

**ADVISORY COMMITTEE
ON
BANKRUPTCY RULES**

**Portland, Oregon
September 20-21, 2012**

THIS PAGE INTENTIONALLY BLANK

TABLE OF CONTENTS

AGENDA	5
TAB 1 Greetings, Introduction of New Members, and Acknowledgment.....	25
TAB 2 Draft Minutes of March 2012 Bankruptcy Rules Meeting	29
TAB 3 Draft Minutes of June 2012 Standing Committee Meeting.....	57
TAB 4 Report by the Subcommittee on Consumer Issues	
A. Memorandum Regarding Suggestion 12-BK-I for the Amendment of Rule 1006(b) (August 21, 2012).....	109
B. Memorandum Regarding Suggestion 11-BK-N for the Promulgation of Official Forms to Implement 28 U.S.C. § 1930(f)(2) and (3) (August 12, 2012).....	123
C. Memorandum Regarding Suggestion 12-BK-B for Amendment Providing Creditors with Notice of the Entry of a Confirmation Order in Chapter 13 Cases (August 17, 2012).....	131
D. Oral Report Regarding Suggestion 12-BK-D for the Amendment of Rule 7001(1).....	139
TAB 5 Joint Report by the Subcommittees on Consumer Issues and Forms	
A. Oral Report Regarding Mini-Conference on Mortgage Rules and Forms	145
B. Letter Regarding Mini-Conference on Mortgage Rules and Forms (August 7, 2012).....	149
TAB 6 Report by the Chapter 13 Form Plan Working Group	
A. Memorandum and Appendix with Draft Rules Amendments Regarding National Chapter 13 Form Plan Project (August 22, 2012).....	167
B. Draft National Chapter 13 Form Plan.....	187
TAB 7 Report by the Subcommittee on Forms and the Forms Modernization Project	
A. Memorandum Regarding the Forms Modernization Project (August 22, 2012).....	201

	<i>Appendix A.1—Proposed New Official Forms B101, B101AB, B102, B104, B106-Summary, B106A, B106B, B106C, B106D, B106E, B106F, B106-Declaration, B107, B112, B119, B318, B423, and B427, and the Committee Notes</i>	213
	<i>Appendix A.2—Instruction Booklet</i>	319
	<i>Appendix A.3—Forms Number Conversion Table</i>	365
	B. Memorandum Regarding Revision of Exemption Schedule to Reflect <i>Schwab v. Reilly</i> (August 16, 2012)	377
TAB 8	Report by the Subcommittee on Business Issues	
	A. Memorandum Regarding Suggestion 11-BK-B for Amendment of Rule 3002(a) (August 17, 2012)	385
	B. Memorandum Regarding Suggestion 11-BK-M for Amendment of Rule 9027 (August 12, 2012)	391
TAB 9	Report by the Subcommittee on Privacy, Public Access, and Appeals	
	Memorandum Regarding Suggestion 12-BK-H to Amend Rules in Light of <i>Stern v. Marshall</i> (August 16, 2012)	397
TAB 10	Report by the Subcommittee on Technology and Cross Border Insolvency	
	Memorandum Regarding Electronic Signatures of Persons Other than Filing Attorneys (August 12, 2012)	407
TAB 11	Oral Report by the Subcommittee on Attorney Conduct and Health Care	415
TAB 12	Interim Rule 1007-I	
	A. Oral Report Regarding Interim Rule 1007-I	421
	B. Revised Interim Rule 1007-I	425
TABS 13-17	Oral Reports Regarding Suggestions 12-BK-E and 12-BK-L, Legislation, and Section 109(h) of the Bankruptcy Code	431
TAB 18	Bankruptcy Rules Tracking Docket	435
TABS 19-20	Reports on Future Meetings, New Business, and Adjournment	457

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of September 20 - 21, 2012
Portland, Oregon

Introductory Items

1. Greetings; acknowledgment of the service of John Rao. (Judge Wedoff)
2. Approval of minutes of Phoenix meeting of March 29 - 30, 2012. (Judge Wedoff)
 - Draft minutes.
3. Oral reports on meetings of other committees:
 - (A) June 2012 meeting of the Committee on Rules of Practice and Procedure, including approval of the amendments to Civil Rules 37 and 45, which are scheduled to take effect on December 1, 2013. (Judge Wedoff and Professor Gibson)
 - Draft minutes of the Standing Committee meeting of June 11 - 12, 2012.
 - (B) June 2012 meeting of the Committee on the Administration of the Bankruptcy System. (Judge Lefkow and Judge Wedoff)
 - (C) Upcoming November 2012 meeting of the Advisory Committee on Civil Rules. (Judge Harris)
 - (D) April 2012 meeting and upcoming October 2012 meeting of the Advisory Committee on Evidence. (Judge Wizmur)
 - (E) April 2012 meeting and upcoming September 2012 meeting of the Advisory Committee on Appellate Rules. (Judge Jordan)
 - (F) Bankruptcy CM/ECF Working Group and the CM/ECF NextGen Project. (Judge Perris)

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues. (Judge Harris, Professor Gibson, and Professor McKenzie)

- (A) Recommendation concerning Suggestion 12-BK-I by Judge John E. Waites (on behalf of the Bankruptcy Judges Advisory Group) to amend Rule 1006(b) to provide that courts may require a minimum initial payment with requests to pay filing fees in installments. (Judge Harris and Professor Gibson)
 - Memo of August 21, 2012, by Professor Gibson.
 - (B) Recommendation concerning Suggestion 11-BK-N by for a rule and form for applications to waive fees other than filing fees, under 28 U.S.C. § 1930(f)(2) and (f)(3). (Judge Harris and Professor Gibson)
 - Memo of August 12, 2012, by Professor Gibson.
 - (C) Recommendation concerning Suggestion 12-BK-B Matthew T. Loughney (on behalf of the Bankruptcy Noticing Working Group) to amend Rule 2002(f)(7) to require notice of the confirmation of the debtor’s chapter 13 plan. (Judge Harris and Professor McKenzie)
 - Memo of August 17, 2012, by Professor McKenzie.
 - (D) Oral report concerning Suggestion 12-BK-D Judge S. Martin Teel, Jr., to amend Rule 7001(1) as it concerns compelling the debtor to deliver the value of property to the trustee. (Judge Harris and Professor Gibson)
5. Joint Report by the Subcommittees on Consumer Issues and Forms. (Judge Harris, Judge Perris, Professor Gibson, and Professor McKenzie)
- Oral report on the mini-conference to gather input on the new mortgage forms—Form 10 (Attachment A), Form 10 (Supplement 1), and Form 10 (Supplement 2). (Judge Perris, Professor Gibson)
- Information letter of August 7, 2012, to invited participants at the mini-conference, including a list of the invitees, topics for discussion, panel assignments, and a schedule.
6. Report by the Chapter 13 Form Plan Working Group. (Judge Perris, Mr. Rao, Professor McKenzie)
- Recommendation concerning adopting a national chapter 13 form plan; amending Rules 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009 in connection with adopting a form plan; and contacting interest groups to obtain reactions to the proposed form plan and rules amendments. (Mr. Rao)

- Memo of August 22, 2012, by Mr. Rao, including an appendix with drafts of the rules amendments.
- Draft of national chapter 13 form plan.

See Item 8A for a report on the Business Subcommittee's consideration of requiring proofs of secured claims to be filed in chapter 11 cases.

7. Report by the Subcommittee on Forms and the Forms Modernization Project. (Judge Perris, Professor Gibson, and Mr. Myers)
 - (A) Report on the status of the Forms Modernization Project and recommendations concerning publication of proposed new individual financial forms developed by the project, including revision Schedule C as a result of the Supreme Court's holding in *Schwab v. Reilly*, 130 S. Ct. 2652 (2010). (Judge Perris and Mr. Myers)
 - Memo of August 22, 2012, by Judge Perris.
 - Copies of proposed new Official Forms B101, B101AB, B102, B104, B106 – Summary, B106A, B106B, B106C, B106D, B106E, B106F, B106-Declaration, B107, B112, B119, B318, B423, and B427 and the Committee Notes.
 - Instructions.
 - Forms number conversion table.
 - (B) Recommendation concerning revision of the exemption schedule as a result of the Supreme Court's holding in *Schwab v. Reilly*, 130 S. Ct. 2652 (2010). (Judge Perris and Professor Gibson)
 - Memo of August 16, 2012, by Professor Gibson.
8. Report by the Subcommittee on Business Issues. (Judge Wizmur, Professor Gibson, and Professor McKenzie)
 - (A) Report concerning amending the Bankruptcy Rules to require the filing of proofs of secured claims in chapter 11 cases. (Judge Wizmur and Professor McKenzie)
 - Memo of August 17, 2012, by Professor McKenzie.
 - (B) Recommendation concerning Suggestion 11-BK-M by attorney Jim F. Spencer, Jr., on behalf of the Advisory Committee to the Uniform Local Rules for the Northern and Southern Districts of Mississippi, to amend Rule 9027 to require that a notice of removal be filed with the bankruptcy clerk for the district and division where the civil action to be removed is pending. (Judge Wizmur and Professor Gibson)

- Memo of August 12, 2012, by Professor Gibson.
9. Report by the Subcommittee on Privacy, Public Access, and Appeals. (Judge Jordan and Professor McKenzie)
 - Recommendation concerning Suggestion 12-BK-H by Professor Alan N. Resnick to amend the Bankruptcy Rules in response to *Stern v. Marshall*, 131 S. Ct. 2594 (2011). (Judge Jordan and Professor McKenzie)
 - Memo of August 16, 2012, by Professor McKenzie.
 10. Report by the Subcommittee on Technology and Cross Border Insolvency. (Mr. Baxter and Professor Gibson)
 - Report concerning adopting a bankruptcy rule establishing standards for electronic signatures by parties other than attorneys. (Mr. Baxter and Professor Gibson)
 - Memo of August 12, 2012, by Professor Gibson.
 11. Oral report by the Subcommittee on Attorney Conduct and Health Care. (Mr. Rao)

Discussion Items

12. Oral report on the revision of Interim Rule 1007-I to conform the Interim Rule to the proposed amendment to Rule 1007, which is scheduled to take effect on December 1, 2012. (Professor Gibson).
 - Revised Interim Rule 1007-I.
13. Oral report on Suggestion 12-BK-E by Judge Richard Schmidt to amend Rules 7008, 7012, 9014, 9027, and 9033 in response to the Supreme Court's decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011). (Judge Wedoff)
14. Oral report on Suggestion 12-BK-L by Judge Neil P. Olack to amend Rule 7008(b) to clarify the pleading requirements to recover statutory attorney's fees. (Judge Wedoff)

Information Items

15. Oral report on the status of bankruptcy-related legislation, including the revision of Forms B200 and B201 as a result of the enactment of the Temporary Bankruptcy

Judgeships Extension Act of 2012 (Pub. L. No. 112-121). (Judge Wedoff, Professor Gibson, and Mr. Wannamaker)

16. Oral update on opinions interpreting section 109(h) of the Bankruptcy Code. (Professor Gibson)
17. *Bull Pen.* (Mr. Wannamaker):

Amendment to Official Form 23 to implement the proposed amendment to Rule 1007(b)(7) which would authorize providers of financial management course providers to file notification of the debtor's completion of the course, approved at September 2010 meeting.
18. Rules Docket. (Mr. Wannamaker)
19. Future meetings: Spring 2013 meeting, April 2 – 3, in New York City. Possible locations for the fall 2013 meeting.
20. New business.
21. Adjourn.

THIS PAGE INTENTIONALLY BLANK

ADVISORY COMMITTEE ON BANKRUPTCY RULES

<p>Chair, Advisory Committee on Bankruptcy Rules</p>	<p>Honorable Eugene R. Wedoff United States Bankruptcy Court Everett McKinley Dirksen United States Courthouse 219 South Dearborn Street Chicago, IL 60604</p>
<p>Reporter, Advisory Committee on Bankruptcy Rules</p>	<p>Professor S. Elizabeth Gibson 5073 Van Hecke-Wettach Hall University of North Carolina at Chapel Hill C.B. #3380 Chapel Hill, NC 27599-3380</p> <p>Professor Troy A. McKenzie New York University School of Law 40 Washington Square South New York, NY 10012</p>
<p>Members, Advisory Committee on Bankruptcy Rules</p>	<p>Michael St. Patrick Baxter, Esq. Covington & Burling LLP 1201 Pennsylvania Avenue, N.W. Washington, DC 20004-2401</p> <p>Honorable Karen K. Caldwell United States District Court United States Courthouse and Post Office 101 Barr Street Lexington, KY 40507</p> <p>Honorable Jean C. Hamilton United States District Court Thomas F. Eagleton United States Courthouse 111 South Tenth Street, Room 16N St. Louis, MO 63102-1116</p> <p>Honorable Arthur I. Harris United States Bankruptcy Court Howard M. Metzenbaum U.S. Courthouse 201 Superior Avenue, Room 148 Cleveland, OH 44114-1238</p>

**Members, Advisory Committee
on Bankruptcy Rules (*cont'd.*)**

Honorable Sandra Segal Ikuta

United States Court of Appeals
Richard H. Chambers Court of Appeals Building
125 South Grand Avenue, Room 305
Pasadena, CA 91105-1621

Honorable Robert James Jonker

United States District Court
Gerald R. Ford Federal Building
110 Michigan Street, N.W., Room 685
Grand Rapids, MI 49503

Honorable Adalberto Jordan

Eleventh Circuit Court of Appeals
Wilkie D. Ferguson, Jr. U.S. Courthouse
400 North Miami Avenue, Room 10-4
Miami, FL 33128

Richardo I. Kilpatrick, Esq.

Kilpatrick & Associates, P.C.
903 N. Opdyke Road, Suite C
Auburn Hills, MI 48326

J. Christopher Kohn, Esq.

Director, Commercial Litigation Branch
Civil Division (ex officio)
United States Department of Justice
P.O. Box 875, Ben Franklin Station
Washington, DC 20044-0875
(1100 L Street, N.W., 10th Flr., Rm. 10036
Washington, DC 20005)

David A. Lander, Esq.

Greensfelder, Hemker & Gale, P.C.
10 South Broadway
Suite 2000
St. Louis, MO 63102

Professor Edward R. Morrison

University of Chicago Law School
1111 East 60th Street
Chicago, IL 60637

<p>Members, Advisory Committee on Bankruptcy Rules (cont'd.)</p>	<p>Honorable Elizabeth L. Perris United States Bankruptcy Court 700 Congress Center 1001 Southwest Fifth Avenue Portland, OR 97204-1145</p> <p>John Rao, Esq. National Consumer Law Center 7 Winthrop Square, 4th Floor Boston, MA 02110-1245</p> <p>Honorable Judith H. Wizmur Chief Judge United States Bankruptcy Court Mitchell H. Cohen U.S. Courthouse 2nd Floor – 400 Cooper Street Camden, NJ 08102-1570</p>
<p>Advisors and Consultants, Advisory Committee on Bankruptcy Rules</p>	<p>Ramona D. Elliott, Esq. Deputy Director/General Counsel Executive Office for the U.S. Trustees 20 Massachusetts Avenue, N.W. - Suite 8100 Washington, DC 20530</p> <p>Patricia S. Ketchum, Esq. 113 Richdale Avenue #35 Cambridge, MA 02140</p> <p>James J. Waldron Clerk, United States Bankruptcy Court Martin Luther King, Jr. Federal Building and United States Courthouse Third Floor, 50 Walnut Street Newark, NJ 07102-3550</p>
<p>Liaison Member, Advisory Committee on Bankruptcy Rules</p>	<p>Honorable James A. Teilborg (Standing) United States District Court 523 Sandra Day O'Connor U.S. Courthouse 401 West Washington Street – Suite 523 Phoenix, AZ 85003-2146</p>
<p>Liaison from Committee on the Administration of the Bankruptcy System</p>	<p>Honorable Joan Humphrey Lefkow United States District Court Everett McKinley Dirksen U.S. Courthouse 219 South Dearborn Street, Room 1956 Chicago, IL 60604</p>

<p>Secretary, Standing Committee</p>	<p>Peter G. McCabe Secretary Committee on Rules of Practice & Procedure Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E., Room 4-180 Washington, DC 20544 Phone 202-502-1800 Fax 202-502-1766 Peter_McCabe@ao.uscourts.gov</p>
<p>Chief Counsel</p>	<p>Andrea L. Kuperman Chief Counsel to the Rules Committees 11535 Bob Casey U.S. Courthouse 515 Rusk Ave. Houston, TX 77002-2600 Phone 713-250-5980 Fax 713-250-5213 Andrea_Kuperman@txs.uscourts.gov</p>
<p>Rules Committee Officer</p>	<p>Jonathan C. Rose Rules Committee Officer Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E., Room 7-240 Washington, DC 20544 Phone 202-502-1820 Fax 202-502-1755 Jonathan_Rose@ao.uscourts.gov</p>
<p>Deputy Rules Committee Officer and Counsel</p>	<p>Benjamin J. Robinson Deputy Rules Committee Officer and Counsel to the Rules Committees Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E., Room 7-240 Washington, DC 20544 Phone 202-502-1516 Fax 202-502-1755 Benjamin_Robinson@ao.uscourts.gov</p>

ADVISORY COMMITTEE ON BANKRUPTCY RULES
SUBCOMMITTEES

Subcommittee/Liaison Assignments, Effective August 24, 2012

<p>Subcommittee on Consumer Issues Judge Arthur I. Harris, Chair Judge Sandra Segal Ikuta Judge Karen K. Caldwell Judge Judith H. Wizmur John Rao, Esq. David A. Lander, Esq. Richardo I. Kilpatrick, Esq. Professor Edward R. Morrison James J. Waldron, <i>ex officio</i> Ramona D. Elliott, Esq., <i>EOUST liaison</i></p>	<p>Subcommittee on Business Issues Judge Judith H. Wizmur, Chair Judge Robert James Jonker Judge Jean C. Hamilton J. Christopher Kohn, Esq. Michael St. Patrick Baxter, Esq. David A. Lander, Esq. Professor Edward R. Morrison James J. Waldron, <i>ex officio</i> Ramona D. Elliott, Esq., <i>EOUST liaison</i></p>
<p>Subcommittee on Forms Judge Elizabeth L. Perris, Chair Judge Judith H. Wizmur Judge Arthur I. Harris J. Christopher Kohn, Esq. John Rao, Esq. Richardo I. Kilpatrick, Esq. James J. Waldron, <i>ex officio</i> Ramona D. Elliott, Esq., <i>EOUST liaison</i> Patricia S. Ketchum, Esq., <i>Consultant</i></p>	<p>Forms Modernization Project Judge Elizabeth L. Perris, Chair Judge Judith H. Wizmur Judge Arthur I. Harris J. Christopher Kohn, Esq. John Rao, Esq. Richardo I. Kilpatrick, Esq. James J. Waldron, <i>ex officio</i> Ramona D. Elliott, Esq., <i>EOUST liaison</i> Patricia S. Ketchum, Esq., <i>Consultant</i></p>
<p>Subcommittee on Privacy, Public Access and Appeals Judge Adalberto Jordan, Chair Judge Sandra Segal Ikuta Judge Karen K. Caldwell Judge Elizabeth L. Perris J. Christopher Kohn, Esq. Michael St. Patrick Baxter, Esq. David A. Lander, Esq. Ramona D. Elliott, Esq., <i>EOUST liaison</i></p>	<p>Subcommittee on Style Judge Karen K. Caldwell, Chair Judge Sandra Segal Ikuta Judge Judith H. Wizmur Judge Arthur I. Harris J. Christopher Kohn, Esq. David A. Lander, Esq. Michael St. Patrick Baxter, Esq.</p>

<p>Subcommittee on Attorney Conduct and Healthcare John Rao, Esq., Chair Judge Karen K. Caldwell Judge Robert James Jonker Judge Jean C. Hamilton Judge Arthur I. Harris Ramona D. Elliott, Esq., <i>EOUST liaison</i></p>	<p>Subcommittee on Technology and Cross Border Insolvency Michael St. Patrick Baxter, Esq., Chair Judge Sandra Segal Ikuta Judge Adalberto Jordan Judge Arthur I. Harris Professor Edward R. Morrison Ramona D. Elliott, Esq., <i>EOUST liaison</i></p>
<p>CM/ECF Working Group and CM/ECF Next Gen Liaison: Judge Elizabeth L. Perris</p> <p>Appellate Rules Liaison: Judge Adalberto Jordan</p> <p>Civil Rules Liaison: Judge Arthur I. Harris</p> <p>Evidence Rules Liaison: Judge Judith H. Wizmur</p>	

Advisory Committee on Bankruptcy Rules

Members	Position	District/Circuit	Start Date	End Date
Eugene R. Wedoff Chair	B	Illinois (Northern)	Member: 2004 Chair: 2010	---- 2013
Michael St. Patrick Baxter	ESQ	Washington, DC		2008 2014
Karen K. Caldwell	D	Kentucky (Eastern)		2009 2012
Jean C. Hamilton	D	Missouri (Eastern)		2011 2014
Arthur I. Harris	B	Ohio (Northern)		2010 2012
Sandra Segal Ikuta	C	Ninth Circuit		2010 2012
Robert James Jonker	D	Michigan (Western)		2010 2013
Adalberto Jose Jordan	C	Eleventh Circuit		2010 2013
Richardo I. Kilpatrick	ESQ	Michigan		2011 2014
J. Christopher Kohn*	DOJ	Washington, DC		---- Open
David A. Lander	ESQ	Missouri		2008 2014
Edward R. Morrison	ACAD	New York		2010 2013
Elizabeth L. Perris	B	Oregon		2007 2013
John Rao	ESQ	Massachusetts		2006 2012
Judith H. Wizmur	B	New Jersey		2008 2014
S. Elizabeth Gibson Reporter	ACAD	North Carolina		2008 Open
Principal Staff:	Jonathan C. Rose	202-502-1820		
	Jim H. Wannamaker	202-502-1910		

LIAISON MEMBERS

Liaison for the Advisory Committee on Appellate Rules	Dean C. Colson <i>(Standing)</i>
Liaison for the Advisory Committee on Appellate Rules	Honorable Adalberto Jordan <i>(Bankruptcy)</i>
Liaison for the Advisory Committee on Bankruptcy Rules	Judge James A. Teilborg <i>(Standing)</i>
Liaison for the Advisory Committee on Civil Rules	Judge Arthur I. Harris <i>(Bankruptcy)</i>
Liaison for the Advisory Committee on Civil Rules	Judge Diane P. Wood <i>(Standing)</i>
Liaison for the Advisory Committee on Criminal Rules	Judge Marilyn L. Huff <i>(Standing)</i>
Liaison for the Advisory Committee on Evidence Rules	Judge Judith H. Wizmur <i>(Bankruptcy)</i>
Liaison for the Advisory Committee on Evidence Rules	Judge Paul S. Diamond <i>(Civil)</i>
Liaison for the Advisory Committee on Evidence Rules	Judge John F. Keenan <i>(Criminal)</i>
Liaison for the Advisory Committee on Evidence Rules	Judge Richard C. Wesley <i>(Standing)</i>

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Peter G. McCabe

Secretary
Committee on Rules of Practice & Procedure
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Room 4-180
Washington, DC 20544
Phone 202-502-1800
Fax 202-502-1766
Peter_McCabe@ao.uscourts.gov

Jonathan C. Rose

Rules Committee Officer
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Room 7-240
Washington, DC 20544
Phone 202-502-1820
Fax 202-502-1755
Jonathan_Rose@ao.uscourts.gov

Benjamin J. Robinson

Deputy Rules Committee Officer
and Counsel to the Rules Committees
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Room 7-240
Washington, DC 20544
Phone 202-502-1516
Fax 202-502-1755
Benjamin_Robinson@ao.uscourts.gov

Julie Wilson

Attorney Advisor
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Room 4-250
Washington, DC 20544
Phone 202-502-3678
Fax 202-502-1766
Julie_Wilson@ao.uscourts.gov

James H. Wannamaker III

Senior Attorney
Bankruptcy Judges Division
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Room 4-254
Washington, DC 20544
Phone 202-502-1900
Fax 202-502-1988
James_Wannamaker@ao.uscourts.gov

Scott Myers

Attorney Advisor
Bankruptcy Judges Division
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Room 4-250
Washington, DC 20544
Phone 202-502-1900
Fax 202-502-1988
Scott_Myers@ao.uscourts.gov

Bridget M. Healy

Attorney Advisor
Bankruptcy Judges Division
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Room 4-273
Washington, DC 20544
Phone 202-502-1900
Fax 202-502-1988
Bridget_Healy@ao.uscourts.gov

Bernida D. Evans

Management Analyst
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Room 7-240
Washington, DC 20544
Phone 202-502-1820
Fax 202-502-1755
Bernida_Evans@ao.uscourts.gov

FEDERAL JUDICIAL CENTER

<p>Joe Cecil <i>(Rules of Practice & Procedure)</i> Senior Research Associate Research Division Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E. Washington, DC 20002-8003 Phone 202-502-4084 Fax 202-502-4199 jcecil@fjc.gov</p>	<p>Marie Leary <i>(Appellate Rules Committee)</i> Research Associate Research Division Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E. Washington, DC 20002-8003 Phone 202-502-4069 Fax 202-502-4199 mleary@fjc.gov</p>
<p>Molly T. Johnson <i>(Bankruptcy Rules Committee)</i> Senior Research Associate Research Division Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E. Washington, DC 20002-8003 Phone 315-824-4945 mjohanson@fjc.gov</p>	<p>Emery G. Lee <i>(Civil Rules Committee)</i> Senior Research Associate Research Division Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E. Washington, DC 20002-8003 Phone 202-502-4078 Fax 202-502-4199 elee@fjc.gov</p>
<p>Laural L. Hooper <i>(Criminal Rules Committee)</i> Senior Research Associate Research Division Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E. Washington, DC 20002-8003 Phone 202-502-4093 Fax 202-502-4199 lhooper@fjc.gov</p>	<p>Tim Reagan <i>(Evidence Rules Committee)</i> Senior Research Associate Research Division Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E. Washington, DC 20002-8003 Phone 202-502-4097 Fax 202-502-4199 treagan@fjc.gov</p>

THIS PAGE INTENTIONALLY BLANK

TAB 3

THIS PAGE INTENTIONALLY BLANK

Greetings; Introduction of new members

Item 1 will be an oral report.

THIS PAGE INTENTIONALLY BLANK

TAB 4

THIS PAGE INTENTIONALLY BLANK

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of March 29 - 30, 2012
Phoenix, Arizona

(DRAFT MINUTES)

The following members attended the meeting:

Bankruptcy Judge Eugene R. Wedoff, Chair
Circuit Judge Sandra Segal Ikuta
Circuit Judge Adalberto Jordan
District Judge Karen Caldwell
District Judge Jean Hamilton
District Judge Robert James Jonker
Bankruptcy Judge Arthur I. Harris
Bankruptcy Judge Elizabeth L. Perris
Bankruptcy Judge Judith H. Wizmur
Professor Edward R. Morrison
Michael St. Patrick Baxter, Esquire
Richardo I. Kilpatrick, Esquire
J. Christopher Kohn, Esquire
David A. Lander, Esquire
John Rao, Esquire

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
District Judge James A. Teilborg, liaison from the Committee on Rules of Practice and Procedure (Standing Committee)
District Judge Joan Humphrey Lefkow, liaison from the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee)
Professor Daniel Coquillette, reporter of the Standing Committee
Peter G. McCabe, secretary of the Standing Committee
Patricia S. Ketchum, advisor to the Committee
Ramona D. Elliott, Deputy Director /General Counsel, Executive Office for U.S. Trustees (EOUST)
Lisa Tracy, Associate General Counsel, EOUST
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
Jonathan Rose, Rules Committee Support Officer, Administrative Office of the U.S. Courts (Administrative Office)
Benjamin Robinson, Administrative Office
James H. Wannamaker, Administrative Office
Scott Myers, Administrative Office
Molly Johnson, Federal Judicial Center (FJC)
Lauren Rosi, Senior Products Analyst, VISA

Raymond J. Obuchowski, Esq., on behalf of the National Association of Bankruptcy Trustees.

Professor Troy McKenzie, assistant reporter, was unable to attend the meeting.

Introductory Items

1. Greetings.

The Chair asked participants to introduce themselves, and he welcomed Ramona Elliott to her first meeting as the Committee's liaison from the Executive Office for U.S. Trustees. The Chair also congratulated Judge Jordon on his ascent to the appellate bench.

2. Approval of minutes of the Chicago meeting of September 26 – 27, 2011.

The Committee approved the Chicago minutes with several minor changes.

3. Oral reports on meetings of other committees.

- (A) January 2012 meeting of the Committee on Rules of Practice and Procedure (the Standing Committee).

The Chair reported that the Standing Committee approved all of the Advisory Committee's recommendations. He noted that one topic of conversation was the terminology to use to convey the idea of electronic transmission in the context of the revised bankruptcy appellate rules projected for publication this fall. The Reporter added that a special committee drawn from all the advisory committees would consider the issue, and that Jim Waldron would represent this Committee on the project.

The Reporter also explained that in approving publication this fall of the Committee's proposed amendment to Rule 7054, the Standing Committee corrected a long-standing grammatical error in the first sentence of subsection (b) by changing the verb "provides" to "provide."

- (B) January 2012 meeting of the Committee on the Administration of the Bankruptcy System.

Judge Perris attended the meeting on behalf of the Chair. She and Judge Lefkow said that cost containment and development of a policy for recall judges dominated the agenda. Judge Perris added that she was concerned during the technology discussion that access by external users to bankruptcy data under NextGen was being conflated with allowing people access to data about judicial decisions.

- (C) November 2011 and March 2012 meetings of the Advisory Committee on Civil Rules.

Judge Harris said that proposed amendments to Rule 45 were approved for publication and that the Civil Rules Committee recommended final approval at its March 2012 meeting with some modifications in response to public comments. He noted the impact in bankruptcy of the Rule 45 change would be discussed at Agenda Item 8-D. He said the focus of much of the rest of the Civil Rules Committee meeting was on rule changes dealing with e-discovery and evidence preservation that came out of the mini-conference held at Duke University in the spring of 2011. He said e-discovery/preservation rule changes might be ready for publication in the summer of 2013.

- (D) October 2011 meeting and upcoming April 2012 meeting of the Advisory Committee on Evidence.

Judge Wizmur said the restyled evidence rules went into effect last December, and that a number of rule changes are under consideration. She said the Evidence Committee is also working on the “privilege project” which will be a compendium of federal common law privileges.

- (E) October 2011 meeting and upcoming April 2012 meeting of the Advisory Committee on Appellate Rules.

The Reporter said that there are two issues under consideration by the Appellate Rules Committee that affect bankruptcy appeals. A change to Appellate Rule 6, which deals with bankruptcy appeals, is on track to be published this summer. The timing is designed to coincide with the proposal at Agenda Item 9-A of this meeting that the Committee approve publication this summer of the revised Bankruptcy Part VIII rules.

The Reporter said that a proposed change to Appellate Rule 28(a)(6), requiring that an appellate brief combine into one section the statement of the case and the proposed facts was relevant to Part VIII revision because the bankruptcy version of the rule tracks the language of the appellate rule.

- (F) Bankruptcy CM/ECF Working Group and the CM/ECF NextGen Project.

Judge Perris reported that NextGen has progressed to the point that the CM/ECF Working Group and CM/ECF NextGen are merging. NextGen will become CM/ECF, and the plan is to reuse as much of the existing CM/ECF code as possible. She said the roll out would be an iterative process and the first version, which would have limited new functionality, probably would not be operational until 2014.

Jim Waldron spoke about the bankruptcy *pro se* “Pathfinder” that was created to pilot some of the capabilities of NextGen. He explained that the Pathfinder was designed to facilitate electronic filing by unrepresented debtors. He said it was in the debugging process now, and that he expected it would go live in three courts (D-NJ, D-NM and CD-CA) in June 2012. Judge Perris added that the *pro se* Pathfinder works a little like TurboTax, and that the language for the input questions was derived from the new forms being worked on by the Forms Modernization Project (the FMP). She said that the work of the FMP would be discussed at Agenda Item 7-A, along with a recommendation to publish several FMP forms this fall.

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues.

- (A) Recommendation on comment received on published amendments to Rule 3007(a).

Judge Harris directed members to the Reporter’s memo in the agenda materials for a summary of the reasons that the Advisory Committee published an amendment to Rule 3007(a) last fall that would allow for negative notice on claims objections. He said Subcommittee now recommends deferring action on the proposal for two reasons. First, there was one objection to the proposal that warranted further consideration. Second, the chapter 13 working group is considering multiple vehicles for objecting to claims, including handling the objections in plans. Judge Harris said that exercise requires developing a uniform service standard that would apply both to plans and claims objections outside a chapter 13 plan.

One member questioned whether a uniform negative notice procedure needed to be considered at the same time as objections made through a chapter 13 plan and suggested moving forward on the comment against the negative notice process published last fall. But other members favored considering all the issues at the same time, **and a motion to defer passed without objection.**

- (B) Recommendation concerning Suggestion (11-BK-B) by Judge A. Benjamin Goldgar to amend Rule 3002(a) to require secured creditors to file proofs of claim.

Judge Harris said that the Consumer and Business Subcommittees have different recommendations about whether secured creditors in all chapters should be required to file proofs of claim. The Consumer Subcommittee favors such a requirement, but the Business Subcommittee had concerns about unintended consequences in chapter 11. Several Business Subcommittee members added they are reluctant to support a requirement to file secured claims in part because the current lack of such a requirement has not been an issue in chapter 11.

Judge Harris said that in light of the opposition by some members, the Consumer Subcommittee recommends deferring the issue for this meeting while it considers potential changes to the time limits in chapters 12 and 13. He said the Subcommittee requested guidance, however, on whether the proposal should apply just in chapters 12 and 13, or in all chapters.

Judge Wizmur repeated the general concern of unintended consequences in chapter 11, and Mr. Kohn said one example was a concern about unnecessarily submitting to the bankruptcy court's jurisdiction by filing a proof of claim, even when the claimant is not disputing the debtor's admission of debt as reported on the schedules. He said the proposed process would impose an unnecessary procedure when claims are uncontested.

Mr. Baxter did not oppose further consideration by the Consumer Subcommittee, but he said that there is no current problem in chapter 11. He agreed that creditors sometimes choose not to file a proof of claim in chapter 11 to avoid submitting themselves to the Bankruptcy Court's jurisdiction. But, Mr. Rao questioned whether imposing a claims filing date in chapter 11 would affect jurisdiction. If the creditor does not dispute the amount the debtor lists on the schedules, there is no need to file a claim. But if there is a dispute and the creditor wants the court to resolve it, a claim will have to be filed, and the proposal just provides a deadline in those situations.

One member wondered if a claim secured by the right of set-off might be affected by a mandatory filing deadline, and another member said a negative implication might arise if there is a requirement to file secured claims in chapter 13 but not other chapters.

After further discussion, members agreed that more study is needed, and **a motion to defer consideration until the proposed chapter 13 plan and rules are ready for consideration passed without objection.**

- (C) Recommendation concerning Suggestion (10-BK-H) by chapter 13 trustee Debra L. Miller to amend Rule 3002 to provide a deadline for filing deficiency claims resulting from the sale of collateral.

For the reasons set forth in the Assistant Reporter's memo in the agenda materials, the Subcommittee concluded that the proposed amendment is unnecessary. **Accordingly, the Committee took no further action.**

- (D) Recommendation concerning technical amendments to Rule 4004(c)(1) to clarify the introductory language and to conform to the simultaneous amendment of Rule 1007(b)(7).

Judge Harris explained that the proposed changes to Rule 4004(c)(1) were meant to conform the rule to pending changes to Rule 1007(b)(7) that are scheduled to take effect December 1, 2013. **The Committee approved the technical amendments to Rule 4004(c)(1) described in the Reporter's memo in the agenda materials, subject to restyling, effective December 1, 2013.** Because the changes would merely conform the rule to pending changes to Rule 1007(b)(7), the Committee concluded that publication is not necessary.

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

- (A) Recommendation concerning comments received on published amendments to Official Form 6C. *Memo at Tab A5(A) of the Addendum to the agenda materials.*

Judge Harris said that the proposed amendment to Official Form 6C proved controversial. The amendment, intended to reflect the Supreme Court's decision in *Schwab v. Reilly*, 130 S. Ct. 2652 (2010), would have added a checkbox to the form that would allow debtors to state the value of a claimed exemption as the "full fair market value of the exempted property." Judge Harris said that testimony from the National Association of Bankruptcy Trustees (the NABT), as well as several written comments, was that the checkbox approach would mislead *pro se* debtors. Most exemptions are statutorily defined dollar amounts and so might be held to only be properly claimed in dollar terms. The NABT was concerned that the checkbox approach would lead to many assertions of full market value exemption without legal basis that would generate objections from the trustee and slow down the bankruptcy process. Moreover, critics said, debtor counsel familiar with *Schwab* were already making the "full market value" exemption on the existing version of the form in appropriate circumstances, so there seemed little need to prompt the language through a checkbox.

Consumer groups generally favored the checkbox approach because many debtors would not be aware of the *Schwab* language, and Judge Harris said that at least one subcommittee member favored approving the form as published. Because many attorneys were already writing *Schwab* language into the existing version of the form, however, the majority of the Subcommittee recommended withdrawing the amendment at this time, and asking the Forms Modernization Project to consider any *Schwab* revisions.

Judge Harris also reported that the Subcommittees had considered whether rule amendments might be proposed in order to obtain prompt determinations of a trustee's decision whether to administer assets not fully exempted, but that none of the several suggestions for amendments appeared workable.

Committee members discussed the comments, and **a motion to withdraw the amendment to Official Form 6C passed with two dissenting votes. The vote withdrawing the amendment included a disclaimer that the Advisory Committee was not expressing an opinion or making an inference about the emerging practice of writing in *Schwab* language**

on the current version of the form. The Chair asked the Forms Modernization Project to further consider an amendment to Official Form 6C that would more directly address the *Schwab* decision while accounting for the concerns raised in the comments.

- (B) Recommendation concerning comments received on published amendments to Rule 1007 and Rule 5009 and the conforming amendment to Form 23.

The Chair said that the published amendments to Rule 1007 and Rule 5009, and the conforming amendment to Official Form 23 (previously approved at the fall 2010 meeting and held in the bullpen), were designed to relieve the debtor of the obligation to file Form 23 if the provider of an instructional course concerning personal financial management directly notifies the court that the debtor has completed the course.

He said the comments were generally favorable with one objection, by attorney Jeanne C. Hovenden, who argued that the debtor's attorney might recommend not filing the certificate because in rare circumstances a discharge might not be in the debtor's best interest. (Although not discussed at the meeting, a late-filed comment from Mr. Raymond P. Bell supported Ms. Hovenden). The Chair explained, however, that there are other methods of avoiding or waiving the discharge if that appears prudent in a particular circumstance, and he recommended that the proposed amendments be approved.

After discussing the arguments for and against the proposed amendments, the Advisory Committee approved Rules 1007 and 5009 as published, and decided to hold the conforming revision to Official Form 23 in bullpen until the spring 2013 meeting, so the rules and forms would all be on track to become effective December 1, 2013.

- (C) Report on planning for a mini-conference to be held in conjunction with the Advisory Committee's fall meeting to gather input on the new mortgage forms, Form 10 (Attachment A), Form 10 (Supplement 1), and Form 10 (Supplement 2), and the desirability of including a complete loan history on Form 10 (Attachment A).

Judge Perris said that the Consumer and Forms Subcommittees have begun planning for a mini-conference on the mortgage forms to ensure that these forms are enabling debtors and trustees to obtain the information they need to deal properly with home mortgages and that the disclosure requirements are not imposing an undue burden on mortgage creditors or costs on the debtors. She said that the mini-conference would be held the day before the fall Advisory Committee meeting and that it would be designed to allow the Advisory Committee to determine – with the benefit of actual experience with the new forms – whether any refinements are needed.

She said that the two Subcommittees planned to invite the following constituencies as participants: home mortgage servicers and attorneys, consumer debtor attorneys, chapter 13 trustees, bankruptcy judges, and clerks of courts. The next steps will be to contact the targeted participants, both to solicit suggestions for issues that the mini-conference should address and to identify about 20 representative attendees.

- (D) Recommendation concerning Suggestion 11-BK-D by chapter 13 trustee staff attorney Sabrina L. McKinney to provide a space on the proof of claim (Form 10) to designate the general unsecured amount of a claim and recommendation to eliminate the instruction to attach a power of attorney, if any.

The Reporter explained that there were two issues pertaining to the proof of claim form for the Advisory Committee to consider. A chapter 13 staff attorney, Sabrina McKinney, raised the first issue. The Reporter said that the way the proof of claim form breaks out the constituent parts (general unsecured, priority unsecured, and secured) and reports the total claim amount has changed over the years. As described in the agenda materials, the proof of claim form has been changed three times in the past 15 years – sometimes requiring the creditor to state the total claim amount and then report only that amount unless some portion of the claim is entitled to secured or priority status, and sometimes requiring the creditor to report constituent amounts (general unsecured, priority unsecured, and secured) and then add the constituent parts to the total claim amount.

The form was changed to its present form (requiring the creditor to state the total claim amount and then report the priority or secured amounts only if relevant) in 2007, because adding up the reported constituent amounts in the prior version often resulted in a total that was different than the total amount claimed. Because the differences between the sum of the constituent parts and the total amount claimed are sometimes due to arithmetic errors, and sometimes because constituent parts overlap (for example, a claim can both be secured and entitled to priority treatment), any discrepancy required extra attention by the trustee.

The Reporter said Ms. McKinney nevertheless suggests changing the form back to its pre-2007 version because she has found that without a space to specifically set general unsecured claims, creditors misidentify their claims as secured or entitled to priority.

Because both methods of reporting the constituent and total claim amounts have had critics over the years, and the form was only recently changed, the Joint Subcommittee recommended no further changes at this time. The Reporter noted, however, that new forms are being drafted by the Forms Modernization Project in the context of the next generation of CM/ECF, and that there may be a technological solution to the issue. **After a short discussion, the matter was referred to the Forms Modernization Project to be considered in the ordinary course.**

The Reporter said that member John Rao suggested eliminating the parenthetical in the signature block that requires the creditor's agent to "attach a power of attorney, if any." Mr. Rao explained that Bankruptcy Rule 9010(c) provides that no power of attorney is needed to file a proof of claim. **The Advisory Committee approved the suggestion.** It concluded that publication was not necessary because the change would conform the form to the rule, and recommended that the change go into effect December 1, 2012 along with the previously approved change to line 7 (described at Agenda Item 23-C). The Subcommittee suggested that no immediate action be taken to make corresponding changes in the signature blocks of Official Forms 10S1 and 10S2, due to the possibility that these forms might be altered as a result of the mini-conference on mortgage forms.

6. Report by the Chapter 13 Form Plan Drafting Group on a national form chapter 13 plan and related rule amendments.

Mr. Rao gave the report. He said that over the past year, the Chapter 13 Form Plan Drafting Group has been exploring the adoption of an official form plan for chapter 13. An official form would have several benefits. First, it would make the practice of plan confirmation more uniform. Many districts require the use of local model plans containing distinctive features. These differences impose substantial costs on creditors with regional or national businesses and on software vendors, whose products must accommodate all of the local variations. A national form would also allow for earlier resolution of differences in interpretation. Finally, a national form could provide a specific location within the form for any variances from its standard provisions. This would aid bankruptcy judges in independently reviewing chapter 13 plans for conformity with applicable law, consistent with the Supreme Court's direction in *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367, 1381 n.14 (2010).

The Working Group quickly realized that because many procedures differ from one district or even one judge to the next, there would be a need for rule amendments in addition to a national form plan. Mr. Rao said that the Working Group had not yet finished its work, but that it anticipated changes to Rules 3002, 3012, 3015, 4003, 7001, and 9009. Mr. Rao said a proposed official chapter 13 plan and the related rule amendments would likely be ready for consideration by the Advisory Committee this fall or next spring with a prospect for publication in the summer of 2013.

7. Report by the Subcommittee on Forms.
 - (A) Report on the status of the Forms Modernization Project and recommendation concerning publication of proposed new individual financial forms developed by the project.

Judge Perris said that the Forms Modernization Project (FMP) had largely completed drafting revised individual debtor forms, and has scheduled the first drafting session for the non-individual forms for April 2012. She said that in preparing for the non-individual drafting session, the FMP developed the following guiding principles after soliciting feedback from trustees, debtor and creditor attorneys, and claims agents:

- Eliminate requests for information that pertain only to individuals.
- To the extent possible, parallel how businesses commonly keep their financial records. For example, provide cash flow information in a form more consistent with business financial reporting rather than in the form currently required by Schedules I and J.
- Include information identifying where and how the requested data departs from data maintained according to standard accounting practices.
- Provide better instructions about how to value assets on the schedules, and provide a valuation methodology that would allow people who commonly sign schedules to respond without needing expert valuations.
- Revise the secured debt schedule to clarify when debts are cross-collateralized and the relative priority of secured creditors.
- Require responsive information to be set out in the forms themselves and not simply included as attachments.
- Use a more open-ended response format, as compared to the draft individual debtor forms.
- Keep inter-district variations to a minimum, particularly with respect to the mailing matrix.

Judge Perris said that the look and feel of the new non-individual forms would likely be quite different from the individual forms. There will be more open-ended questions, and the design of the questions will be more understandable than the current forms to accountants and others who are involved in filing non-individual cases.

Judge Perris reminded the Advisory Committee that at its fall 2011 meeting it recommended a subset of the new individual forms for publication and comment this summer. She reiterated the reasons for this decision. Although the design of the new forms should lead unsophisticated debtors to provide better information because the questions are more understandable, the same design choices necessarily make the new forms longer and harder for end users to review manually. Once NextGen becomes fully operational, however, it will capture and store all the information the debtor enters on the form, and end users will be able to develop customized reports that will make review faster. So, Judge Perris explained, acceptance of the new individual forms would depend in part on whether NextGen is able to capture and store the form data fields when the new forms go into effect.

Judge Perris said that although the first release of NextGen could occur in late 2013, or early 2014, it was not yet certain whether that release would be able to collect and store all form

data, so an incremental approach still made sense. She said the Subcommittee recommended that the fee forms (B3A and B3B), income and expense forms (Schedules I and J), and the means-test forms (B22A-1, B22A-2, B22B, B22C-1 and B22C-2) be published for comment this summer. These particular forms, she said, were not much longer than the form versions they would replace and would therefore be usable by judges, clerks and attorneys even if the data report capability was not available on the projected effective date of December 1, 2013. And publishing at least some of the forms now would allow for broader feedback than the prepublication feedback the FMP has received so far.

John Rao said he was concerned that because the forms were substantially different than the current versions, the bar would need extensive training to become familiar with them, and that such training would need to be repeated for each incremental release of forms. Other members acknowledged that possibility, but continued to support this incremental first step because the feedback might expose concerns in the FMP approach that could be addressed early on and minimize overall disruption of transitioning to new forms.

After further discussion, the Advisory Committee recommended publishing for comment Forms B3A, B3B, B6I, B6J, B22A-1, B22A-2, B22B, B22C-1 and B22C-2, along with the accompanying instructions and committee notes, as set out in the agenda materials. Judge Perris explained that form instructions are generally drafted by Administrative Office staff and, although they are reviewed by the Forms Subcommittee, are not typically included in a publication package or submitted to the Judicial Conference for approval. In this case, however, she said the Subcommittee recommended including the instructions in the publication package because they will provide valuable context for reviewers. She said that she anticipated that after the comment period ends, the Subcommittee and Advisory Committee would consider any necessary revisions and would submit for final approval only the proposed forms and committee notes. **After the meeting, the Advisory Committee approved by email vote additional changes to B22C-1 to correct a drafting error in lines 17 and 21 that was inconsistent with the current version of B22C. It also approved an amended B22 Committee Note that reflected the FMP formatting changes as well other substantive changes approved by the Advisory Committee, discussed below.**

- (B) Recommendations by the Subcommittees on Consumer Issues and Forms on the comments on the published amendments to Official Form 22C reflecting the Supreme Court's decision in *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010), and on revising Official Forms 22A and 22C to reflect the IRS allocation of internet services in National & Local Standards.

The Chair said that there were two comments on the proposed *Lanning* amendment to Official Form 22C that would require the debtor to report expected changes in income or expenses for the one-year period after filing the bankruptcy. Attorney Peter Lively argued that the amendment was inconsistent with a Ninth Circuit opinion on the issue of whether there is an

applicable commitment period when projected disposable income is zero or a negative number. Henry J. Sommer, writing on behalf of the National Association of Consumer Bankruptcy Attorneys, stated that the proposed amendment is unnecessary and confusing because changes in income and expenses in the year after filing are already required to be reported on Schedules I and J and can be addressed by motions to modify a confirmed Chapter 13 plan.

The Joint Subcommittee concluded that neither comment warranted reconsidering the proposed amendment to Form 22C. With respect to Mr. Lively's comment, the Joint Subcommittee found that requiring information about changes in income and expenses does not prevent the debtor from arguing that there is no applicable commitment period if there is no projected disposable income. In this respect, the Chair explained, the proposed revised form continues to apply the rule that the applicable commitment period is determined by the debtor's current monthly income under 11 U.S.C. § 1325(b)(4), rather than by the debtor's projected disposable income, determined under 11 U.S.C. § 1325(b)(2).

The Subcommittee was also unpersuaded by Mr. Sommer's comments. Schedules I and J report different income and expenses than those called for in calculating projected disposable income under Form 22C. And modification of a confirmed plan is not an appropriate method for dealing with changes of the kind involved in *Lanning*. Proper treatment of projected disposable income is a requirement for plan confirmation in the first instance.

The Chair said the Subcommittee also continued to recommend approval of the two amendments to Official Forms 22A and 22C addressing changes in the IRS collections standards, noting that no objections were made to the cell phone amendment that was published.

After a short discussion, the Advisory Committee approved the amendments to Official Forms 22A and 22C as recommended by the Joint Subcommittee. Because the forms are also part of the Forms Modernization publication package, however, and to avoid having the previously published amendments take effect in 2012 and then reformatted versions of the forms designed by the Forms Modernization Project take effect in 2013, the Advisory Committee incorporated the proposed amendments into the "modernized" versions to be published this summer.

8. Report by the Subcommittee on Business Issues.
 - (A) Recommendation on Suggestion 11-BK-I by Judge Erik P. Kimball to amend Rules 7008 and 7012; Suggestion 11-BK-K by Chief Judge Bruce W. Black and Judges A. Benjamin Goldgar and Carol Doyle to amend Rules 7008, 9027, and 9033, and to create new Rule 9008.1; and Suggestion 11-BK-L by Chief Judge Arthur J. Gonzalez to amend the general order referring bankruptcy cases and matters from the district court to the bankruptcy court, all in response to the Supreme Court's decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011).

Judge Wizmur said that each of the suggestions provided slightly different proposed solutions to the Supreme Court's *Stern* decision. Before *Stern*, a proceeding was treated by the Bankruptcy Rules as either core or non-core and, if core, the bankruptcy judge was empowered to hear and finally determine it. After *Stern*, courts have confronted the argument that some proceedings may be core – as provided by 28 U.S.C. § 157(b) – and nevertheless be beyond a bankruptcy judge's constitutional power to enter final judgment. The purpose of the suggestions is to prevent a party from alleging (or agreeing) that a proceeding is "core" as a statutory matter, and then later asserting that it is not "core" as a constitutional matter. Each of the suggestions attempts to address the problem by altering portions of the Bankruptcy Rules that rely on the core/non-core distinction.

The Subcommittee agreed that the rules currently add to the confusion created by *Stern* because they rely on the core/non-core distinction. It therefore supported amending four rules -- 7008, 7012, 9027 and 9033 -- to remove references to core or non-core proceedings and require only a statement as to whether the parties consent to final judgment by a bankruptcy judge. The proposed changes, set out in the Addendum at Tab A8, would leave to the bankruptcy judge the determination of whether the judge has authority to enter a final judgment in a particular matter. The recommended amendments would also require that the bankruptcy court issue proposed findings of facts and conclusions of law in matters where a final judgment is not appropriate.

Judge Wizmur said that in one respect the Subcommittee's proposals may go too because they *require* the bankruptcy judge to make proposed findings if consent to a final judgment is not given. Mr. Rao added that in situations where there is consent, there is a need for some sort of mechanism requiring the judge to announce whether a final order would be entered or just findings and conclusions. Other members agreed with Judge Wizmur that that to the extent possible, any rule amendments should simply remove existing ambiguities raised by making a core/non-core distinction, and leave to the bankruptcy judge the determination of whether or not it is appropriate in a particular matter to enter a final order, issue proposed findings of fact and conclusions of law, or take some other action.

After further discussion, the Advisory Committee recommended publication of proposed amendments to Rules 7008, 7012, 9027 and 9033, as revised at the meeting (subject to review by the Style Subcommittee). The Advisory Committee also drafted and recommended publication of an amendment to Rule 7016 to create a new subdivision (b) providing that the bankruptcy court, on its own motion or that of a party, must determine whether it will enter final orders and judgment, issue proposed findings and conclusions, or take some other action in a proceeding. Final versions of the proposed amendments were approved by the Advisory Committee by email vote after the meeting. The Advisory Committee's recommendation included a statement that the proposed amendments and new rule were not intended to address the question of whether party consent is sufficient to permit a bankruptcy judge to enter a final judgment if the judge did not otherwise have authority to do so.

- (B) Recommendation on Suggestion 11-BK-F by Judge Peter W. Bowie to amend Rules 7004(e), 7012, and 9006(f) to provide that the deadline for responding to a summons runs from the date of service rather than the date of issuance.

The Subcommittee agreed with the suggestion that the current deadline for response to a summons, based on issuance rather than service of the summons, may sometimes give the defendant less time in bankruptcy than in ordinary civil litigation, but the Subcommittee noted that the issuance date is arguably less subject to dispute than the service date, especially if service is by mail. Moreover, speedy resolution of disputes in bankruptcy is favored and supports a shorter response time than in non-bankruptcy civil litigation. The Subcommittee did favor, however, shortening the time a litigant can wait before serving the summons after issuance. It therefore recommended amending Rule 7004(e) to provide that the summons is valid for only 7 days after issuance rather than 14 days, as set forth at page 203-04 of the agenda materials. **The Advisory Committee unanimously accepted the Subcommittee's recommendation that the proposed amendment to Rule 7004(e) be published for comment in August. The Advisory Committee also approved a Committee Note documenting the change by email vote after the meeting.**

- (C) Recommendation to clarify Rule 1014(b) regarding notice of the hearing on a motion to determine where cases will proceed if petitions are filed in different districts by, against, or regarding the same debtor or related debtors.

The Reporter said that last fall, the Advisory Committee approved a proposed amendment to Rule 1014(b) addressing the procedure when petitions involving the same or related debtors are pending in different courts. The proposed amendment, recommended for publication in August, would provide that proceedings in subsequently filed cases are stayed only upon order of the court in which the first-filed petition is pending.

After the fall 2011 meeting, the Advisory Committee's style consultant raised the issue of who should give notice of a hearing on a Rule 1014(b) motion, and in considering the question, the Style Subcommittee questioned whether the list of recipients of the notice is sufficiently broad. Because the questions went beyond matters of style, the Chair referred them back to the Subcommittee.

Judge Wizmur said that the Business Subcommittee reconsidered the wording of the amendment to Rule 1014(b). With respect to who should give notice, the Subcommittee recommended no change because Rule 1014(b)'s reference to a "hearing on notice" is consistent with the wording of Rule 1014(a)(1) and (2), is a frequently used phrase throughout the rules, and can be given specific content by a court order.

With respect to who should receive notice, the Subcommittee recommended broadening the language as set forth in the agenda materials so that it is clear that parties in the second case should be given notice of the hearing. **The Advisory Committee agreed with the Business Subcommittee's analysis and approved Rule 1014(b) for publication as set forth in the agenda materials.**

- (D) Report on the impact on the Bankruptcy Rules of proposed amendments to Civil Rules 37 and 45, which were published in August 2011.

Judge Wizmur said that the Subcommittee noted possible problems with the changes to Rules 37 and 45 but concluded that on the whole the changes would be beneficial to bankruptcy courts and practitioners, just as they would in the district court context, and that, as described in the agenda materials, there would be unique impacts in bankruptcy proceedings only in rare circumstances. It therefore recommended no action at this time in response to the changes.

Mr. Wannamaker pointed out that once the changes to Rule 45 take effect, the Director's subpoena forms, which include language from that rule, will need to be updated.

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

- (A) Recommendation on publication of the proposed revision of the Part VIII rules.

The Reporter reminded the Advisory Committee that it previously approved for publication the first half of the bankruptcy appellate rules (8001 through 8012), other than 8001 and 8010. With respect to Rule 8001, the Advisory Committee had concerns about the definition of "transmit" and the presumption of electronic transmissions for *pro se* filers. She said the Standing Committee also had questions about the term "transmit" in Rule 8001, as well as concerns that using the term "appellate court" to refer to the district court and BAPs, but not the court of appeals, was confusing. With respect to Rule 8010, the Advisory Committee asked the Subcommittee to resolve issues about the procedure for preparing and filing a transcript when the court records testimony electronically without a court reporter present.

The Reporter said the Subcommittee considered the suggestions from the Advisory Committee and the Standing Committee, that it made revisions to Rule 8001 and 8010, and that it now recommends that the Advisory Committee ask the Standing Committee to publish for comment this August the full set of revised Part VIII rules included as Appendix B to the agenda materials. The Reporter reviewed each of the rules and described changes from current practice, noting that full details of the changes were set forth in the agenda materials beginning at page 85 of the Addendum.

Rule 8001. The Reporter said the definitions of "transmission" and "appellate court" were deleted. The rule now simply says that document must be sent electronically unless there is

an exception and refers to district court, BAP and court of appeals by name. Because of repeated references throughout the appellate rules to “district court or BAP,” the acronym BAP for bankruptcy appellate panel was retained. **The Advisory Committee approved Rule 8001 for publication.**

Rule 8010. The Subcommittee changed the draft after consulting with clerks of bankruptcy courts and others. The rule now provides that the court reporter would be required to file documents only in the bankruptcy court, and that all transcription duties would be carried out by court reporters and transcription services, not the clerk’s office. The rule also clarifies that the term “reporter” includes the person or service that the court designates to transcribe the electronic recording. **The Advisory Committee approved Rule 8010 as set forth in the agenda materials.**

Rule 8009. After discussing the changes to Rule 8010, Mr. Rao noted that a cross reference in Rule 8009(b)(1)(A) to “the reporter, *as defined in 8010(a)(1),*” should be repeated when the reference to “the reporter” is made in 8009(b)(2)(A). **The Advisory Committee approved Rule 8009 as set forth in the agenda materials with Mr. Rao’s suggested modification.**

Rule 8013. **Approved as set forth in the agenda materials.**

Rule 8014. **Approved as set forth in the agenda materials.**

Rule 8015. **Approved as set forth in the agenda materials – deleting the phrase, “if a cover is used it must be white” at line 115 on page 73 – and accepting several technical corrections suggested by members at the meeting.**

Rule 8016. **Approved as set forth in the agenda materials.**

Rule 8017. **Approved as set forth in the agenda materials.**

Rule 8018. **Approved as set forth in the agenda materials.**

Rule 8019. **Approved as set forth in the agenda materials.**

Former Proposed Rule 8020. The Reporter noted that in earlier drafts, proposed Rule 8020 carried forward the provisions of current Rule 8013. The Subcommittee previously determined that there was no need to instruct district courts and BAPs on the actions they may take (affirm, modify, reverse, or remand with instructions) in ruling on bankruptcy appeals. The Subcommittee now suggested that the remainder of the rule – prescribing the weight to be accorded the bankruptcy court’s findings of fact – can be deleted because it duplicates Rule 7052, and because FRAP does not contain a similar rule. **The Advisory Committee approved**

deleting proposed Rule 8020 from the draft, but suggested that the report to the Standing Committee make clear that the deletion of a topic covered by current Rule 8013 is not intended to change existing law.

Rule 8020. **Approved as set forth in the agenda materials.** The Reporter said she would revise Committee Note to indicate the rule is derived from current Rule 8020, as well as FRAP 38 and 46(c).

Rule 8021. **Approved as set forth in the agenda materials, removing the sentence in the committee note that says costs do not include attorney fees.**

Rule 8022. **Approved as set forth in the agenda materials.**

Rule 8023. **Approved as set forth in the agenda materials.**

Rule 8024. **Approved as set forth in the agenda materials.**

Rule 8025. **Approved as set forth in the agenda materials.**

Rule 8026. **Approved as set forth in the agenda materials, with the following changes: add language at the end of (b)(1) that FRCP 83 governs the procedure for local rulemaking, and changing “judge” to “court” at line 20.**

Rule 8027. **Approved as set forth in the agenda materials.**

Rule 8007. **The revision to subdivision (c) -- described at page 95 of the agenda materials -- approved as set forth in the agenda materials, and, at page 417, line 44, added “court of appeals.”**

The Reporter noted that all of the Part VIII rules would undergo final revisions by the Style Subcommittee prior to publication this summer.

- (B) Recommendation concerning Suggestion (11-BK-E) by retired Bankruptcy Judge A. Thomas Small and Professor Alan N. Resnick to allow litigants in an adversary proceeding to limit their appeal rights.

Judge Jordan said that the Subcommittee considered the suggestion, but, for reasons discussed in the agenda materials, concluded that no rule amendments are needed. Summarizing the memo in the agenda materials, he noted that litigants can already limit their appeal rights by contract, and some Subcommittee members were concerned that a bankruptcy judge aware of such a stipulation might treat the case differently. The Subcommittee was also concerned that any rule change that limited litigant access to an Article III court, even by consent, should not be

undertaken without fully considering whether it implicates the Supreme Court's *Stern v. Marshall* decision. No member objected to the Subcommittee's decision to take no further action.

- (C) Recommendation concerning Suggestion (11-BK-J) by the Judicial Conference's Committee on Court Administration and Case Management (CACM) for bankruptcy rule and form amendments intended to reduce the likelihood that the privacy of debtors' social security numbers will be breached.

The Reporter reviewed the CACM proposal to remove the requirement in Rule 2002(a)(1) that the full social security number (SSN) be included in the notice of meeting of creditors mailed or electronically sent to creditors. She said that the requirement in Rule 2002(a)(1) to send creditors the debtor's full social security number was added in 2003 in conjunction with a privacy amendment to Rule 1005 that limited the caption to the last four numbers of the debtor's SSN. As originally proposed, only Rule 1005 would have been amended and creditors would have received meeting of creditor notices with only the last four numbers of the debtor's SSN.

Private creditors, the credit reporting industry, United States trustees, and the Justice Department all expressed concern during the publication period leading up to the 2003 change that providing only the last four digits of social security numbers would create problems in identifying debtors. They said that this truncated information could lead to inadvertent violations of the automatic stay and discharge injunction. They also stated that it could limit the ability of creditors and trustees to determine whether a particular debtor had obtained bankruptcy relief previously and was engaged in a serial bankruptcy filing and that it could hamper law enforcement efforts to prosecute debtors for bankruptcy fraud and related crimes. As a result of the comments, the Rule 1005 amendment – truncating the caption – was joined with an amendment to Rule 1007(f) requiring the debtor to submit (but not file) the full SSN to the court, and an amendment to Rule 2002(a)(1) requiring that the notice of meeting of creditors sent to parties in interest contain the debtor's full SSN. Official Form 21 was adopted for the debtor's use in submitting the SSN to the court.

The Reporter explained that the AO conducted two studies and concluded that although internal judiciary users still needed the debtor's full SSN, its use among creditors was declining. The studies noted a greater reliance on SSNs by public creditors such as the IRS, and recommended that CACM approve distribution of the SSN to public (but not private) creditors by secure electronic means.

The studies also recounted a number of ways that the debtor's SSN has been inadvertently made public and suggested that amending Rule 2002(a)(1) – to include only the last four digits of the SSN on the meeting of creditors notice – would make inadvertent disclosure much less likely. The authors also suggested that a warning be added to Form

21 stating that the form should not be filed on the docket. CACM adopted the recommendations of the study authors.

The Reporter said that the Subcommittee recognized that the CACM suggestion rests on the balancing of competing concerns: on the one hand, the interest in protecting debtors against the inappropriate public disclosure of their SSNs, and, on the other, the legitimate need for creditors and other participants in the bankruptcy system for this information. The Subcommittee noted that, as long as debtors are still required to provide the court with their full SSNs, as they would be even if the suggestion is adopted, there remains a risk of erroneous disclosure, but that imposing greater restrictions on access to full SSNs would at least decrease the incidence of breaches of privacy.

In discussing the competing interests, the Subcommittee concluded that the AO studies show that there is still a need for access to debtors' SSNs among both public and private creditors and that it would be premature at this time to propose removal of the full SSN from the notice of the meeting of creditors. The Subcommittee also was not convinced that there is an appropriate basis for drawing a distinction between the degrees of access granted public and private creditors. It therefore recommended against amending Rule 2002(a)(1) to distribute only the last four digits of the SSN to private parties in interest. The Subcommittee agreed, however, that a warning should be placed on Form 21 to reduce the possibility that it would be inadvertently filed on the public docket.

Mr. Kohn stated his support for the Subcommittee's recommendation and reaffirmed that the IRS needs the full SSN to identify debtors. Mr. Kilpatrick also agreed with the recommendation, noting that many of his clients, including smaller creditors such as state credit unions, still needed the full SSN. Mr. Rao questioned whether a warning on Form 21 would have any effect. If the debtor is *pro se*, the clerk handles docketing, and if represented, the debtor's attorney would handle docketing. Both clerks and debtor attorneys handle the form on a routine basis and know not to file it. He did not object to a warning on Form 21, but suggested that a warning should also be added to the Form 9 notice of the meeting of creditors that is sent to parties in interest, because the AO studies indicated that those notices are sometimes attached to a creditor's proof of claim and wind up on the claims register, which is public. Judge Harris suggested a modification to the proposed warning on Form 21 that simply states that it should not be filed, (rather than *requiring* that it be "submitted"), because in his court the form generally is not used – the clerk or the debtor's attorney simply fills in a field in CM/ECF. **After further discussion, the Advisory Committee agreed with the Subcommittee and decided to take no action with respect to Rule 2002. After the meeting Advisory Committee approved adding warnings to Form 9 and 21 by email vote.** Because the warnings would simply conform to the existing policy not to file the debtor's SSN, the Advisory Committee recommended that the warnings go into effect December 1, 2012, without publication. The warning to Form 21 was added to the top of the form as follows:

Do not file this form as part of the public case file. This form must be submitted separately and must not be included in the court's public electronic records. Please consult local court procedures for submission requirements.

Each version of Form 9 would be revised to include the following warning on the front near the top of the form:

Creditors – Do not file this notice in connection with any proof of claim you submit to the court.

And the information about filing proofs of claims on the back of each version of Form 9 would include the following information:

Do not include this notice with any filing you make with the court.

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

Recommendation concerning Suggestion 10-BK-G by Geoffrey L. Berman for the adoption of national standards, in addition to local court rules and state law rules on professional responsibility, for practice in the bankruptcy court of any district.

Mr. Rao said that the Subcommittee discussed Mr. Berman's suggestion, but for the reasons detailed in the agenda materials recommended taking no action. The Subcommittee concluded that the court and the state bar association had sufficient power to discipline attorneys. Professor Coquillette supported the Subcommittee's recommendation, noting that the Standing Committee has considered a national bar three times over the years, but has not gone forward because of federal/state issues. No action was taken by the Committee.

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

Recommendation concerning the possibility of adopting a bankruptcy rule establishing standards for electronic signatures by parties other than attorneys.

The Reporter said that the Forms Modernization Project has raised the need for the Advisory Committee to consider rule changes that would allow for electronic signatures. The Subcommittee considered two initial questions: (1) whether and under what circumstances bankruptcy courts should accept for filing documents signed electronically without requiring the retention of a paper copy containing a "wet" or original signature; and (2) if retention of an original signature is required, who should maintain the paper document bearing the signature.

The Subcommittee reviewed current practices and suggested three alternatives. One is set out in a model local rule adopted by several bankruptcy courts, which requires retention of

original documents with wet signatures and imposes the duty of retention on the entity -- most commonly the debtor's attorney -- that files the document electronically. Another approach, used in at least two other bankruptcy courts, does not require retention of paper documents with original signatures. Instead, these courts require that, for any electronically-filed document signed by someone other than the filing attorney, the document be accompanied by a declaration of authenticity wet-signed by the non-attorney. That declaration is scanned and maintained, in electronic form, by the clerk's office. A third approach is taken by the Internal Revenue Service, pursuant to 26 U.S.C. § 6061(b)(2), which validates electronic signatures on tax returns. The IRS uses personal identification numbers as electronic signatures, with no requirement for any original wet-signed document.

Professor Coquillette said that the issue of electronic signature would affect other federal courts and that the Standing Committee would likely be interested, and that a joint advisory subcommittee might be appropriate. **Accordingly, the Advisory Committee deferred any action until the next meeting.** After the meeting, the Chair learned that although the issue will arise in the context of the procedures of other federal courts, it would be appropriate for electronic signatures to be addressed initially in the bankruptcy context. Accordingly, the Advisory Committee will continue to examine the issue with the goal of recommending an amendment to the bankruptcy rules that establishes a uniform procedure for electronic signatures.

12. Recommendations on published amendments to Rules 9006, 9013, and 9014, and Official Form 7.

Rules 9006, 9013, and 9014 were proposed to be amended to highlight the default deadlines for the service of motions and written responses. An amendment to Official Form 7 was proposed to make its definition of insider adhere more closely to the Code. The Chair reported that none of these recommendations received any negative comments. Accordingly, **a motion recommending final approval of the published amendments to Rules 9006, 9013, and 9014, and Official Form 7 passed without objection.**

Discussion Items

13. Suggestion 12-BK-A by Judge Michael J. Kaplan to amend Official Form 3B to exclude non-cash governmental assistance from the calculation of the debtor's income.

The Chair reviewed the suggestion and agreed with Judge Kaplan that non-cash governmental assistance, such as food stamps, was not to be included in calculating the income used to determine eligibility for a fee waiver under the Judicial Conference regulations. He noted that the Advisory Committee had already recommended publishing Official Form 3B as part of the first set of forms from the Forms Modernization Project and recommended an amendment to the form that would provide space for the debtor to state the amount of any such

income without adding it into the income calculation. **The Advisory Committee approved adding a new line to the FMP version of Form 3B to be published for comment in August. Final language was approved by email vote after the meeting.**

14. Suggestion 12-BK-B by Bankruptcy Clerk Matthew T. Loughney on behalf of the Bankruptcy Noticing Working Group to amend Rule 2002(f)(7) to require notice of the confirmation of the debtor's chapter 13 plan of reorganization.

Referred to the Consumer Subcommittee.

15. Suggestion 12-BK-C by Judge Barry S. Schermer to amend Official Form 10 (Attachment A) to clarify the treatment of an escrow shortage.

Referred to the Forms and Consumer Subcommittees for consideration at the mortgage forms mini-conference.

16. Suggestion 12-BK-D by Judge S. Martin Teel, Jr. to amend Rule 7001(1) as it concerns compelling the debtor to deliver the value of property to the trustee.

Referred to the Consumer Subcommittee.

17. Suggestion 11-BK-N by Attorney David S. Yen for a rule and form for applications to waive fees, other than filing fees, under 28 U.S.C. § 1930(f)(2).

Referred to the Consumer Subcommittee.

18. Suggestion 11-BK-M by Attorney Jim Spencer to amend Rule 9027 to require that a notice of removal be filed with the bankruptcy clerk.

Referred to the Business Subcommittee.

19. Oral report on revision of Official Forms 9C, 9D, 9E, 9E(Alt.), 9F, 9F(Alt.), 9G, 9H, and 9I to encourage creditors to obtain the proof of claim form from the federal rulemaking website, rather than the bankruptcy clerk's office.

Mr. Wannamaker explained that since the proof of claim form is no longer mailed to creditors in asset cases, the BNC was now amending the instructions on the back of Official Forms 9C, 9D, 9E, 9E(Alt.), 9F, 9F(Alt.), 9G, 9H, and 9I to encourage creditors to obtain the proof of claim form from the federal rulemaking website, rather than the bankruptcy clerk's office. He suggested that it might make sense to update the official versions of the forms to reflect the BNC practice.

Mr. Myers said he wasn't sure there was a simple fix, however. He said that many courts were modifying the notices with links to their local court website instead of the national website, and in larger cases claims vendors provided unique instructions.

The Chair referred the matter to the Forms Modernization Project to be taken up in the ordinary course.

Information Items

20. Oral report on the status of bankruptcy-related legislation.

Mr. Wannamaker updated the Advisory Committee on pending legislation. He said the temporary bankruptcy judgeship bill has passed the House of Representatives. If the legislation is enacted, the judgeships would be paid for through an increase in the chapter 11 filing fee.

21. Oral update on opinions interpreting section 521(i) of the Bankruptcy Code. *Added to the Agenda: Update on opinions interpreting section 109(h) of the Bankruptcy Code.*

The Reporter said that there have been no case law changes in opinions interpreting 11 U.S.C. § 521(i). The courts still find that automatic dismissal under that Code provision is not “automatic” when used by a debtor to avoid bankruptcy administration or denial of discharge. She said it was unlikely that there would be a sea change in the case law that would form a basis for a rule on automatic dismissals, and she did not think further monitoring of the case law was needed. **The Advisory Committee agreed that further reports on the 11 U.S.C. § 521(i) case law is unnecessary.**

The Reporter added to the agenda an oral report on case law interpreting the recent technical amendments to 11 U.S.C. § 109(h). She said that the amendment seemed to be *intended* to allow the debtor to receive a credit counseling briefing on the petition date, so long as the briefing was completed before the petition was actually filed. Prior to the amendment, a literal reading of section 109(h) seemed to require the briefing to be received by the calendar day before the petition was filed. The problem with the technical amendment, she said, was that a literal reading now seems to allow the briefing to be received *after* the petition is filed, so long as it is received on the same calendar day.

The Reporter said that the only case to date interpreting the new language in § 109(h) held that date of filing means *moment* of filing and that the credit counseling briefing must be received before the moment of filing. This interpretation is consistent with the official form, but if case law were to change, there might be a need to update the official form. **The Chair asked the Reporter to monitor section 109(h) case law and report back at the fall meeting.**

22. New procedures for the Standing Committee and its advisory committees approved by the Judicial Conference at its September 2011 meeting.

The Chair reviewed new Judicial Conference procedures stating that correspondence with the public about the rules and forms out for publication are to be posted on the public website. He said he did not believe that an individual member's discussions with a member of the public about a proposed rule would need to be published *unless* the member was acting on behalf of the Advisory Committee, but asked members to be cautious about whether they might be perceived as representing the Advisory Committee on controversial issues.

23. *Bull Pen.*

- A. Proposed new Rule 8007.1 and the proposed amendment to Rule 9024 (indicative rulings), approved at the September 2008 meeting. **Deleted (included in the Part VIII rules to be published in August).**
- B. Amendment to Official Form 23 to implement the proposed amendment to Rule 1007(b)(7), which would authorize financial management course providers to file notification of the debtor's completion of the course, approved at September 2010 meeting. **Remain in the bullpen** (see Agenda Item 5-B).
- C. Amendment to Box 7 on Official Form 10 to add a reminder to attach the new mortgage attachment form, Official Form 10 (Attachment A), and the statement concerning open-end or revolving consumer credit agreements required by proposed Rule 3001(c)(3)(A), approved at April 2011 meeting. **Change to Official Form 10 to go into effect December 1, 2012** (see Agenda Item 5-D).

24. Rules Docket.

Mr. Wannamaker asked members to email him with any comments or changes.

25. Future meetings.

The Chair announced that the fall 2012 meeting would be held September 11 - 12, 2012¹, at the Hotel Monaco in Portland, Oregon. He said that locations being considered for the spring 2013 meeting were New York City; Charleston, South Carolina; and Fort Lauderdale, Florida.

26. New business.

¹ After the meeting, the dates of the Portland Advisory Committee meeting were changed to September 20 – 21, 2012.

The Chair said he had one new item. In honor of Mark A. Redmiles, former liaison to the Committee from the EOUST, he asked for approval of the following resolution:

Resolution of the Advisory Committee on Bankruptcy Rules

Whereas, Mark A. Redmiles, as a representative of the Executive Office for United States Trustees, began serving as a liaison from that office to the Advisory Committee on Bankruptcy Rules on May 6, 2005;

Whereas, since that time, Mark A. Redmiles devoted countless hours in developing and amending the forms, familiarly known as the “Means Test Forms,” for establishing a presumption of abuse under Section 707(b)(2) of the Bankruptcy Code and for determining disposable income under Section 1325(b) of the Code;

Whereas, Mark A. Redmiles has been an unofficial ambassador of the Advisory Committee to the Internal Revenue Service, creating an effective interchange between the Service and the Committee on matters in which the Service’s Collection Financial Standards affect the application of Sections 707(b) and 1325(b);

Whereas, Mark A. Redmiles has been an effective member of several subcommittees of the Advisory Committee, including Subcommittees on Business Issues; Consumer Issues; Attorney Conduct and Health Care; and Privacy, Public Access, and Appeals;

Whereas, Mark A. Redmiles has been an effective member of the special working groups of the Advisory Committee dealing with forms modernization and a form plan for Chapter 13 cases;

Whereas, in all of his work with the Advisory Committee, Mark A. Redmiles has exhibited timeliness, dedication, open-mindedness, and friendship, while conforming to the highest ethical standards of the legal profession; and

Whereas, Mark A. Redmiles has now been assigned to other positions in the Executive Office for United States Trustees that will largely end his work with the Advisory Committee;

Now, therefore, be it resolved that the Advisory Committee on Bankruptcy Rules extends to Mark A. Redmiles both its deep appreciation for all that he has done on behalf of the Committee and its best wishes for success in his new undertakings.

The resolution was unanimously approved.

27. Adjourn.

Draft Minutes, Bankruptcy Rules Committee, Spring 2012

Respectfully submitted,

Scott Myers

TAB 5

THIS PAGE INTENTIONALLY BLANK

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
Meeting of June 11-12, 2012
Washington, D.C.
Draft Minutes

Aug. 15, 2012

TABLE OF CONTENTS

Attendance.....	1
Introductory Remarks.....	3
Report of the Administrative Office.....	3
Approval of the Minutes of the Last Meeting.....	4
Reports of the Advisory Committees:	
Appellate Rules.....	4
Bankruptcy Rules.....	8
Civil Rules.....	26
Criminal Rules.....	40
Evidence Rules.....	45
Report of the E-Filing Subcommittee.....	47
Assessment of the Judiciary's Strategic Plan.....	48
Next Committee Meeting.....	48

ATTENDANCE

The winter meeting of the Judicial Conference Committee on Rules of Practice and Procedure was held in Washington, D.C., on Monday and Tuesday, June 11 and 12, 2012. The following members were present:

Judge Mark R. Kravitz, Chair
Dean C. Colson, Esquire
Roy T. Englert, Jr., Esquire
Gregory G. Garre, Esquire
Judge Neil M. Gorsuch
Judge Marilyn L. Huff
Chief Justice Wallace B. Jefferson
Dean David F. Levi
Judge Patrick J. Schiltz
Judge James A. Teilborg
Larry D. Thompson, Esquire
Judge Richard C. Wesley
Judge Diane P. Wood

Deputy Attorney General James M. Cole was unable to attend. The Department of Justice was represented throughout the meeting by Elizabeth J. Shapiro, Esquire, and at various points by Kathleen A. Felton, Esquire; H. Thomas Byron III, Esquire; Jonathan J. Wroblewski, Esquire; Ted Hirt, Esquire; and J. Christopher Kohn, Esquire.

Judge Jeremy D. Fogel, Director of the Federal Judicial Center, participated in the meeting, as did the committee's consultants – Professor Geoffrey C. Hazard, Jr.; Professor R. Joseph Kimble; and Joseph F. Spaniol, Jr., Esquire.

Providing support to the committee were:

Professor Daniel R. Coquillette	The committee's reporter
Peter G. McCabe	The committee's secretary
Jonathan C. Rose	Chief, Rules Committee Support Office
Benjamin J. Robinson	Deputy Chief, Rules Committee Support Office
Julie Wilson	Attorney, Rules Committee Support Office
Andrea L. Kuperman	Rules law clerk to Judge Kravitz
Joe Cecil	Research Division, Federal Judicial Center

Also attending were Administrative Office attorneys James H. Wannamaker III, Bridget M. Healy, and Holly T. Sellers, and the judiciary's Supreme Court fellows.

Representing the advisory committees were:

- Advisory Committee on Appellate Rules —
 - Judge Jeffrey S. Sutton, Chair
 - Professor Catherine T. Struve, Reporter
- Advisory Committee on Bankruptcy Rules —
 - Judge Eugene R. Wedoff, Chair
 - Professor S. Elizabeth Gibson, Reporter
 - Professor Troy A. McKenzie, Associate Reporter
- Advisory Committee on Civil Rules —
 - Judge David G. Campbell, Chair
 - Professor Edward H. Cooper, Reporter
 - Professor Richard L. Marcus, Associate Reporter
- Advisory Committee on Criminal Rules —
 - Judge Reena Raggi, Chair
 - Professor Sara Sun Beale, Reporter
- Advisory Committee on Evidence Rules —
 - Judge Sidney A. Fitzwater, Chair
 - Professor Daniel J. Capra, Reporter

INTRODUCTORY REMARKS

Judge Kravitz reported that he would retire as committee chair on September 30, 2012, and the Chief Justice had nominated Judge Sutton to succeed him. He congratulated Judge Sutton and thanked the Chief Justice for making an excellent selection.

Judge Kravitz reported that the Supreme Court in April 2012 had adopted the proposed amendments to the bankruptcy and criminal rules recommended by the Conference at its September 2011 session. The changes will take effect by operation of law on December 1, 2011, unless Congress acts to reject, modify, or defer them.

REPORT OF THE ADMINISTRATIVE OFFICE

Mr. Robinson reported that there had been no further significant legislative action related to electronic discovery since the committee's January 2012 meeting.

He said that the House Judiciary Committee had held a hearing on the Class Action Fairness Act, at which no calls were made either for an overhaul of FED. R. CIV. P. 23 (class actions) or for dramatic changes to the rule. One witness, though, criticized the continuing reliance on *cy près* in class actions.

Mr. Robinson said that there had been no recent action on legislation addressing sunshine in regulatory decrees and settlements. He suggested that legislative attention now seemed to focus more on the criminal rules. A hearing, he reported, had been held before the Senate Judiciary Committee in June 2012 addressing the obligations of prosecutors to disclose exculpatory materials to the defense. At the hearing Senator Murkowski summarized her legislation on the subject, introduced in the wake of the prosecution of the late Senator Stevens and the ultimate dismissal of the criminal case.

Mr. Robinson reported that Judge Raggi had submitted a letter in connection with the hearing, in which she set out in broad terms the extensive work of the Advisory Committee on Criminal Rules over the last decade on FED. R. CRIM. P. 16 (discovery and inspection in criminal cases). The letter, he said, had a 909-page attachment describing that work in detail. In addition, Carol Brook, the federal defender for the Northern District of Illinois and a member of the advisory committee, testified at the hearing. He added that the legislators and witnesses appeared to agree that there were problems with non-disclosure of *Brady* materials that should be addressed, but most concluded that the pending legislation did not offer the right solution to the problems.

He reported that Senator Leahy had introduced legislation underscoring the nation's obligations under article 36 of the Vienna Convention to provide consular notification when foreign nationals are arrested. The legislation, he said, had been added to a State Department appropriations bill. He pointed out that language had been removed from the bill that would have duplicated the substance of proposed amendments to FED. R. CRIM. P. 5 and 58. The committee report accompanying the bill, moreover, encouraged the ongoing work of the rules committees and the Uniform Law Commission in facilitating compliance with the Vienna Convention by federal, state, and local law-enforcement officials. Mr. Robinson thanked the Judicial Conference's Federal-State Jurisdiction Committee for monitoring the legislation and informing the Senate of the activities of the rules committees.

He reported that the House Judiciary Committee had favorably reported out legislation to require bankruptcy asbestos trusts to report claimant filing information to the bankruptcy courts on a quarterly basis. The substance of the legislation, he noted, had previously been proposed as an amendment to the bankruptcy rules, but was not adopted by the Advisory Committee on Bankruptcy Rules. He added that the legislation would continue to be monitored.

Mr. Robinson noted that Magistrate Judge Paul W. Grimm, a member of the Advisory Committee on Civil Rules, had testified at the Senate hearing on his nomination to a district judgeship on the U.S. District Court for the District of Maryland. In addition, a Senate vote was expected shortly to confirm the nomination of Justice Andrew D. Hurwitz, a recent alumnus of the Advisory Committee on Evidence Rules, to a judgeship on the U.S. Court of Appeals for the Ninth Circuit.

APPROVAL OF THE MINUTES OF THE LAST MEETING

The committee without objection by voice vote approved the minutes of the last meeting, held on January 5 and 6, 2012.

REPORT OF THE ADVISORY COMMITTEE ON APPELLATE RULES

Judge Sutton and Professor Struve presented the report of the advisory committee, as set forth in Judge Sutton's memorandum and attachments of May 8, 2012 (Agenda Item 7).

Amendments for Final Approval

FED. R. APP. P. 13, 14, 24(b)

Judge Sutton reported that 26 U.S.C. § 7482(a)(2), enacted in 1986, authorizes permissive interlocutory appeals from the United States Tax Court to the courts of appeals. The statute, however, has never been implemented, and the appellate rules currently do not distinguish between appeals of right from the Tax Court and interlocutory appeals from the court.

The proposed changes to FED. R. APP. P. 13 (review of a Tax Court decision) and FED. R. APP. P. 14 (applicability of other appellate rules to review of a Tax Court decision) would implement the statute and specify the procedures applicable in each type of appeal. The proposed change to FED. R. APP. P. 24(b) (leave to proceed in forma pauperis) would clarify the rule by recognizing that the Tax Court is not an administrative agency.

Judge Sutton reported that the advisory committee had consulted closely with the Tax Court and the Tax Division of the Department of Justice in developing the proposals. He added that no public comments had been received and no changes made in the proposals following publication.

The committee unanimously by voice vote approved the proposed amendments for final approval by the Judicial Conference.

FED. R. APP. P. 28 and 28.1(c)

Judge Sutton explained that the proposed change to FED. R. APP. P. 28(a) (appellant's brief) would revise the list of the required contents of an appellant's brief by combining paragraphs 28(a)(6) and 28(a)(7). Paragraph (a)(6) now requires a statement of the case, and (a)(7) a statement of the facts. The new, combined provision, numbered Rule 28(a)(6), would require "a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record (see Rule 28(e))." Conforming changes would be made in Rule 28(b), governing appellees' briefs, and Rule 28.1(c), governing briefs in cross-appeals.

Judge Sutton pointed out that most lawyers will choose to present the factual and procedural history of a case chronologically. The revised rule, though, gives them the flexibility to follow a different order. In addition, the committee note specifies that a statement of the case may include subheadings, particularly to highlight the rulings presented for review.

He reported that the proposed amendments had attracted six public comments, four of them favorable. Some comments expressed concern that deleting the current rule's reference to "the nature of the case, the course of proceedings, and the disposition below" might lead some to conclude that the procedural history of a case may no longer be included in the statement of the case. Therefore, after publication, the committee inserted into proposed Rule 28(a)(6)'s statement of the case the phrase "describing the relevant procedural history." The committee note was also modified to reflect the addition. He noted, too, that the Supreme Court's rule – which similarly requires a single, combined statement – appears to have worked well.

A member noted that a prominent judge had argued in favor of maintaining separate statements of the case and of the facts, predicting that combined statements will require judges to comb through a great deal of detail to find the key procedural steps in a case – the pertinent rulings made by the lower court. She suggested that the judge's concern might be addressed by requiring that the combined statement begin with the ruling below.

Judge Sutton said that the committee note contemplates that approach, emphasizing that lawyers are given flexibility in presenting their statements. Most, he said, will state the facts first and then the issues for review. He suggested that the judge would have been pleased with simply reversing the order of current paragraphs (a)(6) and (a)(7) to set out the statement of facts first, followed by the statement of the case. Professor Struve added that a circuit could have a local rule that specifies a particular order of subheadings.

The committee unanimously by voice vote approved the proposed amendments for final approval by the Judicial Conference.

FORM 4

Judge Sutton explained that Questions 10 and 11 on the current version of Form 4 (affidavit accompanying a motion for permission to appeal in forma pauperis) require an IFP applicant to provide the details of all payments made to an attorney or other person for services in connection with the case. The questions, he said, ask for more information than needed to make an IFP determination. In addition, some have argued that the form's disclosures implicate the attorney-client privilege. But, he said, research shows that the payment information is very unlikely to be subject to the privilege. Sometimes, though, it might constitute protected work product.

The proposed amendments, he pointed out, combine the two questions into one. The new question asks broadly whether the applicant has spent, or will spend, any money for expenses or attorney fees in connection with the lawsuit – and if so, how much. Only one public comment was received, which proposed an additional modification to the form

to deal with the Prison Litigation Reform Act. The committee, he said, decided not to incorporate the suggestion into the current amendment, but to add the matter to its study agenda as a separate item.

The committee unanimously by voice vote approved the proposed amendments for final approval by the Judicial Conference.

Amendments for Publication

FED. R. APP. P. 6

Professor Struve noted that the advisory committee was proposing several amendments to FED. R. APP. P. 6 (appeals in bankruptcy cases from a district court or bankruptcy appellate panel to a court of appeals). The modifications dovetail with the simultaneous amendments being proposed to Part VIII of the Federal Rules of Bankruptcy Procedure, which govern appeals from a bankruptcy court to a district court or bankruptcy appellate panel.

Revised FED. R. APP. P. 6 would update the rule's cross-references to the new, renumbered Part VIII bankruptcy rules. New subdivision 6(c) will govern permissive direct appeals from a bankruptcy court to the court of appeals under 28 U.S.C. § 158(d)(2), enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. It specifies that the record on a direct appeal from a bankruptcy court will be governed by FED. R. BANKR. P. 8009 (record on appeal and sealed documents) and FED. R. BANKR. P. 8010 (completing and transmitting the record). New Rule 6(c) takes a different approach from Rule 6(b), where the record on appeal from a district court or bankruptcy appellate panel is essentially the record in the mid-level appeal to the district court or panel.

She noted that proposed new Bankruptcy Rule 8010(c) deals with electronic transfer of the record from the bankruptcy court. It specifies that the bankruptcy clerk must transmit to the clerk of the court where an appeal is pending "either the record or a notice that it is available electronically."

In the proposed amendments to FED. R. APP. P. 6(b)(2)(C), she said, the clerk of the district court or bankruptcy appellate panel must number the documents constituting the record and "promptly make it available." The amended appellate rule, she said, is very flexible and works well with the revised Part VIII bankruptcy rules. It allows the clerk to make the record available either in paper form or electronically.

The committee without objection by voice vote approved the proposed amendments for publication.

Informational Items

Judge Sutton reported that he had sent a letter to each chief circuit judge explaining that the advisory committee, like the circuits themselves, was divided on the wisdom of amending FED. R. APP. P. 29 (amicus briefs) to treat federally recognized Native American tribes the same as states. The proposal would allow tribes to file amicus briefs as of right and exempt them from the rule's authorship-and-funding disclosure requirement. The committee, he said, had informed the chief judges that the issue warrants serious consideration, will be maintained on the committee's agenda, and will be revisited in five years.

He noted that the advisory committee had removed from its agenda an item providing for introductions in briefs. Many of the best practitioners, he said, currently include introductions in their briefs to lay out the key themes of their argument. The committee's proposed amendment to FED. R. APP. P. 28(a)(6), he said, was sufficiently flexible to permit inclusion of an introduction as part of a brief's statement of the case. Moreover, it would be difficult to specify how an introduction differs from the statement of the issues presented for review in FED. R. APP. P. 28(a)(5).

REPORT OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Judge Wedoff and Professors Gibson and McKenzie presented the report of the advisory committee, as set forth in Judge Wedoff's memorandum and attachments of May 14, 2012 (Agenda Item 5).

Judge Wedoff noted that the advisory committee had 14 action items to present, six of them for final approval by the Judicial Conference and eight for publication. He suggested that the most important were the amendments dealing with the Supreme Court's decision in *Stern v. Marshall*, the revision of the Part VIII bankruptcy appellate rules, and the modernization of the bankruptcy forms.

Amendments for Final Approval

FED. R. BANKR. P. 1007(b)(7) and 5009(b) and 4004(c)(1)

Judge Wedoff explained that the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 has required virtually all individual debtors to complete a personal course in financial management as a pre-condition for receiving a discharge. He noted that FED. R. BANKR. P. 1007(b)(7) (required schedules and statements) and 5009(b) (case closing) implement the statute by requiring individual debtors to file an official form (Official Form 23) certifying that they completed the course after filing their petition. FED. R. BANKR. P. 1007(c) imposes deadlines for filing the certification. In

Chapter 7 cases, for example, the debtor must file it within 60 days after the first date set for the meeting of creditors under 11 U.S.C. § 341.

If the debtor has not filed the form within 45 days after the first meeting of creditors, FED. R. BANKR. P. 5009(b) instructs the bankruptcy clerk to warn the debtor that the case will be closed without a discharge unless the certification is filed within Rule 1007's time limits. FED. R. BANKR. P. 4004(c) then specifies that the court may not grant a discharge if the debtor has not filed the certificate.

Judge Wedoff reported that the advisory committee recommended amending FED. R. BANKR. P. 1007(b) to allow the provider of the financial-management course to notify the court directly that the debtor has completed the course. This action would relieve the debtor of the obligation to file Official Form 23. FED. R. BANKR. P. 5009(b) would be amended to require the bankruptcy clerk to send the warning notice only if: (1) the debtor has not filed the certification; and (2) the course provider has not notified the court that the debtor has completed the course.

A conforming amendment to FED. R. BANKR. P. 4004(c)(1)(H) (grant of discharge) specifies that the court does not have to deny a discharge if the debtor has been relieved of the duty to file the certification. In addition, language improvements would be made in the rule. Paragraph (c)(1) currently instructs a court to grant a discharge promptly unless certain acts have occurred. The amendment reformulates the text to instruct the court affirmatively not to grant a discharge if those acts have occurred.

Section 524(m) of the Bankruptcy Code, added in 2005, specifies that when a debtor files a reaffirmation agreement, the court must determine whether the statutory presumption that the agreement is an undue hardship for the debtor has been rebutted, *i.e.*, by finding that the debtor is apparently able to make payments under the agreement. A judge needs to make that determination before a discharge is granted. Therefore, FED. R. BANKR. P. 4004(c)(1)(K) tells the court to delay the discharge until the judge considers the debtor's ability to make the payments.

The proposed amendment to FED. R. BANKR. P. 4004(c)(1)(K) would make it clear that the rule's prohibition on entering a discharge due to a presumption of undue hardship ends when the presumption expires or the court concludes a hearing on the presumption. As a result, there would be no delay if the judge has already ruled on the matter.

The committee unanimously by voice vote approved the proposed amendments for final approval by the Judicial Conference. The proposed amendments to FED. R. BANKR. P. 4004(c)(1) were approved without publication.

FED. R. BANKR. P. 9006(d), 9013, and 9014

Judge Wedoff noted that FED. R. BANKR. P. 9006 is entitled “computing and extending time,” but it also specifies the default time for filing motions and affidavits in response to motions. Unlike FED. R. CIV. P. 6 (computing and extending time; time for motion papers), the civil rules counterpart on which it is based, FED. R. BANKR. P. 9006 does not indicate by its title that it also addresses time periods for motions. Nor is it followed immediately by another rule that addresses the form of motions, as the civil rules do. FED. R. CIV. P. 7 (pleadings, motions, and other papers) specifies the pleadings allowed and the form of motions and other papers.

The advisory committee, he said, was proposing amendments to highlight Rule 9006(d). First, the rule’s title would be expanded to add a reference to “time for motion papers.” Second, cross-references to Rule 9006(d) would be added to both FED. R. BANKR. P. 9013 (form and service of motions) and FED. R. BANKR. P. 9014 (contested matters) to specify that motions must be filed “within the time determined under FED. R. BANKR. P. 9006(d).”

The committee unanimously by voice vote approved the proposed amendments for final approval by the Judicial Conference.

OFFICIAL FORM 7

Judge Wedoff explained that Official Form 7 (statement of financial affairs) is a lengthy form that details many of the debtor’s financial transactions. It makes frequent references to “insiders.” The current definition of “insider” on the form refers to any owner of 5% or more of the voting or equity securities of a corporate debtor. That definition, though, has no basis in bankruptcy law, and it is not clear why it was adopted. The advisory committee would replace it with the Bankruptcy Code’s definition of “insider,” which includes any “person in control” of a corporate debtor.

The committee unanimously by voice vote approved the proposed amendments for final approval by the Judicial Conference.

Amendments for Final Approval Without Publication

OFFICIAL FORMS 9A-I and 21

Professor McKenzie noted that there are several variations of Official Form 9 (notice of a bankruptcy filing, meeting of creditors, and deadlines), based on the nature of the debtor and the chapter of the Bankruptcy Code under which a case is filed. Form 9 is directed at creditors, notifying them that a bankruptcy case has been filed and informing them of upcoming case events and what steps they need to take. The form includes identifying information about the debtor that allows recipients of the notice to determine whether they are in fact a creditor of the debtor. In the case of individual debtors, the identifying information includes the debtor's social security number.

Debtors are required to provide their social security numbers to the bankruptcy clerk on Official Form 21 (statement of social security number). That form is submitted separately and not included in the court's public electronic records. The social security number is revealed to creditors on their personal copies of Form 9 purely for identification purposes, but only a redacted version of Form 9 is included in the case file.

The Court Administration and Case Management Committee expressed concern that bankruptcy forms may be mistakenly filed with the courts in ways that publicly reveal debtors' private identifying information. In some cases, creditors may file a copy of their unredacted Form 9 with their proofs of claim without redacting the debtor's social security number. Debtors, moreover, may file Form 21 with other case papers, rather than submit it to the clerk separately.

Professor McKenzie explained that the advisory committee would add prominent warnings on both Form 9 and Form 21 alerting users that the forms should not be filed with the court in a way that makes them publicly available. He pointed out that the advisory committee had made two minor changes in the language of Form 21's warning after the agenda book had been distributed. A corrected version was circulated to the members.

Judge Wedoff reported that the Court Administration and Case Management Committee had suggested that the debtor's full social security number be eliminated entirely from the forms to prevent any problems of inadvertent disclosure. But, he said, the advisory committee was convinced that social security numbers are still needed for some creditors to be able to identify the debtors. The full number, for example, is essential for the Internal Revenue Service. He added, though, that the committee will revisit the matter if the situation changes in the future.

The committee unanimously by voice vote approved the proposed amendments for final approval by the Judicial Conference without publication.

OFFICIAL FORM 10

Professor McKenzie pointed out that the current version of Official Form 10 (proof of claim) contains a requirement at odds with FED. R. BANKR. P. 9010(c) (power of attorney). The form instructs an authorized agent of a creditor filing a proof of claim to attach to the claim a copy of its power of attorney, if any. Rule 9010(c) generally requires an agent to give evidence of its authority to act on behalf of a creditor in a bankruptcy case by providing a power of attorney. But it does not apply when an agent files a proof of claim. Therefore, Form 10 would be amended to delete the instruction to attach a power of attorney.

In addition, Form 10 would be amended to require additional documentation in certain cases. For claims based on an open-end or revolving consumer-credit agreement, the filer of the proof of claim will have to attach the information required by FED. R. BANKR. P. 3001(c)(3)(A) (proof of claim based on open-end or revolving consumer credit agreement), scheduled to take effect on December 1, 2012. If a claim is secured by the debtor's principal residence, the filer will have to attach the Mortgage Proof of Claim Attachment (Official Form 10, Attachment A), required as of December 1, 2011.

The committee unanimously by voice vote approved the proposed amendments for final approval by the Judicial Conference without publication.

Amendments for Publication

FED. R. BANKR. P. 1014(b)

Professor McKenzie explained that Rule 1014(b) (dismissal and change of venue) deals with the procedure when petitions involving the same debtor or related debtors are filed in different districts. The current rule specifies that, upon motion, the court in which the petition is filed first may determine the district or districts in which the cases will proceed. All other courts must stay proceedings in later-filed cases until the first court makes its venue determination, unless the first court orders otherwise. As a result, later cases are stayed by default while the venue question is pending before the first court.

The rule, he said, has been the subject of game playing because it allows an attorney who wants to stay all further proceedings to do so by filing a motion, or threatening to file a motion, in the first case. Therefore, the advisory committee proposal would change the default requirement to state that proceedings in later-filed cases are stayed only on express order of the first court. The change, he said, will prevent disruption of the other cases unless the judge in the first court determines affirmatively that a stay of a related case is needed while he or she makes the venue determination. In addition, the advisory committee made style changes in the rule.

The committee without objection by voice vote approved the proposed amendments for publication.

FED. R. BANKR. P. 7004(e)

Professor McKenzie reported that the proposed amendment to FED. R. BANKR. P. 7004(e) would reduce the amount of time that a summons remains valid after it is issued. Currently, a summons must be served within 14 days after issuance. The proposed amendment to Rule 7004(e) would reduce that time to seven days.

Under the civil rules, a defendant's time to respond to a summons and complaint (30 days) begins when the summons and complaint are actually served. Under the bankruptcy rules, however, the defendant's response time is calculated from the date that the summons is issued.

He noted that concern had been expressed that seven days may be too short a period to effect service. Nevertheless, he said, the advisory committee believed that the time is sufficient and will encourage prompt service after issuance of a summons. He added that bankruptcy service is relatively easy and may be effected anywhere in the United States by first-class mail. Moreover, the necessary paperwork is usually generated by computer.

He added that the bankruptcy system has a strong objective in favor of moving cases quickly. In addition, calculating the time for service from the date of issuance, rather than service, provides clarity because issuance is noted on the court's docket. Finally, he explained that the time for service had traditionally been 10 days in the bankruptcy rules, but was increased to 14 days as a result of the omnibus 2009 time-computation amendments.

The committee without objection by voice vote approved the proposed amendments for publication.

FED. R. BANKR. P. 7008, 7012(b), 7016, 9027, and 9033(a)

Professor McKenzie reported that the advisory committee was recommending publishing proposed amendments to five bankruptcy rules to deal with the recent Supreme Court decision in *Stern v. Marshall*, 564 U.S. ___, 131 S.Ct. 2594 (2011). In *Stern*, the Court held that a non-Article III bankruptcy judge could not enter final judgment on a debtor's state common-law counterclaim against a creditor who filed a proof of claim against the bankruptcy estate. Even though the governing statute, 28 U.S.C. § 157(b), specifies that the counterclaim is a "core proceeding" that a bankruptcy judge may hear and determine with finality, the Court held that it was unconstitutional for Congress to assign final adjudicatory authority over the matter to a bankruptcy judge.

Professor McKenzie noted that the Federal Rules of Bankruptcy Procedure incorporate the statutory distinction between “core” and “non-core” proceedings and recognize that a bankruptcy judge’s authority is much more limited in “non-core proceedings” than in “core proceedings.” Under the current rules, a party filing a motion has to state whether the proceeding is “core” or “non-core,” and a response must do the same.

Since *Stern*, however, a core proceeding under the statute may not be a “core proceeding” under the Constitution. Therefore, the advisory committee, he said, decided that it was necessary to remove the words “core” and “non-core” from the rules entirely.

Instead, the advisory committee would amend FED. R. BANKR. P. 7016 (pretrial procedures and formulating issues) to make clear that a bankruptcy judge must consider his or her authority to enter final orders and judgment in all adversary proceedings. The judge’s decision, moreover, will be informed by the statements of the parties as to whether they consent to the judge’s exercise of that authority. This broad approach, he said, will allow the law to continue to develop without having to change the rules again in the future.

Judge Wedoff reported that it is unclear since *Stern* whether a bankruptcy judge may enter a final judgment in a preference action or fraudulent conveyance action. He pointed out that under the proposed amendments, however, there will be no need to distinguish between core and non-core proceedings. Rather, the parties will only have to decide whether they consent to entry of final orders or judgment by the bankruptcy judge. The judge will then decide whether to: (1) hear and determine the proceeding; (2) hear it and issue proposed findings of fact and conclusions of law; or (3) take some other action.

A member commended the advisory committee for an elegant solution to a difficult problem. He suggested that the revised heading to revised Rule 9016 (“procedure”) may be too limited.

The committee without objection by voice vote approved the proposed amendments for publication.

FED. R. BANKR. P. 8001-8028

Judge Wedoff explained that the advisory committee’s thorough revision of Part VIII of the Federal Rules of Bankruptcy Procedure – the bankruptcy appellate rules – was the result of a multi-year project to bring the rules into closer alignment with the Federal Rules of Appellate Procedure, to make the rules simpler and clearer, and to recognize that bankruptcy documents today are normally filed, served, and transmitted electronically, rather than in paper form.

He thanked Professor Gibson, emphasizing that she deserved enormous credit for having coordinated the huge revision project. He noted that she had immersed herself in all the details of appellate practice, had conducted considerable research, and had drafted a great many documents for the committee. He also thanked James Wannamaker and Bridget Healy, attorneys in the Bankruptcy Judges Division of the Administrative Office, for their dedication and professional assistance to the project. In addition, he expressed the committee's appreciation to Professor Struve, Professor Kimble, and Mr. Spaniol for their incisive and important contributions to the project, often made on very short notice.

He and Professor Gibson proceeded to describe each Part VIII rule not previously presented to the Standing Committee (Rules 8013-8028) and some additional changes made in the rules presented at the January 2012 meeting (Rules 8001-8011).

Fed. R. Bankr. P. 8001

Professor Gibson reported that since the January 2012 Standing Committee meeting, the advisory committee had made two additional changes in Rule 8001 (scope of Part VIII, definition of "BAP," and method of transmitting documents). The draft rule presented in January had included a general definition of the term "appellate court" to mean either the district court or the bankruptcy appellate panel – the court in which the first-level bankruptcy appeal is pending or will be taken. It did not, though, include the court of appeals.

It was suggested at the last meeting that the term is misleading because "appellate court" in common parlance generally refers to the court of appeals. As a result, she said, the advisory committee had eliminated the general definition. Each of the revised rules now refers specifically to the district court or the "BAP." Despite the objections of the style consultants, she added, the advisory committee decided to use the universally recognized abbreviation for a bankruptcy appellate panel and to define BAP in Rule 8001(b).

She said that there was a need to highlight a strong presumption in the revised rule in favor of electronic transmission of documents. Accordingly, revised Rule 8001(c) states specifically that a document must be sent electronically under the Part VIII rules, unless: (1) it is being sent by or to a pro se individual; or (2) a local court's rule permits or requires mailing or other means of delivery. She added that the advisory committee was comfortable with using the term "transmitting."

Fed. R. Bankr. P. 8007

Professor Gibson stated that Rule 8007 (stay pending appeal, bonds, and suspension of proceedings) had been restyled and subheadings added. In addition, the

advisory committee corrected the omission of a reference to the court of appeals in subdivision (c).

A member pointed out that under proposed Rule 8007(b), the showing required for making a motion for relief in the appellate court deals with two situations: (1) where moving first in the bankruptcy court would be impracticable; and (2) where the bankruptcy court has already ruled. But, he said, the Federal Rules of Appellate Procedure cover a third possibility – where a motion was filed below but not ruled on.

Judge Wedoff agreed to revise Rule 8007(b)(2)(B) to require the moving party to state whether the bankruptcy court has ruled on the motion, and, if so, what the reasons were for the ruling.

Fed. R. Bankr. P. 8009

Professor Gibson noted that proposed Rule 8009 (record on appeal and sealed documents) was incorporated by reference in the proposed new FED. R. APP. P. 6(c), which will govern permissive direct appeals from a bankruptcy court to a court of appeals.

Fed. R. Bankr. P. 8010

Professor Gibson reported that the advisory committee had made several changes in Rule 8010 (completing and transmitting the record) since the January 2012 meeting after conferring with clerks of the bankruptcy courts, the clerk of a bankruptcy appellate panel, and Administrative Office staff. She noted that bankruptcy courts generally use recording devices to take the record. If a transcript of a proceeding is ordered, it is produced for the court from the electronic record, usually by a contract service provider.

The rule requires the “reporter” to prepare and file the transcript with the bankruptcy clerk, but there is some question as to the identity of the reporter when a recording device is used. The advisory committee, she said, decided that the “reporter” should be defined in Rule 8010(a) as the person or service that the bankruptcy court designates to transcribe the recording.

In addition, the rule requires reporters to file all documents with the bankruptcy clerk. In the Federal Rules of Appellate Procedure, by contrast, reporters file certain documents in the appellate court and others in the district court. The reporter in a bankruptcy case, though, may not know where an appeal is pending.

Fed. R. Bankr. P. 8011

Professor Gibson reported that a minor typographical error had been corrected in Rule 8011 (filing, service, and signature) since the last Standing Committee meeting.

With regard to proof of service, a member questioned whether affidavits of service still serve a useful purpose in light of the universal use of CM/ECF in the federal courts. He noted that service in virtually all his civil cases is accomplished through CM/ECF, and there is no need to make the parties file an affidavit of service. He suggested that the Advisory Committee on Civil Rules consider removing the requirement of a certificate of service in the future.

Fed. R. Bankr. P. 8013

Professor Gibson noted that proposed Rule 8013 (motions and intervention) would change current bankruptcy practice. Currently, a person filing a motion or response may file a separate brief. The new rule, however, would not permit briefs to be filed in support of or in response to motions. Instead, it adopts the practice in FED. R. APP. P. 27 (motions), requiring that legal arguments be included in the motion or response.

She reported that proposed FED. R. BANKR. P. 8013(g) is a new provision for the bankruptcy rules. It is also not included in the Federal Rules of Appellate Procedure. It will authorize motions for intervention in an appeal pending in a district court or bankruptcy appellate panel. The party seeking to intervene must state in its motion why it did not intervene below.

Fed. R. Bankr. P. 8014

Professor Gibson explained that Rule 8014 (briefs) largely tracks the Federal Rules of Appellate Procedure and incorporates the proposed amendment to FED. R. APP. P. 28(a)(6) (briefs), which combines the statements of the case and of the facts into a single statement. (See pages 5 and 6 of these minutes.) In a change from current bankruptcy practice, revised Rule 8014 follows the Federal Rules of Appellate Procedure and requires inclusion of a summary of argument in the briefs. New Rule 8014(f) adopts the provision of FED. R. APP. P. 28(j) regarding the submission of supplemental authorities. Unlike the appellate rule, the proposed Rule 8014(f) proposes a definite time limit of seven days for any response, unless the court orders otherwise.

She emphasized that the advisory committee was attempting to make the bankruptcy rules as similar as practicable to the Federal Rules of Appellate Procedure to make it easier for the bar to handle double appeals, *i.e.*, an appeal first to a district court or bankruptcy appellate panel, and then to the court of appeals.

Fed. R. Bankr. P. 8015

Professor Gibson noted that Rule 8015 (form and length of briefs, appendices, and other papers) was modeled on FED. R. APP. P. 32 (form and length of briefs, appendices, and other papers). The new bankruptcy rule adopts the provisions of the appellate rule governing the length of briefs, but not those prescribing the colors for brief covers. She added that the change is likely to attract comments during the publication period because new Rule 8015(a)(7) reduces the length of principal and reply briefs currently permitted in the bankruptcy rules. To achieve consistency with FED. R. APP. P. 32(a)(7), it reduces the page limits for a principal brief from 50 pages to 30, and those for a reply brief from 25 to 15.

Fed. R. Bankr. P. 8016

Professor Gibson reported that Rule 8016 (cross-appeals) was new to bankruptcy and modeled on FED. R. APP. P. 28.1 (cross-appeals). A member noted, though, that proposed Rule 8016(e) does not exactly parallel the appellate rule. Moreover, it does not include a provision, similar to that in Rule 8018(a), allowing a district court or bankruptcy appellate panel by local rule or order to modify the rule's time limits.

Judge Wedoff suggested that it would be possible to incorporate the Rule 8018 language on local court modifications into Rule 8016. He added that Rules 8016 and 8018 should be internally consistent, even though there may be some differences between them and the counterpart appellate rules. A participant recommended making both the bankruptcy and appellate rules internally consistent and consistent with each other. The same provisions should apply in both sets of rules.

Another participant recommended not including any provision in the bankruptcy rules allowing a local court to extend the time limits of the national rules. He suggested that it will only encourage extensions.

Fed. R. Bankr. P. 8017

Professor Gibson reported that Rule 8017 (amicus briefs) was new to bankruptcy and was derived from FED. R. APP. P. 29 (amicus briefs). She pointed out that proposed Rule 8017(a) would allow a bankruptcy court on its own motion to request an amicus brief.

Fed. R. Bankr. P. 8018

Professor Gibson reported that Rule 8018 (serving and filing briefs) would continue the existing bankruptcy practice that allows an appellee to file a separate appendix. It differs from FED. R. APP. P. 30 (appendix to briefs), which requires all the

parties to file a single appendix. Rule 8018(a) lengthens the period for filing initial briefs from the current 14 days to 30. Since requests for extensions of time are very common, she said, it just makes sense to increase the deadline to 30 days.

Fed. R. Bankr. P. 8019

Professor Gibson noted that proposed Rule 8019 (oral argument) tracks FED. R. APP. P. 34(a)(1) (oral argument) and is more detailed than the current bankruptcy rule. Rule 8019(a) would alter the existing bankruptcy rule by: (1) authorizing the court to require the parties to submit a statement about the need for oral argument; and (2) permitting a statement to explain why oral argument is not needed, rather than only why it should be allowed. Rule 8019(f) gives the court discretion, when the appellee fails to appear for oral argument, either to hear the appellant's argument or to postpone it.

Fed. R. Bankr. P. 8020

Professor Gibson reported that Rule 8020 (frivolous appeal and other misconduct) was derived from FED. R. APP. P. 38 (frivolous appeals, damages and costs) and FED. R. APP. P. 46(c) (attorney discipline). It applies to misconduct both by parties and attorneys.

Fed. R. Bankr. P. 8021

Professor Gibson noted that Rule 8021 (costs) would continue the existing bankruptcy practice that gives the bankruptcy clerk the entire responsibility for taxing costs on appeal. The practice under FED. R. APP. P. 39 (costs), on the other hand, involves both the court of appeals and the district court in taxing costs.

Rule 8021(b) was added to govern costs assessed against the United States. Derived from FED. R. APP. P. 39(b), it is not included in the current bankruptcy rules.

Fed. R. Bankr. P. 8022

Professor Gibson reported that Rule 8022 (motion for rehearing) would continue the current bankruptcy practice of requiring that a motion for rehearing be filed within 14 days after entry of judgment on appeal. It differs from FED. R. APP. P. 40(a)(1) (time to file a petition for rehearing), which gives parties 45 days to file a rehearing motion in any civil case in which the United States is a party. She added that the Department of Justice reported that it had no problem with the rule.

Fed. R. Bankr. P. 8023

Professor Gibson reported that proposed Rule 8023 (voluntary dismissal) deviates from both the existing bankruptcy rule and the Federal Rules of Appellate Procedure. It would provide for a voluntary dismissal only after an appeal is pending in the district court or bankruptcy appellate panel. Under the current rules, a case on appeal from a bankruptcy judge is not docketed in the district court or bankruptcy appellate panel until the record is transmitted, and an appeal may be voluntarily dismissed in the bankruptcy court prior to the docketing of the appeal. But under new Rules 8003 and 8004, the appeal will be docketed immediately after the notice of appeal is filed. The notice, moreover, will normally be transmitted electronically to the district court or bankruptcy appellate panel. The advisory committee, she said, concluded that it is very unlikely that an appeal will be voluntarily dismissed before it is docketed.

Fed. R. Bankr. P. 8024

Professor Gibson reported that Rule 8024 (clerk's duties on disposition of an appeal) contained virtually no changes, other than stylistic, from the current bankruptcy rule.

Fed. R. Bankr. P. 8025

Professor Gibson reported that Rule 8025 (stay of a district court or BAP judgment) contained only stylistic changes from the existing bankruptcy rule. She pointed out, though, that subdivision (c) was new. It specifies that if the district court or bankruptcy appellate panel affirms a bankruptcy court ruling and the appellate judgment is stayed, the bankruptcy court's order, judgment, or decree will be automatically stayed to the same extent as the stay of the appellate judgment.

Fed. R. Bankr. P. 8026

Professor Gibson reported that Rule 8026 (rules by circuit councils and district courts, and procedure when there is no controlling law) contained only stylistic changes from the current bankruptcy rule.

Fed. R. Bankr. P. 8027

Professor Gibson reported that Rule 8027 (notice of mediation procedure) was a new rule with no counterpart in the Federal Rules of Appellate Procedure. It provides that if a district court or bankruptcy appellate panel has a mediation procedure applicable to bankruptcy appeals, the clerk of the district court or the panel must notify the parties

promptly after the appeal is docketed whether the mediation procedure applies, what its requirements are, and how it affects the time for filing briefs in the appeal.

Fed. R. Bankr. P. 8028

Professor Gibson explained that Rule 8028 (suspension of rules in Part VIII) was derived from current FED. R. BANKR. P. 8019 (suspension of rules in Part VIII) and FED. R. APP. P. 2 (suspension of rules). It authorizes a district court, bankruptcy appellate panel, or court of appeals to suspend the requirements or provisions of the Part VIII rules, except for certain enumerated rules. The new rule expands the current list of rules that may not be suspended.

Professor Gibson reported that the current FED. R. BANKR. P. 8013 (disposition of appeal and weight accorded fact findings) would be eliminated. The first part of that rule specifies what a district court or bankruptcy appellate panel may do on an appeal, *i.e.*, affirm, modify, reverse, or remand. She noted that there is no similar provision in the Federal Rules of Appellate Procedure. The second part of the current rule specifies the weight that must be given to a bankruptcy judge's findings of fact. She explained that the provision is not needed because it is already covered by FED. R. CIV. P. 52 (findings and conclusions) and incorporated by FED. R. BANKR. P. 7052 (findings by the court).

The committee without objection by voice vote approved the proposed amendments for publication.

FED. R. BANKR. P. 9023 and 9024

Judge Wedoff explained that FED. R. BANKR. P. 9023 (new trials and amendment of judgments) and FED. R. BANKR. P. 9024 (relief from a judgment or order) would be amended to add a cross-reference in each rule to the procedure set forth in proposed new Rule 8008, governing indicative rulings.

The committee without objection by voice vote approved the proposed amendments for publication.

MODERNIZATION OF THE OFFICIAL FORMS

Judge Wedoff explained that the bankruptcy process is driven in large measure by forms. Several of the current forms, however, are difficult to complete, especially for people unfamiliar with the bankruptcy system. In addition, the forms take little cognizance of electronic filing in the bankruptcy courts.

He explained that forms modernization has been a major, multi-year project of the advisory committee, working under the leadership of Judge Elizabeth L. Perris and in

close coordination with the Administrative Office and the Federal Judicial Center. The major goals of the project have been: (1) to improve the quality and clarity of the forms in order to elicit more complete and accurate information from debtors and creditors; and (2) to enhance the interface between the forms and modern technology, especially the “next generation” of CM/ECF currently under development.

He said that the advisory committee and the forms-project team had reached out extensively to users of the bankruptcy system to seek their input in redesign and testing of the forms. In addition, the committee had made an important policy decision at the outset to separate the forms used by individual debtors from those used by entities other than individuals.

He explained that the first nine forms, now presented for authority to publish, are a subset of the larger package of individual forms filed by debtors at the beginning of a case. He emphasized that the forms used by individuals need to be less technical in language because individuals are generally less sophisticated than other entities and may not have the assistance of experienced bankruptcy counsel. As a result, he said, the revised individual forms are written in more conversational language, have a more approachable format, and contain substantially more instructions.

OFFICIAL FORMS 3A AND 3B

Judge Wedoff explained that debtors who cannot pay the filing fee have two options – either to ask the court for permission to pay the fee in installments (Form 3A) or to waive the fee (Form 3B). The latter option is available only to individuals whose combined family monthly income is less than 150% of the official poverty guideline last published by the Department of Health and Human Services.

In addition to major stylistic and formatting changes common to all the new forms, three minor substantive changes were made in Form 3B. First, the opening question asks for the size of the debtor’s family, as listed on Schedule J. That information is currently required on Schedule I. Second, the income portion of the form was changed to specify that non-cash governmental assistance, such as food stamps or housing subsidies, will not count against the debtor as income in determining eligibility for a fee waiver. The information, though, will continue to be reported for purposes of determining the debtor’s ability to pay the filing fee. Third, the new form eliminates the declaration and signature section for non-attorney bankruptcy petition preparers because the same declaration is already required on Official Form 19.

The committee without objection by voice vote approved the proposed forms for publication.

OFFICIAL FORMS 6I and 6J

Judge Wedoff noted that some substantive changes had been made on Forms 6I (statement of the debtor's income) and 6J (statement of the debtor's expenses) to elicit more accurate and useful information from individual debtors. First, the debtor will have to provide more information on Forms 6I and 6J about non-traditional living arrangements, such as living with an unmarried partner or living and sharing expenses in a household with non-relatives. Form 6I asks for all financial contributions to the household. Second, Form 6J asks for separate information on dependents who live with the debtor, dependents who live separately, and other members of the household. Third, in Chapter 13 cases, Form 6J asks for the debtor's expenses at two different points in time – when the debtor files the bankruptcy petition and when the proposed Chapter 13 plan is confirmed. Fourth, a line has been added to the form setting out a calculation of the debtor's monthly net income.

The committee without objection by voice vote approved the proposed forms for publication.

OFFICIAL FORMS 22A-1, 22A-2, 22B, 22C-1, and 22C-2

Judge Wedoff explained that Form 22, commonly referred to as the “means test” form, has five variations. It is used to determine a debtor's “current monthly income” under 11 U.S.C. § 101(10A) and, in Chapter 7 and Chapter 13 cases, to determine the debtor's income remaining after deducting certain specified expenses.

In Chapter 7 cases, the form is used to assess whether the debtor qualifies under the statute to file a petition under Chapter 7. In Chapter 13, cases, it determines how much the debtor is able to pay under the plan. Other than stylistic changes, no changes were made in the form's Chapter 11 version (Form 22B). But four changes would be made in the Chapter 7 and Chapter 13 versions.

First, the advisory committee separated both the Chapter 7 and Chapter 13 forms into two distinct forms each because debtors with income below the median of their state do not have to list their expenses. As a result, the vast majority of debtors will only have to fill out the income portion. Thus, all debtors will complete an income form (Form 22A-1 or 22C-1), but only some will have to file the expense form (Form 22A-2 or 22C-2).

Second, the revised forms modify the deduction for cell phone and internet expenses to reflect more accurately the Internal Revenue Service allowances incorporated by the Bankruptcy Code.

Third, line 60 on the current Chapter 13 form (Form 22C) will not be included in the new chapter 13 expense form (Form 22C-2) because it is rarely used. It allows

debtors to list, but not deduct from income, “other necessary expense” items not included within the categories specified by IRS.

Fourth, Form 22C-2 reflects the Supreme Court’s decision in *Hamilton v. Lanning*, 560 U.S. ___, 130 S. Ct. 2464 (2010). *Lanning* requires taking a “forward-looking approach” in calculating a Chapter 13 debtor’s projected disposable income by considering changes in income or expenses that have occurred or are virtually certain to occur by the time the plan is confirmed. The changes may either increase or decrease the debtor’s disposable income. Part 3 of Form 22C-2 will require the debtor to report those changes.

The committee without objection by voice vote approved the proposed forms for publication.

Information Items

FED. R. BANKR. P. 3007(a)

Judge Wedoff reported that proposed amendments to FED. R. BANKR. P. 3007(a) (objections to claims), published in August 2011, would have specified the time and manner of serving objections to claims. The rule currently requires that notice of an objection be provided at least 30 days “prior to the hearing” on the objection. The proposal would have authorized a negative notice procedure – requiring notice of an objection to be made at least 30 days before “any scheduled hearing on the objection or any deadline for the claimant to request a hearing.”

He noted that at its March 2012 meeting, the advisory committee decided to withdraw the proposed amendments temporarily and consider them as part of its project to draft a national Chapter 13 form plan.

OFFICIAL FORM 6C

Judge Wedoff reported that the advisory committee had decided not to proceed with amending Form 6C (property claimed as exempt) by adding a box to give debtors the option of declaring that the value of property claimed as exempt is the “full fair market value of the exempted property.” The amendment, published in August 2011, was intended to reflect the Supreme Court’s decision in *Schwab v. Reilly*, 560 U.S. ___, 130 S. Ct. 2652 (2010).

He said that representatives of the Chapter 7 and Chapter 13 trustee associations had objected to the change on the grounds that it would encourage debtors to claim the full market value of property even when the exemption is capped by statute at a specific dollar amount. They predicted that the revision would lead to gamesmanship and a

“plethora of objections.” On the other hand, supporters of the amendment, including representatives of the consumer bankruptcy attorneys’ association, disputed the prediction. They argued that it was consistent with *Schwab* and would be beneficial to debtors.

Judge Wedoff reported that the advisory committee decided not to proceed with the amendment because: (1) it is unnecessary since debtors already incorporate the *Schwab* language into the existing form; and (2) courts are divided on whether it is always improper for a debtor to claim as exempt the full fair market value of property when the exemption is capped at a specific dollar amount. The advisory committee decided, therefore, that any amendment to the form should await further case law development. It might also be considered as part of the forms modernization project.

OFFICIAL FORMS 22A AND 22C

Judge Wedoff reported that the advisory committee had decided to defer final approval of proposed amendments to Forms 22A and 22C (the means test forms) that would have: (1) reflected changes in the IRS standards on telecommunication expenses; and (2) changed the Chapter 13 version of the form to respond to the Supreme Court’s decision in *Hamilton v. Lanning*, 560 U.S. ___, 130 S. Ct. 2464 (2010).

He said that it would be better to avoid having the proposed amendments take effect in 2012, only to have substantially reformatted versions of the same forms take effect in 2013 as part of the forms modernization project. The proposed amendments, he added, had been incorporated into the first set of modernized forms to be published for comment in August 2012. (See pages 22-24 of these minutes.)

OFFICIAL FORM FOR CHAPTER 13 PLAN AND RELATED RULE AMENDMENTS

Judge Wedoff explained that the advisory committee was working on drafting a national form for Chapter 13 plans. He pointed out that a wide variety of local forms and model plans are currently used in the bankruptcy courts. They impose different requirements and distinctive features from district to district. The lack of a national form, he said, makes it difficult for lawyers who practice in several districts, and it adds transactional costs that are passed on to debtors.

He reported that a recent survey of the bankruptcy bench had established that a majority of chief bankruptcy judges support developing a national form plan. Therefore, he said, the advisory committee had established a working group that expects to have a draft ready soon for informal circulation and comment. He added that it became apparent during the course of the group’s work that the effectiveness of a national form plan will

depend on making some simultaneous amendments to the bankruptcy rules to harmonize practice among the courts and clarify certain procedures.

MINI-CONFERENCE ON NEW MORTGAGE FORMS

Judge Wedoff reported that the advisory committee will hold a mini-conference in conjunction with its September 2012 meeting to discuss the effectiveness of the new mortgage-information disclosure forms that took effect on December 1, 2011.

ELECTRONIC SIGNATURES

Judge Wedoff noted that the advisory committee was considering the use of electronic signatures as part of its forms modernization project. In particular, it was focusing on whether, and under what circumstances, bankruptcy courts should accept for filing documents signed electronically without also requiring retention of a paper copy with an original signature. If retention of an original signature is required, moreover, who should maintain it? He noted that the committee was exploring a range of options and contemporary practices.

FORMS MODERNIZATION PROJECT

Judge Wedoff reported that the forms modernization project had nearly completed its work on all the individual-debtor forms and had begun its work on revising the non-individual forms.

REPORT OF THE ADVISORY COMMITTEE ON CIVIL RULES

Judge Campbell and Professor Cooper presented the report of the advisory committee, as set forth in Judge Campbell's memorandum and attachments of May 8, 2012 (Agenda Item 4).

Amendments for Final Approval

FED. R. CIV. P. 45 and 37

Judge Campbell reported that the advisory committee had undertaken a multi-year project to revise Rule 45 (subpoenas) by simplifying the rule and addressing several problems brought to its attention. He noted that during the course of its study, the advisory committee came to appreciate that Rule 45 is an important workhorse in civil litigation that governs virtually all discovery involving non-parties and accomplishes several other important procedural purposes.

After reviewing the pertinent literature on the rule and canvassing the bar, the committee developed a list of 17 concerns that might potentially be addressed through rule amendments. The list was eventually boiled down to four proposed changes: (1) simplification of the rule; (2) transfer of subpoena-related motions; (3) trial subpoenas for distant parties and party witnesses; and (4) notice of service of documents-only subpoenas. A revised rule incorporating those changes was published for public comment in August 2011, and some minor modifications were made after publication. The revised rule, he said, was now ready for final approval by the Judicial Conference.

1. Simplification of the rule

He noted that the first category of proposed changes would simplify an overly complex rule. As Rule 45 is now written, he explained, a lawyer has to look in three different parts of the rule to determine where a subpoena may be issued, where it may be served, and where performance may be required.

First, Rule 45(a)(2) specifies which court may issue a subpoena. It may be a different court for trial, for deposition discovery, or for document discovery. Second, Rule 45(b)(2) specifies four different possibilities for the place where a subpoena may be served. It may be within the district, outside the district but within 100 miles of the place of compliance, anywhere in the state where the district sits if state law permits, or anywhere in the United States if federal law authorizes it. Third, Rule 45(c) imposes limits on the place of enforcement. A non-party, for example, cannot be required to travel more than 100 miles to comply with a subpoena, except to attend a trial. In that case, attendance may be anywhere in the state if the person does not have to incur “substantial expense” to travel. He said that it was the experience of all the judges on the advisory committee that even good lawyers get the various provisions of the rule wrong from time to time.

The advisory committee’s proposed simplification addresses those problems and should eliminate most of the confusion. First, revised Rule 45(a)(2) specifies that the court that issues a subpoena is the court that presides over the case. There are no other possibilities. Second, Rule 45(b)(2) specifies that a subpoena may be served at any place in the United States. Third, Rule 45(c)(3) specifies where performance may be required. Essentially, it preserves the performance requirements of the current rule, but eliminates its reference to state law.

There is, he said, precedent in the rules for authorizing nationwide service. Rule 45(b)(2)(D), he noted, currently authorizes service in another state if there is a federal statute that authorizes it. In addition, the Federal Rules of Criminal Procedure authorize nationwide service (FED. R. CRIM. P. 17)(e)).

Professor Marcus said that the public comments on simplification of the rule were very favorable, and some offered suggestions for additional clarification. As a result, the

committee made some changes in the committee note, dealing with depositions of party witnesses and subpoenas for remote testimony. In essence, though, the changes made after publication were very minor.

Professor Marcus pointed out that under the committee's proposal, as published, Rule 45(c)(2) would have left it essentially to the parties to designate the place for production of Rule 34 discovery materials. It provided that a subpoena could command production "at a place reasonably convenient for the person who is commanded to produce." But, he explained, that simplification did not work and could lead to mischief. Accordingly, the committee revised Rule 45(c)(2) to specify that a subpoena may command production "at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person." That formulation essentially preserves the current arrangements, but states them more clearly.

2. Transfer of subpoena-related motions

Judge Campbell explained that the modified rule, like the current rule, specifies that a party receiving a subpoena typically has to litigate the enforceability of the subpoena in the court in the district where the performance is required. The producing party, thus, enjoys the convenience of having its dispute handled locally and does not have to travel to a different part of the country to litigate.

Rule 45, however, does not currently allow the court where production is required to transfer a dispute back to the court having jurisdiction over the case. Yet, there are certain situations in which the court in the district of performance should be allowed to refer a dispute to the judge presiding over the case. There is, he said, a split in the case law on the matter, and some courts in fact transfer disputes. The current rule, though, does not authorize the practice expressly.

The proposed new Rule 45(f) would resolve the matter and explicitly allow certain disputes to be resolved by the judge presiding over the case. It would allow the local court to transfer the case either on the consent of the person subject to the subpoena or if the court finds "exceptional circumstances." He reported that some public comments questioned whether exceptional circumstances was the appropriate standard for authorizing a transfer, but the advisory committee ultimately concluded unanimously that it was.

The proposed amendment to FED. R. CIV. P. 37 (failure to make disclosures or cooperate in discovery) would conform that rule to the proposed amendments to Rule 45(f). A new second sentence in Rule 37(b)(1) deals with contempt of orders entered after a transfer. It provides that failure to comply with a transferee court's deposition-related order may be treated as contempt of either the court where the discovery is taken or the court where the action is pending..

Professor Marcus pointed out that the August 2011 publication had highlighted the new transfer provision and expressly invited comment on two questions: (1) whether consent of the parties should be required in addition to consent by the person served with the subpoena; and (2) whether “exceptional circumstances” should be the standard for transfer if the non-party does not consent. Considerable public comment argued that it was inappropriate to require party consent. As long as the recipient of the subpoenas consents to the transfer, the parties should have no veto over the matter. The advisory committee, he said, revised the rule to remove the party-consent feature.

With regard to the appropriate standard for authorizing a transfer in the absence of consent, considerable public support was voiced for a more flexible, less demanding standard. But formulating an appropriate lesser standard, while still protecting the primary interests of the producing party, had been very challenging. The advisory committee and its discovery subcommittee discussed the matter at considerable length and decided to retain the exceptional circumstances standard, but add some clarifying language to the committee note. The note was recast to state that if the local non-party served with a subpoena does not consent to a transfer, the court’s prime concern should be to avoid imposing burdens on that person. In some circumstances, though, a transfer may be warranted to avoid disrupting the issuing court’s management of the underlying litigation. In short, transfer is appropriate only if those case-management interests outweigh the interests of the producing party in obtaining local resolution of the dispute.

A member praised the work of the advisory committee and said that the proposed changes were long overdue. He noted that few rules of procedure are used more often, yet are harder to work with, than Rule 45. Nevertheless, he said, the “exceptional circumstances” standard may be too high. It may underestimate the needs of a judge presiding over a big, hotly disputed civil case to have flexibility in controlling the case. It may also underestimate how easy it is today to conduct hearings and resolve disputes by telephone or video-conference. He noted that when subpoena disputes arise, it is common for the judge in the district of compliance to call the judge having jurisdiction over the underlying case to discuss the matter.

In addition, he said, the language in the committee note stating that transfers should be “truly rare” events is much too restrictive. It tells judges, in essence, that transfers should almost never occur. He added that a more generous standard is warranted, and “good cause” should be considered as a substitute. He recommended combining a good cause standard with an appropriate explanation in the committee note to give judges the flexibility they need to decide what is best in each case.

Judge Campbell explained that some public comments had suggested a good cause standard, and the advisory committee considered them carefully. But it ultimately concluded that it had to err in favor of protecting third parties who receive subpoenas and

sparing them from assuming undue burdens and hiring counsel in other parts of the country. The exceptional circumstances standard, he said, will afford them more protection than the good cause standard.

He said that the committee was concerned that if the rule were to contain a “good cause” standard, many busy district judges faced with subpoena disputes in out-of-district cases would be readily inclined to transfer them routinely to the issuing court. The rule, he said, should make those busy district judges pause and carefully balance the reasons for a transfer against the burdens imposed on the subject of the subpoena. In essence, he explained, the committee concluded that it was essential to have a higher threshold than mere good cause.

Professor Marcus added that it is very difficult to achieve just the right balance in the rule. It is, he said, particularly difficult to draft a standard that falls somewhere between “exceptional circumstances,” which is very difficult to satisfy, and “good cause,” which is quite easy to satisfy. He added that the comments from the ABA Section on Litigation were very supportive of retaining the exceptional circumstances standard in order to protect non-party witnesses.

A member argued in favor of retaining the exceptional circumstances standard, and emphasized that it was important to resolve the current conflict in the law and explicitly authorize transfers in appropriate, limited circumstances. She added that the rule should be designed for the average civil case, not the exceptional case. The great majority of subpoena disputes, she said, involve local issues and should be resolved locally. As a practical matter, a good cause standard would lead to excessive transfers.

A participant spoke in favor of the good cause standard, but recommended that if the exceptional circumstances standard were retained, the committee note should be toned down and revised to eliminate the current language stating that transfers should be “truly rare.” In addition, it would be useful to refer in the note to the difference between the average case with a local third party and complex litigation in which the lawyers hotly dispute every aspect of a case, including the subpoenas. He added that not all subpoenaed persons are in fact uninvolved, uninterested third parties. Often, the subpoenaed person, although not a party to the case, may well have a direct financial interest in the litigation.

A member agreed that the word “truly” should be eliminated from the note, but supported the advisory committee’s decision to retain the exceptional circumstances standard. A member recommended resolving the matter by eliminating the second sentence in the third paragraph of the portion of the committee note dealing with Rule 45(f). As revised, it would read: “In the absence of consent, the court may transfer in exceptional circumstances, and the proponent of transfer bears the burden of showing that such circumstances are presented.”

A member expressed concern about the language added to the committee note after publication regarding the issuance of subpoenas to require testimony from a remote location. He suggested that the committee should consider amending Rule 45(c)(1) itself to clarify that it applies both to attendance at trial and testimony by contemporary transmission from a different location under Rule 43(a).

3. Trial subpoenas for distant parties and party officers

Judge Campbell explained that the third change in the rule resolves the split in the case law in the wake of *In re Vioxx Products Liability Litigation*, 438 F. Supp. 2d 664 (E.D. La. 2006). The district court in that case read Rule 45 as permitting a subpoena to compel a party officer to testify at a trial at a distant location. Other courts, though, have ruled that parties cannot be compelled to travel long distances from outside the state to attend trial because they have not been served with subpoenas within the state, as required by Rule 45(b)(2).

The advisory committee, he said, was of the view that *Vioxx* misread Rule 45, in part because the current rule is overly complex. The proposed amendments, he said, would overrule the *Vioxx* line of cases and confirm that party officers can only be compelled to testify at trial within the geographical limits that apply to all witnesses. He noted that the committee had highlighted the matter when it published the rule by including in the publication an alternative draft text that would have codified the *Vioxx* approach.

The public comments, he said, were split, with no consensus emerging for either position. The advisory committee decided ultimately that it should not change the original intent of a rule that has worked well for decades. Professor Marcus added that the committee's concern was that if the rule were amended to codify *Vioxx*, subpoenas could be used to exert undue pressures on a party and its officers. Moreover, there are alternate ways of dealing with the problems of obtaining testimony from party witnesses, including the use of remote testimony under Rule 43(a).

4. Notice of service of documents-only subpoenas

Judge Campbell explained that the current Rule 45 requires parties to notice other parties that they are serving a subpoena. But the provision is hidden as the last sentence of Rule 45(b)(1), and many lawyers are unaware of it. The advisory committee proposal, he said, relocates the provision to a more prominent place as a separate new paragraph 45(a)(4), entitled "notice to other parties before service." In addition, the revised rule requires that a copy of the subpoena be attached to the notice.

Judge Campbell said that the advisory committee realized that many other reasonable notice provisions might have been added to the rule. For example, it could have required that: notice be given a specific number of days in advance of service of the subpoena; additional notice be given if the subpoena is modified by agreement; notice be given when documents are received; and copies of documents be provided by the receiving party to the other parties in the litigation. The rule could also have specified the sanctions for non-compliance with the notice requirements.

The advisory committee, however, concluded that those provisions, though sensible, should not be included because the primary purpose of the amendments is to get parties to give notice of subpoenas. Just accomplishing that objective should resolve most of the current problems. The remaining issues can generally be worked out if lawyers are left to their own devices to consult with opposing counsel to obtain copies of whatever documents they need. The committee, he said, was concerned about the length and complexity of the current rule and did not want to add to that length and complexity by dictating additional details. He added, though, that the committee could return to the rule in the future if problems persist.

Professor Marcus said that many competing suggestions had been received for additional provisions. He added that, at the urging of the Department of Justice, the committee had made a change in the rule following publication to restore the words “before trial” to the notice provision. It also added in Rule 45(c)(4) the word “pretrial” before “inspection of premises.”

Judge Campbell noted that the advisory committee had considered whether the time limit in current Rule 45(c) for serving objections to subpoenas was too short, but decided not to change it. He added that the matter rarely results in litigation, as courts allow extensions of time when appropriate. He agreed to a member’s suggestion that language in lines 43 and 44 of the committee note be deleted. It had suggested that parties may ask that additional notice requirements be included in a court’s scheduling order.

The committee unanimously by voice vote approved the proposed amendments for final approval by the Judicial Conference.

Information Items

PRESERVATION AND SPOILIATION

Judge Campbell reported that one of the panels at the committee’s 2010 Duke Law School conference had urged the committee to approve a detailed civil rule specifying when an obligation to preserve information for litigation is triggered, the scope of that obligation, the number of custodians who should preserve information, and

the sanctions to be imposed for various levels of culpability. After the conference, Judge Kravitz, then chair of the advisory committee, tasked the committee's discovery subcommittee with following up on the recommendations.

The subcommittee began its work in September 2010 by asking the Federal Judicial Center to study the frequency and nature of sanctions litigation in the district courts. The Center's research found that litigation is rare, as only 209 spoliation motions had been filed in more than 130,000 civil cases studied, only about half of which involved electronic discovery. The subcommittee also studied a large number of federal and state laws that impose various preservation obligations.

The subcommittee, he said, then drafted three possible rules to address preservation. The first was a very detailed rule that provided specific directives and attempted to prescribe which events trigger a duty to preserve, what the scope of the preservation duty is, and what sanctions may be imposed for a failure to preserve. The committee, however, found it exceedingly difficult to draft a detailed rule that could be applied across all the broad variety of potential cases and give any meaningful certainty to the parties.

The second rule also addressed the triggering events for preservation, the scope of retention obligations, and sanctions for violations, but it did so in a much more general way. Essentially it provided broad directions to behave reasonably and preserve information in reasonable anticipation of litigation.

The third rule focused just on sanctions under Rule 37 in order to promote national uniformity and constraint in imposing sanctions. Currently, there is substantial dispute among the circuits on what level of culpability gives rise to sanctions for failure to preserve. The prevailing standards now range from mere negligence to wilfulness or bad faith.

The third rule specified that a court may order curative or remedial measures without finding culpability. Imposition of sanctions of the kind listed in Rule 37(b), on the other hand, would require wilfulness or bad faith. The proposed rule identified the factors that a court should consider in assessing the need for sanctions. Those factors, moreover, should also provide helpful guidance to parties at the time they are considering their preservation decisions.

Judge Campbell said that the three draft rules had been discussed with about 25 very knowledgeable people at the committee's September 2011 mini-conference in Dallas. A wide range of views was expressed, but no consensus emerged. Many written comments were received by the committee and posted on the judiciary's website. They embrace a full range of proposals. Some groups argued that there is an urgent need for a very detailed rule on preservation and spoliation with bright-line standards. One, for

example, suggested that a duty to preserve should only be triggered by the actual commencement of litigation. Others contended that no rule is needed at all, as the common law should continue its development. The Department of Justice, he said, took the position that it is premature to write a rule on these subjects.

The subject area, he said, continues to be very dynamic. In April 2012, the RAND Corporation completed a study of large corporations, documenting that they spend millions of dollars in trying to comply with preservation obligations. About 73% of the costs are spent on lawyers reviewing materials and 27% on the preservation of information itself. A recent in-house study by the Department of Justice generally corroborated the conclusion of the Federal Judicial Center that spoliation disputes in court are rare. Another recent study, by Professor William Hubbard, found that the problem arises only in a small percentage of cases, but when it does it can be extraordinarily expensive.

Judge Campbell pointed out that the Seventh Circuit was conducting a pilot program on electronic discovery and preservation that emphasizes the need for the parties to cooperate and discuss preservation early in the litigation. The pilot, he said, was entering its third phase and producing a good deal of helpful information. The Southern District of New York recently launched a complex-case pilot program that also includes preservation as an element. The Federal Circuit promulgated clear guidelines on discovery of electronically stored information and has placed some important limits on discovery in patent cases. A Sedona Conference working group has been working for months on a consensus rule for the committee's consideration. The group, he noted, had not yet reached consensus on potential rule amendments. Finally, he said, the case law continues to evolve, as trial judges are taking imaginative steps to deal with preservation problems and restrain unnecessary costs.

Judge Campbell reported that the advisory committee was still leaning towards a sanctions-only rule, rather than a rule that tries to define trigger and scope. Nevertheless, the subcommittee was still absorbing and discussing the many sources of information coming before it. He suggested that the subcommittee may have a more concrete draft available for the advisory committee's consideration at its November 2012 meeting.

He noted that the advisory committee was aware that some are frustrated with the pace of the project. But, he said, the delay in producing a rule has not been for lack of effort. Rather, the issues are particularly difficult, and the views expressed to the subcommittee have been very far apart. He noted that even if the committee were to approve a rule at its next meeting, it could not take effect before December 2015.

He reported that in December 2011, the House Judiciary Subcommittee on the Constitution had held a hearing on the costs and burdens of civil discovery. The proceedings included substantial discussion on electronic discovery issues. The basic

message from the majority was that preservation obligations and electronic discovery cost corporations substantial money and are a drain on innovation and jobs. He pointed out that the witnesses testified that the federal rules process works well, and the rules committees should continue their efforts to solve the current problems. After the hearings, the subcommittee chair wrote a letter urging the advisory committee to approve a strong rule. The subcommittee minority, though, followed with a letter asking the committee to proceed slowly and let the common law work its course.

Professor Marcus pointed out that the advisory committee had not resolved two critical policy questions and invited input on them from the members. First, he said, a decision must be made on whether a new rule should be confined just to electronic discovery or apply to all discoverable information. Second, in light of the strikingly divergent views expressed to the committee on the subject, a basic decision must be made on how urgently a new rule is needed and how aggressive it should be.

A member argued that national uniformity is very important because preservation practices and litigation holds cost parties a great deal of money. The precise contents of the new rule may not be clear at this point, but the advisory committee should continue to proceed deliberately and carefully study the various pilot projects underway in the courts. Eventually, however, it needs to produce a national rule. A participant added that the primary risk of moving too slowly is that courts will develop their own local rules and become attached to them, making it more difficult to impose a uniform national rule.

A participant pointed out that efforts have been made, without much result so far, to prod the corporate community into developing a series of best practices to deal with preservation of information. Corporations, he said, need to balance their legitimate need to get rid of information in the normal course of business against the competing need to preserve certain information in anticipation of eventual litigation. There is, he said, reluctance on the part of corporate management even to consider the matter, but there may be some movement in that direction in the future.

He suggested that a sanctions-only rule is appropriate. It would also be desirable, he said, to include a more emphatic emphasis in Rules 16 and 26 on getting the parties and the judge to address preservation obligations more directly at the outset of a case.

A member expressed great appreciation for the advisory committee's work and agreed with its inclination to pursue a narrow rule that focuses just on Rule 37 sanctions. He emphasized that the Rules Enabling Act restricts the rules committees' authority to matters of procedure only. Preservation duties, though, generally go beyond procedure and simply cannot be fixed by a rule.

Moreover, he said, the committee cannot the preservation problems because most litigation is conducted in the state courts, not the federal courts. He suggested that the

more the committee sticks to procedure and avoids matters of substantive conduct, the more likely the states will follow its lead. A member added that there is an important opportunity for the committee to achieve greater national uniformity by working with the state courts. If the committee produces a good rule, he said, effective complementary state-court rules could be promoted with the support and encouragement of the Conference of Chief Justices.

DUKE CONFERENCE SUBCOMMITTEE

Judge Campbell pointed out that it is difficult to speak about preservation without considering more broadly what information should be permitted in the discovery process, especially electronically stored information. He reported that the advisory committee had established a separate subcommittee, chaired by Judge John G. Koeltl, to evaluate the many helpful ideas for discovery reform raised at the Duke conference and to recommend which should be proposed as rule amendments. Eventually, he said, the advisory committee will marry the work of the Duke Conference subcommittee with that of the discovery subcommittee on spoliation because the two are closely related.

He reported that Professor Cooper had produced very helpful and thought-provoking drafts of several potential rule amendments to implement the Duke recommendations. The proposals, he explained, can be categorized as falling into three sets of proposed changes.

The first set of proposals was designed to promote early and active case management. They include: reducing the time for service of a complaint from 120 days to 60; reducing the time for holding a scheduling conference from 120 days to 60 or 45; requiring judges to actually hold a scheduling conference in person or by telephone; no longer allowing local court rules to exempt cases from the initial case-management requirements; requiring parties to hold a conference with the court before filing discovery motions; and allowing written discovery to be sought before the Rule 26(f) conference is held, but providing that requests do not have to be answered until after the case-management conference. The latter provision would let the parties know what discovery is contemplated when they meet with the judge to discuss a discovery schedule. Those and other ideas were designed to get the courts more actively involved in the management of cases and at an earlier stage.

Judge Campbell noted that the second category of possible changes was designed to curtail the discovery process and make it more efficient. One set of proposals would take the concept of proportionality and move it into Rule 26(b)(1)'s definition of discoverable information. It is already there by cross-reference in the last sentence of that provision, but the proposals would make it more prominent. In essence, the revised definition would define discoverable information as relevant, non-privileged information that is proportional to the reasonable needs of the case.

In addition, he said, the subcommittee was considering limiting discovery requests by lowering presumptive numbers and time limits, such as reducing the number of depositions from 10 to 5, the time of depositions from 7 hours to 4, and the number of interrogatories from 25 to 15, and by imposing caps of 25 requests for production and 25 requests for admissions. Although courts may alter them, just reducing the presumptive limits may reduce the amount of discovery that occurs and change the prevailing ethic that lawyers must seek discovery of everything.

Another proposal, he noted, would require parties objecting to a request for production to specify in their objection whether they are withholding documents. A responding party electing to produce copies of electronically stored information, rather than permitting inspection, would have to complete the production no later than the inspection date in the discovery request. Rule 26(g) would be amended to require the attorney of record to sign a discovery response to attest that the response is not evasive. Another proposal would defer contention interrogatories and requests to admit until after the close of all other discovery. The subcommittee, he said, was also considering cost-shifting provisions and may make cost shifting a more prominent part of discovery. All these changes are designed to streamline the discovery process and reduce the expenses complained about at the Duke conference.

Judge Campbell reported that a third category of proposals was designed to emphasize cooperation among the attorneys. One amendment would make cooperation an integral part of Rule 1. The rule, thus, might specify that the civil rules are to be construed and used to secure the just, speedy, and inexpensive determination of cases, and the parties should cooperate to achieve these ends.

Judge Campbell said that the advisory committee will study these drafts at its November 2012 meeting. It will likely marry them with the proposed rule on preservation to produce a package of rule amendments to make litigation more efficient. Professor Cooper added that it would be very beneficial for the Standing Committee members to review the proposed drafts carefully and point out any flaws and make additional suggestions that the advisory committee might consider.

A member praised the comprehensive and impressive efforts of the committee. She noted, though, that several corporate counsel had expressed concern about giving proportionality a more prominent place in the rules. They fear that it would give attorneys an excuse to litigate more discovery disputes.

A participant pointed out that the objective of fostering cooperation among the parties is excellent, but specifying a cooperation requirement in the text of the rules is troublesome. Cooperation inevitably is entwined with attorney conduct, an area on the edge of the Rules Enabling Act that may impinge on the role of the states in regulating attorney conduct.

Another participant suggested that consideration be given to appointing special masters to handle discovery in complex cases because busy judges often do not have the time to devote undivided attention to overseeing discovery. Some way would have to be found to pay for masters, but at least in large corporate cases, the parties may be able to work it out. He also recommended reducing the presumptive limit for expert-witness depositions to 4 hours.

A member commended the advisory committee for undertaking the discovery project. He suggested that anything the committee can do to limit the number of discovery requests and reduce discovery time periods, at least in the average case, will be beneficial. He also commended the proposed modest recommendations on cost-shifting and proportionality. He urged the committee to carry on the work and move as quickly as possible.

His only reservation, he said, concerned adding a cooperation requirement to the rules. The concept, he said, was fine, but it may conflict with an attorney's ethical duty to pursue a client's interests zealously. He asked how much lawyers can be reasonably expected to cooperate in discovery when they are not expected to cooperate very much in other areas. The adversarial process, he said, is a highly valued attribute of the legal system, and the committee should avoid intruding into the states' authority over attorney conduct.

Members noted that some states have imposed effective, stricter limits on depositions that led lawyers to reassess how long they really need to take a deposition. A member added that depositions of expert witnesses have been eliminated completely in his state. It was noted that the original intent of Rule 26(a)(2)'s report requirement was to reduce the length of depositions of expert witnesses or even to eliminate them in many cases. That benefit, however, has not been realized.

PLEADING STANDARDS

Professor Cooper reported that the advisory committee was continuing to monitor case law developments in the wake of the Supreme Court's decisions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Iqbal v. Ashcroft*, 556 U.S. 662 (2009). There is, he said, no sense that the lower courts have unified around a single, identifiable pleadings standard for civil cases, but there is also no sense of a crisis or emergency. The committee, he said, was essentially biding its time and did not plan to move forward quickly. It has several potential proposals on the table, including directly revising the pleading standards in FED. R. CIV. P. 8 (general rules of pleading), addressing pleading indirectly through Rule 12(e) motions for a more definite statement, or integrating pleading more closely with discovery, particularly in cases where there is an asymmetry of information.

Dr. Cecil reported that the Federal Judicial Center had begun pilot work on its new study of all case-dispositive motions in the district courts. The study, he said, will be different from earlier studies because it will take a more comprehensive, holistic look at all Rule 12 motions and summary judgment issues and explore whether there are any tradeoffs, such as whether an increase in motions to dismiss has led to a reduction in motions for summary judgment. In addition, the Center is collaborating closely with several civil procedure scholars and hopes to reach a consensus with them about what is actually going on in the courts regarding dispositive motions. The study, he said, will be launched in September 2012 with the help of law professors and students in several schools.

FED. R. CIV. P. 84 AND FORMS

Judge Campbell reported that the advisory committee was examining FED. R. CIV. P. 84 (forms), which states that the forms appended to the rules “suffice” and illustrate the simplicity and brevity that the rules contemplate. He explained that many of the forms are outdated, and some are legally inadequate.

Professor Cooper pointed out that the Standing Committee had appointed an ad hoc forms subcommittee, chaired by Judge Gene E. K. Pratter of the civil committee, to review now the advisory committees develop and approve forms. The subcommittee, he said, made two basic observations: (1) in practice, the civil, criminal, bankruptcy, and appellate forms are used in widely divergent ways; and (2) the process for generating and approving forms differs substantially among the advisory committees.

The civil and appellate forms, for example, adhere to the full Rules Enabling Act process, including publication, approval by the Judicial Conference and the Supreme Court, and submission to Congress. The bankruptcy rules, on the other hand, follow the process partly, only up through approval by the Judicial Conference. At the other extreme, the criminal rules have no forms at all. Instead, the Administrative Office drafts the criminal forms, sometimes in consultation with the criminal advisory committee. He said that the subcommittee ultimately concluded that there is no overriding need for the advisory committees to adopt a uniform approach.

Professor Cooper explained that the civil advisory committee was now in the second phase of the forms project and was focusing on what to do specifically with the civil forms. He noted that the project had received an impetus from the Supreme Court’s *Twombly* and *Iqbal* decisions on pleading requirements and from the widely held perception that the illustrative civil complaint forms are legally insufficient. There is, he said, a clear tension between the simplicity of those forms and the pleading requirements announced in the Supreme Court decisions.

He noted that the advisory committee was considering several different options. One would be just to eliminate the pleading forms. An alternate would be to develop a set of new, enhanced pleading forms for each category of civil cases consistent with *Twombly* and *Iqbal*. There was, though, no enthusiasm in the committee for that approach. Going further, the committee could consider getting back into the forms business full-bore and spend substantial amounts of time on improving and maintaining all the forms. At the other extreme, the committee could eliminate all the forms and allow the Administrative Office to generate the forms, with appropriate committee consultation.

CLASS ACTIONS AND RULE 23 SUBCOMMITTEE

Judge Campbell reported that the advisory committee had appointed a Rule 23 subcommittee to consider several topics involving class-action litigation and whether certain amendments to the class-action rule were appropriate.

Professor Marcus said that the subcommittee had begun its work and was examining a variety of controversial issues that have emerged as a result of several Supreme Court decisions in the past couple of years, recent litigation developments, and experience under the Class Action Fairness Act. Among the topics being considered are: (1) the relationship between considering the merits of a case and determining class action certification, particularly with regard to the predominance of common questions; (2) the viability of issues classes under Rule 23(c)(4); (3) monetary relief in a Rule 23 (b)(2) class action; (4) specifying settlement criteria in the rule; and (5) revising Rule 23 to address the Supreme Court's announcement in *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), that the fairness and adequacy of a settlement are no substitute for full-dress consideration of predominance.

Professor Marcus noted that the list of issues continues to evolve and many were discussed at the panel discussion during the Standing Committee's January 2012 meeting. He pointed out that the project to consider appropriate revisions to Rule 23 will take time, since several topics are controversial and will pose drafting difficulties.

REPORT OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

Judge Raggi and Professor Beale presented the report of the advisory committee, as set forth in Judge Raggi's memorandum and attachments of May 17, 2012 (Agenda Item 8).

Amendment for Final Approval

FED. R. CRIM. P. 11(b)

Judge Raggi reported that the proposed amendment to FED. R. CRIM. P. 11(b)(1) (pleas) would add a new subsection (o) to the colloquy that a court must conduct before accepting a defendant's guilty plea. It would require a judge to advise defendants who are not United States citizens that they may face immigration consequences if they plead guilty.

She noted that at every stage of the advisory committee's deliberations, a minority of members questioned whether it is wise or necessary to add further requirements to the already lengthy Rule 11 plea colloquy. Moreover, the Supreme Court's decision in *Padilla v. Kentucky*, 559 U.S. ___, 130 S. Ct. 1473 (2012), addressed the duty of defense counsel, not the duty of courts, to provide information on immigration consequences to the defendant. Nevertheless, a majority of the advisory committee concluded that immigration is qualitatively different from other collateral consequences that may flow from a conviction. Moreover, a large number of criminal defendants in the federal courts are aliens who are affected by immigration consequences.

The committee, she said, recognized the importance of not allowing Rule 11(b) to become such a laundry list of every possible consequence of a guilty plea that the most critical factors bearing on the voluntariness of a plea do not get lost, *i.e.*, knowledge of the important constitutional rights that the defendant is waiving. She added that the only change made after publication was a modest change in the committee note.

The committee unanimously by voice vote approved the proposed amendment for final approval by the Judicial Conference.

Amendments for Publication

FED. R. CRIM. P. 5(d) and 58(b)

Judge Raggi explained that the proposed amendments to FED. R. CRIM. P. 5(d) (initial appearance) and FED. R. CRIM. P. 58(b)(2) (initial appearance in a misdemeanor) dealt with advising detained foreign nationals that they may have their home country's consulate notified of their arrest.

The amendments had been approved by the Judicial Conference in September 2011, but returned by the Supreme Court in April 2012. The advisory committee then discussed possible concerns that the Court may have had, such as that the possibility that the language of the amendments could be construed to intrude on executive discretion or

confer personal rights on a defendant. She suggested that there may have been concern over the proposed language in Rule 5(d)(1)(F), which specified that a detained non-citizen be advised that an attorney for the government or law-enforcement officer will do either of two things: (1) notify a consular office of the defendant's country, or (2) make any other consular notification required by treaty or international agreement.

She suggested that use of the word "will" might have been seen as potentially tying the hands of the executive in conducting foreign affairs. In addition, despite language in the committee note that the rule did not create any individual rights that a defendant may enforce in a federal court, the rule might have been seen as taking a step in that direction,

After the rule was returned by the Court, the advisory committee went back to the drawing board and produced a revised draft of the amendments. As revised, the first part provides that the defendant must be told only that if in custody, he or she "may request" that an attorney for the government or law-enforcement officer notify a consular office. It does not guarantee that the notification will in fact be made. The second part of the amendments was not changed. It specifies that even without the defendant's request, consultation notification may be required by a treaty or other international agreement.

Judge Raggi pointed out that the primary concern in revising the amendments was to assuage any concerns that the Supreme Court may have had with the amendments as originally presented. She noted that the Department of Justice had been consulting closely with the Department of State, which is very eager to have a rule as an additional demonstration to the international community of the nation's compliance with its treaty obligations.

A member noted that the Vienna Convention only requires notification of a consular office if a defendant requests it. She said that the Supreme Court might have found the original language of proposed Rule 5(d)(1)(F)(i) too strong in stating that the government will notify a consular office if the defendant requests. But the new language in Rule 5(d)(1)(F)(ii) may go too far in the other direction by requiring notification without the defendant's request if required by a treaty or international agreement.

Ms. Felton explained that several bilateral treaties, separate from the Vienna Convention, require notification regardless of the defendant's request. She added that the Departments of Justice and State had proposed the amendments to Rules 5 and 58 primarily as additional, back-up insurance that consular notification will in fact be made.

The main thrust of the amendments, she said, was to inform defendants of their option to request consular notification. In the vast majority of cases, however, the notification will already have been made by a law-enforcement officer or government attorney at the time of arrest. That is what the Vienna Convention contemplates. The

proposed amendments, which apply at initial appearance proceedings, will help catch any cases that may have slipped through the cracks.

Judge Raggi noted that this factor was part of the discussion on whether a rule is needed at all because there are no court obligations under the Convention and treaties. The rule, essentially, is a belt-and-suspenders provision designed to cover the rare cases when a defendant has not been advised properly. It only states that a defendant may request notification, and that is as far as it can go. If were to imply that the notice will in fact be given, which is what some treaties actually require, there would be concern that the rule itself was creating an enforceable individual right in the defendant.

Professor Beale added that the revised amendments were acceptable to the Departments of Justice and State. They may be more acceptable to the Supreme Court because they do not in any way tie the hands of the executive and avoid creating any individual rights or remedies. A member noted that the last part of the committee notes makes that point explicitly.

Judge Raggi pointed out that it was up to the Standing Committee to decide whether to republish the rule. Although the changes made after the return from the Supreme Court simply clarify the intent of the amendments, the advisory committee had reason to think that they were different enough to warrant publishing the rule again for further comment.

The committee unanimously by voice vote approved the proposed amendments for republication.

Information Items

FED. R. CRIM. P. 12 and 34

Judge Raggi explained that the proposed amendments to FED. R. CRIM. P. 12 (pleadings and pretrial motions) and the conforming amendment to FED. R. CRIM. P. 34 (arresting judgment) deal with motions that have to be made before trial and the consequences of an untimely motion. The amendments, she said, had been prompted by a proposal by the Department of Justice to include motions objecting to a defect in the indictment in the list of motions that must be made before trial.

The proposal, she said, had now come to the Standing Committee for the third time. The last draft was published for public comment in August 2011. It generated many thoughtful comments, which led the advisory committee to make some additional changes. It is expected that the ad hoc subcommittee reviewing the rule will present a final draft to the advisory committee in October 2012, and it may be presented to the Standing Committee for final approval in January 2013.

FED. R. CRIM. P. 6(e)

Judge Raggi reported that the advisory committee had received a letter from the Attorney General in October 2011 recommending that FED. R. CRIM. P. 6(e) (grand jury secrecy) be amended to establish procedures for disclosing historically significant grand jury materials. She noted that applications to release historic grand jury materials had been presented to the district courts on rare occasions, and the courts had resolved them by reference to their inherent supervisory authority over the grand jury.

The Department of Justice, however, questioned whether that inherent authority existed in light of Rule 6(e)'s clear prohibition on disclosure of grand jury materials. Instead, it recommended that disclosure should be permitted, but only under procedures and standards established in the rule itself. The Department submitted a very thoughtful memo and proposed rule amendments that would: (1) allow district courts to permit disclosure of grand jury materials of historical significance in appropriate circumstances and subject to required procedures; and (2) provide a specific point in time at which it is presumed that materials may be released.

She noted that a subcommittee, chaired by Judge John F. Keenan, had examined the proposal and consulted with several very knowledgeable people on the matter. In addition, the advisory committee reporters prepared a research memorandum on the history of Rule 6(e), the relationship between the court and the grand jury and case law precedents on the inherent authority of a judge to disclose grand jury material. After examining the research and discussing the proposal, all members of the subcommittee, other than the Department of Justice representatives, recommended that the proposed amendment not be pursued.

The full advisory committee concurred in the recommendation and concluded that in the rare cases where disclosure of historic materials had been sought, the district judges acted reasonably in referring to their inherent authority. Therefore, there is no need for a rule on the subject.

Judge Raggi added that she had received a letter from the Archivist of the United States strongly supporting the Department of Justice proposal. She spoke with him at length about the matter and explained that it would be a radical change to go from a presumption of absolute secrecy, which is how grand juries have always operated, to a presumption that grand jury materials should be presumed open after a certain number of years. A change of that magnitude, she said, would have to be accomplished through legislation, rather than a rule change. She noted that the archivist has a natural, institutional inclination towards eventually releasing historical archived documents and might consider supporting a legislative change.

FED. R. CRIM. P. 16

Judge Raggi reported that a suggestion had been received from a district judge to amend FED. R. CRIM. P. 16(a) (government's disclosure) to require pretrial disclosure of all the defendant's prior statements. There was, however, a strong consensus on the advisory committee that there are no real problems in criminal practice that warrant making the change. The committee, accordingly, decided not to pursue an amendment.

Judge Raggi reported that the Senate Judiciary Committee was considering legislation addressing the government's obligations to disclose exculpatory materials under *Brady* and *Giglio*. The committee had asked the judiciary for comments and a witness at the hearings. She said that she had decided not to testify but wrote to the committee to document the work of the advisory committee and the Standing Committee on the subject over the last decade. Attached to the letter were 900 pages of the public materials that the committee had produced.

She explained in the letter that the advisory committee had tried to write a rule that would codify all the government's disclosure obligations under case law and statute, but concluded that it could not produce a rule that fully captures the obligations across the wide range of federal criminal cases. In addition, she said, her letter alluded to a Federal Judicial Center survey of federal judges showing, among other things, that judges see non-disclosure as a problem that only arises infrequently. Although the advisory committee decided not to pursue a rule change, she added, the subject is being addressed in revisions to the *Bench Book for U.S. District Court Judges*. She noted that the Federal Judicial Center's Bench Book Committee was close to completing that work.

REPORT OF THE ADVISORY COMMITTEE ON EVIDENCE RULES

Judge Fitzwater and Professor Capra presented the report of the advisory committee, as set forth in Judge Fitzwater's memorandum and attachments of May 3, 2012 (Agenda Item 6). Judge Fitzwater noted that the advisory committee had no action items to present.

Amendments for Final Approval

FED. R. EVID. 803(10)

Judge Fitzwater reported that the proposed amendment to FED. R. EVID. 803(10) (hearsay exception for the absence of a public record) was needed to address a constitutional infirmity as a result of the Supreme Court's decisions in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009). It raised the concern that "testimonial" evidence is being allowed when a certificate that a public record does not exist is introduced in

evidence without the presence of the official who prepared the certificate. The proposed amendment would create a notice-and-demand procedure that lets the prosecution give written notice of its intention to use the information. Unless the defendant objects and demands that the witness be produced, the certificate may be introduced.

The proposed procedure, he said, had been approved in *Melendez-Diaz*. The advisory committee received two comments on the amendment, one of which endorsed it and the other approved it in principle with some comments.

The committee unanimously by voice vote approved the proposed amendment for final approval by the Judicial Conference.

Amendments for Publication

FED. R. EVID. 801(d)(1)(B)

Judge Fitzwater reported that FED. R. EVID. 801(d) (declarant-witness's prior statement) specifies that certain prior statements are not hearsay. Under Rule 801(d)(1)(B), the proponent of testimony may introduce a prior consistent statement for its truth, *i.e.* to be admitted substantively, but not for another rehabilitative purpose, such as faulty recollection.

He said that two problems have been cited with the way the rule is now written. First, the prior consistent statement of the witness is of little or no use for credibility unless the jury actually believes the testimony to be true anyway. The jury instruction, moreover, is very difficult for jurors to follow, as it asks them to distinguish between prior consistent statements admissible for the truth and those that are not. Second, the distinction has little, if any, practical effect because the proponent of the testimony has already testified in the presence of the trier of fact.

The proposed amendment would allow a prior consistent statement to be admitted substantively if it otherwise rehabilitates the witness' credibility.

The committee without objection by voice vote approved the proposed amendment for publication.

FED. R. EVID. 803(6)-(8)

Judge Fitzwater noted that FED. R. EVID. 803(6), (7), and (8) are the hearsay exceptions, respectively, for business records, the absence of business records, and public records. When the admissibility requirements of the rule are met, the evidence is admitted as an exception to the hearsay rule unless the source, method, or circumstances indicate a lack of trustworthiness.

During the restyling of the rules, he said, a question arose as to who has the burden on the issue of lack of trustworthiness. By far the vast majority of court decisions have held that the burden is on the opponent of the evidence, not the proponent. But a few decisions have placed the burden on the proponent. Since the case law was not unanimous, the advisory committee decided that it could not clarify the matter as part of the restyling project because a change would constitute a matter of substance.

Although the ambiguity was not resolved during the restyling project, the Standing Committee suggested that the advisory committee revisit the rule. The advisory committee initially was of the view that no further action was needed until it was informed that the State of Texas, during its own restyling project, had looked at the restyled federal rules and concluded that FED. R. EVID. 803(6)-(8) had placed the burden on the proponent of the evidence. This, clearly, was not the advisory committee's intention. At that point, it decided to make a change in the rules to make it clear that the burden is on the opponent of the evidence.

At members' suggestions, minor changes were made in the proposed committee notes. Line 34 of the note to Rule 806(8) was corrected to conform to the text of the rule, and an additional sentence was added to the second paragraph of the note to Rule 806(6).

The committee without objection by voice vote approved the proposed amendments for publication.

Information Items

SYMPOSIUM ON FED. R. EVID. 502

Judge Fitzwater noted that the advisory committee's next meeting will be held on October 4 and 5, 2012, in Charleston, South Carolina. A symposium on Rule 502 will be held in conjunction with the meeting, with judges, litigators, and academics in attendance. There is concern, he said, that Rule 502 (limitations on waiver of attorney-client privilege and work product) is not being used as widely as it should be as a means of reducing litigation costs. He noted that Professor Marcus will be one of the speakers at the program, and he invited the members of the Standing Committee to attend.

REPORT OF THE E-FILING SUBCOMMITTEE

Judge Gorsuch noted that the ad hoc committee, which he chaired, was comprised of representatives from all the advisory committees. It was convened to consider appropriate terminology that the rules might use to describe activities that previously had only involved paper documents but now are often processed electronically. Although the

impetus for the subcommittee's formation arose in connection with the appropriate terminology to use in the pending amendments to Part VII of the bankruptcy rules and FED. R. APP. P. 6, the subcommittee took a comprehensive look at all the federal rules. Professor Struve served as the subcommittee reporter, and Ms. Kuperman compiled a comprehensive list of all the terms used in each set of federal rules to describe the treatment of the record and other materials that may be either in paper or electronic form.

He noted that the subcommittee had identified four possibilities for defining its work and listed them from the most aggressive to the least. First, he said, it could conduct a major review of all the federal rules in order to achieve uniformity in terminology across all the rules. That major project would be conducted along the lines of the recent restyling efforts. Second, the subcommittee could compile a glossary of preferred terms. Third, it could serve as a screen for all future rule amendments, and advisory committees would have to run their proposals through the subcommittee. And fourth, the subcommittee could simply make itself available for assistance at the request of the advisory committees.

He reported that the subcommittee opted for the last alternative, largely because the others would all take a great deal of time and effort. Moreover, it recognized that technology is changing so rapidly that it may not be timely to undertake a more aggressive approach at this juncture. At some point in the future, though, terminology will have to be addressed more comprehensively. He added that the most valuable result of the subcommittee's work was to make the reporters cognizant of the extraordinary number of synonyms currently in use in the rules and to encourage them to coordinate with each other on terminology.

INTERIM ASSESSMENT OF THE JUDICIARY'S STRATEGIC PLAN

Judge Kravitz noted that he would work with the advisory committees to prepare a response to Judge Charles R. Breyer, the Judicial Planning Coordinator, on the committee's progress in implementing the *Strategic Plan for the Federal Judiciary*.

NEXT MEETING

The committee will hold its next meeting on Thursday and Friday, January 3 and 4, 2013 in Boston, Massachusetts.

Respectfully submitted,

Peter G. McCabe,
Secretary

TAB 6

THIS PAGE INTENTIONALLY BLANK

TAB 6A

THIS PAGE INTENTIONALLY BLANK

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

RE: SUGGESTION FOR THE AMENDMENT OF RULE 1006(b) REGARDING
THE PAYMENT OF THE FILING FEE IN INSTALLMENTS

DATE: AUGUST 21, 2012

Bankruptcy Judge John Waites (D.S.C.) submitted suggestion 12-BK-I on behalf of the Bankruptcy Judges Advisory Group (“BJAG”). The suggestion proposes that Rule 1006(b) be amended to clarify that courts may require a debtor who applies to pay the filing fee in installments to make an initial installment payment with the petition and the application. The suggestion was referred to this Subcommittee for a recommendation. The Subcommittee considered the matter during its July 26, 2012 conference call and by subsequent email communications. **It recommends that Rule 1006(b) be amended to provide that local rules may require that an initial installment payment of no more than 25% of the filing fee be paid at the time the petition and application are filed. The Subcommittee also recommends that a minor conforming change be made to Official Form 3A.** Finally, the Subcommittee presents an issue for the Committee’s consideration: whether the rule or its committee note should specify the consequences of failing to make an installment payment, if one is required, at the time a petition is filed.

Payment of the Filing Fee in Installments

The source of the authority for debtors to pay the bankruptcy filing fee in installments is 28 U.S.C. § 1930(a). It requires a party commencing a bankruptcy case to pay the fee specified

by the statute, as well as any additional fees required by the Judicial Conference of the United States. The current fees due upon filing are:

- Chapter 7 -- \$306
- Chapter 11 -- \$1046
- Chapter 12 -- \$246
- Chapter 13 -- \$ 281

Section 1930(a) states that an “individual commencing a voluntary or joint case under title 11 may pay such fee in installments.”

Bankruptcy Rule 1006(b) governs the payment of filing fees in installments. Subdivision (b)(1) requires a voluntary petition of an individual to be accepted for filing if it is “accompanied by the debtor’s signed application, prepared as prescribed by the appropriate Official Form, stating that the debtor is unable to pay the filing fee except in installments.” The court must rule on the application before the meeting of creditors, either ordering the debtor to pay the filing fee to the clerk or fixing the terms of payment by installment. The number of installments may not exceed four, and the debtor generally must make the last payment no later than 120 days after filing the petition. Rule 1006(b)(2). The Official Form used for applying to make installment payments is Form 3A.

Judge Waites explained the reasons underlying the suggestion. A number of districts by local rule or order now require applicants for installment payment to make an initial installment payment at the outset of the case. They do so because they have encountered difficulties in collecting filing fees when cases are dismissed before all installments have been paid. Other districts, however, have concluded that Rule 1006(b)—by stating that an individual’s petition “shall be accepted for filing” if it is accompanied by the debtor’s signed application—precludes

them from requiring the petition to be accompanied by any payment. BJAG submits that Rule 1006(b) should be amended to eliminate the uncertainty by clearly authorizing courts to require a reasonable minimum payment (which it suggests is 25% of the filing fee) to accompany the application to pay in installments. The group believes that doing so would strike a fair balance between providing debtor access to bankruptcy relief and relieving the courts of some of the burden of trying to collect unpaid installment payments.

Current Practices

A number of districts have adopted a Local Bankruptcy Rule (“LBR”) 1006-1 that requires the payment of an initial installment at the time that a debtor files a petition and a Form 3A application. The content of the payment requirements vary. Some districts specify a percentage of the total filing fee that must be paid upon filing the petition. The percentages range from 25%¹ to 50%,² sometimes with a different percentage requirement for chapter 11.³ Other districts specify a minimum dollar amount that must be paid at the time of filing. The amounts for chapter 7 and chapter 13 cases range between \$40 and \$100.⁴ A greater amount is sometimes required for chapter 11 cases.⁵ At least one district’s local rule requires that the Form 3A application be accompanied by “a minimum payment established by the Court,” which amounts are posted on the court’s website⁶

¹ See, e.g., LBR 1006-1 (Bankr. D. Del); LBR 1006-1 (Bankr. D.N.H.); LBR 1006-1 (Bankr. D. Wyo).

² See, e.g., LBR 1006 (Bankr. E.D. Mo.); LBR 1006-1 (Bankr. D. Minn.).

³ See, e.g., LBR 1006-1 (Bankr. D. Md.).

⁴ See, e.g., LBR 1006-1 (Bankr. D. Mont.) (\$50); LBR 1006-1 (Bankr. D. Mass.) (\$40); LBR 1006-1 (Bankr. N.D.) (\$100).

⁵ See, e.g., LBR 1006-1 (Bankr. S.D. Ind.) (\$262).

⁶ See LBR 1006-1 (Bankr. D.S.C.). The court’s website lists the following required minimum payments: chapter 7—\$96; chapter 13—\$81; chapter 11—\$346.

The Bankruptcy Court for the Western District of Washington recently issued a general order, with an effective date to be announced after the court considers public comments.⁷ The order notes that the district has encountered an increasing number of debtors opting to pay the filing fee in installments and that frequently no fee is collected before a case is dismissed for other reasons. The court says that this nonpayment places an administrative burden on the court and trustees, one that is compounded by repeat filers. The order requires that every voluntary petition be accompanied by either (1) the full filing fee; (2) an application for waiver of the fee; or (3) an application for payment in installments and the payment of an initial installment of \$100 in a chapter 7, 12, or 13 case and \$350 in a chapter 11 case.

Many districts either have no local rule or order governing the payment of the filing fee in installments, or they have a LBR 1006-1, but it does not require that any payment accompany the petition and application.

The Subcommittee's Consideration of the Suggestion

The Subcommittee concluded that a local requirement that a payment accompany the petition and application for payment in installments is inconsistent with Rule 1006(b) and Official Form 3A. As currently written, Rule 1006(b)(1) requires a petition to be accepted for filing if it is accompanied by a completed Form 3A application. It does not leave room for imposing additional filing requirements. And while Form 3A acknowledges the possibility that an initial installment payment may be made at the outset of a case,⁸ payment with the filing of the petition is presented as an option that the debtor can exercise, not as a mandate.

Presented with the conflict between the national rule and the local rules in some districts, the Subcommittee considered whether to recommend (1) that efforts be made to bring those

⁷ Gen. Order No. 2012-3 (Bankr. W.D. Wash.).

⁸ There are two checkboxes for indicating when the debtor proposes to pay the first installment: "With the filing of the petition" and "On or before _____."

9 (B) any initial installment payment required by local rule,
10 so long as the rule does not require the payment to exceed 25
11 percent of the total filing fee.

12 * * * * *

1
COMMITTEE NOTE

Subdivision (b) is amended to authorize courts to promulgate local bankruptcy rules that require an applicant under this subdivision to make the initial installment payment at the time of the filing of the petition. A debtor who pays the filing fee in installments remains liable for the full fee even if the debtor's bankruptcy case is dismissed before all payments are made. In order to facilitate collection of the entire filing fee, some courts have required debtors paying in installments to make their first installment payment at the commencement of the case. As amended, subdivision (b) clarifies that courts have authority to impose such a requirement by local rule.

The right of an individual debtor to pay the filing fee in installments is conferred by statute, *see* 28 U.S.C. § 1930(a). If a district chooses to exercise the authority conferred by this subdivision to adopt a local rule, the initial payment amount should not unduly burden the right to make installment payments. Subdivision (b) therefore limits the amount of a required initial installment to no more than 25 percent of the filing fee, as defined by subdivision (a).

If the Committee accepts the Subcommittee's recommendation to seek publication of the amendment of Rule 1006(b), the Subcommittee also recommends that a minor change be made to Official Form 3A. The existing form requires one of two boxes to be checked regarding the timing of the first installment: either "with the filing of the petition" or "on or before" a date the debtor specifies. Because under the rule, as amended, some districts would not give the debtor a choice about the timing of the first installment, the Subcommittee recommends that the two checkboxes be deleted. The line for the first installment would then be identical to the lines for

1. *The petition must be accepted despite the failure to pay the required initial installment.* Rule 1006(b)(1) provides that a voluntary petition “shall be accepted for filing” if accompanied by a signed Form 3A application and, and as proposed to be amended, any initial installment payment required by local rule. The rule does not state what happens if the petition is not accompanied by an application or payment. Rule 5005(a), however, prohibits the clerk from refusing to accept a petition for filing “solely because it is not presented in proper form as required by these rules or any local rules or practices.” The failure to make an initial installment payment along with the petition and an application to pay in installments would violate a requirement of only a local rule and therefore could be viewed as a matter of form. Moreover, Rule 1017(b)(1) allows for the dismissal of a case for the failure to pay “any installment of the filing fee,” but only “after a hearing on notice to the debtor and the trustee.” A local rule requiring an upfront payment by a debtor who applies to pay the filing fee in installments as permitted by 28 U.S.C. § 1930(a) is consistent with the statute only if that payment is understood to be the first installment. Under Rule 1017(b)(1), the failure to pay that installment may result in *dismissal* of the case, not the rejection of the petition that commences the case, and the debtor must be given notice and a hearing before dismissal is ordered. The clerk therefore could not unilaterally dismiss the case.

2. *The petition may be rejected for filing if it is not accompanied by the required initial installment payment.* Rule 1006(b)(1) implies that a petition need not be accepted for filing if it is not accompanied by the filing fee or a signed Form 3A and, as amended, any initial installment payment that is properly authorized by local rule. Rule 5005(a) does not require otherwise, because the failure to pay a required filing fee is not just a matter of form; it is a failure to comply with a substantive filing requirement. Nor is the recognition that the debtor has not

tendered the required payment a matter requiring the exercise of judicial discernment. A clerk can properly determine that a debtor has failed to accompany a petition with the required payment. If the clerk rejects the filing of a petition on that basis, a case is not commenced, and therefore the requirements of Rule 1017(b)(1) for dismissing a case do not become applicable.

At least with regard to payment of the full filing fee, the Administrative Office of the Courts (“AO”) has interpreted Rule 5005(a) in a manner that is consistent with the latter argument. As quoted by the Collier treatise, the AO’s manual for bankruptcy clerks provides as follows:

“Generally, the intake clerk should be aware that filing fees are due at the time of filing and that the court should not accept personal checks or credit card payments from debtors. Petitions must be accompanied by a filing fee or an application to pay the fee in installments. 28 U.S.C. § 1930(a); Fed. R. Bankr. P. 1006(a). ... *If a petition is submitted without either the payment of the fee or an application to pay the fee in installments, the intake clerk may refuse to accept the petition since fees are prescribed by statute or by resolution of the Judicial Conference pursuant to statute and are not, therefore, matters of form.* Memorandum of the General Counsel of the Administrative Office date 12/27/91 (discussing amendment of Fed. R. Civ. P. 5 (e) concerning acceptance of documents for filing). The intake clerk may accept the petition, however, and designate it as "received," "accepted" or "lodged for filing." Any conflict with the statutory requirement to collect a fee upon filing is avoided by not formally denoting the petition as 'filed' until the outcome of procedures to collect the fee has been determined. The petition is not processed until the fee deficiency is corrected, but there is a record of the date on which the petition was received by the court.”

1 ALAN N. RESNICK & HENRY J. SOMMER, COLLIER ON BANKRUPTCY ¶ 9.02[4] (16th ed. 2012) (emphasis added in treatise).

After quoting from the Clerk’s Manual, the Collier treatise goes on to take the position that clerks may not refuse to accept petitions due to the failure to pay the filing fee: “Thus, it appears there is no basis for a clerk's office to refuse to accept a bankruptcy petition, even if it lacks a filing fee or an application for waiver or installment payment. Whether the case is ultimately filed is a distinct question, and one that will be determined by the bankruptcy judge

rather than the clerk.” *Id.* The treatise notes that courts handle this situation in a variety of ways. “Some clerks will refuse the petition altogether or accept it as submitted but not filed . . . , while others will accept the petition for filing but issue an order to show cause, with an immediate hearing date, that requires the debtor to appear and show cause why the case should not be dismissed.” *Id.* See also 9 COLLIER ON BANKRUPTCY ¶ 1006.02 (Rule 1006 does “not control whether, or when, a petition is deemed filed with the court. It does not mandate that a petition should not be considered filed until the fee is paid.”); *id.* at ¶ 1006.03 (“Dismissal may occur at the outset of the case if the debtor fails either to pay the fee or to submit an application for waiver of the fee or for installment payments, or later in the case if the debtor defaults on installment payment obligations. Federal Rule of Bankruptcy Procedure 1017(b) governs the procedure for dismissal for failure to pay the filing fee.”); *id.* at ¶ 1017.03 (“Rule 1017(b) provides that the court may dismiss the case if the debtor fails to pay any installment of the filing fee. Since this is considered a dismissal for cause, notice and a hearing are required before dismissal. At the hearing, the court may excuse the debtor’s failure to pay the filing fee and provide the debtor additional time to pay, subject to the strictures of Rule 1006.”). *But see id.* at ¶ 5005.02 (“The clerk . . . may refuse to file a document until the proper fee is paid because of a statute and/or local rule of the court.”).

Courts that are currently requiring the payment of an initial installment along with the petition vary as to whether they specify the consequences of failing to make the initial payment and, if they do, what those consequences are. Several of the local rules are silent on the issue, although some of them address the consequences of failing to make a subsequent installment payment.⁹ Interestingly, contrary to Rule 1017(b), some of those rules provide for dismissal of

⁹ See, e.g., LBR 1006-1(b) (Bankr. D. Minn.); LBR 1006-(3)(A) (Bankr. D. Mont.); LBR 1006-1 (Bankr. S.D. Ind.).

the case without notice and a hearing if an installment payment is not timely made.¹⁰ Most of the districts that do have rules addressing the failure to make an installment payment with the petition authorize “dismissal” rather than rejection.¹¹ Two of the districts, however, authorize the clerk to reject a petition that is not accompanied by the initial installment payment along with the Form 3A application.¹² One of those courts, the Bankruptcy Court for the Eastern District of Missouri, requires the clerk to retain a copy of the petition with a notation of the date and time it was tendered. The local rule provides that the debtor may for good cause request the court to treat the petition as filed as of that date and time.

In considering the Subcommittee’s recommendations regarding BJAG’s suggestion, the Committee may want to consider whether there is a need to specify the consequences of failing to make a required installment payment when the petition is filed. Either Rule 1006 or its committee note could state that (1) a clerk may refuse to accept a petition for filing that is not accompanied by a required filing fee installment, or (2) that the failure to pay with the petition a filing fee installment required by local rule will not prevent the filing of the petition but may result in dismissal of the case according to the procedures required by Rule 1017(b). A third option would be for Rule 1006 and its committee note to remain silent on the issue and to leave the consequences up to local rules and judicial determination. Should the Committee choose to

¹⁰ See LBR 1006-1(b) (Bankr. D. Minn.) (“If the balance is not paid within 30 days, . . . an order dismissing the case will be entered immediately, without hearing and without further notice.”); LBR 1006-1 (Bankr. S.D. Ind.) (“If a Debtor fails to pay a fee installment when due, the Court shall dismiss the case without further notice or hearing.”).

¹¹ See, e.g., LBR 1006-1 (Bankr. D. Del.); LBR 1017-2 (Bankr. D. Wyo.) (authorizing the dismissal of a petition if deficiencies are not timely cured); LBR 1006-2 (Bankr. D. Mass.); LBR. 1017-2 (Bankr. D.S.C.).

¹² See LBR 5005 (Bankr. E.D. Mo.) (“The Clerk of Court shall decline to accept for filing any pleading, petition, or document tendered without the required fees or signatures.”); Gen. Order 2012-3 (Bankr. W.D. Wash.) (“The clerk of the court is authorized to reject or dismiss a voluntary petition that is not accompanied by one of the above payment options.”) (As of the writing of this memorandum, the general order has not become effective.).

address the issue in the national rule or committee note, the resolution should probably be made applicable to filing fees generally (i.e. Rule 1006(a)) and not just to the initial installment of such fees by debtors applying to pay in installments.

TAB 6D

THIS PAGE INTENTIONALLY BLANK

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

RE: SUGGESTION FOR THE PROMULGATION OF OFFICIAL FORMS TO IMPLEMENT 28 U.S.C. § 1930(f)(2) and (3)

DATE: AUGUST 12, 2012

David Yen, an attorney at the Legal Assistance Foundation of Chicago, submitted a suggestion (11-BK-N) regarding the waiver of bankruptcy fees other than the ones that Rule 1006(c) and Official Form 3B currently address. That rule and form govern the waiver of filing fees by chapter 7 individual debtors, as authorized by 28 U.S.C. § 1930(f)(1).¹ Subsection (f)(2) of that statute authorizes the district court or bankruptcy court to waive other fees prescribed by the Judicial Conference for “such debtors”—that is, debtors who qualify for a filing-fee waiver under (f)(1). And subsection (f)(3) provides that subsection (f) “does not restrict the district court or the bankruptcy court from waiving . . . fees prescribed under this section for other debtors and creditors.”

Mr. Yen proposes that procedures and Official Forms be adopted for (1) debtors who have qualified for a filing-fee waiver and who seek the waiver of additional fees, and (2) debtors not entitled to a filing-fee waiver under § 1930(f)(1), as well as creditors, who seek fee waivers. Mr. Yen gives some suggestions for the content of these forms.

The Subcommittee considered Mr. Yen’s suggestion during its July 26, 2012 teleconference. **It recommends that the Forms Subcommittee consider the creation of a**

¹ Subsection (f)(1) of 28 U.S.C. § 1930 permits the waiver of the filing fee in a chapter 7 case for an individual debtor who has income “less than 150 percent of the income official poverty line . . . applicable to a family of the size involved” if the debtor is unable to pay that fee in installments. “Filing fee” is defined as the fees required to be paid to the clerk upon the commencement of a chapter 7 case.

Director’s Form for requests for fee waivers covered by 28 U.S.C. § 1930(f)(3) but that no further action be taken regarding the suggestion for the promulgation of a form for fee waivers under § 1930(f)(2).

Waiver Under § 1930(f)(2)

In August 2005 the Judicial Conference of the United States (“JCUS”) adopted interim procedures to assist courts in implementing 28 U.S.C. 1930(f), which was added in 2005 by BAPCPA. Interim Rule 1006(c) was the forerunner of current Rule 1006(c). It addressed only the waiver of filing fees by individual chapter 7 debtors, but the accompanying procedures also stated that “[o]ther fees scheduled by the Judicial Conference under 28 U.S.C. §§ 1930(b) and (c) may be waived in the discretion of the bankruptcy court or district court for individual debtors whose filing fee has been waived.” JCUS Interim Procedures Regarding the Chapter 7 Fee Waiver Provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (available at

<http://www.uscourts.gov/federalcourts/bankruptcy/BankruptcyResources/JCUSinterimProcedures.aspx>). No rule provision or Official Form was ever adopted for the waiver of these other fees.

The waiver of fees under § 1930(f)(2) has received little attention in the case law. Some bankruptcy courts have adopted local rules that address the effect of a filing-fee waiver under § 1930(f)(1) on the waiver of other fees under subsection (f)(2). A local rule of the Bankruptcy Court for the Eastern District of Oklahoma—LBR 1006-1(B)—provides that the “waiver of filing fees in this case relates only to the initial filing fee of a Chapter 7 case. Such waiver will not affect the requirement to pay filing fees for amended schedules and amended matrixes, nor will it affect the requirement to pay filing fees for appeals.” Local rules in the bankruptcy courts for the District of Rhode Island and the Southern District of Florida, on the other hand, provide

that a waiver of filing fees for a chapter 7 debtor results in a waiver of all additional fees. LBR 1006-1(e) (Bankr. D.R.I.) (“The granting of the application [for the waiver of the filing fees] approves the waiver of all future filing fees which may arise in the case while pending under Chapter 7.”); LBR 1006-1(B)(7) (Bankr. S.D. Fla.) (“Entry of an order waiving the chapter 7 filing fee shall be deemed an order waiving other fees scheduled by the Judicial Conference under 28 U.S.C. §§1930(b) and (c) unless otherwise ordered by the court.”). The District of Vermont takes an intermediate approach. Its LBR 5081-1(e) provides that when other bankruptcy fees become due for a chapter 7 debtor who received a filing-fee waiver, “the Court shall consider waiving the other fees only upon an affirmative showing of the continued inability of the debtor to pay those fees.”

At least two districts have rules that briefly address the procedure for seeking a waiver of “other” fees under § 1930(f)(2). The Bankruptcy Court for the Western District of North Carolina provides in its LBR 1006-1(c) that the approval of an application to proceed *in forma pauperis* applies only to the filing fee for the petition. But it allows the consideration of the waiver of additional fees “upon the filing of a motion and tender of an order.” The Bankruptcy Court for the District of South Dakota advises that, “when circumstances warrant,” a debtor should include an application for waiver of other fees under § 1930(f)(2) in its application for waiver of the case filing fee under § 1930(f)(1). LBR 5058-1 “Practice Pointer.”

Mr. Yen suggests that a form be adopted for seeking fee waivers under § 1930(f)(2) that would require the debtor to (1) request the waiver and (2) either state that the information previously submitted on Form 3B remains unchanged or provide information about any changes in the debtor’s income and assets since Form 3B was filed.

After discussing this part of the suggestion, the Subcommittee concluded that the absence of a national form does not appear to have created a problem serious enough to require the creation of either an Official Form or a Director's Form. In districts that require separate applications for fee waivers under § 1930(f)(2), the debtor generally will have already submitted personal financial information to the court in order to obtain a filing-fee waiver. If a form is needed, courts can easily create a local form to elicit the additional information needed for a determination of the entitlement to waiver of other fees. Alternatively, the debtor can file a short motion or application seeking the additional waiver. The Subcommittee noted that the principal effect of accepting Mr. Yen's suggestion to adopt an Official Form would be to highlight the existence of this waiver authority, but it concluded that a national form should not be promulgated for that purpose alone.

Waiver Under § 1930(f)(3)

Unlike § 1930(f)(1) and (2), subdivision (f)(3) does not affirmatively authorize the district court or bankruptcy court to waive fees. Instead it provides that subsection (f) "does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed under this section for other debtors and creditors." In other words, it removes any implication that by authorizing the waiver of fees for certain debtors, § 1930(f) precludes fee waivers for all other debtors and for creditors. But that waiver authority must be found elsewhere. *See Bernegger v. King*, 2011 WL 1743880 at *2 (E.D. Wis. May 6, 2011) ("§ 1930(f)(3) does not provide the authority to waive fees nor does it reference where such authority exists"). *But see In re Richmond*, 247 Fed. App'x 831, 832 (7th Cir. 2007)

(stating in *dicta* that after the enactment of § 1930(f), “the bankruptcy and district courts clearly have the authority to allow creditors to proceed *in forma pauperis*”).²

The Subcommittee concluded that because parties seeking a fee waiver covered by § 1930(f)(3) would not have previously submitted the financial information required by Official Form 3B, a form implementing this provision would need to be more detailed than one used for a § 1930(f)(2) waiver. The Subcommittee therefore decided that, while a mandatory national form does not seem necessary, creation of a national form that courts could adopt if they desired would be useful to courts and to parties seeking fee waivers. The Subcommittee therefore recommends that a Director’s Form be created.

The Subcommittee suggests that the matter be referred to the Subcommittee on Forms for the creation of new Director’s Form. The bankruptcy form might be modeled on Appellate Form 4 (Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis), Forms AO 239 and AO 240 (Application to Proceed in District Court Without Prepaying Fees or Costs) (long and short forms), or another form used by a district court for *in forma pauperis* applications.

² Courts are split on whether bankruptcy courts may allow parties to proceed *in forma pauperis* under 28 U.S.C. § 1915. Compare *In re Richmond*, 247 Fed. App’x 831 (7th Cir. 2007) (without deciding whether bankruptcy courts are “courts of the United States” for purposes of § 1915, holding that district courts may refer authority to bankruptcy courts under § 157(a) to grant *in forma pauperis* motions); with *Perroton v. Gray (In re Perroton)*, 958 F.2d 889 (9th Cir. 1991) (holding that bankruptcy courts are not “courts of the United States” for purposes of § 1915 and thus lack authority to waive statutorily required filing fees).

THIS PAGE INTENTIONALLY BLANK

TAB 6E

THIS PAGE INTENTIONALLY BLANK

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

RE: SUGGESTED AMENDMENT TO THE BANKRUPTCY RULES TO PROVIDE CREDITORS WITH NOTICE OF THE ENTRY OF A CONFIRMATION ORDER IN CHAPTER 13 CASES

DATE: AUGUST 17, 2012

Matthew T. Loughney, a bankruptcy court clerk (M.D. Tenn.) who chairs the Administrative Office's Bankruptcy Noticing Working Group, has submitted on the working group's behalf a suggestion (12-BK-B) regarding notice of the entry of an order confirming a chapter 13 plan. The working group questions why Rule 2002(f)(7), which requires notice to creditors of the entry of confirmation orders in chapter 9, 11, and 12 cases, does not also require notice in chapter 13 cases. They suggest that the Bankruptcy Rules should contain a provision that (i) specifically addresses notice of the entry of confirmation orders in chapter 13 cases and (ii) makes clear who should receive that notice. In their view, both goals could be accomplished most simply by making Rule 2002(f)(7) applicable to chapter 13 cases. The suggestion was referred to the Subcommittee on Consumer Issues, which discussed it during a conference call on July 26, 2012.

This memorandum provides a brief overview of Rule 2002(f)(7) and discusses considerations weighed by the Subcommittee in evaluating the suggestion. It is not clear why chapter 13 was omitted from Rule 2002(f)(7), and members of the Subcommittee recognized that this omission is anomalous and out of step with the heightened appreciation for the significance of confirmation orders after the Supreme Court's *Espinosa* decision. The Subcommittee also

saw potential benefits in ensuring greater notice to creditors of the entry of confirmation orders in chapter 13 cases. Nevertheless, the Subcommittee identified two concerns with the suggestion. First, there does not appear to be a pressing reason to amend the rule. The omission of chapter 13 cases from Rule 2002(f)(7) has not created any confusion in the case law, and nothing prevents courts from invoking their authority in appropriate cases to order service of notice of confirmation on creditors. Second, there is a concern that the costs of requiring notice will outweigh the benefits. Further consideration of the suggestion would benefit from gathering information regarding current noticing practices in chapter 13 cases, the costs of notice, and the parties likely to bear the burden of those costs. **Accordingly, the Subcommittee recommends that the Rules Committee delay consideration of the suggestion for the gathering and assessment of information about noticing practices and costs.**

Rule 2002(f)(7)

Rule 2002(f) requires the clerk (or some other person as the court may direct) to “give the debtor, all creditors, and indenture trustees notice by mail” of various milestones in a bankruptcy case. One of those milestones is the “entry of an order confirming a chapter 9, 11, or 12 plan.” Rule 2002(f)(7). With one exception,¹ this is the only provision of Rule 2002(f) expressly limiting notice to cases under certain chapters of the Code.

There does not appear to be an explicit explanation for the omission of chapter 13 from the rule’s notice requirement. Rule 2002(f)(7) traces back to the 1983 version of the Bankruptcy Rules, which required notice of the “entry of an order confirming a chapter 9 or 11 plan” but did

¹ One provision is limited to chapter 7 cases. *See* Fed. R. Bankr. P. 2002(f)(8) (requiring notice of “a summary of the trustee’s final report in a chapter 7 case if the net proceeds realized exceed \$1,500”).

not include chapter 13.² It is possible that, at the time, the benefits of providing to creditors notice of plan confirmation were not considered substantial enough in consumer cases to outweigh the costs of serving notice. The current version of the notice provision dates to the 1991 amendments to the Bankruptcy Rules. Those amendments included a package of rule changes first proposed in 1988 after the enactment of chapter 12. An amendment to Rule 2002(f)(7) was included among them.³ It appears that the Rules Committee rejected a proposal at that time to delete the provision limiting the rule to chapter 9 and chapter 11 cases. Instead, the Rules Committee decided to retain that language and to add chapter 12 cases to those in which notice of the entry of confirmation orders is required. *See* Advisory Committee on Bankruptcy Rules, Amended Minutes of the Meeting of November 4-5, 1988, at 12-13.

Given the similarities between chapter 12 and chapter 13 cases, it might be expected that chapter 13 would have been included in the rule at the time. The only hint as to why chapter 12 but not chapter 13 was included in the 1991 amendments comes from the description accompanying the package of chapter 12-related amendments. The Reporter at the time described chapter 12 as a provision that “resembles chapter 13, but requires ‘expedited’ noticing and holding of the hearing on confirmation of the plan.” *Id.* at 10. Perhaps the decision to require notice to creditors of the entry of a confirmation order in chapter 12 cases but not chapter 13 cases can be explained by that perceived distinction between the chapters.

² At the time, the provision was designated Rule 2002(f)(9).

³ The amendment altered what was then Rule 2002(f)(8) and renumbered it as Rule 2002(f)(7).

Discussion

A. *Is an Amendment to Rule 2002(f)(7) Necessary?*

It does not appear, from a search of available decisions in chapter 13 cases, that the current version of Rule 2002(f)(7) has generated confusion or prompted significant litigation. Only one published decision squarely considers an attempt by creditors in a chapter 13 case to challenge the validity of a confirmation order based on insufficient notice of its entry. *In re Crumrine*, 2000 WL 854987 (Bankr. N.D. Cal. 2000). The creditors in *Crumrine* moved to reopen a confirmation order outside the window provided by Rule 9024 and Code § 1330(a). They argued that the lack of notice meant their due process rights would be violated by enforcement of the order. The bankruptcy court rejected their argument because the creditors or their attorney had received sufficient notice of the confirmation *hearing* and knew, or should have known, of the entry of the confirmation order before the time to challenge it expired. *Id.* at *2.

The lack of case law on the topic could be explained by a number of factors. It may be the case, as in *Crumrine*, that notice of the confirmation hearing is usually sufficient to apprise creditors of the pending entry of a confirmation order. Creditors who are represented by counsel may also receive notice of the entry of a confirmation order through electronic noticing. In addition, Rule 2002(f)(7) is not the only provision that would afford creditors notice of the entry of a confirmation order. Rule 9022 grants bankruptcy courts the discretion to order notice. That rule requires the clerk to serve notice “immediately on the entry of a judgment or order” to “the contesting parties *and on other entities as the court directs.*” Thus, notwithstanding Rule 2002(f)(7), under Rule 9022 a court may require notice to creditors of the entry of an order confirming a chapter 13 plan.

B. Would an Amendment to Rule 2002(f)(7) be Advisable?

1. Considerations in favor of amending the rule

While it may not be essential to amend Rule 2002(f)(7) to include chapter 13 cases, there are sound reasons for doing so. First, as the Supreme Court recently emphasized, a confirmation order is a final judgment accorded res judicata effect. *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367, 1376 (2010). *Espinosa* abrogated a number of court of appeals decisions that had permitted creditors to challenge plan provisions as improper long after confirmation. See, e.g., *In re Ruehle*, 412 F.3d 679 (6th Cir. 2005) (permitting creditor to challenge discharge order four years after chapter 13 plan confirmation); *In re Hanson*, 397 F.2d 482 (7th Cir. 2005) (permitting creditor to challenge discharge order six years after chapter 13 plan confirmation). After *Espinosa*, a creditor's failure to file a timely challenge to a confirmation order (by appeal or a motion to reopen) carries serious consequences. Because *Espinosa* heightens the importance of bringing timely challenges to confirmation, amending Rule 2002(f)(7) to ensure that creditors receive notice of the entry of a confirmation order could be justified.

Second, now that BAPCPA has introduced expedited confirmation procedures to chapter 13, there is less reason to distinguish between chapter 12 and chapter 13 cases for purposes of Rule 2002(f)(7). If the requirement for expedited procedures was the reason for including chapter 12 when the rule was amended in 1991, chapter 13 arguably should be included now as well.

Third, although the "catchall" provision of Rule 9022 provides sufficient discretion for courts in particular cases to order notice of the entry of a confirmation order beyond the requirements of Rule 2002(f)(7), there is a benefit to creating uniform procedures in chapter 13

cases. The Rules Committee is currently formulating a national chapter 13 form plan with the goal of encouraging uniformity in chapter 13 case procedures. If the benefits of providing notice to creditors when a confirmation order is entered are sufficiently high, it makes more sense to amend Rule 2002(f)(7) rather than rely on the possibility of ad hoc orders in particular cases.

2. Considerations against amending the rule

Nevertheless, the Subcommittee was concerned about the potential costs of imposing a notice requirement. Those costs depend on, among other factors, how many creditors will receive notice in a typical chapter 13 case and the form of notice. If the typical case involves a relatively small number of creditors who would receive notice electronically, the costs of amending the rule would be minimal. If, on the other hand, a lengthier list of creditors is typical, and many of those creditors require notice by mail, more significant costs would be expected.

A related concern is where the burden of any additional notice cost will lie. The current rule permits the court to direct “some other person” besides the clerk to give notice. Members of the Subcommittee noted that in practice the debtor may be the one directed to serve notice to creditors of the entry of a confirmation order. If notice costs are not minimal, an amendment to the rule could therefore increase the financial burden on debtors in chapter 13 cases. Given the apparent lack of any concern or confusion in the case law regarding the current omission of chapter 13 from Rule 2002(f)(7), the Subcommittee viewed the added benefit from amending the rule to be outweighed if these costs are significant.

The Subcommittee has undertaken to contact clerks offices to learn more about current noticing practices in chapter 13 cases and who bears the costs of such notice. Until that information can be gathered and assessed, the Subcommittee recommends deferring consideration of the suggestion.

TAB 6F

THIS PAGE INTENTIONALLY BLANK

Suggestion 12-BK-D Rule 7001(1)

Item 4D will be an oral report.

THIS PAGE INTENTIONALLY BLANK

TAB 7

THIS PAGE INTENTIONALLY BLANK

TAB 7A

THIS PAGE INTENTIONALLY BLANK

Mini-Conference on Mortgage Rules and Forms

Item 5A will be an oral report.

THIS PAGE INTENTIONALLY BLANK

TAB 7D

THIS PAGE INTENTIONALLY BLANK

August 7, 2012

Re: Advisory Committee on Bankruptcy Rules
Conference on Mortgage Rules and Forms
(Rules 3001(c) and 3002.1; Forms 10A, 10S1, and 10S2)

Thank you for agreeing to participate in the Conference on the Mortgage Rules and Forms being held by the Advisory Committee on Bankruptcy Rules. As you may know, the purpose of the conference is both to explore the effectiveness of the mortgage rules and forms adopted last December and to consider whether any amendments might be advisable. I would like to give you some additional information about the conference and your role as a participant.

Location, date, and time of the conference

- The conference will be held on September 19, 2012 from 8:30 a.m. to 3 p.m. in Courtroom 12A at the Mark O. Hatfield U.S. Courthouse, 1000 S.W. Third Ave., Portland, Oregon. This is the location of the District Court, not the Bankruptcy Court. The courtroom is located on the 12th floor, which is served by elevator. Signs will be posted to direct you to the Conference.

- In order to be present for the beginning of the conference, you should arrive at the courthouse by 8:15, giving enough time for security clearance. The security officers will ask you to show government-issued identification.

- A catered lunch will be provided for all participants in order to maximize the available conference time.

Attendees and participation

- The center of the courtroom will be set with a hollow square of tables, with places for members and others associated with the Rules Committee and for our fifteen invited attendees. The conference will be open to the public as observers, with seating in the courtroom benches.

- Not all members of the committee will be attending the conference, but we expect that, at a minimum, the attendees will include:

- Judge Elizabeth Perris, Judge Arthur Harris, and John Rao, who have assisted in organizing the conference;
- myself, as chair of the Rules Committee;
- Professors Elizabeth Gibson and Troy McKenzie, the Committee’s reporters; and
- James Wannamaker and Scott Myers, attorneys with the Administrative Office of the United States Courts.

We also anticipate participation by representatives of the Executive Office for United States Trustees. Contact information for all of the members and associated personnel of the Rules Committee is attached.

- The fifteen invited participants include representatives of several groups affected by the mortgage rules and forms: servicers, debtors, trustees, judges, and clerks. A complete list of the attendees, with contact information, is also attached.

- Each of those seated around the tables will be expected to participate actively, with an opportunity to comment on any issue raised for discussion. The public observers may discuss issues during breaks, but will not engage in the discussion of issues during active sessions of the conference.

Issues and method of presentation

- The Advisory Committee has reviewed a number of judicial decisions, published commentary, and suggestions bearing on the new mortgage rules and forms. From these sources, the committee has developed a list of issues, divided into six topic areas. A list of these issues, with any existing source material, is attached. The issues listed are not exclusive. You may raise other issues, and the final segment of the conference is designed specifically to allow open discussion.

- The final attachment is a list assigning each topic area to a panel of our invited attendees for initial presentation during the segment of the conference devoted to that topic area. Each segment has been given a specific time, and the panel should plan to spend no more than half of the allotted time in giving its initial presentation, with comments by the panel members. The balance of the segment will be used for discussion of the topic by all of the participants. Any time that is not needed for discussion of a given topic will be saved for the general discussion in the last segment.

- Each panel may present its assigned topic in whatever way it decides would be best. One or two panel members might make the entire presentation, the issues may be given to each panel member for individual presentation, or the entire panel might present the issues through a conversation. The panel may determine that slides would be helpful, and a projector will be available.

- I have asked a member of the Advisory Committee to serve as a liaison to each panel, to help set up an initial conference call of the panel members and to answer any questions that the panel may have about its presentation.

- The issues within each topic are not intended to reflect any judgment by the Advisory Committee as to their importance or validity. The panel is free to decide that particular listed issues do not require discussion.

• Each panel is invited to prepare brief written materials in pdf format and submit them to James Wannamaker via email no later than September 7. His email address is James_Wannamaker@ao.uscourts.gov. Mr. Wannamaker will compile all the written materials and circulate them via email to all participants. Feel free to include in your written materials discussion of issues within your topic that your panel has decided not to cover during the oral presentation because of time constraints.

If you have questions about any of these matters, please let me know.

Once again, thank you for your help. I look forward to seeing you in Portland.

Sincerely,

A handwritten signature in black ink that reads "Eugene Wedoff". The signature is written in a cursive style with a large, stylized initial "E".

Eugene Wedoff
Chair, Advisory Committee on Bankruptcy Rules

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Chair, Advisory Committee on Bankruptcy Rules	Honorable Eugene R. Wedoff United States Bankruptcy Court Everett McKinley Dirksen United States Courthouse 219 South Dearborn Street Chicago, IL 60604
Reporter, Advisory Committee on Bankruptcy Rules	Professor S. Elizabeth Gibson 5073 Van Hecke-Wettach Hall University of North Carolina at Chapel Hill C.B. #3380 Chapel Hill, NC 27599-3380 Professor Troy A. McKenzie New York University School of Law 40 Washington Square South New York, NY 10012
Members, Advisory Committee on Bankruptcy Rules	Michael St. Patrick Baxter, Esq. Covington & Burling LLP 1201 Pennsylvania Avenue, NW Washington, DC 20004-2401 Honorable Karen K. Caldwell United States District Court United States Courthouse and Post Office 101 Barr Street Lexington, KY 40507 Honorable Jean C. Hamilton United States District Court Thomas F. Eagleton United States Courthouse 111 South Tenth Street, Room 16N St. Louis, MO 63102-1116 Honorable Arthur I. Harris United States Bankruptcy Court Howard M. Metzenbaum U.S. Courthouse 201 Superior Avenue, Room 148 Cleveland, OH 44114-1238

**Members, Advisory Committee
on Bankruptcy Rules (cont'd.)**

Honorable Sandra Segal Ikuta

United States Court of Appeals
Richard H. Chambers Court of Appeals Building
125 South Grand Avenue, Room 305
Pasadena, CA 91105-1621

Honorable Robert James Jonker

United States District Court
Gerald R. Ford Federal Building
110 Michigan Street, N.W., Room 685
Grand Rapids, MI 49503

Honorable Adalberto Jordan

United States Court of Appeals
Clerk's Office
56 Forsyth St., N.W.
Atlanta, Georgia 30303

Richardo I. Kilpatrick, Esq.

Kilpatrick & Associates, P.C.
903 N. Opdyke Road, Suite C
Auburn Hills, MI 48326

J. Christopher Kohn, Esq.

Director, Commercial Litigation Branch
Civil Division
United States Department of Justice
P.O. Box 875, Ben Franklin Station
Washington, DC 20044-0875
(1100 L Street, N.W., 10th Flr., Rm. 10036
Washington, DC 20005)

David A. Lander, Esq.

Greensfelder Attorneys at Law
10 South Broadway
Suite 2000
St. Louis, MO 63102

Professor Edward R. Morrison

University of Chicago Law School
1111 East 60th Street
Chicago, IL 60637

<p>Members, Advisory Committee on Bankruptcy Rules (cont'd.)</p>	<p>Honorable Elizabeth L. Perris Chief Judge United States Bankruptcy Court 700 Congress Center 1001 Southwest Fifth Avenue Portland, OR 97204-1145</p> <p>John Rao, Esq. National Consumer Law Center 7 Winthrop Square, 4th Floor Boston, MA 02110-1245</p> <p>Honorable Judith H. Wizmur Chief Judge United States Bankruptcy Court Mitchell H. Cohen U.S. Courthouse 2nd Floor – 400 Cooper Street Camden, NJ 08102-1570</p>

**Advisory Committee on Bankruptcy Rules
Conference on Mortgage Rules and Forms
Invited Attendees**

Michael Bates
Wells Fargo
Mike.T.Bates@wellsfargo.com
515-327-4291
West Des Moines, IA

Thad Bartholow
NACBA member
Thad@BBBankruptcy.com
214-696-9000 / 972-739-5255
Dallas, TX

Shawn Carter
Barrett Daffin Frappier Turner & Engel LLP
ShawnC@bdfgroup.com
972-341-0939
Addison, TX

John Crane
Citibank
john.t.crane@citi.com
469-220-4240
Irving, TX

Frederic J. DiSpigna
Brock and Scott, PLLC
frederic.dispigna@brockandscott.com
954-618-6955
Fort Lauderdale, FL

Robert Drummond
President of the NACTT
trustee@MTChapter13.com
406-761-8600
Great Falls, MT

Charlene Hiss
Clerk, Bankruptcy Court for the District of Oregon
charlene_hiss@orb.uscourts.gov
503-326-1571
Portland, OR

Judge Marvin Isgur
Bankruptcy Court for the Southern District of Texas
marvin_igur@txs.uscourts.gov
713-250-5635
Houston, TX

Edward J. Kennedy
American Eagle Credit Union
ekennedy@abecu.org
800-325-9905 ext 717
St Louis, MO

Judge Elizabeth W. Magner
Bankruptcy Court for the
Eastern District of Louisiana
elizabeth_magner@laeb.uscourts.gov
504-589-7800
New Orleans, LA

Debra Miller
Immediate Past President of the NACTT
debtor@d@trustee13.com
574-251-4456
South Bend, IN

Lance Olsen
Routh Crabtree Olsen, P.S.
lolsen@rcolegal.com
425-586-1905
Bellevue, WA

Judge Pamela Pepper
Bankruptcy Court for the
Eastern District of Wisconsin
pamela_pepper@wieb.uscourts.gov
414-290-2650
Milwaukee, WI

Judge Barry S. Schermer
Bankruptcy Court for the
Eastern District of Missouri
judge_barry_schermer@moeb.uscourts.gov
314-244-4531
St Louis, MO

Tara Twomey
NACBA member
tara.twomey@comcast.net
(831) 229-0256
Carmel, CA

Topics for Discussion at the Mortgage Mini-Conference

Topic 1. *Balancing amount and cost of disclosure.* Do the rules and forms strike the optimal balance between disclosure of useful information and the cost of producing the information?

- **To what extent, if any, should Rule 3001(c)(2) and Form 10A (Attachment A) require a full payment history?**
- **Should Form 10A ask for the amount of the debtor's mortgage payment as of the petition date?**
- **Should the requirement of Rule 3002.1(b) that creditors notify debtors of changes in current payments apply to home equity lines of credit (HELOCs)? If not, should any different notice be required in connection with HELOC payments?**
- **Should courts have discretion to relieve mortgage creditors from the obligation to file any of the forms, and, if so, should that discretion be limited to specific situations?**

Topic 2. *Best procedures.* Can there be improvements in the procedures for disclosing the required information and for resolving any disputes about amounts claimed by creditors, arising both before and after the bankruptcy filing?

- **To what extent, if any, should notices of payment changes (reported on Form 10S1) and of postpetition fees, expenses, and charges (reported on Form 10S2) be treated as a supplemental claim to be paid under the debtor's chapter 13 plan and to what extent should these notices have no effect in the absence of other action by the parties, such as a plan amendment or amended proof of claim?**
- **What procedure should a debtor or trustee follow to object to a notice of payment change?**
- **When creditors do not file a timely response to a Notice of Final Cure Payment, through what procedure should the status of the mortgage be determined?**
- **To what extent should a creditor be permitted to charge the debtor with attorney's fees incurred in complying with the notice requirements of Rule 3002.1? See, e.g., *In re Carr*, 468 B.R. 806 (Bankr. E.D. Va. 2012); *In re White*, 2012 Bankr. LEXIS 1884 (Bankr. E.D.N.C. Apr. 30, 2012); *In re Adams*, 2012 WL 1570054 (Bankr. E.D.N.C. May 3, 2012).**
- **Should Rule 3002.1 be amended to emphasize that Forms 10S1 and 10S2 should not be filed in connection with mortgage claims that are not being treated under Section 1322(b)(5)?**

Topic 3. *Technical and administrative issues.* Have any administrative or technical problems have been encountered in completing or filing the forms?

- **How should notices under Rule 3002.1 be filed if the mortgage creditor did not file a proof of claim in the case?**
- **Can changes in the processing of the new forms be made to alleviate any administrative or technological problems encountered by mortgage creditors or clerks' offices?**
- **Can the rules and forms be amended to alleviate problems, if any, that smaller creditors encounter in completing the forms?**
- **What method of service should be required for the trustee's Notice of Final Cure Payment under Rule 3002.1(f)?**
- **Can the mortgage forms be made more compatible with creditor software?**

Topic 4. *Possible ambiguities, part 1.* Are there ambiguous provisions of the rules or forms that need to be amended by the Rules Committee rather than left to judicial interpretation? [Some questions that judges and lawyers have raised are listed below. To what extent do any of these questions reflect a need for amendment?]

- **Must a creditor comply with the requirements of Rule 3002.1 to file supplements if the creditor has been granted relief from the automatic stay?**
- **Must a creditor comply with the requirements of Rule 3002.1 to file supplements if the debtor has surrendered the house? See, e.g., *In re Kraska*, 2012 WL 1267993 (Bankr. N.D. Ohio Apr. 13, 2012).**
- **Does a creditor need to file Form 10S2 with respect to postpetition fees and costs arising from a motion for relief from stay even if the court has approved the fees and costs in connection with the settlement of the motion? See, e.g., *In re Sheppard*, 2012 WL 134112 (Bankr. E.D. Va. Apr. 18, 2012).**
- **Do the requirements under Rule 3002.1 to file supplements to the proof of claim apply if the mortgage payments are being made directly by the debtor rather than by the trustee? See, e.g., *In re Merino*, 2012 WL 2891112 (Bankr. M.D. Fla. July 16, 2012); *In re Garduno*, 2012 WL 2402789 (Bankr. S.D. Fla. June 26, 2012).**

Topic 5. *Possible ambiguities, part 2.*

- **Is the sum of Part I and Part II of Form 10A supposed to equal the amount of the secured claim on the proof of claim? If so, should escrow shortages (Part II, line 13) be deleted from the calculation?**

- **In Form 10S1, Part 1, what is meant by the requirement that the copy of the escrow account statement be "prepared in a form consistent with applicable nonbankruptcy law"?**
- **Does the term “the amount required to cure any default on the claim” in Rule 3002.1(f) include postpetition fees and charges included in notices sent by the creditor? Specifically, should the trustee file a Notice of Final Cure Payment if there have been any notices of postpetition fees, expenses, and charges that the trustee does not know have been paid or successfully challenged?**
- **On which form—Form 10A or Form 10S2—does a creditor disclose attorney’s fees incurred for the preparation of a proof of claim?**

Topic 6. *Local rules and enforcement.*

Local rules. To what extent should provisions in local rules or forms applicable to home mortgage claims either (a) be prohibited because they present difficulties in complying with the national rules and forms or (b) be adopted as part of the national rules and forms because they are more effective and efficient than the current national provisions?

- **Are mortgage creditors being required to file local forms that duplicate information required by the national forms?**
- **To what extent does the existence of additional requirements at the local level cause difficulties for creditors?**
- **Do any local rules or forms require the disclosure of information that should be required to be disclosed in all districts?**
- **Have any local rules or orders implemented procedures that facilitate compliance with the national rules and forms?**

Enforcement. Are the enforcement provisions effective?

- **What consequences should result from a creditor filing a notice or statement required by Rule 3002.1 after the specified deadline?**
- **What should be the procedure for seeking sanctions under Rule 3002.1(i)? Under what circumstances should a sanction be imposed?**

Conference on Mortgage Rules and Forms: Topics, Schedule, and Panel Assignments

- 8:30 - 8:45 Welcome and Introductions
- 8:45 - 9:30 Topic 1. *Balancing amount and cost of disclosure.*
- Panelists: John Crane, Tara Twomey, Debra Miller, Judge Isgur
Committee Liaison: Judge Wizmur
- 9:30 - 10:30 Topic 2. *Best procedures.*
- Panelists: Frederic DiSpigna, Thad Bartholow, Robert Drummond, Judge Pepper
Committee Liaison: Judge Perris
- 10:30 - 10:45 Break
- 10:45 - 11:15 Topic 3. *Technical and administrative issues*
- Panelists: Charlene Hiss, Edward Kennedy, Judge Magner,
Committee Liaison: David Lander
- 11:15 - noon Topic 4. *Possible ambiguities, part 1*
- Panelists: Lance Olsen, Tara Twomey, Judge Magner
Committee Liaison: John Rao
- Noon - 1:00 Lunch (catered lunch will be provided)
- 1:00 - 1:30 Topic 5. *Possible ambiguities, part 2.*
- Panelists: Shawn Carter, Tara Twomey, Judge Schermer
Committee Liaison: Richardo Kilpatrick

1:30 - 2:15

Topic 6. *Local rules/enforcement*

Panelists: Mike Bates, Robert Drummond, Thad Bartholow,
Judge Isgur

Committee Liaison: Judge Harris

2:15 - 3:00

Open Forum to raise and discuss issues not previously
addressed

3:00

Adjourn

THIS PAGE INTENTIONALLY BLANK

TAB 8

THIS PAGE INTENTIONALLY BLANK

TAB 8A

THIS PAGE INTENTIONALLY BLANK

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: CHAPTER 13 FORM PLAN WORKING GROUP
RE: NATIONAL CHAPTER 13 FORM PLAN PROJECT
DATE: AUGUST 22, 2012

In the course of preparing a national chapter 13 form plan, the Working Group concluded that amendments to bankruptcy rules would be helpful—if not essential—to an effective national form. This memorandum discusses the Working Group’s recommendations for rule amendments and the group’s proposal for the timing of formal consideration of these amendments by the Advisory Committee. A draft model plan and redlined version of the proposed rule amendments, showing all changes made from the current rules text, are set out as an appendix.

The Timing of Proposed Amendments

The Working Group has made substantial progress in drafting a model plan and proposed rule amendments. The Working Group brings them to the Advisory Committee at this meeting for a preliminary review. Subject to the approval of the Consumer and Forms Subcommittees, the Advisory Committee will be asked at the spring meeting to request the Standing Committee to publish the rule amendments for public comment in August 2013.

The process of drafting language for the rules discussed in this memorandum and developing the model plan has revealed the importance of seeking additional input before publication. Following the fall meeting, the Working Group would like to solicit the input of a broad cross section of interested parties. One potential approach for doing so would be modeled on the process used in the Forms Modernization Project—that is, seeking the views of lawyers (for debtors and creditors), trustees, and judges in workshop-style sessions. The Working Group

therefore requests the Advisory Committee's approval to solicit input from interested parties about the specific rule amendment language and draft model plan.

Rule Changes Proposed by the Working Group

1. Rule 3002

One of the major functions of a chapter 13 plan is dealing with secured claims. In order for a debtor or the standing trustee to have the relevant information about a secured claim, including the total claim amount and the amount of any claimed arrearage, it would be helpful to have a proof of claim from each secured creditor filed before the confirmation hearing. That way, any differences between the debtor's plan and the proof of claim could be addressed at the confirmation hearing.

A proposed rule amendment requiring proofs of claim to be filed by secured creditors was considered by the Advisory Committee meeting in March. Although general approval of the rule change was expressed, the question of whether the change should apply in chapter 11 cases was referred to the Business Subcommittee. The Working Group's proposal as currently drafted would apply in all cases.

In addition to requiring that proofs of claim be filed by secured creditors under Rule 3002(a), the Working Group also recommends that the deadline for filing proofs of claim under Rule 3002(c)—which deals with claims in chapters 7, 12, and 13—be reduced from 90 days after the first date set for the § 341 meeting of creditors to 60 days after the filing of the petition. A different time period is set out for involuntary chapter 7 cases.

This change would set the filing deadline to occur before the chapter 13 confirmation hearing date established by § 1324(b) of the Code. That subsection generally requires the confirmation hearing to be between 20 and 45 days after the § 341 meeting, which, under Rule

2003(a), must be at least 21 days after the order for relief in chapter 13. Thus, the court could always set the confirmation hearing more than 60 days after the order for relief, the proposed general deadline for filing proofs of claim. The deadline would also result in the filing of claims before the hearing on confirmation of a chapter 12 plan, which must generally be filed within 90 days of the order for relief under § 1221. Governmental creditors would be excepted from the deadline, consistent with the limitation in § 502(b)(9) of the Code.

The Working Group did not initially suggest any amendment to the exceptions to the deadline set out in Rule 3002(c). After further consideration, however, the Working Group has proposed a limited exception for creditors who were not timely listed in the mailing list required by Rule 1007(a)(1) to contain the name and address of creditors included or to be included in the debtor's schedules.

The proposed language is as follows:

Rule 3002. Filing Proof of Claim or Interest

(a) NECESSITY FOR FILING. A secured creditor, unsecured creditor, and equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005. A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim.

(b) PLACE OF FILING. A proof of claim or interest shall be filed in accordance with Rule 5005.

(c) TIME FOR FILING. In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, a proof of claim is timely filed if it is filed not later than 60 days after the date of the filing of the petition, and in an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the entry of the order for relief, except as follows:

* * *

(6) If the debtor fails to include a creditor on the list required by Rule 1007(a)(1), filed with the petition, or if notice of the time to file a proof of claim has been mailed to a creditor at a foreign address, on motion filed by the creditor before or after the expiration of the time, the court may extend the time by not more than 60 days from the date of the court's determination if the court finds that the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim.

2. Rule 3007

Among the rule amendments published for public comment last August was an amendment of Rule 3007(a), which addresses the time and manner of serving objections to claims. Rather than proceed with the published amendment of Rule 3007(a), the Advisory Committee decided in March to postpone further action on the amendment until a unified approach to the service of claim objections and claim determinations through plans can be proposed. Although this unified approach has not yet been developed, the Working Group proposes an amendment to Rule 3007 that would provide an exception to the need to file a claim objection if the determination of the allowance of a claim is made under proposed Rule 3012 in connection with plan confirmation in a chapter 12 or 13 case. The proposed language is as follows:

Rule 3007. Objections to Claims

(a) OBJECTIONS TO CLAIMS. An objection to the allowance of a claim shall be in writing and filed. Except to the extent that a determination of the allowance of a claim is made under Rule 3012 in connection with plan confirmation in a chapter 12 or 13 case, a copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing.

3. Rule 3012

Just as the amendment to Rule 3002 will assist in determining the proper treatment of secured claims under a form chapter 13 plan, an amendment to Rule 3012 will clarify that the amount of an allowed secured claim, as well as the amount of a claim subject to priority, may be specified in a proposed plan, subject to objection and resolution at the confirmation hearing. Current Rule 3012 provides for the valuation of secured claims by motion only, and there is no rule governing the determination of priority claim amounts. However, the secured and priority status of claims must often be determined at the time of plan confirmation in chapter 13, because of a need for these claims to be given special treatment under § 1322(a)(2) (full payment of priority claims), § 1322(b)(2) and (5) (special treatment for homestead-only mortgages), and § 1325(a)(5) with the “hanging paragraph” (treatment of certain other secured claims). Similarly, because of the importance of curing mortgage arrears under § 1322(b)(5), the Working Group decided, after the initial proposed revision was drafted, to add the determination of arrearage amounts to the matters that could be determined through the confirmation process. Finally, because of the importance of these determinations to secured and priority creditors, a further amendment is proposed to require that these creditors receive notice consistent with the requirement of Rule 7004 for service of an adversary proceeding.

In recognition that a claim of a governmental unit may be timely filed after confirmation, the proposed rule also provides that determinations with respect to such a claim may be made only after the claim is filed or after the time for filing the claim has expired.

Objections to claims under § 502(b) of the Code are not affected by this amendment and would continue to be governed by Rule 3007. Section 502(b) generally requires that any proof of claim be “allowed” unless an objection is brought under one of the grounds listed in that

subsection. Those grounds do not include insufficiency of collateral to support a secured claim or the absence of a basis for priority. Thus, a claim can be “allowed” in its full amount, with secured or priority status determined separately. The determination of the allowed amounts of general unsecured claims is generally not required at the time of plan confirmation. Similarly, the procedures for confirmation of chapter 11 plans are also not affected by the amendment. A Committee Note to the amendment would reflect these limitations.

The amendment of Rule 3012 as proposed to deal with the valuation issues and notice is as follows:

Rule 3012. Determination of the Amount of Secured and Priority Claims

On request of a party in interest and after notice—to the holder of the claim and any other entity designated by the court—and a hearing, the court may determine

- (a) the amount of an allowed secured claim under § 506(a) of the Code,
- (b) the amount necessary to cure any default as of the date of the petition,
- or
- (c) the amount of a claim entitled to priority under § 507 of the Code.

The request may be made by motion, in a plan filed in a chapter 12 or 13 case, or in a claim objection. The request shall be served on the holder of the claim and any other entity designated by the court in the manner provided for service of a summons and complaint by Rule 7004. Determinations under this rule may be made with respect to a claim of a governmental unit only after a proof of claim has been filed by the governmental unit or after the time for filing a proof of claim under Rule 3002(c)(1) has expired.

4. Rule 3015

The most extensive proposed amendments are to Rule 3015, which deals with filing, objections to, and modification of a chapter 13 plan. In addition to several stylistic

changes, the proposed amendment introduces, in Rule 3015(c), the requirement that an official form be used for all chapter 13 plans. The rule further provides that non-standard provisions will be ineffective unless they are set out in the section of the official form specifically designated for such provisions and are identified in accordance with the requirements of the official form.

Rule 3015(d) would be amended to assure that creditors receive a copy of the plan prior to confirmation.

Rule 3015(f) would establish a default deadline for objections to confirmation at seven days before the confirmation hearing. This new deadline would create the need for extended notice of plan confirmation under Rule 2002(b)(2), which provides for 28-day notice of both the hearing on confirmation of a chapter 13 plan and the deadline for filing objections to confirmation. If a single notice is provided, it would need to be sent at least 35 days before the confirmation hearing, in order to give 28-days notice of the deadline for filing objections. A Committee Note could point this out. However, the Working Group may wish to consider an amendment to Rule 2002(b)(2) to provide either for 21 days' notice of the deadline for filing objections or 35 days' notice of the confirmation hearing.

A new Rule 3015(g) is added, which provides, consistent with *United Student Aid Funds, Inc. v. Espinosa*, 130 S.Ct. 1367 (2010), that the confirmation of a chapter 13 plan controls over any contrary proof of claim, and so effectuates the amendments to Rule 3012.

Finally, former Rule 3015(g), now designated as Rule 3015(h), is amended to provide more effective notice of proposed plan modifications.

The proposed language of the amendments is as follows:

Rule 3015. Filing, Objection to Confirmation, Effect of Confirmation and Modification of a Plan in a Chapter 12 or a Chapter 13 Case

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

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

(c) **FORM OF CHAPTER 13 PLAN.** The plan filed in a chapter 13 case shall be prepared as prescribed by the appropriate Official Form. Provisions not otherwise included in the Official Form or deviating from provisions of the Official Form shall not be effective unless they are included in a section of the Official Form that is designated for non-standard provisions and are also identified in accordance with any other requirements of the Official Form.

(d) **NOTICE.** If the plan is not included with the notice of the hearing on confirmation mailed pursuant to Rule 2002, the debtor shall serve the plan on the trustee and all creditors when it is filed with the court.

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

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

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

(g) EFFECT OF CONFIRMATION. Any determination made under Rule 3012 of the validity, amount and treatment of a claim filed in a chapter 12 or 13 case shall be binding on the holder of the claim notwithstanding any contrary proof of claim filed by the holder in accordance with Rule 3001 or any scheduling of that claim by the debtor pursuant to § 521(a) of the Code, whether or not any objection has been filed to the claim under Rule 3007.

(h) MODIFICATION OF PLAN AFTER CONFIRMATION. A request to modify a plan pursuant to § 1229 or § 1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. If a copy is not included with the notice and the proposed modification is sought by the debtor, a copy shall be served on the trustee and all creditors in the manner provided for service of the plan by subdivision (d) of this rule. 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.

5. Rule 4003

Rule 4003(d) is amended, consistent with Rule 3012, to make clear that chapter 12 and 13 plans may provide for avoidance of liens pursuant to § 522(f) of the Code. Again, to assure that a creditor affected by the avoidance has proper notice of the plan, the plan would have to be served on that creditor in accordance with Rule 7004. The proposed language is as follows:

Rule 4003. Exemptions

* * *

(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY.

A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be commenced by motion in the manner provided for by Rule 9014 or by a chapter 12 or 13 plan served in the manner provided by Rule 7004 for service of a summons and complaint. Notwithstanding the provisions of subdivision (b), a creditor may object to a motion or chapter 12 or 13 plan provision filed under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

6. Rule 5009

Another issue considered by the Working Group is whether there should be a procedure for the debtor to obtain an order confirming that a secured claim has been satisfied. The primary concern is that a debtor may need documentation for title purposes of the elimination of an unsecured second mortgage or other lien. Because requests for such orders are likely to be made at the time the case is being closed, the Working Group is proposing that the procedure be added as an amendment to Rule 5009. However, the rule would allow a debtor to request an order at any time after the lien has been satisfied. The language is drafted to avoid taking a position on whether a chapter 13 discharge must be entered before a request for an order may be made.

Rule 5009. Closing Chapter 7, Chapter 12, and Chapter 13 Cases; Order Declaring Lien Satisfied

(a) CLOSING OF CASES UNDER CHAPTERS 7, 12, AND 13. If in a chapter 7, chapter 12, or chapter 13 case the trustee has filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered and the case shall be closed.

(b) ORDER DECLARING LIEN SATISFIED. In a chapter 12 or chapter 13 case, if a claim is subject to a lien under applicable nonbankruptcy law, and the debtor contends that (1) any portion of the claim that is an allowed secured claim has been fully paid, and (2) any other portion of the claim has been discharged, the debtor may request entry of an order determining that the lien has been satisfied. The request shall be made by motion and shall be served on the holder of the claim and any other entity designated by the court in the manner provided by Rule 7004 for service of a summons and complaint. An order entered under this subdivision shall be effective as a release of the lien.

7. Rule 7001

Rule 7001 lists a number of matters that are required to be conducted by adversary proceeding. Included in this list, in Rule 7001(2) are certain proceedings “to determine the validity, priority, or extent of a lien or other interest in property.” This item would be amended to clarify that confirmation of a chapter 12 or chapter 13 plan, rather than an adversary proceeding, may determine secured and priority status under Rule 3012, as well as § 522(f) lien avoidance under Rule 4003(d). The Committee Note would point out that lien avoidance not governed by Rule 4003(d) would continue to require an adversary proceeding.

The Committee Note would also point out that the amendments to Rules 3012, 4003, and 7001 resolve a conflict in the reported decisions as to the proper procedure for eliminating, through a chapter 12 or 13 plan, a second mortgage unsupported by any equity in the debtor’s home. *See In re Bennett*, 466 B.R. 422 (Bankr. S.D. Ohio 2012) (collecting conflicting authorities). The amendments make clear that an adversary proceeding is not required and that the second mortgage may be eliminated through a chapter 12 or 13 plan.

The amendment to Rule 7001 is as follows:

Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

* * *

(2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, not including a proceeding under Rule 3012 or Rule 4003(d);

8. Rule 9009

The final amendment is to Rule 9009, which governs forms generally. The amendment would address two concerns involving the current provision that official forms may be “used with alterations as may be appropriate” and with “their contents rearranged.” To make all of the forms—and particularly the chapter 13 plan form—consistent in use, these provisions would be eliminated, and the only modifications allowed would be in the omission of form provisions and responses that, by the terms of the form, are inapplicable. The proposed amended language is as follows:

Rule 9009. Forms

Except as otherwise provided in Rule 3016(d), the Official Forms prescribed by the Judicial Conference of the United States shall be observed and accepted for filing. If a form indicates that answers to particular questions are not required by the person completing the form, those questions need not be reproduced in the document filed with the court. Specific questions and instructions may not be changed, except that on the schedules the debtor may omit spaces for responses once the debtor has either indicated that the debtor has nothing to report for the category or has scheduled all information pertinent to the category. The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code. The forms shall be construed to be consistent with these rules and the Code.

Appendix: Redlined version, showing language modifying existing rules

Rule 3002. Filing Proof of Claim or Interest

1
2 (a) NECESSITY FOR FILING. ~~Unsecured Creditors and Equity Security~~
3 ~~Holder~~. ~~An unsecured creditor or an equity security holder must file a proof of~~
4 ~~claim or interest for the claim or interest to be allowed, except as provided in~~
5 ~~Rules 1019(3), 3003, 3004, and 3005.~~ A secured creditor, unsecured creditor, and
6 equity security holder must file a proof of claim or interest for the claim or
7 interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005.
8 A lien that secures a claim against the debtor is not void due only to the failure of
9 any entity to file a proof of claim.

10 (b) PLACE OF FILING. A proof of claim or interest shall be filed in accordance
11 with Rule 5005.

12 (c) TIME FOR FILING. In a **voluntary** chapter 7 ~~liquidation~~ **case**, chapter 12
13 ~~family farmer's debt adjustment~~ **case**, or chapter 13 ~~individual's debt adjustment~~
14 **case**, a proof of claim is timely filed if it is filed not later than ~~90~~ **60** days after ~~the~~
15 **date of the filing of the petition**, and in an involuntary chapter 7 case, a proof of
16 **claim is timely filed if it is filed not later than 90 days after the entry of the order**
17 **for relief**, ~~the date first set for the meeting of creditors under § 341(a) of the Code~~
18 except as follows:

19 * * *

20 (6) **If the debtor fails to include a creditor on the list required by Rule**
21 **1007(a)(1), filed with the petition, or if** ~~If~~ notice of the time to file a proof
22 of claim has been mailed to a creditor at a foreign address, on motion filed
23 by the creditor before or after the expiration of the time, the court may
24 extend the time by not more than 60 days **from the date of the court's**
25 **determination** if the court finds that the notice was insufficient under the
26 circumstances to give the creditor a reasonable time to file a proof of
27 claim.

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

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

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

13 (c) ~~DATING. Every proposed plan and any modification thereof shall be dated.~~

14 **FORM OF CHAPTER 13 PLAN. The plan filed in a chapter 13 case shall be**
15 **prepared as prescribed by the appropriate Official Form. Provisions not otherwise**
16 **included in the Official Form or deviating from provisions of the Official Form**
17 **shall not be effective unless they are included in a section of the Official Form**
18 **that is designated for non-standard provisions and are also identified in**
19 **accordance with any other requirements of the Official Form.**

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

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

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

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

38 **(g) EFFECT OF CONFIRMATION.** Any determination made under Rule 3012
39 **of the validity, amount and treatment of a claim filed in a chapter 12 or 13 case**
40 **shall be binding on the holder of the claim notwithstanding any contrary proof of**
41 **claim filed by the holder in accordance with Rule 3001 or any scheduling of that**
42 **claim by the debtor pursuant to § 521(a) of the Code, whether or not any objection**
43 **has been filed to the claim under Rule 3007.**

44 ~~(g)~~ **(h) MODIFICATION OF PLAN AFTER CONFIRMATION.** A request to
45 modify a plan pursuant to § 1229 or § 1329 of the Code shall identify the
46 proponent and shall be filed together with the proposed modification. The clerk,
47 or some other person as the court may direct, shall give the debtor, the trustee, and
48 all creditors not less than 21 days' notice by mail of the time fixed for filing
49 objections and, if an objection is filed, the hearing to consider the proposed
50 modification, unless the court orders otherwise with respect to creditors who are
51 not affected by the proposed modification. A copy of the notice shall be
52 transmitted to the United States trustee. A copy of the proposed modification, or a
53 summary thereof, shall be included with the notice. ~~If required by the court, the~~
54 ~~proponent shall furnish a sufficient number of copies of the proposed~~
55 ~~modification, or a summary thereof, to enable the clerk to include a copy with~~
56 ~~each notice.~~ **If a copy is not included with the notice and the proposed**
57 **modification is sought by the debtor, a copy shall be served on the trustee and all**
58 **creditors in the manner provided for service of the plan by subdivision (d) of this**
59 **rule.** Any objection to the proposed modification shall be filed and served on the
60 debtor, the trustee, and any other entity designated by the court, and shall be
61 transmitted to the United States trustee. An objection to a proposed modification
62 is governed by Rule 9014.

1 **Rule 4003. Exemptions**

2 * * *

3 (d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY.

4 A proceeding by the debtor to avoid a lien or other transfer of property exempt
5 under § 522(f) of the Code shall **be commenced** by motion **in the manner provided**
6 **for by** ~~in accordance with~~ Rule 9014 **or by a chapter 12 or 13 plan served in the**
7 **manner provided by Rule 7004 for service of a summons and complaint.**

8 Notwithstanding the provisions of subdivision (b), a creditor may object to a
9 motion or chapter 12 or 13 plan provision filed under § 522(f) by challenging the
10 validity of the exemption asserted to be impaired by the lien.

1 **Rule 5009. Closing Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt**
2 **Adjustment, and Chapter 13 Individual's Debt Adjustment Cases; Order Declaring**
3 **Lien Satisfied**

4 (a) CLOSING OF CASES UNDER CHAPTERS 7, 12, AND 13. If in a chapter 7,
5 chapter 12, or chapter 13 case the trustee has filed a final report and final account
6 and has certified that the estate has been fully administered, and if within 30 days
7 no objection has been filed by the United States trustee or a party in interest, there
8 shall be a presumption that the estate has been fully administered **and the case shall**
9 **be closed.**

10 (b) ORDER DECLARING LIEN SATISFIED. In a chapter 12 or chapter 13 case,
11 if a claim is subject to a lien under applicable nonbankruptcy law, and the debtor
12 contends that (1) any portion of the claim that is an allowed secured claim has been
13 fully paid, and (2) any other portion of the claim has been discharged, the debtor
14 may request entry of an order determining that the lien has been satisfied. The
15 request shall be made by motion and shall be served on the holder of the claim and
16 any other entity designated by the court in the manner provided by Rule 7004 for
17 service of a summons and complaint. An order entered under this subdivision
18 shall be effective as a release of the lien.

TAB 8D

THIS PAGE INTENTIONALLY BLANK

United States Bankruptcy Court
_____ District of _____

In re:

Case No: _____

Debtor(s)

Check if this is an amended plan

Official Form XXXX
Chapter 13 Plan

Date: _____

Check all that apply:

- The plan seeks to limit the amount of a secured claim, which may result in a creditor's lien receiving a partial payment or no payment at all, as set out in Part 2, Section 7.
- The plan requests the avoidance of a judicial lien as set out in Part 2, Section 9.
- The plan requests the avoidance of a nonpossessory, nonpurchase-money security interest as set out in Part 2, Section 10.
- The plan sets out non-standard provisions in Part 10.

Notice to Interested Parties: Your rights may be affected. Your claim may be reduced, modified, or eliminated.

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

If you oppose the Plan treatment of your claim or any provision of this Plan, you or your lawyer must file an objection to confirmation at least seven days before the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court. The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. See Bankruptcy Rule 3015.

Part 1: Plan Payments and Length of Plan

1. Debtor(s) will pay to the trustee \$ _____ per month for _____ months, and
\$ _____ per month for _____ months.
2. Payments to the trustee will be made from future earnings in the following manner:
 - Debtor(s) will agree to entry of a payroll deduction order.
 - Debtor(s) will make payments directly to the trustee.

3. Additional payments to the trustee will be made as follows (check all that apply):

Debtor(s) will turn over to the trustee:

any tax refunds received during the plan term

any tax refunds in excess of \$ _____ received during the plan term

Other sources of funding, including the sale of property (describe source, amount and date when available):

4. The estimated total amount of plan payments is \$ _____.

5. The estimated term of the plan is _____ months.

Part 2: Treatment of Secured Claims

6. **Cure of Default and Maintenance of Payments.** The debtor(s) will cure the default and maintain the contractual installment payments on the secured claims listed below. The allowed claim for the arrearage amount, if any, will be paid under the plan, with interest if specified, at the rate stated.

Name of creditor	Collateral	Current installment payment (including escrow payment)	Interest rate on arrearage (if applicable)	Amount of arrearage to be paid	Monthly plan payment on arrearage or other payment arrangement
		Payment: \$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)			
		Payment: \$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)			

7. **Determination of Allowed Secured Claims and Claim Modification.** The claims listed below are allowed secured claims only to the extent of the value of the creditor's interest in the collateral as provided under 11 U.S.C. § 506(a). Unless a creditor timely objects to confirmation, the value of the creditor's interest in the collateral shall be the amount of the allowed secured claim listed below, and it will be paid in full under the plan with interest at the rate stated below. The portion of any allowed claim that exceeds the amount of the allowed secured claim shall be treated as an unsecured claim under Part 4 of this plan. If the amount of a creditor's allowed secured claim is listed below as having no value, the creditor's allowed claim shall be treated in its entirety as an unsecured claim under Part 4 of this plan. The holder of any allowed secured claim, other than a mortgage treated in Part 2, Section 6, shall retain the lien until the earlier of (a) payment of the underlying debt determined under nonbankruptcy law, or (b) discharge under 11 U.S.C. § 1328(a), at which time the lien shall terminate and be released by the creditor. See Bankruptcy Rule 3015.

Name of creditor	Amount of creditor's claim	Collateral	Value of collateral	Amount of claims senior to creditor's claim	Interest rate	Amount of creditor's secured claim to be paid	Monthly plan payment

8. **Secured Claims Not Subject to 11 U.S.C. § 506.** The claims listed below were either (1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor or (2) incurred within one year of the petition date and secured by a purchase money security interest in any other thing of value. These claims will be paid in full under the plan with interest at the rate stated below.

Check if applicable:

Other secured claims not subject to 11 U.S.C. § 506 that are not listed below are provided for in Part 10 below.

Name of creditor	Collateral	Interest rate	Amount of claim to be paid	Monthly plan payment

9. **Judicial Lien Avoidance.** The judicial liens securing the claims listed below impair exemptions to which the debtor(s) would have been entitled under 11 U. S. C. § 522(b). A judicial lien securing a claim listed below shall be avoided to the extent that the lien impairs such exemptions upon entry of the order confirming the plan. The amount of the lien that is avoided will be treated as an unsecured claim in Part 4. The amount of the lien that is not avoided will be paid in full as a secured claim under the plan. See 11 U. S. C. § 522(f) and Bankruptcy Rule 4003(d).

Name of creditor	Collateral	Judgment date and date of lien recording	Lien recording information	Amount of lien not avoided and paid as secured claim	Interest rate (if applicable)	Monthly plan payment (if applicable)
				a. Amount of judicial lien \$ _____ b. Amount of all other liens \$ _____ c. Value of claimed exemptions + \$ _____ d. Total. Add a, b, and c \$ _____ e. Value of debtor's interest in property \$ _____ Extent of exemption impairment (check applicable box): <input type="checkbox"/> Line d is greater than Line e. The entire lien is avoided. <input type="checkbox"/> Line d is less than Line e. A portion of the lien is avoided. Amount of lien not avoided: \$ _____		
				a. Amount of judicial lien \$ _____ b. Amount of all other liens \$ _____ c. Value of claimed exemptions + \$ _____ d. Total. Add a, b, and c \$ _____ e. Value of debtor's interest in property \$ _____ Extent of exemption impairment (check applicable box): <input type="checkbox"/> Line d is greater than Line e. The entire lien is avoided. <input type="checkbox"/> Line d is less than Line e. A portion of the lien is avoided. Amount of lien not avoided: \$ _____		

10. **Nonpossessory, Nonpurchase-money Security Interest Avoidance.** The nonpossessory, nonpurchase-money security interests securing the claims listed below impair exemptions to which the debtor(s) would have been entitled under 11 U. S. C. § 522(b). A security interest securing a claim listed below shall be avoided to the extent that the security interest impairs such exemptions upon entry of the order confirming the plan. The amount of the security interest that is avoided will be treated as an unsecured claim in Part 4. The amount of the security interest that is not avoided will be paid in full as a secured claim under the plan. See 11 U. S. C. § 522(f) and Bankruptcy Rule 4003(d).

Name of creditor	Collateral	Amount of security interest not avoided and paid as secured claim	Interest rate (if applicable)	Monthly plan payment (if applicable)
		a. Amount of security interest \$ _____ b. Amount of all other liens \$ _____ c. Value of claimed exemptions + \$ _____ d. Total. Add a, b, and c \$ _____ e. Value of debtor's interest in property \$ _____ Extent of exemption impairment (check applicable box): <input type="checkbox"/> Line d is greater than Line e. The entire security interest is avoided. <input type="checkbox"/> Line d is less than Line e. A portion of the security interest is avoided. Amount of security interest not avoided: \$ _____		

		a. Amount of security interest \$ _____ b. Amount of all other liens \$ _____ c. Value of claimed exemptions + \$ _____ d. Total. Add a, b, and c \$ _____ e. Value of debtor's interest in property \$ _____ Extent of exemption impairment (check applicable box): <input type="checkbox"/> Line d is greater than Line e. The entire security interest is avoided. <input type="checkbox"/> Line d is less than Line e. A portion of the security interest is avoided. Amount of security interest not avoided: \$ _____		
--	--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--

11. **Surrender of Collateral.** The debtor(s) elect to surrender to the creditors listed below the personal or real property that is collateral for the claim. The debtor(s) consent to termination of the stay with respect to the collateral upon confirmation of the plan. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in Part 4 below.

Name of creditor	Collateral

Part 3: Treatment of Administrative and Other Priority Claims

12. **Trustee's Fees.** Fees of the standing trustee will be paid in full, without interest. These fees are estimated to be _____% of plan payments; and during plan term, they are estimated to total \$_____.
13. **Attorney's Fees.** Fees of the attorney, in the amount of \$_____, will be paid in full, without interest.
14. **Other Priority Claims.** The allowed priority claims listed below will be paid in full.

Name of creditor	Basis for priority treatment	Amount to be paid

15. **Domestic Support Obligations Paid Less than Full Amount.** The allowed priority claims listed below based on a domestic support obligation will be paid less than the full amount of the claim in accordance with 11 U.S.C. § 1322(a)(4).

Name of creditor	Amount to be paid

16. **Interest.** Interest on allowed priority claims listed in line 15 will (check the applicable box):

Not be paid

Be paid at an annual percentage rate of _____ % in accordance with 11 U.S.C. § 1325(a)(4), and is estimated to total \$ _____.

Part 4: Treatment of Nonpriority Unsecured Claims

17. **Cure of Default and Maintenance of Payments.** The debtor(s) will cure the default and maintain the contractual installment payments on the unsecured claims listed below on which the last payment is due after the final plan payment. The allowed claim for the arrearage amount will be paid under the plan.

Name of creditor	Current installment payment	Amount of arrearage to be paid
	Payment: \$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	
	Payment: \$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	

18. **Separately Classified Nonpriority Unsecured Claims.** The nonpriority unsecured allowed claims listed below are separately classified and will be treated as follows:

Name of creditor	Basis for separate classification	Treatment	Amount to be paid

--	--	--	--

19. **Nonpriority Unsecured Claims.** Nonpriority unsecured allowed claims that are not separately classified will be paid not less than (check the applicable box):

- The sum of \$_____ to be distributed on a *pro rata* basis
- _____ percent of allowed claims
- The funds remaining after disbursements have been made to all other creditors provided for in this plan, to be distributed on a *pro rata* basis.

20. **Interest.** Interest on allowed unsecured claims, including separately classified claims, will (check the applicable box):

- Not be paid
- Be paid at an annual percentage rate of _____ % in accordance with 11 U.S.C. § 1325(a)(4), and is estimated to total \$_____.

Part 5: Executory Contracts and Unexpired Leases

21. All executory contracts and unexpired leases are rejected, except those listed below, which are assumed and will be treated as provided for below or under another specified provision of the plan.

Name of creditor	Property description	Treatment (refer to other plan section if applicable)	Current installment payment	Amount of arrearage to be paid
			Payment: \$_____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	
			Payment: \$_____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	

Part 6: Order of Distribution

22. The trustee will pay allowed claims in the following order:

- 1) _____
- 2) _____
- 3) _____
- 4) _____
- 5) _____
- 6) _____
- 7) _____

Part 7: Summary of Plan Disbursements

23. From the payments received from the debtor(s), the trustee will make the following estimated disbursements on allowed claims:

- | | |
|--------------------------------------------------------------------------------|-----------------|
| 1) Current installment payments on secured claims (Part 2, Section 6 total): | \$ _____ |
| 2) Arrearage payments on secured claims (Part 2, Section 6 total): | \$ _____ |
| 3) Allowed secured claims (Part 2, Section 7 total): | \$ _____ |
| 4) Secured claims not subject to 11 U.S.C. § 506 (Part 2, Section 8 total): | \$ _____ |
| 5) Judicial liens not avoided (Part 2, Section 9 total): | \$ _____ |
| 6) Security interests not avoided (Part 2, Section 10 total): | \$ _____ |
| 7) Administrative and other priority claims (Part 3 total): | \$ _____ |
| 8) Current installment payments on unsecured debts (Part 4, Section 17 total): | \$ _____ |
| 9) Arrearage payments on unsecured debts (Part 4, Section 17 total): | \$ _____ |
| 10) Separately classified unsecured claims (Part 4, Section 18 total): | \$ _____ |
| 11) Nonpriority unsecured claims (Part 4, Section 19 total): | \$ _____ |
| 12) Interest on allowed unsecured claims (Part 4, Section 20 total): | \$ _____ |
| 13) Total of (1) through (12) above: | \$ _____ |

Part 8: Claims of Governmental Units

24. This plan is not binding with respect to any claim of a governmental unit that is (a) timely filed after confirmation of this plan, and (b) inconsistent with the treatment of such claim under this plan.

Part 9: Vesting of Property of the Estate

25. Property of the estate shall revert in the debtor(s) upon (check the applicable box):

- Plan confirmation
- Closing of case
- Other: _____

Part 10: Non-standard Plan Provisions

In accordance with Bankruptcy Rule 3015(c), non-standard provisions are required to be set forth below.

Part 11: Signatures

Debtors (sign only if not represented by an attorney)

Date _____

Date _____

Debtors' Attorney

_____ Date _____

THIS PAGE INTENTIONALLY BLANK

TAB 9

THIS PAGE INTENTIONALLY BLANK

TAB 9A

THIS PAGE INTENTIONALLY BLANK

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

RE: FORMS MODERNIZATION PROJECT

DATE: AUGUST 22, 2012

A. Background

The Bankruptcy Official Forms Modernization Project (FMP) began its work in 2008. The project is being carried out by an ad hoc group composed of members of the Advisory Committee on Bankruptcy Rules' Subcommittee on Forms working in liaison with representatives of other relevant Judicial Conference committees. The history of the FMP's work is discussed in greater detail in the Memorandum included in the materials for the spring 2012 Advisory Committee meeting.

The dual goals of the FMP are to improve the official bankruptcy forms and to improve the interface between the forms and available technology. The judiciary is in the process of developing "the next generation" of CM/ECF (Next Gen), and the modernized forms are being designed to use the enhanced technology that will become available through Next Gen. From a forms perspective, the major change in Next Gen will be the ability to store all information on forms as data so that authorized users can produce customized reports containing the information they want from the forms, displayed in whatever format they choose.

The FMP made a preliminary decision that the debtor forms for individuals and entities other than individuals should be separated, because separate areas of inquiry apply to each group. There is a greater need for the forms submitted by individuals to be less technical, because more individuals are unsophisticated compared to other entities and individuals may not have the assistance of counsel. The FMP began by drafting and testing the forms for individuals.

As explained in greater detail below, the FMP has largely finished drafting the individual forms and is in the process of drafting the modernized non-individual forms. The FMP is seeking to publish and implement the forms in stages to make the process manageable for users and software companies that help counsel produce the forms, to allow the FMP to learn from publication and experience thereby improving the forms that are implemented later, and to work with the Next Gen programers on forms sequentially rather than all at once.

B. Spring 2012 Advisory Committee Meeting

During the spring 2012 meeting, the Advisory Committee reaffirmed its preliminary decision made at its fall 2011 meeting that an incremental approach be taken to publishing and implementing the modernized forms. This decision was based largely on the pre-publication comments received from career law clerks, law students, a small group of lay persons, the the National Association of Chapter 13 Trustees, the National Association of Bankruptcy Trustees, the National Association of Consumer Bankruptcy Attorneys, and a group of attorneys from offices of the U.S. Trustees (collectively “prepublication reviewers”). In light of comments about the length of the draft forms, the Forms Subcommittee believes that the acceptance and success of the individual forms will depend to a large extent on whether Next Gen is sufficiently

operational to permit data to be extracted from the forms and inserted into customizable reports when the forms go into effect. At the time of the spring meeting, and still today, it is uncertain when the first release of Next Gen will become operational, although it is expected that it will be late 2013 or early 2014. It is also uncertain what access to forms information as data will be provided to active bankruptcy case participants outside the judiciary, such as trustees. The extent to which bankruptcy participants outside the judiciary can access and use the data to prepare their own reports will depend on policies of the Judicial Conference. Those policies are still being considered and prepared.

Another concern raised about implementation of the modernized forms is whether the judiciary is going to be able to develop a method to capture electronically information on forms that are filed by pro se parties. The Pro Se Pathfinder project has developed a method for doing that. Three districts, the Central District of California, the District of New Mexico, and the District of New Jersey, are testing the software.

Accordingly, at the spring meeting the Forms Subcommittee suggested, and the Advisory Committee agreed to recommend, the publication of a subset of the individual debtor filing package, consisting of the fee waiver and installment fee forms, the income and expense forms, and the means test forms. These particular forms involve only individual debtors and can replace existing forms. The selected forms, which are not significantly longer than the forms they replace, involve the debtors' income and expenses and are used by courts, U.S. Trustees, and case trustees for varied purposes.

Implementation of these forms should allow for fuller testing of the technological features of the modernized forms. The data on these forms is frequently accessed by end users and judiciary users can prepare customized reports using that data.

C. FMP Progress Since the Spring 2012 Advisory Committee Meeting

1. Individual Filing Package

a. Overview

The individual forms cleared for publication by the Advisory Committee at the spring meeting were submitted to the June 2012 Standing Committee meeting. A minor issue arose with the subtraction of expenses on schedule J, and the issue was resolved. Otherwise, there were no objections to the first group of individual forms, and the Standing Committee approved the individual fee forms, income and expense forms, and the means test forms for publication. Publication occurred in mid-August.

Since the Advisory Committee's spring meeting, the remainder of the individual forms and many of the forms related to individual cases, such as the notice of the commencement of the case (the Form 9 series), have been drafted. The booklet containing instructions, checklists, and a glossary of terms for the individual forms has been revised. A copy of the draft booklet is included with the draft forms in these meeting materials although it is still undergoing revisions. The draft Form 9 series has been sent to representatives of several bankruptcy groups for prepublication comments. The groups include the National Association of Chapter 13 Trustees (NACTT), the National Association of Bankruptcy Trustees, the National Association of Consumer Bankruptcy Trustees, and a group of attorneys from the offices of the U.S. Trustees.

Some forms pertinent to individuals will be drafted later. For example, the involuntary petition applicable to individuals and the attorney disclosure of compensation form, which will remain a Director's Form, are being drafted as part of the non-individual forms.

At the June 2012, FMP meeting, the group discussed when to recommend publication of the remaining individual forms. The FMP concluded that it would be helpful to submit the remaining individual forms to the Advisory Committee and the Standing Committee for comments at their fall meetings, but to consider comments submitted regarding the modernized individual forms just published in August before seeking approval to publish the next set of forms. The next FMP meeting will be held on March 1, 2013, rather than in late January as has been the custom, in order to permit the group to consider comments on the first set of published modernized individual forms. A final recommendation by the FMP regarding publication and implementation of the remaining individual forms can be developed at its March, 2013 meeting and made to the Advisory Committee at its spring, 2013 meeting. This will allow the balance of the individual forms to be submitted to the Standing Committee at its June, 2013 meeting for publication in August, 2013 if the Advisory Committee recommends publication.

b. Schedule of Exempt Property

The Advisory Committee decided during its spring 2012 meeting not to adopt the amendment of the Schedule of Exempt Property (Schedule 6C) proposed and published in response to *Schwab v. Reilly*, 130 S. Ct. 2652 (2010). At the time the Advisory Committee made its decision, it referred further consideration of any amendments in response to *Schwab* to the FMP. As a result of that referral, the FMP considered various options and consulted with the

Consumer and Forms Subcommittees of the Advisory Committee. The FMP revised the modernized Schedule of Exempt Property (Schedule 106D) and the instructions related to that form. The draft form is included in these materials, and the changes are discussed in greater detail in a separate memorandum with these materials.

c. Numbering of Modernized Forms

As part of finalizing the individual forms, the FMP developed a new numbering system that both organizes the bankruptcy forms in a logical way and has some relationship to current form numbers. The basic numbering protocol is:

- 1XX – Forms for Individuals Filing for Bankruptcy
- 2XX – Forms for Non-individual Filing for Bankruptcy
- 3XX – Orders and Court Notices
- 4XX – Additional Official Forms
- XXXX - Director’s Forms

To the extent possible, forms incorporate their current numbers. The following is an example of how the numbering system of the modernized forms works and relates back to the current numbering:

Current Voluntary Petition	Official Bankruptcy Form 1
Modernized Individual Voluntary Petition	Official Bankruptcy Form 101
Modernized Non-individual Voluntary Petition	Official Bankruptcy Form 201

The logic of this numbering system, which can be easily explained and is intuitive, should make the transition to the modernized forms easier for those used to the numbering and

organization of the current Official Bankruptcy Forms. A forms number conversion chart comparing old and new numbers has been prepared and is included in these materials.

2. Non-Individual Form Preparation

Before the spring 2012 meeting of the Advisory Committee, the FMP adopted the following guidelines for drafting the non-individual debtor forms:

- Eliminate requests for information that pertains only to individuals.
- To the extent possible, parallel how businesses commonly keep their financial records.
- Include information identifying where and how the requested information departs from information maintained according to standard accounting practices.
- Provide better instructions about how to value assets on the schedules, and provide a valuation methodology that will allow people who commonly sign schedules to respond without needing expert valuations of assets.
- Revise the secured debt schedule to clarify when debts are cross-collateralized and the relative priority of secured creditors.
- Require responsive information to be set out in the forms themselves and not simply included as attachments.
- Use a more open-ended response format, as compared to the draft individual debtor forms.
- Keep inter-district variations to a minimum, particularly with respect to the mailing matrix.

The FMP has begun its work on the non-individual forms. Two analysts from the United States Trustee program, Kendra Rust and Linda Logan, are helping with the drafting of the non-individual forms. They have extensive experience in both large and small business cases and cases under different chapters of the bankruptcy code, and are familiar with business accounting practices. Their accounting expertise should help the FMP bring the way the schedules and statement of financial affairs seek information in non-individual cases into greater conformity with how non-individual debtors, particularly businesses, keep records. This should also increase the potential to import data directly from the entity's records into the schedules and statement of financial affairs.

The non-individual forms drafters held a meeting in Washington D.C. on April 23-24, 2012. During that meeting, the drafters discussed how to implement the guidelines described above. There is somewhat more flexibility in drafting the non-individual forms, because there are fewer specific statutory information requirements applicable to non-individuals and the Administrative Office collects very few statistics from non-individual forms. The drafters organized themselves into small groups to review each form applicable to non-individuals and to develop a first draft implementing the guidelines into a revised version the form. The drafters are also revising the involuntary petition and attorney disclosure of compensation forms for both individuals and non-individuals. Once drafting is complete, the full group of drafters will review and edit the initial drafts. The non-individual forms are in varying stages of drafting: some have been drafted and reviewed by the full group, some are drafted and waiting for review, and some

are still being drafted. Once the initial drafts are done, the group will produce a glossary and limited instructions to make it easier for those organizing information to understand the forms.

Beth Wiggins and Molly Johnson from the Federal Judicial Center have a research plan for the non-individual forms after they are drafted. They will follow the same kind of procedure as with the individual forms but with a slightly different format. During the fall of 2012, they will obtain input on any forms for which the working draft is complete, using the same groups of professionals who reviewed the individual forms, and also groups of chapter 11 attorneys, U.S. Trustee attorneys, the Western District of Michigan group put together by Judge Hughes, a group put together by Judge Klein, and from software vendors. In addition, they hope to test and review the forms with students from University of Maryland MBA program (a joint program with the law school).

3. Planning and Scheduling for the Project

The FMP agreed that a separate technology group is no longer needed for the FMP. Instead, there will be an implementation group in addition to the analytical group. Judge Harris, Judge Walker, Judge Swain, David Sime, James Waldron, and Patricia Ketchum agreed to be on the implementation group.

D. Conclusion

The FMP and the Subcommittee on Forms request that this Committee comment upon, and submit to the Standing Committee for comment, the following draft modernized individual debtor forms:

B101 Voluntary Petition for Individuals Filing for Bankruptcy

B101AB	Your Statement About an Eviction Judgment Against You - Parts A and B
B102	Your Statement About Your Social Security Numbers
B104	List in Individual Chapter 11 Cases of Creditors Who Have the 20 Largest Unsecured Claims Against You Who are not Insiders
B106-Summary	A Summary of Your Assets and Liabilities and Certain Statistical Information
B106A	Schedule A: Property
B106B	Schedule B: Creditors Who Hold Claims Secured by Property
B106C	Schedule C: Creditors Who Have Unsecured Claims
B106D	Schedule D: The Property You Claim as Exempt
B106E	Schedule E: Executory Contracts and Unexpired Leases
B106F	Schedule F: Your Codebtors
B106-Declaration	Declaration About an Individual Debtor's Schedules
B107	Your Statement of Financial Affairs for Individuals Filing for Bankruptcy
B112	Statement of Intention for Individuals Filing Under Chapter 7
B119	Bankruptcy Petition Preparer's Notice, Declaration and Signature
B318	Discharge of Debtor in a Chapter 7 Case
B423	Certification About a Financial Management Course
B427	Cover Sheet for Reaffirmation Agreement

An instruction booklet for individuals is also included for comment. The instructions explain certain terms and provide context for the new forms.

By following the approach described in this memorandum, the FMP and the Committee will get the benefit of the comments on the published modernized forms and can make changes, if necessary, to the draft modernized forms.

In addition to deciding how to use the information gleaned from the modernized forms just published, during the next six months the FMP will continue working on the non-individual forms.

THIS PAGE INTENTIONALLY BLANK

APPENDIX A01

THIS PAGE INTENTIONALLY BLANK

Fill in this information to identify your case:

United States Bankruptcy Court for the:

_____ District of _____
(State)

Case number (if known): _____ Chapter you are filing under:

- Chapter 7
- Chapter 11
- Chapter 12
- Chapter 13

Check if this is an amended filing

Official Form 101

Voluntary Petition for Individuals Filing for Bankruptcy

12/14

The bankruptcy forms use *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, these forms use *you* to ask for information from both debtors. For example, if a form asks, “Do you own a car?” the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Identify Yourself

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
<p>1. Your full name</p> <p>Write the name that is on your government-issued picture identification (for example, your driver's license or passport).</p> <p>Bring your picture identification to your meeting with the trustee.</p>	<p>First name _____</p> <p>Middle name _____</p> <p>Last name _____</p> <p>Suffix (Sr., Jr., II, III) _____</p>	<p>First name _____</p> <p>Middle name _____</p> <p>Last name _____</p> <p>Suffix (Sr., Jr., II, III) _____</p>
<p>2. All other names you have used in the last 8 years</p> <p>Include your married or maiden names.</p>	<p>First name _____</p> <p>Middle name _____</p> <p>Last name _____</p> <p>First name _____</p> <p>Middle name _____</p> <p>Last name _____</p>	<p>First name _____</p> <p>Middle name _____</p> <p>Last name _____</p> <p>First name _____</p> <p>Middle name _____</p> <p>Last name _____</p>
<p>3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)</p>	<p>XXX - XX - _____</p> <p>OR</p> <p>9 XX - XX - _____</p>	<p>XXX - XX - _____</p> <p>OR</p> <p>9 XX - XX - _____</p>

4. Any business names and Employer Identification Numbers (EIN) you have used in the last 8 years

Include trade names and *doing business as* names

About Debtor 1:

I have not used any business names or EINs.

Business name _____

Business name _____

EIN _____ - _____ - _____

EIN _____ - _____ - _____

About Debtor 2 (Spouse Only in a Joint Case):

I have not used any business names or EINs.

Business name _____

Business name _____

EIN _____ - _____ - _____

EIN _____ - _____ - _____

5. Where you live

Number Street _____

City State ZIP Code _____

County _____

If your mailing address is different from the one above, fill it in here. Note that the court will send any notices to you at this mailing address.

Number Street _____

P.O. Box _____

City State ZIP Code _____

If Debtor 2 lives at a different address:

Number Street _____

City State ZIP Code _____

County _____

If Debtor 2's mailing address is different from yours, fill it in here. Note that the court will send any notices to this mailing address.

Number Street _____

P.O. Box _____

City State ZIP Code _____

6. Why you are choosing this district to file for bankruptcy

Check one:

Over the last 180 days before filing this bankruptcy filing package, I have lived in this district longer than in any other district.

I have another reason. Explain.
(See 28 U.S.C. § 1408.)

Check one:

Over the last 180 days before filing this bankruptcy filing package, I have lived in this district longer than in any other district.

I have another reason. Explain.
(See 28 U.S.C. § 1408.)

Part 2: Tell the Court About Your Bankruptcy Case

7. **The Chapter of the Bankruptcy Code you are choosing to file under**

Check one. (For a brief description of each, see *Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy* (Form B2010)). Also, go to the top of page 1 and check the appropriate box.

- Chapter 7
- Chapter 11
- Chapter 12
- Chapter 13

8. **How you will pay the fee**

If you file under Chapter ...	Your total fee is...
7	\$306
11	\$1,213
12	\$246
13	\$281

I will pay the entire fee when I file my petition. Please check with the clerk's office in your local court for more details about how you may pay. Typically, if you are paying the fee yourself, you may pay with cash, cashier's check, or money order. If your attorney is submitting your payment on your behalf, your attorney may pay with a credit card or check with a pre-printed address.

I need to pay the fee in installments. If you choose this option, sign and attach the *Application for Individuals to Pay Your Filing Fee in Installments* (Official Form 103A).

I request that my fee be waived (You may request this option only if you are filing for Chapter 7. By law, a judge may waive your fee only if your income is less than 150% of the official poverty line that applies to your family size and you are unable to pay the fee in installments). If you choose this option, you must fill out the *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 103B) and file it with your bankruptcy filing package.

9. **Have you filed for bankruptcy within the last 8 years?**

- No
- Yes. District _____ When _____ Case number _____
MM / DD / YYYY
- District _____ When _____ Case number _____
MM / DD / YYYY
- District _____ When _____ Case number _____
MM / DD / YYYY

10. **Are any bankruptcy cases pending or being filed by a spouse who is not filing this case with you, a business partner, or an affiliate?**

- No
- Yes. Debtor _____ Relationship to you _____
District _____ When _____ Case number, if known _____
MM / DD / YYYY
- Debtor _____ Relationship to you _____
District _____ When _____ Case number, if known _____
MM / DD / YYYY

11. **Do you rent your residence?**

- No. Go to Part 3.
- Yes. Has your landlord obtained an eviction judgment against you?
 - No. Go to Part 3.
 - Yes. Fill out *Part A - Your Statement About an Eviction Judgment Against You* (Official Form 101A) and file it with this bankruptcy petition.

Part 3: Report About Any Businesses You Own as a Sole Proprietor

12. Are you a sole proprietor of any full- or part-time business?

A sole proprietorship is a business you own as an individual, rather than a separate legal entity such as a corporation, partnership, or LLC.

If you have more than one sole proprietorship, use a separate sheet and attach it to this package.

- No. Go to Part 4.
- Yes. Name and location of business

Name of business, if any

Number Street

City

State

ZIP Code

Check the appropriate box to describe your business:

- Health Care Business (as defined in 11 U.S.C. § 101(27A))
- Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- Stockbroker (as defined in 11 U.S.C. § 101(53A))
- Commodity Broker (as defined in 11 U.S.C. § 101(6))
- None of the above

13. Are you filing under Chapter 11 of the Bankruptcy Code and are you a small business debtor?

For a definition of small business debtor, see 11 U.S.C. § 101(51D).

If you are filing under Chapter 11, the court must know whether you are a small business debtor so that it can set appropriate deadlines.

- No. I am not filing under Chapter 11.
- No. I am filing under Chapter 11, but I am NOT a small business debtor according to the definition in the Bankruptcy Code.
- Yes. I am filing under Chapter 11 and I am a small business debtor according to the definition in the Bankruptcy Code.

Part 4: Report if You Own or Have Any Hazardous Property or Any Property That Needs Immediate Attention

14. Do you own or have any property that poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety? Or do you own any property that needs immediate attention?

For example, do you own perishable goods or livestock that must be fed?

- No
- Yes. What is the hazard?

If immediate attention is needed, why is it needed?

Where is the property?

Number Street

City

State

ZIP Code

15. Tell the court whether you have received credit counseling.

The law requires that you receive credit counseling before you file for bankruptcy. You must truthfully check one of the following choices. If you cannot do so, you are not eligible to file.

If you file anyway, the court can dismiss your case, you will lose whatever filing fee you paid, and your creditors can begin collection activities again.

About Debtor 1:

You must check one:

I received counseling from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

I received counseling from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and the following circumstances merit a 30-day temporary waiver of the requirement.

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the credit counseling and why you were unable to obtain it before filed for bankruptcy.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving credit counseling before you file this bankruptcy filing package.

If the court is satisfied with your reasons, you must still receive credit counseling within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

I am not required to receive credit counseling because of:

Incapacity. I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.

Disability. My physical disability causes me to be unable to participate in credit counseling in person, by phone, or through the internet, even after I reasonably tried to do so.

Active duty. I am currently on active military duty in a military combat zone.

If you believe you are not required to receive credit counseling, you must file a motion for waiver of credit counseling with the court.

About Debtor 2 (Spouse Only in a Joint Case):

You must check one:

I received counseling from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

I received counseling from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and the following circumstances merit a 30-day temporary waiver of the requirement.

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the credit counseling and why you were unable to obtain it before filed for bankruptcy.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving credit counseling before you file this bankruptcy filing package.

If the court is satisfied with your reasons, you must still receive credit counseling within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

I am not required to receive credit counseling because of:

Incapacity. I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.

Disability. My physical disability causes me to be unable to participate in credit counseling in person, by phone, or through the internet, even after I reasonably tried to do so.

Active duty. I am currently on active military duty in a military combat zone.

If you believe you are not required to receive credit counseling, you must file a motion for waiver of credit counseling with the court.

Part 6: Answer These Questions for Reporting Purposes

16. What kind of debt do you have?

16a. **Are your debts primarily consumer debts?** *Consumer debts* are defined in 11 U.S.C. § 101(8) as “incurred by an individual primarily for a personal, family, or household purpose.”

No. Go to line 16b.
 Yes. Go to line 17.

16b. **Are your debts primarily business debts?** *Business debts* are debts that you incurred to obtain money for a business or investment or through the operation of the business or investment.

No. Go to line 16c.
 Yes. Go to line 17.

16c. State what debts you owe that are not consumer debts or business debts. _____

17. Are you filing under Chapter 7?

No. I am not filing under Chapter 7. Go to line 18.

Yes. I am filing under Chapter 7. Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available to distribute to unsecured creditors?

No
 Yes

Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available for distribution to unsecured creditors?

18. How many creditors do you estimate that you owe?

<input type="checkbox"/> 1-49	<input type="checkbox"/> 1,000-5,000	<input type="checkbox"/> 25,001-50,000
<input type="checkbox"/> 50-99	<input type="checkbox"/> 5,001-10,000	<input type="checkbox"/> 50,001-100,000
<input type="checkbox"/> 100-199	<input type="checkbox"/> 10,001-25,000	<input type="checkbox"/> More than 100,000
<input type="checkbox"/> 200-999		

19. How much do you estimate your assets to be worth?

<input type="checkbox"/> \$0-\$50,000	<input type="checkbox"/> \$1,000,001-\$10 million	<input type="checkbox"/> \$500,000,001-\$1 billion
<input type="checkbox"/> \$50,001-\$100,000	<input type="checkbox"/> \$10,000,001-\$50 million	<input type="checkbox"/> \$1,000,000,001-\$10 billion
<input type="checkbox"/> \$100,001-\$500,000	<input type="checkbox"/> \$50,000,001-\$100 million	<input type="checkbox"/> \$10,000,000,001-\$50 billion
<input type="checkbox"/> \$500,001-\$1 million	<input type="checkbox"/> \$100,000,001-\$500 million	<input type="checkbox"/> More than \$50 billion

20. How much do you estimate your liabilities to be?

<input type="checkbox"/> \$0-\$50,000	<input type="checkbox"/> \$1,000,001-\$10 million	<input type="checkbox"/> \$500,000,001-\$1 billion
<input type="checkbox"/> \$50,001-\$100,000	<input type="checkbox"/> \$10,000,001-\$50 million	<input type="checkbox"/> \$1,000,000,001-\$10 billion
<input type="checkbox"/> \$100,001-\$500,000	<input type="checkbox"/> \$50,000,001-\$100 million	<input type="checkbox"/> \$10,000,000,001-\$50 billion
<input type="checkbox"/> \$500,001-\$1 million	<input type="checkbox"/> \$100,000,001-\$500 million	<input type="checkbox"/> More than \$50 billion

Part 7: Sign Here

I declare under penalty of perjury that the information provided in this petition is true and correct to the best of my knowledge, information, and belief. I understand that if I make a false statement, I could be fined up to \$250,000 or imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

If I have 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 I did not pay or agree to pay someone who is not an attorney to help me fill out this document, I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____	X _____
Signature of Debtor 1	Signature of Debtor 2
Date _____	Date _____
MM / DD / YYYY	MM / DD / YYYY

For your attorney, if you are represented by one

If you are not represented by an attorney, you do not need to file this page.

I, the attorney for the debtor(s) named in this petition, declare that I have informed the debtor(s) about eligibility to proceed under Chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each chapter for which the person is eligible. I also certify that I have delivered to the debtor(s) the notice required by 11 U.S.C. § 342(b) and, in a case in which § 707(b)(4)(D) applies, certify that I have no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

X

Signature of Attorney for Debtor

Date

MM / DD / YYYY

Printed name

Firm name

Number Street

City State ZIP Code

Contact phone Email address

Bar number State

For you if you are filing this bankruptcy filing package without an attorney

If you are represented by an attorney, you do not need to file this page.

As an individual, the law allows you to represent yourself in bankruptcy court, but **you should understand that many people find it extremely difficult to represent themselves successfully. Because bankruptcy has long-term financial and legal consequences, you are strongly urged to hire a qualified attorney.**

To be successful, you must correctly file and handle your bankruptcy case. The rules are very technical, and a misstep or inaction may affect your rights. For example, your case may be dismissed because you did not file a required document, pay a fee on time, attend a meeting or hearing, or cooperate with the court, case trustee, U.S. trustee, bankruptcy administrator, or audit firm if your case is selected for audit. If that happens, you could lose your right to file another case, or you may lose protections, including the benefit of the automatic stay.

You must list all your property and debts in the schedules that you are required to file with the court. Even if you plan to pay a particular debt outside of your bankruptcy, you must list that debt in your schedules. If you do not list a debt, the debt may not be discharged. If you do not list property or properly claim it as exempt, you may not be able to keep the property. The judge can also deny you a discharge of all your debts if you do something dishonest in your bankruptcy case, such as destroying or hiding property, falsifying records, or lying. Individual bankruptcy cases are randomly audited to determine if debtors have been accurate, truthful, and complete. **Bankruptcy fraud is a serious crime; you could be fined and imprisoned.**

If you decide to file without an attorney, the court expects you to follow the rules as if you had hired an attorney. The court will not treat you differently because you are filing for yourself. To be successful, you must be familiar with the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the local rules of the court in which your case is filed. You must also be familiar with any state exemption laws that apply.

Are you aware that filing for bankruptcy is a serious action with long-term financial and legal consequences?

- No
- Yes

Are you aware that bankruptcy fraud is a serious crime and that if your bankruptcy filing package is inaccurate or incomplete, you could be fined or imprisoned?

- No
- Yes

Did you pay or agree to pay someone who is not an attorney to help you fill out this bankruptcy filing package?

- No
- Yes. Name of Person _____
Attach *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119).

By signing here, I acknowledge that I understand the risks involved in filing without an attorney. I have read and understood this notice, and I am aware that filing a bankruptcy case without an attorney may cause me to lose my rights or property if I do not properly handle the case.

X

Signature of Debtor 1

Date _____
MM / DD / YYYY

Contact phone _____

Cell phone _____

Email address _____

X

Signature of Debtor 2

Date _____
MM / DD / YYYY

Contact phone _____

Cell phone _____

Email address _____

COMMITTEE NOTE

Official Form 101, *Voluntary Petition for Individuals Filing for Bankruptcy*, applies only in cases of individual debtors. Form 101 replaces Official Form 1, Voluntary Petition. It is renumbered to distinguish it from the forms used by non-individual debtors such as corporations, and includes stylistic changes throughout the form. It is revised as part of the Forms Modernization Project, making it easier to read and, as a result, likely to generate more complete and accurate responses. Because the goals of the Forms Modernization Project include improving the interface between technology and the forms so as to increase efficiency and reduce the need to produce the same information in multiple formats, many of the open-ended questions and multiple-part instructions have been replaced with more specific questions.

Official Form 101 has been substantially reorganized. References to Exhibits A, B, C, and D, and the exhibits themselves, have been eliminated because the requested information is now asked in the form or is not applicable to individual debtors.

Part 1, *Identify Yourself*, line 6, replaces the venue box from page 2 of Official Form 1 and deletes venue questions that pertain only to non-individuals.

Part 2, *Tell the Court About Your Bankruptcy Case*, line 7, removes choices for chapters 9 and 15 filings because they do not pertain to individuals. Additionally, Part 2 adds a table at line 8 which lists the applicable filing fees for chapters 7, 11, 12, and 13. The status of “being filed” is added to the question regarding bankruptcy cases pending or filed by a spouse, business partner, or affiliate (line 10). Lastly, the question “Do you rent your residence?” (line 11) and Official Form B101AB, *Your Statement About an Eviction Judgment Against You – Part A & B*, replaces “certification by a debtor who resides as a tenant of residential property,” on page 2 of Official Form 1.

Part 3, *Report About Any Businesses You Own as a Sole Proprietor*, line 12, incorporates options from the “nature of business” box from page 1 of Official Form 1 that would apply to individual debtors, thus eliminating checkboxes for railroads and clearing banks. Part 3, line 13, also eliminates a checkbox to report whether a plan was filed with the petition, or if plan acceptances were solicited prepetition. Additionally, line 13 rephrases the question relating to whether a debtor filing under Chapter 11 is a small business debtor.

Part 4, *Report if You Own or Have Any Hazardous Property or Any Property That Needs Immediate Attention*, line 14, replaces Exhibit C from Official Form 1 and adds the category of “property that needs immediate attention.”

Part 5, *Explain Your Efforts to Receive Credit Counseling* (line 15), replaces Exhibit D from Official Form 1. Additionally, this part describes incapacity and disability using a simplified definition, tells the debtor of the ability to file a motion for a waiver, and eliminates statutory reference about districts where credit counseling does not apply because such districts are rare.

Part 6, *Answer These Questions for Reporting Purposes* (line 16c), provides a text field for the debtor to describe the type of debt, if the debtor believes it is neither primarily consumer nor business debt.

Part 7, *Sign Here*, combines the two attorney signature blocks into one certification and eliminates signature lines for corporations/partnerships and chapter 15 Foreign Representative. The declaration and signature section for a non-attorney bankruptcy petition preparer (BPP) has also been removed as unnecessary. The same declaration, required under 11 U.S.C. § 110, is contained in Official Form 119. That form must be completed and signed by the BPP, and filed with each document prepared by a BPP.

Fill in this information to identify your case:

Debtor 1 _____
 First Name Middle Name Last Name

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

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

Case number _____
 (If known)

Official Form 101A

Part A: Your Statement About an Eviction Judgment Against You

12/14

Fill out this form only if:

- you rent your residence; and
- your landlord has obtained a judgment for possession in an eviction, unlawful detainer action, or similar proceeding (called an *eviction judgment*) against you to possess your residence; and
- you want to stay in your rented residence after you file your case for bankruptcy.

Your Statement About an Eviction Judgment Against You has two parts that you must file at different times:

- File Part A with the court when you first file your bankruptcy filing package. Serve a copy on your landlord.
- File Part B within 30 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). Also, serve a copy on your landlord.

You must serve your landlord with a copy of this form. Check the Bankruptcy Rules (www.uscourts.gov/rules) and the court's local website (go to www.uscourts.gov/courtlinks to find your court's website) for any specific requirements that you might have to meet to serve this statement.

File this part when you file your bankruptcy filing package

Fill this out if your landlord has an eviction judgment against you AND you wish to stay in your residence for 30 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101) with the court.

11 U.S.C. §§ 362(b)(22) and 362(l)

If your landlord DOES NOT have an eviction judgment, you do not need to fill out this form.

Has your landlord obtained an eviction judgment against you to possess your residence?

No. You do not need to fill out this form.

Yes. Landlord's name _____

Landlord's address _____
 Number Street

City State ZIP Code

If you answered Yes, check all that apply:

I certify under penalty of perjury that:

Under the state or other nonbankruptcy law that applies to the judgment for possession (*eviction judgment*), I have the right to stay in my residence by paying my landlord the entire amount I owe.

I have given the bankruptcy court clerk a deposit for the rent that would be due during the 30 days after I file the *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101).

 Signature of Debtor 1

Date _____
 MM / DD / YYYY

 Signature of Debtor 2

Date _____
 MM / DD / YYYY

If you checked both boxes above, signed the form to certify that both apply, and served your landlord a copy of this statement, the automatic stay under 11 U.S.C. § 362(a)(3) will apply to the continuation of the eviction against you for 30 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101).

If you wish to stay in your residence after that 30-day period and continue to receive the protection of the automatic stay under 11 U.S.C. § 362(a)(3), you must pay the entire amount you owe to your landlord as stated in the eviction judgment before the 30-day period ends. You must also fill out Part B of this form, file it with the bankruptcy court, and serve your landlord a copy of it before the 30-day period ends.

Fill in this information to identify your case:

Draft August 16, 2012

Debtor 1 _____
First Name Middle Name Last Name

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

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

Case number _____
(if known)

Official Form 101B

Part B: Your Statement About an Eviction Judgment Against You 12/14

Fill out Part B of this form only if:

- you filed Part A of this form; and
- you served a copy of Part A on your landlord; and
- you want to stay in your rented residence for more than 30 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101).

File Part B within 30 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). Also, serve a copy on your landlord.

File Part B within 30 days after you file your bankruptcy filing package

If your landlord has an eviction judgment against you, do you wish to stay in your residence for MORE than 30 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101) with the court?

11 U.S.C. §§ 362(b)(22) and 362(l).

If your landlord DOES NOT have an eviction judgment, you do not need to fill out this form.

No. You do not need to fill out this form.

Yes. I certify under penalty of perjury that (Check all that apply):

- Under the state or other nonbankruptcy law that applies to the judgment for possession (eviction judgment), I have the right to stay in my residence by paying my landlord the entire amount I owe.
- Within 30 days after I filed my *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101), I have paid my landlord the entire amount I owe as stated in the judgment for possession (eviction judgment).

Signature of Debtor 1

Signature of Debtor 2

Date _____
MM / DD / YYYY

Date _____
MM / DD / YYYY

You must serve your landlord with a copy of this form.

Check the Bankruptcy Rules (www.uscourts.gov/rules) and the court's local website (go to www.uscourts.gov/courtlinks to find your court's website) for any specific requirements that you might have to meet to serve this statement.

COMMITTEE NOTE

Official Form 101AB, *Your Statement About an Eviction Judgment Against You*, is substantially revised as part of the Forms Modernization Project. It replaces the “*Certification by a Debtor Who Resides as a Tenant of Residential Property*” section on Official Form 1, *Voluntary Petition*. The form applies only in cases of individual debtors.

The form is divided into Parts A and B.

Part A explains that debtors need to complete and file the form only if their landlord has a judgment for possession or an eviction judgment against them and they wish to stay in their residence for 30 days after filing their bankruptcy petition. The form adds references to the provisions in the Bankruptcy Code that specify when debtor-tenants subject to eviction may remain in their residence after filing for bankruptcy.

The form eliminates the checkboxes that the debtor has served the landlord with the certification and paid the court the rent that would be due during the 30 days after the filing of the bankruptcy petition. Instead, debtors are required to certify under penalty of perjury that the rent has been paid to the court and the instructions direct debtors to serve a copy of the statement on the landlord.

The form eliminates the checkbox that the debtor claims there are circumstances under applicable nonbankruptcy law under which the debtor would be permitted to cure the monetary default that gave rise to the judgment for possession (or eviction judgment) and remain in residence. Instead, debtors are required to certify under penalty of perjury that they have the right to stay in their residence under state law or other nonbankruptcy law by paying their landlord the entire amount they owe.

Part B is new. If debtors wish to stay in their residence for more than 30 days after filing the petition, they must complete and file Part B of Form 101AB within the 30 days. Under Part B, debtors certify under penalty of perjury that they have paid their landlord the entire amount owed as stated in the judgment for possession or in the eviction judgment.

THIS PAGE INTENTIONALLY BLANK

Fill in this information to identify your case:

United States Bankruptcy Court for the:

_____ District of _____
State

Case number (If known): _____

Sample May 3, 2012

Official Form 102

Your Statement About Your Social Security Numbers

12/14

Use this form to tell the court about any Social Security or federal Individual Taxpayer Identification Numbers you have used. Do not file this form as part of the public case file. This form must be submitted separately and must not be included in the court's public electronic records.

To protect your privacy, the court will not make this form available to the public. You should not include a full Social Security Number or Individual Taxpayer Number on any other document filed with the court. The court will make only the last four digits of your numbers known to the public. However, the full numbers will be available to your creditors, the U.S. trustee or bankruptcy administrator, and the trustee assigned to your case and to help creditors correctly identify a case, full Social Security Numbers may appear on an electronic version of some notices. Please consult local court procedures for submission requirements.

If you do not tell the truth on this form, you may be fined up to \$250,000, you may be imprisoned for up to 5 years, or both.

Part 1: Tell the court about yourself and your spouse if your spouse is filing with you

For Debtor 1:

For Debtor 2 (Only If Spouse Is Filing):

1. Your name

First name

Middle name

Last name

First name

Middle name

Last name

Part 2: Tell the court about all of your Social Security or federal Individual Taxpayer Identification Numbers

2. All Social Security Numbers you have used

____ - ____ - ____ - ____ - ____
____ - ____ - ____ - ____ - ____

You do not have a Social Security Number.

____ - ____ - ____ - ____ - ____
____ - ____ - ____ - ____ - ____

You do not have a Social Security Number.

3. All federal Individual Taxpayer Identification Numbers (ITIN) you have used

9 ____ - ____ - ____ - ____ - ____
9 ____ - ____ - ____ - ____ - ____

You do not have an ITIN.

9 ____ - ____ - ____ - ____ - ____
9 ____ - ____ - ____ - ____ - ____

You do not have an ITIN.

Part 3: Sign here

Under penalty of perjury, I declare that the information I have provided in this form is true and correct.

Signature of Debtor 1

Date _____
MM / DD / YYYY

Under penalty of perjury, I declare that the information I have provided in this form is true and correct.

Signature of Debtor 2

Date _____
MM / DD / YYYY

THIS PAGE INTENTIONALLY BLANK

COMMITTEE NOTE

Official Form 102, *Your Statement About Your Social Security Numbers*, is revised as part of the Forms Modernization Project. The form, which applies only in cases of individual debtors, replaces Official Form 21, *Statement of Social Security Number(s)*. It is renumbered to distinguish it from the forms used by non-individual debtors such as corporations and partnerships.

To make Form 102 easier to understand and complete, the form is divided into three sections and directions on the form are simplified. The debtors' address is eliminated from the form and the Employer Tax-Identification number (EIN) is moved from the caption to the body of the form.

THIS PAGE INTENTIONALLY BLANK

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

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

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

Case number _____
 (If known)

Check if this is an amended filing

Official Form 104

For Individual Chapter 11 Cases: The List of Creditors Who Have the 20 Largest Unsecured Claims Against You Who Are Not Insiders

12/14

If you are an individual filing for bankruptcy under Chapter 11, you must fill out this form. If you are filing under Chapter 7, Chapter 12, or Chapter 13, do not fill out this form. Do not include claims by anyone who is an *insider*. Insiders include relatives; general partners of you or your relatives; corporations of which you are an officer, director, or person in control; and any managing agent. 11 U.S.C. § 101. Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information.

List the 20 Unsecured Claims in Order from Largest to Smallest. Do not include claims by insiders.

			Unsecured claim
1	Creditor's Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____ Contact _____ Contact phone _____	What is the nature of the claim? _____ As of the date you file, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply Does the creditor have a security interest in your property? <input type="checkbox"/> No <input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____ Value of security: - \$ _____ Unsecured claim \$ _____	\$ _____
2	Creditor's Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____ Contact _____ Contact phone _____	What is the nature of the claim? _____ As of the date you file, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply Does the creditor have a security interest in your property? <input type="checkbox"/> No <input type="checkbox"/> Yes. Total claim (secured and unsecured): \$ _____ Value of security: - \$ _____ Unsecured claim \$ _____	\$ _____

Unsecured claim

3

Creditor's Name _____

Number _____ Street _____

City _____ State _____ ZIP Code _____

Contact _____

Contact phone _____

What is the nature of the claim? _____ \$ _____

As of the date you file, the claim is: Check all that apply.

- Contingent
- Unliquidated
- Disputed
- None of the above apply

Does the creditor have a security interest in your property?

- No
 - Yes. Total claim (secured and unsecured): \$ _____
- Value of security: - \$ _____
- Unsecured claim \$ _____

4

Creditor's Name _____

Number _____ Street _____

City _____ State _____ ZIP Code _____

Contact _____

Contact phone _____

What is the nature of the claim? _____ \$ _____

As of the date you file, the claim is: Check all that apply.

- Contingent
- Unliquidated
- Disputed
- None of the above apply

Does the creditor have a security interest in your property?

- No
 - Yes. Total claim (secured and unsecured): \$ _____
- Value of security: - \$ _____
- Unsecured claim \$ _____

5

Creditor's Name _____

Number _____ Street _____

City _____ State _____ ZIP Code _____

Contact _____

Contact phone _____

What is the nature of the claim? _____ \$ _____

As of the date you file, the claim is: Check all that apply.

- Contingent
- Unliquidated
- Disputed
- None of the above apply

Does the creditor have a security interest in your property?

- No
 - Yes. Total claim (secured and unsecured): \$ _____
- Value of security: - \$ _____
- Unsecured claim \$ _____

6

Creditor's Name _____

Number _____ Street _____

City _____ State _____ ZIP Code _____

Contact _____

Contact phone _____

What is the nature of the claim? _____ \$ _____

As of the date you file, the claim is: Check all that apply.

- Contingent
- Unliquidated
- Disputed
- None of the above apply

Does the creditor have a security interest in your property?

- No
 - Yes. Total claim (secured and unsecured): \$ _____
- Value of security: - \$ _____
- Unsecured claim \$ _____

7

Creditor's Name _____

Number _____ Street _____

City _____ State _____ ZIP Code _____

Contact _____

Contact phone _____

What is the nature of the claim? _____ \$ _____

As of the date you file, the claim is: Check all that apply.

- Contingent
- Unliquidated
- Disputed
- None of the above apply

Does the creditor have a security interest in your property?

- No
 - Yes. Total claim (secured and unsecured): \$ _____
- Value of security: - \$ _____
- Unsecured claim \$ _____

Unsecured claim

8

Creditor's Name _____
 Number _____ Street _____

 City _____ State _____ ZIP Code _____
 Contact _____
 Contact phone _____

What is the nature of the claim? _____ \$ _____

As of the date you file, the claim is: Check all that apply.
 Contingent
 Unliquidated
 Disputed
 None of the above apply

Does the creditor have a security interest in your property?
 No
 Yes. Total claim (secured and unsecured): \$ _____
 Value of security: - \$ _____
 Unsecured claim \$ _____

9

Creditor's Name _____
 Number _____ Street _____

 City _____ State _____ ZIP Code _____
 Contact _____
 Contact phone _____

What is the nature of the claim? _____ \$ _____

As of the date you file, the claim is: Check all that apply.
 Contingent
 Unliquidated
 Disputed
 None of the above apply

Does the creditor have a security interest in your property?
 No
 Yes. Total claim (secured and unsecured): \$ _____
 Value of security: - \$ _____
 Unsecured claim \$ _____

10

Creditor's Name _____
 Number _____ Street _____

 City _____ State _____ ZIP Code _____
 Contact _____
 Contact phone _____

What is the nature of the claim? _____ \$ _____

As of the date you file, the claim is: Check all that apply.
 Contingent
 Unliquidated
 Disputed
 None of the above apply

Does the creditor have a security interest in your property?
 No
 Yes. Total claim (secured and unsecured): \$ _____
 Value of security: - \$ _____
 Unsecured claim \$ _____

11

Creditor's Name _____
 Number _____ Street _____

 City _____ State _____ ZIP Code _____
 Contact _____
 Contact phone _____

What is the nature of the claim? _____ \$ _____

As of the date you file, the claim is: Check all that apply.
 Contingent
 Unliquidated
 Disputed
 None of the above apply

Does the creditor have a security interest in your property?
 No
 Yes. Total claim (secured and unsecured): \$ _____
 Value of security: - \$ _____
 Unsecured claim \$ _____

12

Creditor's Name _____
 Number _____ Street _____

 City _____ State _____ ZIP Code _____
 Contact _____
 Contact phone _____

What is the nature of the claim? _____ \$ _____

As of the date you file, the claim is: Check all that apply.
 Contingent
 Unliquidated
 Disputed
 None of the above apply

Does the creditor have a security interest in your property?
 No
 Yes. Total claim (secured and unsecured): \$ _____
 Value of security: - \$ _____
 Unsecured claim \$ _____

Unsecured claim

13

Creditor's Name _____

Number _____ Street _____

City _____ State _____ ZIP Code _____

Contact _____

Contact phone _____

What is the nature of the claim? _____ \$ _____

As of the date you file, the claim is: Check all that apply.

- Contingent
- Unliquidated
- Disputed
- None of the above apply

Does the creditor have a security interest in your property?

- No
 - Yes. Total claim (secured and unsecured): \$ _____
- Value of security: - \$ _____
- Unsecured claim \$ _____

14

Creditor's Name _____

Number _____ Street _____

City _____ State _____ ZIP Code _____

Contact _____

Contact phone _____

What is the nature of the claim? _____ \$ _____

As of the date you file, the claim is: Check all that apply.

- Contingent
- Unliquidated
- Disputed
- None of the above apply

Does the creditor have a security interest in your property?

- No
 - Yes. Total claim (secured and unsecured): \$ _____
- Value of security: - \$ _____
- Unsecured claim \$ _____

15

Creditor's Name _____

Number _____ Street _____

City _____ State _____ ZIP Code _____

Contact _____

Contact phone _____

What is the nature of the claim? _____ \$ _____

As of the date you file, the claim is: Check all that apply.

- Contingent
- Unliquidated
- Disputed
- None of the above apply

Does the creditor have a security interest in your property?

- No
 - Yes. Total claim (secured and unsecured): \$ _____
- Value of security: - \$ _____
- Unsecured claim \$ _____

16

Creditor's Name _____

Number _____ Street _____

City _____ State _____ ZIP Code _____

Contact _____

Contact phone _____

What is the nature of the claim? _____ \$ _____

As of the date you file, the claim is: Check all that apply.

- Contingent
- Unliquidated
- Disputed
- None of the above apply

Does the creditor have a security interest in your property?

- No
 - Yes. Total claim (secured and unsecured): \$ _____
- Value of security: - \$ _____
- Unsecured claim \$ _____

17

Creditor's Name _____

Number _____ Street _____

City _____ State _____ ZIP Code _____

Contact _____

Contact phone _____

What is the nature of the claim? _____ \$ _____

As of the date you file, the claim is: Check all that apply.

- Contingent
- Unliquidated
- Disputed
- None of the above apply

Does the creditor have a security interest in your property?

- No
 - Yes. Total claim (secured and unsecured): \$ _____
- Value of security: - \$ _____
- Unsecured claim \$ _____

Unsecured claim

18

Creditor's Name _____

Number _____ Street _____

City _____ State _____ ZIP Code _____

Contact _____

Contact phone _____

What is the nature of the claim? _____

\$ _____

As of the date you file, the claim is: Check all that apply.

- Contingent
- Unliquidated
- Disputed
- None of the above apply

Does the creditor have a security interest in your property?

- No
- Yes. Total claim (secured and unsecured): \$ _____
- Value of security: - \$ _____
- Unsecured claim \$ _____

19

Creditor's Name _____

Number _____ Street _____

City _____ State _____ ZIP Code _____

Contact _____

Contact phone _____

What is the nature of the claim? _____

\$ _____

As of the date you file, the claim is: Check all that apply.

- Contingent
- Unliquidated
- Disputed
- None of the above apply

Does the creditor have a security interest in your property?

- No
- Yes. Total claim (secured and unsecured): \$ _____
- Value of security: - \$ _____
- Unsecured claim \$ _____

20

Creditor's Name _____

Number _____ Street _____

City _____ State _____ ZIP Code _____

Contact _____

Contact phone _____

What is the nature of the claim? _____

\$ _____

As of the date you file, the claim is: Check all that apply.

- Contingent
- Unliquidated
- Disputed
- None of the above apply

Does the creditor have a security interest in your property?

- No
- Yes. Total claim (secured and unsecured): \$ _____
- Value of security: - \$ _____
- Unsecured claim \$ _____

THIS PAGE INTENTIONALLY BLANK

COMMITTEE NOTE

Official Form 104, *For Individual Chapter 11 Cases: The List of Creditors Who Have the 20 Largest Unsecured Claims Against You Who Are Not Insiders*, is revised as part of the Forms Modernization Project. It replaces Official Form 4, *List of Creditors Holding 20 Largest Unsecured Claims* in chapter 11 cases filed by individuals or joint debtors and is renumbered to distinguish it from the version to be used in chapter 11 cases filed by non-individuals, such as corporations and partnerships, and in chapter 9 cases.

Form 104 is reformatted to make it easier to complete and understand and to be more visually appealing. Blanks and checkboxes are provided for specific information about each claim rather than columns for types of information. A separate, numbered section is provided for each of the 20 claims, rather than providing a single section that is to be copied and completed for additional claims.

The instruction not to include fully secured claims is restated in less technical terms. Debtors are instructed to include a secured creditor only if the creditor has an unsecured claim resulting from inadequate collateral value. Blanks are provided to calculate the value of the unsecured portion of a partially secured claim.

Examples of “insiders” are provided in addition to the statutory reference. The form adds an explicit instruction not to file the form in a chapter 7, chapter 12, or chapter 13 case. An instruction to be as complete and accurate as possible is added, along with a warning that, if two married people are filing jointly, both are equally responsible for supplying correct information.

The form eliminate the declaration under penalty of perjury. Also, with respect to children who may be creditors, the direction to state only the initials of a minor child and the name and address of the child's parent or guardian, rather than the child's full name, is moved to the general instruction booklet for the forms, because it applies to all of the forms.

THIS PAGE INTENTIONALLY BLANK

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

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

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

Case number _____
(if known)

Check if this is an amended filing

Official Form 106-Summary

A Summary of Your Assets and Liabilities and Certain Statistical Information 12/14

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. Fill out all of your schedules first; then complete the information on this form. If you are filing amended schedules after you file your original forms, you must fill out a new *Summary* and check the box at the top of this page.

Part 1: Summarize Your Assets

	Your assets Value of what you own
1. Schedule A: Property (Official Form 106A).	
1a. Copy line 55, Total real estate, from <i>Schedule A</i>	\$ _____
1b. Copy line 62, Total personal property, from <i>Schedule A</i>	\$ _____
1c. Copy line 63, Total of all property on <i>Schedule A</i>	\$ _____

Part 2: Summarize Your Liabilities

	Your liabilities Amount you owe
2. Schedule B: Creditors Who Have Claims Secured by Your Property (Official Form 106B)	
2a. Copy the total you listed in the <i>Amount of claim</i> column at the bottom of the last page of Part 1 of <i>Schedule B</i>	\$ _____
3. Schedule C: Creditors Who Have Unsecured Claims (Official Form 106C)	
3a. Copy the total claims from Part 2 (priority unsecured claims) from line 6e of <i>Schedule C</i>	\$ _____
3b. Copy the total claims from Part 3 (nonpriority unsecured claims) from line 6j of <i>Schedule C</i>	+ \$ _____
Your total liabilities	\$ _____

Part 3: Summarize Your Income and Expenses

4. Schedule G: Your Income (Official Form 106G)	
Copy your combined monthly income from line 12 of <i>Schedule G</i>	\$ _____
5. Schedule H: Your Expenses (Official Form 106H)	
Copy your monthly expenses from line 22, Column A, of <i>Schedule H</i>	\$ _____

Part 4: Answer These Questions for Administrative and Statistical Records

6. Are you filing for bankruptcy under Chapters 7, 11, or 13?

- No. You have nothing to report on this part of the form. Check this box and submit this form to the court with your other schedules.
 Yes

7. What kind of debt do you have?

- Your debts are primarily consumer debts.** *Consumer debts* are those "incurred by an individual primarily for a personal, family, or household purpose." 11 U.S.C. § 101(8). Fill out lines 8-10 for statistical purposes. 28 U.S.C. § 159.
 Your debts are not primarily consumer debts. You have nothing to report on this part of the form. Check this box and submit this form to the court with your other schedules.

8. From the *Statement of Your Current Monthly Income* (Official Forms 108-1, 109, or 110-1):
 Copy your total current monthly income from line 14 of 108-1, line 11 of 109, or line 11 of 110-1.

\$ _____

9. Copy the following special categories of claims from Part 4, line 6 of *Schedule C: Creditors Who Have Unsecured Claims* (Official Form 106C):

	Total claim
From Part 4 on <i>Schedule C</i>, copy the following:	
9a. Domestic support obligations (Copy line 6a.)	\$ _____
9b. Taxes and certain other debts you owe the government. (Copy line 6b.)	\$ _____
9c. Claims for death or personal injury while you were intoxicated. (Copy line 6c.)	\$ _____
From Part 4 on <i>Schedule C</i>, copy the following:	
9d. Student loans. (Copy line 6f.)	\$ _____
9e. Obligations arising out of a separation agreement or divorce that you did not report as priority claims. (Copy line 6g.)	\$ _____
9f. Debts to pension or profit-sharing plans, and other similar debts. (Copy line 6h.)	+ \$ _____
9g. Total. Add lines 9a through 9f.	\$ _____

Fill in this information to identify your case and this filing:

Debtor 1 _____
First Name Middle Name Last Name

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

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

Case number _____

Check if this is an amended filing

Official Form 106A

Schedule A: Property

12/14

In each category, separately list and describe items worth more than \$500. Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Describe Each Residence, Building, Land, or Other Real Estate You Own or Have an Interest in

1. Do you own or have any legal or equitable interest in any residence, building, land, or similar property?

- No
- Yes. Where is the property?

1a.

 Street address, if available, or other description

What is the property? Check all that apply.

- Single-family home
- Duplex or multi-unit building
- Condominium or cooperative
- Manufactured or mobile home
- Land
- Investment property
- Time share
- Other _____

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Property*.

Current value of the entire property

Current value of the portion you own

\$ _____

\$ _____

 City State ZIP Code

Who is an owner of the property? Check one.

- Debtor 1 only
- Debtor 2 only
- Debtor 1 and Debtor 2 only
- At least one of the debtors and another

Check if this is community property (see instructions)

 County

Other information you wish to add about this item, such as local property identification number:

If you own or have more than one, list here:

1b.

 Street address, if available, or other description

What is the property? Check all that apply.

- Single-family home
- Duplex or multi-unit building
- Condominium or cooperative
- Manufactured or mobile home
- Land
- Investment property
- Time share
- Other _____

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Property*.

Current value of the entire property

Current value of the portion you own

\$ _____

\$ _____

 City State ZIP Code

Who is an owner of the property? Check one.

- Debtor 1 only
- Debtor 2 only
- Debtor 1 and Debtor 2 only
- At least one of the debtors and another

Check if this is community property (see instructions)

 County

Other information you wish to add about this item, such as local property identification number:

1c.

Street address, if available, or other description

City State ZIP Code

County

What is the property? Check all that apply.

- Single-family home
- Duplex or multi-unit building
- Condominium or cooperative
- Manufactured or mobile home
- Land
- Investment property
- Time share
- Other _____

Who is an owner of the property? Check one.

- Debtor 1 only
- Debtor 2 only
- Debtor 1 and Debtor 2 only
- At least one of the debtors and another

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Property*.

Current value of the entire property

Current value of the portion you own

\$ _____

\$ _____

Check if this is community property
(see instructions)

Other information you wish to add about this item, such as local property identification number:

2. Add the dollar value of all of your entries from Part 1, including any entries for pages you have attached for Part 1.

Write that number here. _____ →

\$ _____

Part 2: Describe Your Vehicles

Do you own or have legal or equitable interest in any vehicles, whether they are registered or not? Include any vehicles you own that someone else drives. Do not report leased vehicles here. If you lease a vehicle, fill out *Schedule E: Executory Contracts and Unexpired Leases*.

3. **Cars, vans, trucks, tractors, sport utility vehicles, motorcycles**

- No
- Yes

3a. Make: _____

Model: _____

Year: _____

- Mileage: 0-24,999
 25,000-49,999
 50,000-74,999
 75,000 or more

Other information:

Who is an owner of the property? Check one.

- Debtor 1 only
- Debtor 2 only
- Debtor 1 and Debtor 2 only
- At least one of the debtors and another

Check if this is community property
(see instructions)

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Property*.

Current value of the entire property

Current value of the portion you own

\$ _____

\$ _____

If you own or have more than one, describe here:

3b. Make: _____

Model: _____

Year: _____

- Mileage: 0-24,999
 25,000-49,999
 50,000-74,999
 75,000 or more

Other information:

Who is an owner of the property? Check one.

- Debtor 1 only
- Debtor 2 only
- Debtor 1 and Debtor 2 only
- At least one of the debtors and another

Check if this is community property
(see instructions)

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Property*.

Current value of the entire property

Current value of the portion you own

\$ _____

\$ _____

3c. Make: _____
 Model: _____
 Year: _____
 Mileage: 0-24,999
 25,000-49,999
 50,000-74,999
 75,000 or more
 Other information:

Who is an owner of the property? Check one.
 Debtor 1 only
 Debtor 2 only
 Debtor 1 and Debtor 2 only
 At least one of the debtors and another
 Check if this is community property
 (see instructions)

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Property*.

Current value of the entire property	Current value of the portion you own
\$ _____	\$ _____

3d. Make: _____
 Model: _____
 Year: _____
 Mileage: 0-24,999
 25,000-49,999
 50,000-74,999
 75,000 or more
 Other information:

Who is an owner of the property? Check one.
 Debtor 1 only
 Debtor 2 only
 Debtor 1 and Debtor 2 only
 At least one of the debtors and another
 Check if this is community property
 (see instructions)

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Property*.

Current value of the entire property	Current value of the portion you own
\$ _____	\$ _____

4. Watercraft, aircraft, motor homes, ATVs and other recreational vehicles, other vehicles, and accessories

Examples: Boats, trailers, motors, personal watercraft, fishing vessels, snow mobiles, accessories

- No
 Yes

4a. Make: _____
 Model: _____
 Year: _____
 Other information:

Who is an owner of the property? Check one.
 Debtor 1 only
 Debtor 2 only
 Debtor 1 and Debtor 2 only
 At least one of the debtors and another
 Check if this is community property
 (see instructions)

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Property*.

Current value of the entire property	Current value of the portion you own
\$ _____	\$ _____

If you own or have more than one, list here:

4b. Make: _____
 Model: _____
 Year: _____
 Other information:

Who is an owner of the property? Check one.
 Debtor 1 only
 Debtor 2 only
 Debtor 1 and Debtor 2 only
 At least one of the debtors and another
 Check if this is community property
 (see instructions)

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule B: Creditors Who Hold Claims Secured by Property*.

Current value of the entire property	Current value of the portion you own
\$ _____	\$ _____

5. Add the dollar value of all of your entries from Part 2, including any entries for pages you have attached for Part 2. Write that number here

\$ _____

Part 3: Describe Your Personal and Household Items

Do you own or have any legal or equitable interest in any of the following items?

Current value of the portion you own

Do not deduct secured claims or exemptions.

6. Household goods and furnishings

Examples: Major appliances, furniture, linens, china, kitchenware

No

Yes. Describe.....

\$ _____

7. Electronics

Examples: Televisions and radios; audio, video, stereo, and digital equipment; computers, printers, scanners; music collections; electronic devices including cell phones, cameras, media players, games

No

Yes. Describe.....

\$ _____

8. Collectibles of value

Examples: Antiques and figurines; paintings, prints, or other artwork; books, pictures, or other art objects; stamp, coin, or baseball card collections; china and crystal; other collections, memorabilia, collectibles

No

Yes. Describe.....

\$ _____

9. Equipment for sports and hobbies

Examples: Sports, photographic, exercise, and other hobby equipment; bicycles, pool tables, golf clubs, skis; canoes and kayaks; carpentry tools; musical instruments

No

Yes. Describe.....

\$ _____

10. Firearms

Examples: Pistols, rifles, shot guns, ammunition, and related equipment

No

Yes. Describe.....

\$ _____

11. Clothes

Examples: Everyday clothes, furs, leather coats, designer wear, shoes, accessories

No

Yes. Describe.....

\$ _____

12. Jewelry

Examples: Everyday jewelry, costume jewelry, engagement rings, wedding rings, heirloom jewelry, watches, gems, gold, silver

No

Yes. Describe.....

\$ _____

13. Non-farm animals

Examples: Dogs, cats, birds, horses

No

Yes. Describe.....

\$ _____

14. Any other personal and household items you did not already list, including any health aids you did not list

No

Yes. Give specific information.

\$ _____

15. Add the dollar value of all of your entries from Part 3, including any entries for pages you have attached for Part 3.

Write that number here →

\$ _____

Part 4: Describe Your Financial Assets

Do you own or have any legal or equitable interest in any of the following?

Current value of the portion you own

Do not deduct secured claims or exemptions.

16. Cash

Examples: Money you have in your wallet, in your home, in a safe deposit box, and on hand when you file your petition

- No
- Yes

Cash: \$ _____

17. Deposits of money

Examples: Checking, savings, money market, or other financial accounts; certificates of deposit; shares in credit unions, brokerage houses, and other similar institutions. If you have multiple accounts with the same institution, list each.

- No
- Yes

Institution name:

17a. Checking account:	_____	\$ _____
17b. Checking account:	_____	\$ _____
17c. Savings account:	_____	\$ _____
17d. Savings account:	_____	\$ _____
17e. Certificates of deposit:	_____	\$ _____
17f. Other financial account:	_____	\$ _____
17g. Other financial account:	_____	\$ _____
17h. Other financial account:	_____	\$ _____
17i. Other financial account:	_____	\$ _____

18. Bonds, mutual funds, or publicly traded stocks

Examples: Bond funds, investment accounts with brokerage firms, money market accounts

- No
- Yes

Institution name:

_____	\$ _____
_____	\$ _____
_____	\$ _____

19. Non-publicly traded stock and interests in incorporated and unincorporated businesses, including an interest in an LLC, partnership, and joint venture

- No
- Yes. Give specific information about them.

Name of entity:	% of ownership:	
_____	_____ %	\$ _____
_____	_____ %	\$ _____
_____	_____ %	\$ _____

20. Government and corporate bonds and other negotiable and non-negotiable instruments

Negotiable instruments include personal checks, cashiers' checks, promissory notes, and money orders. *Non-negotiable instruments* are those you cannot transfer to someone by signing or delivering them.

- No
- Yes. Give specific information about them.

Issuer name:	_____	\$ _____
	_____	\$ _____
	_____	\$ _____

21. Retirement or pension accounts

Examples: Interests in IRA, ERISA, Keogh, 401(k), 403(b), thrift savings accounts, or other pension or profit-sharing plans

- No
- Yes. List each account separately. .

Type of account:	Institution name:	
401(k) or similar plan:	_____	\$ _____
Pension plan:	_____	\$ _____
IRA:	_____	\$ _____
Retirement account:	_____	\$ _____
Keogh:	_____	\$ _____
Additional account:	_____	\$ _____
Additional account:	_____	\$ _____

22. Security deposits and pre-payments

Your share of all unused deposits you have made so that you may continue service or use from a company

Examples: Agreements with landlords, prepaid rent, public utilities (electric, gas, water), telecommunications companies, or others

- No
- Yes

	Institution name or individual:	
Electric:	_____	\$ _____
Gas:	_____	\$ _____
Heating oil:	_____	\$ _____
Security deposit on rental unit:	_____	\$ _____
Prepaid rent:	_____	\$ _____
Telephone:	_____	\$ _____
Water:	_____	\$ _____
Rented furniture:	_____	\$ _____
Other:	_____	\$ _____

23. Annuities (A contract for a periodic payment of money to you, either for life or for a number of years)

- No
- Yes

Issuer name and description:	_____	\$ _____
	_____	\$ _____
	_____	\$ _____

24. 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).

No

Yes

Institution name and description. Separately file the records of any interests. 11 U.S.C. § 521(c):

_____	\$ _____
_____	\$ _____
_____	\$ _____

25. Trusts, equitable or future interests in property (other than anything listed in Part 1), and rights or powers exercisable for your benefit

No

Yes. Give specific information about them....

_____	\$ _____
-------	----------

26. Patents, copyrights, trademarks, trade secrets, and other intellectual property

Examples: Internet domain names, websites, proceeds from royalties and licensing agreements

No

Yes. Give specific information about them....

_____	\$ _____
-------	----------

27. Licenses, franchises, and other general intangibles

Examples: Building permits, exclusive licenses, cooperative association holdings, liquor licenses, professional licenses

No

Yes. Give specific information about them....

_____	\$ _____
-------	----------

Money or property owed to you

Current value of the portion you own

Do not deduct secured claims or exemptions.

28. Tax refunds owed to you

No

Yes. Give specific information about them, including whether you already filed the returns and the tax years.

_____	Federal:	\$ _____
	State:	\$ _____
	Local:	\$ _____

29. Family support

Examples: Past due or lump sum alimony, spousal support, child support, maintenance, divorce settlement, property settlement

No

Yes. Give specific information.....

_____	Alimony:	\$ _____
	Maintenance:	\$ _____
	Support:	\$ _____
	Divorce settlement:	\$ _____
	Property settlement:	\$ _____

30. Other amounts someone owes you

Examples: Amounts earned and unpaid from wages, disability insurance payments, disability benefits, sick pay, vacation pay, workers' compensation, Social Security benefits

No

Yes. Give specific information.....

_____	\$ _____
-------	----------

31. Interests in insurance policies

Examples: Health, disability, or life insurance; health savings account (HSA); credit, homeowner's, or renter's insurance

No

Yes. Name the insurance company of each policy and list its value.....

Company name:

Beneficiary:

Surrender or refund value:

_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

32. Any interest in property that is due you from someone who has died

If you are the beneficiary of a living trust, expect proceeds from a life insurance policy, have inherited something from an existing estate

No

Yes. Give specific information.....

_____	\$ _____
-------	----------

33. Claims against third parties, whether or not you have filed a lawsuit or made a demand for payment

Examples: Accidents, employment disputes, insurance claims, or rights to sue

No

Yes. Describe each claim.

_____	\$ _____
-------	----------

34. Other contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights to set off claims

No

Yes. Describe each claim.

_____	\$ _____
-------	----------

35. Any financial assets you did not already list

No

Yes. Give specific information.

_____	\$ _____
-------	----------

36. Add the dollar value of all of your entries from Part 4, including any entries for pages you have attached for Part 4.

Write that number here → \$ _____

Part 5: Describe Any Business-Related Property You Own or Have an Interest in. List any real estate in Part 1.

37. Do you own or have any legal or equitable interest in any business-related property?

No. Go to Part 6.

Yes. Go to line 38.

Current value of the portion you own

Do not deduct secured claims or exemptions.

38. Accounts receivable or commissions you already earned

No

Yes. Describe

_____	\$ _____
-------	----------

39. Office equipment, furnishings, and supplies

Examples: Business-related computers, software, modems, printers, copiers, fax machines, rugs, telephones, desks, chairs, electronic devices

No

Yes. Describe

_____	\$ _____
-------	----------

40. Machinery, fixtures, equipment, supplies you use in business, and tools of your trade

No
 Yes. Describe \$ _____

41. Inventory

No
 Yes. Describe \$ _____

42. Interests in partnerships or joint ventures

No
 Yes. Describe Name of entity: _____ % of ownership: _____ % \$ _____
 _____ % \$ _____
 _____ % \$ _____

43. Customer lists, mailing lists, or other compilations

No
 Yes. **Do your lists include personally identifiable information** (as defined in 11 U.S.C. § 101(41A))?
 No
 Yes. Describe \$ _____

44. Any business-related property you did not already list

No
 Yes. Give specific information \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____
 _____ \$ _____

45. Add the dollar value of all of your entries from Part 5, including any entries for pages you have attached for Part 5. Write that number here →

\$ _____

Part 6: Describe Any Farm- and Commercial Fishing-Related Property You Own or Have an Interest in
If you own or have an interest in farmland, fill out Part 1.

46. Do you own or have any legal or equitable interest in any farm- or commercial fishing-related property?

No. Go to Part 7.
 Yes. Go to line 47.

Current value of the portion you own
 Do not deduct secured claims or exemptions.

47. Farm animals

Examples: Livestock, poultry, farm-raised fish

No
 Yes \$ _____

48. Crops—either growing or harvested

No
 Yes. Give specific information. \$ _____

49. Farm and fishing equipment and implements

No
 Yes \$ _____

50. Farm and fishing supplies, chemicals, and feed

No
 Yes \$ _____

51. Any farm- and commercial fishing-related property you did not already list

No
 Yes. Give specific information. \$ _____

52. Add the dollar value of all of your entries from Part 6, including any entries for pages you have attached for Part 6.

Write that number here -> \$ _____

Part 7: Describe All Property You Own or Have an Interest in That You Did Not List Above

53. Do you have other property of any kind you did not already list?

Examples: Season tickets, country club membership

No
 Yes. Give specific information. \$ _____
\$ _____
\$ _____

54. Add the dollar value of all of your entries from Part 7. Write that number here

-> \$ _____

Part 8: List the Totals of Each Part of this Form

55. Part 1: Total real estate, line 2 -> \$ _____

56. Part 2: Total vehicles, line 5 \$ _____

57. Part 3: Total personal and household items, line 15 \$ _____

58. Part 4: Total financial assets, line 36 \$ _____

59. Part 5: Total business-related property, line 45 \$ _____

60. Part 6: Total farm- and fishing-related property, line 52 \$ _____

61. Part 7: Total other property not listed, line 54 + \$ _____

62. Total personal property. Add lines 56 through 61..... \$ _____ Copy personal property total -> + \$ _____

63. Total of all property on Schedule A. Add line 55 + line 62..... \$ _____

Fill in this information to identify your case:

Debtor 1 _____
 First Name Middle Name Last Name

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

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

Case number _____
 (if known)

Check if this is an amended filing

Official Form 106B

Schedule B: Creditors Who Hold Claims Secured by Property

12/14

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, copy the Additional Page, fill it out, number the entries, and attach it to this form. On the top of any additional pages, write your name and case number (if known).

1. Do any creditors hold claims secured by your property?

- No. Check this box and submit this form to the court with your other schedules. You have nothing else to report on this form.
- Yes. Fill in all of the information below.

Part 1: List Your Creditors Who Hold Secured Claims

2. List all of your creditors who hold secured claims in alphabetical order. If a creditor has more than one secured claim, list the creditor separately for each claim.

Amount of claim Do not deduct the value of collateral.	Value of collateral that supports this claim	Unsecured portion If any
-----------------------------------------------------------	----------------------------------------------	-----------------------------

1	Describe the property that is collateral: _____ Creditor's Name _____ Number Street _____ _____ City State ZIP Code	\$ _____	\$ _____	\$ _____
As of the date you file, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply				
Who owes the debt? Check one. <input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Debtor 1 and Debtor 2 only <input type="checkbox"/> At least one of the debtors and another <input type="checkbox"/> Check if this is a community claim				
Nature of lien. Check all that apply. <input type="checkbox"/> An agreement you made (such as mortgage or secured car loan) <input type="checkbox"/> Statutory lien (such as tax lien, mechanic's lien) <input type="checkbox"/> Judgment lien from a lawsuit <input type="checkbox"/> Other _____				
Date debt was incurred _____		Last 4 digits of account number _____		

2	Describe the property that is collateral: _____ Creditor's Name _____ Number Street _____ _____ City State ZIP Code	\$ _____	\$ _____	\$ _____
As of the date you file, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply				
Who owes the debt? Check one. <input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Debtor 1 and Debtor 2 only <input type="checkbox"/> At least one of the debtors and another <input type="checkbox"/> Check if this is a community claim				
Nature of lien. Check all that apply. <input type="checkbox"/> An agreement you made (such as mortgage or secured car loan) <input type="checkbox"/> Statutory lien (such as tax lien, mechanic's lien) <input type="checkbox"/> Judgment lien from a lawsuit <input type="checkbox"/> Other _____				
Date debt was incurred _____		Last 4 digits of account number _____		

Add the dollar value of your entries on this page. Write that number here:

\$ _____	\$ _____	\$ _____
----------	----------	----------

<input style="width:100%; height:20px;" type="text"/> Creditor's Name <hr/> Number Street <hr/> City State ZIP Code	Describe the property that is collateral: \$ _____	\$ _____	\$ _____
<p>Who owes the debt? Check one.</p> <input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Debtor 1 and Debtor 2 only <input type="checkbox"/> At least one of the debtors and another <input type="checkbox"/> Check if this is a community claim	<p>As of the date you file, the claim is: Check all that apply.</p> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply <p>Nature of lien. Check all that apply.</p> <input type="checkbox"/> An agreement you made (such as mortgage or secured car loan) <input type="checkbox"/> Statutory lien (such as tax lien, mechanic's lien) <input type="checkbox"/> Judgment lien from a lawsuit <input type="checkbox"/> Other _____	<p>Date debt was incurred _____</p> <p>Last 4 digits of account number <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/></p>	

<input style="width:100%; height:20px;" type="text"/> Creditor's Name <hr/> Number Street <hr/> City State ZIP Code	Describe the property that is collateral: \$ _____	\$ _____	\$ _____
<p>Who owes the debt? Check one.</p> <input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Debtor 1 and Debtor 2 only <input type="checkbox"/> At least one of the debtors and another <input type="checkbox"/> Check if this is a community claim	<p>As of the date you file, the claim is: Check all that apply.</p> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply <p>Nature of lien. Check all that apply.</p> <input type="checkbox"/> An agreement you made (such as mortgage or secured car loan) <input type="checkbox"/> Statutory lien (such as tax lien, mechanic's lien) <input type="checkbox"/> Judgment lien from a lawsuit <input type="checkbox"/> Other _____	<p>Date debt was incurred _____</p> <p>Last 4 digits of account number <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/></p>	

<input style="width:100%; height:20px;" type="text"/> Creditor's Name <hr/> Number Street <hr/> City State ZIP Code	Describe the property that is collateral: \$ _____	\$ _____	\$ _____
<p>Who owes the debt? Check one.</p> <input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Debtor 1 and Debtor 2 only <input type="checkbox"/> At least one of the debtors and another <input type="checkbox"/> Check if this is a community claim	<p>As of the date you file, the claim is: Check all that apply.</p> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply <p>Nature of lien. Check all that apply.</p> <input type="checkbox"/> An agreement you made (such as mortgage or secured car loan) <input type="checkbox"/> Statutory lien (such as tax lien, mechanic's lien) <input type="checkbox"/> Judgment lien from a lawsuit <input type="checkbox"/> Other _____	<p>Date debt was incurred _____</p> <p>Last 4 digits of account number <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/></p>	

Add the dollar value of your entries on this page. Write that number here:	\$ _____	\$ _____	\$ _____
If this is the last page of your form, add the dollar value from all pages. Write that number here:	\$ _____	\$ _____	\$ _____

Part 2: List Others to Be Notified for a Debt That You Already Listed

Use this page only if you have others to be notified for a debt that you already listed in Part 1. For example, if a collection agency is trying to collect from you for a debt you owe to someone else, list the creditor in Part 1, then list the collection agency here.

If you do not have more than one creditor for the same debt, do not fill out or submit this page.

Name

Number Street

City State ZIP Code

On which line in Part 1 did you enter the creditor? _____
Last 4 digits of account number ____ _ _ _

Name

Number Street

City State ZIP Code

On which line in Part 1 did you enter the creditor? _____
Last 4 digits of account number ____ _ _ _

Name

Number Street

City State ZIP Code

On which line in Part 1 did you enter the creditor? _____
Last 4 digits of account number ____ _ _ _

Name

Number Street

City State ZIP Code

On which line in Part 1 did you enter the creditor? _____
Last 4 digits of account number ____ _ _ _

Name

Number Street

City State ZIP Code

On which line in Part 1 did you enter the creditor? _____
Last 4 digits of account number ____ _ _ _

Name

Number Street

City State ZIP Code

On which line in Part 1 did you enter the creditor? _____
Last 4 digits of account number ____ _ _ _

THIS PAGE INTENTIONALLY BLANK

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

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

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

Case number _____
(If known)

Check if this is an amended filing

Official Form 106C

Schedule C: Creditors Who Have Unsecured Claims

12/14

Be as complete and accurate as possible. Use Part 1 for creditors with PRIORITY claims and Part 2 for creditors with NONPRIORITY claims. If you need more space, copy the Part you need, fill it out, and number the entries in the boxes on the left. Attach the Continuation Page to this page. If you have no information to report in a Part, do not file that Part. On the top of any additional pages, write your name and case number (if known).

Part 1: List All of Your Creditors with PRIORITY Unsecured Claims

1. Do any creditors have priority unsecured claims against you?

- No. Go to Part 2.
- Yes.

2. List in alphabetical order all of your creditors with priority unsecured claims and identify what kind of priority claim it is. If you have more than two creditors with priority unsecured claims, fill out the Continuation Page of Part 2. (For an explanation of each type of claim, see *How to Fill Out Schedule C* in the instructions for this form.)

2a

Priority Creditor's Name _____

Number _____ Street _____

City _____ State _____ ZIP Code _____

Last 4 digits of account number _____ \$ _____

When was the debt incurred? _____

Total claim	Priority amount	Nonpriority amount
\$ _____	\$ _____	\$ _____

- As of the date you file, the claim is:** Check all that apply.
- Contingent
 - Unliquidated
 - Disputed
 - None of the above apply

- Who incurred the debt?** Check one.
- Debtor 1 only
 - Debtor 2 only
 - Debtor 1 and Debtor 2 only
 - At least one of the debtors and another
 - Check if this is a community debt

- Type of PRIORITY unsecured claim:**
- Domestic support obligations
 - Taxes and certain other debts you owe the government
 - Claims for death or personal injury while you were intoxicated
 - Other. Specify _____

2b

Priority Creditor's Name _____

Number _____ Street _____

City _____ State _____ ZIP Code _____

Last 4 digits of account number _____ \$ _____

When was the debt incurred? _____

\$ _____	\$ _____	\$ _____
----------	----------	----------

- As of the date you file, the claim is:** Check all that apply.
- Contingent
 - Unliquidated
 - Disputed
 - None of the above apply

- Who incurred the debt?** Check one.
- Debtor 1 only
 - Debtor 2 only
 - Debtor 1 and Debtor 2 only
 - At least one of the debtors and another
 - Check if this is a community debt

- Type of PRIORITY unsecured claim:**
- Domestic support obligations
 - Taxes and certain other debts you owe the government
 - Claims for death or personal injury while you were intoxicated
 - Other. Specify _____

Part 1: Your Creditors with PRIORITY Unsecured Claims – Continuation Page

After listing any entries on this page, number them beginning with 2c, followed by 2d, and so forth.

Total claim	Priority amount	Nonpriority amount
\$ _____	\$ _____	\$ _____

<input type="checkbox"/>	Priority Creditor's Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____	Last 4 digits of account number _____ When was the debt incurred? _____		
Who incurred the debt? Check one. <input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Debtor 1 and Debtor 2 only <input type="checkbox"/> At least one of the debtors and another <input type="checkbox"/> Check if this is a community debt			As of the date you file, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply Type of PRIORITY unsecured claim: <input type="checkbox"/> Domestic support obligations <input type="checkbox"/> Taxes and certain other debts you owe the government <input type="checkbox"/> Claims for death or personal injury while you were intoxicated <input type="checkbox"/> Other. Specify _____	

<input type="checkbox"/>	Priority Creditor's Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____	Last 4 digits of account number _____ When was the debt incurred? _____		
Who incurred the debt? Check one. <input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Debtor 1 and Debtor 2 only <input type="checkbox"/> At least one of the debtors and another <input type="checkbox"/> Check if this is a community debt			As of the date you file, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply Type of PRIORITY unsecured claim: <input type="checkbox"/> Domestic support obligations <input type="checkbox"/> Taxes and certain other debts you owe the government <input type="checkbox"/> Claims for death or personal injury while you were intoxicated <input type="checkbox"/> Other. Specify _____	

<input type="checkbox"/>	Priority Creditor's Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____	Last 4 digits of account number _____ When was the debt incurred? _____		
Who incurred the debt? Check one. <input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Debtor 1 and Debtor 2 only <input type="checkbox"/> At least one of the debtors and another <input type="checkbox"/> Check if this is a community debt			As of the date you file, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply Type of PRIORITY unsecured claim: <input type="checkbox"/> Domestic support obligations <input type="checkbox"/> Taxes and certain other debts you owe the government <input type="checkbox"/> Claims for death or personal injury while you were intoxicated <input type="checkbox"/> Other. Specify _____	

<input type="checkbox"/>	Priority Creditor's Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____	Last 4 digits of account number _____ When was the debt incurred? _____		
Who incurred the debt? Check one. <input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Debtor 1 and Debtor 2 only <input type="checkbox"/> At least one of the debtors and another <input type="checkbox"/> Check if this is a community debt			As of the date you file, the claim is: Check all that apply. <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply Type of PRIORITY unsecured claim: <input type="checkbox"/> Domestic support obligations <input type="checkbox"/> Taxes and certain other debts you owe the government <input type="checkbox"/> Claims for death or personal injury while you were intoxicated <input type="checkbox"/> Other. Specify _____	

Part 2: List All of Your Creditors with NONPRIORITY Unsecured Claims

3. Do any creditors have nonpriority unsecured claims against you?

- No. Go to Part 3.
- Yes

4. List in alphabetical order all of your creditors with nonpriority unsecured claims and identify what kind of nonpriority claim it is. After you list your creditors, number the boxes on the left for the creditors you entered in Part 2. Begin numbering with 4a, followed by 4b. If you have more than 4 creditors with nonpriority unsecured claims, attach additional copies of Part 2.

		Total claim
<div style="border: 1px solid black; padding: 5px;"> <div style="display: flex; justify-content: space-between;"> Nonpriority Creditor's Name _____ </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> Number _____ Street _____ </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> City _____ State _____ ZIP Code _____ </div> <div style="margin-top: 10px;"> <p>Who incurred the debt? Check one.</p> <input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Debtor 1 and Debtor 2 only <input type="checkbox"/> At least one of the debtors and another <input type="checkbox"/> Check if this is a community debt</div> </div>	<div style="border: 1px solid black; padding: 5px;"> <div style="display: flex; justify-content: space-between;"> Last 4 digits of account number _____ \$ _____ </div> <div style="margin-top: 5px;"> <p>When was the debt incurred? _____</p> <p>As of the date you file, the claim is: Check all that apply.</p> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply</div> <div style="margin-top: 5px;"> <p>Type of NONPRIORITY unsecured claim:</p> <input type="checkbox"/> Student loans <input type="checkbox"/> Obligations arising out of a separation agreement or divorce that you did not report as priority claims <input type="checkbox"/> Debts to pension or profit-sharing plans, and other similar debts <input type="checkbox"/> Other. Specify _____</div> </div>	<div style="border: 1px solid black; padding: 5px; height: 40px;"> \$ _____ </div>
<div style="border: 1px solid black; padding: 5px;"> <div style="display: flex; justify-content: space-between;"> Nonpriority Creditor's Name _____ </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> Number _____ Street _____ </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> City _____ State _____ ZIP Code _____ </div> <div style="margin-top: 10px;"> <p>Who incurred the debt? Check one.</p> <input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Debtor 1 and Debtor 2 only <input type="checkbox"/> At least one of the debtors and another <input type="checkbox"/> Check if this is a community debt</div> </div>	<div style="border: 1px solid black; padding: 5px;"> <div style="display: flex; justify-content: space-between;"> Last 4 digits of account number _____ \$ _____ </div> <div style="margin-top: 5px;"> <p>When was the debt incurred? _____</p> <p>As of the date you file, the claim is: Check all that apply.</p> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply</div> <div style="margin-top: 5px;"> <p>Type of NONPRIORITY unsecured claim:</p> <input type="checkbox"/> Student loans <input type="checkbox"/> Obligations arising out of a separation agreement or divorce that you did not report as priority claims <input type="checkbox"/> Debts to pension or profit-sharing plans, and other similar debts <input type="checkbox"/> Other. Specify _____</div> </div>	<div style="border: 1px solid black; padding: 5px; height: 40px;"> \$ _____ </div>
<div style="border: 1px solid black; padding: 5px;"> <div style="display: flex; justify-content: space-between;"> Nonpriority Creditor's Name _____ </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> Number _____ Street _____ </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> City _____ State _____ ZIP Code _____ </div> <div style="margin-top: 10px;"> <p>Who incurred the debt? Check one.</p> <input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Debtor 1 and Debtor 2 only <input type="checkbox"/> At least one of the debtors and another <input type="checkbox"/> Check if this is a community debt</div> </div>	<div style="border: 1px solid black; padding: 5px;"> <div style="display: flex; justify-content: space-between;"> Last 4 digits of account number _____ \$ _____ </div> <div style="margin-top: 5px;"> <p>When was the debt incurred? _____</p> <p>As of the date you file, the claim is: Check all that apply.</p> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply</div> <div style="margin-top: 5px;"> <p>Type of NONPRIORITY unsecured claim:</p> <input type="checkbox"/> Student loans <input type="checkbox"/> Obligations arising out of a separation agreement or divorce that you did not report as priority claims <input type="checkbox"/> Debts to pension or profit-sharing plans, and other similar debts <input type="checkbox"/> Other. Specify _____</div> </div>	<div style="border: 1px solid black; padding: 5px; height: 40px;"> \$ _____ </div>
<div style="border: 1px solid black; padding: 5px;"> <div style="display: flex; justify-content: space-between;"> Nonpriority Creditor's Name _____ </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> Number _____ Street _____ </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> City _____ State _____ ZIP Code _____ </div> <div style="margin-top: 10px;"> <p>Who incurred the debt? Check one.</p> <input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Debtor 1 and Debtor 2 only <input type="checkbox"/> At least one of the debtors and another <input type="checkbox"/> Check if this is a community debt</div> </div>	<div style="border: 1px solid black; padding: 5px;"> <div style="display: flex; justify-content: space-between;"> Last 4 digits of account number _____ \$ _____ </div> <div style="margin-top: 5px;"> <p>When was the debt incurred? _____</p> <p>As of the date you file, the claim is: Check all that apply.</p> <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed <input type="checkbox"/> None of the above apply</div> <div style="margin-top: 5px;"> <p>Type of NONPRIORITY unsecured claim:</p> <input type="checkbox"/> Student loans <input type="checkbox"/> Obligations arising out of a separation agreement or divorce that you did not report as priority claims <input type="checkbox"/> Debts to pension or profit-sharing plans, and other similar debts <input type="checkbox"/> Other. Specify _____</div> </div>	<div style="border: 1px solid black; padding: 5px; height: 40px;"> \$ _____ </div>

Part 3: List Others to Be Notified for a Debt That You Already Listed

5. Use this page only if you have other creditors for a debt that you already listed in Parts 1 or 2. For example, if a collection agency is trying to collect from you for a debt you owe to someone else, list the original creditor in Part 2, then list the collection agency here. If you do not have more than one creditor for the same debt, do not fill out or submit this page.

Name

Number Street

City State ZIP Code

On which entry in Part 1 or Part 2 did you list the original creditor?

Line _____ of (Check one): Part 1: Creditors with Priority Unsecured Claims
 Part 2: Creditors with Nonpriority Unsecured Claims

Last 4 digits of account number _____

Name

Number Street

City State ZIP Code

On which entry in Part 1 or Part 2 did you list the original creditor?

Line _____ of (Check one): Part 1: Creditors with Priority Unsecured Claims
 Part 2: Creditors with Nonpriority Unsecured Claims

Last 4 digits of account number _____

Name

Number Street

City State ZIP Code

On which entry in Part 1 or Part 2 did you list the original creditor?

Line _____ of (Check one): Part 1: Creditors with Priority Unsecured Claims
 Part 2: Creditors with Nonpriority Unsecured Claims

Last 4 digits of account number _____

Name

Number Street

City State ZIP Code

On which entry in Part 1 or Part 2 did you list the original creditor?

Line _____ of (Check one): Part 1: Creditors with Priority Unsecured Claims
 Part 2: Creditors with Nonpriority Unsecured Claims

Last 4 digits of account number _____

Name

Number Street

City State ZIP Code

On which entry in Part 1 or Part 2 did you list the original creditor?

Line _____ of (Check one): Part 1: Creditors with Priority Unsecured Claims
 Part 2: Creditors with Nonpriority Unsecured Claims

Last 4 digits of account number _____

Name

Number Street

City State ZIP Code

On which entry in Part 1 or Part 2 did you list the original creditor?

Line _____ of (Check one): Part 1: Creditors with Priority Unsecured Claims
 Part 2: Creditors with Nonpriority Unsecured Claims

Last 4 digits of account number _____

Name

Number Street

City State ZIP Code

On which entry in Part 1 or Part 2 did you list the original creditor?

Line _____ of (Check one): Part 1: Creditors with Priority Unsecured Claims
 Part 2: Creditors with Nonpriority Unsecured Claims

Last 4 digits of account number _____

Part 4: Add the Amounts for Each Type of Unsecured Claim

6. Total the amounts of certain types of unsecured claims for statistical reporting purposes. For reporting purposes, add the amounts for each type of unsecured claim.

		Total claim	
Total claims from Part 2	6a. Domestic support obligations	6a.	\$ _____
	6b. Taxes and certain other debts you owe the government	6b.	\$ _____
	6c. Claims for death or personal injury while you were intoxicated	6c.	\$ _____
	6d. Other. Add all other priority unsecured claims. Write that amount here.	6d.	+ \$ _____
	6e. Total. Add lines 6a through 6d.	6e.	\$ _____

		Total claim	
Total claims from Part 3	6f. Student loans	6f.	\$ _____
	6g. Obligations arising out of a separation agreement or divorce that you did not report as priority claims	6g.	\$ _____
	6h. Debts to pension or profit-sharing plans, and other similar debts	6h.	\$ _____
	6i. Other. Add all other nonpriority unsecured claims. Write that amount here.	6i.	+ \$ _____
	6j. Total. Add lines 6f through 6i.	6j.	\$ _____

THIS PAGE INTENTIONALLY BLANK

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

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

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

Case number _____
(If known)

Check if this is an amended filing

Official Form 106D

Schedule D: The Property You Claim as Exempt

1/14

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. Using the property you listed on *Schedule A: Property* (Official Form 106A) as your source, list the property that you claim as exempt. If more space is needed, fill out and attach to this page as many copies of *Part 2: Additional Page* as necessary. On the top of any additional pages, write your name and case number (if known). For each item of property you claim as exempt, you must specify the amount of the exemption you claim. Usually, a specific dollar amount is claimed as exempt, but in some circumstances the amount of the exemption claimed might be indicated as 100% of fair market value. For example, a debtor might claim 100% of fair market value for an exemption that is unlimited in dollar amount, such as some exemptions for health aids.

Part 1: Identify the Property You Claim as Exempt

1. Which set of exemptions are you claiming? Check one only, even if your spouse is filing with you.

- You are claiming state and federal non-bankruptcy exemptions. 11 U.S.C. § 522(b)(3)
- You are claiming federal exemptions. 11 U.S.C. § 522(b)(2)

2. For any property you list on *Schedule A* that you claim as exempt, fill in the information below.

Brief description of the property and line on <i>Schedule A</i> that lists this property	Current value of the portion you own <small>Copy the value from <i>Schedule A</i></small>	Amount of the exemption you claim	Specific laws that allow exemption
Brief description: _____ Line from <i>Schedule A</i> : _____	\$ _____	_____	_____ _____ _____
Brief description: _____ Line from <i>Schedule A</i> : _____	\$ _____	_____	_____ _____ _____
Brief description: _____ Line from <i>Schedule A</i> : _____	\$ _____	_____	_____ _____ _____
Brief description: _____ Line from <i>Schedule A</i> : _____	\$ _____	_____	_____ _____ _____

3. Are you claiming a homestead exemption of more than \$146,450? (Subject to adjustment on 4/01/13 and every 3 years after that for cases filed on or after the date of adjustment.)

- No
- Yes. Did you acquire the property covered by the exemption within 1,215 days before you filed this case?
 - No
 - Yes

Part 2: Additional Page

Brief description of the property and line on Schedule A that lists this property		Current value of the portion you own Copy the value from Schedule A	Amount of the exemption you claim	Specific laws that allow exemption
Brief description:		\$ _____	_____	_____
Line from Schedule A:	_____			_____
Brief description:		\$ _____	_____	_____
Line from Schedule A:	_____			_____
Brief description:		\$ _____	_____	_____
Line from Schedule A:	_____			_____
Brief description:		\$ _____	_____	_____
Line from Schedule A:	_____			_____
Brief description:		\$ _____	_____	_____
Line from Schedule A:	_____			_____
Brief description:		\$ _____	_____	_____
Line from Schedule A:	_____			_____
Brief description:		\$ _____	_____	_____
Line from Schedule A:	_____			_____
Brief description:		\$ _____	_____	_____
Line from Schedule A:	_____			_____
Brief description:		\$ _____	_____	_____
Line from Schedule A:	_____			_____
Brief description:		\$ _____	_____	_____
Line from Schedule A:	_____			_____

Fill in this information to identify your case:

Debtor _____
First Name Middle Name Last Name

Debtor 2 _____
 (Spouse If filing) First Name Middle Name Last Name

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

Case number _____
 (If known)

Check if this is an amended filing

Official Form 106E

Schedule E: Executory Contracts and Unexpired Leases

12/14

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, copy the additional page, fill it out, number the entries, and attach it to this page. On the top of any additional pages, write your name and case number (if known).

1. Do you have any executory contracts or unexpired leases?

- No. Check this box and file this form with the court with your other schedules. You have nothing else to report on this form.
- Yes. Fill in all of the information below.

2. List separately each person or company with whom you have the contract or lease. Then state what each contract or lease is for (for example, rent, vehicle lease, cell phone). See the instructions for more examples of executory contracts and unexpired leases.

Person or company with whom you have the contract or lease	State what the contract or lease is for
<p>1</p> <p>_____ Name</p> <p>_____ Number Street</p> <p>_____ City State ZIP Code</p>	
<p>2</p> <p>_____ Name</p> <p>_____ Number Street</p> <p>_____ City State ZIP Code</p>	
<p>3</p> <p>_____ Name</p> <p>_____ Number Street</p> <p>_____ City State ZIP Code</p>	
<p>4</p> <p>_____ Name</p> <p>_____ Number Street</p> <p>_____ City State ZIP Code</p>	
<p>5</p> <p>_____ Name</p> <p>_____ Number Street</p> <p>_____ City State ZIP Code</p>	

Additional Page if You Have More Contracts or Leases

Person or company with whom you have the contract or lease	What the contract or lease is for
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	
<input type="checkbox"/> Name _____ Number Street _____ City State ZIP Code _____	

Fill in this information to identify your case:

Debtor 1 _____
 First Name Middle Name Last Name

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

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

Case number _____
 (If known)

Check if this is an amended filing

Official Form 106F

Schedule F: Your Codebtors

12/14

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, copy the Additional Page, fill it out, and number the entries in the boxes on the left. Attach the Additional Page to this page. On the top of any Additional Pages, write your name and case number (if known). Answer every question.

- 1. Do you have any codebtors?** (If you are filing a joint case, do not list either spouse as a codebtor.)
 No
 Yes
- 2. Within the last 8 years, have you lived in a community property state or territory?** (*Community property states and territories include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, and Wisconsin.*)
 No. Go to line 3.
 Yes. Did your spouse, former spouse, or legal equivalent live with you at the time?

- No
- Yes. In which community state or territory did you live? _____

Fill in the name and current address of that person.

 Name of your spouse

 Number Street

 City State ZIP Code

- 3. In Column 1, list as codebtors all of the people or entities who are also liable for any debts you may have. Include all guarantors and co-signers; do not include your spouse as a codebtor if your spouse is filing with you. List the person shown in line 2 above as a codebtor only if that person is a guarantor or co-signer. Make sure you have listed the creditor on Schedule B or Schedule C. Use Schedule B or Schedule C to fill out Column 2.**

Column 1: Your codebtor

Column 2: The creditor to whom you owe the debt

	Column 1: Your codebtor	Column 2: The creditor to whom you owe the debt
1	_____ Name _____ Number Street _____ City State ZIP Code	Line from <i>Schedule B</i> : _____ OR Line from <i>Schedule C</i> : _____
2	_____ Name _____ Number Street _____ City State ZIP Code	Line from <i>Schedule B</i> : _____ OR Line from <i>Schedule C</i> : _____
3	_____ Name _____ Number Street _____ City State ZIP Code	Line from <i>Schedule B</i> : _____ OR Line from <i>Schedule C</i> : _____

Fill in this information to identify your case:

Debtor 1 _____
 First Name Middle Name Last Name

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

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

Case number _____
 (If known)

Check if this is an amended filing

Official Form 106-Declaration

Declaration About an Individual Debtor's Schedules

12/14

If two married people are filing together, both are equally responsible for supplying correct information.

You must file this form whenever you file bankruptcy schedules or amended schedules. If you make a false statement, you could be fined up to \$500,000 or imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Sign Here

Did you pay or agree to pay someone who is NOT an attorney to help you fill out this bankruptcy filing package?

- No
- Yes. Name of person _____
 Attach *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119).

Under penalty of perjury, I declare that I have read the forms filed with this declaration, and that they are true and correct.

x _____
Signature of Debtor 1

x _____
Signature of Debtor 2

Date _____
MM / DD / YYYY

Date _____
MM / DD / YYYY

THIS PAGE INTENTIONALLY BLANK

COMMITTEE NOTE

The schedules to be used in cases of individual debtors are revised as part of the Forms Modernization Project, making them easier to read and, as a result, likely to generate more complete and accurate responses. The goals of the Forms Modernization Project include improving the interface between technology and the forms so as to increase efficiency and reduce the need to produce the same information in multiple formats. Therefore, many of the open-ended questions and multiple-part instructions have been replaced with more specific questions. The individual debtor schedules are also renumbered starting with the number 106 and followed by the letter or name of the schedule to distinguish them from the versions to be used in non-individual cases.

Official Form 106A, *Schedule A: Your Property*, consolidates information about an individual debtor's real and personal property into a single form. It replaces Official Form 6A, *Real Property Schedule* and Official Form 6B, *Personal Property*, in cases of individual debtors. In addition to specific questions about the assets the form also includes open text fields to allow debtors who want to provide additional information regarding particular assets to do so.

The layout and categories of property on Official Form 106A have changed. Instead of dividing property interests into two categories (real or personal property), the new form uses seven categories likely to be more familiar to non-lawyers: real estate, vehicles, personal household items, financial assets, business-related property, farm- and commercial fishing-related property, and a catch-all category for property that was not listed elsewhere in the form. Although the new form categories and the examples provided in many of the categories are designed to prompt debtors to be thorough and list all of their interests in property, the prompts are not intended to require a detailed description of items of little value that are unlikely to be administered by the case trustee. For example, the debtor is directed to separately describe and list individual items of property only if they are worth more than \$500, and is allowed to describe generally items of minimal value (such

as children's clothes) by adding the value of the items and reporting the total.

Because a particular item of property may fit into more than category, the instructions for the form explain that it should be listed only once.

In addition, because property may fit within a particular category, but not be elicited by the particular line items within the category, the debtor is asked in Parts 3 – 6 (lines 14, 35, 44, and 51) to specifically identify and value any other property in the specific category.

Part 1, *Describe Each Residence, Building, Land, or Other Real Estate You Own or Have an Interest in*, avoids legal terms such as “life estate” or “joint tenancy,” because many individual debtors do not fully understand the nature of their ownership interest in real property. Instead, the debtor is asked to state the “current value of the portion you own,” and to also state whether ownership is shared with someone else. Furthermore, instead of asking an open-ended description of the property, the form guides the debtor in answering the description question by providing eight options from which to choose: single-family home, duplex or multi-unit building, condominium or cooperative, manufactured or mobile home, land, investment property, time share, and other.

Part 2, *Describe Your Vehicles*, also guides the debtor in answering the question, asking for the make, model, year, and mileage of the car or other vehicle. Because mileage is just a general indication of vehicle value, the debtor is not required to list the exact mileage, but instead is prompted to provide the approximate mileage by selecting from four checkboxes.

Part 3, *Describe Your Personal and Household Items*, simplifies wording, updates categories, and uses more common terms. For example, “Wearing apparel” is changed to “clothes” and examples include furs, which were previously grouped with jewelry. Firearms, on the other hand, which were previously grouped with sports and other hobbies, are now set out as a separate category. Additionally, because a new Part 6 has been

added to separately describe-farm related property, Part 3 includes a category for “non-farm animals.”

Part 4, *Describe Your Financial Assets*, prompts a listing of the debtor’s financial assets through several questions providing separate space for the institution name after the type of applicable account, and for the value of the debtor’s interest in the asset. Two new categories are added: “bonds, mutual funds, or publicly traded stocks” and “claims against third parties, whether or not you have filed a lawsuit or made a demand for payment.”

Part 5, *Describe Any Business-Related Property You Own or Have an Interest in*, provides prompts for listing business-related property such as accounts receivable, inventory, and machinery, and includes a direction to list business-related real estate in Part 1, to avoid listing real estate twice.

Part 6, *Describe Any Farm- and Commercial Fishing-Related Property You Own or Have an Interest in*, provides prompts for listing farm- or commercial fishing-related property such as farm animals, crops, and feed. It also includes a direction to list any farm- or commercial fishing-related real estate in Part 1.

Part 7, *Describe All Property You Own or Have an Interest In That You Did Not List Above* is a catch-all provision that allows the debtor to report property that is difficult to categorize.

Part 8, *List the Totals of Each Part of This Form*, tabulates the total value of the debtor’s interest in the listed property. The tabulation includes two subtotals, one for real estate, which corresponds to the real property total that is reported on previous Official Form 6A. The second subtotal is of Parts 2-7, which corresponds to the personal property total that is reported on previous Official Form 6B.

Official Form 106B, *Schedule B: Creditors Who Hold Claims Secured by Property*, replaces Official Form 6D, *Creditors Holding Secured Claims*, in cases of individual debtors.

Part 1, *List Your Creditors Who Hold Secured Claims*, now directs the debtor to list only the last four digits of the account

number. Part 1 also adds four checkboxes with which to describe the nature of the lien: an agreement the debtor made (such as mortgage or secured car loan); statutory lien (such as tax lien, mechanic's lien); judgment lien from a lawsuit; and other.

The form adds Part 2, *List Others to Be Notified for a Debt That You Already Listed*. The debtor is instructed to use Part 2 if there is a need to notify someone other than the creditor for a debt listed in Part 1. For example, if a collection agency is trying to collect for a creditor listed in Part 1, the collection agency would be listed in Part 2.

Official Form 106C, Schedule C: Creditors Who Have Unsecured Claims, consolidates information about priority and nonpriority unsecured claims into a single form. It replaces Official Form 6E – *Creditors Holding Unsecured Priority Claims*, and Official Form 6F – *Creditors Holding Unsecured Nonpriority Claims*, in cases of individual debtors.

Although both priority and non-priority unsecured claims are reported in Official Form 106C, the two types of claims are separately grouped so that the total for each type can be reported for case administration and statistical purposes. The form eliminates the question “consideration for claim” and instructs debtors to list creditors in alphabetical order.

Part 1, *List All of Your Creditors with PRIORITY Unsecured Claims*, includes four checkboxes identifying the type of priority that applies to the claim: domestic support obligations; taxes and certain other debts owed to the government; claims for death or personal injury while intoxicated; and “other.” The first three categories are required to be separately reported for statistical purposes. If the debtor selects “other,” the debtor must specify the basis of the priority, *e.g.* wages, or employee benefit plan contribution.

Part 2, *List All of Your Creditors with NONPRIORITY Unsecured Claims*, no longer asks whether the claim is subject to setoff. The form creates four checkboxes for types of claims that must be separately reported for statistical purposes: student loans; obligations arising out of a separation agreement or divorce not

listed as priority claims; debts to pension or profit-sharing plans and other similar debts; and “other.” If the debtor selects “other,” the debtor must specify the basis of the claim.

Part 3, *List Others to Be Notified for a Debt That You Already Listed*, is a new addition to the form. The debtor is instructed to use Part 3 only if there is a need to notify someone other than the creditor for a debt listed in Parts 1 and 2. For example, if a collection agency is trying to collect for a creditor listed in Part 1, the collection agency would be listed in Part 3.

Finally, Part 4, *Add the Amounts for Each Type of Unsecured Claim*, subtotals particular types of unsecured claims for statistical reporting purposes.

Official Form 106D, *Schedule D: The Property You Claim as Exempt*, replaces Official Form 6C – *Property Claimed as Exempt*, in cases of individual debtors.

Part 1, *Identify the Property You Claim as Exempt*, includes a table to list the property the debtor seeks to exempt, the value of the property owned by the debtor, the amount of the claimed exemption, and the law that allows the exemption. The first column asks for a brief description of the exempt property, and also asks for the line number where the property is listed on Schedule A. The second column asks for the value of the portion if the asset owned by the debtor, rather than the entire asset. The third column asks for the amount, rather than the value, of the exemption claim. The change in the wording of the third column is stylistic.

The form has also been changed in light of the Supreme Court’s ruling in *Schwab v. Reilly*, 130 S.Ct. 2652 (2010). The dollar sign is removed from the entries in the “amount of the exemption you claim” column, and an instruction is added to the form explaining that for each item of property the debtor claims as exempt, the debtor must specify the amount of the exemption claimed. Usually, a specific dollar amount is claimed as exempt because that is what the applicable law allows, but in some circumstances the law may permit the entire item to be claimed as exempt. In such a circumstance, an exemption claim might be

indicated as 100% of fair market value. For example, a debtor might claim 100% of fair market value for an exemption that is unlimited in dollar amount, such as some exemptions for health aids.

Official Form 106E, *Schedule E: Executory Contracts and Unexpired Leases*, replaces Official Form 6G, *Executory Contracts and Unexpired Leases*, in cases of individual debtors.

The form is simplified. Instead of requiring the debtor to make multiple assertions about each potential executory contract or unexpired lease, the form simply requires the debtor to identify the name and address of the entity that the contract or lease is with, and to state what the contract or lease is for. Definitions and examples of executory contracts and unexpired leases are included in the separate instructions for the form.

An additional page is provided in case the debtor has so many executory contracts and unexpired leases that the available page is not adequate. If the debtor needs to use the additional page, the debtor is required to fill-in the entry number.

Official Form 106F, *Schedule F: Your Codebtors*, replaces Official Form 6H, *Codebtors*, in cases of individual debtors.

The form breaks out the questions about whether there are any codebtors, and whether the debtor has lived with a spouse or legal equivalent in a community property state in the prior eight years. It also removes Alaska from the listed community property states. Finally, it asks the debtor to indicate where the debt is listed on Schedule B or Schedule C, thereby eliminating the need to list the name and address of the creditor.

Official Form 106G, *Schedule G: Your Income*, replaces Official Form 6I, *Your Income*, in cases of individual debtors.

The form is one of an initial set of forms that were published as part of the Forms Modernization Project in 2012. It is renumbered and internal cross references are updated to conform to the new numbering system now being introduced by the Forms Modernization Project.

Official Form 106H, *Schedule H: Your Expenses*, replaces Official Form 6J, *Your Expenses*, in cases of individual debtors.

The form is one of an initial set of forms that were published as part of the Forms Modernization Project in 2012. It is renumbered and internal cross references are updated to conform to the new numbering system now being introduced by the Forms Modernization Project.

Official Form 106 – Summary, *A Summary of Your Assets and Liabilities and Certain Statistical Information*, replaces, Official Form 6, *Summary of Schedules and Statistical Summary of Certain Liability and Related Data (28 U.S.C. § 159)*, in cases of individual debtors.

The form is reformatted and updated with cross references indicating from which forms and line numbers the summary information is gathered. In addition, because most filings are now done electronically, the form no longer requires the debtor to list the other schedules being filed with the Summary or to tabulate the total number of sheets used to compile the Schedules.

Official Form 106 – Declaration, *Declaration About an Individual Debtor's Schedules*, replaces Official Form 6, *Declaration Concerning Debtor's Schedules*, in cases of individual debtors.

The form, which is to be signed by the debtor and filed with the debtor's schedules, deletes the Declaration and Signature of Bankruptcy Petition Preparer (BBP). Instead, the debtor is directed to complete and file Official Form 119, *Bankruptcy Petition Preparer's Notice, Declaration, and Signature*, if a BBP helped fill out the bankruptcy forms. The form also deletes the Declaration Under Penalty of Perjury on Behalf of a Corporation or Partnership as unnecessary in a bankruptcy case filed by an individual debtor.

THIS PAGE INTENTIONALLY BLANK

Fill in this information to identify your case:

Debtor 1 _____
 First Name Middle Name Last Name

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

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

Case number _____
 (If known)

Check if this is an amended filing

Official Form 107

Your Statement of Financial Affairs for Individuals Filing for Bankruptcy 12/14

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Give Details About Where You Lived Before

1. During the last 3 years, have you lived anywhere other than where you live now?

- No
- Yes. List all of the places you lived in the last 3 years. Do not include where you live now.

Debtor 1:	Dates Debtor 1 lived there	Debtor 2:	Dates Debtor 2 lived there
_____ Number Street _____ City State ZIP Code	From _____ To _____	Same as Debtor 1 _____ Number Street _____ City State ZIP Code	Same as Debtor 1 From _____ To _____
_____ Number Street _____ City State ZIP Code	From _____ To _____	Same as Debtor 1 _____ Number Street _____ City State ZIP Code	Same as Debtor 1 From _____ To _____

2. Within the last 8 years, did you ever live with a spouse or legal equivalent in a community property state or territory? (Community property states and territories include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, and Wisconsin.)

- No
- Yes. Make sure you fill out Schedule F: *Your Codebtors* (Official Form 106F).

Part 2: Explain the Sources of Your Income

3. Did you have any income from being employed or operating a business during this year or the two previous calendar years?

Fill in a total amount for the income you receive from all jobs and all businesses, including part-time activities. If you are filing a joint case and you have income that you receive together, list it only once under Debtor 1.

- No
- Yes. Fill in the details.

	Debtor 1		Debtor 2	
	Sources of income Check all that apply.	Gross income (before deductions and exclusions)	Sources of income Check all that apply.	Gross income (before deductions and exclusions)
From January 1 of current year until the date you filed for bankruptcy:	Wages, commissions, bonuses, tips Operating a business	\$ _____	Wages, commissions, bonuses, tips Operating a business	\$ _____
For last calendar year: (January 1 to December 31, _____) YYYY	Wages, commissions, bonuses, tips Operating a business	\$ _____	Wages, commissions, bonuses, tips Operating a business	\$ _____
For the calendar year before that: (January 1 to December 31, _____) YYYY	Wages, commissions, bonuses, tips Operating a business	\$ _____	Wages, commissions, bonuses, tips Operating a business	\$ _____

4. Did you receive any other income during this year or the two previous calendar years?

Include income regardless of whether that income is taxable. Examples of *other income* are alimony, child support, Social Security, unemployment, and other public benefit payments, pensions, rental income, interest, dividends, money collected from lawsuits, royalties, and gambling and lottery winnings. If you are filing a joint case and you have income that you receive together, list it only once under Debtor 1.

List each source and the gross income for each separately. Do not include income that you listed in line 3.

- No
- Yes. Fill in the details.

	Debtor 1		Debtor 2	
	Sources of income Describe below.	Gross income from each source (before deductions and exclusions)	Sources of income Describe below.	Gross income from each source (before deductions and exclusions)
From January 1 of current year until the date you filed for bankruptcy:	_____	\$ _____	_____	\$ _____
	_____	\$ _____	_____	\$ _____
	_____	\$ _____	_____	\$ _____
For last calendar year: (January 1 to December 31, _____) YYYY	_____	\$ _____	_____	\$ _____
	_____	\$ _____	_____	\$ _____
	_____	\$ _____	_____	\$ _____
For the calendar year before that: (January 1 to December 31, _____) YYYY	_____	\$ _____	_____	\$ _____
	_____	\$ _____	_____	\$ _____
	_____	\$ _____	_____	\$ _____

Part 3: List Certain Payments You Made Before You Filed for Bankruptcy

5. Are either Debtor 1's or Debtor 2's debts primarily consumer debts?

No. **My debts are not primarily consumer debts.** *Consumer debts* are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."

During the 90 days before you filed for bankruptcy, did you pay any creditor a total of \$5,850 or more?

No. Go to line 6.

Yes. List below each creditor to whom you paid a total of \$5,850 or more in one or more payments and the total amount you paid that creditor. Do not include payments for domestic support obligations, such as child support and alimony. Also, do not include payments to an attorney for this bankruptcy case.

Yes. **My debts are primarily consumer debts.**

During the 90 days before you filed for bankruptcy, did you pay any creditor a total of \$600 or more?

No. Go to line 6.

Yes. List below each creditor to whom you paid a total of \$600 or more and the total amount you paid that creditor. Do not include payments for domestic support obligations, such as child support and alimony. Also, do not include payments to an attorney for this bankruptcy case.

	Dates of payment	Total amount paid	Amount you still owe	Was this payment for...
_____ Creditor's Name _____ Number Street _____ _____ City State ZIP Code	_____	\$ _____	\$ _____	Mortgage Car Credit card Loan repayment Suppliers or vendors Other _____
_____ Creditor's Name _____ Number Street _____ _____ City State ZIP Code	_____	\$ _____	\$ _____	Mortgage Car Credit card Loan repayment Suppliers or vendors Other _____
_____ Creditor's Name _____ Number Street _____ _____ City State ZIP Code	_____	\$ _____	\$ _____	Mortgage Car Credit card Loan repayment Suppliers or vendors Other _____

6. **Within 1 year before you filed for bankruptcy, did you make a payment on a debt you owed anyone who was an insider?**

Insiders include relatives; general partners of you or your relatives; corporations of which you are an officer, director, or person in control; and any managing agent. 11 U.S.C. § 101. Include payments for domestic support obligations, such as child support and alimony.

- No
 Yes. List all payments to an insider.

	Dates of payment	Total amount paid	Amount you still owe	Reason for this payment
_____ Insider's Name _____ Number Street _____ _____ City State ZIP Code	_____	\$ _____	\$ _____	
_____ Insider's Name _____ Number Street _____ _____ City State ZIP Code	_____	\$ _____	\$ _____	

7. **Within 1 year before you filed for bankruptcy, did you make any payments or transfer any property on account of a debt that benefitted an insider?**

Include payments on debts guaranteed or co-signed by an insider.

- No
 Yes. List all payments that benefit an insider.

	Dates of payment	Total amount paid	Amount you still owe	Reason for this payment Include creditor's name
_____ Insider's Name _____ Number Street _____ _____ City State ZIP Code	_____	\$ _____	\$ _____	
_____ Insider's Name _____ Number Street _____ _____ City State ZIP Code	_____	\$ _____	\$ _____	

Part 4: Identify Legal Actions, Repossessions, Foreclosures, and Returns

8. Within 1 year before you filed for bankruptcy, were you a party in any lawsuit, court action, or administrative proceeding?

List all such matters, including personal injury cases, small claims actions, divorces, collection suits, paternity actions, support or custody modifications, and contract disputes.

- No
- Yes. Fill in the details.

	Nature of the case	Court or agency	Status of the case
Case title _____ _____		Court Name _____	Pending
Case number _____		Number Street _____	On appeal
		City State ZIP Code _____	Concluded
Case title _____ _____		Court Name _____	Pending
Case number _____		Number Street _____	On appeal
		City State ZIP Code _____	Concluded

9. Within 1 year before you filed for bankruptcy, was any of your property repossessed, foreclosed, garnished, attached, seized, or levied?

Check all that apply and fill in the details below.

- No. Go to line 10.
- Yes. Fill in the information below.

	Describe the property	Date	Value of the property
Creditor's Name _____ Number Street _____ City State ZIP Code _____			\$ _____
	Explain what happened		
	<input type="checkbox"/> Property was repossessed. <input type="checkbox"/> Property was foreclosed. <input type="checkbox"/> Property was garnished. <input type="checkbox"/> Property was attached. <input type="checkbox"/> Property was seized or levied.		
Creditor's Name _____ Number Street _____ City State ZIP Code _____			\$ _____
	Explain what happened		
	<input type="checkbox"/> Property was repossessed. <input type="checkbox"/> Property was foreclosed. <input type="checkbox"/> Property was garnished. <input type="checkbox"/> Property was attached. <input type="checkbox"/> Property was seized or levied.		

10. Within 90 days before you filed for bankruptcy, did any creditor, including a bank or financial institution, set off or otherwise take anything from your accounts without your permission or refuse to make a payment because you owed a debt?

- No
 Yes. Fill in the details.

	Describe the action the creditor took	Date action was taken	Amount
Creditor's Name _____ Number Street _____ City State ZIP Code _____			\$ _____
	Last 4 digits of account number: XXXX-____ _ _ _ _		

11. Within 1 year before you filed for bankruptcy, was any of your property in the possession of an assignee for the benefit of creditors, a court-appointed receiver, custodian, or other official?

- No
 Yes. Fill in the details.

	Describe the property	Value
Custodian's Name _____ Number Street _____ City State ZIP Code _____		\$ _____
	Case title _____	Court Name _____
	Case number _____	Number Street _____
	Date of order or assignment _____ MM / DD / YYYY	City State ZIP Code _____

Part 5: List Certain Gifts and Contributions

12. Within 2 years before you filed for bankruptcy, did you give any gifts with a total value of more than \$600 per person?

- No
 Yes. Fill in the details for each gift.

Gifts with a total value of more than \$600 per person	Describe the gifts	Dates you gave the gifts	Value
Person to Whom You Gave the Gift _____ Number Street _____ City State ZIP Code _____			\$ _____
Person's relationship to you _____			\$ _____

Gifts with a total value of more than \$600 per person	Describe the gifts	Dates you gave the gifts	Value
_____ Person to Whom You Gave the Gift _____		_____	\$ _____
_____ Number Street _____		_____	\$ _____
_____ City State ZIP Code _____			
_____ Person's relationship to you			

13. Within 2 years before you filed for bankruptcy, did you give any gifts or contributions with a total value of more than \$600 to any charity?

- No
- Yes. Fill in the details for each gift or contribution.

Gifts or contributions to charities that total more than \$600	Describe what you contributed	Date you contributed	Value
_____ Charity's Name _____		_____	\$ _____
_____ Number Street _____		_____	\$ _____
_____ City State ZIP Code			

Part 6: List Certain Losses

14. Within 1 year before you filed for bankruptcy or since you filed for bankruptcy, did you lose anything because of theft, fire, other disaster, or gambling?

- No
- Yes. Fill in the details.

Describe the property you lost and how the loss occurred	Describe any insurance coverage for the loss Include the amount that insurance has paid. List pending insurance claims on line 33 of <i>Schedule A: Property</i> .	Date of your loss	Value of property lost
		_____	\$ _____

Part 7: List Certain Payments or Transfers

15. Within 1 year before you filed for bankruptcy, did you or anyone else acting on your behalf pay or transfer any property to anyone you consulted about seeking bankruptcy or preparing a bankruptcy petition?

Include any attorneys, bankruptcy petition preparers, or credit counseling agencies for services required in your bankruptcy.

- No
- Yes. Fill in the details.

	Description and value of any property transferred	Date payment or transfer was made	Amount of payment
_____ Person Who Was Paid _____ Number Street _____ _____ City State ZIP Code _____ Email or website address _____ Person Who Made the Payment, if Not You		_____ \$ _____ _____ \$ _____	

	Description and value of any property transferred	Date payment or transfer was made	Amount of payment
_____ Person Who Was Paid _____ Number Street _____ _____ City State ZIP Code _____ Email or website address _____ Person Who Made the Payment, if Not You		_____ \$ _____ _____ \$ _____	

16. Within 1 year before you filed for bankruptcy, did you or anyone else acting on your behalf pay anything to anyone who promised to help you deal with your creditors or to make payments to your creditors?

Do not include any payment or transfer that you listed on line 15.

- No
- Yes. Fill in the details.

	Description and value of any property transferred	Date payment or transfer was made	Amount of payment
_____ Person Who Was Paid _____ Number Street _____ _____ City State ZIP Code		_____ \$ _____ _____ \$ _____	

17. Within 2 years before you filed for bankruptcy, did you sell, trade, or otherwise transfer any property to anyone, other than property transferred in the ordinary course of your business or financial affairs?

Include both outright transfers and transfers made as security. Do not include gifts and transfers that you have already listed on this statement.

- No
 Yes. Fill in the details.

	Description and value of property transferred	Describe any property or payments received or debts paid in exchange	Date transfer was made
_____ Person Who Received Transfer _____ Number Street _____ _____ City State ZIP Code _____ Person's relationship to you _____			_____ _____
_____ Person Who Received Transfer _____ Number Street _____ _____ City State ZIP Code _____ Person's relationship to you _____			_____ _____

18. Within 10 years before you filed for bankruptcy, did you transfer any property to a self-settled trust or similar device of which you are a beneficiary? (These are often called asset-protection devices.)

- No
 Yes. Fill in the details.

	Description and value of the property transferred	Date transfer was made
_____ Name of trust _____ _____		_____ _____

Part 8: List Certain Financial Accounts, Safety Deposit Boxes, and Storage Units

19. Within 1 year before you filed for bankruptcy, were any financial accounts or instruments held in your name, or for your benefit, closed, sold, moved, or transferred?

Include checking, savings, money market, or other financial accounts; certificates of deposit; shares in banks, credit unions, brokerage houses, pension funds, cooperatives, associations, and other financial institutions.

- No
 Yes. Fill in the details.

	Last 4 digits of account number	Type of account	Date account was closed, sold, moved, or transferred	Last balance before closing or transfer
Name of Financial Institution _____ Number Street _____ City State ZIP Code _____	XXXX-__ __ __ __	Checking _____ Savings _____ Money market _____ Brokerage _____ Other _____	_____	\$ _____
Name of Financial Institution _____ Number Street _____ City State ZIP Code _____	XXXX-__ __ __ __	Checking _____ Savings _____ Money market _____ Brokerage _____ Other _____	_____	\$ _____

20. Do you now have, or did you have within 1 year before you filed for bankruptcy, any safe deposit box or other depository for securities, cash, or other valuables?

- No
 Yes. Fill in the details.

	Who else had access to it?	Describe the contents	Do you still have it?
Name of Financial Institution _____ Number Street _____ City State ZIP Code _____	Name _____ Number Street _____ City State ZIP Code _____		No Yes

21. Do you store property in a storage unit, or have you stored property in a storage unit within 1 year before you filed for bankruptcy? Do not include storage units that are part of the building in which you live.

- No
 Yes. Fill in the details.

	Who else has or had access to it?	Describe the contents	Do you still have it?
Name of Storage Facility _____ Number Street _____ City State ZIP Code _____	Name _____ Number Street _____ City State ZIP Code _____		No Yes

Part 9: Identify Property You Hold or Control for Someone Else

22. **Do you hold or control any property that someone else owns?** Include any property you borrowed from, are storing for, or hold in trust for someone.

- No
- Yes. Fill in the details.

	Where is the property?	Describe the property	Value
Owner's Name _____ _____	Number Street _____ _____ City State ZIP Code		\$ _____

Part 10: Give Details About Environmental Information

For the purpose of Part 10, the following definitions apply:

- *Environmental law* means any federal, state, or local statute or regulation concerning pollution, contamination, releases of hazardous or toxic substances, wastes, or material into the air, land, soil, surface water, groundwater, or other medium, including statutes or regulations controlling the cleanup of these substances, wastes, or material.
- *Site* means any location, facility, or property that any environmental law defines, whether you now own, operate, or utilize it or used to own, operate, or utilize it, including disposal sites.
- *Hazardous material* means anything an environmental law defines as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, contaminant, or similar term.

Report all notices, releases, and proceedings that you know about, regardless of when they occurred.

23. **Has any governmental unit notified you that you may be liable or potentially liable under or in violation of an environmental law?**

- No
- Yes. Fill in the details.

	Governmental unit	Environmental law, if you know it	Date of notice
Name of site _____ _____ Number Street _____ _____ City State ZIP Code	Governmental unit _____ _____ Number Street _____ _____ City State ZIP Code		_____

24. **Have you notified any governmental unit of any release of hazardous material?**

- No
- Yes. Fill in the details.

	Governmental unit	Environmental law, if you know it	Date of notice
Name of site _____ _____ Number Street _____ _____ City State ZIP Code	Governmental unit _____ _____ Number Street _____ _____ City State ZIP Code		_____

25. **Have you been a party in any judicial or administrative proceeding under any environmental law?** Include settlements and orders.

- No
 Yes. Fill in the details.

	Court or agency	Nature of the case	Status of the case
Case title _____	Court Name _____		Pending
_____	Number Street _____		On appeal
Case number _____	City _____ State _____ ZIP Code _____		Concluded

Part 11: Give Details About Your Business or Connections to Any Business

26. **Within 4 years before you filed for bankruptcy, did you own a business or have any of the following connections to any business?**

- A sole proprietor or self-employed in a trade, profession, or other activity, either full-time or part-time
- Member of a limited liability company (LLC) or limited liability partnership (LLP)
- A partner in a partnership
- An officer, director, or managing executive of a corporation
- Owner of at least 5% of the voting or equity securities of a corporation

- No. None of the above applies. Go to Part 12.
 Yes. Check all that apply above and fill in the details below for each business.

Business Name _____ Number Street _____ City _____ State _____ ZIP Code _____	Describe the nature of the business	Employer Identification number Do not include Social Security number or ITIN.
		EIN: ____ - ____ - ____ - ____ - ____
	Name of accountant or bookkeeper	Dates business existed
		From _____ To _____
Business Name _____ Number Street _____ City _____ State _____ ZIP Code _____	Describe the nature of the business	Employer Identification number Do not include Social Security number or ITIN.
		EIN: ____ - ____ - ____ - ____ - ____
	Name of accountant or bookkeeper	Dates business existed
		From _____ To _____
Business Name _____ Number Street _____ City _____ State _____ ZIP Code _____	Describe the nature of the business	Employer Identification number Do not include Social Security number or ITIN.
		EIN: ____ - ____ - ____ - ____ - ____
	Name of accountant or bookkeeper	Dates business existed
		From _____ To _____

27. **Within 2 years before you filed for bankruptcy, did you give a financial statement to anyone about your business?** Include all financial institutions, creditors, or other parties.

- No
- Yes. Fill in the details below.

		Date issued
Name _____		MM / DD / YYYY
Number _____	Street _____	
City _____		
State _____	ZIP Code _____	

Part 12: Sign Here

I declare under penalty of perjury that I have read the answers on this Statement of Financial Affairs and any attachments and that the answers are true and correct.

X _____

Signature of Debtor 1

Date _____

X _____

Signature of Debtor 2

Date _____

Did you attach additional pages to *Your Statement of Financial Affairs for Individuals Filing for Bankruptcy (Official Form 107)*?

- No
- Yes

THIS PAGE INTENTIONALLY BLANK

COMMITTEE NOTE

Official Form 107, *Your Statement of Financial Affairs for Individuals Filing for Bankruptcy*, which applies only in cases of individual debtors, is revised in its entirety as part of the Forms Modernization Project, making it easier to read and, as a result, likely to generate more complete and accurate responses. The goals of the Forms Modernization Project include improving the interface between technology and the forms so as to increase efficiency and reduce the need to produce the same information in multiple formats. Therefore, many of the open-ended questions and multiple-part instructions have been replaced with more specific questions. In addition, the form is renumbered to distinguish it from the version to be used in non-individual cases, and stylistic changes were made throughout the form.

The form is derived from Official Form 7, *Statement of Financial Affairs*. The new form uses eleven sections likely to be more understandable to non-lawyers, groups questions of a similar nature together, and eliminates questions unrelated to individual debtors. The new form deletes the instruction, currently found in many questions, that married debtors filing under chapter 12 or chapter 13 must include information applicable to their spouse, even if their spouse is not filing with them, unless the spouses are separated.

Part 1, *Give Details About Where You Lived Before*, moves the questions regarding the debtor's prior addresses and residences in a community property state to the beginning of the form. The form eliminates the "name used" question in reference to prior addresses. Also, the debtor is no longer required to list the name of a spouse or former spouse who lived with the debtor in a community property state.

Part 2, *Explain the Sources of Your Income*, consolidates the questions regarding income, adding "wages, commissions, bonuses, tips" as a category for sources of income, and eliminates the option to report income on a fiscal year basis. In addition, the form provides examples of types of "other income." The time

period is changed from the prior two years to two calendar years plus the portion of the year in which the bankruptcy is filed.

Part 3, *List Certain Payments You Made Before You Filed for Bankruptcy*, includes questions related to payments made in the 90 days prior to bankruptcy, with a separate question for payments made to insiders within one year before filing for bankruptcy. The statutory definition of consumer debt is provided. The question regarding payments for consumer and non-consumer debts requires the debtor to use checkboxes to specifically indicate the purpose of the payment. The form instructs debtors to include payments for domestic support obligations in the section regarding insider payments. The form provides a separate question regarding payments or transfers on account of a debt that benefited an insider. For both questions regarding payments to insiders, the debtor is required to provide a reason for the payment.

Part 4, *Identify Legal Actions, Repossessions, Foreclosures, and Returns*, consolidates questions regarding actions against the debtor's property. The form provides examples of types of legal actions, and requires the debtor to indicate the status of any action. The form adds the requirement that a debtor include any property levied within a year of filing for bankruptcy, and that the debtor provide the last four digits of any account number for any setoffs. Also, a debtor must list any assignment for the benefit of creditors made within one year of filing for bankruptcy.

Part 5, *List Certain Gifts and Contributions*, changes the reporting threshold to \$600 per person or charity, and increases the look-back period from one to two years.

Part 6, *List Certain Losses*, clarifies how to report insurance coverage for losses, providing that the debtor must include amounts of insurance that have been paid on this form, but must list pending insurance claims on Official Form 106A.

Part 7, *List Certain Payments or Transfers*, includes questions regarding payments or transfers of property by the debtor. The question regarding payments or transfers to anyone who was consulted about seeking bankruptcy or preparing a bankruptcy petition requires the person's email or website address,

as well as the name of the person who made the payment, if it was not the debtor. There is a separate question asked about payments or transfers to anyone who promised to help with creditors or make payments to creditors, reminding the debtors not to include any payments or transfers already listed. Also, the debtor must list any transfers of property, outright or for security purposes, within two years of filing for bankruptcy, unless the transfer is in the ordinary course of the debtor's business. There is a reminder not to list gifts or other transfers already included elsewhere on the form. The question regarding self-settled trusts includes a notation that such trusts are often referred to as asset-protection devices.

Part 8, *List Certain Financial Accounts, Safety Deposit Boxes, and Storage Units*, adds money market accounts to the examples provided for the question regarding financial accounts or instruments, and removes "other instruments" from the examples. Also, the form adds a question about whether the debtor has or had property stored in a storage unit within one year of filing for bankruptcy. The debtor must provide the name and address of the storage facility and anyone who has or had access to the unit, as well as a description of the contents and whether the debtor still has access to the storage unit. Storage units that are part of the building in which the debtor resides are excluded.

Part 9, *Identify Property You Hold or Control for Someone Else*, instructs that the debtor should include any property that the debtor borrowed from, is storing for, or is holding in trust for someone.

Part 10, *Give Details About Environmental Information*, adds any location, facility, or property that a debtor uses or used in the definition of "site." Also, the debtor must list the case title and nature of the case for any judicial or administrative proceedings under any environmental law, and must choose a checkbox option to indicate the status of the case.

Part 11, *Give Details About Your Business or Connections to Any Business*, eliminates any instructions that apply to corporations and partnerships. The debtor must indicate if, within four years (previously six years) before filing for bankruptcy, the debtor owned a business or had certain connections to a business,

with five categories of businesses provided as checkboxes. If the debtor has a connection to a business, the debtor must list the name, address, nature, and Employer Identification Number of the business, the dates of the business' existence, and the name of an accountant or bookkeeper for the business. Accounting information requested is truncated; the debtor is simply required to provide the name of the business bookkeeper or accountant.

Part 12, *Sign Here*, eliminates the signature boxes for a partnership or corporation and a non-attorney bankruptcy petition preparer. Also, the debtor is asked to indicate through checkboxes whether additional pages are attached to the form.

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

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

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

Case number _____
(if known)

Check if this is an amended filing

Official Form 112

Statement of Intention for Individuals Filing Under Chapter 7

12/14

If you are an individual filing under Chapter 7 and creditors have claims secured by your property or you have leased personal property and the lease has not expired, you must fill out this form. You must file this form with the court within 30 days after you file your bankruptcy petition or by the date set for the meeting of creditors, whichever is earlier, unless the court extends the time for cause. You must also have delivered copies to the creditors and lessors you listed on the form.

If two married people are filing together in a joint case, both are equally responsible for supplying correct information. Both debtors must sign and date the form.

Be as complete and accurate as possible. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known).

Part 1: List Your Creditors Who Hold Secured Claims

1. For any creditors that you listed in Part 1 of *Schedule B*, fill in the information below.

Identify the creditor and the property that is collateral		What do you intend to do with the property that is subject to a secured debt?	Did you claim the property as exempt on Schedule D?
Creditor's name:		Give the property to the creditor. Keep the property. <i>Check one:</i> I will redeem the property. I will sign a <i>Reaffirmation Agreement</i> . Other. Explain: _____ _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Description of property securing debt:			
Creditor's name:		Give the property to the creditor. Keep the property. <i>Check one:</i> I will redeem the property. I will sign a <i>Reaffirmation Agreement</i> . Other. Explain: _____ _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Description of property securing debt:			
Creditor's name:		Give the property to the creditor. Keep the property. <i>Check one:</i> I will redeem the property. I will sign a <i>Reaffirmation Agreement</i> . Other. Explain: _____ _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Description of property securing debt:			
Creditor's name:		Give the property to the creditor. Keep the property. <i>Check one:</i> I will redeem the property. I will sign a <i>Reaffirmation Agreement</i> . Other. Explain: _____ _____	<input type="checkbox"/> No <input type="checkbox"/> Yes
Description of property securing debt:			

Part 2: List Your Unexpired Personal Property Leases

For any unexpired personal property leases that you listed in *Schedule E*, fill in the information below. *Unexpired leases* are leases that are still in effect; the lease period has not yet ended. You may assume an unexpired personal property lease if the trustee does not assume it. 11 U.S.C. § 365(p)(2).

Describe your unexpired personal property leases		Will the lease be assumed?
Lessor's name:		<input type="checkbox"/> No <input type="checkbox"/> Yes
Description of leased property:		
Lessor's name:		<input type="checkbox"/> No <input type="checkbox"/> Yes
Description of leased property:		
Lessor's name:		<input type="checkbox"/> No <input type="checkbox"/> Yes
Description of leased property:		
Lessor's name:		<input type="checkbox"/> No <input type="checkbox"/> Yes
Description of leased property:		
Lessor's name:		<input type="checkbox"/> No <input type="checkbox"/> Yes
Description of leased property:		
Lessor's name:		<input type="checkbox"/> No <input type="checkbox"/> Yes
Description of leased property:		

Part 3: Sign Here

Under penalty of perjury, I declare that I have indicated my intention about any property of my estate that secures a debt and any personal property that is subject to an unexpired lease.

x _____
Signature of Debtor 1

x _____
Signature of Debtor 2

Date _____
MM / DD / YYYY

Date _____
MM / DD / YYYY

COMMITTEE NOTE

Official Form 112, *Statement of Intention for Individuals Filing Under Chapter 7* is revised in its entirety as part of the Forms Modernization Project, making it easier to read and, as a result, likely to generate more complete and accurate responses. In addition, the form is renumbered, and stylistic changes were made throughout the form.

The form is derived from Official Form 8, *Chapter 7 Individual Debtor's Statement of Intention*. The new form has three parts which use language likely to be understandable to non-lawyers. In addition, the instructions are more extensive, advising an individual Chapter 7 debtor that the form must be completed and filed within 30 days, and that the debtor must deliver copies of the form to creditors and lessors listed on the form.

Part 1, *Your Creditors Who Hold Secured Claims*, refers to signing a "Reaffirmation Agreement" rather than asking whether the debtor intends to "reaffirm the debt." In addition, the debtor is asked if the property is claimed as exempt on Schedule C (Official Form 106C).

Part 2, *List Your Unexpired Personal Property Leases*, defines unexpired leases and explains that a debtor may assume an unexpired personal property lease if the trustee does not assume it.

THIS PAGE INTENTIONALLY BLANK

Fill in this information to identify the case:

Debtor 1 _____
 First Name Middle Name Last Name

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

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

Case number _____ Chapter _____
 (If known)

Official Form 119

Bankruptcy Petition Preparer's Notice, Declaration, and Signature

12/14

Bankruptcy petition preparers as defined in 11 U.S.C. § 110 must fill out this form. Only bankruptcy petition preparers should fill out this form. Bankruptcy petition preparers must fill out this form anytime they help prepare documents to be filed in the case. If more than one bankruptcy petition preparer helped with the documents, each must sign in Part 3. A bankruptcy petition preparer who does not comply with the provisions of title 11 of the United States Code and the Federal Rules of Bankruptcy Procedure may be fined and imprisoned. 11 U.S.C. § 110; 18 U.S.C. § 156.

Part 1: Notice to Debtor

Bankruptcy petition preparers must give the debtor a copy of this form and have the debtor sign it before they prepare any documents for filing or accept any compensation. A signed copy of this form must be filed with any document prepared.

Bankruptcy petition preparers are not attorneys and may not practice law or give you legal advice, including the following:

- Whether to file a petition under the Bankruptcy Code (11 U.S.C. § 101 et seq.);
- Whether filing a case under Chapter 7, 11, 12, or 13 is appropriate;
- Whether your debts will be eliminated or discharged in a case under the Bankruptcy Code;
- Whether you will be able to keep your home, car, or other property after filing a case under the Bankruptcy Code;
- The tax consequences that may arise because a case is filed under the Bankruptcy Code;
- Whether any tax claims may be discharged;
- Whether you may or should promise to repay debts to a creditor or enter into a reaffirmation agreement;
- How to characterize the nature of your interests in property or your debts; or
- Bankruptcy procedures and rights.

The bankruptcy petition preparer _____ has notified me of
 Name
 any maximum allowable fee before preparing any document for filing or accepting any fee.

 Signature of Debtor 1, acknowledging receipt of this notice Date _____
 MM / DD / YYYY

 Signature of Debtor 2, acknowledging receipt of this notice Date _____
 MM / DD / YYYY

COMMITTEE NOTE

Official Form 119, *Bankruptcy Petition Preparer's Notice, Declaration, and Signature*, applies only in cases of individual debtors. It is revised as part of the Forms Modernization Project, making it easier to read and, as a result, likely to generate more complete and accurate responses. In addition, the form is renumbered, and stylistic changes were made throughout the form.

The form is derived from Official Form 19, *Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer*. An instruction is added to the form that provides statutory citations. Filers are advised that only bankruptcy petition preparers should use the form, and that if more than one bankruptcy petition preparer helped with the documents, each must sign the form.

Part 1, *Notice to Debtor*, is moved to the beginning of the form and revised. An instruction is added that bankruptcy petition preparers must give the debtor a copy of the form and have the debtor sign it before they prepare any documents for filing or accept compensation, and that the form must be filed with any document prepared. It warns the debtor that bankruptcy petition preparers are not attorneys and may not practice law or give legal advice, with a list of examples of advice that may not be provided by a bankruptcy petition preparer. The signature line includes a note that the debtor acknowledges receipt of the notice.

Part 2, *Declaration of Bankruptcy Petition Preparer*, revises the declaration by the bankruptcy petition preparer to include an officer, principal, responsible person, or partner of a bankruptcy petition preparer. The bankruptcy petition preparer must provide a firm name, if applicable, as well as a contact phone, and must indicate which documents the bankruptcy petition preparer prepared from a list of documents. An "other" option is provided if additional documents were prepared.

Part 3, *Sign Here*, provides spaces for the bankruptcy petition preparer to enter a social security number, and adds the

language regarding an officer, principal, responsible person or partner of the bankruptcy petition preparer on the signature line.

Information to identify the case:			
Debtor 1	_____	_____	_____
	First Name	Middle Name	Last Name
Debtor 2 (Spouse, if filing)	_____	_____	_____
	First Name	Middle Name	Last Name
United States Bankruptcy Court for the:	_____		District of _____
			(State)
Case number:	_____		
		Last 4 digits of Social Security Number or ITIN	_____
		EIN	____ - _____
		Last 4 digits of Social Security Number or ITIN	_____
		EIN	____ - _____

Order of Discharge

IT IS ORDERED: A discharge under 11 U.S.C. § 727 is granted to:

_____ [_____]

MM / DD / YYYY

By the court: _____
United States Bankruptcy Judge

Notice to the creditors:

This order means that no one may make any attempt to collect a discharged debt from the debtors personally. For example, creditors with discharged debts cannot sue, garnish wages, assert a deficiency, or otherwise try to collect from the debtors personally. Creditors cannot contact the debtors by mail, phone, or otherwise in any attempt to collect the debt personally. Creditors who violate this order can be required to pay debtors damages and attorney's fees.

However, a creditor with a lien may enforce a claim against the debtors' property subject to that lien.

This order does not prevent debtors from paying any debt voluntarily or from paying reaffirmed debts according to the reaffirmation agreement. 11 U.S.C. § 524(c), (f).

This order does not close or dismiss the case, and it does not determine how much money, if any, the trustee will pay creditors.

Notice to the debtor:

This court order grants you (the debtor) a discharge. Most debts are covered by the discharge, but not all. Generally a discharge removes your personal liability for debts that you owed before you filed your bankruptcy case.

Also, if this case began under a different chapter of the Bankruptcy Code and was later converted to chapter 7, debts that existed before the conversion are discharged.

This order does not close or dismiss the case, and it does not determine how much money, if any, the trustee will pay creditors.

In a case involving community property: Special rules protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.

For more information, see page 2 ►

Creditors cannot collect discharged debts from you

This order means that no one can make any attempt to collect from you personally a debt that has been discharged. For example, creditors with discharged debts cannot sue you, garnish your wages, assert a deficiency claim against you, or otherwise try to collect from you personally. They cannot contact you by mail, phone, or otherwise in any attempt to collect the debt as your personal liability.

A creditor who violates this order can be required to pay you damages and attorney's fees.

However, you may voluntarily pay any debt that has been discharged.

But creditors might collect for some debts

This discharge does not stop creditors from collecting debts that you reaffirmed or from any property in which they have a valid security interest.

Debts covered by a valid reaffirmation agreement are not discharged. When you signed a reaffirmation agreement, you chose to give up your discharge for that particular debt.

In addition, the creditor may have a right to enforce a lien against your property unless the lien was avoided or eliminated. For example, the creditor may have the right to foreclose a home mortgage or repossess an auto.

Also, this discharge does not stop creditors from collecting from anyone else who is also liable on the debt, such as your insurance company or a relative who cosigned or guaranteed a loan.

Some debts are not discharged

Examples of some debts that are not discharged are:

Debts that are domestic support obligations;

Debts for most student loans;

Debts for most taxes;

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

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

Some debts which you did not properly list;

Debts for certain types of loans owed to pension, profit sharing, stock bonus, or retirement plans; and

Debts for death or personal injury caused by your operating a vehicle while intoxicated.

This information is only a general summary of the bankruptcy discharge; some exceptions exist. Because the law is complicated, you should consult an attorney to determine the exact effect of this discharge.

COMMITTEE NOTE

Official Form 318, *Order of Discharge*, is revised and renumbered as part of the Forms Modernization Project. The form is used to issue a discharge in chapter 7 cases filed by individuals or joint debtors. It replaces Official Form 18, *Discharge of Debtor*, Director's Procedural Form 18J, *Discharge of Joint Debtors*, and Director's Procedural Form 18JO, *Discharge of One Joint Debtor*.

To make the discharge order and the explanation of it easier to read and understand, legal terms are explained more fully or replaced with commonly understood terms and the form is reformatted.

Reaffirmed debts are explained more fully and debtors are informed that a discharge will not stop creditors from collecting debts from any property in which they have a valid security interest. In addition, debtors are advised that the discharge does not stop creditors from collecting from anyone else who is liable on the debt, such as cosigner on the loan or an insurance company.

Director's Procedural Forms 18J and 18JO are no longer needed because Form 318 specifies the names of the debtors, or debtor, to whom the discharge is issued.

THIS PAGE INTENTIONALLY BLANK

Fill in this information to identify the case:

Debtor 1 _____
 First Name Middle Name Last Name

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

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

Case number _____
 (If known)

Draft August 20, 2012

Official Form B423

Certification About a Financial Management Course

12/14

If you are an individual and you filed for bankruptcy under chapter 7 or 13, or under chapter 11 if § 1141(d)(3)(C) applies, you must take an approved course about personal financial management. In a joint case, each debtor must take the course. 11 U.S.C. 727(a)(11).

After you finish the course, the provider will give you a certificate. The provider may notify the court that you have completed the course. If the provider does not do so, then Debtor 1 and Debtor 2 must each file this form with the certificate number before your debts will be discharged.

If you filed under chapter 7 and you need to file this form, file it within 60 days after the first date set for the meeting of creditors under § 341 of the Bankruptcy Code.

If you filed under chapter 11 or 13 and you need to file this form, file it before you make the last payment that your plan requires or before you file a motion for a discharge under § 1141(d)(5)(B) or § 1328(b) of the Bankruptcy Code. Fed. R. Bankr. P. 1007(c).

In some cases, the court can waive the requirement to take the financial management course. To have the requirement waived, you must file a motion with the court and obtain a court order.

Part 1: Tell the Court About the Required Course

You must check one:

I completed an approved course in personal financial management:

Date I took the course _____
 MM / DD / YYYY

Name of approved provider _____

Certificate number _____

I am not required to complete a course in personal financial management because the court has granted my motion for a waiver of the requirement based on (check one):

- Incapacity.** I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.
- Disability.** My physical disability causes me to be unable to complete a course in personal financial management in person, by phone, or through the internet, even after I reasonably tried to do so.
- Active duty.** I am currently on active military duty in a military combat zone.
- Residence.** I live in a district in which the United States trustee (or bankruptcy administrator) has determined that the approved instructional courses cannot adequately meet my needs.

Part 2: Sign Here

I certify that the information I have provided is true and correct.

 Signature of debtor named on certificate

 Printed name of debtor

 Date
 MM / DD / YYYY

THIS PAGE INTENTIONALLY BLANK

COMMITTEE NOTE

Official Form 423, *Certification About a Financial Management Course*, is revised as part of the Forms Modernization Project. The form replaces Official Form 23, *Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management*. Form 423 is renumbered to distinguish it from the forms used by non-individual debtors such as corporations and partnerships.

To make Form 423 easier to understand, legal terms are explained more fully or replaced with commonly understood terms and the form is reformatted. Part 1, *Tell the Court About the Required Course*, provides definitions for “incapacity” and “disability,” rather than providing statutory citations.

A statement is added that, in some cases, the court can waive the requirement to complete the financial management course. To have the requirement waived, the debtor must file a motion with the court and obtain a court order.

THIS PAGE INTENTIONALLY BLANK

Fill in this information to identify your case:

Debtor 1 _____
First Name Middle Name Last Name

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

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

Case number _____
(If known)

Draft
 August 23, 2012

Official Form 427
Cover Sheet for Reaffirmation Agreement

12/14

Anyone who is a party to a reaffirmation agreement may fill out and file this form. Fill it out completely, attach it to the reaffirmation agreement, and file the documents within the time set under Bankruptcy Rule 4008.

Part 1: Explain the Repayment Terms of the Reaffirmation Agreement

1. Who is the creditor? _____
Name of the creditor

2. How much is the debt? On the date that the bankruptcy case is filed \$ _____
 To be paid under the reaffirmation agreement \$ _____
 \$ _____ per month for _____ months (if fixed interest rate)

3. What is the annual percentage rate (APR) of interest?
 Before the bankruptcy case was filed _____ %
 Under the reaffirmation agreement _____ % Fixed rate
 Adjustable rate

4. Does collateral secure the debt? No
 Yes. Describe the collateral. _____
 Current market value \$ _____

5. Does the creditor assert that the debt is nondischargeable? No
 Yes. Attach an explanation of the nature of the debt and the basis for contending that the debt is nondischargeable.

6. Using information from <i>Schedule G: Your Income</i> (Official Form 106G) and <i>Schedule H: Your Expenses</i> (Official Form 106H), fill in the amounts.	Income and expenses reported on Schedules G and H	Income and expenses stated on the reaffirmation agreement
	6a. Combined monthly income from line 12 of Schedule G \$ _____	6e. Monthly income from all sources after payroll deductions \$ _____
6b. Monthly expenses from Column A, line 22 of Schedule H \$ _____	6f. Monthly expenses — \$ _____	
6c. Monthly payments on all reaffirmed debts not listed on Schedule H — \$ _____	6g. Monthly payments on all reaffirmed debts not included in monthly expenses — \$ _____	
6d. Scheduled net monthly income \$ _____ Subtract lines 6b and 6c from 6a. If the total is less than 0, put the number in brackets.	6h. Present net monthly income \$ _____ Subtract lines 6f and 6g from 6e. If the total is less than 0, put the number in brackets.	

7. Are the income amounts on lines 6a and 6e different?	No Yes. Explain why they are different and complete line 10. _____ _____
8. Are the expense amounts on lines 6b and 6f different?	No Yes. Explain why they are different and complete line 10. _____ _____
9. Is the net monthly income in line 6h less than 0?	No Yes. A presumption of hardship arises (unless the creditor is a credit union). Explain how the debtor will make monthly payments on the reaffirmed debt and pay other living expenses. Complete line 10. _____ _____
10. Debtor's certification about lines 7-9 If any answer on lines 7-9 is Yes, the debtor must sign here. If all the answers on lines 7-9 are No, go to line 11.	I certify that each explanation on lines 7-9 is true and correct. <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;"> X _____ Signature of Debtor 1 </div> <div style="text-align: center;"> X _____ Signature of Debtor 2 (Spouse Only in a Joint Case) </div> </div>
11. Did counsel represent the debtor in negotiating the reaffirmation agreement?	No Yes. Has counsel executed a declaration or an affidavit to support the reaffirmation agreement? No Yes

Part 2: Sign Here

Whoever fills out this form must sign here.	<p>I certify that the attached agreement is a true and correct copy of the reaffirmation agreement between the parties identified on this <i>Cover Sheet for Reaffirmation Agreement</i>.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 60%;"> _____ Signature </div> <div style="width: 30%;"> Date _____ MM / DD / YYYY </div> </div> <div style="margin-top: 20px;"> _____ Printed Name </div> <div style="margin-top: 20px;"> Check one: <input type="checkbox"/> Debtor or Debtor's Attorney <input type="checkbox"/> Creditor or Creditor's Attorney </div>
----------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

COMMITTEE NOTE

Official Form 427, *Cover Sheet for Reaffirmation Agreement*, is revised and renumbered as part of the Forms Modernization Project. The form replaces Official Form 27, *Reaffirmation Agreement Cover Sheet*. To make it easier to understand, the form is reformatted and legal terms are explained more fully or replaced with commonly understood terms.

The calculation of the debtor's net monthly income is expanded to include the debtor's net monthly income at the time the bankruptcy petition is filed as well as debtor's net monthly income at the time of the reaffirmation agreement. Rather than requiring filers to state their relationship to the case, checkboxes are provided for the debtor or the debtor's attorney and for the creditor or the creditor's attorney.

THIS PAGE INTENTIONALLY BLANK

APPENDIX A04

THIS PAGE INTENTIONALLY BLANK

Instructions

Bankruptcy Forms for Individuals

U.S. Bankruptcy Court

|

August 2012

About this Booklet of Instructions..... 2

About the bankruptcy forms and filing bankruptcy.....3
Understand the terms used in the forms.....3
Things to remember when filling out these forms.....3
About the Process for Filing a Bankruptcy Case for Individuals 4
Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy (Notice 2010) 8
The types of bankruptcy that are available to individuals8
Bankruptcy crimes have serious consequences.....10
Make sure the court has your mailing address.....11
Understand which services you could receive from credit counseling agencies11

Instructions for Selected Forms 12

Schedule A: Property (Official Form 106A) 13
Schedule B: Creditors Who Hold Claims Secured by Property (Official Form 106B) 15
Schedule C: Creditors Who Have Unsecured Claims (Official Form 106C) 18
Schedule D: The Property You Claim as Exempt (Official Form 106D)..... 22
Schedule E: Executory Contracts and Unexpired Leases (Official Form 106E) 23
Schedule F: Your Codebtors (Official Form 106F) 24
Schedule G: Your Income (Official Form 106G) 25
Schedule H: Your Expenses (Official Form 106H) 27
A Summary of Your Assets and Liabilities and Certain Statistical Information (Official Form 106-Summary) 28
Your Statement of Financial Affairs if You Are an Individual Filing for Bankruptcy (Official Form 107)..... 29
Chapter 7 Statement of Your Current Monthly Income and Means Test Calculation (Official Forms 108-1 and 108-2)..... 30
Chapter 11 Statement of Your Current Monthly Income (Official Form 109) 31
Chapter 13 Statement of Your Current Monthly Income, Calculation of Commitment Period and Chapter 13 Calculation of Your Disposable Income (Official Forms 110-1 and 110-2)..... 32
Statement of Intention for Individuals Filing Under Chapter 7 (Official Form 112)..... 33
Application for Individuals to Pay the Filing Fee in Installments (Official Form 103A) 35
Application to Have the Chapter 7 Filing Fee Waived (Official Form 103B) 36
For Individual Chapter 11 Cases: The List of Creditors Who Have the 20 Largest Unsecured Claims Against You Who Are Not Insiders (Official Form 104) 2

Glossary..... 4

Definitions Used in the Forms for Individuals Filing for Bankruptcy..... 5

About this Booklet of Instructions

This booklet provides instructions for completing selected forms that individuals filing for bankruptcy must submit to the U.S. Bankruptcy Court. You can download all of the required forms without charge from:

<http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>.

The instructions are designed to accompany the forms and are intended to help you understand what information is required to properly file.

Completing the forms is only a part of the bankruptcy process. You are strongly encouraged to hire a qualified attorney not only to help you complete the forms but also to give you general advice about bankruptcy and to represent you in your bankruptcy case. If you cannot afford to pay an attorney, you might qualify for free legal services if they are provided in your area. Contact your state or local bar association for help in obtaining free

legal services or in hiring an attorney. **Note: It is particularly difficult to succeed in a chapter 11, 12, or 13 case without an attorney.**

If an attorney represents you, you must provide information so the attorney can prepare your forms. Once the attorney prepares the forms, you must make sure that the forms are accurate and complete. These instructions may help you perform those tasks. If you are filing for bankruptcy without the help of an attorney, this booklet tells you which forms must be filed and provides information about them.

You should carefully read this booklet and keep it with your records. Review the individual forms as you read the instructions for each.

Although bankruptcy petition preparers can help you type the bankruptcy forms, they cannot file the documents for you and cannot give you legal advice. Court employees cannot give you legal advice either.

Read This Important Warning

Because bankruptcy can have serious long-term financial and legal consequences, including loss of your property, you should hire an attorney and carefully consider all of your options before you file. Only an attorney can give you legal advice about what can happen as a result of filing for bankruptcy and what your options are. If you do file for bankruptcy, an attorney can help you fill out the forms properly and protect you, your family, your home, and your possessions.

Although the law allows you to represent yourself in bankruptcy court, you should understand that many people find it difficult to represent themselves successfully. The rules are technical, and a misstep or inaction may harm you. If you file without an attorney, you are still responsible for knowing and following all of the legal requirements.

You may not file bankruptcy if you are not eligible to file or if you do not intend to file the documents necessary to complete the bankruptcy.

Bankruptcy fraud is a serious crime; you could be fined and imprisoned if you commit fraud in your bankruptcy case. If you deliberately make a false statement, you could be fined up to \$250,000 or imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

About the bankruptcy forms and filing bankruptcy

Use the forms that are numbered in the 100 series to file bankruptcy for an individual or a married couple. Use the forms that are numbered in the 200 series if you are preparing a bankruptcy on behalf of a non-individual, such as a corporation, partnership, or limited liability company (LLC).

When a bankruptcy is filed, the U.S. Bankruptcy Court opens a case and reviews information. It is important that the answers to the questions on the forms be complete and accurate so that the case proceeds smoothly. A person filing bankruptcy who gives false information could be charged with a federal crime or could lose all the benefits of filing for bankruptcy.

You should understand that filing a bankruptcy case is not private. Anyone has a right to see your bankruptcy forms after you file them. However, in some circumstances, if a court issues a protective order to keep your address, telephone number, or other information from being disclosed to the public, it may be possible to protect your information under 11 U.S.C. § 107 and Bankruptcy Rule 9037.

Understand the terms used in the forms

The forms for individuals use *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, these

forms use *you* to ask for information from both debtors. For example, if a form asks, “Do you own a car?” the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the forms use *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Things to remember when filling out these forms

- Be as complete and accurate as possible.
- If more space is needed, attach a separate sheet to the form. On the top of any additional pages, write your name and case number (if known).
- If two married people are filing together, both are equally responsible for supplying correct information.
- For your records, be sure to keep a copy of your bankruptcy documents and all attachments that you file.
- Do not file these instructions with the bankruptcy forms.
- Do not list a minor child’s full name. Instead, fill in only the child’s initials and the full name and address of the child’s parent or guardian. For example, write A.B., a minor child (*John Doe, parent, 123 Main St., City, State*). 11 U.S.C. § 112; Bankruptcy Rule 1007(m) and 9037.

About the Process for Filing a Bankruptcy Case for Individuals

Before you file your bankruptcy case

Before you file for bankruptcy, you must do several things:

- ❑ **Receive counseling about credit from an approved agency** within 180 days before you file. (If you and your spouse are filing together, each of you must receive counseling before you file. Failure to do so will almost certainly result in the dismissal of your case.) You may have the credit counseling one-on-one or in a group, by telephone, or by internet.

For a list of approved providers, go to: <http://www.justice.gov\ust\index.htm>.

In Alabama and North Carolina, go to: <http://www.uscourts.gov>.

After you finish the counseling, you will receive a certificate that you will need to file in your bankruptcy case.

- ❑ **Find out in which bankruptcy court you must file your bankruptcy case.** It is important that you file in the correct district within your state. To find out which district you are in, go to: <http://www.uscourts.gov/courtlinks>
- ❑ **Check the court's local website** for any specific local requirements that you might have to meet. Go to: <http://www.uscourts.gov/courtlinks>
- ❑ **Find out which chapters of the Bankruptcy Code you are eligible for.** For descriptions of each chapter, review the information contained in the notice, *Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy* (Form B2010), which is included in this booklet.

Note: It is particularly difficult to succeed in a chapter 11, 12, or 13 case without an attorney.

When you file your bankruptcy case

To file for bankruptcy, you must give the court several forms and the following items (The list continues on the next page.):

- ❑ *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). This is the form that opens the case. Directions for filling it out are included in the form itself.
- ❑ *Your Statement About Your Social Security Numbers* (Official Form 102) to give the court your full Social Security number or federal Individual Taxpayer Identification number. To protect your privacy, the court will make only the last four digits of your number known to the general public. However, the court will make your full number available to your creditors, U.S. trustee or bankruptcy administrator, and the trustee assigned to your case. This form has no separate instructions.
- ❑ Your filing fee. If you cannot pay the entire filing fee, you must also include:
 - ❑ *Application for Individuals to Pay the Filing Fee in Installments* (Official Form B103A), or
 - ❑ *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 103B) but only if you are filing under chapter 7 and you meet the criteria to have the chapter 7 filing fee waived.
- ❑ A list of names and addresses of all of your creditors, formatted as a mailing list according to instructions from the bankruptcy court in which you file. (Your court may call this a *creditor matrix* or *mailing matrix*.)
- ❑ Your credit counseling certificate from an approved credit counseling agency. (See *Before you file your bankruptcy case*, above). If you have received the credit counseling but have not yet received the certificate, file it when you receive it. If you have not already received credit counseling and believe you are entitled to a temporary waiver from receiving counseling or that you are not required to receive credit counseling, see line 15 of the *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). Waivers are rare and if you do not qualify for a waiver, your case will be dismissed.
- ❑ *For Individual Chapter 11 Cases: The List of Creditors Who Have the 20 Largest Unsecured Claims Against You Who Are Not Insiders* (Official Form 104) if you file under chapter 11.
- ❑ *Your Statement About an Eviction Judgment Against You—Parts A and B* (Official Form 101AB) if your landlord has an eviction judgment against you and you want to stay in your residence after you file your forms to open your bankruptcy case.
- ❑ *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119) and *Disclosure of Compensation of Bankruptcy Petition Preparer* (Form 2800) if a bankruptcy petition preparer helped you fill out your forms.

When you file your bankruptcy case or within 14 days after you file

You must file the forms listed below either when you file your bankruptcy case or within 14 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). If you do not do so, your case may be dismissed. Although it is possible to open your case by submitting only the documents that are listed under *When you file your bankruptcy case*, you should file the entire set of forms at one time to help your case proceed smoothly.

Although some forms may ask you similar questions, you must fill out all of the forms completely to protect your legal rights.

The list below shows the forms that all individuals must file as well as the forms that are specific to each chapter. For copies of the official forms listed here, go to <http://www.uscourts.gov>.

All individuals who file for bankruptcy must file these forms and the forms for the specific chapter:

- ❑ *Schedules of Assets and Liabilities* (Official Form 106) which includes these forms:
 - ❑ *Schedule A: Property* (Official Form 106A)
 - ❑ *Schedule B: Creditors Who Hold Claims Secured by Your Property* (Official Form 106B)
 - ❑ *Schedule C: Creditors Who Have Unsecured Claims* (Official Form 106C)
 - ❑ *Schedule D: The Property You Claim as Exempt* (Official Form 106D)
 - ❑ *Schedule E: Executory Contracts and Unexpired Leases* (Official Form 106E)
 - ❑ *Schedule F: Your Codebtors* (Official Form 106F)
 - ❑ *Schedule G: Your Income* (Official Form 106G)
 - ❑ *Schedule H: Your Expenses* (Official Form 106H)
- ❑ *A Summary of Your Schedules for Individuals Filing for Bankruptcy* (Official Form 106 Summary) to give an overview of the totals on the schedules
- ❑ *Declaration About an Individual Debtor's Schedules* (Official Form 106 Declaration)
- ❑ *Your Statement of Financial Affairs for Individuals Filing for Bankruptcy* (Official Form 107)
- ❑ *Disclosure of Compensation to Debtor's Attorney* (Form 2030)
- ❑ Credit counseling certificate that you received from an approved credit counseling agency
- ❑ Copies of all payment advices (*pay stubs*) or other evidence of payment that you received within 60 days before you filed your bankruptcy case. However, not all courts require that you file these documents with the court and may require that you submit them to the trustee assigned to your case. Check the court's local website for specific local requirements. Go to <http://www.uscourts.gov/courtlinks>.

If you file under chapter 7, you must also file:

- ❑ *Statement of Intention for Individuals Filing Under Chapter 7* (Official Form 112)
- ❑ *Chapter 7 Statement of Your Current Monthly Income* (Official Form 108-1)
- ❑ If necessary, *Chapter 7 Means Test Calculation* (Official Form 108-2).

If you file under chapter 11, you must also file:

- ❑ *Chapter 11 Statement of Your Current Monthly Income* (Official Form 109)

If you file under chapter 11 and are a small business debtor (that is, if you are self-employed and your debts are less than \$2,343,300), within 7 days after you file your bankruptcy forms to open your case, you must also file your most recent:

- ❑ Balance sheet
- ❑ Statement of operations
- ❑ Cash-flow statement
- ❑ Federal income tax return

If you do not have these documents, you must file a statement made under penalty of perjury that you have not prepared either a balance sheet, statement of operations, or cash-flow statement or you have not filed a federal tax return.

If you file under chapter 11, you must also file additional documents.

If you file under chapter 12, you must also file:

- ❑ Chapter 12 Plan (within 90 days after you file your bankruptcy forms to open your case)

If you file under chapter 13, you must also file:

- ❑ *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 110-1)
- ❑ If necessary, *Chapter 13 Calculation of Your Disposable Income* (Official Form 110-2)
- ❑ Chapter 13 Plan (Many bankruptcy courts require you to use a local form plan. Check the court's local website for any specific form that you might have to use. Go to <http://www.uscourts.gov/courtlinks>.)

Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy (Form 2010)

This notice is for you if:

You are an individual filing for bankruptcy,
and

Your debts are primarily consumer debts.
Consumer debts are defined in 11 U.S.C.
§ 101(8) as “incurred by an individual
primarily for a personal, family, or
household purpose.”

The types of bankruptcy that are
available to individuals

Individuals who meet the qualifications may file
under one of four different chapters of the
Bankruptcy Code:

- Chapter 7 — Liquidation
- Chapter 11— Reorganization
- Chapter 12— Voluntary repayment plan
for family farmers or
fishermen
- Chapter 13— Voluntary repayment plan
for individuals with regular
income

**You should have an attorney review your
decision to file for bankruptcy and the choice of
chapter.**

Chapter 7: Liquidation

	\$245	filing fee
	\$46	administrative fee
+	\$15	trustee surcharge
	\$306	total fee

Chapter 7 is for individuals who have financial
difficulty and cannot pay their debts. The
primary purpose for a debtor to file under
chapter 7 is to have your debts discharged. The
bankruptcy discharge relieves you from having
to pay any of your pre-bankruptcy debts unless
an exception to discharge applies to particular
debts.

However, if the court finds that you have
committed certain kinds of improper conduct
described in the Bankruptcy Code, the court
may deny your discharge.

You should know that even if you receive a
discharge, some debts are not discharged under
the law. Therefore, you may still be
responsible to pay:

- most taxes;
- most student loans;
- domestic support and property settlement
obligations;
- most fines, penalties, forfeitures, and
criminal restitution obligations; and
- certain debts that are not properly listed in
your bankruptcy papers.

You may also be required to pay debts arising from:

- fraud or theft;
- breach of fiduciary duty;
- intentional injuries that you inflicted; and
- death or personal injury caused by operating a motor vehicle, vessel, or aircraft while intoxicated from alcohol or drugs.

If your debts are primarily consumer debts, the court can dismiss your chapter 7 case if it finds that you have income to repay creditors a certain amount. You must file *Chapter 7 Statement of Your Current Monthly Income* (Official Form 108–1) if you are an individual filing for bankruptcy under chapter 7. This form will determine your current monthly income and compare whether your income is more than the median income that applies in your state.

If your income is not above the median for your state, you will not have to fill out the second form *Chapter 7 Means Test Calculation* (Official Form 108–2).

If your income is above the median for your state, you must file that form. The calculations on the form—sometimes called the *Means Test*—deduct from your income living expenses and payments on certain debts to determine any amount available to pay unsecured creditors. If your income is more than the median income for your state of residence and family size, depending on the results of the *Means Test*, the U.S. trustee, bankruptcy administrator, or creditors can file a motion to dismiss your case under § 707(b) of the Bankruptcy Code. If a motion is filed, the court will decide if your case should be

dismissed. To avoid dismissal, you may choose to proceed under another chapter of the Bankruptcy Code.

If you are an individual filing for bankruptcy, the law may allow you to keep some property, or it may entitle you to part of the proceeds if the property is sold after your case is filed. Property that the law permits you to keep is called *exempt property*. For example, exemptions may enable you to keep your home, a car, clothing, and household items.

Exemptions are not automatic. To be considered exempt, you must list the property on *Schedule D: The Property You Claim as Exempt* (Official Form 106D). If you do not list the property, the trustee may sell it and pay all of the proceeds to your creditors.

Chapter 11: Reorganization

	\$1,167	filing fee
+	\$46	administrative fee
	\$1,213	total fee

Chapter 11 is for reorganizing a business but is also available to individuals. The provisions of chapter 11 are too complicated to summarize briefly.

Chapter 12: Repayment plan for family farmers or fishermen

	\$200	filing fee
+	\$46	administrative fee
	\$246	total fee

Similar to chapter 13, chapter 12 permits family farmers and fishermen to repay their debts over a period of time using future earnings.

Chapter 13: Repayment plan for individuals with regular income

	\$235	filing fee
+	\$46	administrative fee
	\$281	total fee

Chapter 13 is for individuals who have regular income and would like to pay all or part of their debts in installments over a period of time. You are only eligible for chapter 13 if your debts are not more than certain dollar amounts set in the Bankruptcy Code.

Under chapter 13, you must file with the court a plan to repay your creditors all or part of the money that you owe them, using your future earnings. The court must approve your plan and may allow you to repay your debts within 3 years or 5 years, depending on your income and other factors.

After you make the payments under your plan, your debts are generally discharged. However, you may still be responsible to pay:

- domestic support obligations,
- most student loans,
- certain taxes,
- most criminal fines and restitution obligations,
- certain debts that are not properly listed in your bankruptcy papers,
- certain debts for acts that caused death or personal injury, and
- certain long-term secured obligations.

Bankruptcy crimes have serious consequences

- If you knowingly and fraudulently conceal assets or make a false oath or statement under penalty of perjury—either orally or in writing—in connection with a bankruptcy case, you may be fined, imprisoned, or both.
- All information you supply in connection with a bankruptcy case is subject to examination by the Attorney General acting through the Office of the U.S. Trustee, the Office of the U.S. Attorney, and other offices and employees of the U.S. Department of Justice.

Warning: File Your Forms on Time

Section 521(a)(1) of the Bankruptcy Code requires that you promptly file detailed information about your creditors, assets, liabilities, income, expenses and general financial condition. The court may dismiss your bankruptcy case if you do not file this information within the deadlines set by the Bankruptcy Code, the Bankruptcy Rules, and the local rules of the court.

For more information about the documents and their deadlines, go to:
http://www.uscourts.gov/bkforms/bankruptcy_forms.html#procedure.

Make sure the court has your mailing address

The bankruptcy court sends notices to the mailing address you list on *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). To ensure that you receive information about your case, Bankruptcy Rule 4002 requires that you notify the court of any changes in your address.

A married couple may file a bankruptcy case together—called a *joint case*. If you file a joint case and each spouse lists the same mailing address on the bankruptcy petition, the bankruptcy court generally will mail you and your spouse one copy of each notice, unless you file a statement with the court asking that each spouse receive separate copies.

Understand which services you could receive from credit counseling agencies

The law generally requires that you receive a credit counseling briefing from an approved credit counseling agency. 11 U.S.C. § 109(h). With limited exceptions, you must receive it within the 180 days **before** you file your bankruptcy petition. This briefing is usually conducted by telephone or on the Internet.

The clerk of the bankruptcy court has a list of approved agencies. If you are filing a joint case, both spouses must receive the briefing.

In addition, after filing a bankruptcy case, you generally must complete a financial management instructional course before you can receive a discharge. The clerk also has a list of approved financial management instructional courses. If you are filing a joint case, both spouses must complete the course.

Read This Warning

Because bankruptcy can have serious long-term financial and legal consequences, including loss of your property, you should hire an attorney and carefully consider all of your options before you file. An attorney can explain to you what can happen as a result of filing for bankruptcy and what your options are. If you do file for bankruptcy, an attorney can help you fill out the forms properly and protect you, your family, your home, and your possessions. Bankruptcy petition preparers can only help you type the forms required; they cannot give you legal advice of any kind.

Although the law allows you to represent yourself in bankruptcy court, you should understand that many people find it extremely difficult to represent themselves successfully. The rules are very technical, and a misstep or inaction may affect your rights. If you file without an attorney, you are still responsible for knowing and following all of the legal requirements.

You may not file bankruptcy if you are not eligible to file or if you do not intend to file the documents necessary to complete the bankruptcy.

Bankruptcy fraud is a serious crime; you could be fined and imprisoned if you commit fraud in your bankruptcy case. If you make a false statement, you could be fined up to \$250,000 or imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Instructions for Selected Forms

Schedule A: Property (Official Form 106A)

Schedule A: Property (Official Form 106A) lists property interests that are involved in a bankruptcy case. All individuals filing for bankruptcy must honestly list everything they own or have a legal or equitable interest in. *Legal or equitable interest* is a broad term and includes all kinds of property interests in both tangible and intangible property, whether or not anyone else has an interest in that property.

The information in this form is grouped by category and includes several examples for many items. Note that those examples are meant to give you an idea of what to include in the categories. They are not intended to be complete lists of everything within that category. Make sure you list everything you own or have an interest in.

You must verify under penalty of perjury that the information you provide is complete and accurate. If you fail to list any property, you may lose the property, lose your bankruptcy discharge, be fined up to \$250,000, and be imprisoned for up to 5 years. 11 U.S.C. §§ 554, 727; 18 U.S.C. §§ 152, 157, 3559, 3571, and 3581.

Understand the terms used in this form

Community property — Type of property ownership available in certain states for property owned by spouses and, in some instances, legal equivalents of spouses. Community property states and territories include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, and Wisconsin.

Current value — In this form, report the *current value* of the property that you own in each category. *Current value* is sometimes called *fair market value* and, for this form, is the fair market value as of the date of the filing of the petition. *Current value* is how much the property is worth, which may be more or less than when you purchased the property. *Property you own* includes property you have purchased, even if you owe money on it, such as a home with a mortgage or an automobile with a lien.

Report the current value of the portion you own

For each question, report the current value of the portion of the property that you own. To do this, you would usually determine the current value of the entire item of property and the percentage of the property you own. For example:

- If you own a house by yourself, you own 100% of that house. Report the entire current value of the house.
- If you and a sister own the house equally, report 50% of the value of the house (or half of the value of the house).
- Multiply the current value of the house by the percentage that you own. Report the result where the form asks for *Current value of the portion you own*.

In certain categories, current value may be difficult to figure out. When you cannot find the value from a reputable source (such as a pricing guide for your car), estimate the value and be prepared to explain how you determined it.

List items once on this form

List items only once on this form; do not list them in more than one category. Be specific when you describe your items. If you have items that you think could fit into more than one category, select the most suitable category and list the items there.

Where you list similar items of minimal value (such as children's clothes), add the value of the items and report a total.

Separately describe and list individual items worth more than \$500.

List all real estate in Part 1 and other property in the other parts.

Match the values to the other schedules

Make sure that the values you report on this form match the values you report on *Schedule B: Creditors Who Hold Claims Secured by Your Property* (Official Form 106B) and *Schedule D: The Property You Claim as Exempt* (Official Form 106D).

On this form, do not list any interests you may have in executory contracts (for example, an unexpired lease for your apartment, a contract for improvements or repairs for your home, a real estate listing agreement, or a lease for your car). List those contracts or leases on *Schedule E: Executory Contracts and Unexpired Leases* (Official Form 106E).

Schedule B: Creditors Who Hold Claims Secured by Property (Official Form 106B)

The people or organizations to whom you owe money are called your *creditors*. A *claim* is a creditor's right to payment. When you file for bankruptcy, the court needs to know who all your creditors are and what types of claims they have against you.

Typically in bankruptcy cases, there are more debts than assets to pay those debts. The court must know as much as possible about your creditors to make sure that their claims are properly treated according to the rules.

Creditors may have different types of claims:

- **Secured claims.** Report these on *Schedule B: Creditors Who Hold Claims Secured by Property* (Official Form 106B).
- **Unsecured claims.** Report these on *Schedule C: Creditors Who Have Unsecured Claims* (Official Form 106C).

If your debts are not paid, creditors with secured claims may be able to get paid from specific property in which that creditor has an interest, such as a mortgage or a lien. That property is sometimes called *collateral* for your debt and could include items such as your house, your car, or your furniture. Creditors with unsecured claims do not have rights against specific property.

Many claims have a specific amount, and you clearly owe them. However, some claims are uncertain when you file for bankruptcy, or they become due only after you file. You must list all claims in your schedules, even if the claims are contingent, unliquidated, or disputed.

Claims may be contingent, unliquidated, or disputed

Claims may be:

- Contingent claims,
- Unliquidated claims, or
- Disputed claims.

A claim is *contingent* if you are not obligated to pay it unless a particular event occurs after you file for bankruptcy. You owe a contingent claim, for example, if you cosigned someone else's loan. You may not have to pay unless that person later fails to repay the loan.

A claim is *unliquidated* if the amount of the debt cannot be readily determined, such as by referring to an agreement or by a simple computation. An unliquidated claim is one for which there may be a definite liability but where the value has not been set. For instance, if you were involved in a car accident, the victim may have an unliquidated claim against you because the amount of damages has not been set.

A claim is *disputed* if you disagree about whether you owe the debt. For instance, your claim is disputed if a bill collector demands payment for a bill you believe you already fully paid.

A single claim can have one, more than one, or none of these characteristics.

On *Schedule B: Creditors Who Hold Claims Secured by Property* (Official Form 106B), list all creditors who have a claim that is secured by your property.

Do not leave out any secured creditors

In alphabetical order, list anyone who has judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests against your property. When listing creditors who hold secured claims, be sure to include all of them. For example, include the following:

- Your relatives or friends who hold a lien or security interest in your property;
- Car or truck lenders, stores, banks, credit unions, and others who made loans to enable you to finance the purchase of property and who have a lien against that property;
- Anyone who holds a mortgage or deed of trust on real estate that you own;
- Contractors or mechanics who have liens on property you own because they did work on the property and were not paid;
- Someone who won a lawsuit against you and has a judgment lien;
- Another parent or a government agency that has a lien for unpaid child support;
- Doctors or attorneys who have liens on the outcome of a lawsuit;
- Federal, state, or local government agencies such as the IRS that have tax liens against property for unpaid taxes; and
- Anyone who is trying to collect a secured debt from you, such as collection agencies and attorneys.

List the debt in Part 1 only once and list any others that should be notified about that debt in Part 2. For example, if a collection agency is trying to collect from you for a debt you owe to someone else, list the person to whom you owe the debt in Part 1, and list the collection agency in Part 2. If you are not sure who the creditor is, list the person you are paying in Part 1 and list anyone else who has contacted you about this debt in Part 2.

If a creditor's full claim is more than the value of your property securing that claim—for instance, a car loan in an amount greater than the value of the car—the creditor's claim may be partly secured and partly unsecured. In that situation, list the claim only once on *Schedule B: Creditors Who Hold Claims Secured by Property* (Official Form 106B). Do not repeat it on *Schedule C: Creditors Who Hold Unsecured Claims* (Official Form 106C). List a creditor in *Schedule B* even if it appears that there is no value to support that creditor's secured claim.

Determine the unsecured portion of secured claims

To determine the amount of a secured claim, compare the amount of the claim to the value of the property that supports the claim. If the value of the property is greater than the amount of the claim, then the entire amount of the claim is secured. But if the value of the property is less than the amount of the claim, the difference is an *unsecured portion*. For example, if the outstanding balance of a car loan is \$10,000 and the car is worth \$8,000, the car loan has a \$2,000 unsecured portion.

If there is more than one secured claim against the same property, the claim that is entitled to be paid first must be subtracted from the property value to determine how much value remains for the next claim. For example, if a home worth \$300,000 has a first mortgage of \$200,000 and a second mortgage of \$150,000, the first mortgage would be fully secured, and there would be \$100,000 of property value for the second mortgage, which would have an unsecured portion of \$50,000.

\$300,000	value of a home
- \$200,000	<u>first mortgage</u>
\$100,000	remaining property value
\$150,000	second mortgage
- \$100,000	<u>remaining property value</u>
\$ 50,000	unsecured portion of second mortgage

Schedule C: Creditors Who Have Unsecured Claims (Official Form 106C)

The people or organizations to whom you owe money are called your *creditors*. A *claim* is a creditor's right to payment. When you file for bankruptcy, the court needs to know who all your creditors are and what types of claims they have against you.

Typically in bankruptcy cases, there are more debts than assets to pay those debts. The court must know as much as possible about your creditors to make sure that their claims are properly treated according to the rules.

Use *Schedule C: Creditors Who Have Unsecured Claims* (Official Form 106C) to identify everyone who holds an unsecured claim against you when you file your bankruptcy petition, unless you have already listed them on *Schedule B: Creditors Who Hold Claims Secured by Your Property* (Official Form 106B).

Creditors may have different types of claims:

- **Secured claims.** Report these on *Schedule B: Creditors Who Hold Claims Secured by Property* (Official Form 106B).
- **Unsecured claims.** Report these on *Schedule C: Creditors Who Have Unsecured Claims* (Official Form 106C).

If your debts are not paid, creditors with secured claims may be able to get paid from specific property in which that creditor has an interest, such as a mortgage or a lien. That property is sometimes called *collateral* for your debt and could include items such as your house, your car, or your furniture. Creditors

with unsecured claims do not have rights against specific property.

Many claims have a specific amount, and you clearly owe them. However, some claims are uncertain when you file for bankruptcy, or they become due only after you file. You must list all claims in your schedules, even if the claims are contingent, unliquidated, or disputed.

Claims may be contingent, unliquidated, or disputed

Claims may be:

- Contingent claims,
- Unliquidated claims, or
- Disputed claims.

A claim is *contingent* if you are not obligated to pay it unless a particular event occurs after you file for bankruptcy. You owe a contingent claim, for example, if you cosigned someone else's loan. You may not have to pay unless that person later fails to repay the loan.

A claim is *unliquidated* if the amount of the debt cannot be readily determined, such as by referring to an agreement or by a simple computation. An unliquidated claim is one for which there may be a definite liability but where the value has not been set. For instance, if you were involved in a car accident, the victim may have an unliquidated claim against you because the amount of damages has not been set.

A claim is *disputed* if you disagree about whether you owe the debt. For instance, your claim is disputed if a bill collector demands payment for a bill you believe you already fully paid.

A single claim can have one, more than one, or none of these characteristics.

Creditors with unsecured claims do not have liens on or other security interests in your property. Secured creditors have a right to take property if you do not pay them. Common examples are lenders for your car, your home, or your furniture.

Do not leave out any unsecured creditors

List all unsecured creditors in each part of the form in alphabetical order. Even if you plan to pay a creditor, you must list that creditor. When listing creditors who hold unsecured claims, be sure to include all of them. For instance, include the following:

- Your relatives or friends to whom you owe money;
- Your ex-spouse, if you are still obligated under a divorce decree or settlement agreement to pay joint debts;
- A credit card company, even if you intend to fully pay your credit card bill;
- A lender, even if the loan is cosigned;
- Anyone who holds a loan or promissory note that you cosigned for someone else;
- Anyone who has sued or may sue you because of an accident, dispute, or similar event that has occurred; or
- Anyone who is trying to collect a debt from you such as a bill collector or attorney.

Unsecured claims could be priority or nonpriority claims

What are priority unsecured claims?

In bankruptcy cases, *priority unsecured claims* are those debts that the Bankruptcy Code requires to be paid before most other unsecured claims are paid. The most common priority unsecured claims are certain income tax debts and past due alimony or child support. Priority unsecured claims include those you owe for:

- **Domestic support obligations**—If you owe domestic support to a spouse or former spouse; a child or the parent, legal guardian, or responsible relative of a child; or a governmental unit to whom such a domestic support claim has been assigned.
11 U.S.C. § 507(a)(1).
- **Taxes and certain other debts you owe the government**—If you owe certain federal, state, or local government taxes, customs duties, or penalties.
11 U.S.C. § 507(a)(8).
- **Claims for death or personal injury while you were intoxicated**—If you have a claim against you for death or personal injury that resulted from your unlawfully operating a motor vehicle or vessel while you were unlawfully intoxicated from alcohol, drugs, or another substance. This priority does not apply to claims for property damage.
11 U.S.C. § 507(a)(10).

■ **Other:**

- ❑ **Deposits by individuals**—If you took money from someone who planned to purchase, lease, or rent your property or use your services but you never delivered or performed. For the debt to have priority, the property or services must have been intended for personal, family, or household use (only the first \$2,600 per person is a priority debt). 11 U.S.C. § 507(a)(7).
- ❑ **Wages, salaries, and commissions**—If you owe wages, salaries, and commissions, including vacation, severance, and sick leave pay and those amounts were earned within 180 days before you open your bankruptcy case or ceased business. In either instance, only the first \$11,725 per claim is a priority debt. 11 U.S.C. § 507(a)(4).
- ❑ **Contributions to employee benefit plans**—If you owe contributions to an employee benefit plan for services an employee rendered within 180 days before you file your bankruptcy petition, or within 180 days before your business ends. Count only the first \$11,775 per employee, less any amounts owed for wages, salaries, and commissions. 11 U.S.C. § 507(a)(5).
- ❑ **Certain claims of farmers and fishermen**—Only the first \$5,775 per farmer or fisherman is a priority debt. 11 U.S.C. § 507(a)(6).

What are nonpriority unsecured claims?

Nonpriority unsecured claims are those debts that generally will be paid after priority unsecured claims are paid. The most common examples of nonpriority unsecured claims are credit card bills, medical bills, and educational loans.

What if a claim has both priority and nonpriority amounts?

If a claim has both priority and nonpriority amounts, list that claim in Part 2 and show both priority and nonpriority amounts. Do not list it again in Part 3.

In Part 3, list all of the creditors you have not listed before. You must list every creditor that you owe, regardless of the amount you owe and even if you plan to pay a particular debt. If you do not list a debt, it may not be discharged.

What is needed for statistical purposes?

For statistical reasons, the court must collect information about some specific categories of unsecured claims.

The categories for priority unsecured claims are:

- **Domestic support obligations**
- **Taxes and certain other debts you owe the government**
- **Claims for death or personal injury while you were intoxicated**

The categories for nonpriority unsecured claims are:

- **Student loans**—If you owe money for any loans that you used to pay for your education;
- **Obligations arising out of a separation agreement or divorce that you did not report**

as priority claims—If you owe debts for separation or divorce agreements or for domestic support and you did not report those debts in Part 2; and

- **Debts to pension or profit-sharing plans and other similar debts**—If you owe money to a pension or profit-sharing plan.

Schedule D: The Property You Claim as Exempt (Official Form 106D)

How exemptions work

If you are an individual filing for bankruptcy, the law may allow you to keep some property, or it may entitle you to part of the proceeds if the property is sold after your case is filed. Property that the law permits you to keep is called *exempt* property. For example, exemptions may enable you to keep your home, a car, clothing, and household items.

Exemptions are not automatic. To be considered exempt, you must list the property on *Schedule D: The Property You Claim as Exempt* (Official Form 106D). If you do not list the property, the trustee may sell it and pay all of the proceeds to your creditors.

You may unnecessarily lose property if you do not claim exemptions to which you are entitled. You are strongly encouraged to hire a qualified attorney to advise you.

Determine which set of exemptions you will use

Before you fill out this form, you must learn which set of exemptions you can use. In general, exemptions are determined on a state-by-state basis.

You are entitled to the exemptions in federal law other than the Bankruptcy Code. You may choose the additional exemptions in the law of the state where you had your legal home for 730 days before you file for bankruptcy. Special rules may apply if you did not have the same home state for 730 days before you file. Under some

state laws, you may choose exemptions in the Bankruptcy Code instead of state law exemptions.

You may lose property if you do not use the best set of exemptions for your situation.

If your spouse is filing with you and you are filing in a state in which you may choose between state and federal sets of bankruptcy exemptions, you both must use the same set of exemptions.

Claiming exemptions

Using the property and values that you listed on *Schedule A: Property* (Official Form 106A) as your source, list on this form the property that you claim as exempt.

Listing the amount of each exemption

For each item of property you claim as exempt, you must specify the amount of the exemption you claim. Usually, a specific dollar amount is claimed as exempt, but in some circumstances, the amount of the exemption claimed might be indicated as 100% of fair market value. For example, a debtor might claim 100% of fair market value for an exemption that is unlimited in dollar amount, such as some exemptions for health aids.

Listing which laws apply

In the last column of the form, you must identify the laws that allow you to claim the property as exempt. If you have questions about exemptions, consult a qualified attorney.

Schedule E: Executory Contracts and Unexpired Leases (Official Form 106E)

Use *Schedule E: Executory Contracts and Unexpired Leases* (Official Form 106E) to identify your ongoing leases and certain contracts. List all of your executory contracts and unexpired leases.

Executory contracts are contracts between you and someone else in which neither you nor the other party has performed all of the requirements by the time you file for bankruptcy. *Unexpired leases* are leases that are still in effect; the lease period has not yet ended.

You must list all agreements that may be executory contracts or unexpired leases, including the following:

- Residential leases (for example, a rental agreement for a place where you live or vacation, even if it is only a verbal or month-to-month arrangement);
- Service provider agreements (for example, contracts for cell phones and personal electronic devices);
- Internet and cable contracts;
- Vehicle leases;
- Supplier or service contracts (for example, contracts for lawn care or home alarm or security systems);
- Timeshare contracts or leases that you did not list on *Schedule A: Property* (Official Form 106A);
- Rent-to-own contracts;
- Employment contracts;
- Realtor listing agreements;
- Contracts to sell a residence, building, land, or other real property;
- Equipment leases;
- Leases for business or investment property;
- Supplier and service contracts for your business;
- Copyright and patent license agreements; and
- Development contracts.

Schedule F: Your Codebtors (Official Form 106F)

If you have any debts that someone else may also be responsible for paying, these people or entities are called *codebtors*. Use *Schedule F: Your Codebtors* (Official Form 106F) to list any codebtors who are responsible for any debts you have listed on the other schedules.

To help fill out this form, use both *Schedule B: Creditors Who Hold Claims Secured by Property* (Official Form 106B) and *Schedule C: Creditors Who Have Unsecured Claims* (Official Form 106C).

List all of your codebtors and the creditors to whom you owe the debt. For example, if someone co-signed for the car loan that you owe, you must list that person on this form.

If you are filing a joint case, do not list either spouse as a codebtor.

Other codebtors could include the following:

- Co-signer;
- Guarantor;
- Former spouse;
- Unmarried partner;
- Joint contractor; or
- Nonfiling spouse—even if not a co-signer—because the debt is for necessities (such as food or medical care) if state law makes the nonfiling spouse legally responsible for debts for necessities.

Schedule G: Your Income (Official Form 106G)

In *Schedule G: Your Income* (Official Form 106G), you will give the details about your employment and monthly income as of the date you file this form. If you are married and your spouse is living with you, include information about your spouse even if your spouse is not filing with you. If you are separated and your spouse is not filing with you, do not include information about your spouse.

How to report employment and income

If you have nothing to report for a line, write \$0.

In Part 1, line 1, fill in employment information for you and, if appropriate, for a non-filing spouse. If either person has more than one employer, attach a separate page with information about the additional employment.

In Part 2, give details about the monthly income you currently expect to receive. Show all totals as monthly payments, even if income is not received in monthly payments.

If your income is received in another time period, such as daily, weekly, quarterly, annually, or irregularly, calculate how much income would be by month, as described below.

If either you or a non-filing spouse has more than one employer, calculate the monthly amount for each employer separately, and then combine the income information for all employers for that person on lines 2-7.

If all or part of your income is sporadic such as overtime or commissions, include your best estimate of the monthly amount you expect to receive.

One easy way to calculate how much income would be per month is to total the payments earned in a year, then divide by 12 to get a monthly figure. For example, if you are paid annually, you would simply divide your annual salary by 12 to get the monthly amount.

Below are other examples of how to calculate monthly amount.

Example for quarterly payments:

If you are paid \$15,000 every quarter, figure your monthly income in this way:

\$15,000	income every quarter
X	4 pay periods in the year
\$60,000	total income for the year

$$\frac{\$60,000 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$5,000 \text{ monthly income}$$

Example for bi-weekly payments:

If you are paid \$2,500 every other week, figure your monthly income in this way:

\$2,500	income every other week
X	26 number of pay periods in the year
\$65,000	total income for the year

$$\frac{\$65,000 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$5,417 \text{ monthly income}$$

Example for weekly payment:

If you are paid \$1,000 every week, figure your monthly income in this way:

\$1,000 income every week
X 52 number of pay periods in the year
\$52,000 total income for the year

$\frac{\$52,000 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$4,333 \text{ monthly income}$

Example for irregular payments:

If you are paid \$4,000 8 times a year, figure your monthly income in this way:

\$4,000 income a payment
X 8 payments a year
\$32,000 income for the year

$\frac{\$32,000 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$2,667 \text{ monthly income}$

Example for daily payments:

If you are paid \$75 a day and you work about 8 days a month, figure your monthly income in this way:

\$75 income a day
X 96 days a year
\$7,200 total income for the year

$\frac{\$7,200 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$600 \text{ monthly income}$

or this way:

\$75 income a day
X 8 payments a month
\$600 income for the month

In Part 2, line 11, fill in amounts that other people provide to pay the expenses you list on *Schedule H: Your Expenses*. For example, if you and a person to whom you are not married deposit the income from both of your jobs into a single bank account and pay all household expenses and you list all your joint household expenses on *Schedule H*, you must list the amounts that person contributes monthly to pay the household expenses on line 11. If you have a roommate and you divide the rent and utilities, do not list the amounts your roommate pays on line 11 if you have listed only your share of those expenses on *Schedule H*. However, if you have listed the cost of the rent and utilities for your entire house or apartment on *Schedule H*, you must list your roommate's contribution to those expenses on *Schedule G*, line 14. Do not list line 11 contributions that you already disclosed on line 5.

Note that the income you report on *Schedule G* may be different from the income you report on other bankruptcy forms. For example, the *Chapter 7 Statement of Your Current Monthly Income* (Official Form 108-1), *Chapter 11 Statement of Your Current Monthly Income* (Official Form 109), and the *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 110-1) all use a different definition of income and apply that definition to a different period of time. *Schedule G* asks about the income that you are now receiving and expect to receive, while the other forms ask about income you received in the applicable time period before filing. So the amount of income reported in any of those forms may be different from the amount reported here.

Schedule H: Your Expenses (Official Form 106H)

Use Column A of *Schedule H: Your Expenses* (Official Form 106H) to estimate the monthly expenses, as of the date you file for bankruptcy, for you, your dependents, and the other people in your household whose income is included on *Schedule G: Your Income* (Official Form 106G).

If you are filing under chapter 13, you must also complete Column B. In Column B, itemize what your monthly expenses would be under the plan that you are submitting with this schedule or, if no plan is being submitted now, under the most recent plan you previously submitted.

Include your non-filing spouse's expenses unless you are separated. If both spouses are filing but one of you keeps a separate household, fill out separate *Schedule H* for Debtor 1 and Debtor 2 and write *Debtor 1* or *Debtor 2* at the top of page 1 of the form.

Do not include expenses that other members of your household pay directly from their income if you did not include that income on *Schedule G*. For example, if you have a roommate and you divide the rent and utilities and you have not

listed your roommate's contribution to household expenses in line 11 of *Schedule G*, you would list only your share of these expenses on *Schedule H*.

Show all totals as monthly payments. If you have weekly, quarterly, or annual payments, calculate how much you would spend on those items every month.

Do not list as expenses any payments on credit card debts incurred before filing bankruptcy.

Do not include business expenses on this form. You have already accounted for those expenses as part of determining net business income on *Schedule G*.

On line 20, do not include expenses for your residence or for any rental or business property. You have already listed expenses for your residence on lines 4 and 5 of this form. You listed the expenses for your rental and business property as part of the process of determining your net income from that property on *Schedule G* (line 8a).

If you have nothing to report for a line, write \$0.

A Summary of Your Assets and Liabilities and Certain Statistical Information (Official Form 106-Summary)

When you file for bankruptcy, you must summarize certain information from the following forms:

- *Schedule A: Property* (Official Form 106A)
- *Schedule B: Creditors Who Have Claims Secured by Property* (Official Form 106B)
- *Schedule C: Creditors Who Have Unsecured Claims* (Official Form 106C)
- *Schedule G: Your Income* (Official Form 106G)
- *Schedule H: Your Expenses* (Official Form 106H)
- *Chapter 7 Statement of Your Current Monthly Income* (Official Form 108-1), *Chapter 11 Statement of Your Current Monthly Income* (Official Form 109), or *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 110-1)

After you fill out all of the forms, complete *A Summary of Your Assets and Liabilities and Certain Statistical Information* (Official Form 106-Summary) to report the totals of certain information that you listed in the forms.

If you are filing an amended version of any of these forms at some time after you file your original forms, you must fill out a new *Summary* to ensure that your information is up to date and check the box at the top of the *Summary*.

Your Statement of Financial Affairs if You Are an Individual Filing for Bankruptcy (Official Form 107)

Your Statement of Financial Affairs provides a summary of your financial history over certain periods of time before you file for bankruptcy. If you are an individual in a bankruptcy case, you must fill out this statement. 11 U.S.C. § 521(a) and Bankruptcy Code 1007(b)(1).

If you are married and your spouse is not filing this case with you, you need only provide information on this form about your spouse if you are filing under chapter 12 or chapter 13 and are not separated from your spouse.

If you are in business as a sole proprietor, partner, family farmer, or self-employed professional, you must provide the information

about all of your business and personal financial activities.

Although this statement may ask you questions that are similar to some questions on the schedules, you must fill out all of the forms completely to protect your legal rights.

Understand the terms used in this form

Legal equivalent of a spouse — A person whom applicable nonfederal law recognizes as having a relationship with the debtor that grants legal rights and responsibilities equivalent, in whole or in part, to those granted to a spouse.

Chapter 7 Statement of Your Current Monthly Income and Means Test Calculation (Official Forms 108-1 and 108-2)

Official Forms 108-1 and 108-2 determine whether your income and expenses create a presumption of abuse that may prevent you from obtaining relief from your debts under chapter 7 of the Bankruptcy Code. Chapter 7 relief can be denied to a person who has primarily consumer debts if the court finds that the person has enough income to repay creditors a portion of their claims set out in the Bankruptcy Code.

You must file 108-1, the *Chapter 7 Statement of Your Current Monthly Income* (Official Form 108-1) if you are an individual filing for bankruptcy under chapter 7. This form will determine your current monthly income and compare whether your income is more than the median income for households of the same size in your state. If your income is not above the median, there is no presumption of abuse and you will not have to fill out the second form.

If your income is above the median, you must file the second form, 108-2, *Chapter 7 Means Test Calculation*. The calculations on this form—sometimes called the *Means Test*—reduce your income by living expenses and payment of certain debts, resulting in an amount available to pay other debts. If this amount is high enough, it will give rise to a *presumption of abuse*. A presumption of abuse does not mean you are actually trying to abuse

the bankruptcy system. Rather, the presumption simply means that you are presumed to have enough income that you should not be granted relief under chapter 7. You may overcome the presumption by showing special circumstances that reduce your income or increase your expenses.

If you cannot obtain relief under chapter 7, you may be eligible to continue under another chapter of the Bankruptcy Code and pay creditors over a period of time.

Read each question carefully. You may not be required to answer every question on this form. For example, your military status may determine whether you must fill out the entire form. The instructions will alert you if you may skip questions.

If you have nothing to report for a line, write \$0.

Some of the questions require you to go to other sources for information. In those cases, the form has instructions for where to find the information you need.

If you and your spouse are filing together, you and your spouse may file a single statement. However, if an exclusion in Parts 1 or 2 applies to either of you, separate statements may be required. 11 U.S.C. § 707(b)(2)(C).

Chapter 11 Statement of Your Current Monthly Income (Official Form 109)

You must file the *Chapter 11 Statement of Your Current Monthly Income* (Official Form 109) if you are an individual filing for bankruptcy under chapter 11.

If you have nothing to report for a line, write \$0.

Chapter 13 Statement of Your Current Monthly Income, Calculation of Commitment Period and Chapter 13 Calculation of Your Disposable Income (Official Forms 110–1 and 110–2)

Official Forms 110–1 and 110–2 determine the period for your payments to creditors, how the amount you may be required to pay to creditors is established, and, in some situations, how much you must pay.

You must file 110–1, the *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 110–1) if you are an individual and you are filing under chapter 13. This form will report your current monthly income and determine whether your income is at or below the median income for households of the same size in your state. If your income is equal to or less than the median, you will not have to fill out the second form. Official Form 110-1 also will determine your applicable commitment period—the time period for making payments to your creditors.

If your income is above the median, you must file the second form, 110–2, *Chapter 13 Calculation of Your Disposable Income*. The calculations on this form—sometimes called the *Means Test*—reduce your income by living expenses and payment of certain debts, resulting in an amount available to pay unsecured debts. Your chapter 13 plan may be required to provide for payment of this amount toward unsecured debts.

Read each question carefully. You may not be required to answer every question on this form. The instructions will alert you if you may skip questions.

Some of the questions require you to go to other sources for information. In those cases, the form has instructions for where to find the information you need.

If you and your spouse are filing together, you and your spouse must file a single statement.

Statement of Intention for Individuals Filing Under Chapter 7 (Official Form 112)

You must fill out the *Statement of Intention for Individuals Filing Under Chapter 7* (Official Form 112) if you are an individual filing under chapter 7 or if your case has been converted to chapter 7 and creditors have claims secured by your property or you have any unexpired leases of personal property. The Bankruptcy Code requires you to state your intentions about such claims and provides for early termination of the automatic stay as to personal property if the statement is not timely filed. The same early termination of the automatic stay applies to any unexpired lease of personal property unless you state that you intend to assume the unexpired lease if the trustee does not do so.

To help fill out this form, use the information you have already provided on the following forms:

Schedule B: Creditors Who Hold Claims Secured by Property (Official Form 106),

Schedule D: The Property You Claim as Exempt (Official Form 106D), and

Schedule E: Executory Contracts and Unexpired Leases (Official Form 106E).

Explain what you intend to do with your property that is collateral for a claim

If you have property that is collateral (or security) for a claim, you must show what you intend to do with that property.

You may choose to either:

Give the property to the creditor, or
Keep the property by redeeming it, signing a *Reaffirmation Agreement* (Form B340A), or taking some other action such as avoiding a lien using 11 U.S.C. § 522(f).

- **You may give the property to the creditor.** If you give the property to the creditor (*you surrender the property*), your bankruptcy discharge will protect you from any claim for a deficiency if the property is worth less than what you owe the creditor, unless the court determines that the debt is non-dischargeable.
- **You may want to keep the property.** If you want to keep your secured personal property, you should be aware of the following options and requirements:
- **You may be able to redeem your property.** 11 U.S.C. § 722. You can redeem property only if all of the following apply:
 - The property secures a debt that is a *consumer debt* — you incurred the debt primarily for personal, family, or household use.
 - The property is *personal tangible property* — the property can be touched, such as furniture, appliances, and cars.
 - You are either claiming the property as exempt or the trustee has abandoned it.

To obtain court authorization to redeem your property, you must file a motion to redeem. If the court grants your motion, you pay the creditor the value of the property or the amount of the claim, whichever is less. The payment will be a single lump-sum payment.

- **You may be able to reaffirm the debt.** You may decide to remain legally obligated to pay a debt so that you can keep the property securing the debt. This is called *reaffirming a debt*. You may reaffirm the debt in full on its original terms or you and the creditor may agree to change the terms. For example, if you want to keep your car, you may reaffirm a car loan, stating that you will continue to make monthly payments for it. **Only reaffirm those debts that you are confident you can repay.** You may seek to reaffirm the debt if you sign a *Reaffirmation Agreement*, which is a contract between you and a creditor and you follow the proper procedure for the *Reaffirmation Agreement*. 11 U.S.C. § 524. The procedure is explained in greater detail in the Disclosures that are part of the reaffirmation documents.

Explain what you intend to do with your leased personal property

If you lease personal property such as your car, you may be able to continue your lease if the trustee does not assume the lease. To continue your lease, you can write to the lessor that you want to assume your lease. The creditor may respond by telling you whether it agrees that you may assume the lease and may require you to pay any past-due amounts before you can do so. If the lessor agrees to your request to assume the lease, you must write to the lessor within 30 days stating that you assume the lease.

11 U.S.C. § 365(p)(2).

File the *Statement of Intention* before the deadline

You must file this form either within 30 days after you file your bankruptcy petition or by the date set for the meeting of creditors, whichever is earlier. You must also deliver copies of this statement to the creditors and lessors you listed on the form. Bankruptcy Code 1007(b)(2).

If two married people are filing together in a joint case, both are equally responsible for supplying correct information. Both debtors must sign and date the form.

Application for Individuals to Pay the Filing Fee in Installments (Official Form 103A)

If you cannot afford to pay the full filing fee when you first file for bankruptcy, you may pay the fee in installments. However, in most cases, you must pay the entire fee within 120 days after you file, and the court must approve your payment timetable. Your debts will not be discharged until you pay your entire fee.

Do not file this form if you can afford to pay your full fee when you file.

If you are filing under chapter 7 and cannot afford to pay the full filing fee at all, you may be qualified to ask the court to waive your filing fee.

See *Application to Have Your Chapter 7 Filing Fee Waived* (Official Form 103B).

If a bankruptcy petition preparer helped you complete this form, make sure that person fills out the *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 113); include a copy of it when you file this application.

Application to Have the Chapter 7 Filing Fee Waived (Official Form 103B)

The fee for filing a bankruptcy case under chapter 7 is \$306. If you cannot afford to pay the entire fee now in full or in installments within 120 days, use this form. If you can afford to pay your filing fee in installments, see *Application for Individuals to Pay the Filing Fee in Installments* (Official Form 103A).

If you file this form, you are asking the court to waive your fee. After reviewing your application, the court may waive your fee, set a hearing for further investigation, or require you to pay the fee in installments or in full.

For your fee to be waived, all of these statements must be true:

- You are filing for bankruptcy under chapter 7.
- You are an individual.
- The total combined monthly income for your family is less than 150% of the official poverty guideline last published by the U.S. Department of Health and Human Services (DHHS). (For more information about the guidelines, go to <http://www.uscourts.gov>.)
- You cannot afford to pay the fee in installments.

Your family includes you, your spouse, and any dependents listed on *Schedule H*. Your family may be different from your *household*, referenced on *Schedules G* and *H*. Your household may include your unmarried partner and others who live with you and with whom you share income and expenses.

If a bankruptcy petition preparer helped you complete this form, make sure that person fills out *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 113); include a copy of it when you file this application.

If you have already completed the following forms, the information on them may help you when you fill out this application:

- *Schedule A: Property* (Official Form 106A)
- *Schedule G: Your Income* (Official Form 106G)
- *Schedule H: Your Expenses* (Official Form H)

For Individual Chapter 11 Cases: The List of Creditors Who Have the 20 Largest Unsecured Claims Against You Who Are Not Insiders (Official Form 104)

If you are filing under chapter 7, 12, or 13, do not fill out this form.

The people or organizations to whom you owe money are called your *creditors*. A *claim* is a creditor's right to payment. If you are an individual filing for bankruptcy under chapter 11, you must fill out the *For Individual Chapter 11 Cases: The List of Creditors Who Have the 20 Largest Unsecured Claims Against You Who Are Not Insiders* (Official Form 104).

Creditors may have different types of claims:

- Secured claims, or
- Unsecured claims.

If your debts are not paid, creditors with secured claims may be able to get paid from specific property in which that creditor has an interest, such as a mortgage or a lien. If a creditor has security in your property, but the value of the security available to pay the creditor is less than the amount you owe the creditor, the creditor has both a secured and unsecured claim against you. The amount of the unsecured claim is the total claim minus the value of the security that is available to pay the creditor.

Generally, creditors with unsecured claims do not have rights against specific property, or the specific property in which the creditor has

rights is not worth enough to pay the creditor in full. For example, if you owe a creditor \$30,000 for your car and the creditor has a security interest in your car but the car is worth only \$20,000, the creditor has a \$20,000 secured claim and a \$10,000 unsecured claim.

\$30,000	Total amount you owe creditor
– \$20,000	Amount your car is worth (amount of secured claim)
<hr/>	
\$10,000	Amount of unsecured claim

Many claims have a specific amount, and you clearly owe them. However, some claims are uncertain when you file for bankruptcy, or they become due only after you file. You must include such claims when listing your 20 largest unsecured claims on this list.

Claims may be contingent, unliquidated, or disputed.

The form asks you to identify claims that are:

- Contingent claims,
- Unliquidated claims, or
- Disputed claims.

A claim is *contingent* if you are not obligated to pay it unless a particular event occurs after you file for bankruptcy. You owe a contingent claim, for example, if you cosigned someone else's loan. You may not have to pay unless that person later fails to repay the loan.

A claim is *unliquidated* if the amount of the debt cannot be readily determined, such as by referring to an agreement or by a simple computation. An unliquidated claim is one for which there may be a definite liability but where the amount has not been set. For instance, if you were involved in a car accident, the victim may have an unliquidated claim against you because the amount of damages has not been set.

A claim is *disputed* if you do not agree that you owe the debt. For instance, your claim is disputed if a bill collector demands payment for a bill you believe you already fully paid.

A single claim can have one, more than one, or none of these characteristics.

On this form, list the creditors with the 20 largest unsecured claims who are not insiders

You must file this form when you file your chapter 11 bankruptcy case with the court.

When you list the 20 largest unsecured creditors, include all unsecured creditors, except for the following two types of creditors, even if you plan to pay them. Do not include:

- Anyone who is an *insider*. *Insiders* include relatives; general partners of you or your relatives; corporations of which you are an officer, director, or person in control; and any managing agent. 11 U.S.C. § 101.
- Secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

Make sure that all of the creditors listed on this form are also listed on *Schedule C: Creditors Who Have Unsecured Claims*, (Official Form 106C).

On the form, you will fill in what the claim is for. Examples include trade debts, bank loans, professional services, and government contracts.

Glossary

Definitions Used in the Forms for Individuals Filing for Bankruptcy

Here are definitions for some of the important terms used in the forms for individuals who are filing for bankruptcy. See *Bankruptcy Basics* (<http://www.uscourts.gov/FederalCourts>) for more information about filing for bankruptcy and other important terms you should know.

Annuity — A contract for the periodic payment of money to you, either for life or for a number of years.

Bankruptcy petition preparer — Any person or business, other than a lawyer or someone who works for a lawyer, that charges a fee to prepare bankruptcy documents. Under your direction and control, the bankruptcy petition preparer generates bankruptcy forms for you to file by typing them. Because they are not attorneys, they cannot give legal advice or represent you in bankruptcy court. Also called *typing services*.

Business debt — Debt that you incurred to obtain money for a business or investment or through the operation of the business or investment.

Claim — A creditor's right to payment.

Codebtor — If you have any debts that someone else may also be responsible for paying, this person or entity is called a *codebtor*.

Collateral for your debt — If your debts are not paid, creditors with secured claims such as a mortgage or a lien may be able to get paid from specific property in which that creditor has an interest.

Community property — Type of property ownership available in certain states for property owned by spouses and, in some instances, legal equivalents of spouses. Community property states and territories include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, and Wisconsin.

Consumer debt — Debt incurred by an individual primarily for a personal, family, or household purpose.

Contingent claim — Debt you are not obligated to pay unless a particular event occurs after you file for bankruptcy. You owe a contingent claim, for example, if you cosigned someone else's loan. You may not have to pay unless that person later fails to repay the loan.

Creditor matrix or mailing matrix — A list of names and addresses of all of your creditors, formatted as a mailing list according to instructions from the bankruptcy court in which you file.

Creditor — The person or organization to whom you owe money.

Creditor with secured claims — Creditors who have a right to take property if you do not pay them. Common examples are lenders for your car, your home, or your furniture.

Creditor with unsecured claims — Creditor who does not have lien on or other security interest in your property.

Current value, fair market value, or value — Generally, the fair market value as of the date of the filing of the petition. It is how much the property is worth, which may be more or less than when you purchased the property. See the instructions for specific forms regarding whether the value requested is as of the date of the filing of the petition, the date you complete the form, or some other date.

Debtor 1 — A debtor filing alone or one person in married couple who is filing a bankruptcy case with a spouse.

Debtor 2 — The second person in a married couple who is filing a bankruptcy case with a spouse.

Dependent — The term *dependent* generally means people who are economically dependent on the debtor regardless of whether they can be claimed as a dependent on the debtor's federal tax return. However, *Chapter 7 Means Test Calculation*, (Official Form 108-2) and *Chapter 13 Calculation of Your Disposable Income*, (Official Form 110-2) use the term in a more limited way. See the instructions on those forms.

Discharge — A discharge in bankruptcy relieves you from having to pay debts that you owed before you filed your bankruptcy case. Most debts are covered by the discharge, but not all. (The instruction booklet explains more about common debts that are excepted from discharge.)

Only your personal liability is removed by the discharge; creditors with discharged debts cannot sue you, garnish your wages, assert a deficiency against you, or otherwise try to collect from you personally.

But a discharge does not stop creditors from collecting debts from any property in which they have a security interest—such as foreclosing a home mortgage or repossessing an auto. Similarly, a discharge does not stop creditors from collecting from anyone else who is also liable on the debt, such as a relative who cosigned or guaranteed a loan.

Even if a debt has been discharged, you can choose to repay it by either *reaffirming the debt* (see the definition below) or by voluntarily paying the debt. The creditor may negotiate a reaffirmation agreement with you, but may not suggest that you make voluntary payments.

Disputed claim — If you disagree about whether you owe a debt. For instance, your claim is disputed if a bill collector demands payment for a bill you believe you already fully paid.

Eviction judgment — Your landlord has obtained a judgment for possession in an eviction, unlawful detainer action, or similar proceeding.

Executory contract — Contract between you and someone else in which neither you nor the other party has performed all of the requirements by the time you file for bankruptcy.

Exempt property — Property that the law permits you to keep.

Individual debtor — You are a person who is filing for bankruptcy by yourself or with your spouse.

Joint case — A married couple filing a bankruptcy case together.

Legal equivalent of a spouse — A person whom applicable nonfederal law recognizes as having a relationship with the debtor that grants legal rights and responsibilities equivalent, in whole or in part, to those granted to a spouse.

Legal or equitable interest — A broad term that includes all kinds of property interests in both tangible and intangible property, whether or not anyone else has an interest in that property.

Negotiable instrument — Include personal checks, cashiers' checks, promissory notes, and money orders.

Non-individual debtor — You are filing for bankruptcy on behalf of a non-individual, such as a corporation, partnership, or limited liability company (LLC).

Non-negotiable instrument — Financial instrument that you cannot transfer to someone by signing or delivering it.

Nonpriority unsecured claim — Debt that generally will be paid after priority unsecured claims are paid. The most common examples are credit card bills, medical bills, and educational loans.

Payment advice — Pay stub.

Presumption of abuse — A legal determination meaning you may have too much income to be granted relief under chapter 7. You may overcome the presumption by showing special circumstances that reduce your income or increase your expenses.

Priority unsecured claim — Debt that the Bankruptcy Code requires to be paid before most other unsecured claims are paid. The most common examples are certain income tax debts and past due alimony or child support.

Property you own — Includes property you have purchased, even if you owe money on it, such as a home with a mortgage or an automobile with a lien.

Reaffirming a debt — You may agree to repay a debt that would otherwise be discharged by entering into a reaffirmation agreement with the creditor. A reaffirmation agreement may allow you to keep property that a creditor has the right to take from you because it secures the debt being reaffirmed. For a reaffirmation agreement to be effective, you must enter into it before discharge. You may ask the court to delay your discharge if you need more time to complete your reaffirmation agreement. The court may have to find that the agreement is not an undue burden on you before it can become effective.

Sole proprietorship — A business you own as an individual, rather than a separate legal entity such as a corporation, partnership, or LLC.

Unexpired lease — Lease that is still in effect; the lease period has not yet ended.

Unliquidated claim — If the amount of a debt cannot be readily determined, such as by referring to an agreement or by a simple computation. An unliquidated claim is one for which there may be a definite liability but where the value has not been set. For instance, if you were involved in a car accident, the victim may have an unliquidated claim against you because the amount of damages has not been set.

You — A debtor filing alone or one person in married couple who is filing a bankruptcy case with a spouse.

APPENDIX A05

THIS PAGE INTENTIONALLY BLANK

No.	Current title	New No.*	New title	Date to BK Comm.	Publication Date	
			Unsecured Claims Against You Who Are Not Insiders (<i>individuals</i>)			
		B204	For Chapter 11 Cases: The List of Creditors Who Have the 20 Largest Unsecured Claims Against You Who Are Not Insiders (<i>non-individuals</i>)			
B 5	Involuntary Petition	B105	Involuntary Petition Against an Individual	Spring 2013	August 2013	
		B205	Involuntary Petition Against a Non-Individual			
B6	Cover Sheet for Schedules	No coversheet created				
B6	Summary of Schedules (Includes Statistical Summary of Certain Liabilities)	B106 -- Summary	A Summary of Your Assets and Liabilities and Certain Statistical Information (<i>individuals</i>)	Fall 2012	August 2013	
		B206 -- Summary	A Summary of Your Assets and Liabilities (<i>non-individuals</i>)			
B 6A	Schedule A - Real Property	}	B106-A	Schedule A: Property (Official Form 106A) (<i>combines real and personal property, individuals</i>)	Fall 2012	August 2013
B 6B	Schedule B - Personal Property		B206-A	Schedule A: Property (<i>combines real and personal property, non-individuals</i>)		
B 6C	Schedule C - Property Claimed as Exempt		B106-D	Schedule D: The Property You Claim as Exempt (<i>individuals</i>)	Fall 2012	August 2013
B 6D	Schedule D - Creditors Holding Secured Claims		B106-B	Schedule B: Creditors Who Hold Claims Secured By Property (<i>against individuals</i>)	Fall 2012	August 2013
			B206-B	Schedule B: Creditors Who Hold Claims Secured By Property (<i>against non-individuals</i>)		

*1XX = Individual Filing Package 2XX = Non-Individual Filing Package 3XX = Orders and Court Notices
4XX = Add. Official Forms XXXX = director's forms

No.	Current title		New No.*	New title	Date to BK Comm.	Publication Date
B 6E	Schedule E - Creditors Holding Unsecured Priority Claims	}	B106C	Schedule C: Creditors Who Have Unsecured Claims (<i>against individuals, combines priority and non-priority</i>)	Fall 2012	August 2013
B 6F	Schedule F - Creditors Holding Unsecured Nonpriority Claims		B206C	Schedule C: Creditors Who Have Unsecured Claims (<i>against non-individuals, combines priority and non-priority</i>)		
B 6G	Schedule G - Executory Contracts and Unexpired Leases		B106E	Schedule E: Executory Contracts and Unexpired Leases (<i>individuals</i>)	Fall 2012	August 2013
			B206E	Schedule E: Executory Contracts and Unexpired Leases (<i>non-individuals</i>)		
B 6H	Schedule H - Codebtors		B106F	Schedule F: Your Codebtors (<i>individuals</i>)	Fall 2012	August 2013
			B206F	Schedule F: Your Codebtors (<i>non-individuals</i>)		
B 6I	Schedule I - Current Income of Individual Debtor(s)		B106G	Schedule G: Your Income (<i>individuals – published as B6I</i>)	Fall 2011	August 2012
				no non-individual version		
B 6J	Schedule J- Current Expenditures of Individual Debtor(s)		B106H	Schedule H: Your Expenses (<i>individuals- published as 6J</i>)	Fall 2011	August 2012
				no non-individual version		
B 6	Declaration Concerning Debtor's Schedules		B106 -- Declaration	Declaration About an Individual Debtor's Schedules	Fall 2012	August 2013
			B202	Declaration Under Penalty of Perjury On Behalf of a Corporation or Partnership (<i>For petition, schedules, SOFA, etc</i>)		
B 7	Statement of Financial Affairs		B107	Your Statement of Financial Affairs for Individuals Filing for Bankruptcy	Fall 2012	August 2013
			B207	Statement of Your Financial Affairs (<i>non-</i>		

*1XX = Individual Filing Package 2XX = Non-Individual Filing Package 3XX = Orders and Court Notices
4XX = Add. Official Forms XXXX = director's forms

No.	Current title	New No.*	New title	Date to BK Comm.	Publication Date
			<i>Individuals)</i>		
B 8	Chapter 7 Individual Debtor's Statement of Intention	B112	Statement of Intention for Individuals Filing Under Chapter 7	Fall 2012	August 2013
B 9	Notice of Commencement of Case under the Bankruptcy Code, Meeting of Creditors, and Deadlines	No coversheet created.			
B 9A	Chapter 7 Individual or Joint Debtor No Asset Case	B 309A	(For Individuals or Joint Debtors) Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline	Spring 2013	August 2013
B 9B	Chapter 7 Corporation/Partnership No Asset Case	B 309C	(For Corporations or Partnerships) Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline Set	Spring 2013	August 2013
B 9C	Chapter 7 Individual or Joint Debtor Asset Case	B 309B	(For Individuals or Joint Debtors) Notice of Chapter 7 Bankruptcy Case – Proof of Claim Deadline Set	Spring 2013	August 2013
B 9D	Chapter 7 Corporation/Partnership Asset Case (12/11)	B 309D	(For Corporations or Partnerships) Notice of Chapter 7 Bankruptcy Case – Proof of Claim Deadline Set	Spring 2013	August 2013
B 9E	Chapter 11 Individual or Joint Debtor Case	B309E	(For Individuals or Joint Debtors) Notice of Chapter 11 Bankruptcy Case (<i>former Alt version combined with Form B309-E</i>)	Spring 2013	August 2013
B 9E(Alt.)	Chapter 11 Individual or Joint Debtor Case				
B 9F	Chapter 11 Corporation/Partnership Case	B 309F	(For Corporations or Partnerships) Notice of Chapter 11 Bankruptcy Case (<i>former Alt version combined with Form B309-F</i>)	Spring 2013	August 2013
B 9F(Alt.)	Chapter 11 Corporation/Partnership Case				
B 9G	Chapter 12 Individual or Joint Debtor Family Farmer	B 309G	(For Individuals or Joint Debtors) Notice of Chapter 12 Bankruptcy Case	Spring 2013	August 2013
B 9H	Chapter 12 Corporation/Partnership Family Farmer	B 309H	(For Corporations or Partnerships) Notice of Chapter 12 Bankruptcy Case	Spring 2013	August 2013
B 9I	Chapter 13 Case	B 309I	Notice of Chapter 13 Bankruptcy Case	Spring 2013	August 2013
B 10	Proof Of Claim	B 410	Proof Of Claim		

*1XX = Individual Filing Package 2XX = Non-Individual Filing Package 3XX = Orders and Court Notices
4XX = Add. Official Forms XXXX = director's forms

No.	Current title	New No.*	New title	Date to BK Comm.	Publication Date
B 10A	Proof Of Claim, Attachment A	B 410A	Proof Of Claim, Attachment A		
B 10S1	Proof Of Claim, Supplement 1	B 410S1	Proof Of Claim, Supplement 1		
B 10S2	Proof Of Claim, Supplement 2	B 410S2	Proof Of Claim, Supplement 2		
B 11A	General Power of Attorney	B 411-A			
B 11B	Special Power of Attorney	B 411-B			
B 12	Order and Notice for Hearing on Disclosure Statement	B 312			
B 13	Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof	B 313			
B 14	Ballot for Accepting or Rejecting Plan	B 414			
B 15	Order Confirming Plan	B 315			
B 16A	Caption	B 416A			
B 16B	Caption (Short Title)	B 416B			
B 16C	[Abrogated]	N/A			
B 16D	Caption for Use in Adversary Proceeding other than for a Complaint Filed by a Debtor	B 416D			
B 17	Notice of Appeal under 28 U.S.C. §158(a) or (b) from a Judgment, Order or Decree of a Bankruptcy Court	B 417			
B 18	Discharge of Debtor	B 318	Discharge of Debtor in a Chapter 7 Case	Fall 2012	August 2013
B 19	Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer	B119	Bankruptcy Petition Preparer's Notice, Declaration and Signature (was B 113)	Fall 2012	August 2013
B 20A	Notice of Motion or Objection	B 420-A	Notice of Motion or Objection	Spring 2013	August 2013
B 20B	Notice of Objection to Claim	B 420-B	Notice of Objection to Claim	Spring 2013	August 2013

*1XX = Individual Filing Package 2XX = Non-Individual Filing Package 3XX = Orders and Court Notices
4XX = Add. Official Forms XXXX = director's forms

No.	Current title	New No.*	New title	Date to BK Comm.	Publication Date
B 21	Statement of Social Security Number	B 102	Your Statement About Your Social Security Numbers	Fall 2012	August 2013
B 22A	Statement of Current Monthly Income and Means Test Calculation (Chapter 7)	B 108-1	Chapter 7 Statement of Your Current Monthly Income and Means-Test Calculation	Spring 2011	August 2012
		B 108-2	Chapter 7 Means Test Calculation	Spring 2011	August 2012
B 22B	Statement of Current Monthly Income (Chapter 11)	B 109	Chapter 11 Statement of Your Current Monthly Income	Spring 2011	August 2012
B 22C	Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Chapter 13)	B 110-1	Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period	Spring 2011	August 2012
		B 110-2	Chapter 13 Calculation of Your Disposable Income	Spring 2011	August 2012
B 23	Debtor's Certification of Completion of Instructional Course Concerning Financial Management	B 423	Certification About a Financial Management Course <i>(was B 113)</i>	Fall 2012	August 2013
B 24	Certification to Court of Appeals	B 424			
B 25A	Plan of Reorganization in Small Business Case under Chapter 11	B 425-A			
B 25B	Disclosure Statement in Small Business Case under Chapter 11	B 425-B			
B 25C	Small Business Monthly Operating Report	B 425-C			
B 26	Periodic Report Regarding Value, Operations and Profitability of Entities in Which the Debtor's Estate Holds a Substantial or Controlling Interest	B 426			
B 27	Reaffirmation Agreement Cover Sheet	B427	Cover Sheet for Reaffirmation Agreement	Fall 2012	August 2013

*1XX = Individual Filing Package 2XX = Non-Individual Filing Package 3XX = Orders and Court Notices
4XX = Add. Official Forms XXXX = director's forms

No. Current title New No.* New title Date to BK Comm. Publication Date

DIRECTOR FORMS					
B 13S	Order Conditionally Approving Disclosure Statement, Fixing Time for Filing Acceptances or Rejections of Plan, and Fixing the Time for Filing Objections to the Disclosure Statement and to the Confirmation of the Plan, Combined with Notice Thereof and of the Hearing on Final Approval of the Disclosure Statement and the Hearing on Confirmation of the Plan	B 1300-S			
B 15S	Order Finally Approving Disclosure Statement and Confirming Plan	B 1500-S			
B 18F	Discharge of Debtor After Completion of Chapter 12 Plan	B 1800-F			
B 18FH	Discharge of Debtor Before Completion of Chapter 12 Plan	B 1800-FH			
B 18J	Discharge of Joint Debtors (Chapter 7)	B 318	Order of Discharge (combined with Forms 18 and 18JO)		
B 18JO	Discharge of One Joint Debtor (Chapter 7)	B 318	Order of Discharge (combined with Forms 18 and 18J)		
B 18RI	Discharge of Individual Debtor in a Chapter 11 Case	B 1800-RI			
B 18W	Discharge of Debtor After Completion of Chapter 13 Plan	B 1800-W			
B 18WH	Order Discharging Debtor Before Completion of Chapter 13 Plan	B 1800-WH			
B 104	Adversary Proceeding Cover Sheet	B 1040			
B 131	Exemplification Certificate	B 1310			
B 132	Application for Search of Bankruptcy Records	B 1320			
B 133	Claims Register	B 1330			
B 200	Required Lists, Schedules, Statements and Fees	B 2000			
B 201A	Notice to Individual Consumer Debtor	B 2010			
B 201B	Certification of Notice to Individual Consumer	B 101	Not needed because certification is in petition		

*1XX = Individual Filing Package 2XX = Non-Individual Filing Package 3XX = Orders and Court Notices
 4XX = Add. Official Forms XXXX = director's forms

No.	Current title	New No.*	New title	Date to BK Comm.	Publication Date
	Debtor(s)				
B 202	Statement of Military Service	B 2020			
B 203	Disclosure of Compensation of Attorney for Debtor	B 2030	Attorney's Disclosure of Compensation		
B 204	Notice of Need to File Proof of Claim Due to Recovery of Assets	B 2040			
B 205	Notice to Creditors and Other Parties in Interest	B 2050			
B 206	Certificate of Commencement of Case	B 2060			
B 207	Certificate of Retention of Debtor In Possession	B 2070			
B 210A	Transfer of Claim Other Than for Security	B 2100-A			
B 210B	Notice of Transfer of Claim Other Than for Security	B 2100-B			
B 230A	Order Confirming Chapter 12 Plan	B 2300-A			
B 230B	Order Confirming Chapter 13 Plan	B 2300-B			
B 231A	Order Fixing Time to Object to Proposed Modification of Confirmed Chapter 12 Plan	B 2310-A			
B 231B	Order Fixing Time to Object to Proposed Modification of Confirmed Chapter 13 Plan	B 2310-B			
B 240A	Reaffirmation Documents	B 2400-A			
B 240B	Motion for Approval of Reaffirmation Agreement	B 2400-B			
B 240C	Order on Reaffirmation Agreement	B 2400-C			
B 240A/B ALT	Reaffirmation Agreement	B 2400-A/B ALT			
B 240C ALT	Order on Reaffirmation Agreement	B 2400-C ALT			
B 250A	Summons in an Adversary Proceeding	B 2500-A			
B 250B	Summons and Notice of Pretrial Conference in an Adversary Proceeding	B 2500-B			

*1XX = Individual Filing Package 2XX = Non-Individual Filing Package 3XX = Orders and Court Notices
 4XX = Add. Official Forms XXXX = director's forms

No.	Current title	New No.*	New title	Date to BK Comm.	Publication Date
B 250C	Summons and Notice of Trial in an Adversary Proceeding	B 2500-C			
B 250D	Third-Party Summons	B 2500-D			
B 250E	Summons to Debtor in Involuntary Case	B 2500-E			
B 250F	Summons in a Chapter 15 Case Seeking Recognition of a Foreign Nonmain Proceeding	B 2500-F			
B 253	Order for Relief in an Involuntary Case	B 2530			
B 254	Subpoena for Rule 2004 Examination	B 2540			
B 255	Subpoena in an Adversary Proceeding	B 2550			
B 256	Subpoena in a Case Under the Bankruptcy Code	B 2560			
B 260	Entry of Default	B 2600			
B 261A	Judgment by Default	B 2610-A			
B 261B	Judgment by Default	B 2610-B			
B 261C	Judgment in an Adversary Proceeding	B 2610-C			
B 262	Notice of Entry of Judgment	B 2620			
B 263	Bill of Costs	B 2630			
B 264	Writ of Execution to the United States Marshal	B 2640			
B 265	Certification of Judgment for Registration in Another District	B 2650			
B 270	Notice of Filing of Final Report of Trustee, of Hearing on Applications for Compensation [and of Hearing on Abandonment of Property by the Trustee]	B 2700			
B 271	Final Decree	B 2710			
B 280	Disclosure of Compensation of Bankruptcy Petition Preparer	B 2800	Disclosure of Compensation of Bankruptcy Petition Preparer		
B 281	Appearance of Child Support Creditor or Representative	B 2810			
B 283	Chapter 13 Debtor's Certifications Regarding	B 283			

*1XX = Individual Filing Package 2XX = Non-Individual Filing Package 3XX = Orders and Court Notices
4XX = Add. Official Forms XXXX = director's forms

No.	Current title	New No.*	New title	Date to BK Comm.	Publication Date
	Domestic Support Obligations and Section 522(q)				

*1XX = Individual Filing Package 2XX = Non-Individual Filing Package 3XX = Orders and Court Notices
 4XX = Add. Official Forms XXXX = director's forms

TAB 9D

THIS PAGE INTENTIONALLY BLANK

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ELIZABETH GIBSON, REPORTER

RE: FMP'S PROPOSED EXEMPTION SCHEDULE

DATE: AUGUST 16, 2012

At the spring 2012 meeting, the Advisory Committee voted (with two dissents) to withdraw its published proposal to amend Official Form 6, Schedule C (Property Claimed as Exempt) and to refer further consideration of any amendments of Schedule C to the Forms Modernization Project (“FMP”). The amendment had been proposed in response to *Schwab v. Reilly*, 130 S. Ct. 2652 (2010), and would have added a checkbox to the form to allow debtors to state the value of a claimed exemption as the “full fair market value of the exempted property”—as an alternative to stating “Exemption limited to \$ _____.” The proposed change was intended to reflect the *Schwab* Court’s discussion of how a debtor could indicate her intent to exempt “the full market value of the asset or the asset itself” in a manner that puts the trustee on notice of the scope of the claimed exemption.

Comments submitted in response to the publication of the proposed amendment were mixed. Consumer debtors’ attorneys and the National Association of Consumer Bankruptcy Attorneys favored adding the option of claiming the full value of an asset as exempt, although some of them suggested different wording. Bankruptcy trustees, however, and a bankruptcy judge opposed the amendment. Comments and testimony submitted on behalf of the National Association of Bankruptcy Trustees expressed concern that the new option could be easily invoked by checking a box and would encourage debtors to claim the full fair market value of an asset as exempt, even when using an exemption capped at an amount less than the asset’s value.

They argued that the increase in such exemption claims would then lead to a “plethora of objections” and would increase the gamesmanship that, according to them, already occurs with the valuation of property and the claiming of exemptions.

The draft minutes of the spring meeting state that, following the Committee’s decision not to proceed with the published amendment, the “Chair asked the Forms Modernization Project to further consider an amendment to Official Form 6C that would more directly address the *Schwab* decision while accounting for the concerns raised in the comments.”

The FMP considered its draft of Schedule C (to be redesignated as Schedule D or Official Form 106D) at its June meeting. Because of the Advisory Committee’s decision not to proceed with the published amendment, the FMP voted to remove from its draft of the modernized form the check box for claiming an exemption of “the full fair market value of the property.” The group then considered inserting a blank line—either alone or in addition to a line for a dollar amount—in the column for the amount (or value) of the exemption in order to provide room for a debtor to exercise the option identified by the *Schwab* Court of claiming full fair market value as exempt. Concern was expressed, however, that this option might have previously been rejected by the Advisory Committee and that, in any event, writing instructions about the information that could be inserted in the blank space could raise the same difficulties that the Advisory Committee had encountered in attempting to revise the form to reflect the *Schwab* option.

The FMP decided to seek guidance from the Consumer and Forms Subcommittees about what options remain available for revising the exemption schedule to reflect the *Schwab* decision, given the Advisory Committee’s prior deliberations and its decision not to proceed with the published amendment.

The Subcommittees' Advice

The Subcommittees considered the FMP's request for advice during their joint conference call on July 23, 2012. The members understood that the FMP desired to make available on the exemption schedule the option the *Schwab* Court had suggested of claiming 100% of fair market value ("fmv"), but to do so in a way that does not encourage improper use of the option. The Subcommittees agreed that one option the FMP had considered—placing only a blank line without any dollar sign under the column for "Amount of the exemption you claim"—would allow a debtor to insert either a dollar amount or a statement of full or 100% fmv. A single line would also have the advantage of not requiring a determination of which of two responses prevails, as would be the case if the form included both a dollar amount and a blank line or check box for 100% fmv and the debtor filled in both.

The challenge the Subcommittees saw with using only a blank line was in the writing of the instructions for that portion of the form. After their discussions, the Subcommittees recommended the following instruction:

For each item of property you claim as exempt, you must specify the amount of the exemption you claim. Usually, a specific dollar amount is claimed as exempt, but in some circumstances the amount of the exemption claimed might be indicated as 100% of fair market value. For example, a debtor might claim 100% of fair market value for an exemption that is unlimited in dollar amount, such as some exemptions for health aids.

The Subcommittees believed that this instruction provides accurate advice without raising the prospect of an overuse of the option because of ease of invocation.

Proposed Official Form 106D

The exemption schedule presented to the Committee for approval incorporates the advice provided by the Consumer and Forms Subcommittees. It has a blank line for specifying the amount of the claimed exemption, and it includes the instruction quoted above at the beginning of the form.

TAB :

THIS PAGE INTENTIONALLY BLANK

TAB : A

THIS PAGE INTENTIONALLY BLANK

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON BUSINESS ISSUES

RE: AMENDMENT TO RULE 3002(a) TO REQUIRE SECURED CREDITORS TO FILE PROOFS OF CLAIM

DATE: AUGUST 17, 2012

At its spring meeting, the Rules Committee considered a suggestion (11-BK-B) to amend the Bankruptcy Rules to require a secured creditor to file a proof of claim in order to have an allowed claim. The suggestion had been considered previously by the Consumer Subcommittee, which favored amending Rule 3002(a) to state that secured creditors in all bankruptcy cases must file proofs of claim. The Chapter 13 Form Plan Working Group also endorsed that approach. Some members of the Rules Committee, however, expressed concern that requiring the filing of proofs of claim by secured creditors might have consequences in cases beyond chapters 12 and 13, such as business chapter 11 cases. They therefore urged that any amendment to Rule 3002(a) be limited to apply to secured creditors in chapter 12 and 13 cases, where the case law most clearly indicated confusion caused by the lack of a requirement for secured creditors to file proofs of claim. The Rules Committee agreed to defer decision on the suggestion to give the Business Subcommittee an opportunity to express its view on the suggestion.

The Business Subcommittee discussed the suggestion during its July 26, 2012, conference call. The Subcommittee did not come to rest on a recommendation in favor of, or against, the suggestion. This memorandum sets out the principal concerns of members of the Subcommittee who favor limiting the amendment to Rule 3002(a) to cover only chapter 12 and

13 cases. It also discusses the views expressed in favor of amending Rule 3002(a) to require secured creditors to file proofs of claim in all cases.

The Subcommittee's Discussion

Two concerns figured most prominently in the Subcommittee's discussion of the proposal: (i) its effect on secured creditors who would otherwise wish to avoid submission to the jurisdiction of the bankruptcy court; and (ii) its potential to generate unintended consequences in business chapter 11 cases, including confusion as to the validity of a secured creditor's lien if the creditor decides not to file a proof of claim.

1. Forcing Submission to the Bankruptcy Court's Jurisdiction

The first concern is that a general requirement that secured creditors file proofs of claim will unfairly coerce some creditors to submit themselves to the jurisdiction of the bankruptcy court. Mr. Kohn raised this concern with respect to governmental entities that choose not to file proofs of claim in order to limit any waiver of sovereign immunity. A similar concern could be expressed by non-governmental entities that, for example, would be deemed to waive their rights to a jury trial in a preference action by filing a proof of claim against the debtor's estate. *See Langenkamp v. Culp*, 498 U.S. 42 (1990) (*per curiam*) (holding that creditors in a chapter 11 case who filed proofs of claim against the debtor's estate "brought themselves within the equity jurisdiction of the Bankruptcy Court" and were not entitled to a jury trial under the Seventh Amendment in a preference action).

A point of discussion in response to this concern was whether secured creditors who would not file a proof of claim under the current version of Rule 3002(a) would be compelled or misled to do so under an amended version of the rule. On the one hand, some secured creditors

may misread the mandatory language of an amended rule to require filing in all circumstances. But the amended rule would state only that a secured creditor must file a proof of claim in order to have an allowed secured claim. That is a restatement of the law—a secured creditor seeking to have an allowed secured claim must file a proof of claim, unless the claim has been filed by the debtor or trustee, or (in a chapter 9 or chapter 11 case) has been scheduled. Other portions of the Bankruptcy Rules already contain similar language. Rule 3003, applicable to chapter 9 and 11 cases, provides that “[a]ny creditor . . . whose claim . . . 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 purposes of voting and distribution.” If secured creditors in chapter 11 cases do not currently find that language to be coercive, it is arguable whether they would they find the language of an amended Rule 3002(a) coercive.

2. *Unintended Consequences*

The second concern is that rulemaking in this area should proceed cautiously to avoid unintended consequences. Because the suggestion to amend Rule 3002 arises from confusion in case law involving chapter 12 and chapter 13 cases, some members of the Subcommittee favor limiting the amendment to those cases.

Members of the Subcommittee recognized, however, that there are two competing kinds of unintended consequences. One is the kind expressed by those favoring a more limited rule amendment—that an amendment touching on cases outside chapters 12 and 13 may disturb settled practices in other areas (such as business chapter 11 or chapter 7 cases). A member of the Subcommittee suggested that a broader amendment could lend support to the argument that a secured creditor’s lien, even though it ordinarily survives bankruptcy, see *Dewsnup v. Timm*, 502

U.S. 410, 417-18 (1992), would no longer attach to any property if the secured creditor failed to file a proof of claim in accordance with amended Rule 3002(a). Although no member of the Subcommittee found this reasoning persuasive, it was given as an example of the sort of argument that might be generated by an amendment to Rule 3002(a) that was not limited to chapters 12 and 13. Members of the Subcommittee also recognized, however, that limiting the amendment to chapters 12 and 13 would mean that similar arguments—to the extent they are a concern—might be made in those cases.

The Subcommittee also discussed another potential unintended consequence, but one that militated in favor of an amendment to Rule 3002(a) to cover all cases. The countervailing concern is that a limited amendment may be read, by negative implication, to say that a proof of claim does *not* need to be filed in order for a secured creditor to have an allowed claim in non-chapter 12 or 13 cases. That misreading of a limited amended rule would also generate unwanted confusion.

After its meeting, the Subcommittee decided to report its discussion to the Rules Committee without a recommendation on the suggestion. Members of the Subcommittee recognized, however, that the Rules Committee may benefit from additional views on the issue if the package of rule amendments being considered in connection with the national chapter 13 form plan—including the amendment to Rule 3002(a)—is presented to interested groups after the fall meeting.

TAB : D

THIS PAGE INTENTIONALLY BLANK

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: SUBCOMMITTEE ON BUSINESS ISSUES
RE: SUGGESTION REGARDING NOTICE OF REMOVAL AND RULE 9027
DATE: AUGUST 12, 2012

The Advisory Committee to the Uniform Local Rules for the Northern and Southern Districts of Mississippi has submitted a suggestion (11-BK-M) for amending Rule 9027 to clarify two issues that have caused confusion for bankruptcy lawyers in Mississippi. The Mississippi committee seeks to have the rule state specifically that (1) a notice of removal must be filed with the bankruptcy, not district, clerk; and (2) the notice must be filed with the bankruptcy clerk for the district and division where the civil action to be removed is pending, regardless of where the related bankruptcy case is pending. The Subcommittee considered this suggestion during its conference call on July 26, and, for the reasons that follow, **it recommends that the Advisory Committee take no further action on the suggestion.**

Bankruptcy vs. District Clerk

The statutory provision for removal of bankruptcy claims or causes of action—28 U.S.C. § 1452—provides that a “party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.” The provision was enacted in 1984 as part of the congressional response to *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). It replaced 28 U.S.C. § 1478, which had

authorized removal of bankruptcy-related claims to the “bankruptcy court for the district where such civil action is pending.”

Section 1452’s reference to the district court is consistent with other Judicial Code provisions related to bankruptcy that were enacted in 1984. Section 1334 confers bankruptcy jurisdiction on the district courts, and § 151 provides that bankruptcy judges “constitute a unit of the district court to be known as the bankruptcy court for that district.” Section 157 provides that the district court may refer any or all bankruptcy cases and proceedings to the bankruptcy judges of the district; §§ 1408 and 1409 provide for venue of bankruptcy cases and proceedings in the district court; and § 1412 provides that the district court may transfer venue of a bankruptcy case or proceeding to another district.

Rule 9027 prescribes the procedures for removal. Subsection (a)(1) provides that a “notice of removal shall be filed with the clerk of the district and division within which is located the state or federal court where the civil action is pending.” For purposes of the Bankruptcy Rules, “clerk” is defined in Rule 9001(3) as the “bankruptcy clerk, if one has been appointed, [and] otherwise the clerk of the district court.”

The Mississippi Rules Committee’s suggestion is prompted by a split of authority in the district courts of that state with respect to whether the notice of removal must be filed with the district clerk or the bankruptcy clerk. In the Southern District of Mississippi, Judge Wingate has held in at least two cases that the notice must be filed in the district court. *Morgan v. Bruce*, 1993 WL 786892 (S.D. Miss. 1993); *Searcy v. Knostman*, 155 B.R. 699 (S.D. Miss. 1993). According to the committee, the Northern District of Mississippi takes the opposite view and requires bankruptcy notices of removal to be filed with the bankruptcy clerk.

Although there was some uncertainty on the question after the enactment of § 1452, the majority view now is that a bankruptcy removal petition is to be filed in the bankruptcy court. *See, e.g., In re Coastal Plains, Inc.*, 338 B.R. 703 (N.D. Tex. 2006) (collecting and discussing cases). This reading is based on the conclusion that the statutory change in 1984 from “bankruptcy court” to “district court” merely reflected the simultaneous creation of the bankruptcy court as a unit of the district court, so that “removing a case to a bankruptcy court is the functional equivalent of removing it to the federal district court under § 1452(a).” *Id.* at 711. Courts also rely on the definition of “clerk” in the Bankruptcy Rules and the inefficiency of requiring removal to the district court, only to have the case automatically referred to the bankruptcy court.

The handful of cases that have adopted the minority view are mostly older cases, decided in the late 1980s or early 1990s. *But see McKinstry v. Sergeant*, 442 B.R. 567, 572 (E.D. Ky. 2011). They rely primarily on the specific reference to “district court” in § 1452, in contrast to the earlier reference in § 1478 to “bankruptcy court.” As Judge Wingate wrote in the *Morgan* case, “[I]t is Congress’ wish that removal petitions under § 1452(a) be filed in the District Court” 1993 WL 786892 at *7.¹

Some districts have adopted local bankruptcy rules that specify that a bankruptcy notice of removal must be filed with the clerk of the bankruptcy court. *See, e.g.*, LBR 9027-1 (Bankr. D.N.J); LBR 9027-1 (Bankr. D. Colo.); LBR 9027-1 (Bankr. D. Ariz.); LBR 9027-1 (Bankr. S.D. Cal); LBR 9027-1 (Bankr. W.D. Wash.). These rules were promulgated to clear up any

¹ Judge Wingate also pointed out that Rule 9027(e) provides that after removal of a claim or cause of action to a district court, the district court may take certain actions, “or, if the case under the Code has been referred to a bankruptcy judge of the district,” the bankruptcy judge may act. 1993 WL 786892 at *7. He read that provision as contemplating removal of a civil action to the district court and then referral to the bankruptcy court. It may, however, be read as authorizing immediate action in the removed case by a bankruptcy judge if the underlying bankruptcy case has already been referred to the bankruptcy court.

confusion that might exist about the bankruptcy removal procedure. In Mississippi the adoption of a similar rule would not be possible, since the two districts have a uniform set of local bankruptcy rules and there is the split of district court authority on the question.

Although the desire for a uniform procedure in Mississippi is understandable, the Subcommittee concluded that an amendment of Rule 9027 would not solve the problem. Judge Wingate's conclusion that a notice of removal should be filed in the district court was based primarily on his reading of § 1452. His view of congressional intent would not likely be changed by an amendment to the bankruptcy rule, which would not supersede the statute. Moreover, Rule 9027(a)'s reference to "clerk" is consistent with the other bankruptcy rules; they use that term to mean bankruptcy clerk. Although the new Part VIII rules will follow a different practice,² it seems preferable to rely on the defined meaning of the term in Rule 9027, which most courts have understood to mean bankruptcy clerk. To include "bankruptcy" before "clerk" in this one rule might create confusion about the meaning of "clerk" elsewhere.

Removal District

The suggestion also requests a clarification in Rule 9027 of the district to which a claim or cause of action should be removed when the civil action is pending in a state court located in a federal district other than the one where the underlying bankruptcy case is pending. The Subcommittee concluded that both the statute and the rule speak clearly to this issue. Section 1452(a) provides for removal "to the district court for the district where such civil action is pending," and Rule 9027(a)(1) says that a notice of removal "shall be filed with the clerk for the district and division within which is located the state or federal court where the civil action is pending." The suggestion does not explain why there is confusion over this issue or how the rule might be worded more clearly.

² They will refer specifically to "bankruptcy clerk," "district clerk," and "BAP clerk."

TAB ;

THIS PAGE INTENTIONALLY BLANK

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS, AND APPEALS

RE: SUGGESTED AMENDMENT TO RULE 8013 IN LIGHT OF *STERN V. MARSHALL*

DATE: AUGUST 16, 2012

Professor Alan N. Resnick has submitted a suggestion (12-BK-H) to amend the Bankruptcy Rules in response to *Stern v. Marshall*. 131 S. Ct. 2594 (2011). The suggestion would go further than the post-*Stern* rule amendments approved for publication for public comment. Those proposed amendments principally require litigants to state whether they do or do not consent to entry of final orders or judgment by bankruptcy judges, who are directed to decide the proper treatment of proceedings accordingly. Professor Resnick urges that the Bankruptcy Rules should explicitly provide that a district court, in an appeal of a bankruptcy judge's decision, may treat the decision as proposed findings of fact and conclusions of law if the bankruptcy judge did not have the power, consistent with Article III, to enter a final order or judgment. His suggestion would also give the parties in those circumstances an opportunity to file objections (or responses to objections) to the bankruptcy judge's decision when the district court decides to treat it as proposed findings and conclusions. In the alternative, a party could elect to have its appellate brief deemed as objections or responses.

The Subcommittee considered the suggestion during its August 2, 2012, conference call. Two questions were identified during the discussion. The first is whether the Bankruptcy Rules should explicitly provide for a district court to treat a bankruptcy judge's decision as proposed findings and conclusions. The rule amendments proposed by the Rules Committee in response

to *Stern* do not address that issue, although several district courts have done so by amending their standing orders of reference. The second question is whether the Bankruptcy Rules should expressly give parties an opportunity to file objections to a bankruptcy judge's decision once a district court decides to treat it as proposed findings and conclusions.

The Subcommittee concluded that the suggestion has identified potential areas of concern, but that there is no evidence of confusion or disruption calling for immediate rulemaking. **The Subcommittee therefore recommends that further action on the suggestion await the receipt of public comments on the previously proposed *Stern*-related amendments and additional developments in the case law.**

Professor Resnick's Suggestion

The suggestion would amend Rule 8013, which in its current form addresses the weight accorded to a bankruptcy judge's findings of fact, by adding a new subsection.¹ The amended rule would provide as follows:

RULE 8013. DISPOSITION OF APPEAL; WEIGHT ACCORDED BANKRUPTCY JUDGE'S FINDINGS OF FACT; TREATMENT OF JUDGMENT, ORDER, OR DECREE AS PROPOSED FINDINGS AND CONCLUSIONS

(a) Disposition; Weight Accorded Findings of Fact. On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless

¹ There is no equivalent to current Rule 8013 in the proposed revisions to the Part VIII rules. The most logical place to include a provision along the lines of the suggestion would be Rule 9033(d), which addresses the standard of review by a district court receiving a bankruptcy judge's proposed findings of fact and conclusions of law.

clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.

(b) Treatment as Proposed Findings and Conclusions. If the appeal is to the district court and the district court determines that the bankruptcy judge did not have the power consistent with Article III of the Constitution to enter the judgment, order, or decree, the district court may treat the judgment, order, or decree as proposed findings of fact and conclusions of law. In that event, Rule 9033(b), (c), and (d) shall apply, except that the district court shall set a time for serving and filing written objections under Rule 9033(b). Any party may elect to have its appellate brief treated as objections or responses to the proposed findings and conclusions.

Professor Resnick identifies four reasons for his suggestion. First, the proposed amendment would make clear that a district court does not need to remand a proceeding to a bankruptcy court and await the formal issuance of proposed findings and conclusions in order to treat the bankruptcy court's decision accordingly. Second, the suggestion would comport with *Stern* itself, in which the district court treated the bankruptcy judge's decision, entered as a final judgment, as proposed findings and conclusions. Third, the proposal would set a uniform national procedure in place of piecemeal development of practices in each district regarding the treatment on appeal of *Stern*-barred bankruptcy decisions. Fourth, the proposal would ensure that the parties have an opportunity to object, or respond to objections, to the bankruptcy judge's decision.

The Subcommittee's Recommendation

The first question raised by the suggestion is whether the Bankruptcy Rules should state explicitly that a district court may treat a bankruptcy judge's decision as proposed findings and conclusions when the decision cannot be considered a final order in light of *Stern*. In formulating the proposed *Stern*-related amendments to the Bankruptcy Rules, the Rules Committee contemplated that district courts may exercise their authority under 28 U.S.C. § 157(a) and modify their standing orders of reference to address that situation. *See, e.g.*, Amended Standing Order of Reference, Case No. 12 Misc. 00032 (S.D.N.Y. Jan. 31, 2012) (“The district court may treat any order of the bankruptcy court as proposed findings of fact and conclusions of law in the event the district court concludes that the bankruptcy judge could not have entered a final order or judgment consistent with Article III of the United States Constitution.”). In addition to the Southern District of New York, a number of other district courts (including the District of Delaware, the Middle District of Florida, the Southern District of Florida, the Western District of Louisiana, the District of Massachusetts, the Southern District of Texas, and the District of Vermont) have already adopted amendments to their standing orders of reference that expressly do so. In Professor Resnick's view, a national rule is preferable, as it “would eliminate the need for district courts to amend their referral orders and would promote uniformity.” On the other hand, even in the absence of referral orders authorizing it, district courts have not hesitated to treat judgments of a bankruptcy court as proposed findings and conclusions. *See, e.g., Feuerbacher v. Moser*, 2012 WL 1070138, at *9 (E.D. Tex. March 29, 2012) (affirming bankruptcy judge's order on appeal but in the alternative adopting the decision as proposed findings and conclusions). *Cf. In re Palm Beach Finance Partners, L.P.*, 2012 WL 2504009, at *3 (S.D. Fla. June 28, 2012) (“The Court will review the specific legal question of

constitutional authority de novo, and if the Court determines that the bankruptcy court erred in rendering a final judgment, it will simply treat the [bankruptcy court's] 'decision' as a report and recommendation.”). There appears to be no reported decision remanding proceedings to the bankruptcy court for issuance of proposed findings and conclusions in lieu of the entry of judgment. Moreover, the Subcommittee is mindful that the sentiment among members of the Rules Committee at the March meeting favored taking a minimalist approach with respect to *Stern* to allow courts the flexibility to explore further developments in the area. Given the recent movement among district courts to amend their standing orders of reference to permit treatment of bankruptcy decisions as proposed findings and conclusions, and the absence of any indication of actual confusion in this respect, there is reason to adhere to that cautious approach.

The second question—whether the Bankruptcy Rules should expressly provide the parties with an opportunity to file objections to a bankruptcy judge's order deemed to be proposed findings and conclusions—presents additional considerations. Under Rule 9033(b), a party must, within fourteen days, file written objections “which identify the specific proposed findings or conclusions objected to and state the grounds for such objection.” A party may respond to another party's objections within fourteen days thereafter. Failure to object to proposed findings and conclusions carries significant consequences. As Professor Resnick observes, the standard of review applicable when a district court is sitting as an appellate court differs from the standard applicable when the district court reviews a bankruptcy judge's proposed findings and conclusions. With proposed findings and conclusions, the bankruptcy court's decision—on legal and factual questions—is subject to de novo review, but only as to those portions of the decision to which a party has filed specific written objections. *See* Fed. R. Bankr. P. 9033(d) (“The district judge shall make a de novo review upon the record or, after additional evidence, of any

portion of the bankruptcy judge's findings of fact or conclusions of law to which *specific written objection* has been made in accordance with this rule.” (emphasis added)). Failure to make a timely and specific objection to a bankruptcy judge's decision may also be considered a waiver of a party's right to appeal the issue from the district court to the court of appeals. *See In re Nantahala Village, Inc.*, 976 F.2d 876, 880 (4th Cir. 1992) (holding that failure to file specific written objections to bankruptcy judge's proposed findings and conclusions constituted waiver of party's “rights to present in [the court of appeals] consequent issues which it did not contest in the district court”).

The suggestion points out a gap in the Bankruptcy Rules when a proceeding is found on appeal to fall outside the bankruptcy court's constitutional authority to enter final orders or judgment. There does not seem to be a consensus approach taken by district courts when that situation arises. In *Stern* itself, the district court “deemed the bankruptcy court's [decision] as proposed findings of fact and conclusions of law pursuant to 28 U.S.C. § 157(c)(1) and began to undertake a de novo review of the record submitted” in the proceeding. *In re Marshall*, 275 B.R. 5, 10 (C.D. Cal. 2002). But it does not appear that the district court gave the parties an additional opportunity to make specific written objections to the bankruptcy judge's decision. In at least one post-*Stern* case, however, the district court deemed the bankruptcy judge's order to be a report and recommendation and treated the appellant's brief as objections to the report and recommendation. The appellees were then given fourteen days to respond to those objections. *In re Coudert Bros. LLP*, 2011 WL 5593147 at *15 (S.D.N.Y. Sept. 23, 2011).

The Subcommittee considered the possibility that this gap in the rules may not be a significant one if, in most situations, the parties' appellate briefs will adequately serve to alert the district court as to which portions of the bankruptcy judge's decision are contested. When, as in

Coudert Bros., additional responses are necessary, district courts retain sufficient authority to order additional filings by the parties.

In keeping with the cautious approach of the proposed *Stern*-related rule amendments, the Subcommittee believes it would be advisable to allow further development in the district courts before assessing whether parties are being deprived of an adequate opportunity to object or respond to bankruptcy court decisions that have been treated on appeal as proposed findings and conclusions. When public comments to the published post-*Stern* rules are received, there will be additional opportunity to assess the advisability of rulemaking along the lines of the suggestion.

THIS PAGE INTENTIONALLY BLANK

TAB 12

THIS PAGE INTENTIONALLY BLANK

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON TECHNOLOGY AND CROSS BORDER
INSOLVENCY

RE: ELECTRONIC SIGNATURES OF PERSONS OTHER THAN FILING
ATTORNEYS

DATE: AUGUST 12, 2012

At the fall 2011 meeting of the Advisory Committee, the Subcommittee on Forms reported on a set of technological issues that the Forms Modernization Project had been considering and for which it had determined that a national rule might be beneficial. The first issue was whether and under what circumstances bankruptcy courts can accept documents signed electronically by an individual, such as a debtor, who is not a registered user of the CM/ECF system (a “non-registrant”) without requiring retention of the paper document with the “wet” or original signature. Second, if retention is required, should a national rule be proposed that specifies the proper custodian of the wet signature and the period of retention? Currently, pursuant to Rule 5005(b)¹, these issues in bankruptcy courts are governed by local rules that vary significantly from one district to another. Following presentation and discussion of the Forms Subcommittee’s report at the fall 2011 meeting, the Chair referred the electronic-signature issues to this Subcommittee for consideration of any needed rule changes.

The Subcommittee considered the matter and reported to the Advisory Committee at the spring 2012 meeting. It recommended that a national rule on electronic signatures be developed,

¹ Bankruptcy Rule 5005(b)(2) provides in part that a “court may by local rule permit or require documents to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes.” This provision was added in 1996 to authorize courts to permit electronic filing, signing, and verification, and later amended in 2006 to allow courts to require those activities to be done electronically, so long as reasonable exceptions are allowed.

following one of two approaches that it presented. The Subcommittee suggested, however, that if the Advisory Committee accepted its recommendation and decided to consider a national rule, the Chair should first determine from the Chair of the Standing Committee whether the project should be pursued as a joint undertaking with other rules advisory committees. The Committee agreed with this recommendation, and Judge Wedoff thereafter consulted with Judge Kravitz.

The Advisory Committee was given permission to proceed on its own in considering whether to propose a national bankruptcy rule that would create a uniform procedure for electronic signatures. The matter was then referred back to this Subcommittee for consideration of the content of a national rule. The Subcommittee discussed the matter during its conference call on August 1, 2012, and now reports on the actions it is undertaking to guide its formulation of a rule proposal.

The Two Options Previously Presented to the Advisory Committee

At the spring 2012 Advisory Committee meeting, the Subcommittee recommended that a national bankruptcy rule amendment regarding electronic signatures be pursued. It presented two options for consideration, neither of which would require attorneys or clerks to retain hard copies of documents with wet signatures. The proposed options were the following:

(1) Rule 5005(b) could be amended to adopt a declaration procedure similar to one that is currently used in the Bankruptcy Court for the Northern District of Illinois. The rule would provide that a declaration with an original signature must be filed when documents requiring the signature of non-registrants are filed electronically. The declaration would attest to the truthfulness and validity of the information in the electronically filed document, and the clerk would store the declaration electronically. No hard copies of the underlying document or the declaration would have to be retained.

(2) Rule 5005(b) could be amended to declare that any petition or other document electronically filed and verified, signed, or subscribed in a manner that is consistent with technical standards that the Judicial Conference of the United States establishes must be treated for all purposes (including penalties for perjury) in the same manner as though signed or subscribed. This language generally tracks the language of 26 U.S.C. § 6061(b)(2), which validates electronic signatures on tax returns. The IRS uses taxpayers' personal identification numbers ("PINs") as electronic signatures. (PINs were previously assigned by the IRS to electronically filing taxpayers and are now in most cases selected by the taxpayers themselves.) The Subcommittee concluded that a bankruptcy rule along these lines should not specify the technological method for providing an electronic signature. As the 1996 Committee Note to Rule 5005 stated:

By delegating to the Judicial Conference the establishment and future amendment of national standards for electronic filing, the Supreme Court and Congress will be relieved of the burden of reviewing and promulgating detailed rules dealing with complex technological standards. Another reason for leaving to the Judicial Conference the formulation of technological standards for electronic filing is that advances in computer technology occur often, and changes in the technological standards may have to be implemented more frequently than would be feasible by rule amendment under the Rules Enabling Act process.

Because the Committee at the spring meeting accepted the recommendation that Judge Wedoff consult with Judge Kravitz about the consideration of this issue by a joint rules advisory subcommittee, the merits of the two alternatives were not discussed by the Advisory Committee.

Issues Considered by the Subcommittee

The Subcommittee's earlier recommendation was based on the conclusion that it would be desirable to eliminate the requirement for retaining hard copies of documents bearing the wet signature of non-registrants. Doing so would make the lengthier modernized forms more acceptable to debtors' attorneys, since hard copies would not have to be retained, and it would

eliminate a concern expressed by representatives of the Department of Justice about attorneys being the custodians of documents that might be used as evidence against their clients. It also would prevent courts from having to assume the responsibility for retaining hard copies of documents with wet signatures. During its discussions on August 1, the Subcommittee considered how retention could best be eliminated without jeopardizing future prosecutions for perjury and bankruptcy fraud.

Members of the Subcommittee agreed that the first option described above—the use of a signed declaration accompanying electronically filed documents—has the advantage of being simple to implement and already being used in at least one district. Before proposing a rule based on this model, however, the Subcommittee decided that it would be helpful to undertake a comprehensive survey of the local rules and local electronic-case-filing procedures to determine (1) how many other districts use signed declarations in lieu of requiring retention of the wet signatures and (2) what their requirements are for this procedure. For example, must the signed declaration be physically presented to the clerk’s office, where it is then scanned, or is the attorney permitted to scan the declaration and file it electronically? Dr. Molly Johnson of the Federal Judicial Center has agreed to undertake this research task for the Committee.

The greater the number of districts that use this type of procedure, the more comfort the Committee might have that it can feasibly be adopted as a national procedure. Further reassurance could be gained by seeking input from U.S. Attorney’s offices in relevant districts about whether they have encountered or they anticipate any evidentiary problems in prosecuting debtors without the existence of the original signed document on which the prosecution is based. Dr. Johnson will gather this input as well.

The Subcommittee concluded that the other option—adoption of a rule that declares that electronic signatures meeting certain requirements shall be treated for all purposes as the signature of a non-registrant—would be more complicated to pursue. While the Subcommittee previously suggested to the Advisory Committee that the governing technical standards should be left to the Judicial Conference, those standards would be critical to the rule’s operation. There would need to be some method of uniquely identifying an electronic signature with the non-registrant. A rule of this type is used for registrants with the CM/ECF system because they have unique log-ins and passwords. Electronic income-tax-form filers have a PIN. While they are now permitted to select the number for themselves, they must connect that number with some personally identifying information—their prior year’s adjusted gross income or prior year’s PIN. Because debtors in bankruptcy, however, may be first-timers, a different type of identification system would need to be devised.

Another issue the Subcommittee considered is whether any other Judicial Conference Committees will need to be advised of the Committee’s work on a rule that would eliminate the retention requirement. The Committee on Court Administration and Case Management (“CACM”) was the originator of model rules regarding electronic case filing, and the Commentary to those rules asserted the need for the retention of the original wet-signed document. Technological advances since the 2001 approval of the model rules may have rendered that requirement unnecessary. But given CACM’s central role in the creation of the model rules on which many of the local bankruptcy rules are based, the Subcommittee concluded that it would be prudent to make that committee aware of the Committee’s development of a rule proposal as it progresses. Judge Wedoff agreed to engage in this communication with the CACM chair.

The Subcommittee hopes to be in a position to make a recommendation to the Advisory Committee about a national electronic-signature rule at the spring 2013 meeting.

TAB 13

THIS PAGE INTENTIONALLY BLANK

Subcommittee on Attorney Conduct and Health Care

Item 11 will be an oral report.

THIS PAGE INTENTIONALLY BLANK

TAB 12

THIS PAGE INTENTIONALLY BLANK

TAB 14A

THIS PAGE INTENTIONALLY BLANK

Interim Rule 1007-I

Item 12A will be an oral report.

THIS PAGE INTENTIONALLY BLANK

TAB 14D

THIS PAGE INTENTIONALLY BLANK

Interim Rule 1007-I.¹ Lists, Schedules, Statements, and Other Documents; Time Limits; Expiration of Temporary Means Testing Exclusion²

1 * * * * *

2 (b) SCHEDULES, STATEMENTS, AND OTHER
3 DOCUMENTS REQUIRED.

4 * * * * *

5 (4) Unless either: (A) § 707(b)(2)(D)(I) applies,
6 or (B) § 707(b)(2)(D)(ii) applies and the exclusion from means
7 testing granted therein extends beyond the period specified by Rule
8 1017(e), an individual debtor in a chapter 7 case shall file a
9 statement of current monthly income prepared as prescribed by the
10 appropriate Official Form, and, if the current monthly income
11 exceeds the median family income for the applicable state and
12 household size, the information, including calculations, required by
13 § 707(b), prepared as prescribed by the appropriate Official Form.

14 * * * * *

¹ Interim Rule 1007-I has been adopted by the bankruptcy courts to implement the National Guard and Reservists Debt Relief Act of 2008, Public Law No: 110-438, as amended by Public Law No. 112-64. The amended Act, which provides a temporary exclusion from the application of the means test for certain members of the National Guard and reserve components of the Armed Forces, applies to bankruptcy cases commenced in the seven-year period beginning December 19, 2008.

² Incorporates (1) time amendments to Rule 1007 which took effect on December 1, 2009, ~~and~~ (2) an amendment, effective December 1, 2010, which extended the time to file the statement of completion of a course in personal financial management in a chapter 7 case filed by an individual debtor, and (3) a conforming amendment, effective December 1, 2012, which removed an inconsistency created by the 2010 amendment.

15 (c) TIME LIMITS. In a voluntary case, the schedules,
16 statements, and other documents required by subdivision (b)(1), (4),
17 (5), and (6) shall be filed with the petition or within 14 days
18 thereafter, except as otherwise provided in subdivisions (d), (e), (f),
19 (h), and (n) of this rule. In an involuntary case, ~~the list in~~
20 ~~subdivision (a)(2), and~~ the schedules, statements, and other
21 documents required by subdivision (b)(1) shall be filed by the
22 debtor within 14 days of the entry of the order for relief. In a
23 voluntary case, the documents required by paragraphs (A), (C), and
24 (D) of subdivision (b)(3) shall be filed with the petition. Unless
25 the court orders otherwise, a debtor who has filed a statement under
26 subdivision (b)(3)(B), shall file the documents required by
27 subdivision (b)(3)(A) within 14 days of the order for relief. In a
28 chapter 7 case, the debtor shall file the statement required by
29 subdivision (b)(7) within 60 days after the first date set for the
30 meeting of creditors under § 341 of the Code, and in a chapter 11 or
31 13 case no later than the date when the last payment was made by
32 the debtor as required by the plan or the filing of a motion for a
33 discharge under § 1141(d)(5)(B) or § 1328(b) of the Code. The
34 court may, at any time and in its discretion, enlarge the time to file
35 the statement required by subdivision (b)(7). The debtor shall file
36 the statement required by subdivision (b)(8) no earlier than the date
37 of the last payment made under the plan or the date of the filing of a

38 motion for a discharge under §§1141(d)(5)(B), 1228(b), or 1328(b)
39 of the Code. Lists, schedules, statements, and other documents
40 filed prior to the conversion of a case to another chapter shall be
41 deemed filed in the converted case unless the court directs
42 otherwise. Except as provided in § 1116(3), any extension of time
43 to file schedules, statements, and other documents required under
44 this rule may be granted only on motion for cause shown and on
45 notice to the United States trustee, any committee elected under
46 § 705 or appointed under § 1102 of the Code, trustee, examiner, or
47 other party as the court may direct. Notice of an extension shall be
48 given to the United States trustee and to any committee, trustee, or
49 other party as the court may direct.

50 * * * * *

51 (n) TIME LIMITS FOR, AND NOTICE TO, DEBTORS

52 TEMPORARILY EXCLUDED FROM MEANS TESTING.

53 (1) An individual debtor who is temporarily excluded from
54 means testing pursuant to § 707(b)(2)(D)(ii) of the Code shall file
55 any statement and calculations required by subdivision (b)(4) no
56 later than 14 days after the expiration of the temporary exclusion if
57 the expiration occurs within the time specified by Rule 1017(e) for
58 filing a motion pursuant to § 707(b)(2).

59 (2) If the temporary exclusion from means testing under
60 § 707(b)(2)(D)(ii) terminates due to the circumstances specified in

61 subdivision (n)(1), and if the debtor has not previously filed a
62 statement and calculations required by subdivision (b)(4), the clerk
63 shall promptly notify the debtor that the required statement and
64 calculations must be filed within the time specified in subdivision
65 (n)(1).

TABS 13-17

THIS PAGE INTENTIONALLY BLANK

Suggestions 12-BK-E and 12-BK-L
Bankruptcy-related legislation
Section 109(h) of the Code
Bull Pen

Items 13 – 17 will be oral reports.

THIS PAGE INTENTIONALLY BLANK

TAB 18

THIS PAGE INTENTIONALLY BLANK

Bankruptcy Rules Tracking Docket (By Rule or Form Number)

8/23/12

Suggestion	Docket No., Source & Date	Status Pending Further Action	Tentative Effective Date
<p>Rule 1006(b) Courts may require a minimum initial payment with fee installment requests</p>	<p>Suggestion 12-BK-I Judge John Waites on behalf of the Bankruptcy Judges Advisory Group</p>	<p>6/12 - Subcommittee on Consumer Issues considered 9/12 - Committee agenda</p>	
<p>Rule 1007(c) Conform to deadline in (a)(2) to file a list of creditors in an involuntary case</p>	<p>Committee proposal Suggestion 10-BK-L Susan Ivancsics, Court Services Admin, Northern District of Indiana</p>	<p>9/10 - Committee approved as technical amendment, Reporter to draft Committee Note 6/11 - Standing Committee approved as technical amendment 9/11 - Judicial Conference approved 4/12 - Supreme Court approved</p>	<p>12/1/12</p>
<p>Rule 1007(b)(7) Allow financial management course provider to file notice of course completion</p>	<p>Suggestion 09-BK-I Dana C. McWay on behalf of the Next Generation Bankruptcy CM/ECF Clerk's Office Functional Requirements Group</p>	<p>4/10 - Committee considered, referred to Subcommittee on Consumer Issues 8/10 - Subcommittee considered 9/10 - Committee approved publication 6/11 - Standing Committee approved publication 8/11 - Published for comment 3/12 - Committee approved 6-12 - Standing Committee approved 9/12 - Judicial Conference agenda</p>	<p>12/1/13</p>
<p>Interim Rule 1007-I Conform to 1007(c) amendment</p>	<p>Committee proposal</p>	<p>9/12 - Committee agenda</p>	<p>12/1/12</p>

<p>Rule 1014 Cases filed in different districts by a debtor and certain affiliates</p>	<p>Suggestion 10-BK-J Judge Linda Riegle</p>	<p>4/11- Committee discussed, referred to Business Subcommittee 6/11, 8/11 - Subcommittee discussed 9/11 - Committee approved publication 11/11 - Referred to Subcommittee for further consideration 12/11 - Subcommittee considered 3/12 - Committee approved publication of revised amendment 6/12 - Standing Committee approved publication 8/12 - Published for comment</p>	<p>12/1/14</p>
<p>Rule 2002(a)(1), Official Forms 9A-I, 21 Redact debtor's SSN on Form 9A-I</p>	<p>Suggestion 11-BK-J Committee on Court Administration and Case Management</p>	<p>1/12 - Subcommittee on Privacy, Public Access, and Appeals considered 3/12 - Committee approved technical amendment adding privacy warnings to the forms 6/12 - Standing Committee approved amended forms 9/12 - Judicial Conference agenda</p>	<p>12/1/12</p>
<p>Rule 2002(f)(1) Require notice of chapter 13 confirmation</p>	<p>Suggestion 12-BK-B Bankruptcy Noticing Working Group</p>	<p>3/12 - Committee discussed, referred to Subcommittee on Consumer Issues 6/12 - Subcommittee considered 9/12 - Committee agenda</p>	

<p>Rule 2015(a)(3) Correct reference to 11 U.S.C. § 704(a)(8)</p>	<p>William Redden, Clerk Eastern District of Virginia</p>	<p>3/11 - Referred to Chair and Reporter 4/11 - Committee approved as technical amendment 6/11 - Standing Committee approved as technical amendment 9/11 - Judicial Conference approved 4/12 - Supreme Court approved</p>	<p>12/1/12</p>
<p>Rule 3001, Official Form 10 Facilitate identification of stale claims and inadequately documented claims filed after bulk transfer of consumer debts</p>	<p>Suggestion 08-BK-J Judge A. Thomas Small</p>	<p>1/09 - Subcommittee on Consumer Issues discussed 3/09 - Committee approved publication of amendment to Rule 3001(c)(1) with mortgage amendments to Rules 3001, 3002.1 (see above); certification approved, added to pending amendments to Form 10 6/09 - Standing Committee approved publication 8/09 - Published for comment 2/10 - Public hearing 2/10 - Consumer Subcommittee considered comments 4/10 - Committee approved republication of revised Rule 3001 and publication of Form 10 with certification 6/10 - Standing Committee approved publication 8/10 - Published for comment 2/11 - Public hearing 2/11 - Subcommittee considered comments 4/11 - Committee approved Rule 3001 as revised 6/11 - Standing Committee approved revised rule 9/11 - Judicial Conference approved revised rule 4/12 - Supreme Court approved revised rule</p>	<p>12/1/12 Rule 3001 12/1/11 Form 10</p>

<p>Rules 3001, 3002, 3007, 3012, 3015, 4003, 7001, 7004, 9009 Amendments in connection with a chapter 13 form plan</p>	<p>Committee proposal</p>	<p>9/11 - Committee discussed 3/12 - Working group discussed 3/12 - Committee discussed 8/12 - Working Group discussed 9/12 - Committee agenda</p>	
<p>Rule 3001(c) Discrepancy between the rule and paragraph 7 of instructions for Form 10</p>	<p>Comment 10-BK-02 Linda Spaight AO US Courts, BCAD</p>	<p>3/11 – Forms Subcommittee considered 4/11 - Committee approved as a technical amendment 6/11 - Standing Committee approved as a technical amendment 9/11 - Judicial Conference approved 4/12 - Supreme Court approved</p>	<p>12/1/12</p>
<p>Rule 3002(a) Require secured creditors to file proofs of claim</p>	<p>Suggestion (11-BK-B) Judge A. Benjamin Goldgar</p>	<p>7/11 - Consumer Subcommittee discussed 9/11 - Committee discussed, referred to Subcommittee on Consumer Issues 12/11, 2/12 - Subcommittee considered 3/12 - Committee considered, deferred further action, referred to Subcommittee on Business Issues and Chapter 13 Form Plan 7/12 - Subcommittee considered 9/12 - Committee agenda</p>	
<p>Rules 3002, 3004 Deadline for filing deficiency claims</p>	<p>Suggestion 11-BK-H Trustee Debra L. Miller</p>	<p>12/11- Subcommittee on Consumer Issues considered 3/12- Committee considered, took no further action</p>	

<p>Rule 3002.1 Application of rule when no cure in plan</p>	<p>Suggestion 12-BK-K Laila Gonzalez</p>	<p>9/12 - Mortgage Forms Mini-conference</p>	
<p>Rule 3002.1 Where to file notices when no proof of claim</p>	<p>Suggestion 12-BK-G Judge Thomas Saladino</p>	<p>9/12 - Mortgage Forms Mini-conference</p>	
<p>Rule 3007(a) Disposition of objections to claims by negative notice</p>	<p>Suggestion 09-BK-H Judge Margaret Dee McGarrity on behalf of the Bankruptcy Judges Advisory Group</p>	<p>1/10 - Subcommittee on Consumer Issues considered 4/10 - Committee discussed, referred to Subcommittee on Consumer issues 8/10 - Subcommittee considered 9/10 - Committee discussed, referred to Subcommittee on Consumer issues 12/10 - Subcommittee considered 4/11 - Committee approved publication 6/11 - Standing Committee approved publication 8/11 - Published for comment 3/12 - Subcommittee on Consumer Issues considered 3/12 - Committee considered, referred to Chapter 13 Form Plan Working Group 7/12 - Working Group discussed</p>	

<p>Rule 3007(a) Clarify service requirements for objections to claims</p>	<p>Suggestion (09-BK-N) Judge Michael E. Romero on behalf of the Bankruptcy Judges Advisory Group</p>	<p>4/10 - Committee discussed, referred to Subcommittee on Consumer issues 8/10 - Subcommittee considered 9/10 - Committee discussed, referred to Subcommittee on Consumer issues 12/10 - Subcommittee considered 4/11 - Committee approved publication 6/11 - Standing Committee approved publication 8/11 - Published for comment 3/12 - Subcommittee on Consumer Issues considered 3/12 - Committee considered, referred to Chapter 13 Form Plan Working Group 7/12 - Working Group discussed</p>	
<p>Rule 4004(c)(1) Clarification</p>	<p>Committee Proposal</p>	<p>9/11 - Committee discussed, referred to Subcommittee on Consumer Issues 12/11 - Subcommittee considered 3/12 - Committee approved 6-12 - Standing Committee approved 9/12 - Judicial Conference agenda</p>	<p>12/1/13</p>
<p>Rule 5009(b) Conform rule to amendment to Rule 1007(b)(7)</p>	<p>Committee Proposal</p>	<p>12/10 - Considered by Consumer Subcommittee 4/11 - Committee approved publication 6/11 - Standing Committee approved publication 8/11 - Published for comment 3/12 - Committee approved 6-12 - Standing Committee approved 9/12 - Judicial Conference agenda</p>	<p>12/1/13</p>

<p>Rule 7001(1) Compelling the debtor to deliver the value of property to the trustee</p>	<p>Suggestion 12-BK-D Judge S. Martin Teel, Jr.</p>	<p>3/12 - Committee discussed, referred to the Subcommittee on Consumer Issues 6/12 - Subcommittee considered 9/12 - Committee agenda</p>	
<p>Rules 7004(e), 7012, 9006(f) Provide that the deadline for responding to a summons runs from the date of service, not the date of issuance</p>	<p>Suggestion 11-BK-F Chief Judge Peter W. Bowie</p>	<p>9/11 - Committee discussed, referred to Subcommittee on Business Issues 12/11 - Subcommittee considered 3/12 - Committee approved publication of revised amendment to Rule 7004(e) 6/12 - Standing Committee approved publication 8/12 - Published for comment</p>	
<p>Rules 7008, 7054 Finding that there is a gap in the procedure for requesting allowance of attorney's fees in adversary proceedings</p>	<p>Charlie Y, Inc., v. Carey B.A.P. 9th Cir. (Mar. 4, 2011)</p>	<p>4/11 - Committee discussed. Referred to Consumer and Business Subcommittees 7/11 - Consumer Subcommittee discussed 7/11 - Business Subcommittee discussed 9/11 - Committee approved publication 1/12 - Standing Committee approved publication as revised 8/12 - Published for comment</p>	<p>12/1/14</p>
<p>Rules 7008, 7012(b), 7016, 9027, 9033(a) Impact of decision in <i>Stern v. Marshall</i>, 131 S. Ct. 2594 (2011)</p>	<p>Committee proposal Suggestion 11-BK-I Judge Eric P. Kimball Suggestion 11-BK-K Judges Black, Goldgar, and Doyle Suggestion 11-BK-L Judge Arthur Gonzalez</p>	<p>9/11 - Committee discussed, referred to Subcommittee on Business Issues 3/12 - Subcommittee considered 3/12 - Committee approved publication 6/12 - Standing Committee approved publication 8/12 - Published for comment</p>	<p>12/1/14</p>

<p>Rules 7008, 7012, 9014, 9027 Impact of <i>Stern</i> decision</p>	<p>Suggestion 12-BK-L Judge Richard Schmidt</p>	<p>9/12 - Committee agenda</p>	
<p>Rule 7008(b) Clarify pleading requirements to recover statutory attorney's fees</p>	<p>Suggestion 12-BK-L Judge Neil P. Olack</p>	<p>9/12 - Committee agenda</p>	
<p>Rules 7016, 8001 Permit parties to agree that their appellate options will be limited to no more than one appeal or to no appeal at all</p>	<p>Suggestion 11-BK-E Judge A. Thomas Small</p>	<p>9/11 - Committee discussed, referred to Appeals Subcommittee 1/12 - Subcommittee considered 3/12 - Committee considered, took no further action</p>	
<p>Rules 7054(b) Time provisions</p>	<p>Committee proposal</p>	<p>10/09 - Committee approved changing 5 days to 7 days, deferred 1-day provision 11/09 - BJAG recommended changing 1 day to 7 days 2/10 - Subcommittee on Business Issues considered 4/10 - Committee approved publication 6/10 - Standing Committee approved publication 8/10 - Published for comment 2/11 - One comment 4/11 - Committee approved 6/11 - Standing Committee approved 9/11 - Judicial Conference approved 4/12 - Supreme Court approved</p>	<p>12/1/12</p>

<p>Rule 7056, Civil Rule 56 Timing of summary judgment motions in contested matters and adversary proceedings after civil rule amended</p>	<p>Judge Wedoff</p>	<p>3/09 - Committee discussed 10/09 - Committee considered, referred to Subcommittee on Consumer Issues 2/10 - Note in newsletters for bankruptcy judges and clerks 3/10 - Subcommittee considered 4/10 - Committee approved publication (see Rule 7054(b) above)</p>	<p>12/1/12</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------

<p>Rules 8001 - 8020 Revise Part VIII of the rules to modernize and more closely follow the Appellate Rules</p>	<p>Eric Brunstad Committee proposal</p>	<p>3/08 - Referred to Privacy, Public Access and Appeals Subcommittee 5/08 - Subcommittee discussed 8/08 - Subcommittee discussed 10/08 - Committee discussed 3/09 - Open meeting of Subcommittee on Privacy, Public Access, and Appeals 3/09 - Committee discussed 6/09 - Subcommittee discussed comments at open meeting 9/09 - Subcommittee discussed comments at 2nd open meeting 10/09 - Report to committee 12/09 - Revised draft incorporated comments at 2nd open meeting 2/10 - Subcommittee considered 4/10 - Committee received progress report 8/10, 9/10 - Subcommittee calls 9/10 - Report on Committee agenda 12/10, 2/11 - Subcommittee calls 4/11 - Discussed during joint meeting with Appellate Rules Committee 7/11 - Drafting group reviewed and revised the draft 9/11 - Committee discussed 12/1 - Report to Standing Committee 1/12, 3/12 - Subcommittee considered 3/12 - Committee approved publication of new Rules 8001 - 8028 6/12 - Standing Committee approved publication 8/12 - Published for comment</p>	<p>12/1/14</p>
----------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------

<p>Rules 8007.1 (new), 9023, 9024 Indicative rulings</p>	<p>Committee proposal</p>	<p>8/08 - Subcommittee on Privacy, Public Access, and Appeals discussed 10/08 - Committee tentatively approved publication of new Rule 8007.1 and Rule 9024 amendment 3/09 - Rules 8007.1 and 9024 assigned to the Bull Pen 3/12 - Committee approved publication of revised Rules 9023 and 9024 amendments 6/12 - Standing Committee approved publication 8/12 - Published for comment</p>	<p>12/1/14</p>
<p>Rule 9006(d) Delete as superfluous, not properly located in the Rules, and may create confusion</p> <p>Rules 9013, 9014</p>	<p>Suggestion 10-BK-D Judge Raymond T. Lyons</p> <p>Committee proposal</p>	<p>8/10 - Considered by the Subcommittee on Business Issues 9/10 - Committee approved amendments to Rules 9006, 9013, 9014 6/11 - Standing Committee approved publication 8/11 - Published for comment 3/12 - Committee approved 6-12 - Standing Committee approved 9/12 - Judicial Conference agenda</p>	<p>12/1/13</p>
<p>Rule 9016 Impact of proposed amendments to Civil Rules 37 and 45</p>	<p>Committee proposal</p>	<p>4/11 - Committee discussed, deferred until after civil rules are published 8/11 - Rules 37 and 45 published 9/11 - Bull Pen 12/11 - Subcommittee on Business Issues considered 3/12 - Committee considered, took no further action, subpoena Forms 254, 255, 256 will be updated</p>	

Rule 9027 File notice of removal with bankruptcy clerk	Suggestion 11-BK-M Attorney Jim Spencer	3/12 - Committee discussed, referred to Subcommittee on Business Issues 7/12 - Subcommittee considered 9/12 - Committee agenda	
New Rule, New Form Waiver of additional fees	Suggestion 11-BK-N Attorney David S. Yen	3/12 - Committee discussed, referred to Subcommittee on Consumer Issues 7/12 - Subcommittee considered 9/12 - Committee agenda	
New Rule Automatic dismissal under § 521(i)	Suggestion 06-BK-011 Judge Marvin Isgur Suggestion 06-BK-020 National Association of Consumer Bankruptcy Attorneys	6/07 - Subcommittee on Consumer Issues discussed 9/07 - Committee discussed 2/08 - Considered by Consumer Subcommittee 3/08 - Committee discussed 10/08, 3/09, 10/09 - Committee discussed, Reporter to continue monitoring 4/10, 9/10, 4/11, 9/11, 3/12 - Committee reports 3/12 - Reports discontinued	
New Rule National standard for practice before bankruptcy courts	Suggestion 11-BK-G Geoffrey L. Berman	1/12 - Attorney Conduct Subcommittee considered 3/12 - Committee considered, took no further action	
New Rule Electronic Signatures	Forms Modernization Project	8/11 - Forms Modernization Project considered 9/11 - Committee discussed 1/12 - Subcommittee on Technology and Cross Border Insolvency considered 3/12 - Committee considered 7/12 - Subcommittee considered 1/12 - Standing Committee discussed 7/12 - Subcommittee discussed 9/12 - Committee agenda	

<p>New Rule Treatment of <i>Stern</i> issues in bankruptcy appeals</p>	<p>Suggestion 12-BK-H Professor Alan Resnick</p>	<p>7/12 - Subcommittee on Privacy, Public Access and Appeals considered 9/12 - Committee agenda</p>	
<p>Official Form 3B Exclude non-cash government assistance</p>	<p>Suggestion 12-BK-A Judge Michael J. Kaplan</p>	<p>3/12 - Committee considered, incorporated in Forms Modernization version of the form</p>	
<p>Official Form 6C Extent of claimed exemption, <i>Schwab v. Reilly</i>, 130 S. Ct. 2652 (2010),</p>	<p>Judge Eugene Wedoff</p>	<p>7/09 - Subcommittee on Consumer Issues considered 10/09 - Committee discussed 4/10 - Committee discussed 6/10 - Supreme Court decision 8/10 - Consumer and Forms Subcommittees considered 9/10 - Committee considered, referred to Consumer, Forms Subcommittees 10/10 - Subcommittees considered 4/11 - Committee approved 4-column version for publication 6/11 - Standing Committee approved publication 8/11 - Published for comment 2/12 - Forms and Consumer Subcommittees considered comments 3/12 - Committee considered, withdrew the amendment without expressing an opinion on the emerging practice of writing in <i>Schwab</i> language on the current version of the form, referred to Forms Modernization 7/12 - Consumer and Forms Subcommittees considered 9/12 - Committee agenda</p>	

<p>Forms 6I, 6J Separate debtors' business income and expenses from personal income and expenses</p>	<p>Suggestion 12-BK-F Robert B. Katz, Esq.</p>	<p>Forms Modernization Project</p>	
<p>Official Form 7 Revise definition of an "insider"</p>	<p>Suggestion 10-BK-I Aaron Cahn</p>	<p>2/11- Subcommittee on Forms considered 4/11 - Committee approved publication 6/11 - Standing Committee approved publication 8/11 - Published for comment 3/12 - Committee approved 6/12 - Standing Committee approved 9/12 - Judicial Conference agenda</p>	<p>12/1/12</p>
<p>Official Forms 9A-I, 21, Rule 2002(a)(1) Redact debtor's SSN on Form 9A-I</p>	<p>Suggestion 11-BK-J Judge Julie A. Robinson for Committee on Court Administration and Case Management</p>	<p>1/12 - Subcommittee on Privacy, Public Access, and Appeals considered 3/12 - Committee approved adding privacy warnings to the forms as technical amendments 6/12 - Standing Committee approved amended forms 9/12 - Judicial Conference agenda</p>	<p>12/1/12</p>
<p>Official Forms 9C, 9D, 9E, 9E(Alt.), 9F, 9F(Alt.), 9G, 9H, 9I Encourage creditors to obtain proof of claim form courts' website</p>	<p>Suggestion 12-BK-B Matthew T. Loughney for Bankruptcy Noticing Working Group</p>	<p>3/12 - Committee discussed, referred to Forms Modernization</p>	

<p>Official Form 10, Rule 3001 Revise Form 10 certification to deter stale claims</p>	<p>Suggestion 08-BK-J Judge A. Thomas Small Committee proposal</p>	<p>1/09 - Subcommittee on Consumer Issues discussed 3/09 - Committee approved revised certification, added to pending amendments to Form 10 4/10 - Committee approved publication 6/10 - Standing Committee approved publication 8/10 - Published for comment 4/11 - Committee approved 6/11 - Standing Committee approved 9/11 - Judicial Conference approved</p>	<p>12/1/11</p>
<p>Official Form 10 Add reminder in Box 7 to file new forms</p>	<p>Committee proposal</p>	<p>4/11 - Committee approved, deferred for Rule 3001 amendments in 2012 9/11 - Held in Bull Pen 3/12 - Committee approved 6/12 - Standing Committee approved 9/12 - Judicial Conference agenda</p>	<p>12/1/12</p>
<p>Official Form 10 Provide a space for designating the amount of a general unsecured claim</p>	<p>Suggestion 11-BK-D Sabrina L. McKinney</p>	<p>9/11 - Committee discussed, referred to Forms and Consumer Subcommittees 1/12 - Subcommittees considered 3/12 - Committee considered, referred to Forms Modernization</p>	
<p>Official Form 10 Eliminate instruction to attach power of attorney</p>	<p>John Rao</p>	<p>1/12 - Forms and Consumer Subcommittees considered 3/12 - Committee approved 6/12 - Standing Committee approved 9/12 - Judicial Conference agenda</p>	<p>12/1/12</p>

<p>Official Forms 10(Attach. A) 10(Suppl. 1) 10(Suppl. 2) How to gather input on new mortgage forms, the desirability of including a complete loan history</p>	<p>Committee proposal</p>	<p>7/11 - Consumer and Forms subcommittees discussed 9/11 - Committee discussed, referred to Forms and Consumer Subcommittees 1/12 - Subcommittees discussed 3/12 - Committee discussed 7/12 - Consumer and Forms Subcommittees discussed 9/12 - Mini-Conference planned</p>	
<p>Official Form 10(Attach. A) Treatment of escrow shortage</p>	<p>Suggestion 12-BK-C Judge Barry S. Schermer</p>	<p>3/12 - Committee discussed, referred to Mortgage Forms Mini-Conference 7/12 - Forms and Consumer Subcommittee considered 9/12 - Mini-Conference planned</p>	
<p>Official Forms 22A, 22C Deducting telecommunications expenses by debtor who is not self-employed</p>	<p>William J. Neild Comment 09-BK-032</p>	<p>4/10 - Committee discussed, referred to Subcommittee on Consumer Issues 8/10 - Subcommittee considered 9/10 - Committee discussed, referred to Forms Subcommittee 2/11 - Subcommittee considered 4/11 - Committee approved, referred to Forms Subcommittee for final review 2/11 - Subcommittee reviewed 6/11 - Standing Committee approved publication 8/11 - Published for comment 2/12 - Subcommittee on Consumer Issues considered comments 3/12 - Committee approved, incorporated in the Forms Modernization version of Forms 22A and 22C</p>	

<p>Official Form 22A Technical amendments to § 109(h)</p>		<p>3/12 - Committee discussed, oral reports at future meetings 9/12 - Committee agenda</p>	
<p>Official Forms 22A, 22C Change in IRS allocation of internet services in National Standards and Local Standards</p>	<p>Mark Redmiles</p>	<p>9/11 - Committee discussed, referred to Subcommittee on Consumer Issues 12/11, 2/12 - Subcommittee considered 3/12 - Committee considered, incorporated in the Forms Modernization versions of Forms 22A and 22C</p>	
<p>Official Forms 22A, 22C Allow below-median income debtors to file shortened versions of the forms</p>	<p>Suggestion 11-BK-C Wendell J. Sherk</p>	<p>9/11 - Committee considered, referred to Forms Modernization Project 3/12 - Included in proposed amendments to Forms 22A, 22C</p>	
<p>Official Form 22C Calculation of projected disposable income under § 1325(b)(1), <i>Hamilton v. Lanning</i>, 130 S. Ct. 2464 (2010).</p>	<p>Committee Proposal</p>	<p>4/10 - Committee discussed 6/10 - Supreme Court decision 8/10 - Consumer and Forms Subcommittees considered 9/10 - Committee approved, referred to subcommittees for final review 2/11- Subcommittees reviewed 6/11 - Standing Committee approved publication 8/11 - Published for comment 2/12 - Forms and Consumer Subcommittees considered comments 3/12 - Committee approved, incorporated in the Forms Modernization version of 22C</p>	

Official Form 23 Conform to amendment to Rule 1007(b)(7)	Committee proposal	9/10 - Committee discussed, referred to Forms Subcommittee for final review 2/11- Subcommittee reviewed 4/11 - Held in the Bullpen	12/1/13
New Form Form chapter 13 plan	Suggestion 10-BK-G Judge Margaret Mahoney Comment 10-BK-M States' Association of Bankruptcy Attorneys (SABA)	2/11 - Consumer and Forms Subcommittees discussed 4/11 - Assigned to Forms Subcommittee, with direction to present a proposal for advancing the recommendation at the September meeting 6/11 - Working group appointed 6/11, 8/11 - Working group discussed 8/11 - Judge Wedoff requested information on local model chapter 13 plans 9/11 - Committee discussed 1/12, 2/12 - Working group discussed 3/12 - Committee discussed 7/12, 8/12 - Working Group discussed 9/12 - Committee agenda	

<p>Official Forms Alternatives to paper-based format for forms; renumber Official Forms</p>	<p>Judge James D. Walker, Jr. Comment 06-BK-011 Judge Marvin Isgur Patricia Ketchum</p>	<p>9/06 - Committee will coordinate a study with the Administrative Office 8/07 - Discussion of how to organize the study 9/07 - Committee discussed and authorized chair to create group 1/08 - Organizational meeting for Forms Modernization Project 2008/2009/2010/2011/2012 - Forms Modernization Project continues work, meetings in January, June 9/10 - Statement of Financial Affairs drafting session 9/10 - Progress report on agenda 10/10 - Form 22 drafting session 4/11 – Progress report 9/11 - Committee approves publishing new individual financial forms 3/12 - Committee approved publication of revised Forms 3A, 3B, 6I, 6J, 22A-1, 22A-2, 22B, 22C-1, 22C-2 6/12 - Standing Committee approved publication 8/12 - Published for comment</p>	<p>12/1/13 Individual Financial Forms</p>
<p>Director's Forms 200, 201 Conform to new chapter 11 filing fee</p>	<p>Committee proposal</p>	<p>9/12 - Committee agenda</p>	<p>11/21/12</p>

THIS PAGE INTENTIONALLY BLANK

TABS 19-21

THIS PAGE INTENTIONALLY BLANK

Future meetings
New business
Adjourn

Items 19 – 21 will be oral reports.

THIS PAGE INTENTIONALLY BLANK