequacy of an attorney's conflict-checking procedures without substantial information about the nature and depth of the law firm's database and would prefer not to have the information unless a party objects to the employment. Judge Small agreed that the professional's conflict-checking process properly is a defense to be considered only if an objection is raised.

Professor Resnick, on behalf of Bankruptcy Judge Allan L. Gropper, a new judge in the Southern District of New York, raised a question about subdivision (c) of the rule, the provision that specifies the service list for the application. Judge Gropper was concerned, he said, because it might conflict with the customary practice in his district whereby the judge will sign an interim retention order on the first day of the case, when there has not been time to serve those named on the service list. Professor Morris responded that the Committee Note already states that the court can act without a hearing, that a party can object, and that the court can vacate the order. He said the Committee always has assumed that the court would act on the first day. Professor Resnick requested that the Committee Note be amended to add that the court can act before the parties

have been served. Judge Cristol said a court that has concerns about the timing of service can put in its order that any party can object and request and immediate hearing.

Mr. Frank noted that in the re-drafts the requirement that an attorney provide the information required to be disclosed under § 329(a) of the Code had been deleted. He said he was not convinced that Rule 2016(b) is adequate for the situation in which an application for employment would be filed under Rule 2014. The statement prescribed in Rule 2016(b) is not required to be filed for 15 days after the case is commenced, he said, and is intended to provide the court with information about fees paid in cases in which fee applications are not filed. **There was no objection to his suggestion that the provision referring to § 329(a) be restored.** Professor Wiggins noted that in the first re-draft, at tab 5a, page 16, line 22, there was an unnecessary "that." The Reporter said he was aware of several similar lines and intended to review the entire amended rule, once the Committee had approved the substance, for the purpose of deleting all extraneous "thats." He noted also that all amendments approved by the Committee would be reviewed by the Style Subcommittee and by the Standing Committee's Style Subcommittee.

On the second day of the meeting, the Committee considered a new draft that the Reporter had prepared based on the Committee's discussion. The Reporter explained that the new draft contained a subdivision (b)(3) that included the phrase "not de minimus" and provided three alternative subdivisions (b)(4) on the theme of "reasonably questioning." Professor Resnick said he would strike subdivision (b)(3) ("not de minimus") and proceed only with one of the versions of subdivision (b)(4). He noted that in all other respects, this action would retain the published draft. Mr. Adelman said the Committee should keep lines 24-26 of subdivision(b)(3), keeping disclosure of any interest in the debtor and avoiding variation from the statutory standard for "disinterested" in § 101 of the Code. In addition, he said, the Committee should keep one of the versions of subdivision (b)(4). In response to a question about whether the word "reasonably" is redundant in the context of the rule, Professor Resnick said it would require broader disclosure than would "relevant," because the lawyer or other professional could not be conclusory or subjective but would have to think about what others could or might consider as questionable. **A motion to proceed using lines 24 - 26 and lines 33 -35 passed without objection, subject to review by the style subcommittee.** Thus subdivision (b)(3) through (b)(4) would read:

> (3) any interest in, relationship to, or connection the person has that is not de minimus with the debtor;
>
> (4) any interest, connection, or relationship the person has that may cause the court or a party in interest to reasonably question whether the person is disinterested under § 101;

Rule 9014(d). The Reporter said the proposed amendment to Rule 9014(d) had drawn the largest number of comments, most of them opposed to the change. The Committee's intent, in

referencing Civil Rule 43(a), to emphasize the similarity between contested matters initiated by motion and civil trials, appeared to have been misunderstood by some commentators. In civil actions, motions governed by Rule 43(e) are not comparable to motions that initiate contested matters in bankruptcy cases, because motions in civil actions generally do not result in final resolution of the underlying matter. Many courts, however, have a long-standing practice of accepting direct testimony by affidavit, subject to the right of the opposing party to conduct live cross examination of the witness. Moreover, both the Ninth Circuit and the Second Circuit have authorized this practice. The Chairman suggested that changing the Rule 43(a) reference to simply "Rule 43" would accommodate those who had opposed the amendment. Judge Donald agreed that the Chairman's approach would provide needed flexibility without disturbing what courts are doing now. Judge Small said the Committee also could delete any reference to Rule 43 and state that testimony should be taken as in an adversary proceeding, leaving Rule 9017 to prescribe the procedure. Judge Klein asked why Rule 9014 needs to say anything when Rule 9017 unquestionably applies. Professor Resnick responded that the reason is historical; the Committee decided several years prior to the meeting that a contested matter is litigation and, if there is a factual dispute, it should be heard according the trial rules. He added that, rather than refer simply to "Rule 43," he would prefer to state that testimony in a contested matter should be taken as in an adversary proceeding. Judge Zilly said, if there are some facts at issue–such as competing valuations--but no material issue, the use of affidavits alone should be permitted, rather than requiring the parties to bring in a distant witness. **A motion was made to amend the preliminary draft to add the word "material" in line 33 and delete the reference to Rule 43(a).** Judge Zilly said the motion still would deprive parties of the ability to stipulate that the matter should be determined on affidavits. He said **the phrase "at trial" also should be deleted so the rule would require testimony simply "as in an adversary proceeding," and there was no objection to amending the motion.** Professor Resnick said, if the phrase "at trial" were deleted from the rule, the reference to Rule 43(a) should remain in the Committee Note. Others disagreed. After further discussion, **the motion passed by a vote of 7 to 4. A motion to delete from the Committee Note the sentence referring to Rule 43(a) failed by a vote of 3 to 8. A sentence will be added to the note concerning agreement of the parties to submission of a matter on affidavits.**

The Committee, by consensus, approved one new rule and amendments to the following rules as published for comment: Rule 1004, new Rule 1004.1, Rule 2004, Rule 2015, Rule 4004, Rule 9014(e) and Rule 9027.

Official Form 1. In light of the concern about possible self-incrimination expressed in the comment on the form as published, Mr. Shaffer suggested amending proposed Exhibit "C" to delete from numbered paragraph 2 the word "dangerous." **The Committee approved the form as so amended and further approved requesting the Judicial Conference to prescribe an effective date of December 1, 2001, to permit publishers and bankruptcy software vendors to print and distribute the form. The Committee also approved adding a checkbox labeled "Clearing Bank" to the form** to conform to amendments to the Bankruptcy Code creating a new subchapter under which these entities can be liquidated.

Official Form 15. At its September 2000 meeting, the Committee approved an amendment to the form to conform it to an amendment to Rule 3020 that is expected to become effective December 1, 2001. **The Committee approved requesting the Judicial Conference to prescribe an effective date for the form of December 1, 2001,** to match the expected effective date of the amendment to Rule 3020.

Official Form 5 and Official Form 17. The Bankruptcy Administration Committee had requested the Committee to consider amending the involuntary petition form (Official Form 5) and the notice of the appeal form (Official Form 17) to include a notice that a child support creditor or child support creditor's representative who files a form stating the details of the child support debt, its status, and "other characteristics" is exempt from paying filing fees. The Director of the Administrative Office has issued a form that a child support creditor or child support creditor's representative can use for the purpose of qualifying for the filing fee waiver. **The Committee approved proposed amendments with the addition of the phrase "in connection with the filing of the involuntary petition" at the end of the notice on Official Form 5 and the moving of the notice to the second page of the form, and with the further insertion of the words "filing or docketing" before the word "fee" on Official Form 17.**

Rule 2003(b) and Rule 2009. The Reporter explained that the proposed amendments would conform the rules to the newly enacted provisions of the Bankruptcy Code concerning the liquidation of uninsured State banks that operate as multilateral clearing organizations ("Clearing Banks"). After a short discussion, **the Committee approved the Reporter's draft amendments subject to review by the Style Subcommittee.** As these amendments only conform the rules to statutory changes, Mr. Rabiej said publication would not be necessary.

Rule 1007 and New Rule 7007.1. The Reporter introduced the proposed new rule, as modified by the Subcommittee on Attorney Conduct Including Rule 2014 Disclosure Requirements, during its January conference call and at a meeting on March 14. The proposal was drafted at the direction of the Standing Committee acting at the request of the Committee on Codes of Conduct. The Advisory Committee on Civil Rules and the Advisory Committee on Criminal Rules published similar draft rules in August 2000, he said, and had not received any adverse comment.

The subcommittee had decided to limit the scope of the rule to adversary proceedings only, Professor Morris said, because in many circumstances that arise in contested matters it would be difficult – or even impossible – to obtain compliance and afford the court time to review the volume of disclosures that could be received. In motions seeking relief from the automatic stay, for example, the motion may be filed on behalf of a national organization by a local attorney who does not have access to the information required. There is no requirement in Rule 9014 that a party file a response, and bankruptcy cases present many situations – such as multiple liens on the same collateral, settlements, plan confirmations – in which affected creditors fail to respond or respond shortly before the commencement of a hearing, effectively preventing the disclosure rule from operating. Moreover, Rule 9014 would authorize the

presiding judge to direct that Rule 7007.1 should apply in any particular contested matter in which disclosures appeared to be warranted. The subcommittee determined that the debtor should make its disclosures at the beginning of the case, so the judge could review them before signing the orders presented on the first day of the case. A proposed amendment to Rule 1007 had been drafted to accomplish that, the Reporter said.

The subcommittee's draft language differs in certain respects from that published by the other advisory committees, the Reporter noted. The subcommittee limited disclosures to any nongovernmental corporation to prevents entities such as Amtrak from having to file disclosures. The subcommittee chose the phrase "equity interests" rather than "stock," he said, because the definition of "corporation" in § 101 of the Bankruptcy Code includes entities that do not issue stock. The subcommittee also changed the reportable ownership interest to ten percent of any class of equity interests, because ownership of 90 percent of one class might not amount to ten percent ownership of the whole but still would be significant. The subcommittee determined that interests owned "directly or indirectly" should be disclosed and would propose that as an improvement on the drafts already published. The subcommittee deleted any reference to a parent corporation, because the members could not think of any ten percent ownership situation that would not include a parent. The subcommittee also deleted the phrase limiting the corporate owners that must be disclosed to those that are "publicly held," because many organizations that have broad distribution of equity interests are not publicly traded. Finally, Professor Morris said, the subcommittee changed the title of the rule from "Disclosure Statement," used in the civil and criminal drafts, to the more informative "Corporation Ownership Disclosure Statement."

Judge Gettleman said the Committee Note should mention that the debtor is required to make similar disclosures under Rule 1007, and Professor Resnick noted that the Committee Note retains a reference to publicly traded corporations. Judge Montali expressed concern about limiting the rule to adversary proceedings. He said if a judge acts in a "big" motion or signs first day orders, but information later shows that judge should have been disqualified, the court system could be subject unfavorable publicity. **A motion to limit the scope of the rule to adversary proceedings passed by a vote of 6 to 5.**

A member suggested adding "or local rule" to the draft language of Rule 7007.1(a)(2) concerning additional information that may be required by the Judicial Conference. Other members, however, said attorneys and parties will not know where to find any Judicial Conference requirements. It is unwise, they said, to put in a rule that there may be something else the person needs to check. **A motion to delete subdivision (a)(2) and the final sentence of the Committee Note passed by a vote of 10 to 0.** The consensus was that the Committee Note should be edited, particularly in paragraph 3, to reflect the Committee's actions, and that the note could retain a mention that the Judicial Conference might add further disclosure requirements.

The Chairman asked the Reporter to send our changes and explanations to the other Advisory Committees in time for their April 2001 meetings in the form of comment and suggestions they might want to consider in connection with their own drafts. Professor Morris

said he would include in those materials his concern for the length of time it would take to amend the rule to implement and make public any further requirements the Judicial Conference might prescribe in the future.

The Committee approved the draft amendments to Rule 1007 concerning disclosure by the debtor. If approved by the Standing Committee, new Rule 7007.1 and the amendments to Rule 1007 would be published for comment in August 2001.

Official Forms - Individual Privacy. At its September 2000 meeting the Committee determined to publish for comment amendments to the official forms that would require only the last four digits of a debtor's Social Security number or debtor's account number to be disclosed. Official Forms marked with these potential amendments were presented for consideration. Judge Cristol said the last four digits often are used as PIN numbers and could be a source of mischief when files are posted on the Internet. Mr. Waldron said he had some concern that the last four digits are not unique enough, and Mr. Kohn noted that some responses to the judiciary's request for comment on privacy policy proposals said they are not. Mr. Heltzel said that redacting or selectively holding back information is extremely difficult with paper or imaged documents. He also said the electronic files system would be giving creditors other pieces of information, such as aliases and addresses, to match up and arrive at a correct identification. Mr. Kohn responded that having to use other information would require the Internal Revenue Service to perform "manual triangulation" to arrive at a correct identification and that, while engaged in that task, would be exposed to liability for stay violation, as would other creditors. Mr. Kohn added that it should be sufficient to exclude only part of the Social Security number but continue to require the full Taxpayer ID Number used by corporations and other employers. He suggested this could be done by switching the order in which the request for the numbers is stated on the form, so that it would read "Taxpayer ID Number / Last Four Digits of Social Security Number."

Judge Walker said he and other members of the Subcommittee on Privacy and Public Access had looked at the forms for what disclosures might be eliminated, but did not find much. He suggested that one approach might be to permit a debtor to file a "privacy disclosure document" that a proper party could access, but that would not be public without further court order. This document would contain the Social Security number and any other information from the schedules or statement of financial affairs that the debtor might want to keep private, and that preparing the document would make the debtor think about the sensitivity of the information the debtor is making public. Professor Resnick said the Committee probably would be amending the official forms extensively to conform to the pending bankruptcy reform legislation. He suggested delaying publication of the privacy-related amendments until the legislation-driven amendments also are ready.

Rule 6, Federal Rules of Appellate Procedure(FRAP). At its March 2000 meeting the Committee approved requesting the Advisory Committee on Appellate Rules to amend FRAP 6 to include a reference to Bankruptcy Rules 9019 and 7041, to prevent settlements at the circuit court level from becoming final without notice to other creditors in the bankruptcy case. Judge

Small said the Appellate Advisory Committee had agreed to the request but wanted the Committee to provide a specific proposed amendment. Judge Montali asked whether the proposed language would cause the court of appeals to think it has to do something; Rule 9019 directs the parties to give notice and obtain approval from the bankruptcy court, he said. Mr. Kohn expressed concern about the bankruptcy court's jurisdiction to act without a formal remand; he suggested going forward with the proposed amendment but notifying the Appellate Advisory Committee of the problem. Professor Wiggins questioned whether FRAP 6 is the appropriate location for the amendment; she suggested FRAP 33 (settlement) and FRAP 42 (voluntary dismissal). Judge Cordova said the Reporter's draft should be rearranged to make it clear that Rule 9019 applies to appeals and Rule 7041 to dismissals. Professor Resnick suggested amending FRAP 6 to say simply that Rules 9019 and 7041 apply, **and there was no objection.** The Committee could then amend Rule 7041 to broaden it to include settlements of appeals. Mr. Niemic said he meets regularly with the chief mediators for the courts of the appeals and can attest that they know about Rule 9019. The mediation programs operated by the courts of appeals have grown, however, and knowledge of the bankruptcy rule has become uneven with that growth. He said that FRAP 33, the rule that applies to mediators, may be the best place for the amendment. **The Chairman directed the Reporter to proceed with the FRAP 6 amendment as modified and recommend to the Appellate Advisory Committee that it also put the same language or a cross-reference in FRAP 33 and FRAP 42.**

Rule 7026. The Reporter said Rule 7026 was before the Committee in order to determine whether it should be amended in light of the December 1, 2000, amendments to Civil Rule 26 that removed the opt-out provisions under which courts formerly could exempt parties from certain discovery requirements such as mandatory initial disclosures and a mandatory meeting before the scheduling conference. Under the philosophy that federal rules should be consistent, Mr. Frank and other members said Civil Rule 26 as amended should apply in adversary proceedings without modification. Judge Cristol said, since the purpose of Rule 26 is to prevent delay, he would favor a modification allowing local rules to provide for shorter times than are specified in Rule 26. Judge Cordova said Rule 26 does not require the parties or the court to take the full time and does not prohibit shortening the times. The rule only prohibits extending the prescribed times, he said. Judge Klein noted that Rule 26(a) contains a list of case types that are excepted from the mandatory disclosure requirements, including student loan cases. Mr. Kohn said the United States attorneys would like to see the exception extended to bankruptcy proceedings, because application of Rule 26 otherwise would slow these matters down in the bankruptcy courts. **The consensus was to leave Rule 7026 unchanged.**

Rule 9014. With respect to the application of Rule 26 to contested matters, **the Committee approved inserting on line 6 of the Reporter's draft, at the beginning of the new sentence, "Unless the court directs otherwise."** Under generally accepted vocabulary conventions in the rules, the verb "order" means the court can act only on a case-by-case basis. The verb "direct," however, means the court can act either on a case-by-case basis or by issuing a local rule, unless the national rule limits the court's discretion with a modifying phrase such as "in a particular matter," (used in lines 14 - 15 of the Reporter's draft). The Committee Note

should say the verb "directs" was chosen to signal that the court may regulate the application of Rule 26 to contested matters by local rule or on a case-by-case basis. Accordingly, proposed amendments to Rule 9014 would provide that subdivisions (a)(1), (a)(2), (a)(3), and (f) of Rule 26 would not apply in contested matters unless the court "directs otherwise." The consensus was that these modifications are appropriate and defensible, because of the need for speedy resolution in contested matters. These amendments would be published for comment in August 2001.

Information Items

Bankruptcy Case Files on the Internet -- Privacy Considerations. Judge Montali, who is the Bankruptcy Administration Committee's alternate liaison to the Privacy Subcommittee of CACM, described for the Committee the alternative policy options concerning which that subcommittee had recently sought comment. The general policy options offered for comment were 1) no policy, 2) continuation for electronic files of the policy in effect for paper files, 3) redefining the contents of the "public file" to better accommodate privacy interests, and 4) limiting the level of remote access to certain categories of information. The bankruptcy files options on which comment was solicited were 1) requiring less information on schedules and statements, 2) creating an "estate" or "administrative" file that would be available only to parties in interest, 3) reducing Social Security and other account numbers to only the last four digits, and 4) seeking amendment of § 107(b) of the Code to broaden a judge's authority to seal documents to include privacy as a reason. He noted that bankruptcy case files are the only ones that are public by statute; the Judicial Conference has more latitude to make policy concerning files in other types of cases.

Contemporaneously with the Committee meeting, the Privacy Subcommittee was holding a public hearing in Washington, DC, to receive oral comments to supplement the 240 written comments that had been submitted. The hearing was scheduled to be taped by C-Span and might be broadcast, although no date had been specified, he said. The Subcommittee planned to meet following the hearing to begin formulating its recommendations to the Judicial Conference. These are scheduled to be reviewed by other interested committees, including the Standing Committee, at their June meetings, and to be presented to the Judicial Conference in September. Mr. McCabe added that the Subcommittee may decide that one policy does not suit all types of cases and, for example, might recommend different treatment for criminal files than for bankruptcy files. Enforcing any policy, he said, will be a continuing challenge, as it is impossible to control what happens to information once it is in the hands of third parties.

Model Local Rules for Electronic Case Filing. Ms. Ketchum reported that CACM also had formed a subcommittee to develop model local rules for electronic case filing. The first meeting of the subcommittee would be held April 6, 2001, and she expected that any proposed model rules drafted by the subcommittee would be presented to the Committee for its review and comment.

Administrative Matters

The Committee discussed how it might organize the work that would be needed in the likely event that major bankruptcy reform legislation would be enacted within weeks following the meeting. The pending bills contain provisions for an effective date of 180 days after enactment. The consensus was that suggested interim rules for local adoption would be necessary, together with new and amended forms. There was further consensus that interim rules

should be approved at least by the Standing Committee and perhaps by the Judicial Conference. Official Forms, both new and amended, that were required by the legislation or otherwise implemented it could either be approved without public comment or issued as interim forms, with feedback from users serving as the equivalent of formal comment. Mr. Rabiej said the Judicial Conference could act on as little as two days' notice, if necessary. He suggested advising the Standing Committee at its June meeting of the Committee strategy for implementing the legislation and using mail ballots for any approvals that might be required afterwards.

Ms. Davis said the EOUST had developed a draft form for means testing. She said the form had not been cleared yet by the Department of Justice, but she would bring it to the Committee once that had been accomplished. She said completing the form properly would depend on the debtor's ability to do math. Judge Small asked about whether the EOUST also might have a standard chapter 11 plan form it could offer the committee, but she said no such form is available. Professor Resnick said he had met two or three years prior, in connection with an earlier version of the bankruptcy reform legislation, with a committee of United States trustees organized by a previous director of the EOUST, and that some members of that committee had provided him with copies of local chapter 11 plan forms. He said he would attempt to locate these in his files.

Professor Morris said he had drafted a memorandum to the Chairman suggesting topical areas of the reform legislation that might be assigned to various subcommittees once the final version of the legislation is known. Professor Resnick said another approach that the Reporter and Chairman might consider would be to start with the existing rules and go through them part by part to see which ones need to be amended. He said that method had been effective in amending the rules to implement the 1986 legislation and would avoid having two groups working on the same rule from different perspectives. He said he was unsure whether the rule-oriented approach would serve better than starting with the statutory provisions this time, however. Mr. Rabiej said he was arranging to contract with up to three consultants to work with the Committee in drafting the rules and amendments and forms that would be required.

The Chairman invited the members to contact him concerning their areas of interest as he would be forming the necessary subcommittees during the weeks following the meeting.

The Committee agreed to March 21-22, 2002, as the dates for its spring 2002 meeting and discussed Tucson, Arizona, Santa Fe, New Mexico, and the Monterey and Napa Valley areas of California as possible meeting sites.

Respectfully submitted,

Patricia S. Ketchum

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
Meeting of June 7-8, 2001
Philadelphia, Pennsylvania

Draft Minutes

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ATTENDANCE

The mid-year meeting of the Judicial Conference Committee on Rules of Practice and Procedure was held in Philadelphia, Pennsylvania, on Thursday and Friday, June 7-8, 2001. The following members were present:

Judge Anthony J. Scirica, Chair
David M. Bernick
Honorable Michael Boudin
Honorable Frank W. Bullock, Jr.
Charles J. Cooper
Honorable Sidney A. Fitzwater
Dean Mary Kay Kane
Gene W. Lafitte
Patrick F. McCartan
Honorable J. Garvan Murtha
Honorable A. Wallace Tashima
Honorable Thomas W. Thrash, Jr.

The Department of Justice was represented at the meeting by Roger Pauley, Director (Legislation) of the Office of Legislation and Policy in the Criminal Division. Also in attendance was Chief Justice E. Norman Veasey, a former member of the committee.

Chief Justice Charles Talley Wells and Deputy Attorney General Larry D. Thompson were unable to attend the meeting.

Providing support to the committee were: Professor Daniel R. Coquillette, reporter to the committee; Peter G. McCabe, secretary to the committee; John K. Rabiej, chief of the Rules Committee Support Office of the Administrative Office of the U.S. Courts; Nancy Miller, special counsel in the Office of Judges Programs of the Administrative Office; and Christopher F. Jennings, assistant to Judge Scirica.

Representing the advisory committees were:

Advisory Committee on Appellate Rules —
Judge Will L. Garwood, Chair
Professor Patrick J. Schiltz, Reporter
Advisory Committee on Bankruptcy Rules —
Judge A. Thomas Small, Chair
Professor Jeffrey W. Morris, Reporter
Advisory Committee on Civil Rules —
Honorable David F. Levi, Chair
Honorable Lee H. Rosenthal, Member
Professor Edward H. Cooper, Reporter
Professor Richard L. Marcus, Special Consultant
Advisory Committee on Criminal Rules —
Honorable W. Eugene Davis, Chair
Professor David A. Schlueter, Reporter
Advisory Committee on Evidence Rules —
Honorable Milton I. Shadur, Chair
Professor Daniel J. Capra, Reporter

Also taking part in the meeting were: Joseph F. Spaniol, Jr., consultant to the committee; Professor Mary P. Squiers, Director of the Local Rules Project; and Joe Cecil of the Research Division of the Federal Judicial Center.

INTRODUCTORY REMARKS

Judge Scirica introduced Dean Michael A. Fitts and Professor Stephen B. Burbank of the University of Pennsylvania Law School and thanked them for making the school's facilities available to the committee for the meeting. Dean Fitts and Professor Burbank welcomed the members and conveyed best wishes from Professor Geoffrey Hazard, a former member of the committee, who was unable to attend the meeting.

Judge Scirica welcomed Dean Mary Kay Kane to the committee and pointed out that she is the dean of the Hastings College of the Law, University of California, president of the American Association of Law Schools, and reporter for the American Law Institute's complex litigation project.

Judge Scirica thanked Chief Justice Veasey for seven years of distinguished service as a member of the Standing Committee, citing, among other things, his leading role in attorney conduct and mass torts issues. He also thanked Judges Garwood and Davis, whose terms as advisory chairs are due to end on October 1, 2001. He praised them especially for their enormous contributions in achieving a complete restyling of the appellate and criminal rules.

Judge Scirica said that there was little to report on the action of the Judicial Conference at its March 2001 meeting. He added, however, that several proposed amendments to the rules will be presented to the Conference at its September 2001 meeting, some of which might prove to be controversial.

APPROVAL OF THE MINUTES OF THE LAST MEETING

The committee voted without objection to approve the minutes of the last meeting, held on January 7-8, 2001.

REPORT OF THE ADMINISTRATIVE OFFICE

Mr. Rabiej reported that the Judicial Conference at its September 2000 meeting had passed a resolution encouraging courts to post their local rules on the Internet. At that time, 54 district courts already had posted local rules on their respective web sites. The courts, he said, have been complying with the resolution, and now 83 out of the 92 district courts have placed their rules on the Internet. He added that Senator Lieberman had introduced legislation that would require all courts to establish web sites and post on them their local rules and orders.

Mr. Rabiej reported that Senator Thurmond had introduced legislation that would allow a district judge to conduct an arraignment by video conferencing, even without the consent of the defendant, and to conduct a sentencing hearing by video conferencing under certain circumstances.

REPORT OF THE FEDERAL JUDICIAL CENTER

Mr. Cecil noted that the agenda book for the meeting contains a status report on the various educational and research projects of the Federal Judicial Center. He pointed out that the Research Division of the Center is updating an earlier study of summary judgments and should have some additional insights to present at the next committee meeting on the impact of summary judgments on civil litigation in the district courts.

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Judge Garwood presented the report of the advisory committee, as set forth in his memorandum and attachments of May 11, 2001. (Agenda Item 8)

Amendments for Final Approval

Judge Garwood reported that the advisory committee had been working since April 1998 on a variety of amendments to the appellate rules. The proposed amendments had been brought to the Standing Committee's initial attention at its January 2000 and June 2000 meetings. They deal with five general subjects: (1) entry of judgment and time for filing an appeal; (2) electronic service; (3) calculating time limits; (4) corporate disclosure statements; and (5) various "housekeeping" changes in the rules. Judge Garwood pointed out that public comments had been received on the proposed amendments, but no commentator had asked to testify on them in person.

FED. R. APP. P. 1(b)

Professor Schiltz said that the advisory committee recommends abrogating Rule 1(b), which declares that the Federal Rules of Appellate Procedure "do not extend or limit the jurisdiction of the courts of appeals." He noted that the provision is obsolete because Congress enacted legislation in 1990 and 1992 authorizing the Supreme Court through the rules process to affect the jurisdiction of the courts of appeals by: (1) defining when a district court ruling is final for purposes of 28 U.S.C. § 1291; and (2) providing for appeals of interlocutory decisions not already authorized by 28 U.S.C. § 1292.

One of the members expressed concern that extending or limiting the jurisdiction of the courts of appeals through the rules process may not be constitutional. Defining the jurisdiction of the courts, he said, is "ordaining and establishing" courts within the meaning of Article III of the Constitution — a power reserved exclusively to Congress.

Judge Garwood responded that the advisory committee is not taking a position on the constitutional issue. Rather, it is merely seeking to abrogate a rule that is no longer correct in light of the legislation described above.

Mr. Cooper moved to add language to the committee note specifying that the committee takes no position with regard to the constitutional issue. The motion died for lack of a second.

The committee approved the proposed abrogation of Rule 1(b) with one objection.

FED. R. APP. P. 4(a)(1)(C)

Professor Schiltz explained that the proposed addition to Rule 4, governing the time for filing a notice of appeal, would resolve a split among the courts of appeals as to whether an appeal from an order denying an application for a writ of error *coram nobis* is governed by the time limitations applicable to civil cases (Rule 4(a)) or by those applicable to criminal cases (Rule 4(b)). He said that the proposed amendment adopts the civil case time limitations. He added that no changes had been made in the text or note following publication.

The committee approved the proposed amendment without objection.

FED. R. APP. P. 4(a)(5)(A)(ii)

Professor Schiltz said that the proposed amendment to the rule, governing motions for extension of time, would allow a district court to extend the time to file a notice of appeal if the moving party shows either "excusable neglect" or "good cause" — regardless of whether the extension motion is filed within the original 30-day time for appeal or the next 30 days. He added that some courts have held — based on obsolete language in a committee note — that the "good cause" standard applies to motions brought within the 30-day period, and the "excusable neglect" applies after that time.

Professor Schiltz explained that the proposed amendment brings the civil appellate provision into harmony with the criminal appellate provision. He also said that the only change, other than style, made after publication was to add language to the note explaining "good cause" and "excusable neglect."

The committee approved the proposed amendment without objection.

FED. R. APP. P. 4(a)(7)

Professor Schiltz said that the proposed changes would address problems caused by the interaction of: (1) Rule 4(a)(7)'s definition of when a judgment is entered for purposes of appeal; and (2) FED. R. CIV. P. 58's requirement that a judgment be set forth on a separate document. The core problem, he said, is that many district court judgments — despite the requirement of Rule 58 — are not in fact set forth on separate documents. Under the case law of every circuit but one, the time to file an appeal never begins to run if the trial court fails to comply with the separate document requirement.

In addition, he said, the filing of a post-judgment motion tolls the time for appeal until an order denying the motion is entered. In many circuits, most orders denying post-judgment motions are themselves appealable, and thus are defined under the civil rules as "judgments" that must be entered on separate documents before the time to appeal begins to run. As a result of all this, there are many cases in which the parties assume that the time to appeal has expired, when in fact it remains open. Professor Schiltz pointed out that there are more than 500 court of appeals decisions addressing the subject.

Professor Schiltz reported that the Advisory Committee on Appellate Rules and the Advisory Committee on Civil Rules had worked together on proposing solutions to the problems caused by the interaction of the two sets of rules. He said that the proposed companion amendments to FED. R. CIV. P. 58 would maintain the separate document requirement generally, but specify that when a separate document is required a judgment is entered for purposes of the civil rules when it is entered in the civil docket and when the earlier of these events occurs: (1) the judgment is set forth on a separate document; or (2) 150 days have run from entry in the civil docket. The proposed amendments to the civil rule would also specify that a separate document is not required for an order disposing of specified post-trial motions.

Professor Schiltz explained that the proposed amendments to FED. R. APP. P. 4(a)(7) tie directly into FED. R. CIV. P. 58. There will be no separate document requirement in the appellate rules. Rather, a judgment will be considered entered for purposes of FED. R. APP. P. 4(a) if it is entered in accordance with FED. R. CIV. P. 58.

Professor Schiltz pointed out that the committee had received some negative comments from the public on the proposal to "cap" the time for filing an appeal. Commentators declared that the separate document requirement protects parties against unknowingly forfeiting their rights by giving them clear, actual notice that the time for appeal has begun to run. They argue that the appeal period should never run until a separate document is entered. Professor Schiltz reported, however, that the two advisory

committees had rejected that argument, believing that the time to appeal should not be allowed to run forever.

As published, the proposed amendments had specified that a judgment is deemed entered 60 days after entry in the civil docket by the clerk. But commentators suggested that 60 days of inactivity in a case is simply too common to provide the parties with adequate notice that the case is over. Accordingly, in light of the public comments, the advisory committees decided after publication to increase the "cap" from 60 days to 150 days. A period of 150 days of inactivity should clearly signal to the parties that the court is done with their case. Professor Schiltz noted, moreover, that if a a judgment is properly entered on a separate document, a party who receives *no notice at all* has only 180 days to file an appeal under the current rule. It would be inconsistent, he said, to argue that a party who does in fact receive notice of the court's judgment, but not through a separate document, should have an unlimited amount of time to appeal.

Professor Cooper reported that a few changes had been made in FED. R. CIV. P. 58 following publication. He noted that the definition of the time of entering judgment in Rule 58(b) had been extended to apply to all the civil rules, not just the list of specific rules set forth in the published version.

He also noted that the advisory committee had decided to carry forward the separate document requirement in Rule 58(a), even though some commentators had suggested abandoning it. The requirement applies explicitly not only to every judgment, but also to every amended judgment. This provision, he said, is important with respect to orders disposing of post-trial motions. Rule 58(a), as amended, states that a separate document is not required to dispose of certain post-trial motions. But if the order disposing of the motion amends the judgment, a separate document is in fact required.

Professor Cooper pointed out that Rule 58(a)(2) specifies the duty of the clerk to prepare, sign, and enter the judgment. The advisory committee decided after publication to add the words: "unless the court otherwise orders." He noted that subdivision (c) restates the current rule on cost or fee awards. But subdivision (d), he said, is new. It allows a party to request the court to set forth a judgment on a separate document to support an immediate appeal. A complementary amendment to FED. R. CIV. P. 54(d) would delete the requirement that a judgment on a motion for attorney fees be set forth in a separate document.

Several of the participants stated that the proposed amendments represented a major accomplishment, achieved as a result of extensive, careful research and close cooperation between the appellate and civil advisory committees.

One of the members pointed out that Supreme Court orders normally specify that amendments to the rules govern all proceedings then pending "insofar as just and practicable." He asked whether the proposed amendments to the FED. R. APP. P. 4(a)(7) and FED. R. CIV. P. 58 will have the effect of ending all pending "time bomb" cases 150 days after the proposed amendments are scheduled to take effect on December 1, 2002. Professors Schiltz and Cooper responded that the Court's orders prescribing the amendments to FED. R. APP. P. 4 and FED. R. CIV. P. 58 should specify that they do in fact apply to all pending cases. Judge Scirica noted that there was a consensus in the committee in support of the recommendation, and he suggested that the matter be brought specifically to the attention of the Court.

The committee approved the proposed amendments to Fed. R. App. P. 4(a)(7) and Fed. R. Civ. P. 54(d)(2) and 58 without objection.

FED. R. APP. P. 4(b)(5)

Professor Schiltz reported that the proposed amendment would resolve a split among the circuits by specifying that the filing of a motion to correct a sentence under FED. R. CRIM. P. 35 does not toll the time to appeal a judgment of conviction.

Judge Garwood added that the rule's reference to FED. R. CRIM. P. 35(c) must be changed to FED. R. CRIM. P. 35(a) because of the recent restyling of the criminal rules.

The committee approved the proposed amendment without objection.

FED. R. APP. P. 5(c)

Professor Schiltz said that the proposed amendment would correct an erroneous cross-reference in the rule and impose a 20-page limit on petitions for permission to appeal, cross-petitions for permission to appeal, and answers to petitions or cross-petitions for permission to appeal. He noted that there had been no public comments on the proposal.

The committee approved the proposed amendment without objection.

FED. R. APP. P. 15(f)

Professor Schiltz reported that the advisory committee had proposed adding a new subdivision (f) to Rule 15 (review or enforcement of an agency order) to provide that when an agency order is rendered non-reviewable by the filing of a petition for rehearing or a similar petition with the agency, any petition for review or application filed with the court to enforce that non-reviewable order will be held in abeyance and become effective

when the agency disposes of the last review-blocking petition. The proposed amendment is modeled on Rule 4(a)(4)(B)(i) and treats premature petitions for review of agency orders in the same manner as premature notices of appeal of judicial decisions.

Professor Schiltz noted that the proposed amendment is being deferred in light of opposition from the Advisory Committee on Procedures for the District of Columbia Circuit. He said that the committee would confer with the chief judge and clerk of the court of appeals about the objections.

FED. R. APP. P. 21(d)

Professor Schiltz reported that the proposed amendment would correct an erroneous cross-reference in Rule 21(d) (writs of mandamus and prohibition and other extraordinary writs). It would also impose a 30-page limit on petitions for extraordinary relief and answers to those petitions.

The committee approved the proposed amendment without objection.

FED. R. APP. P. 24(a)

Professor Schiltz said that the proposed amendments to Rule 24(a) (proceeding *in forma pauperis*) would eliminate apparent conflicts with the Prison Litigation Reform Act of 1995 regarding payment of filing fees and continuance of district court *in forma pauperis* status to the court of appeals.

The committee approved the proposed amendments without objection.

ELECTRONIC SERVICE
FED. R. APP. P. 25(c), 25(d), 26(c), 36(b) AND 45(c)

Professor Schiltz pointed out that the proposed amendments to the appellate rules authorizing the use of electronic service are identical to the companion amendments to the civil rules, except for an additional paragraph in the committee note making it clear that parties have the flexibility to define the terms of their consent.

The committee approved the proposed amendments without objection.

TIME CALCULATION
FED. R. APP. P. 26(a)(2), 4(a)(4)(A)(vi), 27(a)(3)(A), 27(a)(4), AND 41(b)

Professor Schiltz reported that the proposed amendments are designed to conform computation of deadlines under the Federal Rules of Appellate Procedure with usage

under the civil and criminal rules. Thus, under the proposed amendment to Rule 26(a)(2), intermediate weekends and holidays will be excluded in computing any prescribed period less than 11 days, rather than periods less than 7 days.

The proposed amendment to Rule 4(a)(4)(A)(vi) (appeal in a civil case) would delete a parenthetical that will become superfluous in light of the proposed amendment to Rule 26(a)(2).

Professor Schiltz explained that the proposed amendment to Rule 27(a)(3)(A) would change from 10 days to 8 days the time within which a party must file a response to a motion. As a practical matter, he said, the time limit would remain about the same as under the current rule since the proposed amendment to Rule 26(a)(2) specifies that intermediate weekends and holidays are excluded in computing deadlines of less than 11 days.

Professor Schiltz said that the proposed amendment to Rule 27(a)(4) would change from 7 days to 5 days the time within which a party must file a reply to a response to a motion. Because of the parallel amendment to Rule 26(a)(2), intermediate weekends and holidays will be excluded from computation.

Professor Schiltz said that Rule 41 (mandate) would be amended to specify that the court's mandate must issue in seven *calendar* days.

The committee approved the proposed amendments without objection.

FED. R. APP. P. 26.1

The committee considered the proposed amendments to Rule 26.1 (corporate disclosure statement) later in the meeting together with proposed parallel amendments to the civil, criminal, and bankruptcy rules. (See the section of these minutes entitled "Corporate Disclosure Statements" at pages 38-41.)

COVER COLORS
FED. R. APP. P. 27(d)(1)(B), 32(a)(2), AND 32(c)(2)(A)

Professor Schiltz pointed out that the proposed amendments would specify the color of a cover, if one is used, for a motion (white), a supplemental brief (tan), and a petition for panel rehearing, petition for hearing or rehearing en banc, answer to a petition for panel rehearing, or response to a petition for hearing or rehearing en banc (white). He said that all the public comments save one had been favorable.

The committee approved the proposed amendments without objection.

FED. R. APP. P. 28(j)

Professor Schiltz explained Rule 28(j) (citation of supplemental authorities) authorizes a party to notify the clerk by letter if pertinent and significant authorities come to its attention after its brief has been filed. The current rule, he said, specifies that the letter must describe the supplemental authorities "without argument," but there is no size limit on the letter. The proposed amendment would eliminate the prohibition on "argument" because it is just too difficult to enforce. But it would impose a limit on the size of the letter. As published, the proposed limit had been 250 words, but commentators expressed concern about letters addressing multiple citations. In response, the advisory committee decided to increase the proposed limit of the letter to 350 words, without specifying how citations will be counted.

The committee approved the proposed amendment without objection.

FED. R. APP. P. 31(b)

Professor Schiltz said that the proposed amendment to Rule 31 (serving and filing briefs) would clarify that briefs must be served on all parties, including those not represented by counsel.

The committee approved the proposed amendment without objection.

FED. R. APP. P. 32(a)(7)(C) AND FORM 6

Professor Schiltz explained that the proposed new Form 6 is a suggested certificate of compliance stating that a brief meets the requirements of Rule 32(a) regarding type-volume limitation, typeface, and type style. The proposed amendment to Rule 32(a)(7)(C) specifies that use of Form 6 is sufficient to meet the certification obligation of the rule.

The committee approved the proposed amendment without objection.

FED. R. APP. P. 32(d)

Professor Schiltz reported that the proposed amendment to Rule 32(d) specifies that every brief, motion, or other paper filed with the court must be signed by the attorney or unrepresented party who files it. He said that one commentator strongly opposed the amendment, and other commentators expressed concern as to whether each copy of a document must be signed. He explained that the advisory committee added a sentence to the committee note following publication specifying that only the original of every paper must be signed.

The committee approved the proposed amendment without objection.

FED. R. APP. P. 44(b)

Professor Schiltz explained that the current Rule 44 implements 28 U.S.C. § 2403(a) by requiring the clerk of court to notify the Attorney General of the United States whenever a party challenges the constitutionality of a federal statute and the United States is not a party to the case. Proposed new Rule 44(b) would implement a companion statutory provision, 28 U.S.C. § 2403(b), and require the clerk to notify the attorney general of a state whenever a party challenges the constitutionality of a state statute and the state is not a party to the case.

The committee approved the proposed amendment without objection.

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Small and Professor Morris presented the report of the advisory committee, as set forth in Judge Small's memorandum and attachments of May 15, 2001. (Agenda Item 7)

Judge Small noted that the Supreme Court on April 23, 2001, had approved amendments to eight bankruptcy rules and submitted them to Congress. (Rules 1007, 2002, 3016, 3017, 3020, 9006, 9020, and 9022)

He also reported that major bankruptcy reform legislation had passed both houses of the 107th Congress and will likely be enacted into law sometime later in the year. Because the legislation generally will take effect 180 days after enactment, the advisory committee will have a very short period in which to draft appropriate rules and forms to implement the new law. He said that the advisory committee had appointed subcommittees and hired consultants to examine the legislation thoroughly and determine what changes will be needed in the rules and forms.

Amendments for Final Approval

Judge Small reported that the advisory committee in August 2000 had published proposed amendments to seven rules, one proposed new rule, and amendments to one official form. He said that the committee had received many comments on the proposals and had conducted a public hearing on January 26, 2001. The most controversial of the changes, he said, involves the rewriting of Rule 2014, which requires a professional seeking employment in a bankruptcy case to disclose connections with the debtor and others.

FED. R. BANKR. P. 1004

Professor Morris explained that Rule 1004(a), dealing with voluntary petitions filed by partnerships, would be deleted because it addresses a matter of substantive law beyond the scope of the rules. As amended, the rule will apply only to involuntary petitions.

The committee approved the proposed amendment without objection.

FED. R. BANKR. P. 1004.1

Professor Morris reported that proposed new Rule 1004.1 will fill a gap in the rules and allow an infant or incompetent person to file a petition through a representative, next friend, or guardian ad litem. It also will allow the court to appoint a guardian ad litem or issue any other orders necessary to protect an infant or incompetent debtor. Judge Small pointed out that the proposed rule is modeled on FED. R. CIV. P. 17(c).

The committee approved the proposed new rule without objection.

FED. R. BANKR. P. 2004

Professor Morris said that Rule 2004 (examination) would be amended to clarify that an examination may be conducted outside the district in which a case is pending. The amended rule specifies that the subpoena for the examination may be issued and signed by an attorney authorized to practice either in the court where the case is pending or the court where the examination is to be held.

One of the judges questioned whether it is technically correct to state that an attorney, rather than the court, "issues" a subpoena. It was pointed out, though, that the language of the proposed amendment to the bankruptcy rules is consistent with the usage of the civil rules. Specifically, FED. R. CIV. P. 45(a)(2) declares that a subpoena issues from the court, but FED. R. CIV. P. 45(a)(3) provides that an attorney, as an officer of the court, may also issue and sign a subpoena on behalf of the court.

The committee approved the proposed amendment without objection.

FED. R. BANKR. P. 2014

Judge Small explained that Rule 2014 (employment of a professional) has been rewritten to conform more closely to the provisions of the Bankruptcy Code regarding the disclosures that a professional must make when seeking employment in a bankruptcy case. The amended rule will require the professional to disclose, among other things:

(1) any interest in, relationship to, or connection with the debtor; and

(2) any other interest, relationship, or connection that might cause the court or a party in interest reasonably to question whether the professional is "disinterested" within the meaning of section 101 of the Code.

Judge Small said that the committee had received both favorable and unfavorable comments on the proposed revisions. He explained that the opponents claim that the revised rule will give professionals too much discretion to decide what they must disclose. They express a preference for retaining the current rule, which requires disclosure of "all connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee." Proponents of the revision, on the other hand, declare strongly that the current rule simply does not work and that it is impossible as a practical matter for professionals to comply with it fully.

Judge Small reported that the advisory committee had spent a great deal of time in addressing the rule, and he noted that members had engaged in a personal dialog with some of the opponents of the revisions. As a result of these discussions, he said, the advisory committee had refined the language of paragraphs (b)(3) and (b)(4) following publication. He and Professor Morris explained that the revisions will continue to require full disclosure of any connection with the debtor, will specify a reasonableness standard with respect to disclosure of connections with creditors and other parties in interest, and will give clear notice to professionals that their disinterestedness is to be judged by others, *i.e.*, the court and parties in interest. Judge Small said that the post-publication refinements had satisfied most, though not all, opponents of the change.

The committee approved the proposed amendment with two negative votes.

FED. R. BANKR. P. 2015

Professor Morris said that Rule 2015 (duty to keep records, make reports and give notice) would be amended to specify that the duty to file quarterly reports in a chapter 11 case continues only as long as there is an obligation to make quarterly payments to the United States trustee.

The committee approved the proposed amendment without objection.

FED. R. BANKR. P. 4004

Professor Morris stated that the proposed amendment to Rule 4004(c) (grant or denial of discharge) would expand the types of motions that prevent or postpone the entry of a discharge.

The committee approved the proposed amendment without objection.

FED. R. BANKR. P. 9014

Judge Small noted that the advisory committee had considered the proposed amendments to Rule 9014 (contested matters) originally as part of its proposed "litigation package."

He said that some negative comments had been received regarding new subdivision (d). The proposed amendment makes it clear that testimony as to material, disputed facts in contested matters must be taken in the same manner as in an adversary proceeding. He said that some commentators had expressed concern that the amendment might eliminate the widespread practice of allowing some direct testimony to be presented by way of affidavit. Judge Small explained that the proposed amendment does not eliminate the practice. But if a factual dispute arises in a contested matter, the court must resolve it through live testimony, just as it would in an adversary proceeding.

Professor Morris reported that new subdivision (e) would require a court to provide a mechanism for notifying attorneys as to whether the presence of witnesses is necessary at a particular hearing. He emphasized that the rule does not specify any particular procedures. Nor does it specify whether the court should notify attorneys by local rule, order, or otherwise. He emphasized that local procedures for hearings and other court appearances in contested matters vary from district to district. The amended rule will simply require a court to provide some sort of mechanism enabling attorneys to know at a reasonable time before a scheduled hearing on a contested matter whether they need to bring their witnesses.

The committee approved the proposed amendments without objection.

FED. R. BANKR. P. 9027

Professor Morris said that the proposed amendment to Rule 9027 (removal) makes it clear that if a claim or cause of action is initiated after a bankruptcy case has been commenced, the time limits for filing a notice of removal of the claim or cause of action apply whether the case is still pending or has been suspended, dismissed, or closed by the court.

The committee approved the proposed amendment without objection.

FORMS 1 AND 15

Professor Morris pointed out that only relatively minor changes are proposed in the forms. He said that Form 1 (voluntary petition) would be amended to require a debtor to disclose ownership or possession of any property that poses, or is alleged to pose, a

threat of imminent and identifiable harm to public health or safety. He said that there had been very little public comment on the proposed addition.

Professor Morris reported that Form 15 (order confirming a plan) would be amended to conform to a change in Rule 3020 currently pending in Congress that should take effect on December 1, 2001. The amended rule states that if a chapter 11 plan provides for an injunction against conduct not otherwise enjoined under the Code, the order of confirmation must describe in reasonable detail all acts enjoined, be specific in its terms regarding the injunction, and identify the entities subject to the injunction.

Professor Morris recommended that the amendments to the forms be made effective by the Judicial Conference on December 1, 2001, to coincide with the effective date of amendments to the rules.

The committee approved the proposed amendments to the forms without objection and recommended that they become effective on December 1, 2001.

Amendments for Publication

FED. R. BANKR. P. 1007 AND 7007.1

The committee considered the proposed amendment to Rule 1007 and proposed new Rule 7007.1 (corporate ownership statement) later in the meeting together with proposed parallel amendments to the appellate, civil, and criminal rules. (See the section of these minutes entitled "Corporate Disclosure Statements" at pages 38-41.)

FED. R. BANKR. P. 2003 AND 2009

Judge Small said that the proposed amendments to Rule 2003 (meeting of creditors or equity security holders) and Rule 2009 (trustees for estates when joint administration is ordered) reflect the enactment of a new subchapter V of chapter 7 of the Bankruptcy Code governing the liquidation of multilateral clearing organizations.

The committee approved the proposed amendments for publication without objection.

FED. R. BANKR. P. 2016

Professor Morris said that new subdivision (c) would be added to Rule 2016 (compensation for services rendered and reimbursement of expenses) to implement § 110(h)(1) of the Bankruptcy Code. It would require bankruptcy petition preparers to disclose fees they receive from the debtor.

The committee approved the proposed amendment for publication without objection.

FORMS 1, 5, AND 17

Professor Morris said that Form 1 (voluntary petition) would be amended by adding a check box to designate a clearing bank case filed under subchapter V of chapter 7 of the Bankruptcy Code. The proposed changes to Form 5 (involuntary petition) and Form 17 (notice of appeal) are required by an uncodified 1994 amendment to the Bankruptcy Code providing that child support creditors do not have to pay filing fees.

The committee approved the proposed amendments for publication without objection.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Levi and Professor Cooper presented the report of the advisory committee, as set forth in Judge Levi's memorandum and attachments of May 14, 2001. (Agenda Item 6)

Amendments for Final Approval

FED. R. CIV. P. 7.1

The committee considered proposed new Rule 7.1 (corporate disclosure statement) later in the meeting together with proposed parallel amendments to the appellate, bankruptcy, and criminal rules. (See the section of these minutes entitled "Corporate Disclosure Statements" at pages 38-41.)

FED. R. CIV. P. 54 AND 58

The committee approved proposed amendments to Rule 54 (judgment and costs) and Rule 58 (entry of judgment) as part of its consideration of proposed amendments to FED. R. APP. P. 4(a)(7). (See pages 6-8 of these minutes.)

FED. R. CIV. P. 81

Professor Cooper said that the proposed amendment to Rule 81 (applicability of the rules) would eliminate an inconsistency regarding time provisions between Rule 81(a)(2) and the rules governing § 2254 cases and § 2255 proceedings.

The committee approved the proposed amendment without objection.

ADMIRALTY RULE C

Professor Cooper pointed out that the proposed amendments to the admiralty rules had been described in detail at the January 2001 meeting of the committee. He explained that the proposed changes are minor in nature and designed to eliminate unintentional inconsistencies between the rules and the Civil Asset Forfeiture Act of 2000. He noted that the amendments had been published under an expedited schedule and had attracted no public comments.

The committee approved the proposed amendments without objection.

Amendments for Publication

Judge Levi reported that the advisory committee was seeking authority to publish proposed amendments to Rule 23 (class actions), Rule 51 (jury instructions), and Rule 53 (masters).

FED. R. CIV. P. 23

Background

Judge Levi noted that the advisory committee had been studying the operation of Rule 23 for a number of years. In the 1990s, he said, its efforts had focused largely on the merits of the decision to certify a class. Although several proposed amendments to Rule 23 had been published for comment, the only change actually made in the rule was the addition in 1998 of subdivision (f), authorizing interlocutory appeals of decisions granting or denying class certification. That amendment, he said, appears to be working very well. It has facilitated a healthy development of the law without either overburdening the courts of appeals or delaying cases in the district courts.

Judge Levi said that the focus of the advisory committee's current efforts is on judicial oversight of class actions, including oversight of settlements, appointment and payment of attorneys, and overlapping or competing class actions. He reported that the advisory committee's class-action work has been directed by Judge Rosenthal, chair of the committee's class action subcommittee, assisted by Professor Cooper and Professor Marcus, its special consultant.

Judge Levi pointed out that the standing committee in January 2001 had advised the advisory committee to be bold in devising solutions to class action problems and not to be intimidated by the restrictions of the Rules Enabling Act. To that end, he said, some members invited the advisory committee to recommend possible statutory amendments as part of the proposed solutions.

Judge Levi noted that the advisory committee's package of proposed amendments to Rule 23 had been carefully drafted with an eye on the Rules Enabling Act. Nevertheless, he said, some members have questioned whether the committee has authority to proceed under the rules process with three of the amendments in the package. As included in the committee's agenda book, the three deal with competing class actions and may be summarized as follows:

(1) Proposed Rule 23(c)(1)(D) specifies that if a court refuses to certify a class, it may direct that no other court certify a substantially similar class.

(2) Proposed Rule 23(e)(5) specifies that if a court refuses to approve a settlement, other courts are precluded from approving substantially the same settlement.

(3) Proposed Rule 23(g) specifies that a court may enjoin a class member from filing or pursuing a similar class action in any other court.

Judge Levi said that the advisory committee had decided to table further action on these three particular provisions in order to avoid controversy over the Rules Enabling Act that could derail the whole package of proposed class action amendments. He said that the advisory committee will not publish the three provisions, but will distribute them in a less formal way to members of the bench, bar, and academia and invite comments. Accordingly, the attorney appointment and attorney fee subdivisions, originally designated as proposed Rules 23(h) and (i), will be redesignated as proposed Rules 23(g) and (h). In addition, the committee will host a class-action conference at its October 2001 meeting that will consider, among other things, competing and conflicting class actions.

Judge Scirica reported that the decision to defer publication of the three proposed amendments had been reached following considerable discussion among the committee chairs and reporters. He said that it is very important to solicit input on the three "preclusion" amendments and to discuss them with bar groups, judges, and law schools, and also with the Federal-State Jurisdiction Committee of the Judicial Conference.

Several members of the committee extolled the work of the advisory committee, stating that the proposed preclusion provisions are badly needed, whether by way of statute or rule.

Rule 23(c)

Judge Levi pointed out that proposed Rule 23(c)(1)(A) requires a court to make a decision on whether to certify a class "when practicable." The current rule, on the other hand, requires a decision "as soon as practicable." He said that the proposed change is significant because it would give a judge adequate time to decide whether certification of

a class is appropriate. The amendment, he said, is not designed to have the judge delve into the merits of the case, but to learn more about the nature of the issues.

Professor Cooper added that the proposal had been recommended by the advisory committee in the past, but had been deferred in part because of concern by some that it might cause delay in some cases. The advisory committee, he said, had looked at the proposal afresh, had considered a Federal Judicial Center study of class actions, and had determined that the proposal strikes a good balance between the need for dispatch and the need to gather sufficient information to support a well-informed determination by the court on whether to certify a class.

One member stated that there is no compelling reason to change the current rule. He said that the bench and bar are comfortable with the present language, which emphasizes prompt court action. Any change in the rule, he said, could lead to mischief and unintended consequences. Another member complained that some judges now defer certification decisions in order to encourage settlement. He said that the amendment may broaden that practice and open the way to additional discovery and delay.

Judge Levi responded that most courts read the current "as soon as practicable" language to mean "when practicable." Thus, the amendment may make no difference in these courts. On the other hand, other courts read the current language to mean "as quickly as is humanly possible," and some even have local rules setting overly strict time limits for making certification decisions. The advisory committee, he said, wants to emphasize the need for the court to make an informed decision, even if it takes a little time for the judge to explore the key issues, and even to allow some limited discovery.

Judge Rosenthal pointed out that an unintended consequence of the current rule is that many judges and lawyers believe that there is an absolute barrier against inquiring into the nature of the issues on the merits. The amendment, she said, would remove that impediment. At the same time, she said, the advisory committee is very careful in the note to explain the purposes of the pre-certification activities and to emphasize that the amendment does not allow further delay.

One of the participants suggested that the key issue is whether a court may grant a dispositive motion before it makes a certification decision. He suggested that the rule or note focus on the power of a judge to rule on a dispositive motion before ruling on a class certification motion.

Several participants offered language changes in the proposed amendment and committee note. Judge Scirica noted that there appeared to be a consensus as to the desirability of publishing the proposed rule. But, he said, there were a number of disagreements as to language. Accordingly, he suggested that Professor Cooper work with several of the members to incorporate their suggestions and improve the language of

the rule and note before publication. Ultimately, it was decided to require that the court's certification decision be made "at an early practicable time."

Judge Levi noted that the remaining parts of proposed Rule 23(c) are non-controversial. He pointed out that Rule 23(c)(2)(a)(ii) would require that reasonable notice be provided to class members in (b)(1) and (b)(2) class actions.

The committee approved proposed Rule 23(c) — after tabling subparagraph (c)(1)(D), as noted above — for publication without objection. It also authorized the advisory committee to entertain additional changes in the note.

Rule 23(e)

Judge Levi noted that the proposed amendment to Rule 23(e)(1) would for the first time specify standards in the rules for approving a settlement. It would require a settlement to be "fair, reasonable, and adequate."

Professor Cooper stated that the current rule provides that an action may not be dismissed or settled without notice. He explained that the rule, as revised, would distinguish between: (1) voluntary dismissals and settlements occurring before the court certifies a class; and (2) dismissals and settlements that bind a class. In the first case — covered by proposed Rule 23(e)(1)(A) — notice is not required, although the court retains discretion to order notice. But court approval is required because people may have relied on the action being pending. In the second case — covered by proposed Rule 23(e)(1)(B) and (C) — reasonable notice must be provided to all class members, and the court must determine that the dismissal or settlement is "fair, reasonable, and adequate." Professor Cooper added that the term "compromise" has been retained in the rule, as well as "settlement," out of an abundance of caution.

Some participants offered suggested improvements in the language of the rule that Judge Levi agreed to consider.

The committee approved proposed Rule 23(e)(1) for publication with one objection.

Judge Levi stated that proposed Rule 23(e)(2) would authorize the court to direct that settlement proponents file copies of any side agreements made in connection with the settlement.

The committee approved proposed Rule 23(e)(2) for publication with one objection.

Judge Levi said that in many cases a proposed settlement and a class certification are presented to the court at the same time. Class members have the opportunity to opt out with full knowledge of the terms of the settlement.

On the other hand there are many cases where class members are provided a single opportunity to opt out of a class before settlement terms are disclosed. He said that the court should have discretion to give them another chance to opt out when they learn the terms of the settlement. Judge Levi said that most class members will likely not opt out, but fairness dictates that they be allowed to elect exclusion after the settlement terms are announced. He noted that the advisory committee had drafted two alternate versions of the opt-out provision for publication. Judge Rosenthal explained that the first alternate is stronger, containing a presumption in favor of an opt out. The second, she said, is more neutral.

One of the members strongly opposed the proposed amendment, saying that although it appears on its face to be fair to class members, it is normally lawyers, not class members, who make the decisions. The amendment, he said, would allow attorneys to sabotage a class action by threatening to pull out large numbers of clients. It would also make the negotiation process considerably more difficult.

Judge Levi responded that there were points to be made on both sides of the argument, but the arguments in favor of allowing an opt-out are stronger on balance. He added that the advisory committee had considered the alternative of strengthening the procedural support for objections, but had come to the conclusion that it was not workable. He emphasized, moreover, that support had been voiced for the opt-out proposal by attorneys from all segments of the bar. Thus, he said, the advisory committee had concluded that giving bound class members a chance to opt out — at the discretion of the court — is simply the right thing to do.

Some participants made suggestions for improvements in the language of the rule that Judge Levi said he would try to incorporate.

The committee approved proposed Rule 23(e)(3) for publication without objection.

Judge Levi said that proposed Rule 23(e)(4) is self-explanatory. It confirms the right of class members to object to a proposed settlement or dismissal.

The committee approved proposed Rule 23(e)(4) for publication without objection.

Rule 23(h)

Professor Marcus noted that proposed subdivisions (h) and (i), dealing with appointment of counsel and attorney fees, will be relettered to account for the decision to table proposed subdivision (g) on overlapping classes.

Professor Marcus stated that proposed paragraph (h)(1) sets forth both the requirement that the court appoint class counsel and the obligation of class counsel to fairly and adequately represent the interests of the class. He noted that the introductory phrase to subparagraph (1)(A), *i.e.*, "unless a statute provides otherwise," is designed to exclude securities litigation. This recognizes explicitly that the rule will not supersede the Private Securities Litigation Act of 1995, which contains specific directives about selecting a lead plaintiff and retaining counsel.

Professor Marcus noted that paragraph (h)(2) sets forth procedures for appointing class counsel. In subparagraph (2)(A), he said, the advisory committee contemplates possible competition for appointment as class counsel. It specifies that the court may allow a reasonable time for attorneys seeking appointment to apply. He added that a Federal Judicial Center study of class actions in the district courts shows that it may take several months before certification and appointment of class counsel in many cases.

He explained that subparagraph (2)(B) elaborates on what the court must look for in class counsel, including experience, work undertaken on the case to date, and resources that counsel will devote to representing the class. The court may consider any other factors and require counsel to provide additional information and propose terms for attorney fees and costs. Subparagraph (2)(C) suggests that the court order appointing class counsel may include provisions for attorney fees and costs.

Concern was expressed regarding use of the word "appoint" in Rule 23(h)(1)(A) because counsel is not "appointed" in securities litigation. The court merely approves the parties' designation of counsel. Professor Marcus responded that the narrow purpose of the lead-in language is only to document that the rule does not supersede the securities legislation. Judge Rosenthal suggested that the advisory committee could draft appropriate language to address the concern.

Several language improvements were suggested in the rule and committee note. Judge Levi agreed to work on incorporating the suggestions.

The committee approved proposed Rule 23(h) for publication without objection.

Professor Marcus explained that proposed Rule 23(i), dealing with attorney fees, is new. Under paragraph (i)(1), notice of a motion for award of attorney fees must be served on all parties, and notice of motions by class counsel must also be given to all

class members in a reasonable manner. Under paragraph (i)(2), class members or parties from whom payment is sought may object to the motion. Under paragraph (i)(3), the court must give a careful explanation of its decision by holding a hearing and making findings of fact and conclusions of law. Under paragraph (i)(4), the court is authorized to refer fee award issues to a special master or magistrate judge, as provided in FED. R. CIV. P. 54(d)(2)(D).

Several members suggested that the language of paragraph (i)(3) should not specify that the court must hold a hearing. Judge Rosenthal responded that the rule is intended to simply provide an opportunity for a hearing, not a right to a hearing. She suggested, and the members agreed, that the paragraph should be rephrased to specify that "the court may hold a hearing, and must find the facts and state its conclusions."

The committee approved proposed Rule 23(i) for publication without objection.

Judge Thrash moved to delete lines 69 to 145 of the committee note.

He pointed out that the proposed rule itself specifies no criteria for setting attorney fees. Nevertheless, extensive discussion is set forth in the committee note explaining the criteria that courts follow in setting fees. He said that this amounted to placing substantive law in the committee note and questioned the appropriateness of the practice.

Judge Rosenthal responded that the advisory committee had debated the matter at considerable length and had decided in the end not to include a "laundry list" of attorney fee factors in the rule itself. She explained that the committee's goal has been to blend flexibility with standards. To that end, it concluded that it would not be possible to specify all the potentially relevant factors in the rule. Rather, it chose to set forth some examples in the committee note to guide bench and bar and make it clear that the list is not exhaustive or complete. Thus, case law will not be restrained from developing additional factors.

Judge Thrash said that the committee note contains an excellent summary of the current law, but it will be out of date in a few years. He objected on principle to placing substantive law in committee notes. He said that if standards are desired, they belong in the rule, not the note.

He also pointed to the proposed committee note to FED. R. EVID. 804(b)(3), which contains a detailed discussion of the law on corroborating circumstances in support of declarations against penal interest. He recommended elimination of the extensive case law discussion from that note.

Two of the advisory committee chairs responded that committee notes in general serve an important educational purpose for bench and bar. They recognized that the case

law is expected to develop and change. Nevertheless, an explanation of the current law and a careful citing of key cases and factors can provide clear guidance and serve as a useful resource for counsel.

The motion died for lack of a second.

FED. R. CIV. P. 51

Judge Levi noted that the current Rule 51 allows a party to file proposed jury instructions at the close of evidence or at "such earlier time during the trial" that the court directs. Many judges, however, request or allow proposed instructions before trial. The rule, he said, does not reflect current practice, and it fails to distinguish clearly among requests, instructions, and objections.

Judge Levi explained that the common model today is for a court to ask the parties to submit proposed instructions before trial. At some point, usually well before argument, the court prepares its own instructions, often including portions of the parties' proposed instructions. At that point, the parties are given a chance to object and be heard on the court's instructions.

He said that the amended rule follows this approach. Subdivision (a) deals with requests of the parties. Paragraph (a)(1) gives the court authority to direct that requests be submitted before trial. Paragraph (a)(2) allows a party to file requests for additional instructions at the close of the evidence in appropriate circumstances, recognizing that evidence emerging during the trial may turn out to be different from that anticipated by the parties before trial.

In subdivision (b), the court must inform the parties of its proposed instructions and its actions on their requests. The court must give the parties a chance to object on the record before instructions and arguments are delivered to the jury.

Subdivision (c) deals with objections. It specifies that a party may object to an instruction by stating the matter objected to and the grounds of the objection. A party must also object to the court's failure to give an instruction. Judge Levi noted that subdivision (d) requires both a timely request and a timely objection, although a request alone suffices if the court made a definitive ruling on the record rejecting the request. It also incorporates the plain error rule.

Several participants suggested some modifications in the language of the rule, and Judge Levi agreed to incorporate them in a revised draft for publication.

The committee approved the amended rule for publication without objection.

FED. R. CIV. P. 53

Professor Cooper explained that Rule 53 would be revised to reflect the actual use of masters in the district courts. The current rule, he said, focuses on special masters who perform trial functions. But a study conducted for the advisory committee by the Federal Judicial Center has confirmed the general experience that masters are also used extensively to perform pre-trial and post-trial functions.

He emphasized that the revised rule is not designed either to encourage or discourage the use of special masters. Rather, it reflects current reality and addresses the key issues that district courts need to consider in using masters.

Professor Cooper pointed out that subdivision (a) of the revised rule, dealing with appointment of a master, is a central part of the revisions. Under paragraph (a)(1), a court may appoint a master to perform duties consented to by the parties. He said that the rule provides broad discretion for the court to agree to the parties' wishes on the use of a master, as long as their consent is genuine.

If the parties do not consent, the court may appoint a master to hold trial proceedings and make recommended findings of fact, but only if warranted by an "exceptional condition" or if there is a need to perform an accounting or resolve a difficult computation of damages. In this respect, he said, the revised rule retains the current limits on the use of masters in exercising trial functions, as directed by case law such as *La Buy v. Howes Leather Co.*, 352 U.S. 249 (1957). The rule also eliminates the use of trial masters in a case tried before a jury, unless the parties consent.

Finally, Professor Cooper noted that subparagraph (a)(1)(C) would allow a court to appoint a master to perform pretrial and post-trial duties. The duties, however, would be limited to those that cannot be performed by an available district judge or magistrate judge of the district. He added that an earlier draft of the revised rule had contained a lengthy list of duties that might be assigned, but the advisory committee decided against detail in the rule in favor of just setting forth examples in the committee note.

Professor Cooper pointed out that it is essential that there be no actual or apparent conflicts of interest involving a master. To that end, paragraph (a)(2) would extend to masters the standard of disqualification for a judge found in 28 U.S.C. § 455. But it would allow the parties to consent to appointment of a particular person as master after disclosure of a potential ground for disqualification.

He added that paragraph (a)(3) would prohibit a master, during the period of appointment, from appearing as an attorney before the judge who made the appointment. Under paragraph (a)(4), the court must consider the fairness of imposing the expenses of a master on the parties and protect against unreasonable expense and delay.

Professor Cooper emphasized the key role played by the order appointing a master under the revised rule. He said that the order must specify the master's duties and compensation and address certain procedural matters. He pointed out that the Federal Judicial Center's study of masters in the district courts had revealed that *ex parte* communications between a master and either the court or the parties are the focus of continuing concern, but may be very beneficial in certain circumstances. Accordingly, the rule requires the order appointing the master to specify the circumstances in which the master may communicate *ex parte* with the court or a party.

One member questioned the advisability of authorizing *ex parte* contact between a master and a party. He said that *ex parte* communications can bring the institution of master into great disrepute and are inherently inconsistent with the concept of an impartial decider. He said that the rule will result in parties questioning the neutrality of the master.

Professor Cooper responded that the rule simply allows the district judge to determine the matter. He pointed out that the Federal Judicial Center study on the use of masters in the district courts had pointed out that this issue is the single most difficult problem cited by interviewees. He noted that *ex parte* contacts normally will not be allowed, but that confidential contacts with the parties may be essential for a settlement master. He said that lines 266-281 of the committee note provide guidance to the courts on the matter.

Professor Cooper stated that subdivision (g) addresses a master's order, report, or recommendations. He pointed out that a party may file objections to a master's findings or recommendations within 20 days, unless the court sets a different time. Professor Cooper noted that the presumptive standard of review for a master's findings of fact will be "clearly erroneous," carried over from the current Rule 53(e)(2). But the court's order of appointment may specify *de novo* review by the court, or the parties may stipulate with the court's consent that the master's findings will be final.

After discussion, it was decided to publish alternate versions of subdivision (g). The first version establishes *de novo* review of all fact issues unless the order of appointment provides for clear error review of the parties stipulate with the court's consent that the master's findings will be final. The second version uses the approach of the first version for "substantive fact issues," but establishes clear error review for "non-substantive fact issues" unless the order of appointment provides for *de novo* review, the court receives evidence, or the parties stipulate with the court's consent that the master's findings will be final.

Professor Cooper pointed out that subdivision (h) deals with compensation of a master. Among other things, it requires the court to take into account the means of the parties. In subdivision (i), a magistrate judge may be appointed as a master only for

duties that cannot be performed in the capacity of a magistrate judge and only in exceptional circumstances.

Several suggestions were made for language improvements, which Professor Cooper and Judge Levi agreed to incorporate in the rule before publication.

One member expressed reservations concerning the proposed revisions in general. He said that masters are not a beneficial institution, and individual masters have engaged in egregious violations of the judicial process. He feared that the revised rule would encourage the use of masters or increase their authority. He voiced particular concern over subdivision (g), which he said gives a master the powers of an Article III judge to make findings of fact. He questioned the constitutional propriety of allowing masters to perform judicial functions.

Judge Levi responded that the advisory committee was very much aware of this issue, and the rule does not attempt to change the current law or expand its exceptional circumstance limitations. Masters, he said, make findings of fact under the current rule, and review of the findings by a district judge is limited to the clear error test. He emphasized that the revised rule will place firm control in the Article III judge's hands. The judge may require *de novo* review in the order appointing the master and may also review any finding on a *de novo* basis, even if the order specifies a less rigid standard. Professor Cooper emphasized that the revised rule gives the judge more power than the current rule in reviewing a master's report. He pointed out that under the revised rule, the master's report is a nullity unless the court acts to adopt it.

The committee approved the revised rule for publication without objection.

Professor Cooper pointed out that conforming amendments are needed in Rule 54(d)(2)(D) (attorneys' fees) and Rule 71A(h) (condemnation of property) to reflect the proposed revisions in Rule 53. The proposed amendments would delete references to specific subdivisions of the current rule.

The committee approved the amendments for publication without objection.

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Davis and Professor Schleuter presented the report of the advisory committee, as set forth in Judge Davis's memorandum and attachments of May 10, 2001. (Agenda Item 5)

Style Package

Judge Davis explained that the project to restyle the body of criminal rules, begun in January 1998, had entailed an enormous amount of effort and thought on the part of the advisory committee, its consultants, and the Administrative Office staff. He expressed special appreciation for the contributions of Judge James A. Parker, former chairman of the style committee; John K. Rabiej, chief of the Rules Committee Support Office; Professor Schlueter, the committee's reporter; and the committee's consultants — Bryan A. Garner, Professor Stephen A. Salzburg, Professor R. Joseph Kimble, and Joseph F. Spaniol, Jr.

Judge Davis distributed to the members a chronology of the project. He noted that he had divided the advisory committee into two subcommittees, assigning blocks of rules to each. In addition, each member was given a number of rules for which he or she was primarily responsible. He explained that all the proposed revisions had been reviewed on several occasions by the individual members, the consultants, a subcommittee, and the full committee. The committee's schedule, he said, had been demanding and intense, with 10 subcommittee meetings and 6 full committee meetings taking place between December 1998 and April 2001.

Judge Davis reported that the proposed revisions had been published in two separate packages — one limited to stylistic changes and the other comprising those rules containing substantive changes. He said that the committee had made a number of non-controversial changes in the style package after publication, most of them suggested by the style consultants. He also pointed out that two changes had been added to the style package to take account of recent legislation — in Rule 4 (arrest warrant or summons on a complaint) to reflect the Military Extraterritorial Jurisdiction Act and in Rule 6 (grand jury) to reflect 18 U.S.C. § 3322.

The committee voted to approve the "style" package of proposed amendments without objection.

Substantive Package

Judge Davis reported that the advisory committee had decided after the public comment period to withdraw or defer three matters in the substantive package.

First, revised Rule 32(h)(3), as published, would have required a sentencing judge to resolve all objections to "material" matters in a presentence report, even matters not affecting the actual sentence. Judge Davis explained that presentence reports are used by the Bureau of Prisons to make operational decisions, such as whether a defendant is eligible for drug treatment. He noted that the proposal had attracted negative comments

from a number of judges. Thus, he said, after further consideration of the proposal and consultation with the Bureau of Prisons, the advisory committee had decided to withdraw the amendment.

Second, the advisory committee had published an amendment to Rule 41 prescribing procedures for issuing "covert" warrants, *i.e.*, warrants permitting law enforcement agents to enter premises, not to seize property, but covertly to observe and record information. Judge Davis noted that these warrants, though not mentioned in Rule 41, are authorized by case law and are currently issued by magistrate judges. He said that the advisory committee had decided that the rule itself should give magistrate judges clear, authoritative advice. He said that the advisory committee had received a good deal of opposition to the proposal and had decided to defer the amendment for further study.

Third, the advisory committee had published several amendments to the Rules Governing § 2254 Cases and § 2255 Proceedings. Judge Davis noted that several public comments suggested that more extensive changes were needed in these rules. Therefore, the committee decided to defer the proposed amendments and conduct a broader study of the rules. To that end, it has hired a special consultant to assist with the study.

Judge Davis proceeded to describe the proposed amendments contained in the substantive package.

FED. R. CRIM. P. 5, 10, AND 43 — VIDEO CONFERENCING

Judge Davis noted that the proposed amendments to Rule 5 (initial appearance), Rule 10 (arraignment), and Rule 43 (presence of the defendant) are closely related. They will allow a judge to conduct an initial appearance or arraignment by video conferencing. He reported that originally the advisory committee had decided to propose that video conferencing be allowed only with the consent of the defendant. But after considerable discussion, it voted to seek public comments also on an alternate proposal allowing video conferencing without consent.

Judge Davis said that a number of judges had expressed very strong support for the proposal — especially judges who have conducted criminal proceedings along the Mexican border and judges from districts with large geographical expanses. He added that many of the judges would support a rule authorizing video conferencing without consent.

Judge Davis pointed out that the committee had also received a good deal of opposition to the amended rule, particularly to the alternate proposal dispensing with consent. He focused on a letter just received from the chair of the Defender Services Committee of the Judicial Conference. He said that the advisory committee had assumed

that the defender committee would object to the non-consent provision. But the letter expressed broader opposition to the very concept of video conferencing of initial criminal proceedings as a matter of policy, regardless of whether the defendant consents. It also emphasized that video conferencing, if permitted, would shift significant costs from the Department of Justice to the judiciary's defender services budget.

He added that the National Association of Criminal Defense Lawyers and the public defenders' organizations had also voiced opposition to the proposed rule. They argue, he said, that it is essential for an initial appearance to be conducted before a judge in a courtroom. The proceedings are seen as a critical opportunity for a lawyer to meet personally with his or her client.

Judge Davis pointed out that he and Judge Scirica had met with members of the Judicial Conference in March 2001 to give them a preliminary briefing on the two alternative proposals. He said that several of the members had expressed concern about the amendments and had reacted negatively to the non-consent alternative.

Judge Davis reported that the advisory committee — in light of the public comments and the initial reactions of the members of the Judicial Conference — had decided to seek approval of an amendment authorizing video conferencing of initial appearances and arraignments only with the consent of the defendant. He suggested that giving defense counsel an absolute right to opt out of video conferencing should meet the principal objections and provide sufficient protection for the defendant.

He added that the negative public comments to the rule had been directed generally to the initial appearance, not the arraignment. He noted that a separate amendment to Rule 10, allowing a defendant to waive appearance at the arraignment entirely, had attracted no significant objection. He suggested that if a defendant can waive the proceeding itself, he or she should be able to consent to having it conducted by video conferencing.

Judge Davis said that many district courts already use video conferencing to conduct initial appearances or arraignments with the defendant's consent. One of the members added that he had been doing so for several years, largely to accommodate lawyers and defendants. He said that the lawyers request video conferencing, and it makes a great deal of sense to all participants for geographic reasons. He noted that the video proceedings are conducted with the judge in his own courtroom, the defendant in another courtroom, and lawyers in both courtrooms. Another member added that many state court systems successfully use video conferencing for a number of criminal proceedings.

Mr. Pauley pointed out that the vote in the advisory committee to require consent for video proceedings had been a close one. The Department of Justice, he said, favors a rule giving a court discretion to order video conferencing without the defendant's consent. He pointed out that video proceedings are held already in many courts on consent. Therefore, the proposed amendment would not accomplish anything of substance. He said that the Department is concerned about locking a consent requirement into the rule that will freeze the law for an indeterminate period.

Mr. Pauley added that several potential options exist between the published consent and non-consent alternatives. He suggested a rule allowing a court to order video conferencing without consent for "good cause" or under "exceptional circumstances." He said that the committee could also consider approving the consent proposal, but with the clear understanding that the advisory committee will return shortly with an amendment allowing video conferencing in certain circumstances without consent. Another option, he said, would be to recommit the whole rule to the advisory committee for further consideration.

Judge Scirica said that the proposed consent rule may be just the first step towards greater use of video conferencing. He said that the consent requirement should mitigate the legitimate concerns expressed by the members of the Judicial Conference and the defense bar. Nevertheless, he said, the advisory committee should think about additional alternatives and consider the advisability of a further amendment addressing the concerns of the Department of Justice.

The committee approved the proposed three amended rules without objection.

FED. R. CRIM. P. 5.1

Judge Davis explained that Rule 5.1 (preliminary examination), as amended, would permit a magistrate judge to grant a continuance of a preliminary examination. He noted that the Judicial Conference had approved the amendment at its Spring 1998 meeting. Mr. Rabiej added that Congress needs to be informed that the amendment, though non-controversial, will supersede a statute, 18 U.S.C. § 3060(c).

The committee approved the proposed amended rule without objection.

FED. R. CRIM. P. 12.2

Professor Schlueter said that several substantive changes are included in amended Rule 12.2, addressing notice requirements for presenting an insanity defense or evidence of a mental condition. He noted that the rule had attracted only two comments from the

public, and the advisory committee had made some minor language changes following publication.

The committee approved the proposed amended rule without objection.

FED. R. CRIM. P. 12.4

The committee considered proposed new Rule 12.4 (disclosure statement) later in the meeting together with proposed parallel amendments to the civil, bankruptcy, and appellate rules. (See the section of these minutes entitled "Corporate Disclosure Statements" at pages 38-41.)

FED. R. CRIM. P. 26

Professor Schlueter said that amended Rule 26 (taking of testimony) would permit a court to use remote transmission for live testimony. It generally tracks a counterpart provision in the civil rules, FED. R. CIV. P. 43.

He noted that the advisory committee had made some improvements in the rule as a result of the public comments. First, the rule was amended to refer specifically to "two-way" video presentations. Second, a requesting party must establish "exceptional circumstances" for remote transmission, rather than "unusual circumstances." The revised language reflects the FED. R. CRIM. P. 15 standard for taking depositions, as well as the standard courts have applied under the Confrontation Clause of the Constitution. Third, the committee expanded the note to address the Confrontation Clause and provide courts with guidance as to the steps they may take to ensure the accuracy and quality of remote transmissions.

The committee approved the proposed amended rule without objection.

FED. R. CRIM. P. 30

Judge Davis reported that amended Rule 30 (jury instructions) permits a judge to request the parties to submit requested jury instructions before trial. The current rule allows a party to file a request for instructions only after the trial has started.

Judge Davis said that some commentators had raised concerns about permitting a court in a criminal case to require the defense to disclose its theory of the case before trial. Nevertheless, he said, the proposal simply conforms with actual, current practice in the district courts. He pointed out that the advisory committee had added a comment in the note explaining that the amendment does not preclude a party from seeking to supplement during the trial, particularly when the evidence turns out to be different from that contemplated in its requested instructions. The committee also added a sentence to

Rule 30(d) specifying that failure of a party to object precludes appellate review, except as permitted under FED. R. CRIM. P. 52(b) (stating that plain errors or defects affecting substantial rights may be noticed although not brought to the court's attention).

Judge Davis noted that the proposed criminal rule differs in several respects from a proposed amendment to its civil rule counterpart, FED. R. CIV. P. 51. Professor Coquillette explained that the proposed revision of FED. R. CRIM. P. 30 had been published, subject to public comments, and is now ready for final approval by the Judicial Conference. On the other hand, the proposed revision of FED. R. CIV. P. 51 had not yet been published. He said that the rules committee reporters work together as a group to keep the rules in tandem, but they have concluded that it is not advisable to defer final approval of the criminal rule — which has been under consideration for several years — until the civil rule is published and subject to public comment. He added that there may be legitimate reasons for some differences between the civil and criminal rules. The criminal rule, moreover, could be amended in the future if additional insights are gained during the public comment period for the civil rule.

The members proceeded to comment on and compare the language of the proposed civil and criminal rules. Several offered suggestions for improving the language of the proposed revision of FED. R. CIV. P. 51. Judge Davis and Judge Levi agreed to confer to harmonize the two proposals as much as possible.

The committee approved the proposed amended rule without objection.

FED. R. CRIM. P. 35

Judge Davis reported that the primary substantive change to Rule 35 (correcting or reducing a sentence) is to broaden the exceptions to the one-year deadline that the government has to seek reduction in a sentence to reward the defendant's substantial assistance. He explained that the amended rule will allow exceptions where the substantial assistance involves:

(1) information not known to the defendant until a year or more after sentencing;

(2) information provided to the government within a year of sentencing, but that did not become useful to the government until a year or more after sentencing; and

(3) information the usefulness of which the defendant could not reasonably have anticipated until more than a year after sentencing, and that was promptly provided to the government after its usefulness was reasonably apparent to the defendant.

Judge Davis added that the rule, as published, did not specify what event constitutes "sentencing" for purposes of triggering the one-year period for bringing a motion. Accordingly, the advisory committee, at its April 2001 meeting, added a provision to Rule 35(a) defining "sentencing" as the entry of judgment, rather than the oral announcement of sentence from the bench.

Judge Davis said, however, that several members wrote to him after the meeting suggesting that the additional provision was sufficiently substantive to require further publication of the rule. Thus, the committee decided to seek final approval of the rule without the definitional provision and separately seek authority to publish the proposed definition. Mr. Pauley noted that the Department of Justice was opposed to the recommended definition, preferring to define sentencing for purposes of computation as the oral announcement of the court.

The committee voted without objection: (1) to approve the proposed amended rule without the proposed definition of "sentencing" in Rule 35(a); and (2) to authorize for publication the proposed amendment to Rule 35(a).

REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES

Judge Shadur and Professor Capra presented the report of the advisory committee, as set forth in his memorandum and attachments of May 1, 2001. (Agenda Item 9)

Amendments for Publication

FED. R. EVID. 608(b)

Professor Capra reported that the proposed amendment to Rule 608 (evidence of character and conduct of witness) deals with extrinsic evidence. He said that the intent of the drafters of the rule was to preclude the use of extrinsic evidence when an attorney asks a witness about specific instances of past conduct to attack or support the witness's character for veracity.

Professor Capra explained that the problem with the current rule is that it uses the broad term "credibility." Thus, many courts apply the ban on extrinsic evidence more widely than was intended and have prohibited the use of evidence for non-character forms of impeachment, such as bias, contradiction, or prior inconsistent statements. The proposed amendment substitutes the term "character for truthfulness" for "credibility." As a result, it brings the text of the rule into line with the original intent of the drafters.

One of the members hailed the change and suggested that the existing rule may be the most misunderstood provision in the Federal Rules of Evidence.

The committee approved the proposed amendment for publication without objection.

FED. R. EVID. 804(b)(3)

Professor Capra explained that Rule 804(b)(3) is designed to assure that a declaration against penal interest is reliable by requiring that it be supported by corroborating circumstances. He pointed out that the current text of the rule imposes the corroborating circumstances requirement on declarations offered by a criminal defendant, but not on those offered by the government. Nevertheless, he said, most courts applying the rule have extended its corroboration requirement to prosecution-proffered declarations as a matter of fundamental fairness.

Professor Capra said that the proposed amendment would adopt the case law and provide uniform treatment of all declarations against interest, whether offered by the defendant or the government. It would also apply equally in criminal cases and civil cases. Professor Capra added that the amendment does not reach beyond the current case law, including the Supreme Court's decision in *Williamson v. United States,* 512 U.S. 594 (1994).

Mr. Pauley said that the Department of Justice is strongly opposed to the amendment and recommended that it be rejected outright or returned to the advisory committee. He reported that the Department also opposes the rule's application in civil cases, but it is most concerned about its impact on criminal cases.

Judge Shadur responded that the advisory committee had considered all the issues thoroughly and had explicitly rejected the Department's arguments. He emphasized that — despite the literal language of the current rule — many courts interpret Rule 804(b)(3) broadly, applying it as a matter of fundamental fairness equally to the defendant and the government.

Some members pointed out that the matter had been discussed largely in the abstract and suggested that the advisory committee take advantage of the public comment period to document specific factual examples, obtain the views of prosecutors and defense counsel, and examine the operation of the rule in those state court systems that have a two-way corroboration requirement.

The committee approved the proposed amendment for publication with one objection.

Informational Items

Judge Shadur reported that the advisory committee had considered a proposal to amend Rule 1101 (applicability of the rules). He noted that subdivision (d), listing the proceedings to which the evidence rules are not applicable, is not complete. But, he said, it would be difficult, if not impossible, to set forth specifically all the proceedings to which the rules are not, or should not be, applicable. It would be inadvisable to provide a list of excluded proceedings that is not comprehensive. In addition, he pointed out, the courts are having no problem in applying Rule 1101(d).

Judge Shadur noted that the advisory committee is continuing to work on a long-term project to prepare provisions that would state, in rule form, the federal common law of privileges. But, he emphasized, the project may never result in proposed amendments. He also reiterated the advisory committee's policy not to make changes in the evidence rule unless it is obvious that there is an important need for them.

CORPORATE DISCLOSURE STATEMENTS

[FED. R. APP. P. 26.1; FED. R. BANKR. P. 1007(a)(1) and 7007.1; FED. R. CIV. P. 7.1; FED. R. CRIM. P. 12.4]

Judge Scirica commented that the advisory committees had not initiated the proposed amendments. Rather, he said, they are in large part a response to recommendations from members of Congress that the Judicial Conference take additional steps to ensure that judges recuse themselves from cases in which they hold stock in a corporate party.

Judge Scirica said that the proposed amendments have resulted from well-coordinated efforts by the standing committee, the advisory committees, and the reporters. He noted that the proposed amendments to the appellate, civil, and criminal rules had been published in August 2000 and are ready for final approval by the Judicial Conference. On the other hand, the standing committee gave the Advisory Committee on Bankruptcy Rules additional time to consider how corporate disclosure requirements could be implemented in bankruptcy cases and proceedings. Accordingly, the proposed amendments to the bankruptcy rules are only ready for public comment.

As to the merits of the proposals, Judge Scirica reported that the Codes of Conduct Committee of the Judicial Conference recommends that the relatively minimal disclosure requirement of the current FED. R. APP. P. 26.1 be extended to the civil, criminal, and bankruptcy rules. Rule 26.1 requires a non-governmental corporate party to

file a statement with the court identifying only its parent corporations and any publicly held company owning 10% of more of its stock.

Judge Scirica reported that the proposed amendments, as published, would have both: (1) extended FED. R. APP. P. 26.1 to the other sets of rules; and (2) given the Judicial Conference authority to prescribe additional disclosure requirements from time to time. But, he said, significant objections were raised during the comment period to the second part of the proposal. The objectors cited two potential problems: (1) it is difficult for the bar to know the requirements unless they are set forth in the rule itself; and (2) it would be illegal, or at least unwise, to permit the Judicial Conference to supplement a federal rule without proceeding through the full Rules Enabling Act process. He said that the advisory committees had decided to withdraw the Judicial Conference authority to supplement Rule 7.1 in light of the public comments.

Judge Scirica also pointed out that, although FED. R. APP. P. 26.1 imposes only minimum disclosure requirements, the committee note to the rule encourages the courts of appeals by local rule to require additional disclosures. He noted that research conducted for the committee by the Federal Judicial Center shows that virtually every court of appeals, and several district courts, have in fact expanded upon the national rule and require parties to disclose a wide variety of additional financial interests and connections. Thus, he said, it would be very difficult at this juncture to restrict local rulemaking in this area, even though a uniform set of national disclosure requirements should be an ultimate goal.

In addition, he said, the Codes of Conduct Committee, rather than the rules committee, is the body with the pertinent subject matter expertise. It should take the lead for the Judicial Conference in deciding what disclosures are needed. To that end, he added, it would be advisable to have a formal understanding between the two committees that any additional disclosure requirements recommended by the Codes of Conduct Committee will be considered by the rules committee through the Rules Enabling Act process.

Professor Coquillette emphasized that the committee reporters had worked together closely to coordinate the proposed amendments. He reported that the proposed amendments now before the committee for final approval are substantially identical, although there are a few minor differences in language among them.

Professor Schlueter pointed out that three post-publication changes had been made in the criminal version of the amendments: (1) requiring parties to file their disclosure statements at the defendant's first appearance; (2) requiring the government to file a statement identifying a corporate victim, but only to the extent that the information "can

be obtained through due diligence"; and (3) deleting some material from the committee note.

Professor Morris explained that the bankruptcy version had several differences in language from the other versions in order to take account of statutory definitions set forth in section 101 of the Bankruptcy Code. Among other things, he noted, the Code defines "corporation" more broadly than in the normal context. Likewise, while the other versions refer to a "non-governmental corporate party," the bankruptcy version speaks of a corporation "other than the debtor or a governmental unit." In addition, FED. R. BANKR. P. 1007 would be amended to require the debtor to file a statement at the beginning of a case, rather than with every adversary proceeding. He noted, also, that the advisory committee had decided not to apply the rule to contested matters, in part because there is no requirement for a response in those proceedings.

Professor Cooper reported that the only difference between the proposed civil rule and the other versions is the inclusion of subdivision (c) in proposed FED. R. CIV. P. 7.1 , specifying that the clerk of court must deliver a copy of the disclosure statement to each judge acting in the action or proceeding.

Judge Tashima said that subdivision (c) does not belong in a national rule because it deals with a purely internal operating matter pertinent only to court personnel. Several members agreed.

Accordingly, Judge Tashima moved to eliminate proposed FED. R. CIV. P. 7.1(c). The committee approved his motion without objection.

One member suggested that the rule or committee note should make it clear that the corporate disclosure statement requirement does not apply to every member of a class. Professor Cooper responded that the same issue exists with the current FED. R. APP. P. 26.1. He added that it is not the intention of the advisory committees to require class members to file statements.

Another member pointed out that the rule did not specify procedures for removal situations. It was generally agreed, however, that the subject could be addressed by local rule.

The committee approved the proposed amendments to FED. R. APP. P. 26.1 and proposed new FED. R. CIV. P. 7.1, as modified, and FED. R. CRIM. P. 12.4 without objection.

It also authorized publication of the proposed amendment to FED. R. BANKR. P. 1007(a)(1) and proposed new FED. R. BANKR. P. 7007.1 without objection.

REPORT OF THE TECHNOLOGY SUBCOMMITTEE

Privacy and Public Access to Court Files

Mr. Lafitte presented the report of the Technology Subcommittee, noting that the primary focus of the subcommittee's attention for the past two years has been the judiciary's Electronic Case File (ECF) systems, now being deployed in the courts.

He reported that implementation of ECF has given rise to a number of important policy questions cutting across jurisdictional lines of Judicial Conference committees. He said that the Court Administration and Case Management Committee has formed two subcommittees to address the issues – one to deal with privacy and public access to court records, and the other to draft model local rules for electronic case filing. He noted that he has served as a representative of the rules committee on the two subcommittees. Both subcommittees, he said, have filed draft reports and are seeking input on the products from the rules committee and other committees of the Conference.

Privacy and Public Access

Mr. Lafitte reported that there is a natural tension between two very important, competing public policies — open access to court records and protection of legitimate privacy interests. He said that the privacy and public access subcommittee had conducted considerable research on these issues, listened to experts from different disciplines, and received initial input from the rules committees. It then published a document soliciting public comments and conducted a public hearing in Washington in March 2001.

The subcommittee, he said, has now prepared a draft report and set of recommendations for approval by the Court Administration and Case Management Committee. That committee, however, has not made the draft report public, and it distributed the draft to the rules committees for comment on a confidential basis.

The members reviewed the report and made suggestions to bring to the subcommittee's attention. There was a consensus that no amendments were needed in the federal rules at this time to address the issues of privacy and public access.

Model Electronic Filing Rules

Mr. Lafitte reported that Professor Capra and Ms. Miller had collected and analyzed the local rules of the ECF pilot courts and that the subcommittee had developed a set of model local court rules. Professor Capra pointed out that no original rule drafting had been involved. Rather, he said, the subcommittee worked from the existing rules of the pilot courts and made a few modifications and language improvements.

Judge Small expressed concern over use of the term "model rules." He pointed out, for example, that they had not been subject to any of the requirements of the rules process. Moreover, he said, the Advisory Committee on Bankruptcy Rules will soon draft model local rules to implement the pending bankruptcy reform legislation. The model rules need to be in place within 180 days of enactment of the legislation. He emphasized that it is important to avoid any confusion between the two sets of model rules.

Professor Capra pointed out that a different title would be advisable. He noted, by way of example, that the term model "procedures" had been used in the past. Judge Scirica agreed with the suggestion and said that Judge Small was free to send any additional comments to the Electronic Filing Rules Subcommittee.

Professor Capra promised to convey orally the committee's suggestions to the chair of the subcommittee. **Judge Scirica noted that it was the consensus of the committee that the proposed model electronic filing rules or procedures will be helpful to the courts and should be distributed to them.**

ATTORNEY CONDUCT

Judge Scirica and Professor Coquillette reported that the committee has deferred further action on proposed attorney conduct rules for a number of reasons. Among other things, they said, a new administration and Congress have just been elected. In addition, negotiations have not yet resumed among the American Bar Association, the Department of Justice, and the Conference of Chief Justices on developing a standard for government attorneys in dealing with represented parties.

LOCAL RULES PROJECT

Professor Squiers stated that she was continuing to work on the comprehensive local court rules report for the committee. She said that the report will follow the same format as her last report, and the bulk of it should be available at the January 2002 committee meeting.

NEXT COMMITTEE MEETING

The next meeting of the committee is scheduled for January 10-11, 2002, in Tucson, Arizona.

Respectfully submitted,

Peter G. McCabe
Secretary

MEMORANDUM

TO: Advisory Committee on Bankruptcy Rules

FROM: Jeff Morris, Reporter

RE: Bankruptcy Reform Legislation

DATE: August 20, 2001

As you know, Congress has actively considered bankruptcy reform legislation for several years. It has passed a bill on the subject, but that bill did not become law by virtue of a pocket veto of the legislation by President Clinton. Thereafter, Congress again undertook consideration of bankruptcy reform legislation, and both the House and Senate have passed bills on the topic. The House passed H.R. 333 on March 1, 2001, and the Senate passed S. 420 on March 15, 2001. There are differences in the two bills, and they are now before a conference committee[1] seeking to reconcile the two bills. The two versions of the reform legislation are available in a side-by-side format through the website of the Davis Polk & Wardwell law firm. You can access this material at <http:www.dpw.com/bankruptcyreform>. It is also available through the website of the American Bankruptcy Institute at <www.abiworld.org> through its Legislative News link. The side-by-side comparison places the language of the bills into the Bankruptcy Code and other U.S. Code titles. We will be referring to the Bankruptcy Code and related amendments frequently during the meeting, so you may wish to have a copy handy for those discussions.[2]

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[1] On July 17, 2001, the Senate passed H.R. 333 after deleting all of its provisions and substituting therefor the language of S. 420. The membership of the Conference Committee is now set, and meetings of the Committee are expected to begin when Congress reconvenes after Labor Day.

[2] After using the printed version of the document for several months, Judge Walker has opted to use the electronic version of the document.

The two Bills are nearly 300 pages long, and they contain amendments to five different titles of the United States Code. Many of the statutory changes and additions require no change or addition to the existing Bankruptcy Rules. Nevertheless, there are many provisions that will require action to implement by way of amendments and additions to the Bankruptcy Rules and Official Forms.

The amendments affecting consumer bankruptcy have garnered most of the attention given to the Bills. Certainly, these amendments are very extensive, but they are not the only changes that would follow upon final enactment. The Bills contain significant business bankruptcy amendments and other changes that operate across the full range of bankruptcy cases as well as to the appellate process. We will consider rules amendments and additions primarily, though not exclusively in those two categories. In preparation for our discussion of the proposed rules changes, the following is a brief description of the reform legislation in those areas that will require rules amendments and additions should the legislation become effective. The bills each provide a general effective date of 180 days after enactment. Consequently, we are attempting to set the foundation for amendments to the rules so that they can be promulgated as quickly as possible (consistent with the Rules Enabling Act) in the event that the bill becomes law. References to the Bankruptcy Code in this memorandum are references to the Code as it would be amended in the event that the pending legislation becomes law.

THE CONSUMER PROVISIONS

The most fundamental change to the Bankruptcy Code contained in the Bills is the introduction of a means test for eligibility for individual debtors' to obtain chapter 7 relief. In simple terms, it provides that a debtor whose disposable income is either above a stated amount,

or whose disposable income is sufficient to pay a stated amount or percentage of nonpriority, unsecured claims cannot proceed under chapter 7 of the Bankruptcy Code. The disposable income calculations are based on expenses taken in large part from expense allowances established by the Internal Revenue Service. To some extent, a debtor's actual expenses form a part of the calculation. The chapter 7 petitions of those debtors whose disposable income levels meet or exceed the stated minimums are deemed to be an abuse of that chapter, and the debtors must seek relief under another chapter of the Code unless they are able to demonstrate special circumstances that justify expense allowances in excess of the IRS standards.

Understanding the means test requires analysis of several Bankruptcy Code sections. While it is primarily included in § 707(b), §§ 521 and 704 also play a significant role in the application of the means test in Chapter 7 cases.[3] Furthermore, the means test is made applicable to Chapter 13 cases by the amended definition of disposable income in §1325 (b). That section carries forward the means test calculations from § 707(b), and if the debtor's current monthly income exceeds the applicable median, then the debtor's plan must extend for five years in the Chapter 13 case. The applicable median is based on the size of the debtor's household and the state in which the debtor resides.

Section 521 provides that, unless the court orders otherwise, the debtor must file a statement of current income and expenditures. This statement of current income and expenditures must permit the calculation of the debtor's net income for purposes of the means test. The calculation requires a determination of the debtor's monthly income (a term defined in

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[3] It is also necessary to consider § 101(10A) which contains the definition of the debtor's "current monthly income".

Section 101) and the debtor's expenses. Current monthly income is defined as all of the income received by the debtor in the six months prior to the commencement of the case divided by six. The debtor's expenses are those established by the national and local standards of the Internal Revenue Service as well as the debtor's actual expenses in the categories of "other necessary expenses" set by the Internal Revenue Service. There is also the possibility of expanding the debtor's housing and food allowance by up to 5% over the IRS guidelines. Additionally, each bill provides that the debtor can demonstrate a higher expense for utilities if that fact is present.[4]

Under Section 707(b)(2), if the debtor's net income would exceed $10,000 over five years, then the debtor is presumed to be in abuse of Chapter 7. Furthermore, if the debtor can pay the greater of either $6,000 over five years or 25% of general unsecured claims over that period, then the filing is likewise considered an abuse.

If the debtor's gross income (on an annualized basis) is below the applicable median, the debtor is not vulnerable to a presumed abuse motion under § 707(b)(2). See § 707(b)(7). A debtor whose income is below that median, however, could be the subject of a motion to dismiss under § 707(b)(3). Such a motion, however, can be brought only by the judge, United States trustee, or bankruptcy administrator. The following table demonstrates the availability of these motions to specific parties.

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[4] The IRS expense calculations apply as well to the calculation of disposable income under § 1325(b) if the debtor's income exceeds the applicable median for that debtor's household.

	§ 707(b)(2)(presumed abuse)	§ 707(b)(3)(bad faith or totality of circumstances abuse)
Gross income above applicable median	Judge, United States trustee, Bankruptcy Administrator, and parties in interest may move to dismiss	Judge, United States trustee, Bankruptcy Administrator, and parties in interest may move to dismiss
Gross income below applicable median	No party can move to dismiss - safe harbor for debtor	Only Judge, United States Trustee, and Bankruptcy Administrator may move to dismiss under (b)(3)

Given that parties in interest are eligible to move to dismiss cases in which the debtor's income exceeds applicable medians, the first information that is necessary for noticing is the debtor's income and household size. If the debtor's income is below the median, presumably a notice could be sent to parties in interest stating that they are not eligible to move to dismiss under § 707(b). That notice could likewise be sent to the United States trustee or bankruptcy administrator and would indicate that the trustee or administrator is limited to moving under § 707(b)(3).

Sections 342 and 704 of the Code provide additional noticing requirements essential to the operation of the means test. Under § 342(d), the clerk must give notice to all creditors not later than ten days after the date of the filing of the petition that a presumption of abuse is triggered. Thus, the information necessary to make a determination of presumed abuse must be available to the clerk in time to initiate such a notice. Importantly, that section requires the notice whenever a presumption of abuse is present, not just when the debtor's income exceeds the appropriate median. This would suggest that all debtors must complete a means test calculation form, even if the debtor would not be vulnerable to a motion to dismiss for presumed

abuse under § 707(b)(2).

Once the § 342(d) notice is given, the next step in the case is the meeting of creditors under§ 341. Section 704(b)(1)(A) requires the United States trustee or bankruptcy administrator to review the materials filed by the debtor and to file with the court a statement as to whether the debtor's case would be presumed to be an abuse under § 707(b). This statement must be filed not later than ten days after the date of the first meeting of creditors. Thereafter, the court must provide a copy of that statement to all creditors within five days after receipt of the statement. This would be the second notice that all creditors receive regarding potential abuse by the debtor. Section 704(b)(2) then requires the United States trustee or bankruptcy administrator to file a motion to dismiss or a statement setting forth why such motion is not appropriate. This filing must occur not later than 30 days after the date of the filing of the "ten day statement" required under § 704(b)(1)(A). The United States trustee or bankruptcy administrator has discretion to refrain from filing a motion to dismiss or convert if the debtor's current monthly income is between 100% and 150% of the appropriate median amount, and the debtor's net income is less than $2,000 a year or would pay 25% of the debtor's unsecured claims or $6,000, whichever is greater.

Any noticing system, and the rules to implement that system, must take account of the dual sources of motions to dismiss in § 707(b). In cases in which a debtor's case can be dismissed on motion of a party in interest, those parties need to be informed that they may have standing to assert such motions. The initial notice given by the clerk within ten days of the commencement of the case meets this need. Arguably, no other specific notice need be given to those parties. Rather, the timing for motion to dismiss under § 707(b) is analytically comparable

to objections to discharge under § 727. For example, the trustee can proceed under § 727 to object to a debtor's discharge. Parties in interest likewise can pursue such objections. No additional time is given to parties in interest to commence those actions even though the trustee might initiate a case. Instead, the parties have the same amount of time in which to initiate such actions. The protection of the interests of other creditors is contained in the rules governing dismissal of the discharge objection case. Dismissal can only be accomplished on notice to the trustee, the United States trustee, and such other persons as the court may direct under Rule 7041. Arguably, a similar rule should apply to 707(b) dismissal motions.

Section 704(b)(2) sets a deadline for the United States trustee or bankruptcy administrator to file a motion to dismiss within thirty days after the filing of the "ten day statement". This is a total of forty days after the first meeting of creditors. This time ? however, does not apply to motion to dismiss under § 707(b)(3). Presumably, the deadline for filing those motions would remain as it is under existing Rule 1017(e). The existing rule would operate sufficiently to govern the filing of motions to dismiss under § 707(b)(3). The statute governs the timing of the filing of the motion under § 707(b)(2) when the debtor's income exceeds the appropriate median. Since parties and interests may bring such motions in the event that the debtor's income exceeds the median, the rule needs to be expanded to establish timing limits on those motions filed by parties and interests. Two possibilities exist. Parties in interest can be given the same amount of time as the United States trustee or bankruptcy administrator within which to file such motions. It is also possible to extend that time to the deadline currently included in Rule 1017(e) which is currently only applicable to the United States trustee. The argument in favor of extending the time for parties and interest (but not for the United States trustee or bankruptcy administrator) is

that parties and interest theoretically will await action by the United States trustee before determining whether to pursue a motion to dismiss. The parties in interest would have twenty days after the United States trustee files its statement that it does not intend to move to dismiss the proceeding within which to file their motion.

The Bills contain a number of other provisions that likely will require amendments and additions to the Rules. Section 521 is amended to require debtors to submit additional financial information including pay stubs and tax returns. The rules and forms currently do not refer to these items that must be submitted. The Bills amend § 1328(a) to reduce the scope of the discharge in chapter 13 by excepting debts under § 523(a)(2) and (4) from that discharge. They also except from the full payment discharge debts for "restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual." This additional exception is very close in language to § 523(a)(6), but the difference in language and the fact that this exception to discharge is not carried into chapter 13 by direct cross reference to § 523(a)(6) raises questions about the applicability of the exclusive jurisdiction of the bankruptcy courts over those proceedings. The importation of these new categories of nondischargeable debts into chapter 13 can pose some problems as to the justiciability of those claims and to the effect of the conversion of the case from chapter 13 to chapter 7.

The Bills include new restrictions on the scope of the automatic stay when the debtor has filed for bankruptcy relief on more than one occasion. These limits may require that debtors provide additional or different information on the petition or other forms.

The reform legislation also expands the pilot program that existed in a limited number of

courts for the waiver of filing fees. See 28 U.S.C. § 1930(f). Rules and forms changes may be necessary to implement the nationwide availability of fee waivers. Likewise, the creation of new requirements of creditor counseling and financial management education as conditions to eligibility for relief and the entry of a discharge, respectively, may require additions to the rules and forms to implement the changes.

BUSINESS BANKRUPTCY ISSUES

While less extensive, the amendments to the Bankruptcy Code affecting business cases create the need for a number of amendments and additions to the Bankruptcy Rules and Official Forms. Most of the changes follow from the provisions governing "small business debtors" in chapter 11 cases. These debtors face different time deadlines for the confirmation of plans, and they also must submit operating reports different in form from those that might be required of chapter 11 debtors generally. The reform legislation also calls for the promulgation of form plans and disclosure statements for use by small business debtors. Each of these legislative developments requires the creation of rules or forms to implement those provisions. Even the definition of a "small business debtor" creates problems for the rules because the definition turns on the presence or absence of an active and effective creditors' committee, a matter that can change over the course of the case. The legislation also establishes restrictions on serial bankruptcy cases by small business debtors.

The reform legislation also contains significant amendments to chapter 11 for cases of individual debtors. Property of the estate is redefined, see § 1115, and the discharge in those cases is postponed to the completion of payments under a confirmed plan. See § 1141(d)(5).

These changes create problems similar to those created by the expansion of the categories of nondischargeable debts in chapter 13 cases discussed above, and also raise issues about the need for postconfirmation monitoring of the debtor.

The reform legislation also creates "health care businesses" as another form of debtor. In these debtors' cases, the revised Code anticipates the appointment of an ombudsman to oversee the protection of patient health care records. The amendments include new provisions for the election of trustees in chapter 11 cases as well as requirements to expand the information being given to creditors with foreign addresses. Each of these amendments may require changes to or additions to the Bankruptcy Rules and Official Forms.

The Agenda Materials on these matters are divided into four categories: Consumer Rules, Consumer Forms, Business Rules, and Business Forms. Other Rules amendments or additions necessitated by the pending legislation are addressed separately.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: "CONSUMER" AMENDMENTS TO IMPLEMENT THE BANKRUPTCY REFORM LEGISLATION

DATE: AUGUST 23, 2001

The Consumer Subcommittee met twice during the past several months to consider the extent to which the pending reform legislation might require amendments to the rules. The Subcommittee initially studied and discussed the matter, and later considered specific language for the amendment of a number of rules. The following proposed rules amendments are a product of those discussions. The versions set out below have been modified and expanded to some extent after the Subcommittee met; however the changes were largely in response to the the Subcommittee's discussions. It is possible that further rules amendments and additions may be necessary if the reform legislation is enacted. The amendments and additions set out below are those that the Subcommittee identified or discussed. While the Subcommittee has considered most of these amendments, some of the changes and additions were made after the Subcommittee's last meeting.

As noted in the general memorandum, the most extensive amendments to the Bankruptcy Code contained in the pending reform legislation apply in individual debtor cases. Some of the amendments are relatively straightforward, such as the expansion of the availability of filing fee waivers. Under the existing law, Congress authorized eight pilot districts to waive filing fees in bankruptcy cases. By amendment to 28 U.S.C. § 1930, waiver of filing fees would be available

nationwide. Thus, there is a proposed amendment to **Rule 1006** to reflect this legislative change.

The reform legislation greatly increases the information and materials that individual debtors must provide to the court and parties in interest. Consequently, amendments are necessary to **Rules 1007 and 1009** which describe the debtor's informational filing obligations. Under the legislation, debtors must submit pay stubs and tax returns and must complete and file new forms to demonstrate that they meet new eligibility requirements. These forms and the new data were not required under the existing rules, so amendments would be necessary to implement those changes.

Among the most significant amendment to the Bankruptcy Code that the reform legislation would effect is the introduction of a means test as a requirement for eligibility for relief under chapter 7. The means test is a combination of provisions in §§ 101, 521, and 707 of the Code, and it is implemented primarily by a motion to dismiss a chapter 7 case under § 707(b). These amendments require changes in **Rule 1017** to reflect the new terminology ("abuse" rather than "substantial abuse") and the limited standing to file motions under § 707(b). Proposed amendments to **Rules 2003 and 9006** are set out below to address possible problems with the timing of the conclusion of the § 341 meeting of creditors. This event has important consequences under the reform legislation, and the rules need to provide a mechanism to establish necessary deadlines.

Categories of nondischargeable debts are expanded in chapter 13 cases under the reform bills. This creates a need to establish new deadlines for filing these complaints in chapter 13 cases and to set the deadlines if a case is converted to chapter 7. Revisions to **Rules 1019 and**

4007 are intended to implement these legislative amendments.

Under the reform legislation, chapter 13 debtors have new obligations to file with the court copies of tax returns that come due during the pendency of the case. The legislation provides that the taxing authorities with claims that arise from these returns have more time to file proof of those claims than is provided under the current version of **Rule 3002**. Consequently, and amendment to that rule is offered. The amendments and additions proposed to implement the changes made to the law governing consumer bankruptcy cases are set out below.

RULE 1006. FILING FEE

(a) GENERAL REQUIREMENT. Unless the court waives the filing fee, every ~~Every~~ petition shall be accompanied by the filing fee except as provided in subdivision (b) of this rule. For the purpose of this rule, "filing fee" means the filing fee prescribed by 28 U.S.C. § 1930(a)(1)-(a)(5) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code.

(b) PAYMENT OF FILING FEE IN INSTALLMENTS.

(1) *Application for Permission to Pay Filing Fee in Installments.* A voluntary petition by an individual shall be accepted for filing if accompanied by the debtor's signed

application stating that the debtor is unable to pay the filing fee except in installments. The application shall state the proposed terms of the installment payments and that the applicant has neither paid any money nor transferred any property to a debt relief agency ~~an attorney~~ for services in connection with the case.

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COMMITTEE NOTE

The rule is revised to reflect the amendment that added 28 U.S.C. § 1930(f) authorizing the courts to waive the filing fee for an individual whose income falls below the statutory standard. The availability of the waiver is in addition to the payment of the filing fee in installments which subdivision (b) of the rule continues to govern. Subdivision (b)(1) is amended to introduce the term "debt relief agency" included in § 101 of the Bankruptcy Code. That term includes attorneys and others who provide "bankruptcy assistance" (as that term is likewise defined in § 101 of the Code) to the debtor. The amendment to the rule expands the restriction on the timing of the payment of attorney fees to reach payments to all debt relief agencies.

RULE 1007. LISTS, SCHEDULES, ~~AND~~ STATEMENTS, AND OTHER SUBMISSIONS; TIME LIMITS

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(b) Schedules, ~~and~~ statements, and other submissions required.

(1) Except in a chapter 9 municipality case, the debtor, unless the court orders otherwise, shall file schedules of assets and liabilities,

a schedule of current income and expenditures, a schedule of executory contracts and unexpired leases, and a statement of financial affairs, prepared as prescribed by the appropriate Official Forms. The debtor also shall file with the court a record of any interest that the debtor has in an education individual retirement account or a qualified State tuition program, and, unless the court orders otherwise, copies of all payment advices or other evidence of payment, if any, received by the debtor from an employer within 60 days of the filing of the petition.

(2) An individual debtor in a chapter 7 case shall file a statement of intention as required by § 521(a) ~~521(2)~~ of the Code, prepared as prescribed by the appropriate Official Form. A copy of the statement of intention shall be served on the trustee and the creditors named in the statement on or before the filing of the statement.

(3) An individual debtor in a chapter 7 case shall file a statement of current monthly income and the calculations that determine whether a presumption of abuse arises under § 707. If an individual filing a chapter 13 case has current monthly income greater than the applicable median family income for the applicable state, as adjusted under § 1325, the debtor shall file a statement of current monthly income and the calculations that determine

whether a presumption of abuse arises under § 707.

(4) An individual debtor who requests an exemption from the credit counseling requirement of § 109 must file an application with the petition. All individual debtors must file a certificate indicating satisfaction of the credit counseling requirement of § 109 and a copy of the debt repayment plan, if any, within 45 days after the filing of the petition.

(c) Time limits. The schedules and statements required by subdivision (b)(1); ~~other than the statement of intention,~~ shall be filed with the petition in a voluntary case, or if the petition is accompanied by a list of all the debtor's creditors and their addresses, within 15 days thereafter, except as otherwise provided in subdivisions (d), (e), and (h) of this rule. In an involuntary case the schedules and statements required by subdivision (b)(1); ~~other than the statement of intention,~~ shall be filed by the debtor within 15 days after entry of the order for relief. The statement and calculations required by subdivision (b)(3) shall be filed with the petition within 5 days after the filing of the petition in a voluntary case and within 5 days after entry of the order for relief in an involuntary case. Schedules, ~~and~~ statements, and other submissions filed prior to the conversion of a case to another chapter shall be deemed filed in the converted case unless the court

directs otherwise. Any extension of time for the filing of the schedules, ~~and~~ statements, and submissions may be granted only on motion for cause shown and on notice to the United States trustee and to any committee elected under § 705 or appointed under § 1102 of the Code, trustee, examiner, or other party as the court may direct. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.

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COMMITTEE NOTE

The title of the rule has been changed to reflect the broader range of submissions it governs. Subdivision (b) has been amended to require the filing of other submissions now required to be filed by § 521, including the statement of current monthly income and the calculations that determine whether a presumption of abuse arises under § 707(b), as required by § 707(b)(2)(C) and § 521(a). Another amendment to subdivision (b) relates to the new requirement under § 109 that individual debtors receive credit counseling prior to filing the petition or request an exemption of the requirement, in which case they must receive credit counseling after the filing of the petition. Amendments to subdivision (c) make conforming amendments and establish time limits for the statement and calculations to be filed under subdivision (b)(3).

RULE 1009. AMENDMENTS OF VOLUNTARY PETITIONS, LISTS, SCHEDULES AND STATEMENTS

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(b) Statement of intention. The statement of intention may be amended by the debtor at any time before the expiration of the

period provided in § 521(a) ~~521(2)(B)~~ of the Code. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby.

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Committee Note

The amendment to subdivision (b) reflects the renumbering of subsections of § 521 and substantive amendments thereto.

RULE 1017. DISMISSAL OR CONVERSION OF CASE; SUSPENSION

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(e) Dismissal of an individual debtor's chapter 7 case or conversion to a case under chapter 11 or 13 for ~~substantial~~ abuse. The court may dismiss or convert an individual debtor's case for ~~substantial~~ abuse under § 707(b) only on motion ~~by the United States trustee or on the court's own motion~~ and after a hearing on notice to the debtor, the trustee, the United States trustee, and any other entities as the court directs.

(1) A motion to dismiss or convert a case for ~~substantial~~ abuse under § 707(b)(2) may be filed ~~by the United States trustee~~ only within ~~60~~ the earlier of 30 days after ~~the first date set for the meeting of creditors under § 341(a), unless, on request filed by~~ the

United States trustee files a statement as to whether the debtor's case would be presumed to be an abuse or 40 days after the conclusion of the meeting of creditors under § 341(a). ~~before the time has expired, the court for cause extends the time for filing the motion to dismiss~~. The conclusion of the meeting shall not be withheld without cause. [1] The ~~United States trustee~~ party filing the motion shall set forth in the motion all matters to be considered ~~submitted to the court for its consideration~~ at the hearing.

(2) ~~If the hearing is set on the court's own~~ A motion ; to dismiss or convert for abuse other than one under subdivision (e)(1) ~~notice of the hearing shall~~ may be ~~served on the debtor no later than~~ filed only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request of a party made prior to the expiration of the 60 days, the court for cause extends the time for filing the motion to dismiss. All motions to dismiss under § 707(b)(3) shall state with particularity the circumstances constituting abuse. ~~The notice shall set forth all matters to be considered by the court at the hearing.~~

(3) A motion to dismiss by the victim of a crime of violence or a drug trafficking crime may be filed only within 60 days after the United States trustee files a statement as to whether the debtor's

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[1]This sentence is offered as an alternative to the proposed amendment to Rule 2003(e).

case would be presumed to be an abuse, unless, on request by the victim before the time has expired, the court for cause extends the time for filing the motion to dismiss.

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COMMITTEE NOTE

Subdivision (e) has been amended to implement new subsections of § 707. First, § 707 now refers to conversion of a chapter 7 case to a case under chapter 11 or 13 as well as to dismissal of the case. Second, dismissal or conversion is now triggered by abuse, rather than substantial abuse. Third, subdivision (e) reflects that other parties in interest are now authorized to bring motions under § 707(b) under certain circumstances. Fourth, § 707 now draws a distinction between cases that are presumed abusive due to ability to pay calculations and cases that are found abusive on other grounds, and the distinction has procedural and timing consequences. For cases that are presumptively abusive based on the formula set forth in § 707(b)(2), § 704 now requires that the United States trustee file a motion within 30 days after filing an initial statement. Amended subdivision (e)(2) requires that the United States trustee, as well as other parties authorized to bring such motions, file a presumed abuse motion to dismiss within the earlier of 30 days after the United States trustee files its initial statement, or 40 days after the conclusion of the meeting of creditors. It is expected that meetings of creditors will not improvidently be held open. For a motion to dismiss or convert for abuse other than presumed abuse, the current timing rule is preserved. Fifth, new § 707(c) authorizes the court to dismiss a chapter 7 case, on motion of the victim of a crime of violence or a drug trafficking crime, when dismissal is in the best interest of the victims under some circumstances. The timing rules are provided separately for those motions in new subdivision (e)(3).

RULE 1019. CONVERSION OF CHAPTER 11 REORGANIZATION CASE, CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT CASE, OR CHAPTER 13

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(2) NEW FILING PERIODS. A new time period for filing claims or ~~claims,~~ a complaint objecting to discharge~~, or a complaint to obtain a determination of dischargeability of any debt~~ shall commence under ~~pursuant to~~ Rules 3002 or 4004 ~~3002, 4004, or 4007,~~ provided that a new time period shall not commence if a chapter 7 case had been converted to a chapter 11, 12, or 13 case and thereafter reconverted to a chapter 7 case and the time for filing claims or ~~claims,~~ a complaint objecting to ~~discharge,or a complaint to obtain a determination of the dischargeability of any debt,~~ or any extension thereof, expired in the original chapter 7 case. In a case converted to chapter 7 from chapter 13, a new period for filing a complaint to obtain a determination that a debt is dischargeable under § 523 (a)(6) shall commence under Rule 4007 unless the case had been converted to a chapter 13 case and the time for filing such a complaint expired in the original chapter 7 case.

COMMITTEE NOTE

The rule is amended to recognize that the Bankruptcy Reform Act of 2001 makes all of the categories of nondischargeable debts in § 523(a) of the Bankruptcy Code applicable in chapter 11 and 12 cases. The amendments also make two of the categories of

nondischargeable debts for which § 523(c) provides exclusive jurisdiction in the bankruptcy courts and for which Rule 4007 establishes filing deadlines applicable in chapter 13 cases. Since all of these debts would be nondischargeable in any of the operative chapters, there is no need to provide an additional deadline for filing these complaints in the event of a conversion of the case. Only in the conversion of a chapter 13 case to chapter 7 is there a need to establish a new deadline, and then only for debts that are nondischargeable under § 523(a)(6). Those debts are dischargeable in a chapter 13 case in which the debtor completes making the payments called for in the confirmed plan.

RULE 2003. MEETING OF CREDITORS OR EQUITY SECURITY HOLDERS

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(e) Adjournment. Unless the court orders otherwise, ~~The~~ the meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time without further written notice.[2]

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COMMITTEE NOTE

The conclusion of the meeting of creditors is one of the events setting the time to file motions to dismiss or convert chapter 7 cases for presumed abuse under § 707 and Rule 1017(e). Therefore, notwithstanding the general lack of involvement of courts in meetings of creditors under § 341(a), to prevent an open-ended statute of limitations period for presumed abuse motions it is important to recognize that judicial review is available in the event that meetings of creditors are continued without cause. This is the justification for the new reference to the court in subdivision (e).

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[2]This amendment is offered as an alternative to the language flagged in Rule 1017(e).

RULE 3002. FILING PROOF OF CLAIM OR INTEREST

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(c) TIME FOR FILING. 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 § 341(a) of the Code, except as follows:

(1) A proof of claim filed by a governmental unit, other than for a claim resulting from a tax return filed under § 1308 of the Code, is timely filed if it is filed not later than 180 days after the date of the order for relief. On motion of a governmental unit before the expiration of such period and for cause shown, the court may extend the time for filing of a claim by the governmental unit. A proof of claim filed by a governmental unit for a claim under § 1308 of the Code is timely if filed before the later of 180 days after the date of the order for relief, or 60 days after the date of the filing of the tax return.

COMMITTEE NOTE

The rule is amended to provide additional time for governmental units to file a proof of claim for tax obligations set out in tax returns filed during the pendency of a chapter 13 case.

The governmental unit has at least 60 days after the filing of the tax return to file proof of the claim, and that period can be greater if the return in filed less than 120 days after the date of the order for relief.

RULE 4007. DETERMINATION OF DISCHARGEABILITY OF A DEBT

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(c) TIME FOR FILING COMPLAINT UNDER § 523(c) IN A CHAPTER 7 LIQUIDATION, CHAPTER 11 REORGANIZATION, ~~OR~~ CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT CASE, OR CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASE; NOTICE OF TIME FIXED. Except as provided in subdivision (d), a ~~A~~ complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

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COMMITTEE NOTE

Subdivision (c) of the rule is amended to account for the addition of categories of nondischargeable debts in chapter 13 cases. Previously, several categories of debts that were nondischargeable in chapter 7, 11, and 12 cases under § 523(a) of the Code were dischargeable in chapter 13 cases. The 2001 amendments to § 1328 of the Code, however, now exclude debts under § 523(a)(2) and (4) from the full payment discharge in chapter 13. Therefore, the time limits set by the rules governing these actions under the other chapters of the Code are now made applicable in chapter 13 cases. It is appropriate to employ the same time limits in chapter13 cases as in chapter 12 cases.

Since there still exists the possibility that a chapter 13 debtor may seek a hardship discharge under § 1328(b), the rule continues to provide time limits governing those cases.

RULE 9006. TIME

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(b) ENLARGEMENT.

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(2) Enlargement not permitted. The court may not enlarge the time for taking action under Rules 1007(d), 1017(e)(1), 2003(a) and (d), 7052, 9023, and 9024.

(3) Enlargement limited. The court may enlarge the time for taking action under Rules 1006(b)(2), 1007(c), 1017(e)(2), 1017(e)(3), 3002(c), 4003(b), 4004(a), 4007(c), 8002, and 9033, only to the extent and under the conditions stated in those rules.

* * * * *

COMMITTEE NOTE

A reference to Rule 1017(e)(1) has been placed in subdivision (b)(2) to preclude extensions of the time to file motions to dismiss or convert for presumed abuse under § 707(b). Subdivision (b)(3) includes a reference to Rule 1017(e)(2), for abuse motions under § 707(b) other than presumed abuse motions, and new Rule 1017(e)(3), which deals with motions to dismiss by the victim of a crime of violence or a drug trafficking crime and contains its own guidance on time extensions. Subdivision (b)(3) now includes a reference to Rule 1007(c) to reflect the guidance on extensions provided therein.

Rules Amendments Regarding Debtor Financial Education Requirements

The Consumer Subcommittee briefly considered whether rules changes were necessary to implement the provisions in the reform legislation that require the debtor to complete a financial management course as a prerequisite to the entry of a discharge. The legislation would create §§ 727(a)(11) and 1328(g) to require completion of a course in personal financial management as a condition to the entry of a discharge. The Subcommittee concluded that the incentive for the debtor to obtain a discharge would likely lead to the submission of appropriate evidence of the completion of such a course. Moreover, under § 111 of the Code as it would be amended by the reform legislation, the United States trustee and the Bankruptcy Administrator are directed to evaluate and approve the entities that provide the personal financial management classes and credit counseling services. The Subcommittee assumed that the relevant oversight agency will require the service provider to submit a certificate of completion of the course or counseling program to the court. Only debtors in bankruptcy cases will be taking the personal financial management course, so the service provider could submit to the appropriate court a record of the debtor's completion of the course so that the discharge could be entered.

The United States trustee office has subsequently proposed that several rules be amended to prevent the automatic entry of a discharge. The proposal is to amend Rule 4004(c) to include the absence of a certificate of completion of a personal financial management course as a ground for the court to withhold entry of the discharge. The argument is that adding the absence of this document to the list in Rule 4004(c) will enable the clerk to "red flag" the case and prevent the inadvertent entry of the discharge. The argument against the rule amendment is that the statute specifically provides that the debtor is not entitled to a discharge unless the debtor has completed the course. Therefore, there is no need for the rules to duplicate the statute. The statute provides sufficient notice to the clerk to initiate a system to prevent the inadvertent entry of a discharge in the absence of the debtor's submission of a certificate of completion of the course.

If the Committee believes that rules amendments are proper, the following are suggested.

Rule 4004. GRANT OR DENIAL OF DISCHARGE

* * * * *

(c) GRANT OF DISCHARGE.

* * * * *

(1)(H) the debtor has not filed with the court a certificate from a provider approved by the United States trustee stating that the debtor has completed a course in personal financial management.

COMMITTEE NOTE

The bankruptcy reform legislation introduced §§ 727(a)(11)

and 1328(g) which require individual debtors to complete a course in personal financial management as a condition to the entry of a discharge. The rule is amended to direct the court to withhold the entry of a discharge until the debtor files the appropriate certificate. Including this requirement in the rule also provides notice to the clerk to avoid the inadvertent entry of a discharge in the absence of a proper certificate.

Rule 4006. NOTICE OF NO DISCHARGE

If an order is entered denying or revoking a discharge or is a waiver of discharge is filed, the clerk, after the order becomes final or the waiver is filed, or if the case is closed without the entry of an order of discharge, shall promptly give notice thereof to all creditors in the manner provided in Rule 2002.

COMMITTEE NOTE

Under the bankruptcy reform legislation, debtors must complete a course in personal financial management as a condition to the entry of a discharge. If the debtor fails to complete the course, no discharge will be entered, but the case may still be closed. The rule is amended to include the closing of the case without the entry of the discharge as a trigger to the notification of creditors that no discharge was entered.

Rule 5009. CLOSING CHAPTER 7 LIQUIDATION, CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT AND CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASES

If in a chapter 7, chapter12, 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 by the United States trustee or a party in interest, there

shall be a presumption that the estate has been fully administered. The clerk shall give at least 20 days notice to the debtor prior to the closing of the case that the debtor has failed to file a certificate of completion of a personal financial management course.

COMMITTEE NOTE

Under the bankruptcy reform legislation, the debtor must complete a personal financial management course as a condition to the entry of a discharge in a case under chapter 7 or 13. The rule is amended to require the clerk to notify the debtor that no certificate of completion has been filed and that the case will be closed without the entry of a discharge. The notice will enable the debtor to seek a postponement of the closing of the case in order to complete the personal financial management course and to file an appropriate certificate thereby permitting the entry of the discharge and avoiding any need to reopen the case for that purpose at a later time.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: RULE 1005 – CAPTION OF PETITION

DATE: AUGUST 24, 2001

Rule 1005 sets out the requirements for the caption of a petition. There are two information items called for in the caption that should be revised. The first is the requirement that the caption include the debtor's social security number. The Judicial Conference has taken the position that these identifiers should be limited to protect legitimate privacy concerns, and the Advisory Committee has previously concluded that, unless the Bankruptcy Code specifically provides otherwise, publication of social security numbers and account numbers should be limited to the last four digits. Rule 1005 should be amended to make it consistent with this determination.

The rule also requires the debtor to state all names used by the debtor during the past six years. The bankruptcy reform legislation would amend § 727(a)(8) to extend the period between discharges from six to eight years. Consequently, Rule 1005 should be amended to reflect that proposed change in the statute.

Rule 1005. CAPTION OF PETITION

The caption of a petition commencing a case under the Code shall contain the name of the court, the title of the case and the docket number. The title of the case shall include the name, <u>last four digits of the</u> social security number and employer's tax

identification number of the debtor and all other names used by the debtor within ~~six~~ eight years before filing the petition. If the petition is not filed by the debtor, it shall include all names used by the debtor which are known to the petitioners.

COMMITTEE NOTE

The rule is amended to require the debtor to disclose all names used by the debtor during the preceding eight years. The bankruptcy reform legislation amended § 727(a)(8) to expand from six to eight years of the time between bankruptcy cases before which the debtor can receive a discharge.

The rule also is amended to implement the Judicial Conference policy to limit the disclosure of a party's social security number and similar identifiers. Under the rule as amended, only the last four digits of these identifiers need be included in the caption of the petition.

Memorandum

To: Advisory Committee on Bankruptcy Rules

From: Subcommittees on Forms and Consumer Issues

Date: August 28, 2001

Re: Amendments to Official Forms Needed to Implement Pending Bankruptcy Legislation

This agenda item has two parts. The first part addresses amendments that will be needed to the official forms to implement consumer-related provisions of the pending legislation. The forms included are Official Forms 1, 3, 4, 5, 6, 7, 8, 10, 16A, 16C, 17, 18, and 19. Committee Notes following each form describe the changes. Amendments also will be needed to Form 9 (the "§ 341 Notice"); these will be distributed at the meeting. One new official form also will be needed, a notice by a non-attorney bankruptcy petition preparer which must be signed and filed with every document prepared by the petition preparer. This form also will be distributed at the meeting.

The second part is a memorandum and attachments from Professor Jacoby concerning the "means test" that will be required of all individual debtors who file under chapter 7 or chapter 13.

Attachments

(Official Form 1) (BRA DRAFT)

FORM B1

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./Tax I.D. No. (if more than one, state all):	Last four digits of Soc. Sec./Tax I.D. No. (if more than one, state all):
Street Address of Debtor (No. & Street, City, State & Zip Code):	Street Address of Joint Debtor (No. & Street, City, 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):	Mailing Address of Joint Debtor (if different from street address):

Location of Principal Assets of Business Debtor (if different from street address above):

Type of Debtor (Check all boxes that apply)

- ☐ Individual(s)
- ☐ Corporation
- ☐ Partnership
- ☐ Health Care Business
- ☐ Other _____
- ☐ Railroad
- ☐ Stockbroker
- ☐ Commodity Broker
- ☐ Clearing Bank

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)

- ☐ Chapter 7
- ☐ Chapter 11
- ☐ Chapter 13
- ☐ Chapter 9
- ☐ Chapter 12
- ☐ Chapter 15

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 No. 3.
- ☐ Filing Fee waiver requested (Applicable to individuals only). Must attach signed application detailing the debtor's income and expenses for the court's consideration. See Official Form No. _____.

Nature of Debts (Check one box)

- ☐ Consumer/Non-Business
- ☐ Business

Individual and Joint Debtors with primarily consumer debts filing under chapter 7:

Current Monthly Income $_____

Size of Household = _____ persons

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

1-15	16-49	50-99	100-199	200-999	1000-over
☐	☐	☐	☐	☐	☐

THIS SPACE IS FOR COURT USE ONLY

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	More than $100 million
☐	☐	☐	☐	☐	☐	☐	☐

Estimated Debts

$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	More than $100 million
☐	☐	☐	☐	☐	☐	☐	☐

Individual and Joint Debtors with Primarily Consumer Debts Only:
If debtor checks "consumer/non-business" above, debtor also must complete this box.
Total Assets $_____ Total Liabilities $_____
(Give exact amounts rounded to the nearest dollar.)

Voluntary Petition *(This page must be completed and filed in every case)*	Name of Debtor(s):	
Prior Bankruptcy Case Filed Within Last 8 Years (If more than one, attach additional sheet)		
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 delivered to the debtor the notice required by § 342(b) of the Bankruptcy Code.

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

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

☐ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately 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 District.

☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of justice and convenience of the parties will be served in regard to the relief sought in this District.

Certification Concerning Debt Counseling by Individual/Joint Debtor(s)

☐ I/we have received approved budget and credit counseling during the 180-day period preceding the filing of this petition.

☐ I/we request a waiver of the requirement to obtain budget and credit counseling prior to filing based on exigent circum-- stances. Must attach certification describing.

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 § 342(b) of the Bankruptcy Code.

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 Attorney

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 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 Petition Preparer

I declare under penalty of perjury that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document and the notices required under 11 U.S.C. §§ 110(b), 110(h), and 342(b). Official Form No. ____ is attached. I certify that if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 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 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 peption preparer.)

_____
Address

_____

X _____
Signature and title, if any, 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:

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.

COMMITTEE NOTE

The form is amended to implement [reflect] amendments to the Bankruptcy Code contained in the Bankruptcy Reform Act of 2001, Pub. L. No. 107- , Stat. , (, 2001). The period for which the debtor must provide all names used is extended to eight years to match the new minimum time between the granting of discharges to the same debtor. The amendments also require an individual debtor with primarily consumer debts to file information that will help the clerk to determine whether the presumption of abuse has been triggered in a case filed under chapter 7. The box indicating the debtor's selection of chapter under which to file the case has been amended to delete "Sec. 304 - Case ancillary to foreign proceeding" and replace it with the new "Chapter 15." A statement of venue to be used in a chapter 15 case also has been added. A check box has been added for a debtor to indicate that the debtor is applying for a waiver of the filing fee. The section of the form relating to a chapter 11 small business debtor has been deleted, because under the definition contained in the Bankruptcy Reform Act the debtor will not know at the time of filing whether the case will be a "small business case." The statistical section of the form is amended to require individuals with primarily consumer debts to state the actual dollar amounts of their assets and liabilities. A space has been provided for individuals to certify that they have received budget and credit counseling prior to filing or to request a waiver of the requirement. The signature sections and the declaration under penalty of perjury by an individual debtor concerning the notice received concerning bankruptcy relief, the declaration under penalty of perjury by a non-attorney bankruptcy petition preparer, and the declaration and certification by an attorney all have been amended to include new material mandated by the Bankruptcy Reform Act. In addition, in furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files, the form is amended to require the debtor to provide only the last four digits of the debtor's Social Security or tax identification number.

Official Form 3
(DRAFT)

Form 3. APPLICATION AND ORDER TO PAY FILING FEE IN INSTALLMENTS

[Caption as in Form 16B]

APPLICATION TO PAY FILING FEE IN INSTALLMENTS

1. In accordance with Fed. R. Bankr. P. 1006, I apply for permission to pay the Filing Fee amounting to $_____ in installments.

2. I certify that I am unable to pay the Filing Fee except in installments.

3. I further certify that I have not paid any money or transferred any property to an attorney for services in connection with this case and that I will neither make any payment nor transfer any property for services in connection with this case until the filing fee is paid in full.

4. I propose the following terms for the payment of the Filing Fee.*

$ _____ Check one ☐ With the filing of the petition, or
☐ On or before _____
$ _____ on or before _____

$ _____ on or before _____

$ _____ on or before _____

* The number of installments proposed shall not exceed four (4), and the final installment shall be payable not later than 120 days after filing the petition. 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. Fed. R. Bankr. P. 1006(b)(2).

5. I understand that if I fail to pay any installment when due my bankruptcy case may be dismissed and I may not receive a discharge of my debts.

_____
Signature of Attorney Date

_____
Name of Attorney

_____
Signature of Debtor Date
(In a joint case, both spouses must sign.)

_____
Signature of Joint Debtor (if any) Date

CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION (See 11 U.S.C. § 110)

I ~~certify~~declare under penalty of perjury that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document and the notices required under 11 U.S.C. §§ 110(b), 110(h), and 342(b). I certify that if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 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. I also certify that I will not accept money or any other property from the debtor before the filing fee is paid in full.

_____ _____
Printed or Typed Name and title, if any, of Bankruptcy Petition Preparer Social Security No.
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 the document.

_____

_____
Address

x_____ _____
Signature and title, if any, of Bankruptcy Petition Preparer Date
If the bankruptcy petition preparer is not an individual, this certification must be signed by an officer, principal, responsible person or partner of the bankruptcy petition preparer.

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

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.

United States Bankruptcy Court

_____ District Of _____

In re _____, Debtor

Case No. _____

Chapter _____

ORDER APPROVING PAYMENT OF FILING FEE IN INSTALLMENTS

IT IS ORDERED that the debtor(s) may pay the filing fee in installments on the terms proposed in the foregoing application.

IT IS FURTHER ORDERED that until the filing fee is paid in full the debtor shall not pay any money for services in connection with this case, and the debtor shall not relinquish any property as payment for services in connection with this case.

BY THE COURT

Date: _____

_____
United States Bankruptcy Judge

COMMITTEE NOTE

The declaration and certification by a non-attorney bankruptcy petition preparer in the form have been amended to include material mandated 11 U.S C. §110 as amended by the Bankruptcy Reform Act of 2001, Pub. L. No. 107- , Stat , (, 2001).

Official Form 4
(DRAFT)

United States Bankruptcy Court

_____ District Of _____

In re _____, Debtor

Case No. _____

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." Do not include the name or address of a minor child in this schedule. See 11 U.S.C. § 112; 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]

COMMITTEE NOTE

The form has been amended to direct that the name and address of any minor child not be disclosed. This amendment is required under the Bankruptcy Reform Act of 2001, Pub. L. No. 107- , Stat , (, 2001).

FORM B5
(DRAFT)

United States Bankruptcy Court

_____ District of _____

INVOLUNTARY PETITION

IN RE (Name of Debtor - If Individual: Last, First, Middle)	ALL OTHER NAMES used by debtor in the last 8 years (Include married, maiden, and trade names.)
Last four digits of SOC. SEC./TAX I.D. NO. (If more than one, state all.)	
STREET ADDRESS OF DEBTOR (No. and street, city, state, and zip code) COUNTY OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS	MAILING ADDRESS OF DEBTOR (If different from street address)

LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR (If different from previously listed addresses)

CHAPTER OF BANKRUPTCY CODE UNDER WHICH PETITION IS FILED

☐ Chapter 7 ☐ Chapter 11

INFORMATION REGARDING DEBTOR

(Check one box)

Petitioners believe:

☐ Debts are primarily consumer debts

☐ Debts are primarily business debts (Complete section B)

B. BRIEFLY DESCRIBE NATURE OF BUSINESS

TYPE OF DEBTOR (check any applicable box)

☐ Individual ☐ Corporation

☐ Partnership ☐ Health Care Business

☐ Other: _____

VENUE

☐ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in the District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ A bankruptcy case concerning debtor's affiliate, general partner or partnership is pending in this District.

PENDING BANKRUPTCY CASE FILED BY OR AGAINST ANY PARTNER OR AFFILIATE OF THIS DEBTOR (Report information for any additional cases on attached sheets.)

Name of Debtor	Case Number	Date
Relationship	District	Judge

ALLEGATIONS
(Check applicable boxes)

1. ☐ Petitioner(s) are eligible to file this petition pursuant to 11 U.S.C. § 303(b).
2. ☐ The debtor is a person against whom an order for relief may be entered under title 11 of the United States Code.
3.a. ☐ The debtor is generally not paying such debtor's debts as they become due, unless such debts are the subject of a bona fide dispute as to liability or amount;

or

b. ☐ Within 120 days preceding the filing of this petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.

COURT USE ONLY

FORM 5 Involuntary Petition
(DRAFT)

Name of Debtor ____________________

Case No. ____________________ (court use only)

TRANSFER OF CLAIM

☐ Check this box if there has been a transfer of any claim against the debtor by or to any petitioner. Attach all documents evidencing the transfer and any statements that are required under Bankruptcy Rule 1003(a).

REQUEST FOR RELIEF

Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition.

Petitioner(s) declare under penalty of perjury that the foregoing is true and correct according to the best of their knowledge, information, and belief.

X ____________________
Signature of Petitioner or Representative (State title)

____
Name of Petitioner Date Signed

Name & Mailing Address of Individual Signing in Representative Capacity ____________________

X ____________________
Signature of Attorney Date

____
Name of Attorney Firm (If any)

____
Address

____
Telephone No.

X ____________________
Signature of Petitioner or Representative (State title)

____
Name of Petitioner Date Signed

Name & Mailing Address of Individual Signing in Representative Capacity ____________________

X ____________________
Signature of Attorney Date

____
Name of Attorney Firm (If any)

____
Address

____
Telephone No.

X ____________________
Signature of Petitioner or Representative (State title)

____
Name of Petitioner Date Signed

Name & Mailing Address of Individual Signing in Representative Capacity ____________________

X ____________________
Signature of Attorney Date

____
Name of Attorney Firm (If any)

____
Address

____
Telephone No.

PETITIONING CREDITORS

Name and Address of Petitioner	Nature of Claim	Amount of Claim
Name and Address of Petitioner	Nature of Claim	Amount of Claim
Name and Address of Petitioner	Nature of Claim	Amount of Claim
Note: If there are more than three petitioners, attach additional sheets with the statement under penalty of perjury, each petitioner's signature under the statement and the name of attorney and petitioning creditor information in the format above.		Total Amount of Petitioners' Claims

______continuation sheets attached

COMMITTEE NOTE

This form is amended to delete statistical information no longer required and to add "as to liability or amount" to the language concerning debts that are the subject of a bona fide dispute, in conformity amendments to § 303 of the Bankruptcy Code made by the Bankruptcy Reform Act of 2001, Pub. L. No. 107- , Stat , (, 2001). In furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files, petitioning creditors are directed to provide only the last four digits of the debtor's Social Security or tax identification number.

Form B6B
(DRAFT)

In re _____, **Case No.** _____
Debtor **(If known)**

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." In providing the information requested in this schedule, do not include the name or address of a minor child. Simply state "a minor child."

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.				
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.				
3. Security deposits with public utilities, telephone companies, landlords, and others.				
4. Household goods and furnishings, including audio, video, and computer equipment.				
5. Books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles.				
6. Wearing apparel.				
7. Furs and jewelry.				
8. Firearms and sports, photographic, and other hobby equipment.				
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.				
10. Annuities. Itemize and name each issuer.				
~~12~~11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c); Rule 1007(b)).				

In re _____, Debtor

Case No. _____ (If known)

SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
~~11~~12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. ~~Itemize~~ Give particulars. 13. Stock and interests in incorporated and unincorporated businesses. Itemize. Indicate for stock whether it is closely held or publicly traded and for every type of interest whether the debtor holds a substantial or controlling interest. 14. Interests in partnerships or joint ventures. Itemize. Indicate whether the debtor holds a substantial or controlling interest. 15. Government and corporate bonds and other negotiable and non-negotiable instruments. 16. Accounts receivable. 17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars. 18. Other liquidated debts owing debtor including tax refunds. Give particulars. 19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property. 20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust. 21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each. Indicate whether the debtor holds a substantial or controlling interest.				

Form B6B-cont.
(DRAFT)

In re _____, Case No. _____
Debtor (If known)

SCHEDULE B -PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH-OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
22. Patents, copyrights, and other intellectual property. Give particulars. 23. Licenses, franchises, and other general intangibles. Give particulars. 24. Personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided by individuals to the debtor in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes. Give details, including whether the debtor has disclosed a policy to an individual prohibiting the transfer of personally identified information to unaffiliated third persons and whether the policy remains in effect. 25. Automobiles, trucks, trailers, and other vehicles and accessories. 26. Boats, motors, and accessories. 27. Aircraft and accessories. 28. Office equipment, furnishings, and supplies. 29. Machinery, fixtures, equipment, and supplies used in business. 30. Inventory. 31. Animals. 32. Crops - growing or harvested. Give particulars. 33. Farming equipment and implements. 34. Farm supplies, chemicals, and feed. 35. Other personal property of any kind not already listed. Itemize.				
		_____continuation sheets attached Total➤ (Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)		$

Form B6C
(DRAFT)

In re _____, **Debtor**

Case No. _____ **(If known)**

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled under:
(Check one box)

☐ 11 U.S.C. § 522(b)(~~1~~2): Exemptions provided in 11 U.S.C. § 522(d). **Note: These exemptions are available only in certain states.**

☐ 11 U.S.C. § 522(b)(~~2~~3): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the ~~180~~730 days immediately preceding the filing of the petition, or ~~for a longer portion of the 180-day period than in any other place, and~~ if the debtor's domicile has not been located at a single state for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place; the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law; and certain retirement funds to the extent provided in 11 U.S.C. §§ 522(b)(3)(C) and (b)(4).

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION

Form B6D
(DRAFT)

In re _____, Debtor

Case No. _____ (If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding claims secured by property of the debtor as of the date of filing of the petition. 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 all secured creditors will not fit on this page, use the continuation sheet provided.

If a minor child is a creditor, indicate that by stating "a minor child." Do not include the name or address of a minor child in this schedule. See 11 U.S.C. § 112; 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 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.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND ~~MARKET~~ 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 $					
ACCOUNT NO. *			VALUE $					

_____continuation sheets attached

Subtotal➤ (Total of this page) $

Total➤ (Use only on last page) $

(Report total also on Summary of Schedules)

*Use only last four digits of account number

Form B6D - Cont.
(DRAFT)

In re _____, Case No. _____
Debtor (If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND ~~MARKET~~ 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 $					
ACCOUNT NO. *			VALUE $					
ACCOUNT NO. *			VALUE $					

Sheet no. ___ of ___continuation sheets attached to Schedule of Creditors Holding Secured Claims

Subtotal➤ (Total of this page) $

Total➤ (Use only on last page) $

(Report total also on Summary of Schedules)

*Use only last four digits of account number

Form B6E
(DRAFT)

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 and 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.

If a minor child is a creditor, indicate that by stating "a minor child." Do not include the name or address of a minor child in this schedule. See 11 U.S.C. § 112, 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 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 "Subtotal" 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. Repeat this total also on the Summary of Schedules.

☐ 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)

☐ ~~**Alimony, Maintenance, or Support**~~ **Domestic Support Obligations**

~~Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 11 U.S.C. § 507(a)(1).~~ 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 $4,650* per person earned within 90 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).

In re _____, Case No._____
Debtor (if known)

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to $4,650* 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 $2,100* 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 injuries resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated. 11 U.S.C. § 507(a)(10).

* Amounts are subject to adjustment on April 1, 2004, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

____ continuation sheets attached

Form B6E - Cont.
(DRAFT)

In re _____, Case No. _____
Debtor (If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS
(Continuation Sheet)

TYPE OF PRIORITY

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. *								
ACCOUNT NO. *								
ACCOUNT NO. *								
ACCOUNT NO. *								
ACCOUNT NO. *								

Sheet no. ___ of ___ sheets attached to Schedule of Creditors Holding Priority Claims

Subtotal➤ (Total of this page) $

Total➤ (Use only on last page of the completed Schedule E.) (Report total also on Summary of Schedules) $

*Use only last four digits of account number.

Form B6F (DRAFT)

In re _____, Debtor

Case No. _____ (If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of the account number, if any, 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. 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 a minor child is a creditor, indicate that by stating "a minor child." Do not include the name or address of a minor child in this schedule. See 11 U.S.C. § 112; 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 husband, wife, both of them, or the marital community maybe 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 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.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							

_____continuation sheets attached

Subtotal ➤ $

Total ➤ $

(Report also on Summary of Schedules)

* Use only last four digits of account number.

Form B6F - Cont
(DRAFT)

In re _____, Debtor

Case No. _____ (If known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							

Sheet no. ___ of ___sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal ➤ (Total of this page) $

Total ➤ $

(Use only on last page of the completed Schedule E.)
(Report total also on Summary of Schedules)

* Use only last four digits of account number.

Form B6G
(DRAFT)

In re _____, Debtor

Case No._____ (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." Do not include the name or address of the minor child in this schedule. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

☐ 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.

Form B6H
(DRAFT)

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 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 ~~six~~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 ~~six~~ 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." Do not include the name and address of a minor child in this schedule. See 11 U.S.C. § 112, Fed. Bankr. P. 1007(m).

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR

Official Form 6-Cont.
(DRAFT)

In re _____ ,
Debtor

Case No. _____
(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, and that they are true and correct to the best of my knowledge, information, and belief.
(Total shown on summary page plus 1.)

Date _____ Signature: _____
Debtor

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

[If joint case, both spouses must sign.]

CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I ~~certify~~declare under penalty of perjury that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document and the notices required under 11 U.S.C. §§ 110(b), 110(h) and 342(b). I certify that if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 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 of Bankruptcy Petition Preparer Social Security No

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 and title, if any, of Bankruptcy Petition Preparer Date

If the bankruptcy petition preparer is not individual, this certification must be signed by an officer, principal, responsible person or partner of the bankruptcy petition preparer.

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document

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, and that they are true and correct to the best of my knowledge, information, and belief. (Total shown on summary page plus 1.)

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.

FORM B6J
(6/90)

In re _____, Debtor

Case No. _____ (If known)

SCHEDULE J—CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

Rent or home mortgage payment (include lot rented for mobile home)	$ _____
Are real estate taxes included? Yes _____ No _____	
Is property insurance included? Yes _____ No _____	
Utilities Electricity and heating fuel	$ _____
Water and sewer	$ _____
Telephone	$ _____
Other _____	$ _____
Home maintenance (repairs and upkeep)	$ _____
Food	$ _____
Clothing	$ _____
Laundry and dry cleaning	$ _____
Medical and dental expenses	$ _____
Transportation (not including car payments)	$ _____
Recreation, clubs and entertainment, newspapers, magazines, etc.	$ _____
Charitable contributions	$ _____
Insurance (not deducted from wages or included in home mortgage payments)	
Homeowner's or renter's	$ _____
Life	$ _____
Health	$ _____
Auto	$ _____
Other _____	$ _____
Taxes (not deducted from wages or included in home mortgage payments) (Specify) _____	$ _____
Installment payments: (In chapter 12 and 13 cases, do not list payments to be included in the plan)	
Auto	$ _____
Other _____	$ _____
Other _____	$ _____
Alimony, maintenance, and support paid to others	$ _____
Payments for support of additional dependents not living at your home	$ _____
Regular expenses from operation of business, profession, or farm (attach detailed statement)	$ _____
Other _____	$ _____
TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)	$ _____

[FOR CHAPTER 12 AND 13 DEBTORS ONLY]

Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

A. Total projected monthly income	$ _____
B. Total projected monthly expenses	$ _____
C. Excess income (A minus B)	$ _____
D. Total amount to be paid into plan each _____ (interval)	$ _____

Form B6I
(DRAFT)

In re _____, Debtor

Case No._____ (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 a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status:	List dependents of debtor and spouse. Indicate age and relationship of each, but do not disclose the name of any minor child.

Employment:	DEBTOR	SPOUSE
Occupation		
Name of Employer		
How long employed		
Address of Employer		

Income: (Estimate of average monthly income)	DEBTOR	SPOUSE
Current monthly gross wages, salary, and commissions (pro rate if not paid monthly.)	$ _____	$ _____
Estimated monthly overtime	$ _____	$ _____
SUBTOTAL	$ _____	$ _____
LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	$ _____	$ _____
b. Insurance	$ _____	$ _____
c. Union dues	$ _____	$ _____
d. Other (Specify: _____)	$ _____	$ _____
SUBTOTAL OF PAYROLL DEDUCTIONS	$ _____	$ _____
TOTAL NET MONTHLY TAKE HOME PAY	$ _____	$ _____
Regular income from operation of business or profession or farm (attach detailed statement)	$ _____	$ _____
Income from real property	$ _____	$ _____
Interest and dividends	$ _____	$ _____
Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above.	$ _____	$ _____
Social security or other government assistance (Specify) _____	$ _____	$ _____
Pension or retirement income	$ _____	$ _____
Other monthly income	$ _____	$ _____
(Specify) _____	$ _____	$ _____
_____	$ _____	$ _____
TOTAL MONTHLY INCOME	$ _____	$ _____

TOTAL COMBINED MONTHLY INCOME $_____ (Report also on Summary of Schedules)

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

COMMITTEE NOTE

The forms of the Schedules of Assets and Liabilities have been amended to implement the provisions of the Bankruptcy Reform Act of 2001, Pub. L. No. 107- , Stat ,(, 2001). Some amendments occur in several of the schedules. These include directions to avoid disclosing the name and address of any minor child and, in furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files, to disclose only the last four digits of any account number reported on the schedules.

The "means test" mandated for individual debtors with primarily consumer debts who file under chapter 7 or chapter 13 of the Bankruptcy Code is provided for with amended [supplemented] Schedules I and J. Those and other amendments specific only to one schedule are discussed separately with respect to each schedule.

Summary of Schedules - is amended to include additional information needed to prepare statistical reports required under 28 U.S.C. § 159, which was enacted as part of the Bankruptcy Reform Act of 2001, Pub. L. No. 107- , Stat , (, 2001).

Schedule B - Personal Property is amended to require the debtor to list any interests in an education IRA. The schedule also requires the debtor to indicate whether the debtor's stock in a corporation is publicly traded or closely held, and whether the stock or other interest the debtor has in a corporation and any unincorporated business, a partnership, and or joint venture constitutes a substantial or controlling interest in any of those entities. The schedule also is amended to require the debtor to list any personally identifiable information provided by an individual to the debtor in connection with obtaining a product or service from the debtor for personal, family, or household purposes.

Schedule C - Property Claimed as Exempt is amended to conform to provisions in the Bankruptcy Reform Act of 2001 requiring a longer period of domicile before a debtor can claim certain exemptions and indicating the eligibility for exemption of certain retirement funds.

Schedule D - Creditors Holding Secured Claims is amended to advise the debtor not to disclose on the form the name and address of any minor child and to limit the listing of any account numbers to only the last four digits.

Schedule E - Creditors Holding Unsecured Priority Claims is amended implement the changes in priority to which a claim may be entitled under 11 U.S.C. § 507 as amended by the Bankruptcy Reform Act of 2001 and to add the new priority included in the Reform Act for claims for death or personal injury while the debtor was intoxicated. The form also is amended to advise the debtor not to disclose on the form the name and address of any minor child and to

limit the listing of any account numbers to only the last four digits.

Schedule F - is amended to advise the debtor not to disclose on the form the name and address of any minor child and to limit the listing of any account number to only the last four digits.

Schedule G - Executory Contracts and Unexpired Leases is amended to advise the debtor not to disclose on the form the name and address of any minor child.

Schedule H - Codebtors is amended to direct a debtor who resides or formerly resided in a community property state, commonwealth, or territory to disclose the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property jurisdiction. The form also is amended to advise the debtor not to disclose on the form the name and address of any minor child.

Schedule I - Current Income of Individual Debtor(s) is amended to delete the listing of dependents' names, which will avoid disclosure of the names of minor children. Limiting the information disclosed to the age and relationship of the debtor's dependents should be sufficient for purposes of the bankruptcy case. The Bankruptcy Reform Act of 2001 provides for the debtor to provide the name of any minor child confidentially to the court. [Means test language can be added once a decision is made concerning the means test's incorporation into the official forms.]

Schedule J- Current Expenditures of Individual Debtor(s) [Means test language can be added once a decision is made concerning the means test's incorporation into the official forms.]

Declaration Concerning Debtor's Schedules - The declaration and certification by a non-attorney bankruptcy petition preparer in the form have been amended to include material mandated by 11 U.S.C. § 110 as amended by the Bankruptcy Reform Act of 2001.

FORM 7. STATEMENT OF FINANCIAL AFFAIRS

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 schedule. Indicate payments, transfers and the like to minor children by stating "a minor child." See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within the six years immediately preceding 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.

"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.

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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 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.) File separately copies of pay stubs, payment advices, or similar evidence of payment, if any, received by the debtor from any employer of the debtor in the period of 60 days before the filing of the petition.

AMOUNT	SOURCE (if more than one)

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, or 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

None ☐ a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than $600 to any creditor, made within **90 days** immediately preceding the commencement of this case. (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. 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

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4. Suits and administrative proceedings, executions, garnishments and attachments

None ☐ a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION

None ☐ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of 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 PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY

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5. Repossessions, foreclosures and returns

None ☐ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of 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 OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY

---

6. Assignments and receiverships

None ☐ a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment 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 ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT

None ☐ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of 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 CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY

7. Gifts

None ☐ List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than $200 in value per individual family member and charitable contributions aggregating less than $100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions 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 PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT

---

8. Losses

None ☐ List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case**. (Married debtors filing under chapter 12 or chapter 13 must include losses 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.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS

---

9. Payments related to debt counseling or bankruptcy

None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY

---

10. Other transfers

None ☐ List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include 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 TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED

11. Closed financial accounts

None ☐ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for 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 INSTITUTION	TYPE AND NUMBER OF ACCOUNT AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING

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12. Safe deposit boxes

None ☐ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of 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 BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY

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13. Setoffs

None ☐ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning 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	DATE OF SETOFF	AMOUNT OF SETOFF

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14. Property held for another person

None ☐ List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY

15. Prior address of debtor

None ☐ If the debtor has moved within the **two years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY

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16. Spouses and Former Spouses

None ☐ 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 ~~six~~**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.

NAME

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17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

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None ☐ a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

None ☐ b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

None ☐ c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION

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18 . Nature, location and name of business

None ☐ a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was a self-employed professional within the **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of this case.

NAME	TAXPAYER I.D. NUMBER	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES

None ☐ b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within the **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or otherwise self-employed.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within the six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

19. Books, records and financial statements

None ☐ a. List all bookkeepers and accountants who within the **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED

None ☐ b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED

None ☐ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME	ADDRESS

None ☐ d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the **two years** immediately preceding the commencement of this case by the debtor.

NAME AND ADDRESS	DATE ISSUED

20. Inventories

None ☐ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY	INVENTORY SUPERVISOR	DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)

None ☐ b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY	NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS

21 . Current Partners, Officers, Directors and Shareholders

None ☐ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST

None ☐ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP

22 . Former partners, officers, directors and shareholders

None ☐ a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL

None ☐ b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION

23 . Withdrawals from a partnership or distributions by a corporation

None ☐ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY

24. Tax Consolidation Group.

None ☐ If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within the **six-year period** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION TAXPAYER IDENTIFICATION NUMBER

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25. Pension Funds.

None ☐ If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within the **six-year period** immediately preceding the commencement of the case.

NAME OF PENSION FUND TAXPAYER IDENTIFICATION NUMBER

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* * * * * *

[If completed by an individual or individual and spouse]

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date _____ Signature _____
of Debtor

Date _____ Signature _____
of Joint Debtor
(if any)

[If completed on behalf of a partnership or corporation]

I, declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief

Date _____ Signature _____

_____
Print Name and Title

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

____ continuation sheets attached

Penalty for making a false statement Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. § 152 and 3571

CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I ~~certify~~declare under penalty of perjury that I am a bankruptcy petition preparer as defined in 11 U.S.C § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document and the notices required under 11 U.S.C. §§ 110(b), 110(h), and 342(b). I certify that if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 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 of Bankruptcy Petition Preparer Social Security No.
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
If the bankruptcy petition preparer is not an individual, this certification must be signed by an officer, principal, responsible person or partner of the bankruptcy petition preparer.

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

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. 18 U.S.C. § 156.

COMMITTEE NOTE

The form is amended to advise the debtor not to disclose on the form the name and address of any minor child and to direct the debtor to file separately the copies of pay stubs, payment advices, or similar evidences of payment received from the debtor's employer during the 60-day period before the filing of the petition. In addition, the declaration and certification by a non-attorney bankruptcy petition preparer have been amended to include material mandated by 11 U.S.C. § 110 as amended by the Reform Act. These amendments are required to implement the provisions of the Bankruptcy Reform Act of 2001. The form also is amended to extend from six years to eight years the period before the filing of the petition concerning which the debtor is required to disclose the name of the debtor's spouse or of any former spouse who resides or resided with the debtor in a community property state.

Official Form 8
(DRAFT)

United States Bankruptcy Court

_____ District Of _____

In re _____,
Debtor

Case No. _____
Chapter 7

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

1. I have filed a schedule of assets and liabilities which includes consumer debts secured by property of the estate.

2. I intend to do the following with respect to the property of the estate which secures those consumer debts:

a. *Property to Be Surrendered.*

Description of Property **Creditor's name**

b. Property to Be Retained *[Check ~~any~~the applicable statement.]*

Description of Property	Creditor's Name	~~Property is claimed as exempt~~	Property will be redeemed pursuant to 11 U.S.C. § 722	Debt will be reaffirmed pursuant to 11 U.S.C. § 524(c)

Date: _____

_____
Signature of Debtor

CERTIFICATION OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I ~~certify~~declare under penalty of perjury that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document and the notices required under 11 U.S.C. §§ 110(b), 110(h), and 342(b). I certify that if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 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 of Bankruptcy Petition Preparer Social Security No.

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 and title, if any, of Bankruptcy Petition Preparer Date

If the bankruptcy petition preparer is not an individual, this certification must be signed by an officer, principal, responsible person or partner of the bankruptcy petition preparer.

Names and Social Security Numbers of all other individuals who prepared or assisted in preparing this document.

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.

COMMITTEE NOTE

The declaration and certification by a non-attorney bankruptcy petition preparer in the form have been amended to include material mandated by the Bankruptcy Reform Act of 2001, Pub. L. No. 107- , Stat , (, 2001).

Form 9

COMMITTEE NOTE

[The form and committee note will be provided at the meeting.]

FORM B10 (Official Form 10) (DRAFT)

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):	☐ 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.
Name and address where notices should be sent. Telephone number:	☐ 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.
Last four digits of account or other number by which creditor identifies debtor:	Check here ☐ replaces if this claim ☐ amends a previously filed claim, dated:_____

THIS SPACE IS FOR COURT USE ONLY

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 case 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 if c) none or only part of your claim is entitled to priority.

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 $4,650),* earned within 90 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).

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: $_____

☐ Up to $2,100* 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 4/1/04 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.

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):

THIS SPACE IS FOR COURT USE ONLY

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

INSTRUCTIONS FOR PROOF OF CLAIM FORM

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

DEFINITIONS

Debtor

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

Creditor

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

Proof of Claim

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

Secured Claim

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim*.)

Unsecured Claim

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

Unsecured Priority Claim

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims.*

Items to be completed in Proof of Claim form (if not already filled in)

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

Information about Creditor:
Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form.

1. Basis for Claim:
Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

2. Date Debt Incurred:
Fill in the date when the debt first was owed by the debtor.

3. Court Judgments:
If you have a court judgment for this debt, state the date the court entered the judgment.

4. Classification of Claim

Secured Claim:
Check the appropriate place if the claim is a secured claim. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured. (See DEFINITIONS, above).

Unsecured Priority Claim:
Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority. (See DEFINITIONS, above). A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

Unsecured Nonpriority Claim:
Check the appropriate place if you have an unsecured nonpriority claim, sometimes referred to as a "general unsecured claim". (See DEFINITIONS, above.) If your claim is partly secured and partly unsecured, state here the amount that is unsecured. If part of your claim is entitled to priority, state here the amount **not** entitled to priority.

5. Total Amount of Claim at Time Case Filed:
Fill in the total amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

6. Credits:
By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

7. Supporting Documents:
You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

COMMITTEE NOTE

The form is amended to conform to the priority afforded the claims of certain creditors in § 507(a) of the Code as amended by the Bankruptcy Reform Act of 2001, Pub. L. No. 107- , Stat , (, 2001), and to provide spaces for stating the amount of any unsecured nonpriority claim. The contents of the form also have been rearranged and the instructions amended to include the separate listing of a general unsecured claim.

Official Form 16A
(DRAFT)

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 ~~68~~ years.]* Debtor	)	Case No. _____
Address _____	)	
_____	)	Chapter _____
Social Security No(s).:* _____	)	
Employer's Tax Identification No(s). *[if any]:* * _____	)	
_____	)	

[Designation of Character of Paper]

*Use the last four digits of Social Security and Tax Identification numbers, unless the caption is for a notice given by the debtor and the use of the debtor's full Social Security number is required by 11 U.S.C. § 342(c).

Form 16A

COMMITTEE NOTE

The form is amended to require that the title of the case include all names used by the debtor within the last eight years, to implement the provision of the Bankruptcy Reform Act of 2001, Pub. L. No. 107- , Stat , (,2001) extending from six years to eight years the period during which a debtor is barred from receiving successive discharges. The form also is amended to direct that only the last four digits of the debtor's Social Security or tax identification number be provided unless the caption is for a notice given by the debtor and the use of the debtor's full Social Security number is required by 11 U.S.C. § 342(c). This amendment implements the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files.

Official Form 16C
(DRAFT)

FORM 16C. CAPTION OF COMPLAINT IN ADVERSARY PROCEEDING FILED BY A DEBTOR

United States Bankruptcy Court

_____ District Of _____

In re _____, *Debtor*	Case No. _____
Address _____	Chapter _____
Social Security No(s).:* _____ or Employer's Tax Identification No(s). *[if any]*:* _____	
_____, *Plaintiff*	
v.	
_____, *Defendant*	Adv. Proc. No. _____

COMPLAINT

*Use the last four digits of Social Security and Tax Identification numbers, unless the caption is for a notice is given by the debtor and the use of the full Social Security number is required by 11 U.S.C. § 342(c).

Form 16C

COMMITTEE NOTE

The form is amended to include a note directing that, in furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files, only the last four digits of a debtor's Social Security or tax identification number should be used, unless the caption is for a notice given by the debtor and the use of the full Social Security number is required by 11 U.S.C. § 342(c).

Official Form 18
(DRAFT)

United States Bankruptcy Court

_____ District Of _____

In re _____, *Set forth here all names including married, maiden, and trade names used by debtor within last ~~6~~8 years.]* Debtor	)	Case No. _____
Address _____ _____	)	Chapter 7
Social Security No(s).:* _____ Employer's Tax Identification No(s). *[if any]*:* _____ _____	)	

DISCHARGE OF DEBTOR

It appearing that the debtor is entitled to a discharge, **IT IS ORDERED:** The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

Dated: _____

BY THE COURT

_____
United States Bankruptcy Judge

*Last four digits only.

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

Official Form 18

EXPLANATION OF BANKRUPTCY DISCHARGE IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. *[In a case involving community property:]* [There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts that are Not Discharged.

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

a. Debts for most taxes;

b. Debts incurred to pay these taxes;

c. Debts that are ~~in the nature of alimony, maintenance, or support~~domestic support obligations;

d. Debts for most student loans;

e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;

f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle while intoxicated;

g. Some debts which were not properly listed by the debtor;

h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;

i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts.

j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans.

k. Debts incurred through the debtor's violation of laws relating to the provision of lawful goods and services.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

Form 18

COMMITTEE NOTE

The form is amended to require that the title of the case include all names used by the debtor within the last eight years to implement the provision of the Bankruptcy Reform Act of 2001, Pub. L. No. 107- , Stat , (,2001) extending from six years to eight years the period during which a debtor is barred from receiving successive discharges. The form also is amended to include a note directing that, in furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files, only the last four digits of a debtor's Social Security or tax identification number should be used. The explanation part of the form is amended to include additional types of debts that are not discharged and to revise certain terminology in conformity with provisions of the Bankruptcy Reform Act of 2001.

Official Form 19
(DRAFT)

United States Bankruptcy Court

_____ District Of _____

In re _____,
Debtor

Case No. _____

Chapter _____

CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I ~~certify~~declare under penalty of perjury that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document and the notices required under 11 U.S.C. §§ 110(b), 110(h), and 342 (b). I certify that if rules and guidelines have been promulgated pursuant to 11 U.S.C. § 110 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 of Bankruptcy Petition Preparer
If the bankruptcy petition preparer is not an individual, state the name, address, and social security number of the officer, principal, responsible person or partner who signs this document.

_____
Social Security No.

_____

_____
Address

X _____ _____
Signature and title, if any, of Bankruptcy Petition Preparer Date
If the bankruptcy petition preparer is not an individual, this certification must be signed by an officer, principal, responsible person or partner of the bankruptcy petition preparer.

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

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.

COMMITTEE NOTE

The declaration and certification by a non-attorney bankruptcy petition preparer in this form have been amended to include material mandated by the Bankruptcy Reform Act of 2001, Pub. L. No. 107- , Stat , (, 2001).

Form _____

[The draft form will be provided at the meeting.]

COMMITTEE NOTE

This form is new. It contains the notice a non-attorney bankruptcy petition preparer is required to give to a debtor under 11 U.S.C. § 110 as amended by the Bankruptcy Reform Act of 2001, Pub. L. No. 107- , Stat , (, 2001). The notice states that the bankruptcy petition preparer is not an attorney and must not give legal advice in language mandated in the Reform Act. The notice must be signed by the debtor and the bankruptcy petition preparer and filed with any document for filing prepared by the bankruptcy petition preparer. 11 U.S.C. § 110.

MEMORANDUM

To: Advisory Committee on Bankruptcy Rules
From: Melissa B. Jacoby
Date: August 28, 20001
Re: Potential Form Revisions To Reflect Section 102 of the Bankruptcy Reform Act of 2001

Section 102 of the Bankruptcy Reform Act of 2001 makes substantial revisions to 11 U.S.C. § 707 and related statutory provisions. If section 102 is enacted into law, the case of a chapter 7 filer with primarily consumer debts will be presumed abusive if the debtor is deemed able to pay a certain amount of debt (in dollars or percentage) under a legislatively-provided formula. To facilitate disclosure of the relevant information, the legislation amends section 707(b) to include the following language: "[a]s part of the schedule of current income and expenditures required under section 521, the debtor shall include a statement of the debtor's current monthly income, and the calculations that determine whether a presumption arises under [ability-to-pay formula] that shows how each amount is calculated." H.R. 333, 107th Cong. § 102 (2001). The current versions of Schedules I and J do not contain all of the information necessary to apply the ability-to-pay formula set forth in the legislation. Thus, it appears likely that the Official Forms will have to be amended or supplemented.

Although the legislation gives U.S. Trustees/Bankruptcy Administrators primary responsibility to police the new section 707(b), clerks of court also will need some information about debtors' ability to pay under the formula; the legislation amends 11 U.S.C. § 342 to require that "[i]n an individual case under chapter 7 in which the presumption of abuse is triggered under section 707(b), the *clerk shall give written notice to all creditors not later than 10 days after the date of the filing of the petition* that the presumption of abuse has been triggered." H.R. 333, 107th Cong. § 102 (2001) (emphasis added); Davis Polk & Wardwell Side-By-Side Comparison (hereinafter cited as "DPW") p.68. In addition, parties in interest will be authorized to file motions to dismiss or convert a case for presumed abuse based on the debtor's ability to pay under the formula.

Perhaps in recognition of the significant responsibility given to U.S. Trustees/Bankruptcy Administrators, the U.S. Trustees have been working for over a year on a set of worksheets that would implement the new requirements. We recently learned, however, that the Department of Justice does not plan to release the draft worksheets unless and until the legislation is signed into law. Thus, we cannot review those forms or use them as a starting point for the Committee's analysis.

Exhibit A contains what I believe to be the most basic pieces of information necessary for a new or revised form. Exhibit B explains the calculations for each piece of information on Exhibit A. Whether the detailed calculations contained in Exhibit B also should be incorporated into Official Forms is something that the Committee may wish to discuss.

EXHIBIT A
Basic Information Necessary To Implement Section 102 of the Bankruptcy Reform Act of 2001

1. Debtor(s):

2. Marital Status:

3. Number of Dependents:

4. Total Family Size:

5. Safe Harbor Standard:

6. Gross Monthly Income:

7. Does Gross Monthly Income Exceed Monthly Safe Harbor Standard? Yes ___ No___

8. Current Monthly Income:

9. Total Expenses/Deductions As Permitted By Section 102:
   a. Living Expense:
   b. Transportation:
   c. Food Clothing and Other Household Items:
   d. "Other Necessary Expenses:"
   e. Secured Debt Payments:
   f. Priority Debt Payments:
   g. Chapter 13 Administrative Expenses:
   h. Miscellaneous Deductions:

10. Monthly Net Income:

11. Five -Year Net Income:

12. Total Nonpriority Unsecured Claims:

13. Does Five Year Net Income Equal or Exceed $10,000? Yes___ No ___

14. Is Five Year Net Income at least 25% of the debtor's unsecured non-priority claims, or $6,000, whichever is greater? Yes ___ No ___

Check Box if Presumption of Abuse Arises (A Presumption of Abuse Arises if you answered "yes" to either question 13 or question 14) ☐

EXHIBIT B
Explanations and Calculations For Information on Exhibit A

1. **Debtor**: self-explanatory
2. **Marital status**: self-explanatory
3. **Number of dependents**
   a. "Dependents" is not defined in the legislation or the existing Bankruptcy Code.
   b. It may be sensible for debtors to list anyone as dependent who was listed as dependent on the debtor's most recent tax return.

4. **Total family size**: Debtor + Spouse (if any) + Dependents (if any).

5. **Safe Harbor Standard**
   a. Background:
      i. All debtors will be required to submit at least some income and expense calculations, but debtors with incomes below the safe harbor cannot be the subject of a motion to dismiss or convert even if their cases are presumed abusive under the ability-to-pay formula.

      ii. The safe harbor cannot simply be determined by looking at a Census Bureau chart, however. Although the calculation of the safe harbor begins with median income numbers, several adjustments must be made to establish the safe harbor in each case.

   b. Information necessary to calculate standard:
      i. Total family size (see 4, above)
      ii. State of residence (the legislation refers to the "applicable state")
      iii. Applicable median family income[1] in the applicable state,[2] subject to the following adjustments:

         (1) The legislation recognizes that the median income figures for

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[1]The legislation refers to "median <u>family</u> income of the applicable state" as the starting point for the safe harbor standard rather than "median <u>household</u> income" figures. On the national level, median family income figures tend to be higher than median household income figures. My research and consultation with Census Bureau staff suggest that state median family income is reported only once every 10 years. In the interim years, only state median household income is collected and reported. Thus, assuming no change in reporting procedures, it may not always be feasible to use median family income of the applicable state, as those figures will be out of date for safe harbor purposes much of the time.

[2]Although I have not independently verified this, I have been told that there are no median income figures for Puerto Rico, Guam, or the Northern Mariana Islands.

larger families tend to be lower than for smaller families. Thus, the legislation permits the safe harbor to be set by the highest median income for a family of equal or lesser size.

(2) Again, to ensure an appropriate safe harbor for large families, if the family has more than 4 members, the legislation requires that an additional $6,300 be added for each extra family member to the highest median income figure for a family of four or less.

6. **Gross Monthly Income**

a. Background:

i. Gross Monthly Income will have two purposes:

(1) Determine applicability of safe harbor standard

(2) Apply IRS Collection Financial Standards for food, clothing, and other household expenses, the amount of which is determined in part based on gross income. *See* 9(c), below.

b. Calculation:

i. Gross monthly income = Current Monthly Income (defined in 7, below) + Social Security Act benefits (if any) + payments to victim of war crimes or crimes against humanity (if any).

7. **Does Gross Monthly Income Exceed Safe Harbor Standard?**

a. If a debtor's Gross Monthly Income is equal to or less than the Safe Harbor Standard, a debtor cannot be subject to a motion to dismiss or convert for presumed abuse based on the ability to pay calculations. *See* DPW p. 246.

b. In addition, if the debtor's Gross Monthly Income is equal to or less than the Safe Harbor Standard, only a judge, U.S. trustee, or bankruptcy administrator may bring section 707(b) motions based on other types of abuse (e.g., no creditor motions).

8. **Current Monthly Income**

a. Background: A definition of Current Monthly Income will be added to 11 U.S.C. § 101. This definition requires something different than the information currently reported on Schedule I.

b. Calculation:

i. Current Monthly Income is the "average monthly income from all sources . . .. derived during the 6-month period preceding the date of determination." DPW p. 3-4.

(1) Include any monthly contributions from a non-filing spouse or any other source to household expenses.

(2) Exclude Social Security Act benefits and payments to victims of

war crimes or crimes against humanity.

ii. "Date of determination" generally will be assumed to be the last day of the calendar month immediately preceding the date of the filing. DPW p.3-4.

c. *Note*: The inclusive definition of current monthly income presumably includes income from operating a business, but the ability-to-pay calculations do not expressly require the deduction for the expenses of operating a business (other than to the extent they reduce the debtor's tax liability). If the Committee decides to develop or adopt a detailed form, it might want to think about how to address this issue.

d. *Note*: One might encounter non-uniformity problems in the reporting of Current Monthly Income. For example, some people get paid the first and fifteenth of every month, while others get paid every two weeks. The payment schedule can make a difference when determining a six-month average.

9. **Total Expenses/Deductions**

Background: Many of the allowable deductions are a combination of actual expenses and standard deductions based on the IRS Collection Financial Standards and other allowable expenses used in offers in compromise and other IRS workout procedures.[3] The IRS does not appear to update the Collection Financial Standards annually; the housing and transportation standards were last adjusted in October 1999.

a. *Living Expense Standard*

i. The legislation uses the IRS Collection Financial Standards allowable living expenses standard. It is a local standard, meaning that it varies by county and family size (2 or less, family of 3, or family of 4 or more).

ii. The living expenses standard covers monthly rent or mortgage payment, property taxes, homeowners or renters insurance, parking, necessary maintenance and repair, homeowner dues, condominium fees, gas, electricity, water, fuel oil, coal, bottled gas, trash and garbage collection, wood and other fuels, septic cleaning, and telephone. *See* Internal Revenue Service Form 433A, Publication 1854 (Rev. 1-1999). The

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[3]According to the IRS, the "Collection Financial Standards are used to help determine a taxpayer's ability to pay a delinquent tax liability." *See* http://www.irs.ustreas.gov/prod/ind_info/coll_stds/. Most of the IRS standards are currently derived from the Bureau of Labor Statistics Consumer Expenditure Survey, except for the miscellaneous standard in the household expense allowances, which was established by the IRS itself. One shortcoming of the IRS Collection Financial Standards is that the figures that depend on state, county, region, or Metropolitan Statistical Area apparently are unavailable for places such as Puerto Rico, Guam, and the Northern Mariana Islands.

allowance is nonetheless a single number and is not broken down into these components.

iii. It is somewhat unclear how to apply the standard to a debtor in bankruptcy who owns a home subject to a mortgage because the ability-to-pay formula provides a full deduction for mortgage payments (*see* 9(c), below), but does not indicate how to adjust the living expenses standard accordingly. For example, if the mortgage payment exceeds the total IRS housing allowance, does this mean that the debtor's utilities cannot be deducted from current monthly income at all?

iv. The legislation authorizes an additional deduction based on actual expenses for home energy costs if the debtor documents the expenses and demonstrates that they are "reasonable and necessary." DPW p. 242.

(1) The legislation does not indicate whether the debtor is permitted to demonstrate this in writing, and then take this deduction into account into her initial ability-to-pay calculations.

b. *Transportation*

i. The legislation uses the IRS Collection Financial Standard transportation allowance. Unlike the housing allowance, it is broken down into two components: ownership cost and operational expense/transportation. A debtor with no car payment (either lease or loan), or no car, gets no ownership cost allowance at all.

ii. The IRS Collection Financial Standards provide a national ownership cost allowance. The allowance varies depending on whether a debtor has one or two cars.

(1) In the bankruptcy context, the legislation provides that any secured debt payments, such as car loan payments, are deducted in full from current monthly income. Thus, the ownership cost allowance presumably does not apply or provide an additional allowance to someone with a car loan.

iii. The IRS Collection Financial Standards provide a regional or Metropolitan Statistical Area ("MSA") operational expense and transportation expenses.

(1) Thus, to apply these standards, the debtor must determine whether or not she resides in a MSA,[4] and if not, the applicable regional

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[4]For example, the Washington, D.C. MSA includes the District of Columbia along with the following counties or cities in Maryland: Calvert, Charles, Frederick, Montgomery, Prince George's County; along with the following counties or cities in Virginia: Arlington, Clarke, Culpepper, Fairfax, Fauquier, King George, Loudoun, Prince William, Spotsylvania, Stafford,

standard.

(2) The operational and transportation expense vary by whether the debtor has no car, one car, or two cars.

(3) Operating costs are intended to apply to insurance, registration fees, normal maintenance, fuel, public transportation, parking, and tolls, to the extent necessary to produce income or ensure health and welfare.

c. *Food, clothing, and other household items*

i. The IRS Collection Financial Standards provide separate allowances for food,[5] housekeeping supplies,[6] apparel and services,[7] personal care products and services, and miscellaneous. *See* www.irs.ustras.gov/prod/ind_info?coll_stds/cfs-other.html.

ii. The allowance varies based on the consumer's gross monthly income and family size.[8]

iii. The allowance is a national standard except for certain regions, such as Alaska and Hawaii, which have their own tables.

iv. I have assumed that application of this standard depends on Gross Monthly Income as defined above (e.g., Current Monthly Income + Social Security Act Benefits + Any Payments to Victims), rather than the debtor's actual

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Warren, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city; and the following counties in West Virginia: Berkeley, Jefferson. Similarly, the Boston MSA includes the following counties or cities in Massachusetts: Bristol, Essex, Hampden, Middlesex, Norfolk, Plymouth, Suffolk, Worcester; the following counties or cities in New Hampshire: Hillsborough, Merrimack, Rockingham, Strafford; the following county in Connecticut: Windham; and the following county in Maine: York. *See* http://www.irs.ustreas.gov/prod/ind_info/coll_stds/cfs-trans.html.

[5]The Internal Revenue Manual reports that this category includes all meals, home or away. Internal Revenue Manual 5.15.1-2 (2001).

[6]The Internal Revenue Manual reports that this category includes postage, stationery, laundry and cleaning supplies, other household products, cleansing and toilet tissue, paper towels and napkins, law and garden supplies, and miscellaneous supplies. *Id.*

[7]The Internal Revenue Manual reports that this category includes hair care products, haircuts and beautician services, oral hygiene products and articles, shaving needs, cosmetics, perfume, bath preparations, deodorants, feminine hygiene products, electric personal care appliances, personal care services, and repair of personal care appliances. *Id.*

[8]This does not mean, however, that larger families get a greater allowance. The allowance for a low income larger family will be smaller than the allowance for a higher income individual or smaller family.

gross income at the time of filing, but the legislation does not specifically state that this is the required approach.

v. The legislation permits a debtor to obtain a 5% increase in the food and clothing allowances if "it is demonstrated that it is reasonable and necessary." DPW p. 241. It is unclear whether the debtor is permitted to deduct this additional 5% in her initial ability-to-pay calculations.

d. *Other Necessary Expenses*

i. The legislation permits the debtor to deduct from current monthly income the debtor's "actual monthly expenses for the categories specified as Other Necessary Expenses" by the IRS. DPW p. 241. The IRS Collection Financial Standards permit the deduction of such expenses if they contribute to health and welfare and/or production of income. There are no set allowances. The Internal Manual provides a non-exhaustive list of examples of expenses that might be considered necessary, including, *inter alia*, child care, taxes, health care, court-ordered payments, involuntary deductions, life insurance, disability insurance for the self-employed, union dues, professional association dues. *See* Internal Revenue Manual 5.15.1.3.2.3. (2001). The Internal Revenue Manual suggests that optional telephone service is only an allowable expense if it either promotes health and welfare or production of income. It is not clear whether a debtor can list expenses such as this, or expenses that are not mentioned at all as examples, in her initial ability-to-pay calculations. This is just an example of the type of expense and issue in this category that a form or worksheet might need to address.

e. *Secured Debt Payments*

i. The debtor may deduct payments "as contractually due to secured creditors in each month of the 60 months following the date of the petition" and adequate protection payments that would have to be made if the debtor were in chapter 13. DPW p. 242 (emphasis added).

ii. Thus, the debtor must identify the claims entitled to priority, aggregate them, and divide by 60 to get the monthly secured debt figure. It is presumed for purposes of the ability-to-pay calculations that the payments are spread evenly throughout the 5 years.

iii. The legislation does not specifically address adjustable rate mortgages.

iv. The legislation does not specifically address balloon payments.

f. *Priority Debt Payments*

i. The legislation permits the debtor to deduct all priority claims.

ii. Thus, the debtor must identify the claims entitled to priority, aggregate them, and divide by 60 to get the monthly priority debt figure. It is presumed for purposes of the ability-to-pay calculations that payments are spread evenly throughout the 5 years.

g. *Chapter 13 Administrative Expenses*

i. The legislation recognizes that a portion of the debtor's disposable income in chapter 13 would be consumed by administrative expenses. To take this into account, the debtor will be able to deduct a deduction for up to 10% of the projected plan payments. *See* DPW 241.

(1) The precise amount of the deduction depends on the actual administrative expenses associated with chapter 13 in the debtor's district.

(2) Thus, the debtor will need to know the actual percentage in that district to take the proper deduction.

h. *Miscellaneous Deductions*

i. Care of Elderly, Chronically Ill, or Disabled

(1) The legislation authorizes a deduction for reasonable and necessary actual expenses for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family who is not a dependent and who is unable to pay for such expenses. DPW p. 241. It is unclear whether the debtor can deduct those expenses in her initial ability-to-pay calculation.

ii. Elementary or Secondary School

(1) The legislation authorizes a deduction for "actual expenses for each dependent child under the age of 18 years up to $1,500 per year per child to attend a private or public elementary or secondary school, if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary," assuming that those expenses are not already accounted for in the IRS allowances. DPW p. 241. It is unclear whether the debtor can deduct those expenses in her initial ability-to-pay calculations.

iii. Charitable Contributions

(1) Although the Internal Revenue Manual permits only limited allowances for charitable contributions, the Bankruptcy Code takes a different approach. Section 707(b) was amended in 1999 to provide that a court may not take into account whether a debtor made charitable contributions when determining whether granting chapter 7 relief to that debtor would be an abuse of the Bankruptcy Code. This amendment presumably was intended to prevent courts from finding chapter 7 debtors able to repay creditors with income that they otherwise are using to tithe and/or to make charitable contributions. This provision will still be in force, and thus arguably justifies a deduction in the ability-to-pay calculations,

subject to the restrictions provided in current section 707(b) (which incorporates by reference the definitions of charitable contribution and qualified religious or charitable entity or organization now set forth in 11 U.S.C. § 548).

10. **Monthly Net Income**
    a. Current Monthly Income - Total Expenses/Deductions = Monthly Net Income

11. **Five-Year Net Income**
    a. Monthly Net Income x 60 months = Five-Year Net Income

12. **Total Unsecured Nonpriority Claims**
    a. This information is self-explanatory, but note that the debtor must know the amount of general unsecured claims in order to complete the ability-to-pay calculations.
        i. If the debtor's five-year net income is less than $6,000, however, the debtor's chapter 7 case will not be presumed abusive regardless of the percentage of general unsecured debt she can pay.
        ii. In addition, if the debtor's five-year net income equals or exceeds $10,000, the debtor's chapter 7 case will be presumed abusive regardless of the percentage of general unsecured debt she can pay.

13. **Does Five Year Net Income Equal or Exceed $10,000?** Self-explanatory

14. **Is Five Year Net Income at least 25% of the debtor's unsecured non-priority claims, or $6,000, whichever is greater?** Self explanatory

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: "BUSINESS" AND MISCELLANEOUS RULES AMENDMENTS

DATE: AUGUST 28, 2001

The pending bankruptcy reform legislation introduces several new concepts into the Bankruptcy Code and contains a number of other revisions that require amendments and additions to the rules. For example, the legislation amends the definition of a small business debtor under § 101 such that the debtor no longer will elect that status. Furthermore, there are a great many consequences that flow from being a small business debtor. Small business debtors have different time periods for the filing and confirmation of chapter 11 plans than do other chapter 11 debtors. There will be official forms for chapter 11 plans and disclosure statements available to small business debtors, and the confirmation process itself can be streamlined as compared to the process for other, larger chapter 11 debtors. The expedited plan confirmation process creates a need to amend the notice rules. These debtors also have different reporting obligations concerning their business operations during the bankruptcy case.

There are other changes to the business bankruptcy provisions of the Code that require

rules and forms amendments and additions. The reform legislation authorizes the court to dispense with a § 341 meeting of creditors in "prepack" cases. There are new provisions governing the election of trustees in chapter 11 cases, and a requirement found in the new chapter 15 of the Code (although it applies to cases under any chapter) that creditors with foreign addresses be given more notice of the time than "domestic" creditors to file proofs of claims.

The specific provisions of the bankruptcy reform legislation that create the need for the changes set out below are referenced in each of the Committee Notes following the proposed rule change. Again, these amendments are set out in the Davis, Polk & Wardwell side-by-side comparison of the House and Senate versions of the reform bills.

Rule 1007. Lists, Schedules, and Statements; Time Limits

* * * * *

(c)TIME LIMITS. The schedules and statements, other than the statement of intention, shall be filed with the petition in a voluntary case, or if the petition is accompanied by a list of all the debtor's creditors and their addresses, within 15 days thereafter, except as

otherwise provided in subdivisions (d), (e), and (h) of this rule. In an involuntary case the schedules and statements, other than the statement of intention, shall be filed by the debtor within 15 days after entry of the order for relief. Schedules and statements filed prior to the conversion of a case to another chapter shall be deemed filed in the converted case unless the court directs otherwise. Except as provided in § 1116(3) of the Code, any ~~Any~~ extension of time for the filing of the schedules and statements may be granted only on motion for cause shown and on notice to the United States trustee and to any committee elected under § 705 or appointed under § 1102 of the Code, trustee, examiner, or other party as the court may direct. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.

COMMITTEE NOTE

The rule is amended to recognize the limitation on the extension of the time to file schedules and statements when the debtor is a small business debtor. The bankruptcy reform

legislation added § 1116(3) to the Bankruptcy Code which establishes a specific standard for the courts to apply in the event that the debtor in possession or the trustee seeks an extension for the filing of these forms for a period beyond 30 days after the order for relief.

Rule 1020. Election to be Considered a Small Business in a Chapter 11 Reorganization Case

~~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.~~ [Abrogated]

COMMITTEE NOTE

Under § 101 of the Bankruptcy Code as amended by the bankruptcy reform legislation, debtors no longer may elect to be treated as a small business debtor. Thus, there is no longer any need for the rule.

Rule 2002. Notices to Creditors, Equity Security Holders, United States, and United States Trustee

(a) TWENTY-DAY NOTICES TO PARTIES IN INTEREST.

Except as provided in subdivisions (h), (i), ~~and (*l*)~~ (*l*), and (p) 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:

* * * * *

(b) TWENTY-FIVE-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivision (*l*) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 25 days notice by mail of (1) the time fixed for filing objections and the hearing to consider approval of a disclosure statement or approval of a plan as a disclosure statement if the court has determined under § 1125(f) that a separate disclosure statement is not necessary; and (2) the time fixed for filing objections and the hearing to consider confirmation of a chapter 9, chapter 11, or chapter 13 plan.

* * * * *

(p) Unless the courts for cause orders that a longer period be set, a

creditor with a foreign address shall be given at least 45 [60?]days notice of the time fixed for filing proofs of claims under Rule 3003(c).

COMMITTEE NOTE

The bankruptcy reform legislation amended § 1125 to authorize the courts to dispense with a separate disclosure statement in some instances. In a small business case, the plan can serve as the disclosure statement if the court determines that the plan contains adequate information. The rule is amended to account for those instances in which the court makes such a determination. It is likely that the court will conditionally approve the plan as a disclosure statement, and the hearing on the final approval of the plan as the disclosure statement is likely to be consolidated with the hearing on confirmation of the plan itself.

Section 1514(d) of the Code, added by the bankruptcy reform legislation, requires that creditors with foreign addresses receive additional time over that provided to domestic creditors in which to file proofs of claims. Thus, subdivision (p) is added to the rule to grant those creditors at least 45 days [or 60 or some other amount] notice of the time within which to file proofs of claims. Other creditors continue to receive at least 20 days notice under subdivision (a)(7) of the rule. If cause exists, such as likely delays in the delivery of notices in particular locations, the court can extend the notice period for creditors with foreign addresses.

Rule 2003. Meeting of Creditors or Equity Security Holders

(a) DATE AND PLACE. Except as provided in § 341(e) of the Code, in ~~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 after the order of relief. In a chapter 12 family farmer debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 20 and no more than 35 days after the order for relief. 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. If there is an appeal from or a motion to vacate the order for relief, or if there is a motion to dismiss the case, the United States trustee may set a later date for the meeting. The meeting may be held at a regular place for holding court or at any other place designated by the United States trustee within the district convenient for the parties in interest. 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.

COMMITTEE NOTE

The bankruptcy reform legislation added § 341(e) to the Code which authorizes the court to dispense with a meeting of creditors when prior to the commencement of the case the debtor has solicited acceptances for a plan. The rule is amended to recognize that in those cases, no meeting of creditors will be held.

Rule 2007.1. Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case

* * * * *

(b) Election of trustee

* * * * *

(3) Report of Election and Resolution of Disputes.

(A) Report of Undisputed Election. If the election is not disputed, the United States trustee shall promptly file a report of the election, including the name and address of the

person elected and a statement that the election is undisputed. 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) Disputed Election. If 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 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 the resolution of the dispute is filed not later than 10 days after the United States trustee files the report, any person appointed by the United States trustee under § 1104(d) and approved in accordance with subdivision (c) of this rule shall serve as trustee. If a motion for the resolution of the dispute is timely filed, and the court determines the result of the election and approves the person elected, the report will constitute appointment of the elected person as of the date of entry of the order approving the appointment.~~

(c) Approval of Appointment. An order approving the appointment of a trustee ~~elected under § 1104(b) or appointed~~ under § 1104(d), or the appointment of an examiner under §1104(d) of the Code,

shall be made on application of the United States trustee. The application shall state the name of the person appointed and, to the best of the applicant's knowledge, all the person's connections with the debtor, creditors, any other parties in interest, their respective attorneys and accountants, the United States trustee, and persons employed in the office of the United States trustee. Unless the person has been elected under § 1104(b), the application shall state the names of the parties in interest with whom the United States trustee consulted regarding the appointment. The application shall be accompanied by a verified statement of the person appointed 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 any person employed in the office of the United States trustee.

COMMITTEE NOTE

Under § 1104(b)(2) of the Code, as amended by the bankruptcy reform legislation, the courts no longer must appoint a trustee who is elected to serve in a chapter 11 case. Instead, the election itself

constitutes the appointment in the absence of any dispute. 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 thus amended to delete the provision that would authorize the appointment of a trustee in a disputed election other than by action of the court.

Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case.

(a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee or debtor in possession, other than in a case of a small business debtor, 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; (2) keep a record of receipts and the disposition of money and property received; (3) file the reports and summaries required by §§ 308 and 704(8) of the Code which shall include a statement, if payments are made to employees, of the amounts of deductions for all taxes

required to be withheld or paid for and in behalf of employees and the place where these amounts are deposited; (4) as soon as possible after the commencement of the case, give notice of the case to every entity known to be holding money or property subject to withdrawal or order of the debtor, including every bank, savings or building and loan association, public utility company, and landlord with whom the debtor has a deposit, and to every insurance company which has issued a policy having a cash surrender value payable to the debtor, except that notice need not be given to any entity who has knowledge or has previously been notified of the case; (5) in a chapter 11 reorganization case, on or before the last day of the month after each calendar quarter until a plan is confirmed or the case is converted or dismissed, file and transmit to the United States trustee a statement of disbursements made during such calendar quarter and a statement of the amount of the fee required pursuant to 28 U.S.C § 1930(a)(6) that has been paid for such calendar quarter.

* * * * *

(d) Unless the court, for cause, sets another reporting interval, the trustee or debtor in possession in a case of a small business debtor shall file and transmit to the United States trustee on the first day of the third month after the order for relief, and quarterly thereafter, a report on the appropriate Official Form as required by § 308 of the Code.

(e) ~~(d)~~ TRANSMISSION OF REPORTS. In a chapter 11 case the court may direct that copies or summaries of other reports shall be mailed to the creditors, equity security holders, and indenture trustees. The court may also direct the publication of summaries of any such reports. A copy of every report and summary mailed or published under ~~pursuant to~~ this subdivision shall be transmitted to the United States trustee.

COMMITTEE NOTE

The bankruptcy reform legislation added § 308 to the Code. That section requires the trustee or debtor in possession of a small business debtor to submit periodic reports on profitability and

projected and actual cash receipts and disbursements. The section also requires that the debtor in possession or trustee report on compliance with the rules generally as well as the filing of necessary tax returns. The rule is amended to implement the obligation to file the reports and to establish timing intervals for the filing of the reports. In some cases, the need for the reports may be greater or lesser than on a quarterly basis, and the court can set a different interval in those circumstances. [Should the Committee Note offer examples for the type of cases in which more or less frequent reporting is proper? E.g., farmers who plant "annual" crops; debtors whose inventory turns over every 30 or 60 days?]

Other amendments are stylistic.

Rule 2020. Review of Acts by United States Trustee

Except as provided in 28 U.S.C. § 586(d)(2), Rule 9014 governs a ~~A~~ proceeding to contest any act or failure to act by the United States trustee ~~is governed by Rule 9014~~.

COMMITTEE NOTE

The rule is amended to recognize that the bankruptcy reform legislation has created a category of actions under 28 U.S.C. § 586 (d)(2) for which the Attorney General will prescribe procedures and which therefore should not be governed by Rule 9014.

Rule 3002. Filing Proof of Claim or Interest

(c) TIME FOR FILING. 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 not later than 90 days after the first date set for the meeting of creditors called under § 341(a) of the Code, except as follows:

(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, or, for a claim for a tax based on a return filed under § 1308 [of the Code], not later than 60 days after the date on which the return was filed . On motion of a governmental unit before the expiration of such period and for cause shown, the court may extend the time for filing of a claim by the governmental unit.

(2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either.

(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. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed.

(4) A claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct.

(5) A proof of claim filed by a creditor with a foreign address not later than 120 days after the first date set for the meeting of creditors called under § 341.

(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.

COMMITTEE NOTE

The rule is amended to conform to changes in the Code made by the bankruptcy reform legislation. Governmental units asserting claims based on tax returns filed during the pendency of a chapter 13 case have additional time to file proof of those claims under § 502(b)(9) of the Code.

The rule also is amended to provide additional time for a creditor with a foreign address to file a proof of claim. Section 1514(d) was added to the Code and it requires that the rules provide additional time for these creditors to file claims in cases under all chapters of the Code.

Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases

(b) FILING PROOF OF CLAIM.

(1) Who May File. Any creditor or indenture trustee may file a proof of claim within the time prescribed by subdivision (c)(3) of this rule

(2) Who Must File. Any creditor or equity security holder

whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the 11 purpose of voting and distribution.

(3) Time for Filing. The court shall fix and for cause shown may extend the time with which proofs of claim or interest may be filed. The court shall set an additional reasonable time within which a creditor with a foreign address may file a proof of claim. Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (c)(3), and (c)(4).

(4) Effect of Filing Claim or Interest. A proof of claim or interest executed and filed in accordance with this subdivision shall supersede any scheduling of that claim or interest pursuant to § 521(1) of the Code.

(5) Filing by Indenture Trustee. An indenture trustee may file a claim on behalf of all known or unknown holders of securities issued pursuant to the trust instrument under which it is trustee.

COMMITTEE NOTE

The rule is amended to implement § 1514(d) of the Code. That section requires that creditors with foreign addresses be provided additional time to file claims. Since the court has wide discretion in setting the claims bar date, the amendment does not set a specific time for the filing of proofs of claims by these creditors, but rather leaves that to the discretion of the court.

Rule 3016. Filing of Plan and Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases

(E) DISCLOSURE STATEMENT. Unless the court finds under § 1125(f) that it is not necessary to file a disclosure statement, in ~~In~~ a chapter 9 or 11 case, a disclosure statement under § 1125 or evidence showing compliance with § 1126(b) of the Code shall be filed with the plan or within a time fixed by the court.

COMMITTEE NOTE

The rule is amended to recognize that under the bankruptcy reform legislation, no disclosure statement is required in some cases. The legislation added § 1125(f) which provides that the plan proponent need not file a disclosure statement if the plan itself includes adequate information and the court finds that a separate disclosure statement is unnecessary.

Rule 3017.1. Court Consideration o Disclosure Statement in a Small Business Case

(A) CONDITIONAL APPROVAL OF DISCLOSURE STATEMENT. If the debtor is a small business ~~and has made a timely election to be considered a small business in a chapter 11 case~~, the court may, on application of the plan proponent, conditionally approve a disclosure statement filed in accordance with Rule 3016(b). On or before conditional approval of the disclosure statement, the court shall:

(1) fix a time within which the holders of claims and interests may accept or reject the plan;

(2) fix a time for filing objections to the disclosure

statement;

(3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and

(4) fix a date for the hearing on confirmation.

(B) APPLICATION OF RULE 3017. Rule 3017(a), (b), (c), and (e) do not apply to a conditionally approved disclosure statement. Rule (d) applies to a conditionally approved disclosure statement, except that conditional approval is considered approval of the disclosure statement for the purpose of applying Rule 3017(d).

(C) FINAL APPROVAL.

(1) Notice. Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement shall be given in accordance with Rule 2002 and may be combined with notice of the hearing on confirmation of the plan.

(2) Objections. Objections to the disclosure statement shall be filed, transmitted to the United States trustee, and served on

the debtor, the trustee, any committee appointed under the Code and any other entity designated by the court at any time before final approval of the disclosure statement or by an earlier date as the court may fix.

(3) Hearing. If a timely objection to the disclosure statement is filed, the court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of the plan.

COMMITTEE NOTE

Under the bankruptcy reform legislation, status as a small business debtor no longer requires an election by the debtor. Rather, § 101 of the Code defines an entity as a small business debtor eliminating any need to elect that status Therefore, the reference in the rule to election of that status is deleted.

Rule 3019. Modification of Accepted Plan Before or After Confirmation in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

(a) In a chapter 9 or chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee,

any committee appointed under the Code and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

(b) In the chapter 11 case of an individual, a request to modify a plan pursuant to § 1127(e) of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 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. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed

modification shall be included with the notice. If required by the court, the proponent shall furnish a sufficient number of copies of the proposed modification to enable the clerk to include a copy with each notice. Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.

COMMITTEE NOTE

The bankruptcy reform legislation amended chapter 11 to provide for the modification of confirmed plans. The rule is amended to establish the procedure for the filing and consideration of these proposals to modify confirmed plans.

Rule 5003. Records Kept by the Clerk.

(E) REGISTER OF MAILING ADDRESSES OF FEDERAL AND STATE GOVERNMENTAL UNITS. The United States or the state or territory in which the court is located, or any local governmental unit collecting taxes within the district in which the

case is pending for purposes of § 505 of the Code may file a statement designating its mailing address. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a register that includes there mailing addresses, but the clerk is not required to include in the register more than one mailing address for each department, agency, or instrumentality of the United States or the state or territory. If more than one address for a department, agency, or instrumentality is included in the register, the clerk shall also include information that each address is applicable, and mailing notice to only one applicable is sufficient to provide effective notice. The clerk shall update the register annually, effective January 2 of each year. The mailing address in the register is conclusively presumed to be a proper address for the governmental unit, but the failure to use that mailing address does not invalidate any notice that is otherwise effective under applicable law.

COMMITTEE NOTE

The rule is amended to implement the addition of § 505(b)(1) to the Coded in the bankruptcy reform legislation. The rule now includes local governmental units that are collecting taxes among the entities that can designate addresses to which all notices must be sent. These address notice designations are operative only to the extent that the notices are served in matters pending under § 505 of the Code.

Rule 9006. Time

(B) ENLARGEMENT.

(1) In General. Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(2) Enlargement Not Permitted. The court may not enlarge the time for taking action under Rules 1007(d), 2003(a) and (d), 7052, 9023, and 9024.

(3) Enlargement Limited. The court may enlarge the time for taking action under Rules 1006(b)(2), 1007(c),1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 8002 and 9033, only to the extent and under the conditions stated in those rules.

COMMITTEE NOTE

The bankruptcy reform legislation places specific outside limits on the time for submitting schedules and a statement of affairs under § 1116(3) of the Code. The rule is amended to recognize that extensions of time for filing these documents are governed by that section and cannot be granted beyond the time set forth in the Code.

Memorandum

To: Advisory Committee on Bankruptcy Rules

From: Subcommittees on Forms and Business Issues

Date: August 28, 2001

Re: Forms Needed to Implement Pending Bankruptcy Reform Legislation

This agenda item has two parts. The first part contains proposed amendments to the official forms that will be needed to implement various business-related provisions of the pending legislation. The forms included are Forms 1, 5, 6, 10, 16A, and 16C. The Committee Notes following each form explain the proposed amendments. Amendments also will be needed to Official Form 9 (the "§ 341 Notice); drafts of proposed amendments to Form 9 will be distributed at the meeting.

The second part contains a memorandum from Professor Markell, with three appendices, and four attachments. These materials address the new forms that will be required in small business chapter 11 cases -- for disclosure statements, plans, and operating reports. The appendices contain: excerpts from the pending legislation, lists of relevant disclosure statement provisions, and excerpts from the United States Trustee Policy Manual on current financial reporting requirements from the Office of the United States Trustee. The attachments are samples of existing local forms: a disclosure statement form and a plan form from the Central District of California, and operating reports (cash and accrual methods) from the Eastern District of California.

Attachments

(Official Form 1) (BRA DRAFT)

FORM B1 **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./Tax I.D. No. (if more than one, state all):	Last four digits of Soc. Sec./Tax I.D. No. (if more than one, state all):
Street Address of Debtor (No. & Street, City, State & Zip Code):	Street Address of Joint Debtor (No. & Street, City, 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):	Mailing Address of Joint Debtor (if different from street address):

Location of Principal Assets of Business Debtor (if different from street address above):

Type of Debtor (Check all boxes that apply)

- ☐ Individual(s)
- ☐ Corporation
- ☐ Partnership
- ☐ Health Care Business
- ☐ Other _____
- ☐ Railroad
- ☐ Stockbroker
- ☐ Commodity Broker
- ☐ Clearing Bank

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)

- ☐ Chapter 7
- ☐ Chapter 9
- ☐ Chapter 11
- ☐ Chapter 12
- ☐ Chapter 13
- ☐ Chapter 15

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 No. 3.
- ☐ Filing Fee waiver requested (Applicable to individuals only). Must attach signed application detailing the debtor's income and expenses for the court's consideration. See Official Form No. _____.

Nature of Debts (Check one box)

- ☐ Consumer/Non-Business
- ☐ Business

Individual and Joint Debtors with primarily consumer debts filing under chapter 7:

Current Monthly Income $_____

Size of Household = _____ persons

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

1-15	16-49	50-99	100-199	200-999	1000-over
☐	☐	☐	☐	☐	☐

THIS SPACE IS FOR COURT USE ONLY

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	More than $100 million
☐	☐	☐	☐	☐	☐	☐	☐

Estimated Debts

$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	More than $100 million
☐	☐	☐	☐	☐	☐	☐	☐

Individual and Joint Debtors with Primarily Consumer Debts Only:
If debtor checks "consumer/non-business" above, debtor also must complete this box.
Total Assets $_____ Total Liabilities $_____
(Give exact amounts rounded to the nearest dollar.)

Voluntary Petition *(This page must be completed and filed in every case)*	Name of Debtor(s):	
Prior Bankruptcy Case Filed Within Last 8 Years (If more than one, attach additional sheet)		
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 delivered to the debtor the notice required by § 342(b) of the Bankruptcy Code.

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

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

☐ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately 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 District.

☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of justice and convenience of the parties will be served in regard to the relief sought in this District.

Certification Concerning Debt Counseling by Individual/Joint Debtor(s)

☐ I/we have received approved budget and credit counseling during the 180-day period preceding the filing of this petition.

☐ I/we request a waiver of the requirement to obtain budget and credit counseling prior to filing based on exigent circumstances. Must attach certification describing.

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 § 342(b) of the Bankruptcy Code.

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 Attorney

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 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 Petition Preparer

I declare under penalty of perjury that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document and the notices required under 11 U.S.C. §§ 110(b), 110(h), and 342(b). Official Form No. ____ is attached. I certify that if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 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 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 peption preparer.)

_____
Address

_____

X _____
Signature and title, if any, 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:

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.

COMMITTEE NOTE

The form is amended to implement [reflect] amendments to the Bankruptcy Code contained in the Bankruptcy Reform Act of 2001, Pub. L. No. 107- , Stat. , (, 2001). The period for which the debtor must provide all names used is extended to eight years to match the new minimum time between the granting of discharges to the same debtor. The amendments also require an individual debtor with primarily consumer debts to file information that will help the clerk to determine whether the presumption of abuse has been triggered in a case filed under chapter 7. The box indicating the debtor's selection of chapter under which to file the case has been amended to delete "Sec. 304 - Case ancillary to foreign proceeding" and replace it with the new "Chapter 15." A statement of venue to be used in a chapter 15 case also has been added. A check box has been added for a debtor to indicate that the debtor is applying for a waiver of the filing fee. The section of the form relating to a chapter 11 small business debtor has been deleted, because under the definition contained in the Bankruptcy Reform Act the debtor will not know at the time of filing whether the case will be a "small business case." The statistical section of the form is amended to require individuals with primarily consumer debts to state the actual dollar amounts of their assets and liabilities. A space has been provided for individuals to certify that they have received budget and credit counseling prior to filing or to request a waiver of the requirement. The signature sections and the declaration under penalty of perjury by an individual debtor concerning the notice received concerning bankruptcy relief, the declaration under penalty of perjury by a non-attorney bankruptcy petition preparer, and the declaration and certification by an attorney all have been amended to include new material mandated by the Bankruptcy Reform Act. In addition, in furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files, the form is amended to require the debtor to provide only the last four digits of the debtor's Social Security or tax identification number.

FORM B5
(DRAFT)

United States Bankruptcy Court

District of _____

INVOLUNTARY PETITION

IN RE (Name of Debtor - If Individual: Last, First, Middle)	ALL OTHER NAMES used by debtor in the last 8 years (Include married, maiden, and trade names.)
Last four digits of SOC. SEC./TAX I.D. NO. (If more than one, state all.)	
STREET ADDRESS OF DEBTOR (No. and street, city, state, and zip code) COUNTY OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS	MAILING ADDRESS OF DEBTOR (If different from street address)
LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR (If different from previously listed addresses)	

CHAPTER OF BANKRUPTCY CODE UNDER WHICH PETITION IS FILED

☐ Chapter 7 ☐ Chapter 11

INFORMATION REGARDING DEBTOR

(Check one box)
Petitioners believe:
☐ Debts are primarily consumer debts
☐ Debts are primarily business debts (Complete section B)

TYPE OF DEBTOR (check any applicable box)
☐ Individual ☐ Corporation
☐ Partnership ☐ Health Care Business
☐ Other: _____

B. BRIEFLY DESCRIBE NATURE OF BUSINESS

VENUE

☐ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in the District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ A bankruptcy case concerning debtor's affiliate, general partner or partnership is pending in this District.

PENDING BANKRUPTCY CASE FILED BY OR AGAINST ANY PARTNER OR AFFILIATE OF THIS DEBTOR (Report information for any additional cases on attached sheets.)

Name of Debtor	Case Number	Date
Relationship	District	Judge

ALLEGATIONS
(Check applicable boxes)

1. ☐ Petitioner(s) are eligible to file this petition pursuant to 11 U.S.C. § 303(b).
2. ☐ The debtor is a person against whom an order for relief may be entered under title 11 of the United States Code.
3.a. ☐ The debtor is generally not paying such debtor's debts as they become due, unless such debts are the subject of a bona fide dispute as to liability or amount;

or

b. ☐ Within 120 days preceding the filing of this petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.

COURT USE ONLY

Name of Debtor ______________________

FORM 5 Involuntary Petition
(DRAFT)

Case No. ______________________
(court use only)

TRANSFER OF CLAIM

☐ Check this box if there has been a transfer of any claim against the debtor by or to any petitioner. Attach all documents evidencing the transfer and any statements that are required under Bankruptcy Rule 1003(a).

REQUEST FOR RELIEF

Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition.

Petitioner(s) declare under penalty of perjury that the foregoing is true and correct according to the best of their knowledge, information, and belief.

X ______________________
Signature of Petitioner or Representative (State title)

____
Name of Petitioner Date Signed

Name & Mailing Address of Individual Signing in Representative Capacity ______________________

X ______________________
Signature of Attorney Date

____
Name of Attorney Firm (If any)

____
Address

____
Telephone No.

X ______________________
Signature of Petitioner or Representative (State title)

____
Name of Petitioner Date Signed

Name & Mailing Address of Individual Signing in Representative Capacity ______________________

X ______________________
Signature of Attorney Date

____
Name of Attorney Firm (If any)

____
Address

____
Telephone No.

X ______________________
Signature of Petitioner or Representative (State title)

____
Name of Petitioner Date Signed

Name & Mailing Address of Individual Signing in Representative Capacity ______________________

X ______________________
Signature of Attorney Date

____
Name of Attorney Firm (If any)

____
Address

____
Telephone No.

PETITIONING CREDITORS

Name and Address of Petitioner	Nature of Claim	Amount of Claim
Name and Address of Petitioner	Nature of Claim	Amount of Claim
Name and Address of Petitioner	Nature of Claim	Amount of Claim
Note: If there are more than three petitioners, attach additional sheets with the statement under penalty of perjury, each petitioner's signature under the statement and the name of attorney and petitioning creditor information in the format above.		Total Amount of Petitioners' Claims

______ continuation sheets attached

COMMITTEE NOTE

This form is amended to delete statistical information no longer required and to add "as to liability or amount" to the language concerning debts that are the subject of a bona fide dispute, in conformity amendments to § 303 of the Bankruptcy Code made by the Bankruptcy Reform Act of 2001, Pub. L. No. 107- , Stat , (, 2001). In furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files, petitioning creditors are directed to provide only the last four digits of the debtor's Social Security or tax identification number.

Form B6B
(DRAFT)

In re _____, Case No. _____
Debtor (If known)

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." In providing the information requested in this schedule, do not include the name or address of a minor child. Simply state "a minor child."

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand 2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives. 3. Security deposits with public utilities, telephone companies, landlords, and others. 4. Household goods and furnishings, including audio, video, and computer equipment. 5. Books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles. 6. Wearing apparel. 7. Furs and jewelry. 8. Firearms and sports, photographic, and other hobby equipment. 9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each. 10. Annuities. Itemize and name each issuer. ~~12~~11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c); Rule 1007(b)).				

Form B6B-Cont.
(DRAFT)

In re _____, Case No. _____
Debtor (If known)

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH-OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
~~11~~12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. ~~Itemize.~~ Give particulars. 13. Stock and interests in incorporated and unincorporated businesses. Itemize. Indicate for stock whether it is closely held or publicly traded and for every type of interest whether the debtor holds a substantial or controlling interest. 14. Interests in partnerships or joint ventures. Itemize. Indicate whether the debtor holds a substantial or controlling interest. 15. Government and corporate bonds and other negotiable and non-negotiable instruments. 16. Accounts receivable. 17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars 18. Other liquidated debts owing debtor including tax refunds. Give particulars. 19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property. 20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust. 21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each. Indicate whether the debtor holds a substantial or controlling interest.				

Form B6B-cont.
(DRAFT)

In re _____, Case No. _____
Debtor (If known)

SCHEDULE B -PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH-OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
22. Patents, copyrights, and other intellectual property. Give particulars.				
23. Licenses, franchises, and other general intangibles. Give particulars.				
24. Personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided by individuals to the debtor in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes. Give details, including whether the debtor has disclosed a policy to an individual prohibiting the transfer of personally identified information to unaffiliated third persons and whether the policy remains in effect.				
25. Automobiles, trucks, trailers, and other vehicles and accessories.				
26. Boats, motors, and accessories.				
27. Aircraft and accessories.				
28. Office equipment, furnishings, and supplies.				
29. Machinery, fixtures, equipment, and supplies used in business.				
30. Inventory.				
31. Animals.				
32. Crops - growing or harvested. Give particulars.				
33. Farming equipment and implements.				
34. Farm supplies, chemicals, and feed.				
35. Other personal property of any kind not already listed. Itemize.				
		_____continuation sheets attached Total➤		$

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

Form B6C
(DRAFT)

In re _____, **Case No.** _____
Debtor **(If known)**

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled under:
(Check one box)

☐ 11 U.S.C. § 522(b)(~~1~~2): Exemptions provided in 11 U.S.C. § 522(d). **Note: These exemptions are available only in certain states.**

☐ 11 U.S.C. § 522(b)(~~2~~3): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the ~~180~~730 days immediately preceding the filing of the petition, or ~~for a longer portion of the 180-day period than in any other place, and~~if the debtor's domicile has not been located at a single state for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place; the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law; and certain retirement funds to the extent provided in 11 U.S.C. §§ 522(b)(3)(C) and (b)(4).

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION

Form B6D
(DRAFT)

In re _____, Debtor

Case No. _____ (If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding claims secured by property of the debtor as of the date of filing of the petition. 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 all secured creditors will not fit on this page, use the continuation sheet provided.

If a minor child is a creditor, indicate that by stating "a minor child." Do not include the name or address of a minor child in this schedule. See 11 U.S.C. § 112; 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 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.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND ~~MARKET~~ 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 $					
ACCOUNT NO. *			VALUE $					

_____continuation sheets attached

Subtotal➤ (Total of this page) $

Total➤ (Use only on last page) $

(Report total also on Summary of Schedules)

*Use only last four digits of account number

Form B6D - Cont.
(DRAFT)

In re _____, Case No. _____
Debtor (If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND ~~MARKET~~ 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 $					
ACCOUNT NO. *			VALUE $					
ACCOUNT NO. *			VALUE $					

Sheet no. ___ of ___continuation sheets attached to Schedule of Creditors Holding Secured Claims

Subtotal➤ (Total of this page) $

Total➤ (Use only on last page) $

(Report total also on Summary of Schedules)

*Use only last four digits of account number.

Form B6E
(DRAFT)

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 and 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.

If a minor child is a creditor, indicate that by stating "a minor child." Do not include the name or address of a minor child in this schedule. See 11 U.S.C. § 112; 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 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 "Subtotal" 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. Repeat this total also on the Summary of Schedules.

☐ 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)

☐ ~~**Alimony, Maintenance, or Support**~~ **Domestic Support Obligations**

~~Claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in 11 U.S.C. § 507(a)(1).~~ 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 $4,650* per person earned within 90 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).

In re _____, Case No._____
Debtor (if known)

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to $4,650* 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 $2,100* 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 injuries resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated. 11 U.S.C. § 507(a)(10).

* Amounts are subject to adjustment on April 1, 2004, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

____ continuation sheets attached

Form B6E - Cont.
(DRAFT)

In re _____, Case No. _____
Debtor (If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet)

TYPE OF PRIORITY

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. *								
ACCOUNT NO. *								
ACCOUNT NO. *								
ACCOUNT NO. *								
ACCOUNT NO. *								

Sheet no. ___ of ___ sheets attached to Schedule of Creditors Holding Priority Claims

Subtotal➤ (Total of this page) $

Total➤ (Use only on last page of the completed Schedule E.) (Report total also on Summary of Schedules) $

*Use only last four digits of account number.

Form B6F (DRAFT)

In re _____, Debtor

Case No. _____ (If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of the account number, if any, 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. 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 a minor child is a creditor, indicate that by stating "a minor child." Do not include the name or address of a minor child in this schedule. See 11 U.S.C. §112; 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 husband, wife, both of them, or the marital community maybe 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 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.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							

_____continuation sheets attached

Subtotal ➤ $

Total ➤ $

(Report also on Summary of Schedules)

* Use only last four digits of account number.

Form B6F - Cont.
(DRAFT)

In re _____, Debtor

Case No. _____ (If known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							
ACCOUNT NO. *							

Sheet no. ___ of ___sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal ➤ (Total of this page) $

Total ➤ $

(Use only on last page of the completed Schedule E.)
(Report total also on Summary of Schedules)

* Use only last four digits of account number.

Form B6G
(DRAFT)

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." Do not include the name or address of the minor child in this schedule. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

☐ 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.

Form B6H
(DRAFT)

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 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 ~~six~~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 ~~six~~ 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." Do not include the name and address of a minor child in this schedule. See 11 U.S.C. § 112; Fed. Bankr. P. 1007(m).

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR

Official Form 6-Cont.
(DRAFT)

In re _____, Debtor

Case No. _____ (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 _____ (Total shown on summary page plus 1.) sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date _____ Signature: _____ Debtor

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

[If joint case, both spouses must sign.]

CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I ~~certify~~declare under penalty of perjury that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document and the notices required under 11 U.S.C. §§ 110(b), 110(h) and 342(b). I certify that if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 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 of Bankruptcy Petition Preparer Social Security No.

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 and title, if any, of Bankruptcy Petition Preparer Date

If the bankruptcy petition preparer is not individual, this certification must be signed by an officer, principal, responsible person or partner of the bankruptcy petition preparer.

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document

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 _____ (Total shown on summary page plus 1.) sheets, 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.

FORM B6J
(6/90)

In re _____, Debtor

Case No. _____ (If known)

SCHEDULE J—CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

Rent or home mortgage payment (include lot rented for mobile home)	$ _____
Are real estate taxes included? Yes _____ No _____	
Is property insurance included? Yes _____ No _____	
Utilities Electricity and heating fuel	$ _____
Water and sewer	$ _____
Telephone	$ _____
Other _____	$ _____
Home maintenance (repairs and upkeep)	$ _____
Food	$ _____
Clothing	$ _____
Laundry and dry cleaning	$ _____
Medical and dental expenses	$ _____
Transportation (not including car payments)	$ _____
Recreation, clubs and entertainment, newspapers, magazines, etc.	$ _____
Charitable contributions	$ _____
Insurance (not deducted from wages or included in home mortgage payments)	
Homeowner's or renter's	$ _____
Life	$ _____
Health	$ _____
Auto	$ _____
Other _____	$ _____
Taxes (not deducted from wages or included in home mortgage payments) (Specify) _____	$ _____
Installment payments: (In chapter 12 and 13 cases, do not list payments to be included in the plan)	
Auto	$ _____
Other _____	$ _____
Other _____	$ _____
Alimony, maintenance, and support paid to others	$ _____
Payments for support of additional dependents not living at your home	$ _____
Regular expenses from operation of business, profession, or farm (attach detailed statement)	$ _____
Other _____	$ _____
TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)	$ _____

[FOR CHAPTER 12 AND 13 DEBTORS ONLY]

Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

A. Total projected monthly income	$ _____
B. Total projected monthly expenses	$ _____
C. Excess income (A minus B)	$ _____
D. Total amount to be paid into plan each _____ (interval)	$ _____

Form B6I
(DRAFT)

In re _____, Debtor

Case No._____ (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 a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status:	List dependents of debtor and spouse. Indicate age and relationship of each, but do not disclose the name of any minor child.

Employment:	DEBTOR	SPOUSE
Occupation		
Name of Employer		
How long employed		
Address of Employer		

Income: (Estimate of average monthly income)	DEBTOR	SPOUSE
Current monthly gross wages, salary, and commissions (pro rate if not paid monthly.)	$ _____	$ _____
Estimated monthly overtime	$ _____	$ _____
SUBTOTAL	$ _____	$ _____
LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	$ _____	$ _____
b. Insurance	$ _____	$ _____
c. Union dues	$ _____	$ _____
d. Other (Specify: _____)	$ _____	$ _____
SUBTOTAL OF PAYROLL DEDUCTIONS	$ _____	$ _____
TOTAL NET MONTHLY TAKE HOME PAY	$ _____	$ _____
Regular income from operation of business or profession or farm (attach detailed statement)	$ _____	$ _____
Income from real property	$ _____	$ _____
Interest and dividends	$ _____	$ _____
Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above.	$ _____	$ _____
Social security or other government assistance (Specify) _____	$ _____	$ _____
Pension or retirement income	$ _____	$ _____
Other monthly income	$ _____	$ _____
(Specify) _____	$ _____	$ _____
_____	$ _____	$ _____
TOTAL MONTHLY INCOME	$ _____	$ _____

TOTAL COMBINED MONTHLY INCOME $_____ (Report also on Summary of Schedules)

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

COMMITTEE NOTE

The forms of the Schedules of Assets and Liabilities have been amended to implement the provisions of the Bankruptcy Reform Act of 2001, Pub. L. No. 107- , Stat ,(, 2001). Some amendments occur in several of the schedules. These include directions to avoid disclosing the name and address of any minor child and, in furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files, to disclose only the last four digits of any account number reported on the schedules.

The "means test" mandated for individual debtors with primarily consumer debts who file under chapter 7 or chapter 13 of the Bankruptcy Code is provided for with amended [supplemented] Schedules I and J. Those and other amendments specific only to one schedule are discussed separately with respect to each schedule.

Summary of Schedules - is amended to include additional information needed to prepare statistical reports required under 28 U.S.C. § 159, which was enacted as part of the Bankruptcy Reform Act of 2001, Pub. L. No. 107- , Stat , (, 2001).

Schedule B - Personal Property is amended to require the debtor to list any interests in an education IRA. The schedule also requires the debtor to indicate whether the debtor's stock in a corporation is publicly traded or closely held, and whether the stock or other interest the debtor has in a corporation and any unincorporated business, a partnership, and or joint venture constitutes a substantial or controlling interest in any of those entities. The schedule also is amended to require the debtor to list any personally identifiable information provided by an individual to the debtor in connection with obtaining a product or service from the debtor for personal, family, or household purposes.

Schedule C - Property Claimed as Exempt is amended to conform to provisions in the Bankruptcy Reform Act of 2001 requiring a longer period of domicile before a debtor can claim certain exemptions and indicating the eligibility for exemption of certain retirement funds.

Schedule D - Creditors Holding Secured Claims is amended to advise the debtor not to disclose on the form the name and address of any minor child and to limit the listing of any account numbers to only the last four digits.

Schedule E - Creditors Holding Unsecured Priority Claims is amended implement the changes in priority to which a claim may be entitled under 11 U.S.C. § 507 as amended by the Bankruptcy Reform Act of 2001 and to add the new priority included in the Reform Act for claims for death or personal injury while the debtor was intoxicated. The form also is amended to advise the debtor not to disclose on the form the name and address of any minor child and to

limit the listing of any account numbers to only the last four digits.

Schedule F - is amended to advise the debtor not to disclose on the form the name and address of any minor child and to limit the listing of any account number to only the last four digits.

Schedule G - Executory Contracts and Unexpired Leases is amended to advise the debtor not to disclose on the form the name and address of any minor child.

Schedule H - Codebtors is amended to direct a debtor who resides or formerly resided in a community property state, commonwealth, or territory to disclose the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property jurisdiction. The form also is amended to advise the debtor not to disclose on the form the name and address of any minor child.

Schedule I - Current Income of Individual Debtor(s) is amended to delete the listing of dependents' names, which will avoid disclosure of the names of minor children. Limiting the information disclosed to the age and relationship of the debtor's dependents should be sufficient for purposes of the bankruptcy case. The Bankruptcy Reform Act of 2001 provides for the debtor to provide the name of any minor child confidentially to the court. [Means test language can be added once a decision is made concerning the means test's incorporation into the official forms.]

Schedule J- Current Expenditures of Individual Debtor(s) [Means test language can be added once a decision is made concerning the means test's incorporation into the official forms.]

Declaration Concerning Debtor's Schedules - The declaration and certification by a non-attorney bankruptcy petition preparer in the form have been amended to include material mandated by 11 U.S.C. § 110 as amended by the Bankruptcy Reform Act of 2001.

Form 9

COMMITTEE NOTE

[The form and committee note will be provided at the meeting.]

FORM B10 (Official Form 10) (DRAFT)

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):	☐ 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.
Name and address where notices should be sent: Telephone number:	☐ 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.
Last four digits of account or other number by which creditor identifies debtor:	Check here ☐ replaces if this claim ☐ amends a previously filed claim, dated:_____

THIS SPACE IS FOR COURT USE ONLY

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 case 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 if c) none or only part of your claim is entitled to priority.

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 $4,650),* earned within 90 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).

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: $_____

☐ Up to $2,100* 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 4/1/04 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.

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):

THIS SPACE IS FOR COURT USE ONLY

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

INSTRUCTIONS FOR PROOF OF CLAIM FORM

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

DEFINITIONS

Debtor

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

Creditor

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

Proof of Claim

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

Secured Claim

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim*.)

Unsecured Claim

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

Unsecured Priority Claim

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims.*

Items to be completed in Proof of Claim form (if not already filled in)

Court, Name of Debtor, and Case Number:

Fill in the name of the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the court, all of this information is near the top of the notice.

Information about Creditor:

Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form.

1. Basis for Claim:

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

2. Date Debt Incurred:

Fill in the date when the debt first was owed by the debtor.

3. Court Judgments:

If you have a court judgment for this debt, state the date the court entered the judgment.

4. Classification of Claim

Secured Claim:

Check the appropriate place if the claim is a secured claim. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured. (See DEFINITIONS, above).

Unsecured Priority Claim:

Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority. (See DEFINITIONS, above). A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

Unsecured Nonpriority Claim:

Check the appropriate place if you have an unsecured nonpriority claim, sometimes referred to as a "general unsecured claim". (See DEFINITIONS, above.) If your claim is partly secured and partly unsecured, state here the amount that is unsecured. If part of your claim is entitled to priority, state here the amount **not** entitled to priority.

5. Total Amount of Claim at Time Case Filed:

Fill in the total amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

6. Credits:

By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

7. Supporting Documents:

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

COMMITTEE NOTE

The form is amended to conform to the priority afforded the claims of certain creditors in § 507(a) of the Code as amended by the Bankruptcy Reform Act of 2001, Pub. L. No. 107- , Stat , (, 2001), and to provide spaces for stating the amount of any unsecured nonpriority claim. The contents of the form also have been rearranged and the instructions amended to include the separate listing of a general unsecured claim.

Official Form 16A
(DRAFT)

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 ~~6~~8 years.]* Debtor	)	Case No. _____
Address _____	)	
_____	)	Chapter _____
Social Security No(s).:* _____	)	
Employer's Tax Identification No(s). *[if any]:* * _____	)	
_____	)	

[Designation of Character of Paper]

*Use the last four digits of Social Security and Tax Identification numbers, unless the caption is for a notice given by the debtor and the use of the debtor's full Social Security number is required by 11 U.S.C. § 342(c).

Form 16A

COMMITTEE NOTE

The form is amended to require that the title of the case include all names used by the debtor within the last eight years, to implement the provision of the Bankruptcy Reform Act of 2001, Pub. L. No. 107- , Stat , (,2001) extending from six years to eight years the period during which a debtor is barred from receiving successive discharges. The form also is amended to direct that only the last four digits of the debtor's Social Security or tax identification number be provided unless the caption is for a notice given by the debtor and the use of the debtor's full Social Security number is required by 11 U.S.C. § 342(c). This amendment implements the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files.

Official Form 16C
(DRAFT)

FORM 16C. CAPTION OF COMPLAINT IN ADVERSARY PROCEEDING FILED BY A DEBTOR

United States Bankruptcy Court

_____ District Of _____

In re _____, *Debtor*	Case No. _____
Address _____	Chapter _____
Social Security No(s).:* _____ or Employer's Tax Identification No(s). *[if any]:* *_____	
_____, *Plaintiff*	
v.	
_____, *Defendant*	Adv. Proc. No. _____

COMPLAINT

*Use the last four digits of Social Security and Tax Identification numbers, unless the caption is for a notice is given by the debtor and the use of the full Social Security number is required by 11 U.S.C. § 342(c).

COMMITTEE NOTE

The form is amended to include a note directing that, in furtherance of the policy of the Judicial Conference of the United States concerning the availability over the Internet of personal information contained in court case files, only the last four digits of a debtor's Social Security or tax identification number should be used, unless the caption is for a notice given by the debtor and the use of the full Social Security number is required by 11 U.S.C. § 342(c).

Memorandum

To: Jeff Morris, Reporter
From: Bruce A. Markell, Consultant to the Advisory Committee
Date: August 10, 2001
Re: Forms for Small Businesses Required by Bankruptcy Reform Act of 2001

This memorandum highlights the issues the Advisory Committee needs to address with respect to small businesses should the Bankruptcy Reform Act of 2001 (H.R. 333; S. 420) become law. Time has been too short to prepare final forms, but I have identified some of the major issues that require resolution before the Committee can adopt final forms.

This memorandum: (1) sets forth the relevant mandates in the pending legislation; (2) highlights issues relevant to those mandates; and (3) frames the issues for discussion at the Committee's semi-annual meeting.

I. Relevant Provisions in the Legislation

As of the date of this memorandum, both the House and Senate have passed a version of the Bankruptcy Reform Act of 2001. H.R. 333, 107th Cong., 1st Sess. (2001); S. 420, 107th Cong., 1st Sess. (2001). Both houses have appointed conferees, but the conference committee has not met. With respect to provisions related to small business, however, there is not at the moment much difference between the two bills (to the point of keeping identical section numbers for the relevant sections). As a consequence, reference to the pending legislation will simply be to a single section number, with that reference serving as a joint reference to the identical section number in both bills.

The full text of the provision relevant to forms is set forth in the appendix. In summary, there are five sections that require the Committee in some way to develop forms related to small business:

- *Section 419*, regarding enhanced reporting of the assets and operations of any entity, including a closely-held corporation, in which the debtor holds a substantial or controlling interest;
- *Section 433*, which directs the Committee to prepare standard forms of disclosure statements and plans of reorganization for small business debtors;
- *Section 434*, which would add section 308 to the Bankruptcy Code regarding periodic reporting of financial operations by small business debtors;
- *Section 435*, which specifically directs the Committee to develop forms to implement new section 308; and
- *Section 436*, which would add section 1116 to the Bankruptcy Code regarding enhanced filing and other duties of small business debtors.

These sections are discussed in detail in the next portion of this memorandum.

II. Issues Raised in Implementing Legislation

A. Issues Raised by Section 419 — Reporting for Entities in Which the Debtor Has a Substantial or Controlling Interest

Section 419 requires the Committee to propose forms and rules designed to "to disclose the information described in paragraph (2) by filing and serving periodic financial and other reports designed to provide such information." The information covered is "the value, operations, and profitability of any closely held corporation, partnership, or of any other entity in which the debtor holds a substantial or controlling interest."

At the July 16, 2001 meeting of the Forms Sub-Committee, this section was discussed, and a tentative decision was made to defer work on this mandate until other provisions (primarily the small business disclosure obligations) were dealt with. Some points were made, however, that bear repeating:

- This provision applies to more than just small business debtors, even though it is in the small business subtitle. For example, it will apply not only to individual debtors and their incorporated small business, but also to international joint ventures in which large multinational corporate debtors are a party.

- There is no statutory definition of "substantial or controlling interest." This may be a place where the Committee may consider promulgating clarifying rules.

- In many respects, the decisions on the scope of "value, operations and profitability" will turn on how those concepts are handled in the small business sections.

B. Issues Raised by Section 433 — Standard Form Disclosure Statements and Plans

Section 433 directs the Committee to propose "for adoption standard form disclosure statements and plans of reorganization for small business debtors . . ., designed to achieve a practical balance between–[¶] (1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and [¶] (2) economy and simplicity for debtors."

The function of section 433 is not to provide the *only* acceptable forms. Counsel to plan proponents will still be able to craft their own plans and disclosure statements without reference to any forms the Committee adopts. Rather, Section 431 of the legislation will amend section 1125(f) to provide that "'(f) Notwithstanding subsection (b), in a small business case–[¶] . . . (2) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 2075 of title 28." As a consequence, use of the forms developed by the committee will serve as a "safe harbor" for plan proponents; that is, a proper form, properly filled out, should provided sufficient information to make a decision on whether to confirm the particular plan at issue.

1. Disclosure Statements

Section 1125(b) of the Code indicates that a valid disclosure statement must be provided to each creditor or interest holder before a vote on the plan is taken. That disclosure statement, in turn, must contain "adequate information," defined in section 1125(a) as "information of a kind, and in sufficient detail, as far is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan." Complicating matters is language in the legislative history that indicates a limited role for the Committee in specifying adequate information in particular cases. H.R. 595, 95th Cong., 1st Sess. 409 (1977) ("The Supreme Court's rulemaking power will not extend to rulemaking that will prescribe what constitutes adequate information . . . .").

Courts and the Office of the United States Trustee have often promulgated long lists of required information. These lists are set forth in Appendix B. In many cases, however, these lists have been developed for larger chapter 11 cases, where securities are proposed to be issued in the plan. They may not be appropriate for smaller cases.

Collier on Bankruptcy states that, for smaller cases, "the disclosure statement must clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution." 7 COLLIER ON BANKRUPTCY ¶1125.02[1] (15th Rev. ed. 2001). Forced compliance with the longer lists, the treatise surmises, "would all but doom the small and medium size businesses which might have been able to make use of the old Chapter XI." *Id.* at ¶ 1125.02[1][a].

Collier boils down the basic types of information for all disclosure statements, including those for small businesses, to the following:

- a description of the business;
- its history;
- financial information about the business;
- description of the plan;
- facts respecting its execution;
- a liquidation analysis;
- identification of management and its compensation;
- transactions with insiders; and
- tax consequences of the plan

Id. at ¶ 1125.02[1], *citing In re* Malek, 35 B.R. 443 (Bankr. E.D. Mich. 1983).

Disclosure statement forms could be designed along the "fill in the blank" model, with the above items as categories. For purposes of assisting those preparing the documents, an issue exists as to whether to "annotate" the model form, by referring to cases which are good examples of the disclosure of the category indicated.

In addition, given that uniform national financial reporting forms are part of the Committee's task, these forms (or information from these forms) could form the basis of a discussion of the debtor's post-petition financial operations.

Some information normally provided in disclosure statements can be classified as boilerplate, and thus common to every disclosure statement. See Chapter 11 Manual of the Office of the United States Trustee ¶ 3-10.3.1. This information might include the standard for acceptance under section 1126, qualifications regarding valuation generally, the nature of the plan process and other possibilities. There are several ways to handle disclosure of this information. It could be built into the actual form. Alternatively, it could exist on a Committee web site, and users of the form could simply incorporate the information by reference, or by downloading the information to their particular statement.

2. Plans of Reorganization

Standardized plans of reorganization present much the same issues as disclosure statements. Many plan provisions, such as retention of post-confirmation jurisdiction or use of certain definitions, could be standardized using the above suggestions. In addition, section 1123 requires certain things of a plan for confirmation.

In another sense, however, plans are very different from disclosure statements. The means of implementing plans under section 1123(a)(5) are quite broad; the section contains ten subparagraphs illustrating acceptable means of implementation. In theory, there could be ten forms indicating language appropriate to each means of implementation. In actuality, there could be many more, especially since section 1123(b) contains optional provisions and means for implementation.

Again, the Committee will need to give guidance as to how detailed and varied it wishes the forms to be. Some courts currently have adopted standardized plans and disclosure statements already, and those documents are being collected for use in drafting Committee forms. *See, e.g.*, Central District of California, Approved Forms of Disclosure Statement and Plan of Reorganization, available from http://www.cacb.uscourts.gov/.

3. Issues on Plans and Disclosure Statements

- Does the Committee wish to provide standardized text in the forms, and then simply indicate areas in which the plan proponent will need to supply information?

- With respect to plans and disclosure statements, does the Committee wish to go further and, in areas in which the plan proponent is to supply information, then indicate cases or clauses which courts have previously approved, and which may be adapted to the particular case?

- As a supplement to the above, does the Committee wish to explore the possibility of providing a centralized and easily accessible repository of standardized

"boilerplate" clauses (such as a Rules Committee website) that plan proponents could refer to in their documents without the need to recopy them in the actual documents provided to creditors and interest holders? Central to any such recommendation will be the degree of accessibility of such a central repository and of the provisions kept there.

- With respect to plans of reorganization, does the Committee wish to have different forms for different common situations, such as a form liquidation plan, a form "new value" plan or a form "pot plan"?

C. *Issues Raised by Section 434 and 435 — Periodic Reporting by Small Business Debtors*

Section 435 charges the Committee with created forms to implement section 434; indeed, section 435(b) delays the applicability of the reporting requirements of section 434(a) until the Committee promulgates forms and rules related to the requirements. section 434(a), in turn, requires from small business debtors "periodic financial and other reports containing information, including information relating to– [¶] (1) the debtor's profitability; [¶] (2) the debtor's cash receipts and disbursements; and [¶] (3) whether the debtor is timely filing tax returns and paying taxes and other administrative claims when due."

In drafting these forms, the Committee is charged to "achieve a practical balance among– [¶] (1) the reasonable needs of the bankruptcy court, the United States trustee, creditors, and other parties in interest for reasonably complete information; [¶] (2) the small business debtor's interest that required reports be easy and inexpensive to complete; and [¶] (3) the interest of all parties that the required reports help the small business debtor to understand the small business debtor's financial condition and plan the small business debtor's future."

This mandate may be very difficult to achieve. The current reporting requirements of the Office of the United States Trustee, set forth in Appendix C, are quite extensive and often are a burden to small businesses which, if they had in place the systems necessary to generate the required information, might not have felt the need to file bankruptcy in the first place.

A small task force of the Business Sub-Committee has been studying the possibility of requiring different types of reports at different times. For example, a debtor might easily comply with reporting cash receipts and disbursements on a monthly basis, but not be able to use those figures to derive "profitability" over the same period. As a possible alternative, the task force has considered making "profitability" reporting a quarterly requirement. section 434 is broad enough to permit this; it speaks only of "periodic" reports, and does not define the period referred to nor does it require the imposition of a unity notion of "period."

If the Committee accepts this suggestion, then forms could be drafted based on this notion. Judge Klein, a member of the task force, has indicated that the reporting forms in the Eastern District of California, already make this distinction, and can be used as a basis to begin drafting. These forms are available at http://www.caeb.uscourts.gov/ by searching under "Forms and Publications" for "operating reports."

Another potential problem is that the legislation charges the Office of the United States Trustee with the job of collecting period information that is very similar to that required by section 434. Section 602(a) of the legislation would add 28 U.S.C. § 589b which would require the Attorney General to promulgate forms for periodic reporting by chapter 11 debtors, including small business debtors. In particular, the legislation would provide that:

> Periodic reports proposed for adoption by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General, in the discretion of the Attorney General, shall propose, include--
>
> * * *
>
> '(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;
> '(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

There are obvious points of similarity with these requirements. It would be contrary to the spirit of the small business provisions for the Rules and Forms to require quarterly profitability reporting while the Office of the United States Trustee requires the same information monthly.

It may be that working with the Office of the United States Trustee can resolve this difference, but until the Committee has some notion of what ought to be required, discussions with the United States Trustee would not be productive.

D. Issues Raised by Section 436 — Enhanced Filing and Reporting Duties by Small Business Debtors

Section 436 of the legislation adds a new section 1116 to the Code. This section adds to the filing requirements of small business debtors, both at the time of filing and thereafter. No forms are likely to be initially required, but implementing rules as to when documents such as tax returns and other evidence of payments should be filed could be subject to a rule.

III. Summary of Issues For Which Guidance is Sought

In summary, the drafting of forms required by the legislation is subject to several policy level questions with respect to the various forms. The specific questions are listed in the text above.

Put generally, however, the questions are as follows:

- With respect to standardized disclosure statements and forms, the level of detail to be provided and the acceptability of incorporation by reference requires discussion and direction.

- With respect to reporting of financial data, the acceptability of requiring different types of reports at different times remains an issue, as does the coordination with the Office of the United States Trustee.

Appendix A
Relevant Provisions of the Legislation[1]

SEC. 419. MORE COMPLETE INFORMATION REGARDING ASSETS OF THE ESTATE.

(a) IN GENERAL-

(1) DISCLOSURE- The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States, after consideration of the views of the Director of the Executive Office for United States Trustees, shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms directing debtors under chapter 11 of title 11, United States Code, to disclose the information described in paragraph (2) by filing and serving periodic financial and other reports designed to provide such information.

(2) INFORMATION- The information referred to in paragraph (1) is the value, operations, and profitability of any closely held corporation, partnership, or of any other entity in which the debtor holds a substantial or controlling interest.

(b) PURPOSE- The purpose of the rules and reports under subsection (a) shall be to assist parties in interest taking steps to ensure that the debtor's interest in any entity referred to in subsection (a)(2) is used for the payment of allowed claims against debtor.

SEC. 433. STANDARD FORM DISCLOSURE STATEMENT AND PLAN.

Within a reasonable period of time after the date of enactment of this Act, the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption standard form disclosure statements and plans of reorganization for small business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between--

(1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and

(2) economy and simplicity for debtors.

SEC. 434. UNIFORM NATIONAL REPORTING REQUIREMENTS.

(a) REPORTING REQUIRED-

(1) IN GENERAL- Chapter 3 of title 11, United States Code, is amended by inserting after section 307 the following:

'Sec. 308. Debtor reporting requirements

'(a) For purposes of this section, the term 'profitability' means, with respect to a debtor, the amount of money that the debtor has earned or lost during current and recent fiscal periods.

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[1]The bills are virtually identical on the points discussed in this memorandum. The minor differences are indicated as follows: language in H.R. 333 that differs from the Senate bill is indicated by ~~strikethrough~~ text; language in S. 420 that differs from the House bill is indicated by double underline.

'(b) A small business debtor shall file periodic financial and other reports containing information including--

'(1) the debtor's profitability;

'(2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;

'(3) comparisons of actual cash receipts and disbursements with projections in prior reports;

'(4)(A) whether the debtor is--

'(i) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

'(ii) timely filing tax returns and other required government filings and paying taxes and other administrative ~~*expenses*~~**claims** when due;

'(B) if the debtor is not in compliance with the requirements referred to in subparagraph (A)(i) or filing tax returns and other required government filings and making the payments referred to in subparagraph (A)(ii), what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

'(C) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.'.

(2) CLERICAL AMENDMENT- The table of sections for chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 307 the following:
'308. Debtor reporting requirements.'.

(b) EFFECTIVE DATE- The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed under section 2075 of title 28, United States Code, to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a).

SEC. 435. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES.

(a) PROPOSAL OF RULES AND FORMS- The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to file periodic financial and other reports containing information, including information relating to--

(1) the debtor's profitability;

(2) the debtor's cash receipts and disbursements; and

(3) whether the debtor is timely filing tax returns and paying taxes and other administrative ~~*expenses*~~**claims** when due.

(b) PURPOSE- The rules and forms proposed under subsection (a) shall be designed to achieve a practical balance among--

(1) the reasonable needs of the bankruptcy court, the United States trustee, creditors, and other parties in interest for reasonably complete information;

(2) the small business debtor's interest that required reports be easy and inexpensive to complete; and
(3) the interest of all parties that the required reports help the small business debtor to understand the small business debtor's financial condition and plan the small business debtor's future.

SEC. 436. DUTIES IN SMALL BUSINESS CASES.

(a) DUTIES IN CHAPTER 11 CASES- Subchapter I of ~~*chapter 11 of*~~ title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

'Sec. 1116. Duties of trustee or debtor in possession in small business cases

'In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall--

'(1) append to the voluntary petition or, in an involuntary case, file not later than 7 days after the date of the order for relief--

'(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

'(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

'(2) attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States trustee, including initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 unless the court waives that requirement after notice and hearing, upon a finding of extraordinary and compelling circumstances;

'(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

'(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

'(5) subject to section 363(c)(2), maintain insurance customary and appropriate to the industry;

'(6) (A) timely file tax returns and other required government filings; and

'(B) subject to section 363(c)(2), timely pay all administrative expense tax claims, except those being contested by appropriate proceedings being diligently prosecuted; and

'(7) allow the United States trustee, or a designated representative of the United States trustee, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.'.

(b) CLERICAL AMENDMENT- The table of sections for chapter 11 of title 11, United States Code, is amended by adding at the end of the matter relating to subchapter I the following:

'1116. Duties of trustee or debtor in possession in small business cases.'.

Appendix B
Lists of Relevant Disclosure Statement Provisions

The Nineteen Factor Test:

(1) The circumstances that gave rise to the filing of the chapter 11 petition;
(2) A complete description of the available assets and their value;
(3) The anticipated future of the debtor;
(4) The source of the information provided in the disclosure statement;
(5) A disclaimer, which typically indicates that no statements or information concerning the debtor or its assets or securities are authorized, other than those set forth in the disclosure statement;
(6) The condition and performance of the debtor while in chapter 11;
(7) Information regarding claims against the estate;
(8) A liquidation analysis setting forth the estimated return that creditors would receive under chapter 7;
(9) The accounting and valuation methods used to produce the financial information in the disclosure statement;
(10) Information regarding the future management of the debtor, including the amount of compensation to be paid to any insiders, directors, and/or officers of the debtor;
(11) A summary of the plan of reorganization;
(12) An estimate of all administrative expenses, including attorneys' fees and accountants' fees;
(13) The collectibility of any accounts receivable;
(14) Any financial information, valuations or pro forma projections that would be relevant to creditors' determinations of whether to accept or reject the plan;
(15) Information relevant to the risks being taken by the creditors and interest holders;
(16) The actual or projected value that can be obtained from avoidable transfers;
(17) The existence, likelihood and possible success of non-bankruptcy litigation;
(18) The tax consequences of the plan; and
(19) The relationship of the debtor with affiliates

In re U.S. Brass Corp., 194 B.R. 420, 424 (Bankr. E.D. Tex. 1996); *In re* Scioto Valley Mortgage Co., 88 B.R. 168 (Bankr. S.D. Ohio 1988); *In re* A.C. Williams Co., 25 B.R. 173 (Bankr. N.D. Ohio 1982).

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(taken from http://www.usdoj.gov/ust/ustp_manual/vol3toc.htm)

3-10.1 INTRODUCTION

Section 586(a)(3)(B) of title 28 provides that the United States Trustee shall monitor plans and disclosure statements filed in cases under chapter 11 and file with the court comments with respect to

such plans and disclosure statements. The disclosure process is the heart of the reorganization provisions of the Bankruptcy Code. Full disclosure is required before solicitation of acceptances of a plan of reorganization, thereby enabling creditors to make an informed judgment in accepting or rejecting a plan.

As stated in the legislative history of the Bankruptcy Code:

> The premise underlying the consolidated chapter 11 of this bill is the same as the premise of the securities law. If adequate disclosure is provided to all creditors and stockholders whose rights are to be affected, then they should be able to make an informed judgment of their own, rather than having the court or the Securities and Exchange Commission inform them in advance of whether the proposed plan is a good plan. Therefore, the key to the consolidated chapter is the disclosure section.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 226 (1977).

Pursuant to 11 U.S.C. §§ 1125(b), acceptance or rejection of a plan may not be solicited unless accompanied by a disclosure statement found by the court to contain "adequate information" regarding the plan. The practical approach to disclosure embodied in 11 U.S.C. §§ 1125, however, is quite unlike the standardized approach to disclosure embodied in the federal securities laws. This is illustrated by 11 U.S.C. §§ 1125(a)(1), which qualifies the sufficiency requirement with the following reasonableness standard:

> "adequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan . . . .

11 U.S.C. §§ 1125(a)(1). Section 1125(d) elaborates by providing that "adequate information is not governed by any otherwise applicable nonbankruptcy law, rule, or regulation. . . ."

The United States Trustee's review of disclosure statements focuses on the adequacy of disclosure. The role of the United States Trustee in reviewing disclosure statements is critical to the protection of creditors who have not directly participated in the negotiations, or when committees are inactive or have not been appointed.

The Bankruptcy Code permits the court to "approve a disclosure statement without a valuation of the debtor or an appraisal of the debtor's assets." 11 U.S.C. §§ 1125(b). Congress recognized that the circumstances will vary widely from one chapter 11 case to the next and, therefore, the parameters of "adequate information" will also vary. The legislative history states:

> The Supreme Court's rulemaking power will not extend to rulemaking that will prescribe what constitutes adequate information. . . . Precisely what constitutes adequate information in any particular instance will develop on a case-by-case basis. Courts will take a practical approach as to what is necessary under the circumstances of each case, such as the cost of preparation of the statements, the need for relative speed in solicitation and confirmation, and, of course, the need for investor protection. There will be a balancing of interests in each case. In reorganization cases, there is frequently great uncertainty. Therefore, the need for flexibility is greatest.

H.R. Rep. No. 595 at 409.

A review of case law illustrates what courts consider "adequate information" based on the facts of each case. See In re Northwest Recreational Activities, Inc., 8 B.R. 10, 12 (Bankr. N.D. Ga. 1980) (perfunctory and modest disclosure statement approved because information already was available to all creditors, all five being lien holders); In re Bel Air Assocs., Ltd., 4 B.R. 168, 175 (Bankr. W.D. Okla. 1980) (no disclosure statement required where plan contained adequate information and movant, a limited partner in debtor, had other sources of information). Information may vary depending upon the sophistication of the class. See In re Bloomingdale Partners, 155 B.R. 961, 972 (Bankr. N.D. Ill. 1993); In re Egan, 33 B.R. 672, 676-77 (Bankr. N.D. Ill. 1983) (disclosure statement containing statements of opinion without factual support, along with lack of cooperation by the debtor, disapproved and petition dismissed); In re Adana Mortgage Bankers, Inc., 14 B.R. 29 (Bankr. N.D. Ga. 1981) (mere summary of the plan inadequate-the disclosure statement must discuss the plan as well as provide other information). But see In re Walker, 198 B.R. 476, 479-80 (Bankr. E.D. Va. 1996) (court held that the information need only be the best prediction that the debtor can make based upon information available).

The process for obtaining approval of a disclosure statement and soliciting votes for a plan of reorganization has been simplified for

small business debtors. A small business debtor may obtain conditional approval of a disclosure statement which can then be utilized to solicit votes regarding a plan. The conditionally approved disclosure statement can be mailed to creditors as few as ten days prior to the date of the hearing on confirmation of the plan. The court can then hold a single hearing to consider both final approval of the disclosure statement and plan confirmation. 11 U.S.C. §§§§ 105(d)(2)(B)(vi) and 1125(f)(3); Fed. R. Bankr. P. 3017.1.

3-10.2 THE CONCEPTUAL FRAMEWORK

3-10.2.1 Items to Include

The United States Trustee should not advocate a "checklist approach to the review of disclosure statements. The disclosure statement certainly should discuss the elements set out in 11 U.S.C. §§ 1123 insofar as they are in the plan filed. Reference to case law regarding information to be included is essential. See, e.g., Hall v. Vance, 887 F.2d 1041, 1043 (10th Cir. 1989); In re Metrocraft Publ'g Servs., Inc., 39 B.R. 567, 568-69 (Bankr. N.D. Ga. 1984); In re Malek, 35 B.R. 443, 443-44 (Bankr. E.D. Mich. 1983); In re A.C. Williams Co., 25 B.R. 173, 176 (Bankr. N.D. Ohio 1982).

3-10.2.2 "Safe Harbor," 11 U.S.C. §§ 1125(e)

Under 11 U.S.C. §§ 1125(e), a person who solicits acceptances or rejections of a plan in good faith and in compliance with the Bankruptcy Code is not liable on account of such solicitation for the violation of any applicable law, rule, or regulation governing the offer, issuance, sale, or purchase of securities. The purpose of this section is to protect creditors, creditors' committees, counsel for committees, and others involved in a case from potential liability for use of an approved disclosure statement.

This safe harbor rule was intended to codify the result of Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976), reh'g denied, 425 U.S. 986 (1976), which held that proof of scienter is a prerequisite to the imposition of civil liability under the antifraud provisions of section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. It was also intended to extend the good faith safe harbor to the imposition of injunctive liability. See H.R. Rep. No. 595 at 229-31.

3-10.2.3 Factors Affecting Adequacy of Disclosure

Several factors can affect the appropriate quantity and quality of disclosure in a given case, including: (1) the nature of the proposed plan of reorganization or liquidation; (2) the sophistication of the various holders of claims and interests and their familiarity with the debtor and its business; (3) whether the expense of the disclosure would substantially outweigh its anticipated benefit to creditors and stockholders; (4) the peculiarities of the debtor's business or financial condition; (5) the need for an expeditious resolution; and (6) the access of a plan proponent, other than the debtor, to factual information regarding the debtor.

An inordinately long or complex disclosure statement may confuse rather than enlighten creditors. In such cases, the deletion of certain materials or the preparation of a summary may be suggested; however, care must be taken to ensure that significant material is not deleted.

3-10.3 CONDUCTING THE REVIEW

3-10.3.1 Standard Language

The use of some standardized language in disclosure statements is appropriate. For example, all documents should indicate that any representations made in order to secure an acceptance of the plan that are not contained in the disclosure statement are to be reported to the debtor, the creditors' committee, the United States Trustee, and the bankruptcy court for such action as may be appropriate.

Similarly, there should be a statement that the plan represents a legally binding arrangement and should be read in its entirety, as opposed to relying on the summary in the disclosure statement. Accordingly, creditors may wish to consult with their own lawyers and the creditors' committee and its lawyer to understand the plan more fully. The disclosure statement should also refer to "the right to vote for acceptance or rejection" of the plan or "the right to vote upon" the plan. While the disclosure statement may serve the parallel purpose of solicitation, the solicitation aspect of the statement should be clearly identified as such and kept distinct from the disclosure aspect. For example, the disclosure statement may state that "as a creditor, your acceptance is important" but such a statement should not be included in a paragraph describing voting procedures. It is permissible, however, for a discussion of the voting process to state that it is important for each creditor to vote.

The disclosure statement should indicate that bankruptcy court approval of the disclosure statement is not a ruling by the bankruptcy court on the merits of the plan. The disclosure statement should

indicate which classes are impaired and are, therefore, entitled to vote on the plan and should define impairment in plain language. The voting requirements under 11 U.S.C. §§ 1126 for acceptance must be set forth in the disclosure statement. Voters should be told where the ballots must be sent and the deadline for voting. The ballots should not be sent to the United States Trustee.

3-10.3.2 Description of the Debtor's Business

The disclosure statement should describe the nature of the debtor's business. In cases in which the plan contemplates cash payments upon confirmation, a brief narrative description should suffice. If the plan contemplates deferred payments or the issuance of common or preferred stocks to creditors and, therefore, its implementation depends upon the future course of the business, the description should be more detailed. Items to look for in the latter case are: (1) material factors peculiar to the specific business of the debtor, such as seasonality, limited sources of supply, limited number of potential customers, patents or licenses, special capital needs, regulatory problems, or backlog; (2) principal product and services present, contemplated, or under development; (3) competitive conditions in the applicable market; and (4) material contracts and leases, including important terms such as expiration dates. Of course, if detailed information would have a detrimental impact on the debtor's competitive position, general terms may be permissible.

3-10.3.3 Reasons for Financial Difficulties and Correction of Those Factors

The disclosure statement should give a brief narrative description of the factors leading to the debtor's financial difficulties, together with a listing of the steps already taken or to be taken by the debtor to correct the problems. This description should be reviewed from the standpoint of the assistance it will provide the holders of claims and interests in assessing the likelihood of any recurrence of prior difficulties and, thus, the feasibility of the proposed plan. In cases in which the plan has neither deferred payments nor issuance of common or preferred stock, an elaboration of the reasons for the debtor's financial difficulties and the correction of those factors are less important and may be dealt with summarily.

3-10.3.4 Historical and Current Financial Information

Historical financial information, such as cash flow statements and profit and loss statements (statements of operation), should, where relevant, provide the holders of claims and interests some

perspective regarding the debtor's financial situation and future prospects (as reflected in any projections included in the disclosure statements). See "Projections" infra.

Current financial information, such as cash flow statements, profit and loss statements (statements of operations), and balance sheets, provide holders of claims and interests with important information about the debtor's performance during the pendency of the chapter 11 case. Of particular importance is the comparison of the current balance sheet with the balance sheet as of the commencement of the case.

The disclosure statement should include, as an exhibit, a summary of the results of the operations during the pendency of the chapter 11 case. In re Merrimack Valley Oil Co., 32 B.R. 485, 488 (Bankr. D. Mass. 1983); In re Western Management, Inc., 6 B.R. 438, 442-43 (Bankr. W.D. Ky. 1980). The summary should be in a format consistent with the projections so that creditors can make a meaningful comparison of the past with future projections. The format of the summary and the projections should be consistent with regard to time and designation of income and expense items.

The disclosure statement should also include a projection of the financial condition of the debtor upon confirmation of the plan. This information enables the court and creditors to determine if the debtor will need further financial reorganization or if the plan will be followed by a liquidation. 11 U.S.C. §§ 1129(a)(11).

The extent to which financial statements are prepared in accordance with generally accepted accounting principles ("GAAP") will vary. The period covered by historical financial information may vary based on the nature of the plan, the condition of the debtor's books and records (11 U.S.C. §§ 1125(a)(1) expressly recognizes this as a variable), and the nature of the debtor's business. Any financial statements that have not been prepared in accordance with GAAP due to the condition of the debtor's books and records should contain appropriate disclaimers and a brief explanation of the accounting methods employed.

The American Institute of Certified Public Accountants issued Statement of Position (SOP) 90-7, on November 19, 1990. The statement provides guidance for the financial reporting of entities currently in chapter 11 which expect to reorganize as going concerns.

3-10.3.5 Material Postpetition Events

The disclosure statement should briefly describe all material postpetition events including: (1) borrowings, (2) issuance of

securities, (3) sales or transfers of assets other than in the ordinary course of business, and (4) lease assumptions and/or assignments or rejections (along with other executory contracts).

3-10.3.6 Outline of the Plan

The degree of detail in which the proposed plan of reorganization should be outlined in the disclosure statement will vary greatly with the complexity of the plan. In some instances, cross-references in the disclosure statement to pertinent plan provisions will suffice. In other instances, complex features of the plan may need to be separately, but briefly, described in the disclosure statement. For example, if the plan contemplates deferred payments to unsecured creditors out of retained earnings in excess of a stated figure, look for some explanation of this feature in the disclosure statement. Similarly, complex plan provisions often involve definitional problems that should be clarified in the disclosure statement. For example, the amount of deferred payments to a particular class of creditors may be expressed as a percentage of "net sales," a term which should be defined. Any default provisions or affirmative and negative covenants contained in the plan (e.g., dividend restrictions, limitations on further borrowing, and board memberships) should be explained. Information on the amount of claims in each class should be provided in tabular form in order to allow computations of the possible distribution to be made under the plan. The disclosure statement should also predict when confirmation will occur.

3-10.3.7 Means of Effectuating the Plan

Information relating to the source and application of funds to effectuate the proposed plan of reorganization should appear in the disclosure statement, including an estimate of the amounts necessary for the initial payments under the plan. This number should be compared to the cash on hand. If the amount needed to confirm is greater than the cash available, there should be an explanation concerning the source of the additional funds. There should also be a brief description of the structure of any transaction related to carrying out the plan (e.g., the sale of stock or of assets). There should be an indication as to whether there exists any avoidable transfers (preferences and/or fraudulent conveyances) and whether the debtor (or acquiring entity) intends to prosecute these claims. These potential causes of action should be factored into the estimated liquidation analysis.

The disclosure statement should contain a brief description of the terms of any material agreements relating to the effectuation of the

plan which the debtor has executed or proposes to execute (e.g., funding agreements, security agreements, guarantees, trust indentures, and agreements for the sale of stock or assets). For example, the plan may contemplate the use of a trust indenture in connection with deferred payments to creditors. In that event, the scope of discretionary authority lodged in the indenture trustee (e.g., the discretion to pledge assets to facilitate new financing or to subordinate the security interest granted to creditors) and the identity and affiliations of the indenture trustee should be disclosed. If there are to be guarantees for debtor's obligations under the plan , the guarantors should be identified and the nature and scope of guarantees described. In addition, the guarantor's ability to support the guarantee (e.g., a net worth statement in the case of an individual guarantor) should be discussed.

If a third party (including debtor's principal) is to provide the necessary funds for confirmation, there should be some financial information with respect to the third party. If the third party does not want to be disclosed or does not want to disclose its financial condition, there are acceptable alternatives. For instance, if the funds are deposited in an identifiable escrow account for confirmation or by an irrevocable letter of credit, financial disclosure about the third party may not be necessary. Terms of the advance loan or contribution to capital should also be set forth. This should also be reflected in a projection which assumes confirmation of the plan.

The disclosure statement should indicate if there are any conditions that have to be met by any party in order for the plan to be confirmed. The disclosure statement should also state the likelihood of the requisite events occurring as scheduled.

3-10.3.8 Securities to be Issued

In rare instances, a case will involve the issuance of securities. If such a case arises, the disclosure statement should provide information about any securities to be issued pursuant to the plan of reorganization, where applicable, as to: (1) dividend rights, management's dividend policies, and external constraints on the payment of dividends (e.g., a negative covenant in a loan agreement); (2) liquidation rights and preferences; (3) voting rights; (4) sinking fund payments; (5) conversion features; (6) preemptive rights; (7) redemption provisions; (8) provisions relating to interest, amortization, and maturity; (9) provisions restricting the issuance of additional securities; and (10) other special rights and preferences (e.g., the right to elect a majority of the board of directors in the event of defaults on payments in respect to debentures issued or the right to veto certain corporate changes, such as recapitalization, that

could adversely affect the security holders' rights).

The disclosure statement should indicate whether the issuance of the securities in question is exempt from the registration requirements of federal and state securities laws by virtue of 11 U.S.C. §§ 1145(a) or a different exemption, or whether it is contemplated that the securities will be registered.

It may be appropriate for the disclosure statement to include information relating to the current and anticipated postconfirmation distribution of ownership of equity securities. This information could serve to inform the holders of claims and interests as to any dilution or changes in control likely to result from the issuance of securities contemplated by the plan of reorganization. Even in those cases where existing stockholders do not have preemptive rights, if the stock is being diluted, the existing stockholders are impaired. Cf. In re Barrington Oaks General Partnership, 15 B.R. 952 (Bankr. D. Utah 1981).

If there is a market for the securities to be issued (or the securities into which they are convertible), the disclosure statement should identify the principal markets involved. If the securities are traded on an exchange, information as to high and low sales prices in the recent past should be included. If the principal market for such securities is not an exchange, there should be included information as to high and low bid quotations in the recent past (together with disclosure of the source of those quotations). If there is no market for such securities, the disclosure statement should so state, and should also state whether it is expected that a market will exist for securities distributed under the confirmed plan. If the securities are publicly held, but not traded because of past failure to disseminate public information (see Securities Exchange Act Rule 15c2-11), that fact should be disclosed. If it is expected that the disclosure being made will cure the deficiency so that trading can resume, then that expectation should be noted.

Finally, the disclosure statement should briefly describe applicable law relating to the resale of the securities to be issued under the plan of reorganization. There is a limited exemption in 11 U.S.C. §§ 1145(d) from the provisions of the Trust Indenture Act of 1939.

3-10.3.9 Projections

"[T]he essence of disclosure in a reorganization case, and the essence of valuation of a business as a going concern, is a projection of future earnings of the business." H.R. Rep. No. 595 at 230-31. If the plan of reorganization does not contemplate any deferred payments or the issuance of any equity security, such projections are

unnecessary. In all other cases, projections are critical to the creditors' and shareholders' ability to assess the viability of the plan and of the debtor. It should be noted that the Securities and Exchange Commission encourages the use of projections of future economic performance. See Securities Act Release No. 33-5992 (November 7, 1978), 43 F.R. 53246.

The projections should include both cash flow and earnings estimates. All payments contemplated under the plan should be factored into the cash flow projections. If earlier projections are available, they should be compared in the disclosure statement with actual results for the periods covered. Creditors will then be able to assess management's powers of projection.

There may be instances in which payments under the plan are tied to specific financial measures (e.g., net sales, pre-tax profits, retained earnings, or other measures). In such circumstances, the projections should set forth estimates in terms of the appropriate measure.

The United States Trustee should ensure that the underlying assumptions utilized by management in developing the projections are disclosed as specifically as possible. There may exist, however, legitimate reasons for a vague statement concerning such items as the introduction of a new product or the gearing down of operations. It should be understood that the disclosure of "adequate information" may conflict with the debtor's legitimate need to protect its competitive position. For example, the disclosure of market study results for a proposed new product, while of significant informational value to creditors, might not be appropriate. Where the assumptions made relate to the factors cited as reasons for the debtor's financial difficulties and are intended to correct those factors, the connection should be made clear.

Cases may arise in which alternative sets of projections, or at least ranges of projections, would be appropriate. For example, the plan of reorganization may offer creditors two or more payment options. Alternative sets of projections or ranges of projections may be desirable to reflect the different results that would flow from the election of each option. Similarly, alternative sets of projections or ranges of projections may be appropriate when there is a reasonable prospect of a change affecting the debtor's business (e.g., regulatory changes, introduction of a new product, or new market entrants).

3-10.3.10 Management, 11 U.S.C. §§ 1129(a)(5)

Even if the plan of reorganization contemplates exclusively cash payments upon confirmation, the disclosure statement must identify the anticipated postconfirmation directors and executive officers of

the debtor, and indicate the extent to which this represents a change from preconfirmation management. The disclosure statement should contain a brief account of the business experience of each director and executive director, together with their age, tenure, and possible retirement where relevant. Information as to compensation arrangements with the debtor's directors and executive officers should also be disclosed. The disclosure statement should also include any other information relevant to the integrity and competence of management (e.g., criminal or regulatory proceedings and prior bankruptcies or receiverships).

3-10.3.11 Controlling Persons

In the case of a plan of reorganization that will be implemented over time, the disclosure statement should identify any "persons" (as defined in 11 U.S.C. §§ 101(41)) that will "control" the debtor following confirmation of the proposed plan of reorganization.

With respect to any "person" that is to "control" the debtor, the disclosure statement should provide at least the following information: (1) the nature and extent of "control" to be exercised; (2) a brief narrative description of the business of the controlling person; (3) the identity of persons that control such controlling person; (4) the identity and experience of management of the controlling person; (5) the identity of affiliates of the controlling person; (6) an outline of the transaction whereby control is to be acquired; (7) if known, the business plans of the controlling person for the debtor; and (8) pertinent financial information regarding the controlling person, if available.

3-10.3.12 Insider and Affiliate Claims

The disclosure statement should list any claims held by "insiders" (as defined in 11 U.S.C. §§ 101(31)) or "affiliates" (as defined in 11 U.S.C. §§ 101(2)) of the debtor and should include: (1) the identity of the claimant; (2) the claimant's affiliation with the debtor; (3) the circumstances giving rise to the claim; (4) the amount of the claim; and (5) the treatment to be afforded the claim in accordance with the plan.

3-10.3.13 Transactions with Insiders and Affiliates

The disclosure statement should contain a brief description of any present or proposed material transactions of the debtor in which "insiders" or "affiliates" of the debtor (as defined in 11 U.S.C. §§§§ 101(31) and (2), respectively) have any interest. The insider or

affiliate should be identified, the affiliation with the debtor described, and the nature of the interest in the transaction explained. For example, rentals paid by or to the debtor should be compared to existing market rates. If any transactions have given rise to claims either on behalf of or against the debtor in the chapter 11 case, they should be disclosed.

3-10.3.14 Disputed Claims

Any material claims that the debtor disputes or proposes to dispute, in whole or in part, should be listed and there should be a disclosure of: (1) the identity of the claimant; (2) the nature of the claim; (3) the full amount of the claim and the amount subject to dispute; and (4) the grounds of the debtor's challenge to the claim (e.g., voidable preference, fraudulent transfer, or lack of collateral value). It may also be appropriate for the disclosure statement to explain the effect upon the plan of reorganization (and the related projections, if any) of the allowance or disallowance of the disputed claim.

3-10.3.15 Legal Proceedings

The disclosure statement should give a brief description of any material legal proceedings to which the debtor is a party, which the debtor contemplates instituting, or which are threatened against the debtor. This disclosure should include information as to: (1) the identity of the parties to the litigation; (2) the nature of the claims; (3) the factual basis alleged to underlie the proceedings; (4) the court in which the litigation is pending; (5) the relief sought; (6) the present status of the litigation; and (7) a statement as to whether a judgment adverse to the debtor might seriously affect the debtor's business or financial conditions or the debtor's ability to effectuate the plan of reorganization.

3-10.3.16 Tax Consequences

In some instances, the proposed plan of reorganization will engender federal tax consequences for the debtor that may have a material affect upon the future financial prospects of the debtor. If material in their affect, these tax consequences should be explained. For example, the discharge of the debtor from indebtedness pursuant to the plan of reorganization may affect the debtor's net operating loss carryovers, investment tax credits, capital loss carryovers, or basis in assets. Similarly, a plan that contemplates a corporate reorganization (e.g., transfer of the debtor's assets to another corporation in exchange for stock) may or may not be tax-free at the corporate

level. Information relating to the tax consequences upon the debtor of the plan of reorganization obviously will be relevant and feasible only in larger chapter 11 cases.

3-10.3.17 Trustee or Examiner

If a trustee or an examiner has been appointed in a chapter 11 case, the identity and the reasons for the appointment of the trustee or examiner should be disclosed. Similar information regarding an elected trustee should be provided. If the trustee or the examiner has prepared a report regarding the operations of the debtor, and if it is not too voluminous, a copy should be attached to the disclosure statement. If it is not attached, it should be summarized in the disclosure statement, with directions on how to obtain a copy of the report.

3-10.3.18 Creditors' Committees and Equity Security Holders' Committees

The disclosure statement should indicate whether there are any creditors' or equity security holders' committees, together with a list of the members of such committees, their addresses, and whether the proposed plan of reorganization has been negotiated with the committees. Any professionals retained by the committees should also be disclosed. The position of the committees on the plan should be disclosed and what role, if any, the committees will play after confirmation.

3-10.3.19 Information Regarding Plan Proponent

Occasionally, a plan and disclosure statement may be offered by a party other than the debtor, the trustee, or the creditors' committee. The proponent must be a "party in interest" under 11 U.S.C. §§ 1121. In those situations, the disclosure statement should clearly describe the position of the proponent relative to the debtor (e.g., a supplier holding an unsecured claim against the debtor in the amount of $20,000), since it may affect the proponent's access to the information and, thus, the quality and quantity of disclosure. On the other hand, disclaimers by an "outside" plan proponent as to the absence of information regarding the debtor must also be scrutinized, since the formulation of a plan by the proponent necessarily involved certain assumptions, if not "hard" information, regarding the debtor. The standard of adequate information should not change depending upon the proponent of the plan. Any assumptions should be disclosed and the proponent should be compelled to obtain the necessary, existing information in order for

the disclosure statement to be approved. See In re Civitella, 15 B.R. 206, 208 (Bankr. E.D. Pa. 1981) (disclosure statement for a plan proposed by three secured creditors denied approval because no factual information provided, only allegations and opinions). Where other plans have been proposed, their existence and the fact that they are on file with the court should be disclosed. These are potential alternatives to the plan that creditors/equity holders are being asked to vote upon.

3-10.3.20 Liquidation Analysis

A creditor cannot make an informed judgment regarding a proposed plan of reorganization without information as to the available alternatives. The most obvious alternative is liquidation of the debtor under chapter 7. Any reference to liquidation should be prefaced with the term "estimated," since liquidation has not occurred. These statements of alternatives should be neutral. Other alternatives may have been considered by the proponent of the plan during the course of the chapter 11 case (e.g., a competing plan of reorganization) and, in that event, the disclosure statement could briefly describe the alternatives considered and the reasons for finding the proposed plan of reorganization preferable.

In most cases an elaborate liquidation analysis should not be necessary. A brief tabular presentation, setting forth estimated administration expenses (including pre and postconfirmation United States Trustee quarterly fees; estimated priority, secured, and unsecured claims; and estimated asset values, together with disclosure of the source of those estimates) should suffice. The disclosure statement should indicate the percentage distribution, if any, to creditors on liquidation.

The disclosure statement should enable the reader to determine what assumptions were made in connection with the estimate of claims and asset values (e.g., the assumptions regarding disallowance of certain claims, recoverable transfers, the book figures upon which the liquidation values are based, and the method employed in computing the book figures or the discount applied to accounts receivable and how this discount relates to the debtor's actual prepetition and postpetition collection experience). Certain assets, such as leases and real estate, may not be reflected accurately on the balance sheet, although quite valuable upon liquidation. Any adjustments that are made should be disclosed.

If liquidation will not be immediate, an estimate of the length of time that would be required to liquidate the assets of the debtor should be included. If relevant, the liquidation analysis should factor in available exemptions provided by the Bankruptcy Code. If claims

incorporated in the liquidation analysis are held by "insiders" or "affiliates" of the debtor, that fact should be mentioned. In the case of a partnership, the disclosure statement should include financial information about the partners so that creditors can determine if the plan is in their "best interest." 11 U.S.C. §§ 1129(a)(7); see also 11 U.S.C. §§ 723 (partnership distributions in chapter 7).

Section 1112(c) of the Bankruptcy Code provides that the court may not convert the chapter 11 case of a "farmer" (as defined in 11 U.S.C. §§ 101(20)) or "a corporation that is not a moneyed, business, or commercial corporation" unless the debtor so requests. Arguably then, a liquidation analysis is unnecessary with respect to cases involving farmers or charitable institutions. There are, however, three factors that should be considered in determining whether a liquidation analysis should be included in such circumstances. First, there may be a legitimate question as to whether the debtor fits the definition of "farmer" in 11 U.S.C. §§ 101(20) or is a "corporation that is not a moneyed, business, or commercial corporation." Second, 11 U.S.C. §§ 1112(c) seems to prohibit involuntary conversion to chapter 7, but does not seem to prohibit dismissal of the chapter 11 case, and the ultimate effect of dismissal may be liquidation of the debtor. Finally, a creditor faced with the proposed plan may elect to reject the plan and seek to structure a competing plan which provides for partial or complete liquidation of the debtor. 11 U.S.C. §§ 1123(b)(4).

Section 1125(b) of the Bankruptcy Code indicates that the court may approve a disclosure statement without a valuation of the debtor or an appraisal of its assets. Appraisals are, however, performed in most cases and their incorporation in the disclosure statement enhances the liquidation analysis. (Disclosure of information relating to an appraisal may be restricted.) If an appraisal is too voluminous, a summary and information on how to obtain a copy of the appraisal will generally suffice. In either event, the disclosure statement should (1) identify the appraiser, (2) identify the party who commissioned the appraisal, and (3) disclose the purpose of the appraisal. The proponent of the plan of reorganization may want to argue that one of the appraisals is especially reliable and the reasons for this conclusion.

3-10.3.21 Vote Required for Acceptance

The disclosure statement should briefly describe the vote required for acceptance of the plan by the various classes of holders of claims and interests under 11 U.S.C. §§ 1126, and should specifically identify which classes are impaired and voting on the plan. The disclosure statement should also establish a record date for voting on

the plan of reorganization by holders of equity securities.

3-10.3.22 "Cram Down"

Although the application of 11 U.S.C. §§ 1129(b) is essentially a question for confirmation, the discussion in the disclosure statement of "cram down" raises a difficult problem. The term "cram down" is used to describe the power of the bankruptcy court to confirm a reorganization plan even though one or more impaired classes of creditors does not accept the plan. 5 Lawrence P. King, Collier on Bankruptcy, ¶¶ 1111.02 (15th ed. rev. 1998). At a minimum, if the debtor intends to invoke the "cram down" provisions against a dissenting class, that intention should be disclosed. Moreover, if the invocation of "cram down" is intended, the disclosure statement should contain a brief summary of the operation of 11 U.S.C. §§ 1129(b) as it would affect the class in question, as well as a brief outline of the "fair and equitable" standard that would be applied should "cram down" be invoked.

The disclosure problem is further complicated to the extent there may be, as a legal matter, significant doubt as to the availability of "cram down" in a given case. For example, although a plan of reorganization proposes that stockholders will receive cash payments in exchange for their shares, the disclosure statement may state (or at least suggest) that 11 U.S.C. §§ 1129(b) "may be" invoked against unsecured creditors as a class. The availability of "cram down" in those circumstances may be questionable. It is misleading to even suggest to creditors that the debtor may invoke 11 U.S.C. §§ 1129(b) without an explanation. Thus, in every case in which the debtor states or suggests that "cram down" is contemplated, the United States Trustee should analyze the legal issue and formulate a judgment as to the availability of "cram down" under the circumstances. If the United States Trustee questions the availability of "cram down," an objection to the disclosure statement should be made. The remedy may be deletion or the inclusion of an explanation of the legal issues involved.

Moreover, the disclosure statement should include a statement to the effect that, if a senior class of creditors rejects the plan, the court may find that the junior class (or classes) may not receive a distribution under the plan or retain its interests in the reorganized debtor unless they satisfy the "new value exception" which would require that the junior class (or classes) contribute new value to the debtor that is new, substantial, money, or money's worth; necessary for a successful reorganization; and in an amount reasonably equivalent to the value of the interest or distribution that they are retaining or receiving. In re One Times Square Assocs. Ltd.

Partnership, 159 B.R. 695, 706-08 (Bankr. S.D.N.Y. 1993).

3-10.3.23 Miscellaneous Matters

The disclosure statement should identify the leases or executory contracts being assumed or rejected under the plan. To the extent a lease or executory contract is being rejected, a claim for damages may arise. An estimate of these damage claims should be set forth and factored into the estimated amount of claims in each class.

The disclosure statement should set forth any default provisions under the plan and the consequences attendant to a default. For example, a default could trigger an acceleration of the total future payments under the plan or an immediate conversion to chapter 7.

3-10.3.24 Summary and Table of Contents

If the disclosure statement is voluminous, the inclusion of a table of contents and a brief summary of the plan, of alternatives to the plan, and of the debtor's future prospects may be appropriate.

Appendix C
Current Financial Reporting Requirements of the Office of the United States Trustee

United States Trustee Policy Manual
Volume 3, 1999
(taken from http://www.usdoj.gov/ust/ustp_manual/vol3toc.htm)

3-3.3 FINANCIAL REPORTS

The timely filing of reports of operations is crucial to the efficient administration of chapter 11 cases. These reports are designed to provide the United States Trustee, the court, creditors, and other parties in interest with reliable information regarding the current status of a Case. The United States Trustee should use the information contained in the reports to identify cases lacking a realistic prospect of reorganization and to evaluate the feasibility of a proposed plan of reorganization.

The debtor in possession should file operating reports each month throughout the pendency of the case. A deadline for the submission of the initial report should be set at the initial debtor interview. The report should be filed with both the United States Trustee and the clerk of the court. The debtor should also provide a copy of the report to the Chair of any creditors' committee appointed to serve in the case.

The United States Trustee retains the discretion to waive or modify the reporting requirements. The rationale underlying any such decision, however, should be documented in writing and maintained in the file. Moreover, this discretion should be exercised sparingly, given both the importance of timely and accurate financial information in the reorganization process, as well as the need to avoid the appearance that a debtor is receiving disparate treatment. The debtor's obligation to file monthly operating reports ends when a case is converted or dismissed. Postconfirmation, the United States Trustee should require submission and filing of reports pursuant to 11 U.S.C. §§ 1106(a)(7). See USTM 3-10.7.

Different reporting formats may be used for different types of cases. For example, the operating report form used for a case involving an ongoing manufacturing concern may be different from the form more suitable for use in a real estate case. Generally, the debtor's operating reports should be premised on the accrual basis of accounting. Under this method, revenue is considered earned in the period in which sales are made or services are rendered (regardless of when payment is collected), and expenses are considered in the period in which they are incurred regardless of when they are paid.

The operating report form used in a standard business reorganization under chapter 11 should encompass the elements described in the following subsections.

3-3.3.1 Cash Receipts and Disbursements Statement

The United States Trustee should require the submission of cash statements showing the receipts and disbursements of the debtor, as well as a separate cash account reconciliation statement for each of its bank accounts, e.g., general account, tax escrow account, and payroll account. The information contained in these statements will reflect whether the debtor's operations are generating a positive cash flow. The information should be analyzed with appropriate consideration given to the seasonality of the debtor's business and any historical information that is relevant.

Aside from the income and other items comprising cash receipts, the cash statement should contain the debtor's expenditures for inventory, salaries, taxes, etc. The United States Trustee can use the information reported in these statements to discover:

1. whether the debtor is making unauthorized payments to professionals;
2. whether the debtor is improperly paying prepetition debts;
3. whether the debtor has sufficient cash flow to effectively reorganize;
4. whether inordinate payments are being made for travel, entertainment, or other employee benefits; and,
5. whether improper payments are being made by the debtor that will hamper its ability to reorganize.

3-3.3.2 Statement of Operations

The debtor should provide a regular monthly statement of operations (income statement) that indicates whether the debtor is generating sufficient funds to reorganize. The statement of operations form is a comparative statement designed to allow the United States Trustee to review all the information from a particular debtor on one spreadsheet.

A detailed review and analysis of this statement is important as it provides a better picture of a debtor's operations than does the cash statement. Many expenses are paid less frequently than on a monthly basis. In addition, there are non-cash accounts (e.g., depreciation and

amortization) that do not appear on a cash statement, yet must be taken into account in analyzing the ongoing viability of the debtor. For example, although depreciation is a non-cash item, the debtor will eventually need to buy new machinery and equipment or pay for other capital improvements.

The accrual income statement is also important since it indicates the cost of goods sold. This requires a beginning inventory figure based upon a physical or perpetual inventory. The beginning inventory figure is critical since it is only after purchases have been added and ending inventory deducted that one arrives at the cost of goods sold. This will determine the debtor's gross profit margin. At this point, a comparative financial analysis can be accomplished using statistics from prior years.

3-3.3.3 Balance Sheet

The debtor is required to provide a balance sheet on a monthly basis to allow the United States Trustee to review the debtor's changing assets and debts on a single spreadsheet.

Careful analysis of the balance sheet is required as it can uncover whether the debtor is making payments on prepetition debts, whether assets are being dissipated, and whether the debtor is accumulating unpaid postpetition liabilities and uncollected postpetition accounts receivable. If any of these occur, the United States Trustee should take appropriate action.

3-3.3.4 Schedule of Postpetition Liabilities

The debtor should provide an accounting of the amount of obligations unpaid since the commencement of the case, as well as an aging schedule for these sums. If the total amount of unpaid obligations increases and the amounts owed are becoming further past due, it may indicate a negative cash flow and/or administrative insolvency. However, there will almost always be certain postpetition obligations which have not been paid simply because they have not become due in the ordinary course of business or because their payment is not yet authorized (e.g., payment of attorney or accountant fees).

3-3.3.5 Postpetition Taxes Payable (Tax Reconciliation) Statement

The taxes payable or tax reconciliation statement provides a means for monitoring and verifying that a debtor is current with its postpetition tax obligations. Aging information about these obligations should be provided. Close scrutiny of this form is critical

and prompt remedial action should be undertaken by the United States Trustee if unpaid postpetition obligations accumulate.

The United States Trustee should maintain an information exchange program with the Special Procedures Staff of the Internal Revenue Service. This exchange will provide an independent means of checking and verifying the debtor's information regarding federal tax obligations. The Internal Revenue Service, in turn, is authorized to notify the United States Trustee when its records indicate that a debtor has failed to satisfy a postpetition tax obligation.

3-3.3.6 Additional Reporting Requirements

In addition to the five standard forms previously discussed, the United States Trustee retains the discretion to require any additional reports necessary to ensure that a case is properly monitored and administered. Examples would include:

1. A requirement that copies of previous years' tax returns and financial statements be filed with the United States Trustee.
2. A requirement that a debtor file a list of inventory.
3. A requirement that a debtor file a list of its employees and their current salaries.
4. A requirement that a debtor provide an aging statement regarding its accounts receivable.
5. In a real estate case, a requirement that a debtor submit a rent roll.
6. A requirement that a debtor submit a check register.
7. A requirement that a debtor submit a statement of sources and uses of cash (Cash Flow Statement).

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

CENTRAL DISTRICT OF CALIFORNIA

APPROVED FORM FOR PRODUCING A

CHAPTER 11 DISCLOSURE STATEMENT

WordPerfect 6.1 (Windows) Format

Version 12/24/96

NAME OF ATTORNEY - State Bar No. _____
NAME OF ATTORNEY - State Bar No. _____
NAME OF LAW FIRM
Address
City, State Zip Code
Telephone ( ) -

Attorneys for _____

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

In re NAME OF DEBTOR, Debtor	**Bk. No.** __ __-_____-__ In a Case Under Chapter 11 of the Bankruptcy Code (11 U.S.C. § 1101 et seq.) **_____[1] DISCLOSURE STATEMENT DESCRIBING _____[2] CHAPTER 11 PLAN** **Disclosure Statement Hearing** Date: _____ Time: _____ Ctrm: {Insert Courtroom #} {Insert Full Court Address Here} **Plan Confirmation Hearing** Complete This Section When Applicable Date: _____ Time: _____ Ctrm: {Insert Courtroom #} {Insert Full Court Address Here}

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I.

INTRODUCTION

_____[3]_____ is the Debtor in a Chapter 11 bankruptcy case. On _____[4]_____, _____[5]_____ commenced a bankruptcy case by filing _____[6]_____ Chapter 11 _____[6b]_____ petition under the United States Bankruptcy Code ("Code"), 11 U.S.C. § 101 et seq., Chapter 11 allows the Debtor, and under some circumstances, creditors and others parties in interest, to propose a plan of reorganization ("Plan"). The Plan may provide for the Debtor to reorganize by continuing to operate, to liquidate by selling assets of the estate, or a combination of both. _____[7]_____ is the party proposing the Plan sent to you in the same envelope as this document. THE DOCUMENT YOU ARE READING IS THE DISCLOSURE STATEMENT FOR THE ENCLOSED PLAN.

This is a _____[8]_____ plan. In other words, the Proponent seeks to accomplish payments under the Plan by _____[9]_____. The Effective Date of the proposed Plan is _____[10]_____.

A. Purpose of This Document

This Disclosure Statement summarizes what is in the Plan, and tells you certain information relating to the Plan and the process the Court follows in determining whether or not to confirm the Plan.

READ THIS DISCLOSURE STATEMENT CAREFULLY IF YOU WANT TO KNOW ABOUT:

(1) WHO CAN VOTE OR OBJECT,

(2) WHAT THE TREATMENT OF YOUR CLAIM IS (i.e., what your claim will receive if the Plan is confirmed), AND HOW THIS TREATMENT COMPARES TO WHAT YOUR CLAIM WOULD

RECEIVE IN LIQUIDATION,

(3) THE HISTORY OF THE DEBTOR AND SIGNIFICANT EVENTS DURING THE BANKRUPTCY,

(4) WHAT THINGS THE COURT WILL LOOK AT TO DECIDE WHETHER OR NOT TO CONFIRM THE PLAN,

(5) WHAT IS THE EFFECT OF CONFIRMATION, AND

(6) WHETHER THIS PLAN IS FEASIBLE.

This Disclosure Statement cannot tell you everything about your rights. You should consider consulting your own lawyer to obtain more specific advice on how this Plan will affect you and what is the best course of action for you.

Be sure to read the Plan as well as the Disclosure Statement. If there are any inconsistencies between the Plan and the Disclosure Statement, the Plan provisions will govern.

The Code requires a Disclosure Statement to contain "adequate information" concerning the Plan. The Bankruptcy Court ("Court") has approved this document as an adequate Disclosure Statement, containing enough information to enable parties affected by the Plan to make an informed judgment about the Plan. Any party can now solicit votes for or against the Plan.

B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

THE COURT HAS NOT YET CONFIRMED THE PLAN DESCRIBED IN THIS DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS OF THE PLAN ARE NOT YET BINDING ON ANYONE. HOWEVER, IF THE COURT LATER CONFIRMS THE PLAN, THEN THE PLAN WILL BE BINDING ON THE DEBTOR AND ON ALL CREDITORS AND INTEREST HOLDERS IN THIS CASE.

1. Time and Place of the Confirmation Hearing

The hearing where the Court will determine whether or not to confirm the Plan will take place on _____[11]_____, at _____ {A.M./P.M.}, in Courtroom _____, {Insert Courthouse Name}, {Insert Full Court Address, City, State, Zip Code}.

2. Deadline For Voting For or Against the Plan

If you are entitled to vote, it is in your best interest to timely vote on the enclosed ballot and return the ballot in the enclosed envelope to _____[12]_____.

Your ballot must be received by _____[13]_____ or it will not be counted.

3. Deadline For Objecting to the Confirmation of the Plan

Objections to the confirmation of the Plan must be filed with the Court and served upon _____[14]_____ by _____[15]_____.

4. Identity of Person to Contact for More Information Regarding the Plan

Any interested party desiring further information about the Plan should contact _____[16]_____.

C. Disclaimer

The financial data relied upon in formulating the Plan is based on _____[17]_____. The information contained in this Disclosure Statement is provided by _____[18]_____. The Plan Proponent represents that everything stated in the Disclosure Statement is true to the Proponent's best knowledge. The Court has not yet determined whether or not the Plan is confirmable and makes no recommendation as to whether or not you should support or oppose the Plan.

II.

BACKGROUND

A. Description and History of the Debtor's Business

The Debtor is a _____[19]_____.

The Debtor is in the business of _____[20]_____.

The Debtor has been in this business since _____[21]_____.

B. Principals/Affiliates of Debtor's Business

_____[22]_____.

C. Management of the Debtor Before and After the Bankruptcy

_____[23]_____.

D. Events Leading to Chapter 11 Filing

Here is a brief summary of the circumstances that led to the filing of this Chapter 11 case:

_____[24]_____.

E. Significant Events During the Bankruptcy

1. Bankruptcy Proceedings

The following is a chronological list of significant events which have occurred during this case: _____[25]_____

The Court has approved the employment of the following professionals: _____[26]_____

Currently, the following significant adversary proceedings and motions are still pending: _____[27]_____.

2. Other Legal Proceedings

In addition to the proceedings discussed above, the Debtor is currently involved in the following nonbankruptcy legal proceedings:

_____[28]_____.

What about other litigation?

3. Actual and Projected Recovery of Preferential or Fraudulent Transfers [29]

_____[30]_____ is estimated to be realized from the recovery of fraudulent and preferential transfers. The following is a summary of the fraudulent conveyance and preference actions filed or to be filed in this case: _____[31]_____

4. Procedures Implemented to Resolve Financial Problems

To attempt to fix the problems that led to the bankruptcy filing, Debtor has implemented the following procedures: _____[32]_____

5. Current and Historical Financial Conditions

_____[33]_____.

The identity and fair market value of the estate's assets are listed in Exhibit A. See also the Debtor's financial history set forth in Exhibit B.

III.

SUMMARY OF THE PLAN OF REORGANIZATION

A. What Creditors and Interest Holders Will Receive Under The Proposed Plan

As required by the Bankruptcy Code, the Plan classifies claims and interests in various classes according to their right to priority. The Plan states whether each class of claims or interests is impaired or unimpaired. The Plan provides the treatment each class will receive.

B. Unclassified Claims

Certain types of claims are not placed into voting classes; instead they are unclassified. They are not considered impaired

and they do not vote on the Plan because they are automatically entitled to specific treatment provided for them in the Bankruptcy Code. As such, the Proponent has not placed the following claims in a class.

1. Administrative Expenses

Administrative expenses are claims for costs or expenses of administering the Debtor's Chapter 11 case which are allowed under Code section 507(a)(1). The Code requires that all administrative claims be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment.[34]

The following chart lists all of the Debtor's § 507(a)(1) administrative claims and their treatment under the Plan[35] (see Exhibit F for detailed information about each administrative expense claim):

Name	Amount Owed	Treatment
Clerk's Office Fees		Paid in full on Effective Date[36]
Office of the U.S. Trustee Fees		Paid in full on Effective Date
	TOTAL	

Court Approval of Fees Required:

The Court must rule on all fees listed in this chart before the fees will be owed. For all fees except Clerk's Office fees and U.S. Trustee's fees, the professional in question must file and serve a properly noticed fee application and the Court must rule on the application. Only the amount of fees allowed by the Court will be owed and required to be paid under this Plan.

As indicated above, the Debtor will need to pay ___[37]___ worth of administrative claims on the Effective Date of the Plan unless the claimant has agreed to be paid later or the Court has not yet ruled on the claim. As indicated elsewhere in this Disclosure Statement, Debtor will have ___[38]___ amount of cash on hand on the Effective Date of the Plan. The source of this cash will be ___[39]___.

2. Priority Tax Claims

Priority tax claims are certain unsecured income, employment and other taxes described by Code Section 507(a)(8)[40]. The Code requires that each holder of such a 507(a)(8) priority tax claim receive the present value of such claim in deferred cash payments, over a period not exceeding six years from the date of the assessment of such tax.

The following chart lists <u>all</u> of the Debtor's Section 507(a)(8)[41] priority tax claims and their treatment under the Plan:

Description	Amount Owed	Treatment[42]
• Name = • Type of tax = • Date tax assessed =		• Pymt interval [43] = • Pymt amt/interval [44] = • Begin date [45] = • End date [46] = • Interest Rate % [47] = • Total Payout Amount [48] __ % = $
• Name = • Type of tax = • Date tax assessed =		• Pymt interval = • Pymt amt/interval = • Begin date = • End date = • Interest Rate % = • Total Payout Amount % = $

C. Classified Claims and Interests

1. Classes of Secured Claims

Secured claims are claims secured by liens on property of

the estate. The following chart lists all classes containing Debtor's secured pre-petition claims and their treatment under this Plan[48a]:

CLASS#	DESCRIPTION	INSIDERS (Y/N)	IMPAIRED (Y/N)	TREATMENT
	Secured claim of: ● Name = ● Collateral description = ● Collateral value = ● Priority of security int. = ● Principal owed = ● Pre-pet. arrearage amount = ● Post-pet. arrearage amount = ● Total claim amount =		[49]	● Pymt interval = ● Pymt amt/interval = ● Balloon pymt [50] = ● Begin date = ● End date = ● Interest rate % = ● Total payout[50a] __ % = $ ● Treatment of Lien =
	Secured claim of: ● Name = ● Collateral description = ● Collateral value = ● Priority of security int. = ● Principal owed = ● Pre-pet. arrearage amount = ● Post-pet. arrearage amount = ● Total claim amount =			● Pymt interval = ● Pymt amt/interval = ● Balloon pymt = ● Begin date = ● End date = ● Interest rate % = ● Total payout % = $ ● Treatment of Lien =

2. Classes of Priority Unsecured Claims

Certain priority claims that are referred to in Code Sections 507(a)(3), (4), (5), (6), and (7)[51] are required to be placed in classes. These types of claims are entitled to priority treatment as follows: the Code requires that each holder of such a claim receive cash on the Effective Date equal to the allowed

amount of such claim. However, a class of unsecured priority claim holders may vote to accept deferred cash payments of a value, as of the Effective Date, equal to the allowed amount of such claims.

The following chart lists all classes containing Debtor's 507(a)(3), (a)(4), (a)(5), (a)(6), and (a)(7)[52] priority unsecured claims and their treatment under this Plan (see Exhibit G for more detailed information about each priority unsecured claim)[53].

CLASS#	DESCRIPTION	IMPAIRED (Y/N)	TREATMENT
	Priority unsecured claim pursuant to [54] ● Total amt of claims = [55]		● Paid in full in cash on Effective Date[56]
	Priority unsecured claim pursuant to [57] ● Total amt of claims = [58]		● Paid in full in cash on Effective Date

3. Class of General Unsecured Claims

General unsecured claims are unsecured claims not entitled to priority under Code Section 507(a). The following chart identifies this Plan's treatment of the class containing all of Debtor's general unsecured claims (see Exhibit H for detailed information about each general unsecured claim):

CLASS#	DESCRIPTION	IMPAIRED (Y/N)	TREATMENT
	General unsecured claims ● Total amt of claims =	[59]	● Pymt interval = ● Pymt amt/interval = ● Begin date = ● End date = ● Interest rate % = ● Total payout [59a] ___ % = $

[59b.]

[59c.]

4. Class(es) of Interest Holders

Interest holders are the parties who hold ownership interest (i.e., equity interest) in the Debtor. If the Debtor is a corporation, entities holding preferred or common stock in the Debtor are interest holders. If the Debtor is a partnership, the interest holders include both general and limited partners. If the Debtor is an individual, the Debtor is the interest holder. The following chart identifies the Plan's treatment of the class[60] of interest holders (see Exhibit I for more detailed information about each interest holder):

CLASS #	DESCRIPTION	IMPAIRED (Y/N)	TREATMENT
	Interest holders	[61]	

D. Means of Effectuating the Plan

1. Funding for the Plan

The Plan will be funded by the following: [62].

2. Post-confirmation Management

[63]

3. Disbursing Agent

[64] shall act as the disbursing agent for the purpose of making all distributions provided for under the Plan. The Disbursing Agent shall serve [65] bond and shall receive [66] for distribution services rendered and expenses incurred pursuant to the Plan.

E. Risk Factors

The proposed Plan has the following risks: [67]

F. Other Provisions of the Plan

1. Executory Contracts and Unexpired Leases

a. Assumptions

The following are the unexpired leases and executory contracts to be assumed as obligations of the reorganized Debtor under this Plan (see Exhibit C for more detailed information on unexpired leases to be assumed and Exhibit D for more detailed information on executory contracts to be assumed):

[68]

On the Effective Date, each of the unexpired leases and executory contracts listed above shall be assumed as obligations of the reorganized Debtor. The Order of the Court confirming the Plan shall constitute an Order approving the assumption of each lease and contract listed above. If you are a party to a lease or contract to be assumed and you object to the assumption of your lease or contract, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan. See Section {I.B.3.} of this document for the specific date.

b. Rejections

On the Effective Date, the following executory contracts and unexpired leases will be rejected:

[69]

The order confirming the Plan shall constitute an Order approving the rejection of the lease or contract. If you are a party to a contract or lease to be rejected and you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan. See Section {I.B.3.} of this document

for the specific date.

THE BAR DATE FOR FILING A PROOF OF CLAIM BASED ON A CLAIM ARISING FROM THE REJECTION OF A LEASE OR CONTRACT IS ____70____. Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court later orders otherwise.

2. Changes in Rates Subject to Regulatory Commission Approval

This Debtor ____71____ subject to governmental regulatory commission approval of its rates[71a].

3. Retention of Jurisdiction.

The Court will retain jurisdiction to the extent provided by law.[71b]

G. Tax Consequences of Plan

CREDITORS AND INTEREST HOLDERS CONCERNED WITH HOW THE PLAN MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS. The following disclosure of possible tax consequences is intended solely for the purpose of alerting readers about possible tax issues this Plan may present to the Debtor. The Proponent CANNOT and DOES NOT represent that the tax consequences contained below are the only tax consequences of the Plan because the Tax Code embodies many complicated rules which make it difficult to state completely and accurately all the tax implications of any action.

The following are the tax consequences which the Plan will have on the Debtor's tax liability: ____72____

IV.

CONFIRMATION REQUIREMENTS AND PROCEDURES

PERSONS OR ENTITIES CONCERNED WITH CONFIRMATION OR THIS PLAN SHOULD CONSULT WITH THEIR OWN ATTORNEYS BECAUSE THE LAW ON CONFIRMING A PLAN OF REORGANIZATION IS VERY COMPLEX. The following discussion is intended solely for the purpose of alerting readers about basic confirmation issues, which they may wish to consider, as well as certain deadlines for filing claims. The proponent CANNOT and DOES NOT represent that the discussion contained below is a complete summary of the law on this topic.

Many requirements must be met before the Court can confirm a Plan. Some of the requirements include that the Plan must be proposed in good faith, acceptance of the Plan, whether the Plan pays creditors at least as much as creditors would receive in a Chapter 7 liquidation, and whether the Plan is feasible. These requirements are not the only requirements for confirmation.

A. Who May Vote or Object

1. Who May Object to Confirmation of the Plan

Any party in interest may object to the confirmation of the Plan, but as explained below not everyone is entitled to vote to accept or reject the Plan.

2. Who May Vote to Accept/Reject the Plan

A creditor or interest holder has a right to vote for or against the Plan if that creditor or interest holder has a claim which is both (1) allowed or allowed for voting purposes and (2) classified in an impaired class.

a. What Is an Allowed Claim/Interest

As noted above, a creditor or interest holder must first

have an allowed claim or interest to have the right to vote. Generally, any proof of claim or interest will be allowed, unless a party in interest brings a motion objecting to the claim. When an objection to a claim or interest is filed, the creditor or interest holder holding the claim or interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or interest for voting purposes.

THE BAR DATE FOR FILING A PROOF OF CLAIM IN THIS CASE WAS 73. A creditor or interest holder may have an allowed claim or interest even if a proof of claim or interest was not timely filed. A claim is deemed allowed if (1) it is scheduled on the Debtor's schedules and such claim is not scheduled as disputed, contingent, or unliquidated, and (2) no party in interest has objected to the claim. An interest is deemed allowed if it is scheduled and no party in interest has objected to the interest. Consult Exhibits F through L to see how the Proponent has characterized your claim or interest.

b. What Is an Impaired Claim/Interest

As noted above, an allowed claim or interest only has the right to vote if it is in a class that is impaired under the Plan. A class is impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class. For example, a class comprised of general unsecured claims is impaired if the Plan fails to pay the members of that class 100% of what they are owed.

+ interest

In this case, the Proponent believes that classes 74 are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Proponent believes that classes 75 are unimpaired and that

holders of claims in each of these classes therefore do not have the right to vote to accept or reject the Plan. Parties who dispute the Proponent's characterization of their claim or interest as being impaired or unimpaired may file an objection to the Plan contending that the Proponent has incorrectly characterized the class.

3. Who is Not Entitled to Vote

The following four types of claims are not entitled to vote: (1) claims that have been disallowed; (2) claims in unimpaired classes; (3) claims entitled to priority pursuant to Code sections 507(a)(1), (a)(2), and (a)(8)[76]; and (4) claims in classes that do not receive or retain any value under the Plan. Claims in unimpaired classes are not entitled to vote because such classes are deemed to have accepted the Plan. Claims entitled to priority pursuant to Code sections 507(a)(1), (a)(2), and (a)(7) are not entitled to vote because such claims are not placed in classes and they are required to receive certain treatment specified by the Code. Claims in classes that do not receive or retain any value under the Plan do not vote because such classes are deemed to have rejected the Plan. EVEN IF YOUR CLAIM IS OF THE TYPE DESCRIBED ABOVE, YOU MAY STILL HAVE A RIGHT TO OBJECT TO THE CONFIRMATION OF THE PLAN.

4. Who Can Vote in More Than One Class

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim is entitled to accept or reject a Plan in both capacities by casting one ballot for the secured part of the claim and another ballot for the unsecured claim.

5. Votes Necessary to Confirm the Plan

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by "cramdown" on non-accepting classes, as discussed later in Section {IV.A.8.}.

6. Votes Necessary for a Class to Accept the Plan

A class of claims is considered to have accepted the Plan when more than one-half (1/2) in number and at least two-thirds (2/3) in dollar amount of the claims which actually voted, voted in favor of the Plan. A class of interests is considered to have accepted the Plan when at least two-thirds (2/3) in amount of the interest-holders of such class which actually voted, voted to accept the Plan.

7. Treatment of Nonaccepting Classes

As noted above, even if <u>all</u> impaired classes do not accept the proposed Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner required by the Code. The process by which nonaccepting classes are forced to be bound by the terms of the Plan is commonly referred to as "cramdown." The Code allows the Plan to be "crammed down" on nonaccepting classes of claims or interests if it meets all consensual requirements except the voting requirements of 1129(a)(8), and if the Plan does not "discriminate unfairly" and is "fair and equitable" toward each impaired class that has not voted to accept the Plan as referred to in 11 U.S.C. § 1129(b) and applicable case law.

Need explanation that for class of claims reject

8. **Request for Confirmation Despite Nonacceptance by Impaired Class(es)**

The party proposing this Plan ___77___ asks the Court to confirm this Plan by cramdown on impaired classes ___77a___ if any of these classes do not vote to accept the Plan.

Please note that the proposed Plan treatment described by this Disclosure Statement cannot be crammed down on the following classes : ___78___. AS A RESULT, IF ANY OF THESE CLASSES DOES NOT VOTE TO ACCEPT THE PLAN, THE PLAN WILL NOT BE CONFIRMED.[79]

B. Liquidation Analysis

Another confirmation requirement is the "Best Interest Test", which requires a liquidation analysis. Under the Best Interest Test, if a claimant or interest holder is in an impaired class and that claimant or interest holder does not vote to accept the Plan, then that claimant or interest holder must receive or retain under the Plan property of a value not less than the amount that such holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code.

In a Chapter 7 case, the Debtor's assets are usually sold by a Chapter 7 trustee. Secured creditors are paid first from the sales proceeds of properties on which the secured creditor has a lien. Administrative claims are paid next. Next, unsecured creditors are paid from any remaining sales proceeds, according to their rights to priority. Unsecured creditors with the same priority share in proportion to the amount of their allowed claim in relationship to the amount of total allowed unsecured claims. Finally, interest holders receive the balance that remains after all creditors are paid, if any.

For the Court to be able to confirm this Plan, the Court must find that all creditors and interest holders who do not accept the Plan will receive at least as much under the Plan as such holders would receive under a Chapter 7 liquidation. The Plan Proponent maintains that this requirement is met here for the following reasons: 80.

Below is a demonstration, in balance sheet format, that all creditors and interest holders will receive at least as much under the Plan as such creditor or interest holder would receive under a Chapter 7 liquidation. (See Exhibit E for a detailed explanation of how the following assets are valued. This information is provided by 18.)

ASSETS VALUE AT LIQUIDATION VALUES[81]:

CURRENT ASSETS		
a.	Cash on hand	$
b.	Accounts receivable	$
c.	Inventories	$
	TOTAL CURRENT ASSETS	$
FIXED ASSETS		
a.	Office furniture & equipment	$
b.	Machinery & equipment	$
c.	Automobiles	$
d.	Building & Land[82]	$
	TOTAL FIXED ASSETS	$
OTHER ASSETS		
a.	Customer list	$
b.	Other intangibles	$
	TOTAL OTHER ASSETS	$
TOTAL ASSETS AT LIQUIDATION VALUE		$
Less:		
Secured creditor's recovery[1]		$
Less:		
Chapter 7 trustee fees and expenses		$
Less:		
Chapter 11 administrative expenses		$
Less:		
Priority claims, excluding administrative expense claims		$
Less:		
Debtor's claimed exemptions		$
(1)	Balance for unsecured claims	$
(2)	Total amt of unsecured claims	$

% OF THEIR CLAIMS WHICH UNSECURED CREDITORS WOULD RECEIVE OR RETAIN IN A CH. 7 LIQUIDATION[2]: = [83]

% OF THEIR CLAIMS WHICH UNSECURED CREDITORS WILL RECEIVE OR RETAIN UNDER THIS PLAN: = [84]

1/ Note: The deficiency portion of a secured recourse claim must be added to the total amount of unsecured claims.

2/ Note: If this percentage is greater than the amount to be paid to the unsecured creditors on a "present value basis" under the Plan, the Plan is not confirmable unless Proponent obtains acceptance by every creditor in the general unsecured class.

Below is a demonstration, in tabular format, that all creditors and interest holders will receive at least as much under the Plan as such creditor or holder would receive under a Chapter 7 liquidation.

CLAIMS & CLASSES[85]	PAYOUT PERCENTAGE UNDER THE PLAN	PAYOUT PERCENTAGE IN CHAPTER 7 LIQUIDATION
Administrative Claims		
Priority Tax Claims		
Class 1 - [86]		
Class 2 - [87]		
Class 3 - [88]		
Class 4 - [89]		

C. Feasibility

Another requirement for confirmation involves the feasibility of the Plan, which means that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan.

There are at least two important aspects of a feasibility analysis. The first aspect considers whether the Debtor will have enough cash on hand on the Effective Date of the Plan to pay all the claims and expenses which are entitled to be paid on such date. The Plan Proponent maintains that this aspect of feasibility is satisfied as illustrated here:

Cash Debtor will have on hand by Effective Date[90]	$_____
To Pay: Administrative claims	-_____
To Pay: Statutory costs & charges	-_____
To Pay: Other Plan Payments due on Effective Date	-_____
Balance after paying these amounts.....	$_____

The sources of the cash Debtor will have on hand by the Effective Date, as shown above are:

$_____	Cash in DIP Account now
+_____	Additional cash DIP will accumulate from net earnings between now and Effective Date
+_____	Borrowing
+_____	Capital Contributions
+_____	Other
$_____	**Total**[91]

Borrowing is from _____[92] and will be paid back as follows: _____[93].

The second aspect considers whether the Proponent will have enough cash over the life of the Plan to make the required Plan payments.[94]

The Proponent has provided financial statements which include both historical and projected financial information. Please refer to Exhibit B for the relevant financial statements. YOU ARE ADVISED TO CONSULT WITH YOUR ACCOUNTANT OR FINANCIAL ADVISOR IF YOU HAVE ANY QUESTIONS PERTAINING TO THESE FINANCIAL STATEMENTS.

In summary, the Plan proposes to pay _____[95] each _____[96]. As Debtor's financial projections demonstrate, Debtor will have an average cash flow, after paying operating expenses and post-confirmation taxes, of _____[97] each _____[98] for the life of the Plan. The final Plan payment is expected to be paid on _____[99]. The Plan Proponent contends that Debtor's financial projections are feasible. As shown by Debtor's historical financial statements, Debtor's average _____[100] cash flow, after paying operating expenses and post-confirmation

taxes, in the three years preceding the filing of this bankruptcy case is ____101____. Debtor's average ____102____ cash flow, after paying operating expenses and post-confirmation taxes, during the bankruptcy case is ____103____. Furthermore, as discussed earlier in the Disclosure Statement at Section {II.E.4}, Debtor has implemented procedures to ____104____.

V.

EFFECT OF CONFIRMATION OF PLAN

A. Discharge[105]

This Plan provides that upon ____106____, Debtor shall be discharged of liability for payment of debts incurred before confirmation of the Plan, to the extent specified in 11 U.S.C.§ 1141. However, the discharge will not discharge any liability imposed by the Plan.

B. Revesting of Property in the Debtor

Except as provided in Section {V.E.}, and except as provided elsewhere in the Plan, the confirmation of the Plan revests all of the property of the estate in the Debtor.

C. Modification of Plan

The Proponent of the Plan may modify the Plan at any time before confirmation. However, the Court may require a new disclosure statement and/or revoting on the Plan.

The Proponent of the Plan may also seek to modify the Plan at any time after confirmation only if (1) the Plan has not been substantially consummated and (2) the Court authorizes the

proposed modifications after notice and a hearing.

D. Post-Confirmation Status Report

Within 120 days of the entry of the order confirming the Plan, Plan Proponent shall file a status report with the Court explaining what progress has been made toward consummation of the confirmed Plan. The status report shall be served on the United States Trustee, the twenty largest unsecured creditors, and those parties who have requested special notice. Further status reports shall be filed every 120 days and served on the same entities.

Creditors Committee?

E. Post-Confirmation Conversion/Dismissal

A creditor or party in interest may bring a motion to convert or dismiss the case under § 1112(b), after the Plan is confirmed, if there is a default in performing the Plan. If the Court orders the case converted to Chapter 7 after the Plan is confirmed, then all property that had been property of the Chapter 11 estate, and that has not been disbursed pursuant to the Plan, will revest in the Chapter 7 estate. The automatic stay will be reimposed upon the revested property, but only to the extent that relief from stay was not previously authorized by the Court during this case.

The order confirming the Plan may also be revoked under very limited circumstances. The Court may revoke the order if the order of confirmation was procured by fraud and if the party in interest brings an adversary proceeding to revoke confirmation within 180 days after the entry of the order of confirmation.

F. Final Decree

Once the estate has been fully administered as referred to in Bankruptcy Rule 3022, the Plan Proponent, or other party as the Court shall designate in the Plan Confirmation Order, shall

file a motion with the Court to obtain a final decree to close the case.

Date: _____

_____
Name and Identity of Plan Proponent

_____
Signature of Plan Proponent
(optional unless party is pro se)

_____
Signature of Attorney for Plan Proponent

_____
Name of Attorney for Plan Proponent

_____
Name of Law Firm for Plan Proponent

VI.

SUPPORTING DECLARATIONS[107]

EXHIBIT A - LIST OF ALL ASSETS[108]

EXHIBIT B - FINANCIAL STATEMENTS

As directed by the Court, the historical financial statements for the three years preceding the petition date and projected financial statements for the life of the Plan are attached.[109] This information is supplied by ____[18]____ and is based on the ____[17]____.

EXHIBIT C - UNEXPIRED LEASES TO BE ASSUMED[109a]

LEASES	ARREARS/DMGS	METHODS OF CURE
● Description = [110] ● Lessor's name = ● Lessee's name = ● Expiration date =	● Default amt = ● Actual pecuniary loss[111] =	● Method of curing default & loss = ● Means of assuring future performance[112] =
● Description = ● Lessor's name = ● Lessee's name = ● Expiration date =	● Default amt = ● Actual pecuniary loss =	● Method of curing default & loss = ● Means of assuring future performance =
● Description = ● Lessor's name = ● Lessee's name = ● Expiration date =	● Default amt = ● Actual pecuniary loss =	● Method of curing default & loss = ● Means of assuring future performance =

EXHIBIT D - EXECUTORY CONTRACTS TO BE ASSUMED

CONTRACT	DEFAULT/DMGS	METHODS OF CURE
• Contract description = • Contracting parties = 1. 2.	• Default amt = • Actual pecuniary loss =	• Method of curing default & loss = • Means of assuring performance =
• Contract description = • Contracting parties = 1. 2.	• Default amt = • Actual pecuniary loss =	• Method of curing default & loss = • Means of assuring performance =
• Contract description = • Contracting parties = 1. 2.	• Default amt = • Actual pecuniary loss =	• Method of curing default & loss = • Means of assuring performance =

EXHIBIT E - LIQUIDATION ANALYSIS

SUPPORTING VALUATION

CURRENT ASSETS:		
CASH ON HAND[113]		
a. Acct Number:	$	
b. Acct Number:	$	
c. Total Cash		$
ACCOUNTS RECEIVABLE		
a. Accounts receivable	$	
b. **Less:** uncollectible accounts	$	
c. Net Accounts Receivables		$
INVENTORIES[114]		$
FIXED ASSETS:		
OFFICE FURNITURE, MACHINERY & EQUIPMENT[115]		$
TRANSPORTATION EQUIPMENT[116]		$
BUILDINGS, LAND & OTHER REAL PROPERTY[117]		
a. Real Property at:	$	
b. Real Property at:	$	
c. Total		$
OTHER ASSETS:[118]		$
TOTAL ASSETS AT LIQUIDATION VALUE		$

EXHIBIT F - LIST OF ADMINISTRATIVE EXPENSE CLAIMS

UNCLASSIFIED CLAIMS: ADMINISTRATIVE CLAIMS						
Name	Code §	**Amounts** (Allowed + Estimated = Total Amount - Paid = Total Due)				
		Allowed to date	Estimated	Total Amount	Paid	Total Due
==> Insert rows here.						
TOTAL AMOUNTS						

EXHIBIT G - LIST OF PRIORITY UNSECURED CLAIMS

CLASSIFIED CLAIMS: §507(a)(3) PRIORITY CLAIMS							
				SCHEDULED CLAIMS		FILED CLAIMS	
Class	**Name**	**Insider**	**Impaired**	Amount	D/C/U*	Amount	Objection
	<== Insert rows here.						
TOTAL AMOUNT FOR CLASS							

* Disputed/contingent/unliquidated

EXHIBIT G - LIST OF PRIORITY UNSECURED CLAIMS

CLASSIFIED CLAIMS: §507(a)(4) PRIORITY CLAIMS							
				SCHEDULED CLAIMS		FILED CLAIMS	
Class	**Name**	**Insider**	**Impaired**	Amount	D/C/U*	Amount	Objection
	<== Insert rows here.						
TOTAL AMOUNT FOR CLASS							

* Disputed/contingent/unliquidated

EXHIBIT G - LIST OF PRIORITY UNSECURED CLAIMS

CLASSIFIED CLAIMS: §507(a)(5) PRIORITY CLAIMS							
				SCHEDULED CLAIMS		FILED CLAIMS	
Class	**Name**	**Insider**	**Impaired**	Amount	D/C/U*	Amount	Objection
	<== Insert rows here.						
	TOTAL AMOUNT FOR CLASS						

* Disputed/contingent/unliquidated

EXHIBIT G - LIST OF PRIORITY UNSECURED CLAIMS

CLASSIFIED CLAIMS: §507(a)(6) PRIORITY CLAIMS							
				SCHEDULED CLAIMS		FILED CLAIMS	
Class	**Name**	**Insider**	**Impaired**	Amount	D/C/U*	Amount	Objection
	<== Insert rows here.						
TOTAL AMOUNT FOR CLASS							

* Disputed/contingent/unliquidated

EXHIBIT G - LIST OF PRIORITY UNSECURED CLAIMS

CLASSIFIED CLAIMS: §507(a)(7) PRIORITY CLAIMS							
				SCHEDULED CLAIMS		FILED CLAIMS	
Class	Name	Insider	Impaired	Amount	D/C/U*	Amount	Objection
	<== Insert rows here.						
TOTAL AMOUNT FOR CLASS							

* Disputed/contingent/unliquidated

EXHIBIT G - LIST OF PRIORITY UNSECURED CLAIMS

CLASSIFIED CLAIMS: §507(a)(8) PRIORITY CLAIMS							
				SCHEDULED CLAIMS		FILED CLAIMS	
Class	**Name**	**Insider**	**Impaired**	Amount	D/C/U*	Amount	Objection
	<== Insert rows here.						
	TOTAL AMOUNT FOR CLASS						

* Disputed/contingent/unliquidated

EXHIBIT H - LIST OF GENERAL UNSECURED CLAIMS

CLASSIFIED CLAIMS: UNSECURED CLAIMS							
				SCHEDULED CLAIMS		FILED CLAIMS	
Class	**Name**	**Insider**	**Impaired**	Amount	D/C/U*	Amount	Objection
	<== Insert rows here.						
	TOTAL AMOUNT FOR CLASS						

* Disputed/contingent/unliquidated

EXHIBIT I - LIST OF EQUITY INTERESTS

CLASSIFIED INTEREST: EQUITY SECURITY INTEREST HOLDERS							
				SCHEDULED INTERESTS		FILED INTERESTS	
Class	Name	Insider	Impaired	Percentage	D/C/U*	Percentage	Objection
	<== Insert rows here.						

* Disputed/contingent/unliquidated

CROSS REFERENCE KEY

I. Overview to Cross Reference Key

This Disclosure Statement is a "fill in the blank form."

The user only fills in the blanks. DO NOT CHANGE THE LANGUAGE IN THE REST OF THE FORM, EXCEPT IN THE FEW PLACES WHERE THE INSTRUCTIONS EXPRESSLY TELL YOU THAT YOU MAY OMIT A SENTENCE OR CLASS IF IT IS NOT NEEDED FOR YOUR CASE.

As you read this Form, you will notice blanks with numbers in them, and also numbers at the end of certain sentences or phrases.

* Here is an example of a blank with a number:

  [1]_____

* Here is an example of a sentence with a number:

  This is an example.[2]

These numbers refer to the numbered instructions in this "Cross Reference Key." When you encounter one of these numbers in the form itself, you need to refer to the "Cross Reference Key," and read the applicable numbered instruction. In our example above, instructions number 1 and 2 would be applicable instructions. Follow the instructions to fill in the needed information.

a. Why the Instructions in this Cross Reference Key are in Two Different Types of Print

When you read the numbered instructions in the "Cross Reference Key" you will see that these instructions are printed in two different types of print, Courier New 12 pt. and Helvetica 10 pt.

Instructions in Courier New 12 pt. font (the font you are currently reading), mean that you are to simply provide the information requested in the endnote and insert it in the corresponding blank. For example, if instruction number 1 states "Debtor's name", then you should insert the Debtor's name in blank number 1.

Instructions in Helvetica 10 pt. font may contain explanations on how to use the disclosure statement form, explanations of the law, or examples of what should be inserted in a particular blank. Read and follow these instructions also.

II. Key Notes 1 through 118

1. Put which version of Disclosure Statement (Original, First Amended, Second Amended Disclosure Statement). Do not use the term "Modified" when describing any version subsequent to the Original.

2. Put what Plan is being described (Original, First Amended, Second Amended Plan, etc.)

3. Debtor's name.

4. Petition date.

5. Insert the applicable information, depending on who filed the petition:
   (a) Debtor's name
   (b) Names of the petitioning creditors

6. Insert one of the following:
   (a) a voluntary
   (b) an involuntary

6b. If case was commenced in a chapter other than Chapter 11 and later converted to Chapter 11, so state and state date of conversion to Chapter 11.

7. Proponent's name.

8. Insert the applicable phrases:
   (a) liquidating
   (b) reorganizing
   (c) combined liquidating and reorganizing

9. Provide a brief summary of how Proponent proposes to fund the Plan. If applicable, include statement that this plan is a joint plan, or is otherwise related to a plan in another bankruptcy case, or is a consensual plan between one or more parties to this Chapter 11 case.

10. Effective date of the Plan.

11. Date of the confirmation hearing.

12. Name, address, and telephone number of the Plan Proponent or Counsel to the Plan Proponent.

    If applicable, the Disclosure Statement should indicate that there are two or more competing plans, and should tell readers to look at their ballots for special instructions on marking them. The ballots should be modified to contain any applicable special instructions.

13. Deadline for receipt of ballots. **(Note:** This date will be provided by the Court at the hearing where the Court approves the Disclosure Statement.)

14. Name and address of the Plan Proponent or Counsel to the Plan Proponent.

15. Deadline for filing and serving any objection to the confirmation of the Plan. **(Note:** This date will be provided to you by the Court at the hearing where the Court approves the Disclosure Statement.)

16. Name, address, and telephone number of Plan Proponent or Counsel to the Plan Proponent. In cases where there is a creditor's committee, include the name, address, and telephone number of counsel for the creditor's committee.

17. Insert documents such as Debtor's books and records, financial statements such as projections, appraisals, and evaluations, as well as who provided these documents.

18. Identify by name and title the party providing the financial information (i.e., corporate officer, managing agent, accountant, accounting firm, bookkeeper, etc.). Accountants who assist clients in the preparation of financial statements should consult Statement of Position 90-7, Financial Reporting by Entities in Reorganization Under the Bankruptcy Code, dated November 19, 1990 and prepared by the AICPA Task Force on Financial Reporting by Entities in Reorganization Under the Bankruptcy Code.

19. Insert the applicable phrase:
    (a) corporation
    (b) partnership
    (c) individual

    (Note: If the Debtor is an entity that is not listed above, provide a description of Debtor's entity and verify that such an entity is eligible to be a debtor.)

20. Type of business conducted by the Debtor (if applicable). **(Note**: See examples on next page.)

Note: For example, if the Debtor is in the business of developing real estate, the following should be listed:

(a) The location of the properties/lots
(b) The size of the lots
(c) The stage of the development for each lot
(d) The type of development, e.g., commercial, industrial or residential

If the Debtor is a manufacturer or service provider, the following should be listed:

(a) The type of products manufactured or services provided
(b) The location of Debtor's business

If the Debtor is in the business of renting real estate, the following should be listed:

(a) Location of the building(s)
(b) Size of the building(s)
(c) Current occupancy rate(s)
(d) Type(s) of building, e.g. residential, commercial, industrial
(e) Debtor's interest in the building(s) being leased

If the Debtor is an individual, the following should be listed:

(a) Debtor's employer and description of the employer's type of business
(b) Length of Debtor's employment
(c) Debtor's position, including title, number of hours worked, salaried or hourly
(d) Description of Debtor's duties
(e) Amount of Debtor's compensation

If Debtor is no longer in business, the above information should still be provided with respect to Debtor's business immediately preceding the bankruptcy. The date Debtor ceased to conduct business should also be provided.

21. Approximate date and year debtor's business commenced.

22. Detailed list of the names and identity of Debtor's principals and affiliates. Include the amount of compensation currently paid to principals and affiliates. **(Note:** See examples below.)

For example, if Debtor is a corporation, the following must be listed:

(a) Key members of the board of directors
(b) Key officers of the corporation
(c) Key shareholders and their respective percentage interest

If Debtor is a partnership, the following must be provided:

(a) Identity of all general partners since the inception of the partnership
(b) Identity of all current limited partners
(c) If the general partner is a corporation, the board members, officers and shareholders must be listed.

23. List key management of the Debtor before the bankruptcy petition was filed; list key management of the Debtor during the course of the bankruptcy; and lastly, list key management of the Debtor after the bankruptcy.

24. Discuss the specific events and dates which led the debtor to file bankruptcy. **(Note:** A statement to the effect that the recession caused debtor's business to fail is not specific enough.) Proponent must disclose the receipt of any notices from any governmental agency relating in any manner to actual or potential liability on the part of the Debtor for any environment

or toxic.waste hazards, whether or not occurring on the Debtor's premises.

25. In chronological order, list the significant events and orders that have been entered in this case and the entry dates of the orders. Also, give a brief description of the proceedings that led to the entry of the orders.

26. Detailed list of the professionals who have obtained court approval of their employment, including (1) the professional's name, (2) scope of employment, and (3) date court approved the employment.

27. Brief description of the following: (1) each significant adversary proceeding or motion that is still pending, including objections to claims, (2) the status of each matter, (3) the effects winning or losing the matter will have on the Plan, and (4) the anticipated cost of pursuing or defending the matter.

28. Brief description of the following: (1) each significant matter that is still pending in other courts, (2) status of each matter, (i.e. whether the matter is stayed), (3) effect the outcome of the matter will have on the Plan, and (4) the anticipated cost of pursuing or defending the matter.

29. If no preference or fraudulent conveyance actions exist and none are expected to be filed, then insert an affirmative statement to that effect and delete the rest of the text under this heading.

30. Estimated total recovery in dollar amount from avoiding preferential and fraudulent transfers and anticipated total expense of pursuing those matters.

31. Provide a brief summary of each fraudulent conveyance or preference action. For each action, include the name of the defendant, summary of the underlying facts, status of the action, and the estimated amount of recovery.

32. Describe post-petition efforts made by the Debtor to remedy the problems that led to the filing of bankruptcy. (**Note:** Be specific.)
Also describe the goals Debtor had in mind when implementing these procedures (e.g., save costs, increase profits).

33. The Proponent should provide a textual discussion pertaining to the Debtor's current financial condition. This discussion should inform the reader about the Debtor's current income and expenses and whether Debtor's operations, if any, are currently profitable. Each document shall identify (i) the accounting method used (e.g. cash or accrual), (ii) whether the financial statements are prepared in conformity with generally accepted accounting principles, and (iii) if the financial statements have been audited.

34. If professional(s) have agreed to payment over time, state the precise terms and payment schedule (e.g. $_____ per months over _____ months).

35. For each chart, add more rows to the tables as necessary.

36. **NOTE:** Pursuant to policy of the Central District Clerk's Office, Court will not sign the order confirming the Plan until the Clerk's Office fees have been paid in full.

37. Total amount of administrative claims to be paid on Effective Date.

38. Amount of cash on hand on Effective Date.

39. The source(s) of all cash Debtor will have on Effective Date.

(**Note:** Be specific. If several sources of cash exist, list each source and the amount of cash expected to be generated from that source.)

40. Denominated as Section 507(a)(7) for bankruptcy cases filed before October 22, 1994.

41. Denominated as Section 507(a)(7) for bankruptcy cases filed before October 22, 1994.

42. Section 507(a)(7) [now renumbered 507(a)(8) for cases filed after October 22, 1994] describing certain priority tax claims. All 507(a)(7) tax claims must be fully paid within 6 years from the date of assessment. Only unsecured tax claims of the kind described by 11 U.S.C. § 507(a)(7)[8] should be inserted here.

43. Identify the proposed payment interval (e.g., monthly, quarterly, yearly).

44. Amount of payment per payment interval.

45. The date Plan payments will commence.

46. The date Plan payments will end.

47. The interest rate paid to a Section 507(a)(8) priority tax claimant should be consistent with the rate provided by 26 U.S.C. § 6621.

48. Total percentage of claim proposed to be paid to claimant over the life of the Plan plus total dollar amount to be paid to the claimant over life of the Plan.

48.a Each secured claim should be placed in a separate class, unless the secured claims have identical collateral, priority, and terms of indebtedness.

Begin numbering the classes with the number "1". The subsequent class should be numbered with the number "2". Do not use subclasses, e.g., 1.1, 1.2, etc.

49. If this class is Not Impaired, put the following in the box: "Not Impaired; claims in this class are not entitled to vote on Plan, class is deemed to have accepted Plan."

If this class is Impaired, put the following in the box: "Impaired; claims in this class are entitled to vote on the Plan"; unless this class is not retaining or receiving any value under the Plan. In this latter case only, put "Impaired, and claims in this class are deemed to have rejected Plan."

50. Balloon payment amount, if any.

50a. Total percent of claim proposed to be paid to claimant over the life of the Plan plus total dollar amount to be paid to claimant over the life of Plan.

51. Omit reference to 507(a)(7) (alimony/child support priority) if case was filed before October 22, 1994 because

priority would not exist for cases filed before that date.

52. Omit reference to 507(a)(7) (alimony/child support priority) if case was filed before October 22, 1994 because priority would not exist for cases filed before that date.

53. Each of the four categories of priority unsecured claims should be placed in a separate class. A separate class is not necessary for a particular category of priority unsecured claims if no claim exist in that category.

54. Insert one of the following:
(a) 11 U.S.C. § 507(a)(3)
(b) 11 U.S.C. § 507(a)(4)
(c) 11 U.S.C. § 507(a)(5)
(d) 11 U.S.C. § 507(a)(6)

55. Total amount of claims in this class.

56. If the Plan does not provide for cash payment in full on Effective Date, Plan Proponent must be able to prove that this class has accepted deferred payments pursuant to 11 U.S.C § 1129(a)(9) before the Plan can be confirmed.

57. Insert one of the following:
(a) 11 U.S.C. § 507(a)(3)
(b) 11 U.S.C. § 507(a)(4)
(c) 11 U.S.C. § 507(a)(5)
(d) 11 U.S.C. § 507(a)(6)

58. Total amount of claims in this class.

59. If this class is Not Impaired, put the following in the box: "Not Impaired; claims in this class are not entitled to vote on Plan, class is deemed to have accepted Plan."

If this class is Impaired, put the following in the box: "Impaired; claims in this class are entitled to vote on the Plan"; unless this class is not retaining or receiving any value under the Plan. In this latter case only, put "Impaired, and claims in this class are deemed to have rejected Plan."

59a. Total percent of claim proposed to be paid to claimant over the life of the Plan plus total dollar amount to be paid to claimant over the life of Plan.

59b. If you have a convenience class allowed under 1122(b), then add as an additional unsecured class here, and at Page 5, line 17 of the Plan form, ",except general unsecured claims placed in the convenience class described hereafter."

59c. If you have an additional general unsecured class(es), add each here, with a separate class number. The norm is to have a single general unsecured class, or where appropriate, to have a general unsecured class plus a convenience general unsecured class (as described in footnote 59a). However, there are a few limited circumstances where it is permissible to have additional general unsecured classes, primarily where one or more general unsecured creditors are agreeing to

receive worse treatment than is being given to the

rest of the general unsecured creditors, then the creditors agreeing to be treated worse can be placed in a separate general unsecured class. Do not use more than one general unsecured class unless you can justify doing so under applicable law.

60. If there is more than one class of equity holders (e.g. preferred stock and common stock), put each in a separate class and change "class" to "classes."

61. If this class is Not Impaired, put the following in the box: "Not Impaired; claims in this class are not entitled to vote on Plan, class is deemed to have accepted Plan."

If this class is Impaired, put the following in the box: "Impaired; claims in this class are entitled to vote on the Plan"; unless this class is not retaining or receiving any value under the Plan. In this latter case only, put "Impaired, and claims in this class are deemed to have rejected Plan."

62. Describe the source of funding for this Plan. Be specific and consistent with the information set forth in Section {IV.C.}

1. If property of the estate is being sold and 11 U.S.C. § 1129(B)(2)(A)(ii) applies, then explain how that section impacts on the rights of a lienholder at a sale of the property.
2. If a buyer of the property has already been identified, then disclose the financial solvency of the proposed buyer.

63. For each entity who will be involved in post-confirmation management, state or explain the following:
(a) Identity
(b) Post-confirmation managerial duties
(c) Amount of compensation paid pre-petition, paid currently, and to be paid post-confirmation
(d) Description of expertise

64. Name and identity of disbursing agent.

65. Select one:
(a) with
(b) without

66. Explain whether Disbursing Agent will be compensated or reimbursed for services and expenses rendered and incurred in connection with making distributions under the Plan.

If Disbursing Agent will be compensated or reimbursed, specify the exact amount and the interval of payment.

NOTE: If disbursing agent will be compensated or reimbursed, be sure to account for these additional costs when evaluating feasibility of the Plan.

67. Detailed description of all the risks that may exist which may prevent the successful consummation of the proposed Plan.

Note: For example, if the Plan will be funded by sale of property, the following risks should be disclosed:

(a) Failure to find a buyer or a buyer willing to pay the listed price by the stated deadline set by the Plan
(b) Inability of proposed buyer to complete sale
(c) Possibility of foreclosure by secured creditor if debtor defaults under the plan
(d) Terms of the sale, if known

For plans which provide for payment over time, the following risks should be discussed:

(a) Possibility of default under terms of the Plan, i.e., possibility of inability to pay Plan payments
(b) Financial projections provided by the Proponent may not be realized, thereby causing inability to pay Plan payments
(c) Business environment
(d) Debtor's competition
(e) Nonbankruptcy law and regulation
(f) Nonbankruptcy litigation

68. List the unexpired leases and executory contracts in sufficient detail to enable the reader to determine which Leases and contracts will be assumed. This list will enable a party to a lease or contract to quickly ascertain whether he or she needs to refer to Exhibit C or D.

Exhibits C and D are intended to provide detailed information on each Lease or contract to be assumed so that the court and any party to a particular Lease or contract can decide whether assumption is proper and desirable.

69. List all executory contracts and unexpired Leases to be rejected in sufficient detail to enable a reader to quickly ascertain whether any particular Lease or contract will be rejected.

70. Deadline for filing proof of claim based on claim arising from rejection of contract or lease.
(**Note:** Typically, this date will be 30 days from Effective Date.)

71. Select one:
(a) is
(b) is not

71a. See 11 U.S.C. § 1129(a)(6). This section is only applicable if Debtor's business is regulated by a governmental regulatory commission. Examples include certain transportation companies and public utility companies. If Debtor is not regulated by a governmental commission, insert an affirmative statement to that effect in the Disclosure Statement. If debtor is regulated, state this and Plan must comply with 11 U.S.C. § 1129(a)(6).

71b. Do not change the language in this section unless the judge to whom your case is assigned has different or additional language that judge wishes to use in this section and directs you to insert that judge's specific language.

72. State the expected tax consequences of the Plan. For example, tax ramifications may include such issues as capital gains on the sale of real property and operating loss-carry forwards.

Note: If the Proponent has no idea of what such consequences might be, then the document must disclose that fact and why it is so.

Few situations exist where the tax liability should not be considered because any tax liability would affect distribution to creditors. Tax considerations might affect the likelihood of continued successful post-confirmation operation of the Debtor and may also affect the feasibility analysis. For these reasons, the Proponent should know the tax consequences of the Plan.

73. Bar date for filing a proof of claim.

Note: In most bankruptcy cases it is necessary that a bar date for filing proof of claims and interests has passed before creditors and interest holders may vote on the plan. Knowing which claims and interests have been allowed will allow the Plan Proponent to easily determine who is entitled to vote. Also, without knowing the amount and nature of the claims against the estate, it is impossible to complete a precise liquidation analysis and difficult to determine whether the Plan is feasible.

If the claims bar date has not yet passed, the motion for order approving the disclosure statement should explain why the disclosure statement and plan are proposed now instead of after the claim bar date.

74. Classes that are impaired.

75. Classes that are unimpaired. (For cases filed after October 22, 1994 please note that the Bankruptcy Reform Act of 1994 deleted § 1124(3). Therefore, creditors who receive cash in full equal to their allowed claim by the effective date would be considered impaired under the Bankruptcy Reform Act of 1994).

76. Denominated as 507(a)(7) for bankruptcy cases filed before October 22, 1994.

77. Select one:
(a) will
(b) will not

77a. List class number of each impaired class which Plan Proponent will seek to cram Plan down on if class does not accept Plan.

78. List classes that are clearly not receiving the type of treatment provided for in section 1129(b)(1).
Also, in the "SUMMARY OF THE PLAN OF REORGANIZATION" section (section III.C. of the Disclosure Statement), after each class that is not receiving the type of treatment provided for in Code section 1129(b)(1), insert the following statement: "If this class does not vote to accept the Plan, the Proponent will not be allowed to cram the Plan down on this class and the Plan will not be confirmed".

79. Delete the preceding two sentences if (1) no unimpaired classes exist, or (2) the Plan does not discriminate unfairly and will give fair and equitable treatment to all impaired classes.

80. Insert the following reasons, if applicable:

a. The liquidation value of the "x" is less than its fair market value because _____. **(Note: Be**

specific when justifying the difference between liquidation value and fair market value. State the basis for your justification.)

b. In a chapter 7 case, a trustee is appointed and entitled to compensation from the bankruptcy estate in an amount not to exceed 25% of the first $5,000 of all moneys disbursed, 10% on any amount over $5,000 but less than $50,000, 5% on any amount over $50,000 but not in excess of $1 million, and 3% on all amounts over $1 million. In this case, the trustee's compensation is estimated to equal "x".

c. A chapter 7 recovery is less because the Debtor is permitted to exempt a certain amount of the sales proceeds before unsecured creditors are paid anything. (**Note:** Be specific when relying on Debtor's claimed exemptions. List each exempt property, the code section which entitles the Debtor to the claimed exemption, and the amount of each exemption.)

Note: If Debtor is a partnership then § 723(a) provides that the general partners of the partnership are liable for any deficiency of property of the estate to pay in full all allowed claims. Therefore, the Proponent must disclose the financial condition of the individual general partners from whom chapter 7 trustee could seek to collect if this was a Chapter 7 case.

81. In appropriate cases, this format may be supplemented, but not reduced.

82. If Debtor owns more than one piece of real property, list each real property and its value separately.

83. Divide "Balance for unsecured claims" by "Total amt of unsecured claims". Insert the result.

84. Divide the total amount proposed to be paid to unsecured claimants under the Plan by the "Total amt of unsecured claims". Insert the result.

85. Add or delete the rows to the table when necessary to provide a row for each class of claims or interest.

86. Description of claims in Class 1.

87. Description of claims in Class 2.

88. Description of claims in Class 3.

89. Description of claims in Class 4. (**Note:** Insert more rows in the table if the Plan contains more than 4 classes.)

90. Explain sources of cash Debtor will have on Effective Date if Debtor does not currently have sufficient cash on hand to pay all claims that must be paid on Effective Date.

91. Total must match figure shown above as "Cash debtor will have on hand by Effective Date".

92. Put person or entity funds are being borrowed from.

93. Put how loan will be paid back (example, lender has agreed it will not be paid until all Plan payments are completed and then will be paid at $____ per month at ___% until paid

in full). If gift instead of borrowing, change "Borrowing" to "Gift" and state amount will never be paid back.

94. If the Plan is a liquidating plan or a plan that proposes to pay all claims on Effective Date, this section may not be applicable and may be deleted upon stating why this aspect of feasibility is not applicable to the Plan.

95. Total amount of Plan Payments to be made each payment interval.

96. Plan payment interval (e.g., monthly, yearly, quarterly).

97. Average cash flow per Plan payment interval, after paying operating expenses and post-confirmation taxes.

98. Plan payment interval.

99. The last Plan payment date.

100. Payment interval (e.g., monthly, yearly, quarterly).

101. Amount of actual average cash flow per Plan payment interval, after paying operating expenses and post-confirmation taxes, for the three years preceding the filing of this bankruptcy case.

102. Plan payment interval (e.g., monthly, yearly, quarterly).

103. Debtor's average cash flow per Plan payment interval, after paying operating expenses and post-confirmation taxes, during the bankruptcy case.

104. Select one:
(a) decrease costs
(b) increase costs
(c) decrease costs and increase income

105. **NOTE:** If the Debtor is not entitled to a discharge pursuant to 11 U.S.C. 1141(d), change this heading to "NO DISCHARGE," and follow instruction #106.

106. Choose one of the following:
(a) confirmation of the Plan
(b) payment in full of proposed plan payments to the unsecured creditors
(c) upon substantial confirmation of plan
(d) other. You must state what the other condition for or date of discharge is.

Alternatively, if debtor does not meet the test of 11 U.S.C. 1141(d)(3) for getting a discharge, then the debtor is not entitled to any discharge, and the whole paragraph under "Discharge" must be omitted and replaced with:

(e) Debtor will not receive any discharge in this bankruptcy case because debtor does not meet the test

for receiving a discharge specified under 11 U.S.C. § 1141(d)(3).

Note: More evidence regarding feasibility of the Plan may be required if the Plan Proponent seeks discharge upon Plan confirmation.

107. Proponent should provide a declaration from someone who has personal knowledge of Debtor's operations and assisted in preparing the Disclosure Statement. The declarant should attest to the truthfulness and accuracy of everything stated in the Disclosure Statement.

108. The exhibit should include the following information for all assets:
   1. description of property (e.g., commercial/residential real property)
   2. fair market value
   3. basis for opinion of value (e.g. income/sales approach)
   4. qualifications of person rendering opinion
   5. any significant differences between an asset's value as listed in this exhibit and its value as stated in the Debtor's schedules should be explained in a footnote to this exhibit.

   TOTAL ASSETS = _____

   Proponent must describe each item of property with particularity and give a value for each item separately. If possible, Proponent should also provide a going concern value for the business as a whole so long as the foundation for that opinion is explained. For accounts receivable, the Proponent must explain the likelihood of collecting the accounts and for what amount. In addition, the debtor's status as a plaintiff in a lawsuit represents potential value to the estate. Although it may be difficult to estimate the exact value of a lawsuit, an effort must be made to present a low and high range of value and the foundation for such belief. The amount of cash on hand must also be disclosed, including, for any real property, any prepaid rent or security deposits paid by tenants and held by the Debtor.

109. List and attach actual financial statements for the three years preceding bankruptcy (e.g. balance sheets, cash flow statements, income and expense statements).

   List and attach projected financial statements for the life of the Plan.

   (**Note:** Income and expense statements should be organized at the payment interval rate. In other words, if the Plan proposes to make payments on a monthly interval, the historical and projected income and expense statements should be organized on a monthly basis unless the Judge directs otherwise.)

109a. Note that the Court can only confirm a plan which provides for assumption of executory contracts or unexpired leases if the plan proponent proves, as part of plan confirmation, that all elements of 11 U.S.C. § 365 governing assumption of executory contracts and unexpired leases are met -- including curing all defaults, paying all damages caused by defaults and providing that the party assuming the contract

has capacity to perform the remainder of the contract/lease. Each of these elements necessary for assumption must be proved by declarations or other admissible evidence presented to the court by plan proponent as part of the plan confirmation process.

110. Description of leased property or asset, including address of real property, if applicable.

111. Actual pecuniary loss consists of damages other than lease payment default amount, if any.

112. Describe how the Debtor is assuring performance on the remaining obligation under the lease, e.g., addition of guarantor.

113. List cash in all accounts in the manner shown in Exhibit E.

114. Assets in inventory should be valued at the amount they can be sold for in an orderly liquidation.

If someone other than a qualified appraiser provides this value, then the basis for the non-appraiser's knowledge must be disclosed. If an appraiser, auctioneer, or other financial advisor is hired to determine this value, a report from the appraiser should be attached as an exhibit. The appraiser, auctioneer, or other financial advisor should be independent of the Debtor and should provide a declaration certifying his/her independence and qualifications as an expert for valuation of this type of asset.

115. Office furniture, equipment and machinery should be valued at the amount they can be sold for in an orderly liquidation. Disclose whether the total liquidation value assumes sales items individually or by lot.

If someone other than a qualified appraiser, auctioneer, or other financial advisor provides this value, the basis for the non-appraiser's knowledge must be disclosed. If an appraiser, auctioneer, or other financial advisor is hired to determine this value, a report should be attached as an exhibit. The appraiser, auctioneer, or other financial advisor should be independent of the Debtor and should provide a declaration certifying his/her independence and qualifications as an expert for valuation of this type of asset.

116. Provide an itemized list of assets and the corresponding value for each asset.

Automobiles should be valued at wholesale value as reported by the most recent "Kelley Blue Book." Unlisted transportation equipment should be valued by an independent appraiser. The appraisal report should be attached as an exhibit and the appraiser should submit a declaration attesting to his/her independence and qualifications as an expert for valuing this type of asset. If someone other than a qualified appraiser provides this value, the basis for the non-appraiser's knowledge must be disclosed.

117. Real property assets should be valued at the amount they can be sold for in an orderly liquidation. Provide an itemized list of real properties and the corresponding liquidation value for each property.

An appraiser or a real estate broker should be utilized to determine this value. A report from the appraiser should be attached as an exhibit. The appraiser should be independent of the Debtor and the appraiser should provide a declaration certifying his/her independence and qualifications as an expert for valuation of this type of asset. If someone other than a qualified appraiser provides this value, the basis for the non-appraiser's knowledge must be disclosed.

118. Other assets should be valued at the amount they can be sold for in an orderly liquidation.

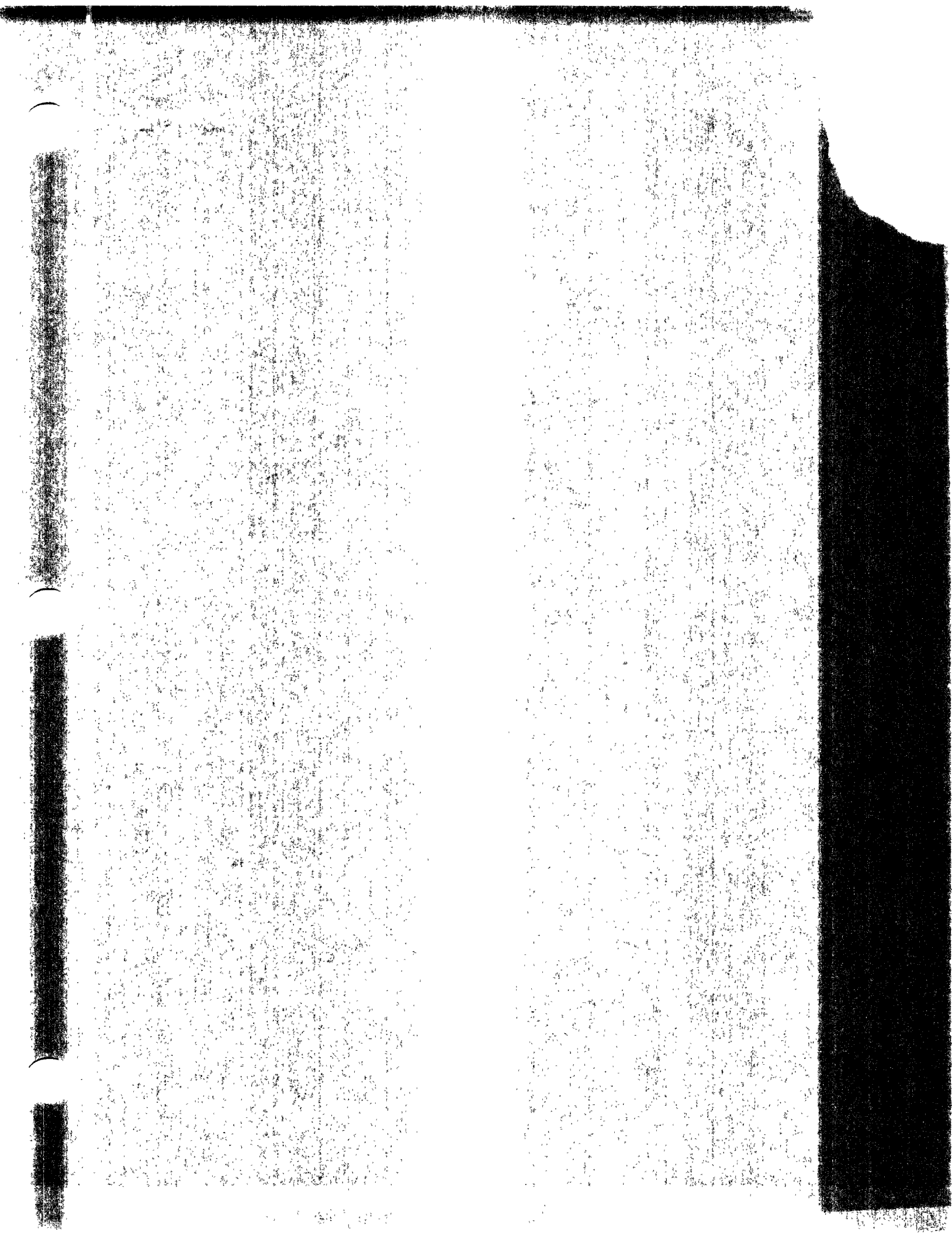
Other assets

Provide an itemized list of assets and the corresponding liquidation value for each.

may include, but are not limited to, assets to which exemptions apply, antiques and collectibles, trademarks, stock, liquor licenses and other assets listed on the Debtor's Schedule B.

An appraiser, auctioneer, or other financial advisor should be hired to determine the liquidation value. A report from the appraiser, auctioneer, or other financial advisor should be attached as an exhibit. The appraiser, auctioneer, or other financial advisor should be independent of the Debtor and should provide a declaration certifying his/her independence and qualifications as an expert for valuation of this type of asset. If someone other than a qualified appraiser provides this value, the basis for the non-appraiser's knowledge must be disclosed.

If a Chapter 7 Trustee could realize value from any of the avoidance actions, preference actions or other lawsuits which are assets of the Debtor, the value of such actions likely to be realized by the Chapter 7 Trustee must also be disclosed, as well as the assumptions underlying the value.



UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

CENTRAL DISTRICT OF CALIFORNIA

APPROVED FORM FOR PRODUCING A

CHAPTER 11 PLAN

WordPerfect 6.1 (Windows) Format

Version 12/24/96

NAME OF ATTORNEY - State Bar No. _____
NAME OF ATTORNEY - State Bar No. _____
NAME OF LAW FIRM
Address
City, State Zip Code
Telephone ( ) -

Attorneys for _____

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

In re NAME OF DEBTOR, Debtor	Bk. No. __ __-_____-__ In a Case Under Chapter 11 of the Bankruptcy Code (11 U.S.C. § 1101 et seq.) __[1]__ **CHAPTER 11** __[2]__ **PLAN** **Disclosure Statement Hearing**[3] Date: _____ Time: _____ Ctrm: {Insert Courtroom #} {Insert Full Court Address Here} **Plan Confirmation Hearing** **See Disclosure Statement for Voting and Objecting Procedures** Date: _____ Time: _____ Ctrm: {Insert Courtroom #} {Insert Full Court Address Here}

TABLE OF CONTENTS

I.

INTRODUCTION

_____[4] is the Debtor in a Chapter 11 bankruptcy case. On _____[5], _____[6] commenced a bankruptcy case by filing _____[7] Chapter 11 petition under the United States Bankruptcy Code ("Bankruptcy Code"), 11 U.S.C. § 101 et seq. This document is the Chapter 11 Plan ("Plan") proposed by _____[8] ("Plan Proponent"). Sent to you in the same envelope as this document is the Disclosure Statement which has been approved by the Court, and which is provided to help you understand the Plan.

This is a _____[9] plan. In other words, the Proponent seeks to accomplish payments under the Plan by _____[10]. The Effective Date of the proposed Plan is _____[11].

II.

CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

A. General Overview

As required by the Bankruptcy Code, the Plan classifies claims and interests in various classes according to their right to priority of payments as provided in the Bankruptcy Code. The Plan states whether each class of claims or interests is impaired or unimpaired. The Plan provides the treatment each class will receive under the Plan.

B. Unclassified Claims

Certain types of claims are not placed into voting classes; instead they are unclassified. They are not considered impaired

and they do not vote on the Plan because they are automatically entitled to specific treatment provided for them in the Bankruptcy Code. As such, the Proponent has not placed the following claims in a class. The treatment of these claims is provided below.

1. Administrative Expenses

Administrative expenses are claims for costs or expenses of administering the Debtor's Chapter 11 case which are allowed under Code Section 507(a)(1). The Code requires that all administrative claims be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment.[12]

The following chart lists all of the Debtor's § 507(a)(1) administrative claims and their treatment under this Plan.[13]

Name	Amount Owed	Treatment
Clerk's Office Fees		Paid in full on Effective Date
Office of the U.S. Trustee Fees		Paid in full on Effective Date
TOTAL		

Court Approval of Fees Required:

The Court must approve all professional fees listed in this chart. For all fees except Clerk's Office fees and U.S. Trustee's fees, the professional in question must file and serve a properly noticed fee application and the Court must rule on the application. Only the amount of fees allowed by the Court will be required to be paid under this Plan.

2. Priority Tax Claims

Priority tax claims are certain unsecured income, employment and other taxes described by Code Section 507(a)(8)[14]. The Code

requires that each holder of such a 507(a)(8) priority tax claim receive the present value of such claim in deferred cash payments, over a period not exceeding six years form the date of the assessment of such tax.

The following chart lists all of the Debtor's Section 507(a)(8)[15] priority tax claims and their treatment under this Plan.

Description	Amount Owed	Treatment[16]
● Name = ● Type of tax = ● Date tax assessed =		● Pymt interval [17] = ● Pymt amt/interval [18] = ● Begin date [19] = ● End date [20] = ● Interest Rate % [21] = = $ ● Total Payout Amount [22] __ %
● Name = ● Type of tax = ● Date tax assessed =		● Pymt interval = ● Pymt amt/interval = ● Begin date = ● End date = ● Interest Rate % = ● Total Payout Amount % = $

C. Classified Claims and Interests

1. Classes of Secured Claims

Secured claims are claims secured by liens on property of the estate. The following chart lists all classes containing Debtor's secured pre-petition claims and their treatment under this Plan[23]:

CLASS#	DESCRIPTION	INSIDERS (Y/N)	IMPAIRED (Y/N)	TREATMENT
	Secured claim of: ● Name = ● Collateral description = ● Collateral value = ● Priority of security int. = ● Principal owed = ● Pre-pet. arrearage amount = ● Post-pet. arrearage amount = ● Total claim amount =		23a.	● Pymt interval = ● Pymt amt/interval = ● Balloon pymt [24] = ● Begin date = ● End date = ● Interest rate % = ● Total payout[24a] __ % = $ ● Treatment of Lien =
	Secured claim of: ● Name = ● Collateral description = ● Collateral value = ● Priority of security int. = ● Principal owed = ● Pre-pet. arrearage amount = ● Post-pet. arrearage amount = ● Total claim amount =			● Pymt interval = ● Pymt amt/interval = ● Balloon pymt = ● Begin date = ● End date = ● Interest rate % = ● Total payout % = $ ● Treatment of Lien =

2. Classes of Priority Unsecured Claims

Certain priority claims that are referred to in Code Sections 507(a)(3), (4), (5), (6), and (7)[25] are required to be placed in classes. These types of claims are entitled to priority treatment as follows: the Code requires that each holder of such a claim receive cash on the Effective Date equal to the allowed amount of such claim. However, a class of unsecured priority claim holders may vote to accept deferred cash payments of a value, as of the Effective Date, equal to the allowed amount of

such claims.

The following chart lists all classes containing Debtor's 507(a)(3), (4), (5), (6), and (7)[26] priority unsecured claims and their treatment under this Plan[27] :

CLASS#	DESCRIPTION	IMPAIRED (Y/N)	TREATMENT
	Priority unsecured claim pursuant to [28] _____ ● Total amt of claims = [29] _____		● Paid in full in cash on Effective Date[30]
	Priority unsecured claim pursuant to [31] _____ ● Total amt of claims = [32] _____		● Paid in full in cash on Effective Date

3. Class of General Unsecured Claims

General unsecured claims are unsecured claims not entitled to priority under Code Section 507(a). The following chart identifies this Plan's treatment of the class containing all of Debtor's general unsecured claims:

CLASS#	DESCRIPTION	IMPAIRED (Y/N)	TREATMENT
	General unsecured claims ● Total amt of claims =	[33]	● Pymt interval = ● Pymt amt/interval = ● Begin date = ● End date = ● Interest rate % = ● Total payout [33a] ___% = $

33b.

33c.

4. Class(es) of Interest Holders

Interest holders are the parties who hold ownership interest (i.e., equity interest) in the Debtor. If the Debtor is a corporation, entities holding preferred or common stock in the Debtor are interest holders. If the Debtor is a partnership, the interest holders include both general and limited partners. If

the Debtor is an individual, the Debtor is the interest holder. The following chart identifies this Plan's treatment of the class[34] of interest holders:

CLASS #	DESCRIPTION	IMPAIRED (Y/N)	TREATMENT
	Interest holders	[35]	

D. Means of Performing the Plan

1. Funding for the Plan

The Plan will be funded by the following: [36].

2. Post-confirmation Management

[37]

3. Disbursing Agent

[38] shall act as the disbursing agent for the purpose of making all distributions provided for under the Plan. The Disbursing Agent shall serve [39] bond and shall receive [40] for distribution services rendered and expenses incurred pursuant to the Plan.[41]

III.

TREATMENT OF MISCELLANEOUS ITEMS

A. Executory Contracts and Unexpired Leases

1. Assumptions

The following are the unexpired leases and executory contracts to be assumed as obligations of the reorganized Debtor under this Plan (see Exhibit A for more detailed information on unexpired leases to be assumed and Exhibit B for more detailed

information on executory contracts to be assumed):

[42]

On the Effective Date, each of the unexpired leases and executory contracts listed above shall be assumed as obligations of the reorganized Debtor. The Order of the Court confirming the Plan shall constitute an Order approving the assumption of each lease and contract listed above. If you are a party to a lease or contract to be assumed and you object to the assumption of your lease or contract, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan. See Section {I.B.3.} of the Disclosure Statement describing this Plan for the specific date.

2. Rejections

On the Effective Date, the following executory contracts and unexpired leases will be rejected:

[43]

The order confirming the Plan shall constitute an order approving the rejection of the lease or contract. If you are a party to a contract or lease to be rejected and you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan. See Disclosure Statement for the specific date.

THE BAR DATE FOR FILING A PROOF OF CLAIM BASED ON A CLAIM ARISING FROM THE REJECTION OF A LEASE OR CONTRACT IS [44]. Any claim based on the rejection of an executory contract or unexpired lease will be barred if the proof of claim is not timely filed, unless the Court later orders otherwise.

B. Changes in Rates Subject to Regulatory Commission Approval

This Debtor ____[45]____ subject to governmental regulatory commission approval of its rates[45a].

C. Retention of Jurisdiction.

The Court will retain jurisdiction to the extent provided by law.[46]

IV.

EFFECT OF CONFIRMATION OF PLAN

A. Discharge[47]

This Plan provides that upon ____[48]____, Debtor shall be discharged of liability for payment of debts incurred before confirmation of the Plan, to the extent specified in 11 U.S.C.§ 1141. However, any liability imposed by the Plan will not be discharged.

B. Revesting of Property in the Debtor

Except as provided in Section {IV.E.}, and except as provided elsewhere in the Plan, the confirmation of the Plan revests all of the property of the estate in the Debtor.

C. Modification of Plan

The Proponent of the Plan may modify the Plan at any time before confirmation. However, the Court may require a new disclosure statement and/or revoting on the Plan if proponent modifies the plan before confirmation.

The Proponent of the Plan may also seek to modify the Plan at any time after confirmation so long as (1) the Plan has not been substantially consummated and (2) if the Court authorizes

the proposed modifications after notice and a hearing.

D. Post-Confirmation Status Report

Within 120 days of the entry of the order confirming the Plan, Plan Proponent shall file a status report with the Court explaining what progress has been made toward consummation of the confirmed Plan. The status report shall be served on the United States Trustee, the twenty largest unsecured creditors, and those parties who have requested special notice. Further status reports shall be filed every 120 days and served on the same entities.

E. Post-Confirmation Conversion/Dismissal

A creditor or party in interest may bring a motion to convert or dismiss the case under § 1112(b), after the Plan is confirmed, if there is a default in performing the Plan. If the Court orders the case converted to Chapter 7 after the Plan is confirmed, then all property that had been property of the Chapter 11 estate, and that has not been disbursed pursuant to the Plan, will revest in the Chapter 7 estate, and the automatic stay will be reimposed upon the revested property only to the extent that relief from stay was not previously granted by the Court during this case.

F. Final Decree

Once the estate has been fully administered as referred to in Bankruptcy Rule 3022, the Plan Proponent, or other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case.

Date: _____

_____
Signature of Party (optional unless party is pro se)

_____
Name of Plan Proponent

_____
Signature of Attorney for Plan Proponent

_____
Name of Attorney for Plan Proponent

_____
Name of Law Firm for Plan Proponent

EXHIBIT A - UNEXPIRED LEASES TO BE ASSUMED

LEASES	ARREARS/DMGS	METHODS OF CURE
● Description = [1] ● Lessor's name = ● Lessee's name = ● Expiration date =	● Default amt = ● Actual pecuniary loss[2] =	● Method of curing default & loss = ● Means of assuring future performance[3] =
● Description = ● Lessor's name = ● Lessee's name = ● Expiration date =	● Default amt = ● Actual pecuniary loss =	● Method of curing default & loss = ● Means of assuring future performance =
● Description = ● Lessor's name = ● Lessee's name = ● Expiration date =	● Default amt = ● Actual pecuniary loss =	● Method of curing default & loss = ● Means of assuring future performance =

EXHIBIT B - EXECUTORY CONTRACTS TO BE ASSUMED

CONTRACT	DEFAULT/DMGS	METHODS OF CURE
• Contract description = • Contracting parties = 1. 2.	• Default amt = • Actual pecuniary loss =	• Method of curing default & loss = • Means of assuring performance =
• Contract description = • Contracting parties = 1. 2.	• Default amt = • Actual pecuniary loss =	• Method of curing default & loss = • Means of assuring performance =
• Contract description = • Contracting parties = 1. 2.	• Default amt = • Actual pecuniary loss =	• Method of curing default & loss = • Means of assuring performance =

CROSS REFERENCE KEY

I. Overview to Cross Reference Key

This Chapter 11 Plan is a "fill in the blank form."

The user only fills in the blanks. DO NOT CHANGE THE LANGUAGE IN THE REST OF THE FORM, EXCEPT IN THE FEW PLACES WHERE THE INSTRUCTIONS EXPRESSLY TELL YOU THAT YOU MAY OMIT A SENTENCE OR CLASS IF IT IS NOT NEEDED FOR YOUR CASE.

As you read this Form, you will notice blanks with numbers in them, and also numbers at the end of certain sentences or phrases.

* Here is an example of a blank with a number:

  _____[1]

* Here is an example of a sentence with a number:

  This is an example.[2]

These numbers refer to the numbered instructions in this "Cross Reference Key." When you encounter one of these numbers, in the form itself, you need to refer to the "Cross Reference Key," and read the applicable numbered instruction. In our examples above, instructions number 1 and 2 would be applicable instructions. Follow the instructions to fill in the needed information.

a. Why the Instructions in this Cross Reference Key are in Two Different Types of Print

When you read the numbered instructions in the "Cross Reference Key" you will see that these instructions are printed in two different types of print, Courier New 12 pt. and Helvetica 10 pt.

Instructions in Courier New 12 pt. font (the font you are currently reading), mean that you are to simply provide the information requested in the endnote and insert it in the corresponding blank. For example, if instruction number 1 states "Debtor's name", then you should insert the Debtor's name in blank number 1.

Instructions in Helvetica 10 pt. font may contain explanations on how to use the disclosure statement form, explanations of the law, or examples of what should be inserted in a

particular blank. Read and follow these instructions also.

II. Key Notes 1 through 48

1. Name of party proposing the Plan (e.g. Debtor's, Creditor Committee's, etc.)

2. Put which version of the Plan this is, i.e., Original, First Amended, Second Amended, etc. Do not use the term "modified" when describing Plans subsequent to the Original Plan unless the Court directs you to do so.

3. Delete Disclosure Statement Hearing information when the Disclosure Statement has been approved and the upcoming hearing is the Plan Confirmation hearing.

4. Debtor's name.

5. Petition date.

6. Insert the applicable information, depending on who filed the petition:
   (a) Debtor's name
   (b) Names of the petitioning creditors

7. Insert one of the following:
   (a) a voluntary
   (b) an involuntary

8. Plan proponent's name.

9. Insert the applicable phrases:
   (a) liquidating
   (b) reorganizing
   (c) combined liquidating and reorganizing

10. Provide a brief summary of how Proponent proposes to fund the Plan.

11. Effective date of the Plan.

12. Holders of administrative expenses under § 507(b) are paid before other administrative expenses. If any such expenses must be paid, so state.

13. For each chart, add more rows to the tables as necessary.

14. Denominated as Section 507(a)(7) for bankruptcy cases filed before October 22, 1994.

15. Denominated as Section 507(a)(7) for bankruptcy cases filed before October 22, 1994.

16. Section 507(a)(7) priority tax claims must be fully paid within 6 years from the date of assessment.

17. Identify the proposed payment interval (e.g., monthly, quarterly, yearly).

18. Amount of payments per payment interval.

19. The date Plan payments will commence.
20. The date Plan payments will end.

21. The interest rate paid to a Section 507 (a)(7) priority tax claimant should be consistent with the rate provided by 26 U.S.C. § 6621.

22. Total percentage of claim proposed to be paid to claimant over the life of the Plan plus total dollar amount to be paid to the claimant over life of the plan.

23. Each secured claim should be placed in a separate class, unless the secured claims have identical collateral, priority, and terms of indebtedness. Begin numbering the classes with the number "1". The subsequent class should be numbered with the number "2". Do not use subclass, e.g., 1.1, 1.2, etc.

23a. If this class is Not Impaired, put the following in the box: "Not Impaired; claims in this class are not entitled to vote on Plan, class is deemed to have accepted Plan."

If this class is Impaired, put the following in the box: "Impaired; claims in this class are entitled to vote on the Plan"; unless this class is not retaining or receiving any value under the Plan. In this latter case only, put "Impaired, and claims in this class are deemed to have rejected Plan."

24. Balloon payment amount, if any.

24a. Total percentage of claim proposed to be paid to claimant over the life of the plan plus total dollar amount to be paid to claimant over life of plan.

25. Omit reference to 507(a)(7) (alimony/child support priority) if case was filed before October 22, 1994 because priority would not exist for cases filed before that date.

26. Omit reference to 507(a)(7) (alimony/child support priority) if case was filed before October 22, 1994 because priority would not exist for cases filed before that date.

27. Each of the four categories of priority unsecured claims should be placed in a separate class. A separate class is not necessary for a particular category of priority unsecured claims if no claim exist in that category.

28. Insert one of the following:
(a) 11 U.S.C. § 507(a)(3)
(b) 11 U.S.C. § 507(a)(4)
(c) 11 U.S.C. § 507(a)(5)
(d) 11 U.S.C. § 507(a)(6)

29. Total amount of claims in this class.

30. If the Plan does not provide for cash payment in full on Effective Date, Plan Proponent must be able to prove that this class has accepted deferred payments pursuant to 11

U.S.C § 1129(a)(9) before the Plan can be confirmed.

31. Insert one of the following:
    (a) 11 U.S.C. § 507(a)(3)
    (b) 11 U.S.C. § 507(a)(4)
    (c) 11 U.S.C. § 507(a)(5)
    (d) 11 U.S.C. § 507(a)(6)

32. Total amount of claims in this class.

33. If this class is Not Impaired, put the following in the box: "Not Impaired; claims in this class are not entitled to vote on Plan, class is deemed to have accepted Plan."

    If this class is Impaired, put the following in the box: "Impaired; claims in this class are entitled to vote on the Plan"; unless this class is not retaining or receiving any value under the Plan. In this latter case only, put "Impaired, and claims in this class are deemed to have rejected Plan."

33a. Total percentage of claim proposed to be paid to claimant over the life of the Plan plus total dollar amount to be paid to claimant over life of the plan.

33b. If you have a convenience class allowed under 1122(b), then add as an additional unsecured class here, and at page 5, line 17 of the Plan form: ", except general unsecured claims placed in the convenience class described hereafter."

33c. If you have an additional general unsecured class(es), add each here, with a separate class number. The norm is to have a single general unsecured class, or where appropriate, to have a general unsecured class plus a convenience general unsecured class (as described in footnote 33a). However, there are a few limited circumstances where it is permissible to have additional general unsecured classes, primarily where one or more general unsecured creditors are agreeing to receive worse treatment than is being given to the rest of the general unsecured creditors, then the creditors agreeing to be treated worse can be placed in a separate general unsecured class. Do not use more than one general unsecured class unless you can justify doing so under applicable law.

34. If there is more than one class of equity holders (e.g. preferred stock and common stock), put each in a separate class and change "class" to "classes."

35. If this class is Not Impaired, put the following in the box: "Not Impaired; claims in this class are not entitled to vote on Plan, class is deemed to have accepted Plan."

If this class is Impaired, put the following in the box: "Impaired; claims in this class are entitled to vote on the Plan"; unless this class is not retaining or receiving any value under the Plan. In this latter case only, put "Impaired, and claims in this class are deemed to have rejected Plan."

36. Describe the source of funding for this Plan. Be specific.

37. For each entity who will be involved in post-confirmation management, state or explain the following:
(a) Identity
(b) Post-confirmation managerial duties
(c) Amount of compensation paid pre-petition and to be paid post-confirmation
(d) Description of expertise

38. Name and identity of disbursing agent.

39. Select one:
(a) with
(b) without

40. Explain whether Disbursing Agent will be compensated or reimbursed for services and expenses rendered and incurred in connection with making distributions under the Plan.

If Disbursing Agent will compensated or reimbursed, specify the exact amount and the interval of payment.

NOTE: If disbursing agent will be compensated or reimbursed, be sure to account for these additional costs when evaluating feasibility of the Plan.

41. If the Disbursing Agent will be making distributions from a fund created under the Plan, the Plan and Disclosure Statement should provide that the fund will be maintained in a segregated interest bearing account.

42. List the unexpired leases and executory contracts in sufficient detail to enable the reader to determine which Leases and contracts will be assumed. This list will enable a party to a lease or contract to quickly ascertain whether he or she needs to refer to Exhibit C or D.

Exhibits C and D are intended to provide detailed information on each Lease or contract to be assumed so that the court and any party to a particular Lease or contract can decide whether assumption is proper and desirable.

43. List all executory contracts and unexpired Leases to be rejected in sufficient detail to enable a reader to quickly ascertain whether any particular Lease or contract will be rejected.

44. Deadline for filing proof of claim based on claim arising from rejection of contract or lease.
(**Note:** Typically, this date will be 30 days from Effective Date.)

45. Select one:
(a) is
(b) is not

45a. See 11 U.S.C. § 1129(a)(6). This section is only applicable if Debtor's business is regulated by a governmental regulatory commission. Examples include certain transportation companies and public utility companies. If Debtor is not regulated by a governmental commission, insert an affirmative statement to that effect in the Disclosure Statement. If debtor is regulated, state this and Plan must comply with 11 U.S.C. § 1129(a)(6).

46. Do not change the language in this section unless the judge to whom your case is assigned has different or additional language that judge wishes to use in this section and directs you to insert that judge's specific language.

47.

NOTE: If the Debtor is not entitled to a discharge pursuant to 11 U.S.C. 1141(d), change this heading to "NO DISCHARGE." Read and follow instruction #48.

48. Choose on of the following:
(a) confirmation of the Plan
(b) payment in full of proposed plan payments to the unsecured creditors
(c) substantial consummation of plan
(d) other. You must state what the other condition for or date of discharge is.

Alternatively, if debtor does not meet the test of 11 U.S.C. 1141(d)(3) for getting a discharge, then the debtor is not entitled to any discharge, and the whole paragraph under "Discharge" must be omitted and replaced with:

(e) Debtor will not receive any discharge in this case because debtor does not meet the test for receiving a discharge specified under 11 U.S.C. § 1141(d)(3).

NOTE: More evidence regarding feasibility of the Plan may be required if the Plan Proponent seeks discharge upon Plan confirmation.

Instructions Relating to Exhibits A & B

1. Description of leased property or asset, including address of real property, if applicable.

2. Actual pecuniary loss consists of damages other than lease payment default, if any.

3. Describe how the Debtor is assuring performance on the remaining obligation under the lease, e.g., addition of guarantor.

REVISION DATE OF WordPerfect 6.1 (Windows) Version:
December 24, 1996.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re	)	Case No.:
	)	
	)	
	)	
	)	**MONTHLY REPORT OF**
	)	**OPERATIONS (Local Rule No. 215)**
Debtor(s).	)	
_____	)	

MONTH OF _____, 19___

Debtor-in-possession hereby submits its Monthly Report on the **Cash Basis** of accounting.

CASH BASIS

Attached hereto are the following schedules:

A.	Cash Receipts and Cash Disbursements	☐	
B.	Summary of Receipts and Disbursements to Date		☐
C.	Balance in Debtor-in-Possession Account		☐
D.	Balance in Tax Account		☐
E.	Balance in _____ Account		☐
F.	Post Petition Debts	☐	
G.	Accounts Receivable Balance	☐	
H.	Inventory Balance	☐	
I.	Federal and State Taxes		☐
J.	Monthly Operating Statement Questionnaire	☐	
K.	Other Appropriate Schedules	☐	

Note: Schedules A, B, C, F, I & J MUST be filed.
Attach Schedules D, E, G, H & K if the are maintained in the ordinary course of business.

EDC 3-462 (Cash) (Rev. 3/95)

SCHEDULE A
CASH RECEIPTS AND DISBURSEMENTS

RECEIPTS

Cash Sales	$_____
Rents Collected	_____
Accounts Receivable collected	_____
Other Receipts (describe):	
	_____
	_____
TOTAL RECEIPTS	$_____

DISBURSEMENTS

Payments to vendors for merchandise		$_____
Net payroll paid		_____
Payroll taxes paid/deposited to tax account:		
Employee withholdings		_____
Employer portion		_____
Sales taxes paid/deposited to tax account		_____
Other Disbursements (describe):		
a.		_____
b.		_____
c.		_____
d.		_____
f.		_____
g.		_____
h.		_____
i.		_____
j.		_____
k.		_____
Miscellaneous (attach listing)		_____
Living allowance or draw		_____
2.	TOTAL DISBURSEMENTS	$_____
3.	Receipts OVER or (UNDER) Disbursements	$_____

EDC 3-462 (Rev. 3/95)

SCHEDULE B

SUMMARY OF CASH TRANSACTIONS SINCE FILING PETITION

4.	Total receipts to date (prior month Schedule B line 4 plus current month Schedule A line 1)	$ _____
5.	Total disbursements to date (prior month Schedule B line 5 plus current month Schedule A line 2)	_____
6.	Net receipts OVER (UNDER) disbursements	$ _____

SCHEDULE C
BALANCE IN DEBTOR-IN-POSSESSION ACCOUNT

Balance at end of last month	$ _____
Net transactions for this month (Line 3 - Schedule A)	_____
Balance at end of this month	$ _____

SCHEDULE D
BALANCE IN TAX ACCOUNT

Balance at end of last month	$_____
Add deposits from general account	_____
Subtotal	_____
Deduct payments to taxing agencies	_____
Balance at end of this month	$_____

SCHEDULE E
BALANCE IN _____ ACCOUNT

Balance at end of last month	$_____
Add deposits from general account	_____
Subtotal	_____
Deduct disbursements	_____
Balance at end of this month	$_____

EDC 3-462 (Rev. 3/95)

SCHEDULE F
POST PETITION DEBTS

Balance at end of last month	$
Add debts incurred this month	
Subtotal	
Deduct payments made this month on this balance	
Subtotal	
Adjustments (Explain on separate sheet)	
Balance at end of this month (Attach listing)	$

SCHEDULE G
ACCOUNTS RECEIVABLE BALANCE

Balance of receivables at end of last month	$
Add new receivables for this month	
Subtotal	
Deduct accounts collected (from Schedule A)	
Subtotal	
Adjustments (Explain on separate sheet)	
Balance at end of this month	$

SCHEDULE H
INVENTORY AND COST OF GOODS SOLD

Inventory balance at end of last month	$
Add merchandise purchases	
Total inventory available	
Adjustments (Explain on separate sheet)	
Less inventory balance at end of month	
Total cost of goods sold	$

EDC 3-462 (Rev. 3/95)

SCHEDULE I
FEDERAL AND STATE TAXES

1. Tax balance at end of last month $_____

PAYROLL TAX LIABILITY THIS MONTH:
Period: ( ) Weekly ( ) Biweekly
( ) Semimonthly ( ) Monthly

Federal Employer ID # _____

EDD ID #_____

Withholdings:

Federal Income Tax	$_____
FICA Withheld	_____
State Income Tax	_____
State Disability	_____

Employer tax liability:

FICA	_____
Federal unemployment	_____
State unemployment	_____

2. Total payroll taxes due _____

SALES AND OTHER TAX LIABILITY THIS MONTH:

SBE ID #_____

Sales tax liability	$_____
Other (excise, city, business, etc.)	_____
	_____
	_____

3. Total sales and other taxes due _____

SUMMARY OF TAX PAYMENTS MADE THIS MONTH:

Payee	Date	Bank acct. #	Ck. #
_____	_____	_____	$_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. Total tax payments made _____

5. Tax balance at end of this month
(add lines 1-3 less line 4) $_____

EDC 3-462 (Rev. 3/95)

SCHEDULE J
MONTHLY OPERATING STATEMENT QUESTIONNAIRE

		YES	NO	N/A	
1.	Copies of checkbooks or receipts and disbursements listing attached:				
	Debtor-in-possession account	☐	☐	☐	
	Tax account	☐	☐	☐	
	Other account	☐	☐	☐	
2.	Listing of unpaid postpetition debts (include unpaid professional fees & interest owed)		☐	☐	☐
3.	Have any payments been made to secured creditors or lessors? (If yes, attach listing of payments made)	☐	☐		
4. (a)	Have any payments been made to officers, shareholders, insiders, relatives or professionals? (If yes, attach listing of payments made)	☐	☐		
(b)	Were these payments approved by the court?		☐	☐	
5. (a)	Have any payments been made on prepetition debts? (If yes - attach listing of payments made)		☐	☐	
(b)	Were these payments approved by the court?		☐	☐	
6.	Do you carry insurance coverage of any kind? (attach copies of declaration pages) **NOTE:** If you have previously submitted copies of declaration pages & there have been no changes in coverage, initial here: _____ (no copies needed)		☐	☐	
7.	Have U.S. Trustee quarterly fees been paid (If yes - attach listing of payments made) (If no - attach explanation)	☐	☐		

DECLARATION OF DEBTOR

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON _____ _____
(Date) (Signature) DEBTOR-IN-POSSESSION

I have reviewed the Monthly Report of Operations and, after making reasonable inquiry, believe that the information is true and correct.

_____ _____
(Signature of Preparer) (Date)
(Attorney or Accountant)

EDC 3-462 (Rev. 3/95)

MONTHLY OPERATING REPORT
INSTRUCTION SHEET

1. **Cover Sheet**

   a. Enter the case name, case number, month of report on the appropriate cover sheet (cash basis or accrual basis).

   b. Place a check mark in each box for which a schedule is filed.

2. **Schedule A**

   a. Complete this schedule for all receipts and cash disbursements for the month.

   b. If additional lines are needed for listing receipts or disbursements attach additional pages.

3. **Schedule B**

   a. This schedule must reflect all receipts and disbursements since filing the petition (cumulative).

   b. Total receipts = this line from last month + Schedule A, total receipts.

   c. Total disbursements = this line from last month + Schedule A, total disbursements.

4. **Schedule C**

   This schedule must reflect the balance in the debtor-in-possession account (or general account). This balance must equal the balance on Schedule B, Line 6, plus any beginning bank balance at the time the bankruptcy was filed.

5. **Schedule D**

   This schedule must reflect the balance in the tax account, if you are required to have one.

6. **Schedule E**

   This schedule must reflect the balance in any other account you maintain. The number of cash accounts held should be kept to a minimum, mainly the debtor-in-possession account and tax and/or cash collateral accounts, if required. Any account required by court order should also be included.

7. **Schedule F**

   This schedule must reflect all debts incurred and not paid since the date of filing the petition. Do not include any debts owed prior to filing the petition.

8. **Schedule I**

   a. This schedule must reflect all transactions occurring for the month for payroll and sales taxes.

   b. The first section of the form lists amounts owed for both employee payroll tax withholdings and the employer's portion for payroll taxes.

   c. The second section of the form lists all amounts owed for sales and other business taxes.

   d. The third section of the form lists all payments made during the month for both payroll and sales taxes.

   e. To compute the tax balance at the end of the month, add the balance from last month (line 1) plus payroll taxes due (line 2) plus sales taxes due (line 3) and subtract all payments made (line 4).

9. **Schedule J**

   a. This schedule is a checklist of items that must be included with the basic monthly report of operations.

   b. Copies of checkbooks (or cash receipts & disbursements listings) must be attached for all bank accounts. All copies attached should be legible.

c. A listing of unpaid post petition debts must be attached, if applicable. The listing must be in the following form and the total of the listing must agree with the ending balance for Schedule F

Date Incurred Vendor Description Amount

d. If payments have been made to secured creditors or lessors during the month, attach a listing which includes the following information:

Payee name/address
Payment amount
Payment period (weekly, month, annual)
Date of last payment

e. If post petition payments to secured creditors are in arrears, list the number of payment missed and the total amount in arrears.

f. If payments have been made to officers, insiders, shareholders, relatives or professionals during the month, attach a listing which includes the following information:

Payee name
Date of payment
Payment amount
Basis of payment (reason)

g. If payments have been made on prepetition debts during the month, attach a listing which includes the following information:

Payee name
Date of payment
Payment amount
Basis of payment (reason)

h. If the U.S. Trustee quarterly fees were paid during the month of this report, include a listing of the date, amount and method of payment.

EDC 3-462 (Rev. 3/95)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re	)	Case No.
	)	
	)	
	)	
	)	**MONTHLY REPORT OF**
	)	**OPERATIONS (Local Rule No. 215)**
Debtor(s).	)	
_____	)	

MONTH ENDING _____, 19___

Debtor-in-possession hereby submits its Monthly Report on the **Accrual Basis** of accounting.

ACCRUAL BASIS

Attached hereto are the following schedules:

A.	Cash Receipts and Cash Disbursements	☐	
I.	Federal and State Taxes		☐
J.	Monthly Operating Statement Questionnaire	☐	
K.	Other Appropriate Schedules	☐	
	Balance Sheet	☐	
	Income Statement	☐	
	Schedules of Account Receivable/Post-Petition Debt	☐	

Note: The Balance Sheet, Income Statement and Schedules I and J MUST be filed.

Schedule A MUST be filed.
A Statement of Cash Flows may be substituted for Schedule A.

Schedule K as appropriate

SCHEDULE A
CASH RECEIPTS AND DISBURSEMENTS

RECEIPTS

Cash Sales	$_____
Rents Collected	_____
Accounts Receivable collected	_____
Other Receipts (describe):	
	_____
	_____
TOTAL RECEIPTS	$_____

DISBURSEMENTS

Payments to vendors for merchandise	$_____	
Net payroll paid		_____
Payroll taxes paid/deposited to tax account:		
Employee withholdings	_____	
Employer portion	_____	
Sales taxes paid/deposited to tax account		_____
Other Disbursements (describe):		
a.		_____
b.		_____
c.		_____
d.		_____
f.		_____
g.		_____
h.		_____
i.		_____
j.		_____
k.		_____
Miscellaneous (attach listing)		_____
Living allowance or draw		_____
2. TOTAL DISBURSEMENTS		$_____
3. Receipts OVER or (UNDER) Disbursements		$_____

EDC 3-462 (Rev. 3/95)

SCHEDULE B

SUMMARY OF CASH TRANSACTIONS SINCE FILING PETITION

4.	Total receipts to date (prior month Schedule B line 4 plus current month Schedule A line 1)	$ _____
5.	Total disbursements to date (prior month Schedule B line 5 plus current month Schedule A line 2)	_____
6.	Net receipts OVER (UNDER) disbursements	$ _____

SCHEDULE C
BALANCE IN DEBTOR-IN-POSSESSION ACCOUNT

Balance at end of last month	$ _____
Net transactions for this month (Line 3 - Schedule A)	_____
Balance at end of this month	$ _____

SCHEDULE D
BALANCE IN TAX ACCOUNT

Balance at end of last month	$ _____
Add deposits from general account	_____
Subtotal	_____
Deduct payments to taxing agencies	_____
Balance at end of this month	$ _____

SCHEDULE E
BALANCE IN _____ ACCOUNT

Balance at end of last month	$ _____
Add deposits from general account	_____
Subtotal	_____
Deduct disbursements	_____
Balance at end of this month	$ _____

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SCHEDULE F
POST PETITION DEBTS

Balance at end of last month	$
Add debts incurred this month	
Subtotal	
Deduct payments made this month on this balance	
Subtotal	
Adjustments (Explain on separate sheet)	
Balance at end of this month (Attach listing)	$

SCHEDULE G
ACCOUNTS RECEIVABLE BALANCE

Balance of receivables at end of last month	$
Add new receivables for this month	
Subtotal	
Deduct accounts collected (from Schedule A)	
Subtotal	
Adjustments (Explain on separate sheet)	
Balance at end of this month	$

SCHEDULE H
INVENTORY AND COST OF GOODS SOLD

Inventory balance at end of last month	$
Add merchandise purchases	
Total inventory available	
Adjustments (Explain on separate sheet)	
Less inventory balance at end of month	
Total cost of goods sold	$

EDC 3-462 (Rev. 3/95)

SCHEDULE I
FEDERAL AND STATE TAXES

1. Tax balance at end of last month $_____

PAYROLL TAX LIABILITY THIS MONTH:
Period: ( ) Weekly ( ) Biweekly
( ) Semimonthly ( ) Monthly

Federal Employer ID # _____

EDD ID #_____

Withholdings:

Federal Income Tax	$_____
FICA Withheld	_____
State Income Tax	_____
State Disability	_____

Employer tax liability:

FICA	_____
Federal unemployment	_____
State unemployment	_____

2. Total payroll taxes due _____

SALES AND OTHER TAX LIABILITY THIS MONTH:

SBE ID #_____

Sales tax liability	$_____
Other (excise, city, business, etc.)	_____
	_____
	_____

3. Total sales and other taxes due _____

SUMMARY OF TAX PAYMENTS MADE THIS MONTH:

Payee	Date	Bank acct. #	Ck. #
_____	_____ _____	_____	$_____
_____	_____ _____	_____	_____
_____	_____ _____	_____	_____
_____	_____ _____	_____	_____

4. Total tax payments made _____

5. Tax balance at end of this month
(add lines 1-3 less line 4) $_____

EDC 3-462 (Rev. 3/95)

SCHEDULE J
MONTHLY OPERATING STATEMENT QUESTIONNAIRE

		YES	NO	N/A	
1.	Copies of checkbooks or receipts and disbursements listing attached:				
	Debtor-in-possession account	☐	☐	☐	
	Tax account	☐	☐	☐	
	Other account	☐	☐	☐	
2.	Listing of unpaid postpetition debts (include unpaid professional fees & interest owed)		☐	☐	☐
3.	Have any payments been made to secured creditors or lessors? (If yes, attach listing of payments made)	☐	☐		
4. (a)	Have any payments been made to officers, shareholders, insiders, relatives or professionals? (If yes, attach listing of payments made)	☐	☐		
(b)	Were these payments approved by the court?		☐	☐	
5. (a)	Have any payments been made on prepetition debts? (If yes - attach listing of payments made)		☐	☐	
(b)	Were these payments approved by the court?		☐	☐	
6.	Do you carry insurance coverage of any kind? (attach copies of declaration pages) **NOTE:** If you have previously submitted copies of declaration pages & there have been no changes in coverage, initial here: _____ (no copies needed)		☐	☐	
7.	Have U.S. Trustee quarterly fees been paid (If yes - attach listing of payments made) (If no - attach explanation)	☐	☐		

DECLARATION OF DEBTOR

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON _____ (Date)

_____ (Signature) DEBTOR-IN-POSSESSION

I have reviewed the Monthly Report of Operations and, after making reasonable inquiry, believe that the information is true and correct.

_____ (Signature of Preparer) (Attorney or Accountant)

_____ (Date)

EDC 3-462 (Rev. 3/95)

MONTHLY OPERATING REPORT
INSTRUCTION SHEET

1. **Cover Sheet**

   a. Enter the case name, case number, month of report on the appropriate cover sheet (cash basis or accrual basis).

   b. Place a check mark in each box for which a schedule is filed.

2. **Schedule A**

   a. Complete this schedule for all receipts and cash disbursements for the month.

   b. If additional lines are needed for listing receipts or disbursements attach additional pages.

3. **Schedule B**

   a. This schedule must reflect all receipts and disbursements since filing the petition (cumulative).

   b. Total receipts = this line from last month + Schedule A, total receipts.

   c. Total disbursements = this line from last month + Schedule A, total disbursements.

4. **Schedule C**

   This schedule must reflect the balance in the debtor-in-possession account (or general account). This balance must equal the balance on Schedule B, Line 6, plus any beginning bank balance at the time the bankruptcy was filed.

5. **Schedule D**

   This schedule must reflect the balance in the tax account, if you are required to have one.

6. **Schedule E**

   This schedule must reflect the balance in any other account you maintain. The number of cash accounts held should be kept to a minimum, mainly the debtor-in-possession account and tax and/or cash collateral accounts, if required. Any account required by court order should also be included.

7. **Schedule F**

   This schedule must reflect all debts incurred and not paid since the date of filing the petition. Do not include any debts owed prior to filing the petition.

8. **Schedule I**

   a. This schedule must reflect all transactions occurring for the month for payroll and sales taxes.

   b. The first section of the form lists amounts owed for both employee payroll tax withholdings and the employer's portion for payroll taxes.

   c. The second section of the form lists all amounts owed for sales and other business taxes.

   d. The third section of the form lists all payments made during the month for both payroll and sales taxes.

   e. To compute the tax balance at the end of the month, add the balance from last month (line 1) plus payroll taxes due (line 2) plus sales taxes due (line 3) and subtract all payments made (line 4).

9. **Schedule J**

   a. This schedule is a checklist of items that must be included with the basic monthly report of operations.

   b. Copies of checkbooks (or cash receipts & disbursements listings) must be attached for all bank accounts. All copies attached should be legible.

c. A listing of unpaid post petition debts must be attached, if applicable. The listing must be in the following form and the total of the listing must agree with the ending balance for Schedule F

Date Incurred	Vendor	Description	Amount

d. If payments have been made to secured creditors or lessors during the month, attach a listing which includes the following information:

Payee name/address
Payment amount
Payment period (weekly, month, annual)
Date of last payment

e. If post petition payments to secured creditors are in arrears, list the number of payment missed and the total amount in arrears.

f. If payments have been made to officers, insiders, shareholders, relatives or professionals during the month, attach a listing which includes the following information:

Payee name
Date of payment
Payment amount
Basis of payment (reason)

g. If payments have been made on prepetition debts during the month, attach a listing which includes the following information:

Payee name
Date of payment
Payment amount
Basis of payment (reason)

h. If the U.S. Trustee quarterly fees were paid during the month of this report, include a listing of the date, amount and method of payment.

EDC 3-462 (Rev 3/95)

Memorandum

To: Advisory Committee on Bankruptcy Rules

From: Forms Subcommittee

Date: August 29, 2001

Re:Proposed Amendments to Official Forms Not Related to Bankruptcy Legislation

During the course of reviewing the official forms to determine what amendments will be needed to implement the pending bankruptcy reform legislation, the Forms Subcommittee identified two forms for which unrelated amendments also might be proposed. These forms are Form 10, Proof of Claim, and Form 6, Schedule G - Executory Contracts and Unexpired Leases.

The proposed amendments to the proof of claim form would restore to the form spaces on which to designate the amount of a general or unsecured nonpriority claim. These spaces were deleted in the 1994 amendments to the form, because any amount not designated as secured or priority is the amount of the unsecured nonpriority claim. Deleting the space for describing the unsecured nonpriority claim and reporting its amount also saved space on a very crowded form. Although the changes to the form attracted little comment when the form was published as a preliminary draft, the Advisory Committee began to receive adverse feedback about the change almost immediately after it went into effect. Users criticize the absence of a designated area for stating a general unsecured claim, because unsophisticated creditors do not understand how to complete the form correctly and claim priority or secured status to which they are not entitled. As a consequence, trustees must file many otherwise unnecessary objections to claims and many otherwise deserving creditors may not be paid, because they fail to defend against the objection. The Forms Subcommittee previously has recommended and the Advisory Committee has agreed in principle that the proof of claim form should be amended to restore the spaces labeled for an unsecured claim. With bankruptcy reform legislation pending that would require other amendments to the form, however, the Advisory Committee determined to delay until those other amendments also are necessary. Accordingly, the amendments restoring the unsecured nonpriority claim to designated space on the form are included with those related to the pending legislation.

A subcommittee member has questioned the instruction on Schedule G - Executory Contracts and Unexpired Leases that states that a party to an executory contract or unexpired

lease who is not also listed on one of the schedules of creditors will not receive notice of the filing of the bankruptcy case. The rationale for this instruction is that the debtor may be current on payments on an executory contract or lease, so that the other party is not a creditor in the case. In many cases, especially those involving a residential lease, the debtor may not want the landlord to know its tenant has filed a bankruptcy case. The rationale for not including parties listed on Schedule G in the regular mailings is to avoid sending duplicate notices to those parties who are creditors listed on Schedule D, E, or F. The subcommittee proposes to reconsider Schedule G on the following grounds. If the debtor who is current when the case is filed later defaults on the contract or lease, the debtor can argue that personal liability on the prepetition contract or lease was discharged and the landlord's remedy for a postpetition or postdischarge breach is limited to recovery of possession of the leased premises. There may be similar issues involving business debtors. Accordingly, it may be that landlords, lessees of personal property, and parties to executory contracts should receive notice of the case regardless of whether they are creditors.

Copies of Form 10, Proof of Claim, and Form 6, Schedule G - Executory Contracts and Unexpired Leases, and Committee Notes describing the proposed amendments are attached.

Attachments

FORM B10 (Official Form 10) (DRAFT)

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 ☐ replaces if this claim ☐ 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 case 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 if c) none or only part of your claim is entitled to priority.

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 $4,650),* earned within 90 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).

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: $_____

☐ Up to $2,100* 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 4/1/04 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.

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):

THIS SPACE IS FOR COURT USE ONLY

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

INSTRUCTIONS FOR PROOF OF CLAIM FORM

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

DEFINITIONS

Debtor

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

Creditor

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

Proof of Claim

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

Secured Claim

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim*.)

Unsecured Claim

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

Unsecured Priority Claim

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims.*

Items to be completed in Proof of Claim form (if not already filled in)

Court, Name of Debtor, and Case Number:

Fill in the name of the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the court, all of this information is near the top of the notice.

Information about Creditor:

Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form.

1. Basis for Claim:

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

2. Date Debt Incurred:

Fill in the date when the debt first was owed by the debtor.

3. Court Judgments:

If you have a court judgment for this debt, state the date the court entered the judgment.

4. Classification of Claim

Secured Claim:

Check the appropriate place if the claim is a secured claim. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured. (See DEFINITIONS, above).

Unsecured Priority Claim:

Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority. (See DEFINITIONS, above). A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

Unsecured Nonpriority Claim:

Check the appropriate place if you have an unsecured nonpriority claim, sometimes referred to as a "general unsecured claim". (See DEFINITIONS, above.) If your claim is partly secured and partly unsecured, state here the amount that is unsecured. If part of your claim is entitled to priority, state here the amount **not** entitled to priority.

5. Total Amount of Claim at Time Case Filed:

Fill in the total amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

6. Credits:

By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

7. Supporting Documents:

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

COMMITTEE NOTE

The form is amended to conform to the priority afforded the claims of certain creditors in § 507(a) of the Code as amended by the Bankruptcy Reform Act of 2001, Pub. L. No. 107- , Stat , (, 2001), and to provide spaces for stating the amount of any unsecured nonpriority claim. The contents of the form also have been rearranged and the instructions amended to include the separate listing of a general unsecured claim.

Form B6G (DRAFT)

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 time share interest. If the claim is also listed on Schedule D, E, or F, do not include here the amount owed on the contract or lease. If all leases and contracts will not fit on this page, use the continuation sheets provided.

Provide the names and complete mailing addresses of all other parties to each lease or contract described, using the same format as in Schedules D, E, or F. State the nature of debtor's interest in each contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor lessee of a lease.

If any entity other than a spouse in a joint case may be jointly liable on a contract or lease, 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 husband, wife, both of them, or the marital community maybe liable on each contract or lease by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If a claim relating to the contract or lease 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 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.

☐ Check this box if debtor has no executory contracts or unexpired leases to report on this Schedule G.

NAME AND MAILING ADDRESS INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM. (AMOUNT OWED AND NOT LISTED ON SCHEDULE D, E, OR F, IF ANY, AS OF DATE PETITION FILED.

_____continuation sheets attached Subtotal ➤ (Total of this page) $

Total ➤ (Use only on last page of the completed Schedule G.) $

(Report total also on Summary of Schedules)

Form B6G - Cont.
(DRAFT)

In re _____, Case No. _____
Debtor (If known)

SCHEDULE G - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

NAME AND MAILING ADDRESS INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM. (AMOUNT OWED AND NOT LISTED ON SCHEDULE D, E, OR F, IF ANY, AS OF DATE PETITION FILED.

Sheet no. ___ of ___sheets attached to Schedule of Executory Contracts and Unexpired Leases

Subtotal➤ (Total of this page) $

Total➤ (Use only on last page of the completed Schedule G.) $

(Report total also on Summary of Schedules)

COMMITTEE NOTE

The form is amended to provide additional information about executory contracts and unexpired leases to which the debtor is a party and to delete the instruction that parties to these contracts and leases will not receive notice of the bankruptcy case unless they are listed on one of the schedules of liabilities. Even though a contract or lease may be an asset of the debtor or the debtor may be current on any lease or contract payment obligations, other parties to these transactions may have an interest in the bankruptcy case and should receive notice.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: RULE 9011

DATE: AUGUST 22, 2001

Section 319 of both the House and Senate versions of the bankruptcy reform legislation provide that it is the sense of Congress that Rule 9011 "should be modified to include a requirement that all documents (including schedules), signed and unsigned, submitted to a court or to a trustee by debtors who represent themselves and debtors who are represented by an attorney be submitted only after the debtor or the debtor's attorney has made reasonable inquiry to verify that the information contained in such document 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 legislation also provides in § 707(b)(4) that debtor's counsel must reimburse the trustee for costs and attorney fees incurred in proceeding under § 707(b) if counsel's action violated Rule 9011. The debtor's attorney is also liable in that instance for civil penalties under § 707(b)(4)(B). The section further provides that for a petition, pleading, or written motion, the attorney's signature constitutes a certification of reasonable investigation and that the arguments are supportable under the law and facts. Furthermore, the section also provides that an attorney's signature on a petition "constitute[s] a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect." Finally, parties in interest that pursue the debtor in ways that violate Rule 9011 may be liable to the

debtor. In this instance, the statute provides only that the court "may" award these costs.

The current version of Rule 9011(a) excludes lists, schedules, and statements from the items that a debtor's attorney must sign. Since the debtor's attorney need not sign those documents, the court cannot sanction the attorney based on those documents under Rule 9011(a). See, e.g., *In re Rookery Bay, Ltd.*, 195 B.R. 811 (Bankr. M.D. Fla. 1996); *In re 72nd Street Realty Assocs.*, 185 B.R. 460 (Bankr. S.D.N.Y.1995). If, however, an attorney signs schedules that contain inaccuracies, the attorney can be sanctioned under this part of the Rule. *Hansen, Jones & Leta, P.C. v. Segal*, 220 B.R. 434, 474 (D. Utah 1998) (gross undervaluing of assets).

Rule 9011(b) extends the reach of the Rule beyond those documents signed by the attorney to any paper that an attorney *presents* to the court. Presentation may be by "signing, filing, submitting, or later advocating" the paper, and by making the presentation, the attorney makes the familiar Rule 9011 certification. Arguably, a debtor's attorney "files" the debtor's schedules and could be subject to sanctions under Rule 9011(b) if the information in those schedules include inaccurate information for which there is no evidentiary support. I have found no reported decisions taking this position. Rather, sanctions against a debtor's attorney for improprieties in the schedules are imposed only when the debtor's attorney has signed the schedules.

The language of § 319 of the Bills and the expansion of a debtor's attorney's obligations in the proposed § 707(b)(4) strongly suggest that Congress considers the current reach of Rule 9011 insufficient particularly as to the schedules of assets and liabilities. In particular, proposed § 707(b)(4)(D) provides that the attorney's signature on a petition "shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules *filed*

with such petition is inaccurate." (Emphasis added). However, since the statute cannot provide that the attorney's signature on the petition is a certification of the accuracy of the schedules which may not even exist at the time of the filing of the petition, it would not apply to schedules filed separately from the petition. In most instances, the schedules and petition are filed together, and the section would create the certification. It would be odd to hold a debtor's attorney to a higher standard for information often provided under greater time constraints than for the same information provided in schedules filed two weeks after the commencement of the case. Unless Rule 9011 is amended, however, the two standards would exist. This would encourage separate filing of the petitions and schedules for no good reason other than to permit the debtor's attorney to operate under a less stringent regime for the submission of information.

If, however, Rule 9011(b) were to be amended to include a provision establishing an obligation for a debtor's attorney to certify the accuracy of the schedules, it perhaps should be consistent with the obligation placed on that attorney under proposed § 704(b)(4)(D). That section requires the debtor's attorney to conduct "an inquiry" to determine that the information in the schedules is correct. Rule 9011 and § 319 of the Bills setting out the Sense of the Congress require the inquiry to be "reasonable" (§ 319) or "reasonable under the circumstances" (Rule 9011(b)). While it is likely that the courts would require that "an inquiry" under proposed § 707(b)(4)(B) be "reasonable", the possibility exists that the courts could construe the statute as simply requiring the debtor's attorney to ask the debtor directly whether the information provided on the schedules is accurate. If that interpretation were adopted, there would be a different standard between the Rule and the statute, and the Rule could be construed as enlarging or modifying a substantive right in contravention of 28 U.S.C. § 2075.

Another issue presented by the Sense of Congress provision and the inclusion of similar language in proposed § 707(b)(4) is the reach of the provisions. Section 707(b) applies only in chapter 7 cases, and only in connection with a motion to dismiss the case. Rule 9011, however, applies in all cases, from the smallest consumer debtor case, to the chapter 11 cases of multinational debtors. The Committee in the past has considered the impact of amending Rule 9011 to include a certification regarding the debtor's schedules, and the difficulty of making such a certification when the debtor's assets are literally spread across the globe has led the Committee to reject such proposals. These decisions, however, were not made in the shadows of legislation such as that now present. The statutory obligation of the consumer debtor's attorney under § 707(b) to certify the accuracy of the debtor's schedule would apply even without amendment to Rule 9011. Thus, the question raised is, should attorneys for business debtors be held to the same or a different standard? The Rule contains the limiting provision that the inquiry be "reasonable under the circumstances," and that limitation may be sufficient to make it feasible for all attorneys for debtors to meet the test.

If the Committee believes that it is necessary or appropriate in any event to expand the reach of Rule 9011 to the schedules filed in a bankruptcy case, the following small change in the language of the Rule along with a corresponding change to Official Form 6 should accomplish the task. The Form would be amended to include a signature space for the debtor's attorney. It is preferable to require the signature on the Form rather than to identify the schedules as a category of documents that carry the certification because the signature line can remind the attorney of the new and greater significance attached to the schedules for Rule 9011 purposes.

Rule 9011. SIGNING OF PAPERS; REPRESENTATIONS TO THE COURT; SANTIONS; VERIFICATION AND COPIES OF PAPERS

(a) SIGNATURE. Every petition, pleading, written motion, [schedule] 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.

* * * * *

COMMITTEE NOTE

The rule is amended to provide that the debtor's attorney must sign the debtor's schedules and thereby makes the certification to the court set out in subdivision (b) as to the accuracy of the debtor's schedules. The rule leaves to the courts the extent of the attorney's obligation to investigate the information provided in the schedules, leaving it to the courts to determine what amount of investigation is reasonable under the circumstances presented.

Another option available to the Committee would be to submit Rule 9011 to a Subcommittee (for example, the Subcommittee on Attorney Conduct, for further review. Section 319 of the Bills states that it is the sense of Congress that the Rule should be modified, but it does not directly mandate any change to the Rule. Therefore, taking additional time to

study the issue prior to making any specific recommendation may be prudent.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: RULES GOVERNING APPEALS UNDER THE REFORM LEGISLATION

DATE: AUGUST 26, 2001

The bankruptcy reform legislation amends the statute governing appeals from the bankruptcy courts (28 U.S.C. § 158) by adding a new subsection (d). Both the House and Senate versions of the Bill provide that the "judgment, decision, order, or decree of the bankruptcy judge shall be deemed a judgment, decision, order or decree of the district court" to which an appeal is made unless the district court either files a decision on the appeal within 30 days of the notice of appeal or the court enters an appropriate order extending that time. Subsection (d)(1)(B) of the proposed section provides that the parties to the appeal can prevent the order being deemed an order of the district court if they all file a written consent that the district retain and decide the appeal.

There is no need to amend the rules to implement the provision in the statute that authorizes the court to extend the time for deciding the appeal either on its own motion or upon motion of a party in interest. Motions by parties in interest are adequately governed by existing Rule 8011, including subdivision (d) of the Rule governing emergency motions. (Emergency motions may be necessary because it appears from the statute that the district court must enter an order extending the time prior to the expiration of the 30 day period even if a motion is made prior to the expiration of the period..) There may be a need, however, to amend Rule 8001 by adding a new subdivision to implement § 158(d)(1)(B).

Rule 8001. MANNER OF TAKING APPEAL; VOLUNTARY DISMISSAL

* * * * *

(f) CONSENT TO RETENTION OF APPEAL BY DISTRICT COURT. On or before 30 days after the filing of a notice of appeal with the district court or a statement of election under subdivision (e), whichever is later, each party to the appeal, either individually or jointly, may file with the clerk of the district court a consent to have the district court retain the appeal until it renders a decision.

COMMITTEE NOTE

The bankruptcy reform legislation introduced the concept that a bankruptcy court decision appealed to the district court is deemed to be a decision of the district court thirty days after the filing of an appeal unless the district court either decides the matter or extends the time for deciding the matter on its own motion or on the motion of a party in interest. The rule clarifies that the thirty days runs from later of the date of the filing of the notice of appeal or the date on which a party to the appeal files a statement of election to remove the appeal from the bankruptcy appellate panel to the district court. The rule also authorizes the parties to file, either individually or jointly, written consents to permit the district court to retain the case until it issues its decision in the matter.

The House and Senate versions of the provision differ. The House version specifically provides that the 30 day time period begins to run from the date of the filing of the notice of appeal or the date on which an election is made under 28 U.S.C. § 158(c)(1) to have the matter heard by the district court rather than the bankruptcy appellate panel. The Senate version simply provides that the 30 days runs from the time the "appeal is filed with the district court." If the

House version of the provision is adopted, then the only purpose for the rule would be to provide that the parties can file their written consents to the retention of the case by the district court either jointly or individually. I do not believe it would be necessary to have such a rule, and I have included it here only because the it does seem necessary to provide additional direction on matters of timing that are potentially unsettled in the Senate Bill.

The Senate version of the Bill also provides for direct appeal to the court of appeals of an otherwise unappealable order if the lower court, or the parties acting jointly certify that the order being appealed involves either a substantial question of law, a question of law that requires the resolution of conflicting decisions, or is a matter of public importance. The court of appeals can accept these cases if the "immediate appeal from the order or decree may materially advance the progress of the case or proceeding." The House version of the Bill contains no comparable provision for appeals in this manner. Prior versions of bankruptcy reform legislation have included provisions for direct appeals to the court of appeals, but they have not been included in the final iterations of the bills. Until it appears more likely that this method of direct appeal will be included in the final version of the reform legislation, it seems premature to propose a rule to govern the process.

MEMORANDUM

TO: Advisory Committee on Bankruptcy Rules

FROM: Jeff Morris, Reporter

RE: Burden of Proof Under Rule 4003

DATE: August 22, 2001

Hon. Barry Russell (Bankr. C.D. Cal.) has asked the Committee to consider an amendment to Rule 4003(c). Under that provision, the burden of proof is on the party asserting that an exemption is not properly claimed. Judge Russell believes that this burden allocation is improper and likely due to the adaptation of former Bankruptcy Rule 403(c) which placed the burden of proof on any entity that objected to the trustee's report of exempt property. As Judge Russell notes in his letter, a copy of which is attached, placing the burden of proof on the party who objects to the exemption usually reverses the burden allocation made under former Rule 403 (c). Typically, the debtor would object to a trustee's report that concluded a claimed exemption should not be allowed. In that instance, the debtor would have the burden of proof as to the propriety of the exemption. Under Rule 4003, however, the trustee does not file a report of exempt property to which the debtor would have to object. Rather, exemptions are allowed, in the absence of timely objections, upon the listing of the property as exempt under Bankruptcy Code § 522(*l*).

Rule 4003 is patterned after former Rule 403, but it is also derived from § 522(*l*). The Bankruptcy Code changed dramatically the treatment of exemptions from the practice under the Bankruptcy Act. The Code reverses the law under the Act by now providing in § 522(b) that

exempt property is property of the estate. Only upon allowance of the exemption is that property removed from the estate. Under the Act, exempt property was not property of the estate, consistent with the Act's emphasis on the creditors' ability to reach property as the foundation for including property within the estate. The Supreme Court in *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992) made it clear that the simple act of claiming property as exempt will result in that property being exempt in the absence of a timely objection by a party in interest. Thus, the treatment of exemptions under the Bankruptcy Code is radically different from the treatment of that property under the Bankruptcy Act. The lower courts have uniformly applied the burden of proof allocation established in Rule 4003(c). See, e.g., *In re Lester*, 141 B.R. 157, 161 (S.D. Oh. 1991) (burden of proof is set by Rule 4003(c) rather than state law even for exemption claimed under state exemption); *Gagne v. Bergquist (In re Gagne)*, (D. Mn. 1994)(same); *In re Ritter*, 190 B.R. 323 (Bankr. N.D. Ill. 1995)(same).

In support of his argument that Rule 4003(c) improperly shifts the burden of proof, Judge Russell cites the Supreme Court's decision in *Raleigh v. Illinois Dept. of Revenue*, 530 U.S. 15 (2000). In that case, the Court held that the applicable nonbankruptcy law supplied the burden of proof for the allowance of a tax claim. The Court stated that creditors entitlements in bankruptcy arise out of substantive nonbankruptcy law as the Court had previously held in *Butner v. Unikted States*, 440 U.S. 48 (1979). The recognition of the typically state law basis for creditors' claims should not, however, be carried over to the procedure for the allowance of exemptions. Section 522 governs all claims for exemption in bankruptcy cases, even when the exemptions are those set out in state law. Section 522(b) permits debtors to claim as exempt from the bankruptcy estate property that would be exempt under State or local law, but the exemption is "from the

estate" and it is both proper and necessary for the Bankruptcy Rules to govern the exemption process. In particular, § 522(*l*) provides the statutory support for the proposition that listing property as exempt makes it so. That section arguably demonstrates a Congressional intention that exemption allowance be streamlined as compared to the practice under the Bankruptcy Act. Importing the burdens of proof for the allowance of exemptions from nonbankruptcy law would be inconsistent with § 522(*l*). I would recommend retaining Rule 4003(c) in its present form rather than to amend it as Judge Russell has proposed.

Nevertheless, if the Committee believes either that the Rules should employ the burden of proof existing in the law under which the exemption is claimed, or if the Committee considers the Supreme Court's decision in *Raliegh* dispositive in requiring the allocation of proof burdens according to applicable nonbankruptcy law, then Rule 4003 would have to be amended. The amendment would have to allocate the burden of proof for "federal" exemptions claimed under § 522(d) (available in approximately 15 states) as well as the "nonbankruptcy" exemptions. Given the directive of § 522(*l*), current Rule 4003(c) would properly allocate the burden, but the rule would have to be rewritten to govern exemption claims made other than under § 522(d). The following amendment to Rule 4003(c) is intended to implement Judge Russell's proposal.

RULE 4003. EXEMPTIONS

* * * * *

(c) BURDEN OF PROOF. If the debtor or a dependent of the debtor claims exemptions under § 522(d) of the Bankruptcy Code, ~~In any hearing under this rule~~ the debtor ~~party objecting~~ has

the burden of proving that the exemptions are ~~not~~ properly claimed. If the debtor or a dependent of the debtor claims exemptions other than under § 522(d), the law under which the exemption arises establishes the burden of proof. After hearing on notice, the court shall determine the issue presented by the objections.

COMMITTEE NOTE

The rule is amended to shift the burden of proof for the allowance of exemptions under § 522(d) to the party claiming the exemption rather than placing the burden on the party filing an objection to the exemptions. This is consistent with the rules under the Bankruptcy Act which placed the burden of proof on the party objecting to the trustee's report of exempt property under former Rule 403(c). In that circumstance the debtor was the most likely party to object to the trustee's report, and under the prior rule the debtor had the burden of proof on that issue. Moreover, as to exemptions claimed under nonbankruptcy law, the Supreme Court has held that nonbankruptcy substantive law governs the burden of proof for the allowance of claims. *Raleigh v. Illinois Dept. of Revenue*, 530 U.S. 15 (2000). Recognizing the preeminence of nonbankruptcy law also is appropriate for exemptions that exist under provisions outside of the Bankruptcy Code. The amendment carries the allocation of the burden of proof into the bankruptcy case from the substantive law outside of the Code and under which the debtor or a dependent of the debtor makes the claim of exemption.

United States Bankruptcy Court
Central District of California
Roybal Building
255 East Temple Street, Suite 1660
Los Angeles, California 90012

4/16/01

Chambers of
Barry Russell
Judge

(213) 894-6091

April 4, 2001

01-BK-D

Chief Judge A. Thomas Small
U.S. Bankruptcy Court
P.O. Box Bureau 2747
Raleigh, NC 27602-2747

Dear Tom:

I am writing to you, as Chairman of the Bankruptcy Rules Committee, concerning Rule 4003. In my opinion, at its inception, the Rule improperly places the burden of proof on the party objecting to the debtor's claimed exemptions.

I believe this error was due to a confusion as to the burden of proof under prior Rule 403. Under both rules 4003 and 403, the burden of proof is, and was on the objector. However, under Rule 403, the trustee prepared and filed a report indicating the allowed exemptions. Thereafter, any creditor or the "bankrupt" had 15 days after the filing of the report to object.

Since the battle over exemptions is usually fought by the trustee and the debtor, it was the debtor, not the trustee who had the burden of proof. I believe the rules committee believed they were merely continuing the prior law when in effect it was reversing the appropriate burden of proof.

Although Rule 4003 superseded Rule 403 of the Bankrupt Act, the bankrupt had a similar duty under Rule 403(a) to file full and complete schedules, including a schedule of exempt property with the trustee. See 4 Colliers on Bankruptcy, (14th Ed). Once filed, however, it was the trustee who determined which exemptions were allowed under Rule 403(b) to make a report, and it was the trustee's report not the bankrupt-debtor's claims of exemption "which [was] given the force of an adjudication." Id.

As you can see from Rule 403(b), at a hearing, "The burden of proof shall be on the objector." Under Rule 403, this would almost always have been the debtor. The burden is reversed under Rule 4003 being on the creditor or the trustee rather than on the debtor.

For your convenience, the following is a copy of Rule 403:

Rule 403. Exemptions

(a) *Claim of Exemptions.* – A bankrupt shall claim his exemptions in the schedule of his property required to be filed by Rule 108.

(B) *Trustee's Report.* – The trustee shall examine the bankrupt's claim for exemptions, set apart such as are lawfully claimed, and allowable, and report to the court the items set apart, the amount or estimate value of each, and the exemptions claimed that are not allowable. The report shall be filed with the court no later than 15 days after the trustee qualifies. If the trustee reports that any exemption claimed is not allowable, he shall forthwith mail or deliver copies of the report to the bankrupt and his attorney.

(c) *Objections to Report.* -- Any creditor or the bankrupt may file objections to the report within 15 days after its filing, unless further time is granted by the court within such 15-day period. Copies of the objections so filed shall be delivered or mailed to the trustee and, if the objections are by a creditor, to the bankrupt and his attorney. After hearing upon notice the court shall determine the issues presented by the objections. The burden of proof shall be on the objector.

(d) *Procedure If No Trustee Qualified.* – If no trustee has qualified, the bankruptcy judge shall file the report prescribed by subdivision (b) of this rule within 15 days after the first date set for the first meeting of creditors. If the bankrupt files objections to the report, the court shall appoint a trustee or receiver, who shall represent the estate in the hearing on the objections.

(e) *Approval of Report If No Objections.* – If no objections are filed within the time provided by this rule, the report shall be deemed approved by the court. On request, the court may, at any time and without reopening the case, enter an order approving the report.

(f) *Claim of Exemption by Person Other Than Bankrupt.* – If the bankrupt fails to claim the exemptions to which he is entitled, or if he dies before his exemptions have been set apart to him, his spouse, dependent children, or any other persons who are entitled to claim the exemptions allowable to the bankrupt may, within such time as the court may order, file a claim for his exemptions or object to the report.

As you are aware, the Supreme Court in *Raleigh v. Illinois Department of Revenue*, 120 S.Ct 1951 (2000) has held that the burden of proof for tax claims is governed by non-bankruptcy substantive law. It seems to me that the burden of proof regarding entitlement to a state exemption is also a matter of substantive state law. I do not recall whether all states have opted out under Section 522(b)(1), but as stated above, I believe for federal exemptions the burden should be on the debtor.

Therefore, I suggest a bankruptcy rule which provides that the burden of proof should be governed by state law, as to state exemptions, (probably always on the debtor) and on the party claiming federal exemptions.

I would appreciate your comments on this matter.

Best regards,

BARRY RUSSELL
U.S. Bankruptcy Judge

cc: Honorable Christopher M. Klein
U.S. Bankruptcy Judge
501 "I" Street, 6th Floor
Sacramento, CA 95814

NEWS RELEASE

Administrative Office of the U.S. Courts

August 15, 2001 Contact: Dick Carelli

Federal Judges Recommend Policy on Electronic Access to Court Files

A committee of United States judges today made public its report and recommendations for a nationwide policy governing electronic availability of federal court case file information.

The report was endorsed unanimously by the 14-judge Committee on Court Administration and Case Management of the Judicial Conference of the United States, and its release was directed by the Conference's seven-member Executive Committee.

The full 27-member Conference, which makes policy for the federal courts, is expected to consider the report and recommendations when it meets September 11.

The Committee on Court Administration and Case Management recommends:

- Documents in civil cases should be made available electronically to the same extent that they are available at the courthouse with one exception (Social Security cases should be excluded from electronic access) and one change in policy (that certain "personal data identifiers" should be modified or partially redacted by the litigants; these identifiers are Social Security numbers, dates of birth, financial account numbers and names of minor children).

- Public remote electronic access to documents in criminal cases should not be available at this time, with the understanding that this policy will be re-examined within two years of adoption by the Judicial Conference.

- Documents in bankruptcy case files should be made generally available electronically to the same extent that they are available at the courthouse, with a similar policy change for personal identifiers as in civil cases. Section 107(b)(2) of the Bankruptcy Code should be amended to establish privacy and security concerns as a basis for the sealing of a document; and the Bankruptcy Code and Rules should be amended as necessary to allow the court to collect a debtor's full Social Security number but display only the last four digits.

- Appellate case files should be treated at the appellate level the same way in which they are treated at the lower level.

Electronic access to court docket sheets through PACERNet and to court opinions through their respective web sites will not be affected by the proposed policy. Neither will the availability of case files at the courthouse. A copy of the committee's report can be located at http://www.uscourts.gov/Press_Releases/att81501.pdf

(MORE)

The Judicial Conference of the United States is the principal policy-making body for the federal court system. The chief justice serves as the presiding officer of the Conference, which is composed of the chief judges of the 13 courts of appeals, a district judge from each of the 12 geographic circuits, and the chief judge of the Court of International Trade. The Conference meets twice a year to consider administrative and policy issues affecting the court system and to make recommendations to Congress concerning legislation involving the Judicial Branch.

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NOTICE

NO RECOMMENDATION PRESENTED HEREIN REPRESENTS THE POLICY OF THE JUDICIAL CONFERENCE UNLESS APPROVED BY THE CONFERENCE ITSELF.

REPORT ON PRIVACY AND PUBLIC ACCESS TO ELECTRONIC CASE FILES

Judicial Conference Committee on
Court Administration and Case Management

Reviewed by the Committees on Court Administration
and Case Management, Criminal Law,
Automation and Technology, Rules of Practice
and Procedure and the Administration of the
Bankruptcy System and submitted to
the Judicial Conference for approval

June 26, 2001

Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access to Electronic Case Files

The Judicial Conference of the United States requested that its Committee on Court Administration and Case Management examine issues related to privacy and public access to electronic case files. The Committee on Court Administration and Case Management formed a special subcommittee for this purpose. This subcommittee, known as the Subcommittee on Privacy and Public Access to Electronic Case Files, consisted of four members of the Committee on Court Administration and Case Management: Judge John W. Lungstrum, District of Kansas, Chair; Judge Samuel Grayson Wilson, Western District of Virginia; Judge Jerry A. Davis, Magistrate Judge, Northern District of Mississippi; and Judge J. Rich Leonard, Bankruptcy Judge, Eastern District of North Carolina, and one member from each of four other Judicial Conference Committees (liaison Committees): Judge Emmet Sullivan, District of Columbia, liaison from the Committee on Criminal Law; Judge James Robertson, District of Columbia, liaison from the Committee on Automation and Technology; Judge Sarah S. Vance, Eastern District of Louisiana, liaison from the Committee on the Administration of the Bankruptcy System; and Gene W. Lafitte, Esq., Liskow and Lewis, New Orleans, Louisiana, liaison from the Committee on the Rules of Practice and Procedure. After a lengthy process described below, the Subcommittee on Privacy and Public Access to Electronic Case Files, drafted a report containing recommendations for a judiciary-wide privacy and access policy.

The four liaison Committees reviewed the report and provided comments on it to the full Committee on Court Administration and Case Management. After carefully considering these comments, as well as comments of its own members, the Committee on Court Administration and Case Management made several changes to the subcommittee report, and adopted the amended report as its own.

Brief History of the Committee's Study of Privacy Issues

The Committee on Court Administration and Case Management, through its Subcommittee on Privacy and Public Access to Electronic Case Files (the Subcommittee) began its study of privacy and security concerns regarding public electronic access to case file information in June 1999. It has held numerous meetings and conference calls and received information from experts and academics in the privacy arena, as well as from court users, including judges, court clerks, and government agencies. As a result, in May 2000, the Subcommittee developed several policy options and alternatives for the creation of a judiciary-wide electronic access privacy policy which were presented to the full Committee on Court Administration and Case Management and the liaison committees at their Summer 2000 meetings. The Subcommittee used the opinions and feedback from these committees to further refine the policy options.

In November 2000, the Subcommittee produced a document entitled "Request for Comment on Privacy and Public Access to Electronic Case Files," a copy of which is attached. This document contains the alternatives the Subcommittee perceived as viable following the committees' feedback. The Subcommittee published this document for public comment from November 13, 2000 through January 26, 2001. A website at www.privacy.uscourts.gov was established to publicize the comment document and to collect the comments. Two hundred forty-two comments were received from a very wide range of interested persons including private citizens, privacy rights groups, journalists, private investigators, attorneys, data re-sellers and representatives of the financial services industry. Those comments, in summary and full text format, are available at that website.

On March 16, 2001, the Subcommittee held a public hearing to gain further insight into the issues surrounding privacy and access. Fifteen individuals who had submitted written comments made oral presentations to and answered the questions of Subcommittee members. Following the hearing, the Subcommittee met, considered the comments received, and reached agreement on the policy recommendations contained in this document.

Background

Federal court case files, unless sealed or otherwise subject to restricted access by statute, federal rule, or Judicial Conference policy, are presumed to be available for public inspection and copying. *See Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978) (holding that there is a common law right "to inspect and copy public records and documents, including judicial records and documents"). The tradition of public access to federal court case files is also rooted in constitutional principles. *See Richmond Newspapers, Inc. v. Virginia,* 448 U.S. 555, 575-78 (1980). However, public access rights are not absolute, and courts balance access and privacy interests in making decisions about the public disclosure and dissemination of case files. The authority to protect personal privacy and other legitimate interests in nondisclosure is based, like public access rights, in common law and constitutional principles. *See Nixon*, 435 U.S. at 596 ("[E]very court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes").

The term "case file" (whether electronic or paper) means the collection of documents officially filed by the litigants or the court in the context of litigation, the docket entries that catalog such filings, and transcripts of judicial proceedings. The case file generally does not include several other types of information, including non-filed discovery material, trial exhibits that have not been admitted into evidence, drafts or notes by judges or court staff, and various documents that are sometimes known as "left-side" file material. Sealed material, although part of the case file, is accessible only by court order.

Certain types of cases, categories of information, and specific documents may require special protection from unlimited public access, as further specified in the sections on civil, criminal, bankruptcy and appellate case files below. *See United States Department of Justice v. Reporters Committee for Freedom of the Press,* 489 U.S. 749 (1989) (noting that technology may affect the balance between access rights and privacy and security interests). To a great extent, these recommendations

rely upon counsel and litigants to act to protect the interests of their clients and themselves. This may necessitate an effort by the courts to educate the bar and the public about the fact that documents filed in federal court cases may be available on the Internet.

It is also important to note that the federal courts are not required to provide electronic access to case files (assuming that a paper file is maintained), and these recommendations do not create any entitlement to such access. As a practical matter, during this time of transition when courts are implementing new practices, there may be disparity in access among courts because of varying technology. Nonetheless, the federal courts recognize that the public should share in the benefits of information technology, including more efficient access to court case files.

These recommendations propose privacy policy options which the Committee on Court Administration and Case Management (the Committee) believes can provide solutions to issues of privacy and access as those issues are now presented. To the extent that courts are currently experimenting with procedures which differ from those articulated in this document, those courts should reexamine those procedures in light of the policies outlined herein. The Committee recognizes that technology is ever changing and these recommendations may require frequent re-examination and revision.

Recommendations

The policy recommended for adoption by the Judicial Conference is as follows:

General Principles

1. There should be consistent, nationwide policies in federal courts in order to ensure that similar privacy protections and access presumptions apply regardless of which federal court is the custodian of a particular case file.

2. Notice of these nationwide policies should be given to all litigants in federal court so that they will be aware of the fact that materials which they submit in a federal court proceeding could become available on the Internet.

3. Members of the bar must be educated about the policies and the fact that they must protect their clients by carefully examining the documents that they file in federal court for sensitive, private information and by making the appropriate motions to protect documents from electronic access when necessary.

4. Except where otherwise noted, the policies apply to both paper and electronic files.

5. Electronic access to docket sheets through PACERNet and court opinions through court websites will not be affected by these policies.

6. The availability of case files at the courthouse will not be affected or limited by these policies.

7. Nothing in these recommendations is intended to create a private right of action or to limit the application of Rule 11 of the Federal Rules of Civil Procedure.

Case Types

Civil Case Files

Recommendation: That documents in civil case files should be made available electronically to the same extent that they are available at the courthouse with one exception (Social Security cases should be excluded from electronic access) and one change in policy (the requirement that certain "personal data identifiers" be modified or partially redacted by the litigants). These identifiers are Social Security numbers, dates of birth, financial account numbers and names of minor children.

The recommendation provides for liberal remote electronic access to civil case files while also adopting some means to protect individual privacy. Remote electronic access will be available only through the PACERNet system which requires registration with the PACER service center and the use of a log in and password. This creates an electronic trail which can be retraced in order to determine who accessed certain information if a problem arises. Further, this recommendation contemplates that certain personal, identifying information will not be included in its full and complete form in case documents, whether electronic or hard copy. For example, if the Social Security number of an individual must be included in a document, only the last four digits of that number will be used whether that document is to be filed electronically or at the courthouse. If the involvement of a minor child must be mentioned, only that child's initials should be used; if an individual's date of birth is necessary, only the year should be used; and, if financial account numbers are relevant, only the last four digits should be recited in the document. It is anticipated that as courts develop local rules and instructions for the use and implementation of Electronic Case Filing (ECF), such rules and instructions will include direction on the truncation by the litigants of personal identifying information. Similar rule changes would apply to courts which are imaging documents.

Providing remote electronic access equal to courthouse access will require counsel and pro se litigants to protect their interests through a careful review of whether it is essential to their case to file certain documents containing private sensitive information or by the use of motions to seal and for protective orders. It will also depend upon the discretion of judges to protect privacy and security interests as they arise in individual cases. However, it is the experience of the ECF prototype courts and courts which have been imaging documents and making them electronically available that reliance on judicial discretion has not been problematic and has not dramatically increased or altered the amount and nature of motions to seal. It is also the experience of those courts that have been making

their case file information available through PACERNet that there have been virtually no reported privacy problems as a result.

This recommended "public is public" policy is simple and can be easily and consistently applied nationwide. The recommended policy will "level the geographic playing field" in civil cases in federal court by allowing attorneys not located in geographic proximity to the courthouse easy access. Having both remote electronic access and courthouse access to the same information will also utilize more fully the technology available to the courts and will allow clerks' offices to better and more easily serve the needs of the bar and the public. In addition, it might also discourage the possible development of a "cottage industry" headed by data re-sellers who, if remote electronic access were restricted, could go to the courthouse, copy the files, download the information to a private website, and charge for access to that website, thus profiting from the sale of public information and undermining restrictions intended to protect privacy.

Each of the other policy options articulated in the document for comment presented its own problems. The idea of defining what documents should be included in the public file was rejected because it would require the courts to restrict access at the courthouse to information that has traditionally been available from courthouse files. This would have the net effect of allowing less overall access in a technological age where greater access is easy to achieve. It would also require making the very difficult determination of what information should be included in the public file.

The Committee seriously considered and debated at length the idea of creating levels of access to electronic documents (i.e., access to certain documents for specific users would be based upon the user's status in the case). The Committee ultimately decided that levels of access restrictions were too complicated in relation to the privacy benefits which could be derived therefrom. It would be difficult, for example, to prohibit a user with full access to all case information, such as a party to the case, from downloading and disseminating the restricted information. Also, the levels of access would only exist in relation to the remote electronic file and not in relation to the courthouse file. This would result in unequal remote and physical access to the same information and could foster a cottage industry of courthouse data collection as described above.

Seeking an amendment to the Federal Rules of Civil Procedure was not recommended for several reasons. First, any such rules amendment would take several years to effectuate, and the Committee concluded that privacy issues need immediate attention. There was some discussion about the need for a provision in Fed. R. Civ. P. 11 providing for sanctions against counsel or litigants who, as a litigation tactic, intentionally include scurrilous or embarrassing, irrelevant information in a document so that this information will be available on the Internet. The Committee ultimately determined that, at least for now, the current language of Fed. R. Civ. P. 11 and the inherent power of the court are sufficient to deter such actions and to enforce any privacy policy.

As noted above, this recommendation treats Social Security cases differently from other civil case files. It would limit remote electronic access. It does contemplate, however, the existence of a skeletal electronic file in Social Security cases which would contain documents such as the complaint,

answer and dispositive cross motions or petitions for review as applicable but **not** the administrative record and would be available to the court for statistical and case management purposes. This recommendation would also allow litigants to electronically file documents, except for the administrative record, in Social Security cases and would permit electronic access to these documents by litigants only.

After much debate, the consensus of the Committee was that Social Security cases warrant such treatment because they are of an inherently different nature from other civil cases. They are the continuation of an administrative proceeding, the files of which are confidential until the jurisdiction of the district court is invoked, by an individual to enforce his or her rights under a government program. Further, all Social Security disability claims, which are the majority of Social Security cases filed in district court, contain extremely detailed medical records and other personal information which an applicant must submit in an effort to establish disability. Such medical and personal information is critical to the court and is of little or no legitimate use to anyone not a party to the case. Thus, making such information available on the Internet would be of little public benefit and would present a substantial intrusion into the privacy of the claimant. Social Security files would still be available in their entirety at the courthouse.

Criminal Case Files

Recommendation: That public remote electronic access to documents in criminal cases should not be available at this time, with the understanding that the policy will be reexamined within two years of adoption by the Judicial Conference.

The Committee determined that any benefits of public remote electronic access to criminal files were outweighed by the safety and law enforcement risks such access would create. Routine public remote electronic access to documents in criminal case files would allow defendants and others easy access to information regarding the cooperation and other activities of defendants. Specifically, an individual could access documents filed in conjunction with a motion by the government for downward departure for substantial assistance and learn details of a defendant's involvement in the government's case. Such information could then be very easily used to intimidate, harass and possibly harm victims, defendants and their families.

Likewise, routine public remote electronic access to criminal files may inadvertently increase the risk of unauthorized public access to preindictment information, such as unexecuted arrest and search warrants. The public availability of this information could severely hamper and compromise investigative and law enforcement efforts and pose a significant safety risk to law enforcement officials engaged in their official duties. Sealing documents containing this and other types of sensitive information in criminal cases will not adequately address the problem, since the mere fact that a document is sealed signals probable defendant cooperation and covert law enforcement initiatives.

The benefit to the public of easier access to criminal case file information was not discounted by the Committee and, it should be noted that, opinions and orders, as determined by the court, and

criminal docket sheets will still be available through court websites and PACER and PACERNet. However, in view of the concerns described above, the Committee concluded that individual safety and the risk to law enforcement personnel significantly outweigh the need for unfettered public remote access to the content of criminal case files. This recommendation should be reconsidered if it becomes evident that the benefits of public remote electronic access significantly outweigh the dangers to victims, defendants and their families, and law enforcement personnel.

Bankruptcy Case Files

Recommendation: That documents in bankruptcy case files should be made generally available electronically to the same extent that they are available at the courthouse, with a similar policy change for personal identifiers as in civil cases; that § 107(b)(2) of the Bankruptcy Code should be amended to establish privacy and security concerns as a basis for the sealing of a document; and that the Bankruptcy Code and Rules should be amended as necessary to allow the court to collect a debtor's full Social Security number but display only the last four digits.

The Committee recognized the unique nature of bankruptcy case files and the particularly sensitive nature of the information, largely financial, which is contained in these files; while this recommendation does provide open remote electronic access to this information, it also accommodates the privacy concerns of individuals. This recommendation contemplates that a debtor's personal, identifying information and financial account numbers will not be included in their complete forms on any document, whether electronic or hard copy (i.e., only the last four digits of Social Security and financial account numbers will be used). As the recommendation recognizes, there may be a need to amend the Bankruptcy Code to allow only the last four digits of an individual debtor's Social Security number to be used. The bankruptcy court will collect the full Social Security number of debtors for internal use, as this number appears to provide the best way to identify multiple bankruptcy filings. The recommendation proposes a minor amendment to § 107(a) to allow the court to collect the full number, but only display the last four digits. The names of minor children will not be included in electronic or hard copies of documents.

As with civil cases, the effectiveness of this recommendation relies upon motions to seal filed by litigants and other parties in interest. To accomplish this result, an amendment of 11 U.S.C. § 107(b), which now narrowly circumscribes the ability of the bankruptcy courts to seal documents, will be needed to establish privacy and security concerns as a basis for sealing a document. Once again, the experiences of the ECF prototype and imaging courts do not indicate that this reliance will cause a large influx of motions to seal. In addition, as with all remote electronic access, the information can only be reached through the log-in and password- controlled PACERNet system.

The Committee rejected the other alternatives suggested in the comment document for various reasons. Any attempt to create levels of access in bankruptcy cases would meet with the same problems discussed with respect to the use of levels of access for civil cases. Bankruptcy cases

present even more issues with respect to levels of access because there are numerous interests which would have a legitimate need to access file information and specific access levels would need to be established for them. Further, many entities could qualify as a "party in interest" in a bankruptcy filing and would need access to case file information to determine if they in fact have an interest. It would be difficult to create an electronic access system which would allow sufficient access for that determination to be made without giving full access to that entity.

The idea of collecting less information or segregating certain information and restricting access to it was rejected because the Committee determined that there is a need for and a value in allowing the public access to this information. Further, creating two separate files, one totally open to the public and one with restricted access, would place a burden on clerks' offices by requiring the management of two sets of files in each case.

Appellate Case Files

Recommendation: That appellate case files be treated at the appellate level the same way in which they are treated at the lower level.

This recommendation acknowledges the varying treatment of the different case types at the lower level and carries that treatment through to the appellate level. For cases appealed to the district court or the court of appeals from administrative agencies, the documents in the appeal will be treated, for the purposes of remote electronic access, in the same manner in which they were treated by the agency. For cases appealed from the district court, the case file will be treated in the manner in which it was treated by the district court with respect to remote electronic access.

Attachment

Request for Comment on Privacy and Public Access to Electronic Case Files

The federal judiciary is seeking comment on the privacy and security implications of providing electronic public access to court case files. The Judicial Conference of the United States is studying these issues in order to provide policy guidance to the federal courts. This request for public comment addresses several related issues:

the judiciary's plans to provide electronic access to case files through the Internet;
the privacy and security implications of public access to electronic case files;
potential policy alternatives and the appropriate scope of judicial branch action in this area.

The judiciary is interested in comments that address any of the issues raised in this document, including whether it is appropriate for the judiciary to establish policy in this area. All comments should be received by 5:00 p.m. January 26, 2001 and must include the name, mailing address and phone number of the commentator.

All comments should also include an e-mail address and a fax number, where available, as well as an indication of whether the commentator is interested in participating in a public hearing, if one is held. The public should be advised that it may not be possible to honor all requests to speak at any such hearing.

The electronic submission of comments is highly encouraged. Electronic comments may be submitted at www.privacy.uscourts.gov or via e-mail to Privacy_Policy_Comments@ao.uscourts.gov . Comments may be submitted by regular mail to The Administrative Office of the United States Courts, Court Administration Policy Staff, Attn: Privacy Comments, Suite 4-560, One Columbus Circle, N.E. Washington, DC 20544.

Electronic Public Access to Federal Court Case Files

The federal courts are moving swiftly to create electronic case files and to provide public access to those files through the Internet. This transition from paper files to electronic files is quickly transforming the way case file documents may be used by attorneys, litigants, courts, and the public. The creation of electronic case files means that the ability to obtain documents from a court case file will no longer

depend on physical presence in the courthouse where a file is maintained. Increasingly, case files may be viewed, printed, or downloaded by anyone, at any time, through the Internet.

Electronic files are being created in two ways. Many courts are creating electronic images of all paper documents that are filed, in effect converting paper files to electronic files. Other courts are receiving court filings over the Internet directly from attorneys, so that the "original" file is no longer a paper file but rather a collection of the electronic documents filed by the attorneys and the court. Over the next few years electronic filing, as opposed to making images of paper documents, will become more common as most federal courts begin to implement a new case management system, called Case Management/Electronic Case Files (or "CM/ECF"). That system gives each court the option to create electronic case files by allowing lawyers and parties to file their documents over the Internet.

The courts plan to provide public access to electronic files, both at the courthouse and beyond the courthouse, through the Internet. The primary method to obtain access will be through Public Access to Court Electronic Records (or "PACER"), which is a web-based system that will contain both the dockets (a list of the documents filed in the case) and the actual case file documents. Individuals who seek a particular document or case file will need to open a PACER account and obtain a login and password. After obtaining these, an individual may access case files – whether those files were created by imaging paper files or through CM/ECF – over the Internet. Public access through PACER will involve a fee of $.07 per page of a case file document or docket viewed, downloaded or printed. This compares favorably to the current $.50 per page photocopy charge. Electronic case files also will be available at public computer terminals at courthouses free of charge.

Potential Privacy and Security Implications of Electronic Case Files

Electronic case files promise significant benefits for the courts, litigants, attorneys, and the public. There is increasing awareness, however, of the personal privacy implications of unlimited Internet access to court case files. In the court community, some have begun to suggest that case files – long presumed to be open for public inspection and copying unless sealed by court order – contain private or sensitive information that should be protected from unlimited public disclosure and dissemination in the new electronic environment. Others maintain that electronic case files should be treated the same as paper files in terms of public access and that existing court practices are adequate to protect privacy interests.

Federal court case files contain personal and sensitive information that litigants and third parties often are compelled by law to disclose for adjudicatory purposes. Bankruptcy debtors, for example, must divulge intimate details of their financial affairs for review by the case trustee, creditors, and the judge. Civil case files may contain medical records, personnel files, proprietary information, tax returns, and other sensitive information. Criminal files may contain arrest warrants, plea agreements, and other information that raise law enforcement and security concerns.

Recognizing the need to review judiciary public access policies in the context of new technology, the Judicial Conference is considering privacy and access issues in order to provide guidance to the courts.

The Judicial Conference has not reached any conclusions on these issues, and this request for public comment is intended as part of the Conference's ongoing study.

The judiciary has a long tradition – rooted in both constitutional and common law principles – of open access to public court records. Accordingly, all case file documents, unless sealed or otherwise subject to restricted access by statute or federal rule, have traditionally been available for public inspection and copying. The Supreme Court has recognized, however, that access rights are not absolute, and that technology may affect the balance between access rights and privacy and security interests. *See Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978), and *United States Department of Justice v. Reporters Committee for Freedom of the Press,* 489 U.S. 749 (1989). These issues are discussed in more detail in an Administrative Office staff paper, "Privacy and Access to Electronic Case Files in the Federal Courts," available on the Internet at www.uscourts.gov/privacyn.pdf .

The Role of the Federal Judiciary

The judiciary recognizes that concern about privacy and access to public records is not limited to the judicial branch. There is a broader public debate about the privacy and security implications of information technology. Congress has already responded to some of these concerns by passing laws that are designed to shield sensitive personal information from unwarranted disclosure. These laws, and numerous pending legislative proposals, address information such as banking records and other personal financial information, medical records, tax returns, and Social Security numbers. The executive branch is also concerned about implications of electronic public access to private information. Most recently, the President directed the Office of Management and Budget, the Department of Justice, and the Department of Treasury to conduct a study on privacy and security issues associated with consumer bankruptcy filings.

Accordingly, the judiciary is interested in receiving comment on the appropriate scope of judicial branch action, if any, on the broad issue of access to public court records, and the corresponding need to balance access issues against competing concerns such as personal privacy and security.

Policy Alternatives on Electronic Public Access to Federal Court Case Files

Regardless of what entity addresses the issues of privacy and electronic access to case files, the effort must be made to balance access and privacy interests in making decisions about the public disclosure and dissemination of case files. The policy options outlined below are intended to promote consistent policies and practices in the federal courts and to ensure that similar protections and electronic access presumptions apply, regardless of which federal court is the custodian of a particular case file. One or more of the policy options for each type of case file may be recommended to the Judicial Conference for its consideration. Some, but not all of the options are mutually exclusive.

Civil Case Files

1. Maintain the presumption that all filed documents that are not sealed are available both at the courthouse and electronically.

This approach would rely upon counsel and pro se litigants to protect their interests on a case-by-case basis through motions to seal specific documents or motions to exclude specific documents from electronic availability. It would also rely on judges' discretion to protect privacy and security interests on a case-by-case basis through orders to seal or to exclude certain information from remote electronic public access.

2. Define what documents should be included in the "public file" and, thereby, available to the public either at the courthouse or electronically.

This option would treat paper and electronic access equally and assumes that specific sensitive information would be excluded from public review or presumptively sealed. It assumes that the entire public file would be available electronically without restriction and would promote uniformity among district courts as to case file content. The challenge of this alternative is to define what information should be included in the public file and what information does not need to be in the file because it is not necessary to an understanding of the determination of the case or because it implicates privacy and security interests.

3. Establish "levels of access" to certain electronic case file information.

This contemplates use of software with features to restrict electronic access to certain documents either by the identity of the individual seeking access or the nature of the document to which access is sought, or both. Judges, court staff, parties and counsel would have unlimited remote access to all electronic case files.

This approach assumes that the complete electronic case file would be available for public review at the courthouse, just as the entire paper file is available for inspection in person. It is important to recognize that this approach would not limit how case files may be copied or disseminated once obtained at the courthouse.

4. Seek an amendment to one or more of the Federal Rules of Civil Procedure to account for privacy and security interests.

Criminal Case Files

1. Do not provide electronic public access to criminal case files.

This approach advocates the position that the ECF component of the new CM/ECF system should not be expanded to include criminal case files. Due to the very different nature of criminal case files, there may be much less of a legitimate need to provide electronic access to these files. The files are usually not that extensive and do not present the type of storage problems presented by civil files. Prosecution and defense attorneys are usually located near the courthouse. Those with a true need for the information can still access it at the courthouse. Further, any legitimate need for electronic access to criminal case information is outweighed by safety and security concerns. The electronic availability of criminal information would allow co-defendants to have easy access to information regarding cooperation and other activities of defendants. This information could then be used to intimidate and harass the defendant and the defendant's family. Additionally, the availability of certain preliminary criminal information, such as warrants and indictments, could severely hamper law enforcement and prosecution efforts.

2. Provide limited electronic public access to criminal case files.

This alternative would allow the general public access to some, but not all, documents routinely contained in criminal files. Access to documents such as plea agreements, unexecuted warrants, certain pre-indictment information and presentence reports would be restricted to parties, counsel, essential court employees, and the judge.

Bankruptcy Case Files

1. Seek an amendment to section 107 of the Bankruptcy Code.

Section 107 currently requires public access to all material filed with bankruptcy courts and gives judges limited sealing authority. Recognized issues in this area would be addressed by amending this provision as follows: 1) specifying that only "parties in interest" may obtain access to certain types of information; and (2) enhancing the 107(b) sealing provisions to clarify that judges may provide protection from disclosures based upon privacy and security concerns.

2. Require less information on petitions or schedules and statements filed in bankruptcy cases.

3. Restrict use of Social Security, credit card, and other account numbers to only the last four digits to protect privacy and security interests.

4. Segregate certain sensitive information from the public file by collecting it on separate forms that will be protected from unlimited public access and made available only to the courts, the U.S. Trustee, and to parties in interest.

Appellate Cases

1. Apply the same access rules to appellate courts that apply at the trial court level.

2. Treat any document that is sealed or subject to public access restrictions at the trial court level with the same protections at the appellate level unless and until a party challenges the restriction in the appellate court.

Model Local Bankruptcy Court Rules for Electronic Case Filing

Judicial Conference Committee on
Court Administration and Case Management

June 29, 2001

NOTICE

This document has been reviewed by the Committees on Court Administration and Case Management, Automation and Technology, and Rules of Practice and Procedure, and submitted to the Judicial Conference for approval at its September 2001 meeting.

Introduction

Because most existing court rules and procedures have been designed with paper court documents in mind, some modifications are needed to address issues arising when court documents are filed in electronic form. This set of model local rules has been developed for federal district and bankruptcy courts implementing the electronic case filing capabilities of the federal judiciary's Case Management/Electronic Case Files (CM/ECF) Project, and can be adapted by courts that offer some other method of electronic filing of court documents.

The model was compiled by a subcommittee of the Court Administration and Case Management Committee that included as members representatives from the Committee on Automation and Technology and the Committee on Rules of Practice and Procedure. The subcommittee reviewed the rules and procedures for electronic filing developed in the CM/ECF prototype district and bankruptcy courts. It also undertook an informal survey of those courts to find out how well those procedures operated. The information indicated general satisfaction with courts' existing procedures. There was also general agreement that it was essential to include the bar in the process of developing and modifying the local procedures governing electronic filing.

This set of model local rules for electronic case filing is based to a significant extent on the procedures used in courts that served as prototype courts for the federal judiciary's CM/ECF Project. There are separate sets of model local rules for district courts and bankruptcy courts. They use the same terminology and are identical to the extent possible and appropriate. Courts are free to adapt the provisions of these model local rules as they choose. (Please note that "Interim Bankruptcy Rules" will be promulgated and recommended for adoption as local rules to implement pending comprehensive bankruptcy reform legislation upon enactment. Unlike model local rules, including these model local rules governing electronic case filing, courts will be urged to adopt the "interim bankruptcy rules" as local rules without change.)

The Federal Rules of Procedure (Civil Rule 5(e), Bankruptcy Rules 5005, 7005 and 8008) provide that a court may "by local rule" permit filing, signing and verification of documents by electronic means. Thus, each court that intends to allow electronic filing should have at least a general authorizing provision in its local rules.[1] The model rules developed here may be used either as a set of local rules, or as the contents for a general order or other administrative procedures. The use of local rules promotes the requirements of the Rules Enabling Act, provides better public notice of applicable procedures, and allows for input from the bar. On the other hand, use of general orders gives courts more flexibility to modify requirements and rules

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[1]An example of a local rule authorizing electronic filing is as follows:

The court will accept for filing documents submitted, signed or verified by electronic means that comply with procedures established by the court.

in response to changing circumstances. If local rules are used, it should be noted that Fed.R.Civ.P. 83, Fed.R.Bankr.P. 9029 and related Judicial Conference policy require that rule numbering conform to the numbering system of the Federal Rules. The model rules could be added as a group to local rules corresponding to Fed.R.Bankr.P. 5005 or 9029.

Note: These model procedures use the term "Electronic Filing System" to refer to the court's system that receives documents filed in electronic form. The term "Filing User" is used to refer to those who have a court-issued log-in and password to file documents electronically.

Rule 1– Scope of Electronic Filing

The court will designate which cases will be assigned to the Electronic Filing System. Except as expressly provided and in exceptional circumstances preventing a Filing User from filing electronically, all petitions, motions, memoranda of law, or other pleadings and documents required to be filed with the court in connection with a case assigned to the Electronic Filing System must be electronically filed.

In a case assigned to the Electronic Filing System after it has been opened, parties must promptly provide the clerk with electronic copies of all documents previously provided in paper form. All subsequent documents must be filed electronically except as provided in these rules or as ordered by the court.

Notwithstanding the foregoing, attorneys and others who are not Filing Users in the Electronic Filing System are not required to electronically file pleadings and other papers in a case assigned to the System. Once registered, a FilingUser may withdraw from participation in the Electronic Filing System by providing the clerk's office with written notice of the withdrawal.

Derivation

The first and third paragraphs of the Model Rule are derived from the Southern District of California Bankruptcy procedures, with the exception of the last sentence of the third paragraph, which is derived from the Eastern District of Virginia Bankruptcy procedures. The second paragraph is adapted from the Northern District of Ohio procedures.

Commentary

1. The Model Rule provides that the court will designate which cases will be assigned to the electronic filing system. It also establishes a presumption that all documents filed in cases assigned to the electronic filing system should be electronically filed. Some courts have designated certain types of cases for electronic filing, while some have determined that all cases are appropriate for electronic filing. However, the Rule does not make electronic filing mandatory. Mandatory electronic filing appears to be inconsistent with Fed.R.Bankr.P. 5005, which states that a court "may permit" papers to be filed electronically, and provides that the clerk "shall not refuse to accept for filing any paper presented . . . solely because it is not presented in proper form." However, the Federal Rules clearly permit a court to strongly encourage lawyers to participate in electronic case filing, and the Model Rule is written to provide such encouragement.

2. For cases assigned to the electronic filing system after documents have already been filed conventionally, the Model Rule states that the parties must provide electronic copies of all previously filed documents. In cases removed to the federal court, parties in cases assigned to the electronic filing system are required to provide electronic copies of all previous filings in the state court. Where documents filed in paper form were previously scanned by the court, electronic filing would not be necessary.

3. Some courts offering electronic filing require fees to be paid in the traditional manner, while others permit or require electronic payment of fees. Nothing in the rule would constrain the court in providing for a desired method of payment of fees.

4. Electronic case filing raises privacy concerns. Electronic case files can be more easily accessible than traditional paper case files, so there is a greater risk of public dissemination of sensitive information found in case files. See Model Rule 12. The Judicial Conference is investigating and evaluating the privacy concerns attendant to electronic case files, and is working to develop a policy.

Rule 2– Eligibility, Registration, Passwords

Attorneys admitted to the bar of this court (including those admitted pro hac vice), United States trustees and their assistants, bankruptcy administrators and their assistants, private trustees, and others as the court deems appropriate, may register as Filing Users of the court's Electronic Filing System. Registration is in a form prescribed by the clerk and requires the Filing User's name, address, telephone number, Internet e-mail address, and, in the case of an attorney, a declaration that the attorney is admitted to the bar of this court.

If the court permits, a party to a pending action who is not represented by an attorney may register as a Filing User in the Electronic Filing System solely for purposes of the action. Registration is in a form prescribed by the clerk and requires identification of the action as well as the name, address, telephone number and Internet e-mail address of the party. If, during the course of the action, the party retains an attorney who appears on the party's behalf, the attorney must advise the clerk to terminate the party's registration as a Filing User upon the attorney's appearance.

Provided that a Filing User has an Internet e-mail address, registration as a Filing User constitutes: (1) waiver of the right to receive notice by first class mail and consent to receive notice electronically; and (2) waiver of the right to service by personal service or first class mail and consent to electronic service, except with regard to service of a summons and complaint under Fed.R.Bankr.P. 7004. Waiver of service and notice by first class mail applies to notice of the entry of an order or judgment under Fed.R.Bankr.P. 9022.

Once registration is completed, the Filing User will receive notification of the user log-in and password. Filing Users agree to protect the security of their passwords and immediately notify the clerk if they learn that their password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

Derivation

The first two paragraphs of Model Rule 2 are adapted from the Eastern District of New York procedures. The last paragraph is derived from the Northern District of Ohio procedures.

Commentary

1. The Model Rule specifically provides that attorneys admitted pro hac vice, U.S.

trustees and their assistants, bankruptcy administrators and their assistants, and private trustees can be Filing Users in electronic filing systems. It also recognizes that the court may wish to permit others, e.g., claims filers, to participate. These additional filers could at the court's option be provided with limited filing privileges. The Model Rule also recognizes that a court may wish under certain circumstances to permit pro se filers to take part in electronic case filing. Such participation is left to the discretion of the court.

2. The Model Rule provides that a person who registers with the System (a Filing User) thereby consents to electronic service and notice of documents subject to the electronic case filing system. Pending amendments to Fed.R.Civ.P. 5, which is incorporated by reference into Fed.R.Bankr.P 7005, permit electronic service on a person who consents "in writing." The Committee Notes indicate that the consent may be provided by electronic means. A court may "establish a registry or other facility that allows advance consent to service by specified means for future action." Thus, a court might use CM/ECF registration as a means to have parties consent to receive service electronically.

3. The consent to receive electronic notice and service is intended to cover the full range of notice and service except those documents to which the service requirements of Fed.R.Bankr.P. 7004 apply. These provisions operate independently from the notices sent by the Bankruptcy Noticing Center under Fed.R.Bankr.P. 9036.

4. Several districts currently have provisions addressing the possibility of compromised passwords. Such a provision may be useful in a User Manual for the electronic filing system. The provision might read as follows:

> Attorneys may find it desirable to change their court assigned passwords periodically. In the event that a Filing User believes that the security of an existing password has been compromised and that a threat to the System exists, the Filing User must give immediate notice by telephone to the clerk, chief deputy clerk or systems department manager and confirm by facsimile in order to prevent access to the System by use of that password.

Rule 3–Consequences of Electronic Filing

Electronic transmission of a document to the Electronic Filing System consistent with these rules, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes of the Federal Rules of Bankruptcy Procedure and the local rules of this court, and constitutes entry of the document on the docket kept by the clerk under Fed.R.Bankr.P. 5003.

When a document has been filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently submitted electronically under Rule 1, a document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing from the court.

Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight local time where the court is located in order to be considered timely filed that day.

Derivation

The first two paragraphs of Model Rule 3 are adapted from the Eastern District of New York procedures. The third paragraph is adapted from the Northern District of Ohio procedures.

Commentary

1. The Model Rule provides a "time of filing" rule that is analogous to the traditional system of file stamping by the Clerk's office. A filing is deemed made when it is acknowledged by the Clerk's office through the CM/ECF system's automatically generated Notice of Electronic Filing.

2. The Model Rule makes clear that the electronically filed documents are considered to be entries on the official docket.

Rule 4– Entry of Court Orders

All orders, decrees, judgments, and proceedings of the court will be filed in accordance with these rules, which will constitute entry on the docket kept by the clerk under Fed.R.Bankr.P. 5003 and 9021. All signed orders will be filed electronically by the court or court personnel. Any order filed electronically without the original signature of a judge has the same force and effect as if the judge had affixed the judge's signature to a paper copy of the order and it had been entered on the docket in a conventional manner.

A Filing User submitting a document electronically that requires a judge's signature must promptly deliver the document in such form as the court requires.

Derivation

The first two sentences of the first paragraph of the Model Rule are adapted from the Eastern District of New York procedures. The last sentence is derived from the Northern District of Georgia Bankruptcy Court. The second paragraph is adapted from Eastern District of New York procedures.

Commentary

1. Not all courts have a provision in their electronic filing procedures addressing the electronic entry of court orders. In at least one court without such a provision, a question arose about the validity of electronically filed court orders. The Model Rule specifically states that an electronically filed court order has the same force and effect as an order conventionally filed.

2. The Model Rule contemplates that a judge can authorize personnel, such as a law clerk or judicial assistant, to electronically enter an order on the judge's behalf.

3. The Model Rule leaves the method for submitting proposed orders to the discretion of the court.

Rule 5– Attachments and Exhibits

Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless the court permits conventional filing. A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts or the complete document. Responding parties may timely file additional excerpts or the complete document that they believe are directly germane.

Derivation

The Model Rule is adapted from the Southern District of New York Bankruptcy procedures.

Commentary

1. One issue that has arisen in most courts using electronic filing relates to attachments or exhibits not originally available to the filer in electronic form, and that must be scanned (or imaged) into Portable Document Format before filing. Examples include leases, contracts, proxy statements, charts and graphs. A scanned document creates a much larger electronic file than one prepared directly on the computer (*e.g.*, through word processing). The large documents can take considerable time to file and retrieve. The Model Rule provides that if the case is assigned to the electronic filing system, the party must file this type of material electronically, unless the court specifically permits conventional filing.

2. It is often the case that only a small portion of a much larger document is relevant to the matter before the court. In such cases, scanning the entire document imposes an inappropriate burden on both the litigants and the courts. To alleviate some of this inconvenience, the Model Rule provides that a Filing User must submit as the exhibit only the relevant excerpts of a larger document. The responding party then has a right to submit other excerpts of the same document under the principle of completeness.

3. This rule is not intended to alter traditional rules with respect to materials that are before the court for decision. Thus, any material on which the court is asked to rely must be specifically provided to the court.

4. For courts permitting claims to be filed electronically, this rule also governs proofs of claim. Official Form 10, the Proof of Claim, already permits creditors to file a summary if the documentation for the claim is voluminous.

Rule 6–Sealed Documents

Documents ordered to be placed under seal must be filed conventionally, and not electronically, unless specifically authorized by the court. A motion to file documents under seal may be filed electronically unless prohibited by law. The order of the court authorizing the filing of documents under seal may be filed electronically unless prohibited by law. A paper copy of the order must be attached to the documents under seal and be delivered to the clerk.

Derivation

The Model Rule is adapted from the Western District of Missouri procedures.

Commentary

1. The Model Rule recognizes that other laws may affect whether a motion to file documents under seal, or an order authorizing the filing of such documents, can or should be electronically filed. It is possible that electronic access to the motion or order may raise the same privacy concerns that gave rise to the need to file a document conventionally in the first place. For similar reasons, the actual documents to be filed under seal should ordinarily be filed conventionally.

2. See Model Rule 12 for another provision addressing privacy concerns arising from electronic filing.

Rule 7– Retention Requirements

Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form by the Filing User until [number] years after all time periods for appeals expire. On request of the court, the Filing User must provide original documents for review.

Derivation

Model Rule 7 is adapted from the Eastern District of Virginia Bankruptcy procedures.

Commentary

1. Because electronically filed documents do not include original, handwritten signatures, it is necessary to provide for retention of certain signed documents in paper form in case they are needed as evidence in the future. The Model Rule requires retention only of those documents containing original signatures of persons other than the person who files the document electronically. The filer's use of a log-in and password to file the document is itself a signature under the terms of Model Rule 8.

2. The Model Rule places the retention requirement on the person who files the document. Another possible solution is to require the filer to submit the signed original to the court, so that the court can retain it. Some government officials have expressed a preference to have such documents retained by the court, in order to make it easier to retrieve the documents for purposes such as a subsequent prosecution for fraud. Some have suggested that a debtor's original signature be filed with the court because the signature is so important on bankruptcy petitions and schedules.

3. Courts have varied considerably on the required retention period. Some have limited it to the end of the litigation (plus the time for appeals). Others have required longer retention periods (four or five years). Assuming that the purpose of document retention is to preserve relevant evidence for a subsequent proceeding, the appropriate retention period might relate to relevant statutes of limitations.

4. Some districts require the filer to retain a paper copy of *all* electronically filed documents. Such a requirement seems unnecessary, and it tends to defeat one of the purposes of using electronic filing. Other courts have required retention of "verified documents," i.e., documents required to be verified under Fed.R.Bankr.P. 1008 or documents in which a person verifies, certifies, affirms, or swears under oath or penalty of perjury. See, *e.g.*, 28 U.S.C. § 1746 (unsworn declarations under penalty of perjury).

Rule 8– Signatures

The user log-in and password required to submit documents to the Electronic Filing System serve as the Filing User's signature on all electronic documents filed with the court. They also serve as a signature for purposes of Fed.R.Bankr. P. 9011, the Federal Rules of Bankruptcy Procedure, the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court. Each document filed electronically must, if possible, indicate that it has been electronically filed. Electronically filed documents must include a signature block [in compliance with local rule number [ ] if applicable] and must set forth the name, address, telephone number and the attorney's [name of state] bar registration number, if applicable. In addition, the name of the Filing User under whose log-in and password the document is submitted must be preceded by an "s/" and typed in the space where the signature would otherwise appear.

No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

Documents requiring signatures of more than one party must be electronically filed either by: (1) submitting a scanned document containing all necessary signatures; (2) representing the consent of the other parties on the document; (3) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than three business days after filing; or (4) in any other manner approved by the court.

Derivation

The first and third paragraphs of the Model Rule are adapted from the Northern District of Ohio procedures. The second paragraph is derived from the Southern District of New York Bankruptcy procedures.

Commentary

1. Signature issues are a subject of considerable interest and concern. The CM/ECF system is designed to require a log-in and password to file a document. The Model Rule provides that use of the log-in and password constitutes a signature, and assures that such a signature has the same force and effect as a written signature for purposes of the Federal Rules of Bankruptcy Procedure, including Fed.R.Bankr. P. 9011, and any other purpose for which a signature is required on a document in connection with proceedings before the court.

2. At the present time, other forms of digital or other electronic signature have received only limited acceptance. It is possible that over time and with further technological development, a system of digital signatures may replace the current password system.

3. Some users of electronic filing systems have questioned whether an s-slash requirement is worth retaining. The better view is that an s-slash is necessary; otherwise there is no indication that documents printed out from the website were ever signed. The s-slash provides some indication when the filed document is viewed or printed that the original was in fact signed.

4. The second paragraph of the Model Rule does not require an attorney or other Filing User to personally file his or her own documents. The task of electronic filing can be delegated to an authorized agent, who may use the log-in and password to make the filing. However, use of the log-in and password to make the filing constitutes a signature by the Filing User under the Rule, even though the Filing User does not do the physical act of filing.

5. Issues arise when documents being electronically filed have been signed by persons other than the filer, *e.g.*, stipulations and affidavits. The Model Rule provides for a substantial amount of flexibility in the filing of these documents. Courts may wish to modify or narrow the options if, for example, they believe that administering the three-day period for endorsements would be burdensome.

6. Courts may wish to underscore the fact that a Filing User's log-in and password constitutes the Filing User's signature, by including a statement to that effect on the registration form.

Rule 9– Service of Documents by Electronic Means

Each entity electronically filing a pleading or other document must transmit a "Notice of Electronic Filing" to parties entitled to service or notice under the Federal Rules of Bankruptcy Procedure and the local rules. The "Notice of Electronic Filing" must be transmitted by e-mail, hand, facsimile, or by first-class mail postage prepaid. Electronic transmission of the "Notice of Electronic Filing"constitutes service or notice of the filed document. Parties not deemed to have consented to electronic notice or service are entitled to receive a paper copy of any electronically filed pleading or other document. Service or notice must be made according to the Federal Rules of Bankruptcy Procedure and the local rules.

Derivation

Model Rule 9 is adapted from the Western District of Missouri procedures.

Commentary

1. The pending amendments to the Federal Rules (Fed.R.Bankr.P. 7005, Fed.R.Civ.P. 5(b)) authorizing service of documents by electronic means do not permit electronic service of process for purposes of obtaining personal jurisdiction (i.e., Rule 7004 service).

2. The CM/ECF system automatically generates a Notice of Electronic Filing at the time a document is filed with the system. The Notice indicates the time of filing, the name of the party and attorney filing the document, the type of document, and the text of the docket entry. It also contains an electronic link (hyperlink) to the filed document, allowing anyone receiving the Notice by e-mail to retrieve the document automatically. The CM/ECF system automatically sends this Notice to all case participants registered to use the electronic filing system. If the court is willing to have this Notice itself constitute service, it may, under pending amendments to the Federal Rules, do so through a local rule. The pending amendments require a local rule if a court wants to authorize parties to use its transmission facilities to make electronic service. The Model Rule does not include such a provision, but could be easily modified to provide that the court's automatically generated notice of electronic filing constitutes service.

3. A pending amendment to Fed.R.Bankr. P. 9006(f) provides that the three additional days to respond to service by mail will apply to electronic service as well. The Committee Note on the parallel amendment to Fed.R.Civ.P. 6(e) states:

> Electronic transmission is not always instantaneous, and may fail for any number of reasons. It may take three days to arrange for transmission in readable form. Providing

added time to respond will not discourage people from asking for consent to electronic transmission, and may encourage people to give consent. The more who consent, the quicker will come the improvements that make electronic service ever more attractive.

The Model Rule does not specifically provide for the added three days, but such a provision would not be necessary if the proposed amendment to Fed.R.Bankr. P. 9006(f) takes effect.

4. The CM/ECF system is designed so that a person may request electronic notice of all filings in a matter even though that person has not obtained a password and registered as a Filing User. Such electronic notice would not constitute service under the Model Rule, because the effectiveness of electronic service is dependent on registration with the system. The court should be aware of this possibility and should encourage all those who request electronic notice to register for a system password.

Rule 10– Notice of Court Orders and Judgments

Immediately upon the entry of an order or judgment in an action assigned to the Electronic Filing System, the clerk will transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed.R.Bankr.P. 9022. The clerk must give notice to a person who has not consented to electronic service in paper form in accordance with the Federal Rules of Bankruptcy Procedure.

Derivation

The Model Rule is adapted from the Eastern District of New York procedures.

Commentary

1. Pending amendments to Fed.R.Bankr.P 9022 authorize electronic notice of court orders where the parties consent. The Model Rule provides that for all Filing Users in the electronic filing system, electronic notice of the entry of an order or judgment has the same force and effect as traditional notice. The CM/ECF system automatically generates and sends a Notice of Electronic Filing upon entry of the order or judgment. The Notice contains a hyperlink to the document.

Rule 11– Technical Failures

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

Derivation

The Model Rule is adapted from the Eastern District of New York procedures.

Commentary

1. CM/ECF is designed so that filers access the court through its Internet website. The Model Rule addresses the possibility that a party may not meet a filing deadline because the court's website is not accessible for some reason. Cf. Fed.R.Bankr.P. 9006(a) (permitting extension of time when "weather or other conditions have made the clerk's office inaccessible"). The Model Rule also addresses the possibility that the filer's own unanticipated system failure might make the filer unable to meet a filing deadline.

2. The Model Rule does not require the court to excuse the filing deadline allegedly caused by a system failure. The court has discretion to grant or deny relief in light of the circumstances.

Rule 12– Public Access

Any person or organization, other than one registered as a Filing User under Rule 2 of these rules, may access the Electronic Filing System at the court's Internet site [Internet address] by obtaining a PACER log-in and password. Those who have PACER access but who are not Filing Users may retrieve docket sheets and documents, but they may not file documents.

In connection with the filing of any material in an action assigned to the Electronic Filing System, any person may apply by motion for an order limiting electronic access to or prohibiting the electronic filing of certain specifically-identified materials on the grounds that such material is subject to privacy interests and that electronic access or electronic filing in the action is likely to prejudice those privacy interests.

Information posted on the System must not be downloaded for uses inconsistent with the privacy concerns of any person.

Derivation

The first paragraph of the Model Rule is adapted from the District of Arizona Bankruptcy procedures. The second paragraph is adapted from the Eastern District of New York procedures. The third paragraph is adapted from the Southern District of New York Bankruptcy procedures.

Commentary

1. A subcommittee of the Judicial Conference Committee on Court Administration and Case Management is currently assessing the privacy concerns arising from electronic case filing. The Judicial Conference may at some point develop policies to address these concerns. The rule can be adapted to reflect any future specific policies or suggestions adopted by the Judicial Conference.

2. The Model Rule is consistent with Judicial Conference policy to limit remote public access to electronic case files to those who have obtained a PACER password.

3. The second paragraph of the Model Rule is not intended to create substantive rights. It simply highlights the fact that a person may apply for a protective order when Internet access to a case file or document is likely to result in the loss of that person's legitimate interest in privacy.

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

August 29, 2001

MEMORANDUM TO JUDGE SMALL

FROM: Peter McCabe

SUBJECT: Possible Amendment of Rule 9036

I am writing to suggest that the Advisory Committee on Bankruptcy Rules give preliminary consideration to amending Rule 9036 (Notice by Electronic Transmission) to delete the requirement that the sender of an electronic notice obtain electronic confirmation from the recipient that the transmission has been received.

The first sentence of Rule 9036, which took effect on December 1, 1993, states that:

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

The Administrative Office has contracted with a vendor to operate the Bankruptcy Noticing Center, which performs noticing functions for the clerks of court under Rules 2002, 4004, and 9022. Last year, the Center issued more than 73 million notices, of which 2.5 million were in electronic form. The annual costs for Center noticing services are about $30 million a year — $13 million for notice production and $17 million for postage. Use of the Center has resulted in enormous savings for the judiciary, particularly in personnel and equipment that would otherwise have to be provided to the individual clerks of court to send out notices.

The judiciary's savings are much greater when notices are transmitted electronically because we avoid the costs of postage altogether. Substantial benefits also accrue to creditors from electronic noticing because they are able to receive court notices much faster and in a more usable format for their business operations.

It has been brought to my attention, however, that potential subscribers have informed the Administrative Office and the Bankruptcy Noticing Center that they will not sign up to receive court notices electronically because they cannot comply with the receipt requirement in the second sentence of Rule 9036. It specifies that:

> Notice by electronic transmission is complete, and the sender shall have fully complied with the requirement to send notice, *when the sender obtains electronic confirmation that the transmission has been received.* (Italics added)

Rule 2002 does not require a receipt for notices sent by mail. Rule 9006(e), moreover, states that service of process and other papers is complete upon mailing. My understanding is that when Rule 9036 was being developed in 1991, the electronic receipt requirement was proposed solely as an additional advantage over regular mail. But it was made under an erroneous assumption that all computer programs contain a "receipt-confirmation" feature.

I have been informed that many Internet Service Providers, including most of the nation's largest, do not provide the capability of sending electronic confirmation that a transmission has been received — as Rule 9036 apparently prescribes. In a recent marketing survey report conducted by the Bankruptcy Noticing Center contractor, several prospective users stated that the receipt requirement prevents them from signing up for the electronic notice service. For many of the intended users of the electronic service — especially medium-size creditors, small-size creditors, and law firms — compliance with the rule would require them to change to a new Internet Service Provider, or, for users on a private network, integration of additional software to provide the receipt capability.

By way of comparison, the proposed new amendments to Fed. R. Civ. P. 5, due to take effect on December 1, 2001, provide simply that "service by electronic means is complete upon transmission." The rule is applicable in adversary proceedings through Bankruptcy Rule 7005. A companion amendment to Fed. R. Civ. P. 77(d), governing notices of judgments and orders sent by the clerk of court, adopts revised Rule 5(b) — and Bankruptcy Rule 9022 incorporates Civil Rule 77(d). Therefore, it appears that on December 1, 2001, electronic service by attorneys generally and some electronic service by bankruptcy clerks will be effective upon transmission. Electronic "notice" by bankruptcy clerks and the Bankruptcy Noticing Center, apparently, will not be effective until a confirmation is returned.

Additionally, proposed new Civil Rule 5(b)(3) provides that electronic service is *not* effective if the sender learns that the service was not completed. Under current procedures, the Bankruptcy Noticing Center promptly issues a paper notice whenever it receives a message that an electronic notice has not been delivered. Accordingly, even without requiring the recipient to send a confirmation of transmission, the system is capable generally of providing alternate notice when non-delivery is indicated.

This matter has just been brought to my attention. It is complex and needs further development. My suggestion is to include it as a purely informational item in the agenda book for the September 13-14 meeting. We could then gather additional details and work with the reporter and the committee on preparing a more complete presentation for possible action at the March 2002 committee meeting.

Effective Dates of Proposed Bankruptcy Rules Amendments

December 1, 2001

1007
2002(c)
2002(g)
3016
3017
3020
9006
9020
9022

December 1, 2002

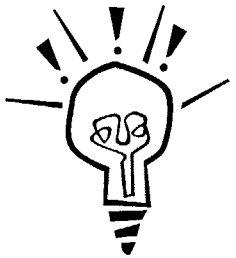
1004
1004.1
2004
*
2015(a)(5)
4004
9014
9027

December 1, 2003

1007
2003
2009
2016
7007.1

* Rule 2014 has been withdrawn.

THE GESTATION OF AN AMENDMENT



YEAR 1

YEAR 2

YEAR 3

Amendments and new rules and official forms to implement pending Bankruptcy Reform Act.

Rules 4003, 9036

1007, 2003, 2009, 2016, and new 7007.1

Official Forms 1, 5, and 17

1004, 1004.1, 2004, 2015(a)(5), 4004, 9014, 9027. Official Forms 1 and 15.

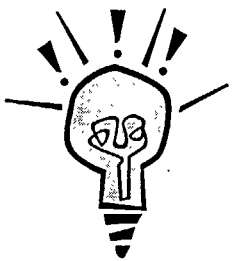
1007, 2002, 3016, 3017, 3020, 9006, 9020, and 9022

Civil Rule 5

PREPARED BY BANKRUPTCY JUDGES DIVISION-AOUSC

8/2001

THE GESTATION OF AN AMENDMENT



YEAR 1

YEAR 2

YEAR 3

1.Advisory Committee considers proposals for amendments. If approved, prepares draft amendments.

2. This period is of indeterminate length.

3. Proposals come from Committee members, the Reporter, judges, clerks, or the public, or result from statutory changes, case law developments, or experience.

Advisory Committee approves draft of proposed amendments. (January-May)

Presents "preliminary draft" to Standing Committee, usually at the summer meeting, with request to publish. (June)

If approved, preliminary draft amendments are published and comments invited.

(August)

Advisory Committee reviews written comments and holds hearing(s). Public comment period closes.

(January - March)

Advisory Committee completes review of comments, final draft of amendments, draft memorandum to Standing Committee re: comments, also memorandum re: controversies, minority views of Advisory Committee members, etc., (if appropriate).

(March -April)

Standing Committee reviews final draft; may 1) approve 2) approve with changes, or 3) send back to Advisory Committee. (June)

Judicial Conference considers amendments submitted by Standing Committee and if approved, forwards to Supreme Court. (September)

Supreme Court decides whether to prescribe amendments and, if so, forwards them to Congress.

(March or April)

(must be by May 1)

Congress can alter or reject during the next seven months. If Congress does not act, amendments take effect December 1.

Proposed amendments may be at different stages of the process at the same time, i.e., amendments can be at the Supreme Court while others are in the public comment stage or still being discussed by the Advisory Committee.

PREPARED BY BANKRUPTCY JUDGES DIVISION - AOUSC

3/99

The next scheduled meeting of the

Advisory Committee on Bankruptcy Rules

will be held March 21 - 22, 2002

at the

Westward Look Resort, Tucson, Arizona

* * *

The Advisory Committee will discuss dates and preferred locations

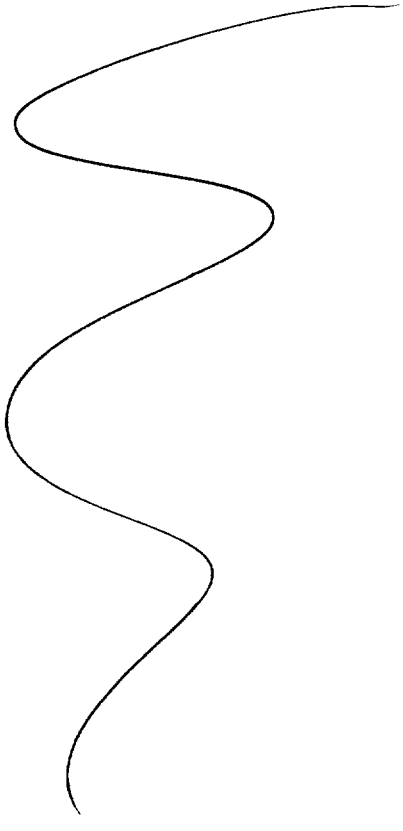
for the September 2002 meeting.

Supplemental

Agenda

Book

Materials



LEONIDAS RALPH MECHAM
Director

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ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

JOHN K. RABIEJ
Chief
Rules Committee Support Office

September 6, 2001

MEMORANDUM TO THE BANKRUPTCY RULES COMMITTEE

SUBJECT: *Materials for the September 13-14, 2001 Bankruptcy Rules Meeting in Plymouth, Massachusetts*

I am sending to you the agenda book, a letter from Judge Duplantier, and an article written by Judge Klein that appeared in the *American Bankruptcy Law Journal.* Please bring the agenda materials with you to the meeting.

John K. Rabiej

3 Attachments

cc: Honorable Anthony J. Scirica
Honorable Thomas W. Thrash, Jr.
Honorable Frank W. Koger
Professor Daniel R. Coquillette
Professor Jeffrey W. Morris

United States District Court
Eastern District of Louisiana
500 Camp Street
New Orleans, Louisiana 70130

Adrian G. Duplantier
Senior Judge

Tel. (504) 589-7535
Fax (504) 589-4479

August 21, 2001

Bankruptcy Advisory Committee, et al (Now and Then)
c/o Mrs. Pat Ketchum
Administrative Office of the U.S. Courts
One Columbus Circle, NE
Washington, D. C. 20544

Dear Friends:

We thoroughly enjoyed the eight years we[1] spent on the Committee, especially the opportunity to get to know you, the members of the Committee, consultants, and staff. The gift with your signatures is a treasure; it brings back so many pleasant memories.

Hopefully, our paths will cross again and often. If any of you are ever near New Orleans, hopefully you will let us know. Meanwhile, if you need any advice on the technical aspects of bankruptcy, I will be glad to furnish it, as those who served with me know that I did during my years on the Committee.

Thanks for the lovely gift, but more so for your friendship.

Sincerely,

Adrian

Adrian G. Duplantier

AGD/od

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[1] Not a "majestic we", but plural because Sally attended every meeting and joins herein in every respect.

Bankruptcy Rules Made Easy (2001): A Guide to the Federal Rules of Civil Procedure that Apply in Bankruptcy

by

*The Honorable Christopher M. Klein**

The lists in this guide correlate the Federal Rules of Civil Procedure ("Civil Rules") with the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"). They were devised as a survival tool for a federal civil litigator who found himself in bankruptcy court.

Many professionals—lawyers and judges alike—erroneously assume that the Civil Rules do not apply in bankruptcy. To be sure, Rule 81(a)(1)[1] does say that the Civil Rules "do not apply in proceedings in bankruptcy . . . *except* insofar as they may be made applicable thereto by rules promulgated by the Supreme Court.[2] When one, however, examines the "except" clause, it turns out that seventy-seven of the eighty-nine Civil Rules are imported, in whole or part, into the Bankruptcy Rules—sixty-seven by way of express incorporation and another ten by restatement in essentially identical language.[3] The exception has largely swallowed the rule.

The puzzle is why there is not general recognition that bankruptcy prac-

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*United States Bankruptcy Judge, Eastern District of California; Member, Bankruptcy Appellate Panel of the Ninth Circuit and Advisory Committee on Bankruptcy Rules, Judicial Conference of the United States. The views expressed herein, as well as all errors and inaccuracies, are purely personal to the author.

[1]In this Article, rules with one or two digits (e.g., Rule 6 or 37) refer to the Federal Rules of Civil Procedure, and rules with four digits (e.g., Rule 7037) refer to the Federal Rules of Bankruptcy Procedure.

[2]The full text of Rule 81(a)(1) provides:

> (1) These rules do not apply to prize proceedings in admiralty governed by Title 10, U.S.C. §§ 7651-7681. They do not apply to proceedings in bankruptcy or proceedings in copyright under Title 17, U.S.C., *except* in so far as they may be made applicable thereto by rules promulgated by the Supreme Court of the United States. They do not apply to mental health proceedings in the United States District Court for the District of Columbia.

FED. R. CIV. P. 81(a)(1) (emphasis added).

[3]There are, arguably, more than ten examples of restatement. The line has been drawn on a subjective basis based on whether one might be assisted in knowing about that particular bridge between the Civil and Bankruptcy Rules.

tice, especially bankruptcy litigation, is governed in large measure by the same rules of procedure that apply in general federal civil practice. It is fascinating to observe how infrequently lawyers and courts draw upon the rich lore of federal procedure when facing basic procedural questions and, instead, restrict themselves to citing only bankruptcy precedents. There has been a curiously unlawyerly failure to examine the Rule 81(a)(1) "except" clause to ascertain which of the Civil Rules have been made applicable in bankruptcy.

The likely explanation is that the idiosyncratic structure and the sheer volume of the Bankruptcy Rules frustrate the effort. Able civil practitioners often despair of making their way through the Bankruptcy Rules labyrinth, scorn the rules as a barrier to entry that was erected to protect a perceived bankruptcy club, and surrender bankruptcy litigation to the bankruptcy specialists. This is a pity and a mistake.[4]

I. THE CORRELATION LISTS

Five correlation lists are included in this Article. The first is a footnoted master list of the seventy-seven Civil Rules that have been imported into bankruptcy. Then follow four unfootnoted subsidiary lists that identify the rules that apply in each of the four categories of bankruptcy matters: adversary proceedings, contested matters, contested petitions, and matters generally.

The master list is footnoted to indicate the nature of the importation (express incorporation or restatement) and the types of proceedings in which each rule applies. The term "express incorporation" means that the particular Civil Rule has explicitly been made applicable in bankruptcy. Rule 9017 ("Rules 43, 44 and 44.1, F. R. Civ. P. apply in cases under the Code")[5] is an example of express incorporation. An example of restatement is found in Bankruptcy Rule 1001 ("Scope of Rules and Forms; Short Title"), which addresses the same subject matter as Civil Rule 1 ("Scope and Purpose of Rules") making appropriate changes referring to bankruptcy and which repeats Rule 1's key clause requiring that the rules "shall be construed to secure

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[4]Judge Dreher accurately describes why good general federal litigators can thrive in bankruptcy court.

> [G]ood litigation counsel have a real advantage in bankruptcy court when litigation skills are important. This is because the great bulk of bankruptcy courtroom practice is motion practice. Accordingly, bankruptcy lawyers are very good at motion practice; the good ones are also very skillful negotiators; and the really good ones are also good litigators. Thus, skillful litigation counsel may have the very skills needed when negotiation fails and a real trial occurs

Honorable Nancy C. Dreher, *Stopping the Clock. The Automatic Stay*, LITIGATION, Winter 1996, at 16, 21 & 65.

[5]FED. R. BANKR. P. 9017. The rule also provides that the Federal Rules of Evidence apply in bankruptcy, the necessity for which is unclear in light of the provisions in Federal Rule of Evidence 1101 that unambiguously make those rules applicable in bankruptcy. *See* FED. R. EVID. 1101(a), (b).

the just, speedy, and inexpensive determination" of matters within their scope.

The need for specifying the type of proceedings in which the rule applies arises from a phenomenon of multiple incorporation in the Bankruptcy Rules. Take, for example, Civil Rule 37. From the face of Bankruptcy Rule 7037 ("Rule 37 F. R. Civ. P. applies in adversary proceedings"),[6] one gets the impression that the incorporation is limited to adversary proceedings. But Rule 1018 provides that Rule 7037 applies in contested petitions.[7] And Rule 9014 provides that Rule 7037 applies in contested matters.[8] Thus, Rule 37 applies in adversary proceedings, contested petitions, and contested matters, which comprise all the litigation known to bankruptcy.

II. TYPES OF BANKRUPTCY MATTERS

Since the correlation lists are intended to make bankruptcy procedure more accessible to nonspecialists, a synopsis of the categories of bankruptcy matters is in order.

A. Bankruptcy Case

The bankruptcy case, sometimes called the "parent case" or merely the "case," is the umbrella under which all proceedings and other matters occur. The case commences with the filing of a petition, either voluntary[9] or involuntary,[10] and ends when the case is closed.[11]

Much routine bankruptcy administration occurs in the case without need for judicial involvement by way of any subsidiary adversary proceedings, contested matters, or contested petitions.[12] For example, the debtor's various schedules and statements are filed in the parent case. The meeting of creditors occurs. Rule 2004 examinations may be taken to ferret out the true financial affairs of the debtor and the estate.[13] Assets are gathered. Claims

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[6]Fed. R. Bankr. P. 7037.

[7]Fed. R. Bankr. P. 1018 ("The following rules in Part VII apply to all proceedings relating to a contested involuntary petition, to proceedings relating to a contested petition commencing a case ancillary to a foreign proceedings, and to all proceedings to vacate an order for relief: Rules . . . 7037 . . . except as otherwise provided in Part I of these rules and unless the court otherwise directs.").

[8]Fed. R. Bankr. P. 9014 ("The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004, and, unless the court otherwise directs, the following rules apply: . . . 7037 . . . .").

[9]11 U.S.C. § 301 (1994).

[10]*Id.* § 303(b).

[11]*Id.* § 350.

[12]For a discussion of the implications of this structure, see Menk v. LaPaglia (*In re* Menk), 241 B.R. 896, 907-10 (B.A.P. 9th Cir. 1999). *See also* Ralph Brubaker, *On the Nature of Federal Bankruptcy Jurisdiction: A General Statutory and Constitutional Theory*, 41 Wm. & Mary L. Rev. 743, 835-50 (2000).

[13]Under Rule 2004, the court may order the examination of any entity relating:

> only to the acts, conduct, or property or to the liabilities and financial condition of

are filed and reviewed. And the discharge is entered. In the absence of specific disputes suitable for litigation, these items and others all occur in the administrative routine of the parent case.

The list that is entitled "All matters, Even Uncontested Matters" identifies the twenty-two Civil Rules that apply in every bankruptcy case.

B. Adversary Proceeding

An "adversary proceeding" is an ordinary lawsuit that is tried in the federal bankruptcy court under essentially the same rules of procedure as a "civil action" in a federal district court. All seventy-seven of the rules imported from the Civil Rules apply in adversary proceedings. Each adversary proceeding has a separate docket number, features a summons and complaint, an answer, pretrial procedure, discovery, and formal trial, and ends with judgment or with dismissal. Since the deviations from the Civil Rules are relatively minor,[14] there is little reason for seasoned federal civil litigators to shy away.

Part VII of the Bankruptcy Rules ("Adversary Proceedings;" Rules 7001-7087) specifically applies to adversary proceedings and incorporates fifty of the seventy Civil Rules that apply. Most of the remainder of the Bankruptcy Rules are located in Part IX ("General Provisions;" Rules 9001-9033), including such trial procedure rules as Civil Rules 43 and 45, as well as Civil Rules 58-60 relating to judgments.

Rule 7001 deems the following matters to be adversary proceedings:

- An action to recover money or property (except recovery of property by trustee from debtor, abandonment, disposition of certain property, or recovery from custodians or attorneys).
- An action to determine the validity, priority, or extent of a lien or other interest in property (except lien avoidance by the debtor per 11 U.S.C. § 522(f)).
- An action to determine the dischargeability of a debt.

> the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge [and, generally, in Chapter 11, 12, and 13 cases,] the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for the purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

Fed. R. Bankr. P. 2004(b).

[14]Perhaps the most significant deviation from the Civil Rules relates to the service of process. Service can be accomplished nationwide by first class mail. Fed R. Bankr. P. 7004(b), (d). Service of process is complete upon mailing to the correct address. Fed. R. Bankr. P. 9006(e). The summons is good for only ten days rather than indefinitely (but may be reissued). Fed. R. Bankr. P. 7004(f). The answer is due thirty days after the summons is issued rather than twenty days after service. Fed. R. Bankr. P. 7012(a).

- An action to object to or revoke the discharge.
- An action for approval of a sale of an interest of the estate and of a co-owner in property per 11 U.S.C. § 363(h).
- An action to revoke an order of confirmation of a plan.
- An action to subordinate a claim or interest, except under a plan.
- An action to obtain an injunction or other equitable relief, except pursuant to a plan.
- A declaratory judgment action relating to any of the above.
- An action removed from state court pursuant to 28 U.S.C. § 1452.

As the list is nonexclusive, the court may require that other matters be handled as adversary proceedings.

C. CONTESTED MATTER

A "contested matter" may be resolved by a "short-cause" motion in the parent bankruptcy case on a faster track than would be possible in an adversary proceeding. It is, by a wide margin, the most common form of bankruptcy litigation.

Rule 9014 governs contested matters and, under the phenomenon of multiple incorporation, makes applicable twenty-five of the adversary proceeding rules from Part VII, in addition to the Civil Rules that apply by virtue of other parts of the Bankruptcy Rules. Rule 9014 also prescribes a procedure by which the court may order that additional adversary proceeding rules apply. Unless additional rules have specifically been ordered by the court to apply to the particular contested matter, a total of forty-seven of the imported Civil Rules apply, including all of the discovery rules, and the rules providing for taking of evidence,[15] subpoena, findings of fact and conclusions of law, entry of judgment, and relief from judgments.

The "contested matter" is a flexible concept that is not susceptible of ready definition. Although any motion that is not made within an adversary proceeding may become a contested matter if there is opposition, twenty-six specific motions, objections, and applications are defined (or referred to) in the Bankruptcy Rules as contested matters:

- A motion to dismiss the bankruptcy case or to convert the bankruptcy case to a different chapter of the Bankruptcy Code, other than: (1) conversion by debtors as of right

[15]A key consequence of defining a contested matter as a motion is FED. R. CIV. P. 43(e) ("Evidence on Motions"), which permits the court to hear the matter on affidavits or depositions rather than oral testimony in open court. *See* FED. R. BANKR. P. 9017 (incorporating Civil Rule 43).

per 11 U.S.C. §§ 706(a), 112(a), and 1307(a); and (2) dismissal as of right by the debtor per 11 U.S.C. § 1307(b).[16]

- A motion for an order to appoint a trustee or an examiner in a Chapter 11 case.[17]
- An application for compensation of a professional, if opposed.[18]
- A motion to examine the debtor's transactions with an attorney.[19]
- A proceeding to contest any act or failure to act by the United States Trustee.[20]
- An objection to a proof of claim, except that a counterclaim necessitates an adversary proceeding.[21]
- An objection to the confirmation of a Chapter 12 or Chapter 13 plan.[22]
- An objection to the modification of a Chapter 12 or Chapter 13 plan.[23]
- An objection to the disclosure statement.[24]
- An objection to the confirmation of a Chapter 9 or Chapter 11 plan.[25]
- A motion for relief from the automatic stay.[26]
- A motion to prohibit or condition the use, sale, or lease of property per 11 U.S.C. § 363(e).[27]
- A motion for authorization to use cash collateral.[28]
- A motion for authority to obtain credit per 11 U.S.C. § 364.[29]
- An objection to the debtor's claim of exemption per 11 U.S.C. § 522.[30]
- A motion to avoid a lien that impairs an exemption per 11

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[16]FED. R. BANKR. P. 1017(d).
[17]FED. R. BANKR. P. 2007.1.
[18]FED. R. BANKR. P. 2016 and 9014, Advisory Committee Note.
[19]FED. R. BANKR. P. 2017, Advisory Committee Note.
[20]FED. R. BANKR. P. 2020.
[21]FED. R. BANKR. P. 3007, Advisory Committee Note.
[22]FED. R. BANKR. P. 3015(f).
[23]FED. R. BANKR. P. 3015(g).
[24]FED. R. BANKR. P. 3017 and 9014, Advisory Committee Note.
[25]FED. R. BANKR. P. 3020(b)(1).
[26]FED. R. BANKR. P. 4001(a).
[27]*Id.*
[28]FED. R. BANKR. P. 4001(b).
[29]FED. R. BANKR. P. 4001(c).
[30]FED. R. BANKR. P. 4003(b) and 9014, Advisory Committee Note.

U.S.C. § 522(f).[31]

- A motion for abstention pursuant to 28 U.S.C. § 1334(c).[32]
- A motion to review an accounting by a custodian who turns over property per 11 U.S.C. § 543.[33]
- An objection to the proposed use, sale, or lease of property per 11 U.S.C. § 363.[34]
- A motion for authority to sell property free and clear of liens or other interests (except interests of co-owners) per 11 U.S.C. § 363(f).[35]
- An objection to the general notice of an intent to sell non-exempt property of an aggregate gross value of less than $2500.[36]
- A motion to assume, reject, or assign an executory contract, unexpired lease, or timeshare interest (other than as part of a plan).[37]
- A motion to require the trustee, debtor in possession, or debtor to determine whether to assume or reject an executory contract, unexpired lease, or timeshare interest.[38]
- An objection to the proposed disposition or abandonment of property.[39]
- A motion to authorize the redemption of property from a lien or from a sale to enforce a lien.[40]
- A motion to remand a removed claim or cause of action.[41]

Whether other motions made outside of adversary proceedings are to be treated as contested matters depends upon the context of the situation. The operative principle is that "[w]henever there is an actual dispute, other than an adversary proceeding, before the bankruptcy court, the litigation to resolve that dispute is a contested matter."[42]

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[31]FED. R. BANKR. P. 4003(d).
[32]FED. R. BANKR. P. 5011(b).
[33]FED. R. BANKR. P. 6002, Advisory Committee Note.
[34]FED. R. BANKR. P. 6004(b).
[35]FED. R. BANKR. P. 6004(c).
[36]FED. R. BANKR. P. 6004(d).
[37]FED. R. BANKR. P. 6006(a).
[38]FED. R. BANKR. P. 6006(b).
[39]FED. R. BANKR. P. 6007, Advisory Committee Note.
[40]FED. R. BANKR. P. 6008.
[41]FED. R. BANKR. P. 9027(d).
[42]FED. R. BANKR. P. 9014, Advisory Committee Note.

D. CONTESTED PETITION

"Contested Petition" is a generic term for involuntary petitions, contested petitions commencing ancillary cases, and proceedings to vacate an order for relief. Contested petitions are uncommon and, when they arise, typically involve involuntary petitions. The phenomenon of multiple incorporation operates to borrow some of the Part VII adversary proceeding rules for use with contested petitions, with the result that a total of forty-five Civil Rules apply. And, as with contested matters, the court has the discretion to order that other Part VII adversary proceeding rules apply.

CONCLUSION

The correlation lists that follow function as road maps for those who find themselves in circumstances in which procedure matters. They are intended to be suitable for bench books and desk books. But, like other summary aids, they should be used with the caveat that they reflect the inherently personal judgments, interpretations, and tastes of the compiler (especially in the descriptions of the variations). There is no substitute for consulting the actual text of the rules.

MASTER LIST CORRELATING FEDERAL RULES OF CIVIL PROCEDURE WITH FEDERAL RULES OF BANKRUPTCY PROCEDURE

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
1	Scope of Rules[43]	1001
3	Commencement of Action[44]	7003
4	Process (supplemented)[45]	7004
		1010
		9014

[43]FED. R. CIV. P. 1 and FED. R. BANKR. P. 1001 define the scope of the respective rules, each providing that the rules "shall be construed to secure the just, speedy, and inexpensive determination" of matters within their scope. They are applicable to all bankruptcy matters.

[44]FED. R. CIV. P. 3 is expressly made applicable by FED. R. BANKR. P. 7003. It applies only in adversary proceedings.

[45]FED. R. CIV. P. 4 is expressly made applicable by FED. R. BANKR. P. 7004(a), with the exception of subsections (c)(2); (d)(2)-(5); (k) and (n). It is supplemented by FED. R. BANKR. P. 7004.

A critical difference from general civil practice is that FED. R. BANKR. P. 7004(e) provides that the summons expires ten days after issuance (and may be reissued of right) and (together with FED. R. BANKR. P. 9006(e)) that service of process by mail is complete upon mailing. Correlatively, FED. R. BANKR. P. 7012(a) requires that the answer be filed within thirty days after the summons is issued rather than the twenty days following service as provided by FED. R. CIV. P. 12(a).

Although FED. R. BANKR. P. 7004 formally applies only in adversary proceedings, FED. R. BANKR. P.

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
5	Service and Filing of Pleadings and Other Papers[46] (supplemented)	7005 1010 2002 5005
6	Time[47] (supplemented)	9006
7	Pleadings Allowed[48] (supplemented)	7007 9013
8	General Rules of Pleading[49] (supplemented)	7008 1018
9	Pleading Special Matters[50]	7009 1018
10	Form of Pleadings[51] (supplemented)	7010 1018

1010 and 9014 require that service in "contested petitions" and "contested matters" is to be made "in the manner" provided by this rule.

[46]FED. R. CIV. P. 5 is expressly made applicable by FED. R. BANKR. P. 7005 and is supplemented by FED. R. BANKR. P. 2002 (generally applicable notices in bankruptcy) and 5005 (filing). It applies in adversary proceedings and, per FED. R. BANKR. P. 1010, in contested petitions, but not contested matters. Provisions drawn from FED. R. CIV. P. 5 also appear in restated form for use in all bankruptcy matters as FED. R. BANKR. P. 5005.

[47]FED. R. CIV. P. 6 appears in restated form as FED. R. BANKR. P. 9006, which applies to all bankruptcy matters including adversary proceedings, contested petitions, and contested matters. FED. R. CIV. P. 6(a) is identical to FED. R. BANKR. P. 9006(a) except that intermediate weekends and holidays are excluded when the specified time is less than eight, rather than eleven, days; the primary impact of the difference being that the ten-day appeal period specified by FED. R. BANKR. P. 8002(a) is not extended by intermediate weekends and holidays. The procedures of FED. R. CIV. P. 6(b) for enlarging time before and after time expires are restated as FED. R. BANKR. P. 9006(b) with different restrictions. FED. R. CIV. P. 6(d) and (e) are restated as FED. R. BANKR. P. 9006(d) and (f) with differences that are merely stylistic. FED. R. BANKR. P. 9006(e) ties in with FED. R. BANKR. P. 7004 and 7012 by providing that service, including service of process, is complete upon mailing. FED. R. BANKR. P. 9006 applies in all bankruptcy matters including adversary proceedings, contested petitions, and contested matters.

[48]FED. R. CIV. P. 7 is expressly made applicable by FED. R. BANKR. P. 7007. Although it applies only in adversary proceedings, FED. R. CIV. P. 7(b)(1) relating to motions is (together with the requirement of service drawn from FED. R. CIV. P. 5(a)) restated at FED. R. BANKR. P. 9013, which applies to all bankruptcy matters including adversary proceedings, contested petitions, and contested matters.

[49]FED. R. CIV. P. 8 is expressly made applicable by FED. R. BANKR. P. 7008, which also prescribes requirements for allegations of jurisdiction, core or noncore status, and for requesting attorneys' fees. It applies in both adversary proceedings and, per FED R. BANKR. P. 1018, in contested petitions, but not contested matters.

[50]FED. R. CIV. P. 9 is expressly made applicable by FED. R. BANKR. P. 7009. It applies in adversary proceedings and, per Fed. R. Bankr. P. 1018, in contested petitions, but not contested matters.

[51]FED. R. CIV. P. 10 is expressly made applicable by FED. R. BANKR. P. 7010, except that a different form of caption is prescribed. Although it applies only in adversary proceedings and, per FED. R. BANKR. P. 1018, contested petitions, it is supplemented by FED. R. BANKR. P. 9004(b) (form of pleadings, captions, name of parties), which applies in all bankruptcy matters.

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
11	Signing and Verification of Papers[52] (revised)	9011
12	Defenses and Objections - When and How Presented - By Pleadings or Motion - Motion for Judgment on Pleadings[53] (revised)	7012 1011
13	Counterclaim and Cross-Claim[54] (revised)	7013
14	Third-Party Practice[55]	7014
15	Amended and Supplemental Pleadings[56]	7015 1018
16	Pretrial Procedure; Formulating Issues[57]	7016 1018
17	Parties Plaintiff and Defendant; Capacity[58] (supplemented)	7017
18	Joinder of Claims and Remedies[59]	7018

[52]FED. R. CIV. P. 11 is restated as FED. R. BANKR. P. 9011. The few differences are essentially stylistic and excuse an attorney from the duty of signing a debtor's list, schedule, or statement. It applies to all bankruptcy matters including adversary proceedings, contested petitions, and contested matters.

[53]FED. R. CIV. P. 12(b)-(h) is expressly made applicable by FED. R. BANKR. P. 7012(b). FED. R. CIV. P. 12(a) is restated as FED. R. BANKR. P. 7012(a), with three changes: (1) the answer is due thirty days after the summons is issued rather than twenty days after service (*see* FED. R. BANKR. P. 7004 & 9006(e)); (2) the court must set the time for answer where service is made by publication or upon a party in a foreign country; and (3) the United States has thirty-five rather than sixty days in which to answer or to reply to a counterclaim. The language of FED. R. CIV. P. 12(a) and FED. R. BANKR. P. 7012(a) is otherwise identical. The rule applies in adversary proceedings and, per FED. R. BANKR. P. 1011(b)-(c), contested petitions, but not contested matters.

[54]FED. R. CIV. P 13 is expressly made applicable by FED. R. BANKR. P. 7013. Two exceptions are made to the compulsory counterclaim rule: (1) a creditor who is sued by a trustee or debtor in possession need not state an otherwise compulsory counterclaim that arose prepetition; and (2) a trustee or debtor in possession does not lose a compulsory counterclaim that is not pled through oversight, inadvertence, excusable neglect, or when justice so requires. This rule applies only in adversary proceedings.

[55]FED. R. CIV. P. 14 is expressly made applicable by FED. R. BANKR. P. 7014. It applies only in adversary proceedings.

[56]FED. R. CIV. P. 15 is expressly made applicable by FED. R. BANKR. P. 7015. It applies in adversary proceedings and, per FED. R. BANKR. P. 1018, contested petitions, but not contested matters.

[57]FED. R. CIV. P. 16 is expressly made applicable by FED. R. BANKR. P. 7016. It applies in adversary proceedings and, per FED. R. BANKR. P. 1018, contested petitions, but not contested matters.

[58]FED. R. CIV. P. 17 is expressly made applicable by FED. R. BANKR. P. 7017 with one stated exception. A proceeding on a trustee's bond, per FED. R. BANKR. P. 2010(b), may be brought by any party in interest in the name of the United States for the use of the entity injured by the breach of condition. FED. R. BANKR. P. 7017 applies only in adversary proceedings.

[59]FED. R. CIV. P. 18 is expressly made applicable by FED. R. BANKR. P. 7018. It applies only in adversary proceedings.

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
19	Joinder of Persons Needed for Just Determination[60] (supplemented)	7019
20	Permissive Joinder of Parties[61]	7020
21	Misjoinder and Nonjoinder of Parties[62]	7021 9014
22(1)	Interpleader[63]	7022
23	Class Proceedings[64]	7023
23.1	Derivative Proceedings by Shareholders[65]	7023.1
23.2	Actions Relating to Unincorporated Associations[66]	7023.2
24	Intervention[67]	7024 1018 2018
25	Substitution of Parties[68] (supplemented)	7025 1018 2012 9014

[60]FED. R. CIV. P. 19 is expressly made applicable by FED. R. BANKR. P. 7019 with two exceptions permitting: (1) dismissal of a joined party who successfully raises a defense of lack of subject matter jurisdiction; and (2) transfer of all or part of an adversary proceeding after a joined party successfully raises a defense of improper venue. It applies only in adversary proceedings.

[61]FED. R. CIV. P. 20 is expressly made applicable by FED. R. BANKR. P. 7020. It applies only in adversary proceedings.

[62]FED. R. CIV. P. 21 is expressly made applicable by FED. R. BANKR. P. 7021. It applies in adversary proceedings and, per FED. R. BANKR. P. 9014, contested matters, but not contested petitions.

[63]FED. R. CIV. P. 22(1) is expressly made applicable by FED. R. BANKR. P. 7022. It applies only in adversary proceedings.

[64]FED. R. CIV. P. 23 is expressly made applicable by FED. R. BANKR. P. 7023. It applies only in adversary proceedings.

[65]FED. R. CIV. P. 23.1 is expressly made applicable by FED. R. BANKR. P. 7023.1. It applies only in adversary proceedings.

[66]FED. R. CIV. P. 23.2 is expressly made applicable by FED. R. BANKR. P. 7023.2. It applies only in adversary proceedings.

[67]FED. R. CIV. P. 24 is expressly made applicable by FED. R. BANKR. P. 7024. It applies in adversary proceedings and, per FED. R. BANKR. P. 1018, contested petitions, but not contested matters. In addition, FED. R. BANKR. P. 2018, which applies to all bankruptcy matters, provides for permissive intervention by interested parties in cases, a state attorney general on behalf of consumer creditors, the Secretary of the Treasury and representatives of states in Chapter 9 cases, and labor unions on the question of economic soundness of plans affecting the interest of employees.

[68]FED. R. CIV. P. 25 is expressly made applicable by FED. R. BANKR. P. 7025. It is supplemented by FED. R. BANKR. P. 2012 relating to substitution of a trustee and a successor trustee. It applies in adversary proceedings and, per FED. R. BANKR. P. 1018 and 9014, contested petitions and contested matters.

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
26	General Provisions Governing Discovery; Duty of Disclosure[69]	7026 1018 9014
27	Depositions Before Action or Pending Appeal[70]	7027 9014
28	Persons Before Whom Depositions May be Taken[71]	7028 1018 9014
29	Stipulations Regarding Discovery Procedure[72]	7029 1018 9014
30	Depositions Upon Oral Examination[73]	7030 1018 9014
31	Depositions Upon Written Questions[74]	7031 1018 9014
32	Use of Depositions in Court Proceedings[75]	7032 1018 9014
33	Interrogatories to Parties[76]	7033 1018 9014

[69]FED. R. CIV. P. 26 is expressly made applicable by FED. R BANKR. P. 7026. It applies in adversary proceedings and, per FED. R. BANKR. P. 1018 and 9014, contested petitions and contested matters.

[70]FED. R. CIV. P. 27 is expressly made applicable by FED. R. BANKR. P. 7027. It applies in adversary proceedings but not contested petitions. In contested matters, a party desiring to perpetuate testimony may, per FED. R. BANKR. P. 9014, "proceed in the same manner as provided in Rule 7027."

[71]FED. R. CIV. P. 28 is expressly made applicable by FED. R. BANKR. P. 7028. It applies in adversary proceedings and, per FED. R. BANKR. P. 1018 and 9014, contested petitions and contested matters.

[72]FED. R. CIV. P. 29 is expressly made applicable by FED. R. BANKR. P. 7029. It applies in adversary proceedings and, per FED. R. BANKR. P. 1018 and 9014, contested petitions and contested matters.

[73]FED. R. CIV. P. 30 is expressly made applicable by FED. R. BANKR. P. 7030. It applies in adversary proceedings and, per FED. R. BANKR. P. 1018 and 9014, contested petitions and contested matters.

[74]FED. R. CIV. P. 31 is expressly made applicable by FED. R. BANKR. P. 7031. It applies in adversary proceedings and, per FED. R. BANKR. P. 1018 and 9014, contested petitions and contested matters.

[75]FED. R. CIV. P. 32 is expressly made applicable by FED. R. BANKR. P. 7032. It applies in adversary proceedings and, per FED. R. BANKR. P. 1018 and 9014, contested petitions and contested matters.

[76]FED. R. CIV. P. 33 is expressly made applicable by FED. R. BANKR. P. 7033. It applies in adversary proceedings and, per FED. R. BANKR. P. 1018 and 9014, contested petitions and contested matters.

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
34	Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes[77]	7034 1018 9014
35	Physical and Mental Examination of Persons[78]	7035 1018 9014
36	Requests for Admission[79]	7036 1018 9014
37	Failure to Make or Cooperate in Discovery: Sanctions[80]	7037 1018
38	Jury Trial of Right[81] (revised)	9015
39	Trial by Jury or by the Court[82]	9015
40	Assignment of Cases for Trial[83]	7040
41	Dismissal of Actions[84] (revised)	7041 1018 9014
42	Consolidation; Separate Trials[85]	7042 9014
43	Taking of Testimony[86]	9017 9012(b)

[77]FED. R. CIV. P. 34 is expressly made applicable by FED. R. BANKR. P. 7034. It applies in adversary proceedings and, per FED. R. BANKR. P. 1018 and 9014, contested petitions and contested matters.

[78]FED. R. CIV. P. 35 is expressly made applicable by FED. R. BANKR. P. 7035. It applies in adversary proceedings and, per FED. R. BANKR. P. 1018 and 9014, contested petitions and contested matters.

[79]FED. R. CIV. P. 36 is expressly made applicable by FED. R. BANKR. P. 7036. It applies in adversary proceedings and, per FED. R. BANKR. P. 1018 and 9014, contested petitions and contested matters.

[80]FED. R. CIV. P. 37 is expressly made applicable by FED. R. BANKR. P. 7037. It applies in adversary proceedings and, per FED. R. BANKR. P. 1018 and 9014, contested petitions and contested matters.

[81]FED. R. CIV. P. 38 is expressly made applicable by FED. R. BANKR. P. 7038. It applies in all bankruptcy matters including adversary proceedings, contested petitions and contested matters. A jury demand per FED. R. CIV. P. 38(b) must be filed in accordance with FED. R. BANKR. P. 5005 matters.

[82]FED. R. CIV. P. 39 is expressly made applicable by FED. R. BANKR. P. 9015. It applies in all bankruptcy matters including adversary proceedings, contested petitions, and contested matters.

[83]FED. R. CIV. P. 40 is expressly made applicable by FED. R. BANKR. P. 7040. It applies only in adversary proceedings.

[84]FED. R. CIV. P. 41 is expressly made applicable by FED. R. BANKR. P. 7041. It applies in adversary proceedings and, per FED. R. BANKR. P. 1018 and 9014, contested petitions and contested matters.

[85]FED. R. CIV. P. 42 is expressly made applicable by FED. R. BANKR. P. 7042. It applies in adversary proceedings and, per FED. R. BANKR. P. 9014, in contested matters but not contested petitions.

[86]FED. R. CIV. P. 43 is expressly made applicable by FED. R. BANKR. P. 9017. In addition, FED. R. CIV. P. 43(d) is restated as FED. R. BANKR. P. 9012(b). FED. R. CIV. P. 43 applies in all bankruptcy matters including adversary proceedings, contested petitions, and contested matters.

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
44	Proof of Official Record[87]	9017
44.1	Determination of Foreign Law[88]	9017
45	Subpoena[89]	9016
46	Exceptions Unnecessary[90]	9026
47	Selection of Jurors[91]	9015
48	Number of Jurors - Participation in Verdict[92]	9015
49	Special Verdicts and Interrogatories[93]	9015
50	Judgment as a Matter of Law in Jury Trials; Alternative Motion for New Trial; Conditional Rulings[94]	9015
51	Instructions to Jury; Objection[95]	9015
52	Findings by the Court[96]	7052 1018 9014
54	Judgments; Costs[97] (revised)	7054 1018 9014

[87]FED. R. CIV. P. 44 is expressly made applicable by FED. R. BANKR. P. 9017. It applies in all bankruptcy matters including adversary proceedings, contested petitions and contested matters.

[88]FED. R. CIV. P. 44.1 is expressly made applicable by FED. R. BANKR. P. 9017. It applies in all bankruptcy matters including adversary proceedings, contested petitions and contested matters.

[89]FED. R. CIV. P. 45 is expressly made applicable by FED. R. BANKR. P. 9016. It applies in all bankruptcy matters including adversary proceedings, contested petitions and contested matters.

[90]FED. R. CIV. P. 46 is expressly made applicable by FED. R. BANKR. P. 9026. It applies in all bankruptcy matters including adversary proceedings, contested petitions and contested matters.

[91]FED. R. CIV. P. 47 is expressly made applicable by FED. R. BANKR. P. 9015. It applies in all bankruptcy matters including adversary proceedings, contested petitions and contested matters.

[92]FED. R. CIV. P. 48 is expressly made applicable by FED. R. BANKR. P. 9015. It applies in all bankruptcy matters including adversary proceedings, contested petitions and contested matters.

[93]FED. R. CIV. P. 49 is expressly made applicable by FED. R. BANKR. P. 9015. It applies in all bankruptcy matters including adversary proceedings, contested petitions and contested matters.

[94]FED. R. CIV. P. 50 is expressly made applicable by FED. R. BANKR. P. 9015. It applies in all bankruptcy matters including adversary proceedings, contested petitions and contested matters.

[95]FED. R. CIV. P. 51 is expressly made applicable by FED. R. BANKR. P. 9015. It applies in all bankruptcy matters including adversary proceedings, contested petitions and contested matters.

[96]FED. R. CIV. P. 52 is expressly made applicable by FED. R. BANKR. P. 7052. It applies in adversary proceedings and, per FED. R. BANKR. P. 1018 and 9014, contested petitions and contested matters.

[97]FED. R. CIV. P. 54 is expressly made applicable by FED. R. BANKR. P. 7054. Awards of costs are made discretionary rather than "of course." It applies in adversary proceedings and, per FED. R. BANKR. P. 1018 and 9014, contested petitions and contested matters. It applies in all bankruptcy matters including adversary proceedings, contested petitions and contested matters.

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
55	Default[98]	7055 9014
56	Summary Judgment[99]	7056 1018 9014
58	Entry of Judgment[100] (revised)	9021
59	New Trials; Amendment of Judgments[101] (supplemented)	9023
60	Relief from Judgment or Order[102] (supplemented)	9024
61	Harmless Error (supplemented)[103]	9005
62	Stay of Proceedings to Enforce a Judgment[104] (supplemented)	7062 1018 9014
63	Disability of a Judge[105]	9028

[98]FED. R. CIV. P. 55 is expressly made applicable by FED. R. BANKR. P. 7055. It applies in adversary proceedings and, per FED. R. BANKR. P. 9014, contested matters, but not contested petitions.

[99]FED. R. CIV. P. 56 is expressly made applicable by FED. R. BANKR. P. 7056. It applies in adversary proceedings and, per FED. R. BANKR. P. 1018 and 9014, contested petitions and contested matters.

[100]FED. R. CIV. P. 58 is expressly made applicable by FED. R. BANKR. P. 9021, with two stated modifications: (1) the separate document requirement applies only in adversary proceedings and contested matters; and (2) entry of judgment is pursuant to FED R. BANKR. P. 5003 rather than FED. R. CIV. P. 79. It applies, as modified, in all bankruptcy matters including adversary proceedings, contested petitions, and contested matters.

[101]FED. R. CIV. P. 59 is expressly made applicable by FED. R. BANKR. P 9023, with the exception that it does not apply to reconsideration of claims pursuant to 11 U.S.C. § 502(j) and FED. R. BANKR. P. 3008. It applies in all bankruptcy matters including adversary proceedings, contested petitions, and contested matters.

[102]FED. R. CIV. P. 60 is expressly made applicable by FED. R. BANKR. P. 9024, with three stated exceptions: (1) reopening a case or reconsidering claims that were allowed or disallowed without contest are not subject to a one-year limitation; (2) complaints to revoke discharge are governed by the times specified at 11 U.S.C. § 727(c); and (3) complaints to revoke orders confirming a plan are governed by the times specified at 11 U.S.C. §§ 1144, 1230, and 1330. It applies in all bankruptcy matters including adversary proceedings, contested petitions, and contested matters.

[103]FED. R. CIV. P. 61 is expressly made applicable by FED. R. BANKR. P. 9005. The court is also authorized to correct or cure errors, defects, or omissions that do not affect substantial rights. It applies in all bankruptcy matters, including adversary proceedings, contested petitions, and contested matters.

[104]FED. R. CIV. P. 62 is expressly made applicable by FED. R. BANKR. P. 7062. Additional exceptions to FED. R. CIV. P. 62(a) are made for: (1) orders granting relief from the automatic stay; (2) cash collateral orders; (3) orders regarding the use, sale, or lease of property of the estate; (4) orders authorizing the trustee to obtain credit; and (5) orders on assumption or assignment of executory contracts and unexpired leases. It applies in adversary proceedings and, per FED. R. BANKR. P. 1018 and 9014, contested petitions and contested matters.

[105]FED. R. CIV. P. 63 is expressly made applicable by FED. R. BANKR. P. 9028. It applies in all bankruptcy matters including adversary proceedings, contested petitions, and contested matters.

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
64	Seizure of Person or Property[106]	7064 9014
65	Injunctions[107] (supplemented)	7065
65.1	Security: Proceedings Against Sureties[108] (revised)	9025
67	Deposit in Court[109]	7067
68	Offer of Judgment[110]	7068
69	Execution[111]	7069 9014
70	Judgment for Specific Acts; Vesting Title[112] (supplemented)	7070
71	Process in Behalf of and Against Persons Not Parties[113]	7071 9014
77(a)	District Courts Always Open[114] (revised)	5001(a)
77(b)	Trials and Hearings; Orders in Chambers[115] (revised)	5001(b)

[106]FED. R. CIV. P. 64 is expressly made applicable by FED. R. BANKR. P. 9028. It applies in all adversary proceedings and, per FED. R. BANKR. P. 9014, contested matters, but not contested petitions.

[107]FED. R. CIV. P. 65 is expressly made applicable by FED. R. BANKR. P. 7065. The court is given the discretion to excuse a trustee, a debtor, or a debtor in possession from the requirement of a bond in connection with a temporary restraining order or preliminary injunction. The rule applies only in adversary proceedings.

[108]FED. R. CIV. P. 65.1 is restated as FED. R. BANKR. P. 9025, with two main differences: (1) a proceeding against a surety must be by adversary proceeding rather than by motion; and (2) the clerk is not made the agent for purposes of service. It applies in all bankruptcy matters including adversary proceedings, contested petitions, and contested matters.

[109]FED. R. CIV. P. 67 is expressly made applicable by FED. R. BANKR. P. 7067. It applies only in adversary proceedings.

[110]FED. R. CIV. P. 68 is expressly made applicable by FED. R. BANKR. P. 7068. It applies only in adversary proceedings.

[111]FED. R. CIV. P. 69 is expressly made applicable by FED. R. BANKR. P. 7069. It applies in adversary proceedings and, per FED. R. BANKR. P. 9014, contested matters, but not contested petitions.

[112]FED. R. CIV. P. 70 is expressly made applicable by FED. R. BANKR. P. 7070, with the addition that the court may enter judgment vesting or divesting title in real or personal property wherever located (so long as it is within the jurisdiction of the court) without the limitation that the property be located in the judicial district. It applies only in adversary proceedings.

[113]FED. R. CIV. P. 71 is expressly made applicable by FED. R. BANKR. P. 7071. It applies in adversary proceedings and, per FED. R. BANKR. P. 9014, contested matters, but not contested petitions.

[114]FED. R. CIV. P. 77(a) is restated as FED. R. BANKR. P. 5001(a), with stylistic changes. It applies in all bankruptcy matters including adversary proceedings, contested petitions, and contested matters.

[115]FED. R. CIV. P. 77(b) is restated as FED. R. BANKR. P. 5001(b). The language is identical, except for the deletion of the phrase "without the attendance of the clerk or other court officials" from the clause regarding acts and proceedings conducted in chambers. It applies in all bankruptcy matters including adversary proceedings, contested petitions, and contested matters.

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
77(c)	Clerk's Office and Orders by Clerk[116] (revised)	5001(c)
77(d)	Notice of Orders or Judgments[117] (revised)	9022(a)
79	Books and Records Kept by the Clerk and Entries Therein[118] (revised)	5003
80(c)	Stenographer; Stenographic Report or Transcript as Evidence[119] (revised)	5007
81(c)	Applicability in General: Removed Actions[120] (revised)	9027
82	Jurisdiction and Venue Unaffected[121] (revised)	9030
83	Rules by District Courts[122] (revised)	9029

[116]The first sentence of FED. R. CIV. P. 77(c), relating to the hours of business in the clerk's office, is restated as FED. R. BANKR. P. 5001(c). The remainder of FED. R. CIV. P. 77(c), relating to orders by the clerk, is omitted. FED. R. BANKR. P. 5001(c) applies in all bankruptcy matters including adversary proceedings, contested petitions, and contested matters.

[117]FED. R. CIV. P. 77(d) is restated as FED. R. BANKR. P. 9022(a), with modification of the entities to whom the judgment or order is to be sent and applies whenever a bankruptcy judge signs the order or judgment. When a district judge signs the order or judgment, FED. R. BANKR. P. 9022(b) provides that FED. R CIV. P. 77(d) applies, with the additional requirement that (except in a Chapter 9 case) a copy be sent to the United States Trustee. FED. R. BANKR. P. 9022 applies in all bankruptcy matters including adversary proceedings, contested petitions, and contested matters.

[118]FED. R. CIV. P. 79 is restated as FED. R. BANKR. P. 5003, with adjustments to reflect the type of records involved in bankruptcy. It applies in all bankruptcy matters including adversary proceedings, contested petitions, and contested matters.

[119]FED. R. CIV. P. 80(c) is restated as FED. R. BANKR. P. 5007(c), which provides that "a certified sound recording or a transcript of a proceeding shall be admissible as prima facie evidence to establish the record." It applies in all bankruptcy matters including adversary proceedings, contested petitions, and contested matters.

[120]FED. R. CIV. P. 81(c) is expressly made applicable insofar as it applies to jury trials by FED. R. BANKR. P. 9015. The balance of FED. R. CIV. P. 81(c) is restated as FED. R. BANKR. P. 9027(g), without the provisions relating to a jury trial. Although the rules in the 9000 series apply to all bankruptcy matters, this rule appears to have its sole impact in adversary proceedings because it applies only to actions removed from state courts all of which are treated as adversary proceedings.

[121]FED. R. CIV. P. 82 is restated as FED. R. BANKR. P. 9030. It applies in all bankruptcy matters including adversary proceedings, contested petitions, and contested matters.

[122]FED. R. CIV. P. 83 is restated as FED. R. BANKR. P. 9029. The district court makes local bankruptcy rules but may delegate that power to the bankruptcy judges. The procedures of FED. R. CIV. P. 83 apply in either event.

ADVERSARY PROCEEDINGS

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
1	Scope of Rules	1001
3	Commencement of Action	7003
4	Process (supplemented)	7004
5	Service and Filing of Pleadings and Other Papers (supplemented)	7005 2002 5005
6	Time (supplemented)	9006
7	Pleadings Allowed	7007
8	General Rules of Pleading (supplemented)	7008
9	Pleading Special Matters	7009
10	Form of Pleadings (supplemented)	7010 9004(b)
11	Signing and Verification of Papers (revised)	9011
12	Defenses and Objections - When and How Presented - By Pleading or Motion - Motion for Judgment on Pleadings (revised)	7012
13	Counterclaim and Cross-Claim (revised)	7013
14	Third-Party Practice	7014
15	Amended and Supplemental Pleadings	7015
16	Pretrial Procedure; Formulating Issues	7016
17	Parties Plaintiff and Defendant; Capacity (supplemented)	7017
18	Joinder of Claims and Remedies	7018
19	Joinder of Persons Needed for Just Determination (supplemented)	7019
20	Permissive Joinder of Parties	7020
21	Misjoinder and Nonjoinder of Parties	7021
22(1)	Interpleader	7022
23	Class Proceedings	7023
23.1	Derivative Proceedings by Shareholders	7023.1

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
23.2	Actions Relating to Unincorporated Associations	7023.2
24	Intervention	7024 2018
25	Substitution of Parties (supplemented)	7025
26	General Provisions Governing Discovery; Duty of Disclosure	7026
27	Depositions Before Action or Pending Appeal	7027
28	Persons Before Whom Depositions May Be Taken	7028
29	Stipulations Regarding Discovery Procedure	7029
30	Depositions Upon Oral Examination	7030
31	Depositions Upon Written Questions	7031
32	Use of Depositions in Court Proceedings	7032
33	Interrogatories to Parties	7033
34	Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes	7034
35	Physical and Mental Examination of Persons	7035
36	Requests for Admission	7036
37	Failure to Make or Cooperate in Discovery: Sanctions	7037
38	Jury Trial of Right	9015
39	Trial by Jury or by the Court	9015
40	Assignment of Cases for Trial	7040
41	Dismissal of Actions (revised)	7041
42	Consolidation; Separate Trials	7042
43	Taking of Testimony	9017 9012(b)
44	Proof of Official Record	9017
44.1	Determination of Foreign Law	9017
45	Subpoena	9016
46	Exceptions Unnecessary	9026

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
47	Selection of Jurors	9015
48	Number of Jurors - Participation in Verdict	9015
49	Special Verdicts and Interrogatories	9015
50	Judgment as a Matter of Law in Jury Trials; Alternative Motion for New Trial; Conditional Rulings	9015
51	Instructions to Jury; Objection	9015
52	Findings by the Court	7052
54	Judgments; Costs (revised)	7054
55	Default	7055
56	Summary Judgment	7056
58	Entry of Judgment (revised)	9021
59	New Trials; Amendment of Judgments (supplemented)	9023
60	Relief from Judgment or Order (supplemented)	9024
61	Harmless Error (supplemented)	9005
62	Stay of Proceedings to Enforce a Judgment (supplemented)	7062
63	Disability of a Judge	9028
64	Seizure of Person or Property	7064
65	Injunctions (supplemented)	7065
65.1	Security: Proceedings Against Sureties (revised)	9025
67	Deposit in Court	7067
68	Offer of Judgment	7068
69	Execution	7069
70	Judgment for Specific Acts; Vesting Title (supplemented)	7070
71	Process in Behalf of and Against Persons Not Parties	7071
77	District Courts and Clerks (revised)	5001 9022(a)
79	Books and Records Kept by the Clerk and Entries Therein (revised)	5003
80	Stenographer; Stenographic Report or Transcript as Evidence (revised)	5007
81	Applicability in General: Removed Actions (revised)	9015 9027

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
82	Jurisdiction and Venue Unaffected (revised)	9030
83	Rules by District Courts (revised)	9029

CONTESTED MATTERS

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
1	Scope of Rules	1001
4	Process (supplemented)	9014 7004
5	Service and Filing of Pleadings and Other Papers	2002 5005
6	Time (supplemented)	9006
7	Pleadings Allowed (revised)	9013
10	Form of Pleadings (supplemented)	9004(b)
11	Signing and Verification of Papers (revised)	9011
21	Misjoinder and Nonjoinder of Parties	9014 7021
24	Intervention (revised)	2018
25	Substitution of Parties (supplemented)	9014 2012 7025
26	General Provisions Governing Discovery; Duty of Disclosure	9014 7026
27	Depositions Before Action or Pending Appeal	9014 7027
28	Persons Before Whom Depositions May be Taken	9014 7028
29	Stipulations Regarding Discovery Procedure	9014 7029
30	Depositions Upon Oral Examination	9014 7030
31	Depositions Upon Written Questions	9014 7031
32	Use of Depositions in Court Proceedings	9014 7032
33	Interrogatories to Parties	9014 7033

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
34	Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes	9014 7034
35	Physical and Mental Examination of Persons	9014 7035
36	Requests for Admission	9014 7036
37	Failure to Make or Cooperate in Discovery: Sanctions	9014 7037
38	Jury Trial of Right	9015
39	Trial by Jury or by the Court	9015
41	Dismissal of Actions (revised)	9014 7041
42	Consolidation; Separate Trials	9014 7042
43	Taking of Testimony	9017 9012
44	Proof of Official Record	9017
44.1	Determination of Foreign Law	9017
45	Subpoena	9016
46	Exceptions Unnecessary	9026
47	Selection of Jurors	9015
48	Number of Jurors - Participation in Verdict	9015
49	Special Verdicts and Interrogatories	9015
50	Judgment as a Matter of Law in Jury Trials; Alternative Motion for New Trial; Conditional Rulings	9015
51	Instructions to Jury; Objection	9015
52	Findings by the Court	9014 7052
54	Judgments; Costs (revised)	9014 7054
55	Default	9014 7055
56	Summary Judgment	9014 7056
58	Entry of Judgment (revised)	9021
59	New Trials; Amendment of Judgments (supplemented)	9023

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
60	Relief from Judgment or Order (supplemented)	9024
61	Harmless Error (supplemented)	9005
62	Stay of Proceedings to Enforce a Judgment (supplemented)	9014 7062
63	Disability of a Judge	9028
64	Seizure of Person or Property	9014 7064
65.1	Security: Proceedings Against Sureties (revised)	9025
69	Execution	9014 7069
71	Process in Behalf of and Against Persons Not Parties	9014 7071
77	District Courts and Clerks (revised)	5001 9022(a)
79	Books and Records Kept by the Clerk and Entries Therein (revised)	5003
80	Stenographer; Stenographic Report and Transcript as Evidence (revised)	5007
82	Jurisdiction and Venue Unaffected (revised)	9030
83	Rules by District Courts (revised)	9029

INVOLUNTARY AND UNCONTESTED PETITIONS

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
1	Scope of Rules	1001
4	Process (supplemented)	1010 7004
5	Service and Filing of Pleadings and Other Papers (supplemented)	1010 2002 5005 7005
6	Time (supplemented)	9006
7	Pleadings Allowed (revised)	9013
8	General Rules of Pleading (supplemented)	1018 7008

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
9	Pleading Special Matters	1018 7009
10	Form of Pleadings (supplemented)	1018 7010 9004(b)
11	Signing and Verification of Papers (revised)	9011
12	Defenses and Objections When and How Presented - By Pleading or Motion - Motion for Judgment on Pleadings (revised)	1011 7012
15	Amended and Supplemental Pleadings	1018 7015
16	Pretrial Procedure; Formulating Issues	1018 7016
24	Intervention	1018 2018 7024
25	Substitution of Parties (supplemented)	1018 2012 7025
26	General Provisions Governing Discovery; Duty of Disclosure	1018 7026
28	Persons Before Whom Depositions May Be Taken	1018 7028
29	Stipulations Regarding Discovery Procedure	1018 7029
30	Depositions Upon Oral Examination	1018 7030
31	Depositions Upon Written Questions	1018 7031
32	Use of Depositions in Court Proceedings	1018 7032
33	Interrogatories to Parties	1018 7033
34	Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes	1018 7034
35	Physical and Mental Examination of Persons	1018 7035

FED. R. CIV. P.	NAME OF RULE	FED. R. BANKR. P.
36	Requests for Admission	1018 7036
37	Failure to Make or Cooperate in Discovery: Sanctions	1018 7037
38	Jury Trial of Right	9015
39	Trial by Jury or by the Court	9015
43	Taking of Testimony	9017 9012(b)
44	Proof of Official Record	9017
44.1	Determination of Foreign Law	9017
45	Subpoena	9016
46	Exceptions Unnecessary	9026
47	Selection of Jurors	9015
48	Number of Jurors - Participation in Verdict	9015
49	Special Verdicts and Interrogatories	9015
50	Judgment as a Matter of Law in Jury Trials; Alternative Motion for New Trial; Conditional Rulings	9015
51	Instructions by Jury; Objection	9015
52	Findings by the Court	1018 7052
54	Judgments: Costs (revised)	1018 7054
56	Summary Judgment	1018 7056
58	Entry of Judgment (revised)	9021
59	New Trials; Amendment of Judgments (supplemented)	9023
60	Relief from Judgment or Order (supplemented)	9024
61	Harmless Error (supplemented)	9005
62	Stay of Proceedings to Enforce a Judgment (supplemented)	1018 7062
63	Disability of a Judge	9028
65.1	Security: Proceedings Against Sureties (revised)	9025
77	District Courts and Clerks (revised)	5001 9022(a)