ADVISORY COMMITTEE ON BANKRUPTCY RULES

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Memphis, Tennessee
March 21-22, 1996

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of March 21-22, 1996
Memphis, Tennessee

Agenda

Introductory Items

1. Approval of minutes of September 1995 meeting.

2. Report on January 1996 meeting of the Committee on Rules of Practice and Procedure (Standing Committee). [Oral report.]

Action Items

3. Consideration of comments on proposed amendments published September 1995. [Materials: Reporter's memorandum dated 2/23/96; Letters from commentators; copy of preliminary draft of proposed amendments.]

4. Proposed amendments to Rule 9015 concerning jury trials -- Judge Easterbrook's suggestion. [Materials: Reporter's memorandum dated 2/21/96; Report by Prof. Cooper on Civil Rule 73(b); 28 U.S.C. § 636(c); Mark I, Inc. v. Gruber, 38 F 3d 369 (7th Cir. 1994) (opinion by Judge Easterbrook).]

5. Proposed amendments to Rule 8002(c) regarding extensions of time to appeal -- Comments by Judge Easterbrook and Prof. Hazard. [Materials: Reporter's memorandum dated 2/20/96.]

6. Proposed amendments to Rule 9011 regarding sanctions -- Reporter's suggestion for clarification. [Materials: Reporter's memorandum dated 2/20/96.]

7. Proposed amendments to Rule 2004 concerning examinations. [Materials: Reporter's memorandum dated 2/19/96.]

8. Proposed amendments to Rules 1017 and 2002 to eliminate requirement of notice to all creditors of hearing on motion to dismiss for failure to file lists, schedules, and statements. [Materials: Reporter's memorandum dated 2/16/96.]

9. Proposed amendments to Rule 9009 on alterations to Official Forms. [Materials: Reporter's memorandum dated 2/22/96.]

10. Preliminary discussion of procedures for imposing sanctions on "bankruptcy petition preparers" under § 110 of the Banakruptcy Code. [Materials: Letter from Hon. Geraldine Mund dated 1/5/96.]

11. Consideration of Advisory Committee members' written comments on proposed amendments to certain Official Bankruptcy Forms for publication. [Materials: Revised Official Forms 1, 3, 6F, 8, 9A-9I, 10, 14, 17, 18, and new Forms 20A and 20B drafted by the Forms Subcommittee.]

12. Consideration of revised cover memorandum to accompany suggested uniform local rule numbering system. [Materials: Draft memorandum; suggested uniform numbering system proposed by Local Rules Subcommittee and approved by Advisory Committee 9/95.]

Subcommittee and Liaison Reports

13. Subcommittee on Rule 2014 disclosure requirements. [Materials: Draft of proposed amendments to Rule 2014; comment letters from James C. Frenzel, Mitchell A. Seider, Myron M. Sheinfeld, and Susan M. Freeman; "ABA Draft" of proposed amendments to Rule 2014.]

14. Subcommittee on Litigation. [Oral Report. For information: copy of letter to Mr. Klee from Hon. Samuel L. Bufford dated 10/11/95.]

15. Subcommittee on Rule 7062. [Oral Report. Any written materials will be distributed later or at the meeting.]

16. Report of liaison to Advisory Committee on Civil Rules. [Materials: Letter of Judge Restani dated 11/13/95; draft of Civil Rule 23 (labeled "A"); draft of Rule 73(b) (labeled "B"); memorandum to Advisory Committee on Civil Rules dated 10/12/95 (labeled "C").]

17. Report of ADR subcommittee. [Oral Report.]

Information Items

18. Amendments approved at the September 1995 meeting.

19. Status charts and lists of pending amendments.

Next Meeting

20. The next meeting of the Advisory Committee will be September 26 - 27, 1996.

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* Revised 1/31/96

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Agenda Item 3

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of September 7-8, 1995

Portland, Oregon

DRAFT

Minutes

The Advisory Committee met at the Portland Marriott Hotel. The following members were present:

Bankruptcy Judge Paul Mannes, Chairman
District Judge Adrian G. Duplantier
District Judge Eduardo C. Robreno
Honorable Jane A. Restani, United States Court of International Trade
Bankruptcy Judge Donald E. Cordova
Bankruptcy Judge Robert J. Kressel
Bankruptcy Judge James W. Meyers
Professor Charles J. Tabb
R. Neal Batson, Esquire
Kenneth N. Klee, Esquire
J. Christopher Kohn, Esquire, United States Department of Justice
Leonard M. Rosen, Esquire
Gerald K. Smith, Esquire
Henry J. Sommer, Esquire
Professor Alan N. Resnick, Reporter

Circuit Judge Alice M. Batchelder was unable to attend. District Judge Thomas S. Ellis, III, liaison to the Committee from the Committee on Rules of Practice and Procedure, also was unable to attend.

District Judge Alicemarie H. Stotler, chair of the Committee on Rules of Practice and Procedure ("Standing Committee"), attended the meeting. Peter G. McCabe, Assistant Director of the Administrative Office of the United States Courts ("Administrative Office") and Secretary to the Standing Committee, also attended.

The following additional persons attended all or part of the meeting: District Judge Paul A. Magnuson, Chair, Committee on the Administration of the Bankruptcy System; Kevyn Orr, Deputy Director, Executive Office for United States Trustees; Richard G. Heltzel, Clerk, United States Bankruptcy Court for the Eastern District of California; Patricia S. Channon, Bankruptcy Judges Division, Administrative Office of the United States Courts; Mark D. Shapiro, Rules Committee Support Office, Administrative Office of the United States Courts; and Elizabeth C. Wiggins, Federal Judicial Center.

The following summary of matters discussed at the meeting should be read in conjunction with the various memoranda and other written materials referred to, all of which are on file in the office of the Secretary to the Committee on Rules of Practice and Procedure. Unless otherwise indicated, all memoranda referred to are included in the agenda book for the meeting.

Votes and other action taken by the Advisory Committee and assignments by the Chairman appear in **bold.**

Introductory Items

The Committee approved the minutes of the March 1995 meeting subject correction on page 24 of the title of the periodical mentioned there to "American Bankruptcy Law Journal."

The Chairman and the Reporter briefed the Committee on actions taken at the July 1995 meeting of the Standing Committee. Both the preliminary drafts and the final drafts of proposed amendments to the bankruptcy rules were approved. With respect to the amendments to Rule 5005 concerning electronic filing, the Standing Committee approved use of the word "document" in the bankruptcy rule, as requested by the Committee, even though the other advisory committees are using the word "paper." The Committee preferred the broader "document" in recognition that some material filed electronically may never exist in paper form and to clarify that such material will be available for public access under § 107 of the Bankruptcy Code.

Another matter discussed at the Standing Committee meeting was the appropriate title for Committee Notes. A question had arisen concerning whether these should be titled Advisory Committee Notes, or whether they should be considered Standing Committee Notes, because the Advisory Committees report to the Standing Committee, which can approve or not approve any Committee Note. The Reporter stated that these notes presesntly are titled Committee Notes, but some publishers re-title them as Advisory Committee Notes. Professor Resnick also said that the

Supreme Court orders prescribing rules do not include the Committee Notes. Judge Stotler said that she is not very concerned about nomenclature, but believes that if the Standing Committee changes a rule, the Committee Note should go back to the Advisory Committee for any rewriting. Professor Resnick, however, raised the point that there may not be sufficient time to do that if the Standing Committee changes the rule after the public comment period. Rather, the rule must be forwarded almost immediately to the Judicial Conference. Judge Stotler said she would like to establish as a standard procedure: 1) rewrite of the Committee Note by the Chairman and Reporter of the Advisory Committee, 2) fax of revised Committee Note to the Advisory Committee members for their approval, and 3) fax of approved rewrite to the Standing Committee. There was no objection to the proposed procedure.

In connection with the Standing Committee's recent Self-Study, Judge Stotler distributed to the Committee copies of an issues summary questionnaire and invited the members to use it to evaluate the recommendations. The Committee also discussed several of the recommendations.

Several members expressed reservations about any recommendation that, in the name of supporting diversity in committee membership, would seem to be advising the Chief Justice on how appointments should be made. Several members noted that the Chief Justice already appears to be appointing people of diverse characteristics and backgrounds, and the consensus was that the recommendation is both unnecessary and inappropriate.

The Committee discussed at length the circulation of materials among the members by the Reporter and by the Rules Committee Support Office. Mr. McCabe mentioned that the rules office soon may have the capacity to receive suggestions from the public by e-mail. The Reporter stated that, if suggestions were

to be accepted in this form and a large volume of messages are received, reporters may need to be authorized to exercise some discretion concerning them. A reporter currently has to address every letter received, he said, and to require a reporter to draft a full memorandum and response to every suggestion received by e-mail might be unduly burdensome, depending on the number of messages received.

Several methods of screening and prioritizing suggestions were discussed, with a view toward enabling a committee to better control the use of its reporter's energies and the limited time for meetings. These included circulating suggestions tentatively, with two or three "for" votes needed to bring a suggestion to the agenda for a meeting, having a "miscellaneous day" every other year, and increased telephone and facsimile communication among the members between meetings, so that meeting time can be spent on matters of strategy and substance.

Judge Stotler said she thought the current procedural rules of the rules committees would permit the Committee to adopt any of these strategies. Mr. Klee cautioned that the Committee needs to be careful, in any procedure it adopts, not to violate any applicable open meeting rule. The Reporter observed that the use of subcommittees has worked very well for the Committee, enabling it to use its meeting time well. In closing, he stressed that sometimes a suggestion that is non-meritorious in itself can lead the Committee to a needy area.

Rules

Uniform Local Rule Numbering, Rule 9029. At the March 1995 meeting, the Committee approved a uniform local rule numbering system subject to certain modifications to be implemented, including the addition of cross-references. Ms. Channon and Professor Resnick explained that the Committee's intentions regarding the modifications had been unclear. That was the

reason for returning the proposed numbering system, with all modifications in place, to the Committee for further approval. The proposal as resubmitted also contained further improvements suggested by the subcommittee on local rules. The Committee discussed what the policy should be when a district promulgates a new rule or cannot fit one of its existing rules into the prescribed numbering system. Ms. Channon stated that such problems likely would be rare because the system was derived from analysis of all existing local rules. If the situation were to arise, the attorneys in the Bankruptcy Judges Division of the Administrative Office, all of whom are familiar with the numbering system, would be available to assist a district in assigning a uniform number. Professor Tabb suggested adding a "catchall" number such as 9999-1 for those few rules that do not fit any existing topic. The Committee requested that the subcommittee add to the draft of the memorandum that will accompany the numbering system explicit instructions to the districts concerning rules that do not seem to fit and stating that a district is welcome to add any further cross-references it deems helpful within the numbering system. **A motion to approve the uniform local rule numbering system, to include in it the material (bracketed in the draft) directing use of the topic names as well as the numbers, to recommend that the alphabetical list of topics accompany the numbering system, to recommend that districts be given at least one year to convert their rules to the system, to designate the Bankruptcy Judges Division to provide technical support and advice during the conversion process, and to authorize the subcommittee to make minor changes to the system as may be necessary carried by a vote of 11 - 2.**

Rule 7062. The Reporter recited the background, including the potential for undesirable unintended consequences if the amendments approved in March 1995 were to become the rule, and the problems that Rule 7062 presents with respect to contested matters and confirmation orders. Some members noted that Rule

62, Fed.R.Civ.P., stays only execution and proceedings to enforce a judgment and suggested that application of Rule 7062 to contested matters was largely harmless, because "execution" rarely would occur in a contested matter. As an alternative to the amendments originally proposed, Judge Kressel had suggested limiting Rule 7062 to adversary proceedings by amending Rule 9014 to delete mention of Rule 7062. Mr. Klee, however, said he still was troubled by the fact that Rule 7001 requires an adversary proceeding for obtaining "equitable relief," even though confirmation orders often grant equitable relief without an adversary proceeding. Mr. Batson said the growing list of exceptions in Rule 7062 and proposals to add more arise from the perceived need to move things along in a bankruptcy case and the difficulty of obtaining a stay. Chairman Mannes said he thought there was a consensus that Rule 7062 ought to be pared down, although the specifics of how to accomplish that and address both the issue of the effective date of orders and the preservation of appellate rights were not clear. He stated his intention to appoint a subcommittee to work out proposals for the Committee's consideration. Judge Restani asked whether there was consensus on shifting the burden to create a 10-day stay of the effectiveness of all orders. Judge Robreno asked whether imposing such a stay would take away discretion which a judge now has: an order is effective upon docketing, although not enforceable for ten days, but a judge can always provide for a stay of effect. Staying the effectiveness of all orders would affect injunctions also, he added. A non-binding vote disclosed three members in favor of orders being effective immediately (as a default) and seven in favor of delayed effect (as a default). **Judge Mannes appointed Judge Kressel to serve as chair of a subcommittee to work on these issues with Mr. Batson, Mr. Smith, Mr. Kohn, Mr. Sommer, and Mr. Klee to serve as members.**

Rule 3010. The Reporter said his memorandum on the suggestion to amend this rule needed correcting in one respect.

The memorandum states that unclaimed money in a bankruptcy case escheats to the government after five years. In fact, although the money is paid into the United States Treasury, it never escheats because it remains subject to claim by the owner. The legislative history to section 347 of the Code, however, erroneously states that escheat occurs.

Mr. Klee stated that he previously had suggested providing for a minimum amount of a distribution check in a chapter 11 case, as the present rule covers only cases under chapters 7 and 13. At that time, the Committee had requested him to reserve his suggestion until other amendments to the rule were being considered. He asked that, if any of the suggested changes were approved, his proposal concerning chapter 11 cases also be considered.

The suggestion to raise from $5 to $30 the minimum amount for which a chapter 7 trustee must write a distribution check to a creditor was made by the Bankruptcy Judges Advisory Committee, but there was no documentation concerning the assertions that it costs more than $5 to issue the check and that creditors do not want to receive such small amounts. Mr. Orr said the cost of issuing a check varies greatly and depends on the efficiency of the individual trustee. Mr. Heltzel stated that while raising the amount might lessen the work of a trustee, it would create more work for the clerk, who would spend much more time than at present processing requests from creditors who want their money. **A motion not to amend the rule carried, 11 - 0.**

A similar suggestion to raise the minimum amount of a check to be issued by a standing chapter 13 trustee from $15 to $45 failed for want of a motion. Some members noted that a chapter 13 trustee issues monthly checks, and that the rule provides for amounts due a creditor to accrue until the minimum is satisfied.

Rule 3015(f). The Bankruptcy Judges Advisory Committee also suggested that Rule 3015(f) establish a deadline of two days prior to the hearing on confirmation of a chapter 13 plan for filing an objection to confirmation. Presently, the rule simply requires that an objection be filed "before confirmation," and the Reporter stated that it is intended to afford the greatest flexibility to the districts. Some districts hold confirmation hearings on the same day as a chapter 13 debtor's § 341 meeting, and the two days recommended by the judges would -- in those districts --deprive creditors of the opportunity to examine the debtor prior to the deadline for filing an objection. Professor Resnick said nothing in the rule prevents a court from setting a reasonable deadline. **A motion to take no action carried by a vote of 11-0.**

Rule 9014. The Bankruptcy Judges Advisory Committee suggested that Rule 9014 should be amended to make Rule 7005 applicable in adversary proceedings. The purpose would be to permit service of pleadings filed subsequent to the motion to be served on the party's attorney rather than on the party. **The Committee referred this suggestion to its subcommittee on long range planning, which is working on a comprehensive proposal for rules governing motion practice in bankruptcy.**

Rule 3017(d). Mr. Klee had suggested that the rule be amended to authorize the court, in its discretion, to order that ballots and copies of the plan and disclosure statement not be mailed to an impaired class of creditors. Mr. Klee had stated that this would allow a plan proponent who intended to "go straight to cramdown" to save expenses. Mr. Klee had noted further that certain creditors which the plan proponent formerly could have treated as unimpaired --- and thereby avoided providing them with voting materials --- no longer are considered unimpaired since enactment of the 1994 amendments to the Code. The Reporter stated the background of the proposal and said there

appeared to be a question whether the proposal would conflict with a creditor's right under section 1126(a) of the Code to "accept or reject a plan." After discussion, **a motion to take no action carried by a vote of 7 - 3.**

Rule 3002. Mr. Sommer had suggested that the rule be amended to require a creditor filing a late claim to serve copies on the debtor and the trustee. The suggestion was discussed at the March 1995 meeting but not resolved. Subsequently, two attorneys had written separately to suggest that a creditor be required to serve a copy of any claim on the debtor and debtor's attorney, regardless of whether the claim were timely or tardily filed, and further suggesting that failure to make service be grounds for disallowance. The Reporter stated that, although there should be some consequence for failing of meet a requirement of a rule, establishing disallowance as a penalty probably would violate the Rules Enabling Act by altering a substantive right created by the Bankruptcy Code. **A motion to take no action carried 9 - 2.**

Rules 1019(1)(B), 2003(d), 4004(b), 4007(c), and 4007(d). These rules currently provide that a party may obtain relief by a motion "made" before the specified deadline. Professor Tabb had suggested that the word "made" should be changed to "filed" throughout the rules. After analyzing the rules in question, the Reporter said he had drafted amendments making the suggested change in four rules in which it appeared that the motion typically would be made in writing and concerning which the rules specify a deadline. In Rule 1019(1)(B), however, where the subject matter suggested that the motion often might be made orally, the Reporter had drafted an amendment providing for either an oral motion or a written motion filed before the deadline. Although there are other rules in which the word "made" is used in connection with a motion, no amendments were proposed because the provision in which "made" is used does not

relate to a time limit. The Reporter's draft also included stylistic changes and conformed Rule 2003(d) to proposed amendments to Rule 2007.1 on election of a chapter 11 trustee. **A motion to adopt the Reporter's drafts carried by a vote of 11 - 2.** A member inquired why the draft of proposed amendments to Rule 2003(d) used the phrase "the presiding officer" on line 12, rather than the "United States trustee" consistently throughout. The Reporter said that "United States trustee" should be used for consistency and the consensus of the Committee was to substitute "United States trustee" for "presiding officer" in line 12.

Rule 3008. Professor Lawrence P. King had suggested amending the rule to state explicitly that the court may deny a motion to reconsider the allowance or disallowance of a claim without notice and a hearing. Professor King had said an amendment would clarify the original intent that notice and a hearing are required only if the motion to reconsider is granted and the judge plans to consider the merits of the allowance or disallowance. **A motion to take no action carried 7 - 3.**

Rule 1003. Bankruptcy Judge S. Martin Teel, Jr., had suggested amendments to the rule to address the situation when three creditors have filed the petition, but the debtor avers that the claim of one or more of them is disputed or contingent. Judge Teel also suggested that a debtor averring the existence of 12 or more creditors be required to state on the list of creditors whether any of their claims are contingent or disputed. **A motion to take no action carried by a vote of 8 - 2.**

Rule 2004(c). Bankruptcy Judge Charles E. Matheson had suggested that Rule 2004 be amended, because he thinks it is not clear in the current rule whether a court can order the examination of a nondebtor to be held outside the judicial district of the court issuing the order (or more than 100 miles from where the court sits). The Reporter said he did not agree

that the rule is unclear on that point, but had discovered a mismatch between Rule 2004(c) and Federal Rule of Civil Procedure 45 concerning the issuance of a subpoena for the examination. (Fed. R. Civ. P. 45 is applicable through Rule 9016, which governs issuance of a subpoena in a bankruptcy proceeding.) Professor Resnick had drafted proposed amendments covering both matters. After discussion, the Committee altered the final sentence of the proposed draft to more closely track Fed. R. Civ. P. 45(a) concerning who can issue a subpoena and to make it clear that an attorney who is admitted either in the district in which the examaination is to take place or in the district where the case is pending can issue the subpoena in the name of the court for the district in which the examination is to take place. **A motion to accept the Reporter's draft amendments to Rule 2004(c) as altered by the Committee carried, 7 - 4.** The Committee then discussed also adding to Rule 2004(a) language stating that an order for an examination may be issued "after notice and a hearing." A poll of the judges on the Committee disclosed that some judges routinely handle motions for Rule 2004 examinations ex parte while others do not. Some members said examination should be available upon notice issued in the same manner as a subpoena with no prior court order. **A motion to table and refer Rule 2004(a) to the Reporter for further study, drafting of alternative proposals, and reconsideration at the next meeting, carried by a vote of 11 - 2.**

Rules 2002(a) and (f). The Reporter stated that an attorney had requested amendments to the rules that would add to the information required in the combined notice of the commencement of the case and the meeting of creditors. Specifically, the notice would have to inform the creditor of the amount the debtor alleges is owed to the creditor, the account number by which the debtor is known to the creditor, whether the debtor asserts that the debt is contingent, disputed, or unliquidated, and the presence of any codebtor, guarantor, etc. Mr. Heltzel said it is

impossible for the clerk, who prepares the notice for printing and mailing, to customize it separately for each creditor in each case. The Reporter noted that Congress recently had considered a statutory amendment that resembled the suggestion concerning account numbers. Ultimately, because of the practical inability of clerks' offices to comply, Congress enacted a provision requiring the account number only on notices actually sent by the debtor and providing expressly that failure to include the information does not invalidate any notice. **A motion to take no action carried 12 - 1.** After the vote, Mr. Smith stated that the technology exists to provide this information when the noticing function has been delegated to the debtor, as often occurs in large chapter 11 cases. The debtor, who creates the schedules, can transfer the data to the materials to be mailed, he said. The clerk, however, does not have the same capability. The consensus was that the Committee supports the goal of providing each creditor with the best and most complete notice possible, will continue to monitor advances in technology, and will continue to propose amendments to maximize the benefits offered by these advances when it considers such action to be appropriate.

Preliminary Discussion Items

Bankruptcy Judge Steven W. Rhodes had written a letter recommending to the Committee his court's local rule on motion procedure, his article on statutory (and rules-related) causes of delay and expense in bankruptcy cases, and suggesting that his court's local rule imposing a 90-day deadline for filing proofs of claim in chapter 11 cases be adopted as a national rule. **The Committee rejected the suggestion for a deadline for filing a proof of claim in a chapter 11 case and referred the materials on motion practice and Judge Rhodes' article to the newly-appointed subcommittee on litigation.** (See, Subcommittee Reports, Long Range Planning, infra.)

District Judge Paul Magnuson, chairman of the Committee on the Administration of the Bankruptcy System ("Bankruptcy Committee), had referred to the Committee three suggestions that arose from the Bankruptcy Committee's long range planning project. **The Committee rejected the suggestion that there be authorization to appoint a special master in a bankruptcy proceeding.** The consensus was that a special master is too reminiscent of the former bankruptcy referee and that adequate alternatives exist in the authority to appoint a trustee and an examiner.

The second suggestion, that there be a separate procedure for handling "small claims" in a bankruptcy case, was very similar to one contained in a letter from Peter H. Arkison, Esquire. The consensus was that existing creditor rights might be adversely affected by a streamlined "small claims" procedure. As the bankruptcy rules cannot modify substantive rights of the parties, the Committee determined that legislative amendments would be required. Accordingly, **the Committee rejected this suggestion also.**

The third suggestion was that bankruptcy judges "be encouraged" to appoint experts to review applications for compensation filed by professionals. The consensus was that use of experts for this purpose is a good idea, and that authority to implement it already exists in Rule 706 of the Federal Rules of Evidence. Accordingly, **the Committee rejected the suggestion to amend the bankruptcy rules.**

Two suggestions had been referred to the Committee as part of the judiciary's efforts to cut the cost of operating the court system. One suggestion was that Rule 2013 be abrogated. Ms. Channon stated, however, that the reporting and compilation of professional fees awarded by the court now is an automated

operation. Accordingly, the cost of compliance with the rule is small; whereas the benefit to the court's integrity is great. **The Committee rejected the suggestion that Rule 2013 be abrogated.**

The second suggestion was that Rule 2002 be amended to require the United States trustee either to provide notice to all creditors of the (motion and) hearing on dismissal for failure to file schedules and statements or to pay the clerk for providing notice. Ms. Channon suggested instead that the Committee consider amending Rule 1017 to limit to the debtor and the trustee the notice of a motion and hearing to dismiss on this ground. Rule 1017 already provides for limited notice of a motion to dismiss for failure to pay filing fees or for substantial abuse. The amendment could provide for the United States trustee to request that notice be sent to all creditors if the circumstances warrant, and creditors would continue to receive notice in the event the case actually were dismissed. **It was the sense of the Committee that such an amendment would be appropriate, and it directed the Reporter to prepare a draft for the next meeting.**

Subcommittee Reports

Long Range Planning. Mr. Klee gave a summary of the results of the Federal Judicial Center's survey to determine perceived problem areas in the rules. He requested that subcommittees be appointed to study and make specific recommendations in the two areas identified in the survey as creating problems --- litigation and attorney admissions and ethics. Ms. Wiggins suggested that the Committee might need a third subcommittee to evaluate the large number of specific and technical recommendations made by survey respondents.

Judge Mannes said that attorney admissions are a separate subject from the problem of ethics in a multilateral situation

and that the district court already is guarding the admissions gate. **He said that the ethics issues should be studied by the existing subcommittee on attorney disclosure and Rule 2014, which is chaired by Mr. Smith.**

Professor Resnick said that the Reporter for the Standing Committee is organizing a symposium on ethics and admission issues to be held in conjunction with the January 1996 meeting of the Standing Committee. One of the issues to be examined, he said, is should the national rules deal with ethics? Judge Stotler said that the Standing Committee would do the first, seminal work, which might help the Committee steer its projects.

Mr. Smith said that his subcommittee already had reached a preliminary decision that drafting a code of ethics might be beyond the scope of its assignment and that such a project should at least be postponed because of the work being done in the area by others. He said he does see a need for national standards because bankruptcy practice is national. A further area for study, he said, is attempting to define "conflict," an issue the American Law Institute is working on in connection with a Restatement of the Law Governing Lawyers, which the ALI recently has published in a "final draft." This draft contains almost nothing on the bankruptcy aspects of this issue, an oversight he intends to call to the drafters' attention. Other projects that the subcommittee is undertaking relate directly to Rule 2014, he said. These are 1) studying the Reporter's 1992 memorandum concerning the American Bar Association's resolutions, 2) improving the language of both Rule 2014 and Rule 2016, particularly the word "connections," 3) developing guidance on disclosures and a form to serve as a model for making them, and 4) proposing a better procedure for appointing counsel in a case.

Judge Mannes directed the subcommittee to go forward and, at the same time, stay in touch with the related work of the

Standing Committee and other groups. He appointed Judge Batchelder, Judge Cordova, Judge Kressel, and Mr. Rosen to join Mr. Klee as members of the subcommittee.

Judge Mannes also appointed Mr. Klee to chair a new litigation subcommittee to propose solutions to the litigation problems identified in the Federal Judicial Center survey. He appointed Judge Restani, Judge Kressel, Mr. Batson, Mr. Smith, and Mr. Sommer to serve as members.

Technology. Mr. Heltzel reported that the court system in Prince George's County, Maryland, is experimenting with a product developed by Arthur Anderson & Co. for electronic receipt, filing, and service of documents. The parties pay a transmission fee directly to Arthur Anderson.

Liaison with the Advisory Committee on Civil Rules. Judge Restani reported that the civil rules committee is continuing to work on Rule 23 and class actions. She said that there no longer seems to be the same interest in collapsing the categories of classes as appeared at the committee's April 1995 meeting. Interest now seams to focus on interlocutory appeal as of right on the issue of certification and a "probable success" test, she said. The committee members also seem to be questioning how useful class action is in a mass tort situation, whether class actions should be "reined in," and whether to permit settlement classes.

Alternative Dispute Resolution. Professor Tabb reported that the subcommittee had met in May 1995 to discuss whether to recommend any of the proposals circulated in draft at the March 1995 committee meeting. The subcommittee had decided not to propose any amendments at this time, he said, in part because numerous ADR experiments are going on and extensive work on a model local rule is underway by a task force made up of representatives from

many interested organizations. The subcommittee will continue to monitor activity and to consider whether any amendments to the national rules would be appropriate.

Style. Judge Duplantier reported that the subcommittee had gone over all the drafts that were submitted to the Standing Committee.

Official Bankruptcy Forms

Form 1. The Committee questioned whether the box labeled "Type of Debtor" on page 1 should mention "municipality" expressly, rather than leaving such an entity to identify itself in the "other" category, and whether the category labeled "Individual(s)" should be changed to "Individual/Joint." **The Committee requested Ms. Channon to check on the number of filings by municipalities and on the statistical treatment of joint debtors' cases.** On page 2, a member questioned the statement which an individual debtor is required to sign under penalty of perjury, because it lists chapter choices most debtors probably are not eligible to proceed under but says "I understand I may proceed under chapters 7, 11, 12, and 13 . . . ." The member suggested changing "may" to "might." The Reporter stated that the language on the form was enacted directly by Congress, and the question of changing it should be brought to the Bankruptcy Review Commission and thence to Congress. He also said Rule 9009 possibly could be construed to permit a departure from the statutorily prescribed wording if required for the context. Another member said the use of "or" in the sentence indicates that the list is disjunctive and provides a context that gives a meaning of "might," or conditionality, to the word "may." **A motion to approve the form for publication without changing the debtor's statement carried by a vote of 8 - 5.** In addition, the Committee **approved suggestions by Mr. Klee to change the wording of the request for relief by a corporation or partnership from "I**

request" to "The debtor requests" and to change the word "person" to "entity" in numbered paragraph 6 of Exhibit A to the petition.

Form 3. **The Committee approved the proposed Application and Order to Pay Filing Fees in Installments with the substitution of "may" for "will" in numbered paragraph 5 of the application and the substitution of "may" for "shall" in the first sentence of the order.**

Form 6. **The Committee approved the proposed Schedule F with the further amendment of "non priority" to "nonpriority" in the label on the checkbox to be used if the debtor has no creditors holding such claims.**

Form 8. **The Committee approved the proposed Individual Debtor's Statement of Intention subject to deletion of the words "the debtor" in numbered paragraph 1, the substitution of "I intend to do the following" for "My intention" in numbered paragraph 3, and the deletion of numbered paragraph 3 of the draft.**

Form 9. The subcommittee's draft contained a notice to persons with disabilities, directing such persons to telephone the clerk's office for "reasonable accommodations." Mr. Heltzel requested guidance on compliance with this notice. Several members stated that inclusion of the notice would be premature, because the judiciary is not covered by the Americans with Disabilities Act, the issue is an institutional one for the entire federal judiciary, and is now under study by another committee of the Judicial Conference. Another factor, said Mr. McCabe, is the recently enacted Congressional Accountability Act, which brings Congress under many laws including the ADA. The Act gives the judiciary two years to comment on what similar requirements should apply to the judiciary, and the Administrative Office's general counsel is preparing a report for the Congress. **A motion to delete the disability notice from the**

proposed form carried, 6 - 4. The chairman of the forms subcommittee, Mr. Sommer, suggested that the Committee could include in its publication of the forms a notice that the Committee is considering including such a notice on this and other forms and requesting comment, both on the content of the notice and on which forms should contain it. **A motion to include such a "notice of intent" in the publication of the forms carried, 6 - 5. A motion to include the notice but direct the public to contact the office of the United States trustee concerning any accommodations needed at a § 341 meeting failed by a vote of 4 - 8.** The Committee discussed whether the directive: "Do not file a proof of claim unless you receive a court notice to do so," which appears on the current notice in no asset cases, is appropriately worded. The directive was requested by the bankruptcy clerks who do not want to have to process claim forms that never will be used. **A motion to add the word "please" at the beginning of the directive carried, 6 - 4. There was consensus further that consistent terminology should be used throughout the eleven versions of the form, particularly with respect to "bankruptcy clerk" and "bankruptcy clerk's office." The Committee approved the form with the changes as voted.**

Form 10. **The Committee approved a number of changes to the proof of claim for publication and comment.** These included deleting "In re" and the parentheses around "Name of Debtor," deleting the direction to attach evidence of perfection of security interest from the checkbox labeled "SECURED CLAIM," and, in numbered paragraph 7 ("SUPPORTING DOCUMENTS"), substituting for "or evidence of security interests," the words "mortgages, security agreements, and evidence of perfection of lien." The Committee approved making it clearer that the specific priorities listed are subcategories of an unsecured priority claim by inserting a direction to specify the priority of the claim and attempting to improve the format of this part of the form. The Committee also approved clarifying that the tax priority is for taxes and

penalties "owed to" a governmental unit. In numbered paragraph 5, the Committee rewrote the checkbox to read as follows: "Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges." In numbered paragraph 6, the Committee deleted the references to setoffs. Instead, the new instruction sheet will add the following sentence to the definition of secured claim: " In addition, to the extent a creditor owes money to the debtor, the creditor's claim is a secured claim." The Committee directed the forms subcommittee to make conforming changes throughout the instruction sheet. The Committee also changed "company" to "corporation" and revised other language to make the instruction sheet more general.

There was not enough time to complete work on the forms. Mr. Sommer suggested that Committee members send written comments to the subcommittee as soon as possible. He said the subcommittee would consider these and circulate a revised forms package.

Recognition of Judge Meyers

The chairman noted that this meeting marked the end of Judge Meyers' term as a member of the Committee and thanked him for his six years of conscientious service.

Next Meeting

The Committee selected September 26-27, 1996, as the dates for its next autumn meeting. (The Committee will meet March 21-22, 1996, in Charleston, South Carolina.)

Respectfully submitted,
Patricia S. Channon

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ALAN N. RESNICK, REPORTER

RE: COMMENTS ON PROPOSED AMENDMENTS PUBLISHED IN 1995

DATE: FEBRUARY 23, 1995

In September 1995, a package of proposed amendments to the Bankruptcy Rules was published for comment by the bench and bar. The package includes proposed amendments to Rules 1019, 2002, 2007.1, 3014, 3017, 3018, 3021, 8001, 8002, 9011, and 9035, and new proposed Rules 1020, 3017.1, 8020, and 9015. A copy of the package of proposed amendments is attached as Appendix B.

The six-month public comment period ends on March 1, 1996. As of this date, only three letters containing comments have been received. If any other comments are received before the deadline, I will circulate a supplemental memorandum on them before the Memphis meeting next month. The public hearing on the proposed amendments that was scheduled for February 9th was canceled for lack of witnesses.

The following comments (copies of which are attached in Appendix A) have been received:

(1) <u>Hon. Geraldine Mund, United States Bankruptcy Judge, Central District of California</u>, in her letter dated November 15, 1995, has commented on the proposed new Rule 3017.1 and the proposed amendments to Rule 9011.

<u>New Rule 3017.1</u>

This proposed rule is designed to implement § 1125(f) that was added to the Code in 1994. Under § 1125(f), "in a case in

which the debtor has elected under section 1121(e) to be considered a small business -- (1) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing; ... (2) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement... (3) a hearing on the disclosure statement may be combined with a hearing on confirmation of a plan."

To implement § 1125(f), proposed new Rule 3017.1 provides procedures for obtaining conditional and final approval of disclosure statements in small business cases.

Judge Mund correctly points out that new Rule 3017.1 is limited to debtors who have made the small business election, but then comments:

> "However, my reading of 11 USC § 105 is that at a status conference the Court can order or approve that a disclosure statement will go through the conditional hearing process and that there will be a combined hearing on the disclosure statement and plan. Section 105 is not limited to small businesses. Therefore, I recommend that Rule 3017.1 be modified so that it also applies to other debtors for whom the Court orders conditional approval of a disclosure statement and combined hearing of the disclosure statement and plan."

Judge Mund's reference to § 105 focuses on new § 105(d), also added as part of the 1994 Reform Act. The relevant language of that section is as follows:

> "(d) The court, on its own motion or on the request of a party in interest, may --
>
> (1) hold a status conference regarding any case or proceeding under this title...;
>
> (2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, issue an order at any such

conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that --

* * * *

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan."

Judge Mund construes § 105(d) to permit the court to order that the disclosure statement hearing and confirmation hearing be combined in any chapter 11 case, even if the debtor is not a small business. Although § 105(d) is poorly drafted, and future court decisions may be consistent with that view, I do not share Judge Mund's interpretation of that section.

If the court may order that the disclosure statement be conditionally approved and that the hearings on final approval of the disclosure statement and on plan confirmation be combined in "large debtor" chapter 11 cases, as well as small business cases, the language at the beginning of § 1125(f) -- which limits that provision to small business debtors -- would not make sense. In addition, § 105(d) contains an important limitation: the court may order the combining of the disclosure statement and confirmation hearings "unless inconsistent with another provision of this title..." I read §§ 105(d) and 1125(f), taken together, to mean that the combining of the two hearings is available only in small business cases and that, <u>in such cases</u>, the court may <u>at a status conference</u> exercise its discretion to combine these hearings.

The legislative history may be helpful, but only to a

limited extent. (Cong. Rec. Oct. 4, 1994, pp. 10752-10773; H. Rep. 103-835). According to the legislative history, the purpose of § 105(d) is to give bankruptcy judges authority "to hold status conferences in bankruptcy cases and thereby manage their dockets in a more efficient and expeditious manner.... [S]ome judges have appeared reluctant to do so without clear and explicit statutory authorization. This provision clarifies that such authority exists in the Bankruptcy Code in adversary and nonadversary proceedings."

The legislative history to § 1125(f) is a bit more instructive. The section-by-section analysis of the Reform Act contained in the committee report states: "A qualified small business debtor who elects coverage under this provision ... would be subject to <u>more liberal</u> provisions for disclosure and solicitation of acceptances for a proposed reorganization plan under Code section 1125." (emphasis added). More liberal than what? I read this to mean that the purpose of § 1125(f) is to provide special (more liberal) provisions that apply only in small business cases.

I recommend, therefore, that Rule 3017.1 be approved as published. If, in future cases, courts hold that § 105(d) gives the court discretion to combine the two hearings in any chapter 11 case, notwithstanding the language of § 1125(f), then I assume that the same courts will also hold that Rule 3017.1 does not stand in the way. I will monitor future decisions regarding this issue and, if it becomes appropriate, the Committee could propose

amendments to Rule 3017.1 at that time.

I also should add that any change to proposed Rule 3017.1 that makes it applicable in cases other than small business cases would be a substantial (and probably controversial) change that would require re-publication for comment.

Rule 9011.

Judge Mund raises two points regarding the proposed amendments to Rule 9011. First, Judge Mund points out that Rule 9011(c)(1)(B) does not give a 21-day safe harbor when the court discovers the wrongful conduct and brings it to light through an order to show cause. Judge Mund asks whether this is intentional. It is. The Advisory Committee's intention is to conform Rule 9011 to Civil Rule 11. Rule 9011(c)(1)(B) is the mirror image of Civil Rule 11 which does not apply the 21-day safe harbor to situations in which the court, on its own initiative, directs an attorney or party to show cause why it has not violated Rule 11.

Judge Mund's second point regarding Rule 9011 focuses on proposed Rule 9011(c)(2)(B). That paragraph provides as follows:

> "(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned."

Although Judge Mund suggests that this paragraph be "clarified", she actually recommends that the substance of it be changed:

> "I believe the intent is that a monetary sanction may not be awarded to another party on the Court's initiative unless

> the order to show cause is issued before a voluntary dismissal or settlement of the claims. But the Court should be able to order payment to the Court even if the matter is dismissed or settled. This is one of the few ways that the Court can handle egregious conduct and shouldn't be taken away from us."

If the Advisory Committee were writing on a clean slate, I might agree with Judge Mund's suggestion. However, the purpose of the amendments to Rule 9011 is to conform to the 1993 amendments to Civil Rule 11. Again, this paragraph is the mirror image of Rule 11. Rightly or wrongly, it was included in Rule 11 so that parties settling a case will not be subsequently faced with unexpected sanctions that might have affected their willingness to settle or voluntarily dismiss the case.

For these reasons, I do not recommend any changes to the proposed draft of Rule 9011.

(2) Hon. James E. Yacos, United States Bankruptcy Judge, District of New Hampshire, in his letter dated January 5, 1996, comments on one aspect of the proposed amendments to Rule 9011(a).

Rule 9011, both now and under the proposed amendments, provides that a paper that is required to be signed under that rule, but that is not signed, "shall be stricken" unless the omission of the signature is corrected promptly after being called to the attention of the person required to sign it. See Appendix B, pp. 81-82 (bottom page numbers), lines 34-40. The new language in the proposed amendments is identical to the language in Civil Rule 11.

Judge Yacos' comments are based on his assumption that clerks are not to accept unsigned papers for filing. He writes:

> "The Rule implies, and it certainly has been the universal understanding of the Rule in the past, that an unsigned paper will not be accepted for filing and docketing by the Clerk. However, that major principle is not made explicit in the rule, either in its original form or in the amended form....
>
> It should be made explicit that the concept of striking unsigned papers in a court file only arises where the clerks inadvertently and through mistake accept an unsigned document for filing. Otherwise, an ambiguity exists in the rule that may suggest to parties and their attorneys that the Clerk must accept an unsigned document subject only to the power to strike set forth in the Rule. It might even be better to eliminate any reference to striking a filed but unsigned document unless it is made clear that the holding of the document in the file till a signature is provided does not have a retroactive effect of validating an earlier filing that was not legally effective as of that earlier date if some deadline is involved.
>
> Indeed, it should be made <u>explicit</u> in the Rule that unsigned documents will not be accepted for filing by the Clerk.... All parties involved either way with such deadlines should have a clear statement that an unsigned document submitted for filing does not constitute a legally effective filing."

I do not agree with Judge Yacos' view that unsigned documents are not to be accepted by the clerk. The only consequence in Rule 9011 (as in Rule 11) is that unsigned papers shall be stricken if not signed promptly after being called to the attention of the person required to sign it.

As mentioned above, the intention of the Advisory Committee is to amend Rule 9011 to conform to Civil Rule 11. The committee note to the 1993 amendments to Civil Rule 11 confirms that the intention of the Civil Rules Committee was to require unsigned

papers to be accepted by the clerk, subject to being stricken later. The committee note states: "Unsigned papers are to be received by the clerk, but then are to be stricken if the omission of the signature is not corrected promptly after being called to the attention of the attorney or pro se litigant."

It is also worth mentioning that this view of Rule 9011 (i.e., that unsigned papers are to be accepted for filing) is consistent with the policy underlying Rule 5005. Rule 5005(a) -- as amended in 1993 for the purpose of conforming to the 1991 amendments to Civil Rule 5(e) -- provides that "[t]he clerk shall not refuse to accept for filing any petition or other paper presented for the purpose of filing solely because it is not presented in proper form as required by these rules or any local rules or practices." The Committee Note to Rule 5005 explains that "[i]t is not a suitable role for the office of the clerk to refuse to accept for filing papers not conforming to requirements of form imposed by these rules or by local rules of practices. The enforcement of these rules and local rules is a role for a judge."

If the proposed amendments to Rule 9011(a) are amended as suggested by Judge Yacos, the rule would not conform to Civil Rule 11, in substance as well as to form. I recommend that the proposed amendments to Rule 9011 be approved as published.

(3) James Gadsden, Esq., of Carter, Ledyard & Milburn, New York City, frequently represents indenture trustees in large

chapter 11 cases, and writes that he is "particularly concerned with the mechanics of notice and distributions to holders of the indenture securities since the indenture trustee frequently makes the distributions either as a disbursing agent for the debtor or as a disbursement of funds distributed to the indenture trustee upon allowance of the indenture trustee's claim for the principal of and interest on all of the indenture securities."

In his letter dated November 8, 1995, Mr. Gadsden commented on the proposed amendments to Rules 3017(d), 3018(a), and 3021. These rules presently require (1) the distribution of the disclosure statement and other voting materials to holders of debt and equity securities who are holders of record on the date on which the order approving the disclosure statement is entered (Rule 3017(d)); (2) voting by the same holders of record (Rule 3018(a)); and (3) distributions to those who are holders of record at the time of the commencement of distributions under a confirmed plan (Rule 3021). Rules 3017(d) and 3018(a) will be amended to permit the court to fix "for cause" another date as the record date. See page 60 (bottom page numbers) (lines 117-119) and page 67 (lines 15-17) of Appendix B. Rule 3021 will be amended to permit distributions to be made to record holders on a date fixed in a chapter 11 plan or confirmation order. See page 69-70 (lines 12-20) of Appendix B.

Mr. Gadsden's letter begins as an inquiry concerning the need for the changes to these record date provisions. He notes, and correctly so, that neither the Rules nor the Committee Notes

provide any guidance on what constitutes "cause" to select a different record date. He then states:

> "Based on that experience [as attorney for indenture trustees in large chapter 11 cases], I am not aware of the need for any modification of the present rules governing record dates. Indenture trustees can supply sets of labels overnight once a record date is fixed so that the present record date rules need not delay notices or distributions. In fact, with respect to distributions, notice to the record holders is only the first step in the distribution mechanics which require the presentation of certificates or uncertified record positions prior to the distribution of the property to the indenture securityholders. Changes to these dates may operate as an injunction against the transfers of securities without the protections of Rule 7065."

As he indicated in his letter, Mr. Gadsden called me a week or so later so that we could discuss the reasons for the proposed amendments. He indicated that he was puzzled by the proposed amendments because, in his experience, the system works fine now. I indicated in our telephone conversation that the original suggestion for the amendments to Rules 3017 and 3018 was based on a concern that courts are not always diligent in entering orders on court dockets and that sometimes an order is entered a day or two after the court signs the order. Therefore, a disclosure statement may be approved on Monday, but the order approving it may not be entered by the clerk until a few days later. The proposed change would permit the judge to order that the record date for the purpose of applying these rules is that Monday -- regardless of the date on which the order is entered. The language that was finally approved by the Committee, however, is not so limited, and is designed to give the judge greater

discretion to select any other date for cause (so that, for example, if the disclosure statement hearing is delayed a day or two, and mailing labels were prepared in contemplation of the original hearing date, the court may order that those labels may be used).

In his letter, Mr. Gadsden expresses concern regarding the effect of the proposed amendments on the trading of securities ("Changes to these dates may operate as an injunction against the transfers of securities without the protections of Rules 7065"). Although any possible injunctive effect of the proposed amendments was not discussed at any of our meetings -- and I personally do not agree that there is any injunctive effect -- the Committee did discuss the effect of these proposed amendments to Rules 3017(d) and 3018(a) (but not Rule 3021) with respect to the rights of investors who buy debt and equity securities shortly before the disclosure statement hearing.

To refresh your recollection, at the March 1994 meeting, the Committee considered two alternative drafts of proposed amendments to Rules 3017 and 3018. One draft limited the court's discretion to directing that the record date (for voting purposes) be "the date on which the court announces the order approving the disclosure statement." My reason for presenting that draft limiting the court's discretion in selecting a record date was because it would solve the stated problem (i.e., brief delays in entering orders) while alleviating my expressed concern that a plan proponent (without revealing its true intentions) may

attempt to disenfranchise an unfriendly purchaser of bonds or other securities by persuading the court to select an early record date. However, after a full discussion of the issues, that draft was rejected in favor of a different draft that would give the court greater flexibility in selecting the record date. The Committee, in approving the more flexible draft, added the requirement that the court may order a different record date for voting purposes only "for cause" and "after notice and a hearing." The Committee considered only one draft of the proposed amendments to Rule 3021, which provides that the record date for distribution purposes may be set in the plan or the confirmation order.

In considering Mr. Gadsden's comments, the Committee also may find relevant Rule 3003(d), which states as follows:

> (d) PROOF OF RIGHT TO RECORD STATUS. For the purposes of Rules 3017, 3018 and 3021 and for receiving notices, an entity who is not the record holder of a security may file a statement setting forth facts which entitle that entity to be treated as the record holder. An objection to the statement may be filed by any party in interest.

Any investor who buys securities after the record date for distributions -- whether the record date is determined as the time when distributions commence consistent with present Rule 3021, or by the plan or confirmation order as under the proposed amendments to Rule 3021 -- would have the right to file a statement that it should be treated as the record holder by reason of the purchase. I question whether Rule 3003(d) is effective, as a practical matter, with respect to the distribution of ballots and disclosure statements, but I believe

it may address Mr. Gadsden's concern that the proposed amendments will act as injunctions against the transfers of securities without the protections of Rule 7065.

In any event, in view of his extensive experience in making distributions in chapter 11 cases, Mr. Gadsden's letter is worthy of serious consideration at the March meeting.

Attachments:

Appendix A - Letters Received from the Bench and Bar
Appendix B - Published Proposed Amendments

APPENDIX A

LETTERS RECEIVED FROM BENCH AND BAR

BANKRUPTCY RULES
COMMENTS SEPTEMBER 1995

DOC #	NAME OF INDIVIDUAL AND /OR ORGANIZATION	DATE REC'D	RULES	DATE RESP	DATE OF FOLLOW UP
BK1	James Gadsden	11/28	3017, 3018, 3021	1/22	
BK2(see CV120)	Judge Geraldine Mund	11/28	3017.1, 9011(c)(1)	1/17	
BK3	Judge James E. Yacos	1/11	9011	1/18	

RECEIVED 11/28/95

95-BK-01

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JEROME J. COHEN
RICHARD B. COVEY
H. THOMAS DAVIS, JR.
WILLIAM E. DONOVAN
TIMOTHY J. FITZGIBBON
MICHAEL I. FRANKEL
JAMES GADSDEN
PETER P. McN. GATES
STEVEN J. GLUSBAND
ROBERT R. GREW
ROBERT L. HOEGLE
BETH D. JACOB
JACK KAPLAN
BERNARD J. KAROL
STEPHEN L. KASS
ROBERT A. McTAMANEY
VINCENT MONTE-SANO
NEIL R. PEARSON
JAMES W. RAYHILL
ROBERT M. RIGGS
JOSEPH M. RYAN
HEYWOOD SHELLEY
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WRITER'S DIRECT DIAL
(212) 238-8607

November 8, 1995

Professor Alan N. Resnick
Hofstra University School of Law
121 Law School
Hempstead, New York 11550

Re: Proposed Amendments to Bankruptcy Rules 3017, 3018 and 3021

Dear Professor Resnick:

I am writing to inquire concerning the need for the changes to record date provisions of Rules 3017, 3018 and 3021 made in the proposed rules published for comment by the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States which appear in the October 18, 1995 edition of the West's Bankruptcy Reporter advance sheets.

The present rules require transmission of the approved disclosure statement to the holders of record as of the date of the entry of the order approving the disclosure statement (Rule 3017(d)); voting by holders of record as of the same date (Rule 3018(a)); and distributions to holders of record the time of the commencement of distributions (Rule 3021). Each rule is to be amended to permit the court to fix another date "for cause." Neither the proposed rules nor the Advisory Committee Notes provide any guidance on proper cause.

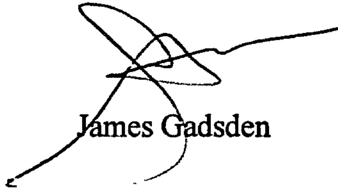
I have frequently represented indenture trustees in large Chapter 11 cases. In the role of counsel for the trustee, I have been particularly concerned with the mechanics of notice and distributions to holders of the indenture securities since the indenture trustee frequently makes the distributions either as a disbursing agent for the debtor or as a disbursement of funds distributed to the indenture trustee upon allowance of the indenture trustee's claim for the

principal of and interest on all of the indenture securities (See Rules 3003(c)(1), 3003(c)(5) and 3021).

Based on that experience, I am not aware of the need for any modification of the present rules governing record dates. Indenture trustees can supply sets of labels overnight once a record date is fixed so that the present record date rules need not delay notices or distributions. In fact, with respect to distributions, notice to the record holders is only the first step in the distribution mechanics which require the presentation of certificates or uncertificated record positions prior to the distribution of the property to the indenture securityholders. Changes to these dates may operate as an injunctions against the transfers of securities without the protections of Rules 7065.

I would appreciate the opportunity to discuss with you the genesis of the changes and will attempt to reach you by telephone next week.

Very truly yours,



James Gadsden

JG:mc

UNITED STATES BANKRUPTCY COURT
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GERALDINE MUND
JUDGE

RECEIVED 11/28/95

95-BK-2

November 15, 1995

95-CV-120

Peter McCabe
Secretary, Committee on Rules of Practice & Procedure
Administrative Office of the U.S. Courts
Washington, D.C. 20544

Re: Rules of Practice & Procedure and

Dear Mr. McCabe:

I have had an opportunity to review the request for comment on the preliminary draft of the proposed amendments to the Rules of Bankruptcy Procedure and Civil Procedure. I have the following comments, which I hope you will pass on to the committees:

F.R.B.P. Rule 3017.1

This rule is limited to a debtor who has made a small business election. However, my reading of 11 U.S.C. § 105 is that at a status conference the Court can order or approve that the disclosure statement will go through the conditional hearing process and that there will be a combined hearing on the disclosure statement and plan. Section 105 is not limited to small businesses. Therefore, I recommend that Rule 3017.1 be modified so that it also applies to other debtors for whom the Court orders conditional approval of a disclosure statement and combined hearing of the disclosure statement and plan.

F.R.B.P. Rule 9011 (c)(1)(B)

I realize that the changes that are made to Rule 9011 mirror those that were made to F.R.C.P. 11. However, I would like to raise two points that the committees may wish to discuss and clarify. Rule 9011(c)(1)(B) does not give a 21-day safe harbor when the Court discovers the wrongful conduct and brings it to light through an order to show cause. Is this intentional?

F.R.B.P. Rule 9011(c)(2)(B)

Rule 9011(c)(2)(B) should be clarified. I believe the intent is that a monetary sanction may not be awarded to another party on the Court's initiative unless the order to show cause is issued before a voluntary dismissal or settlement of the claims. But the Court should be able to order payment to the Court even if the matter is dismissed or settled. This is one of the few ways that the Court can handle egregious conduct and shouldn't be taken away from us.

F.R.C.P. 48

The determination that a jury must have 12 members can create a real facilities problem in the bankruptcy courts. I believe that the bankruptcy court design guide does not provide a large enough jury box to seat 12 people. I suggest that this be kept to local practice. If the committee would like to encourage 12 member juries, the rule should state that the Court shall seat a jury of 12 members unless local rules provide otherwise, or unless the Court orders otherwise, in which case there will be no fewer than 6 members of the jury.

I note that there is no rule to deal with the procedure to enforce 11 U.S.C. § 110 (the Bankruptcy Preparers' Provision). This is a particularly complex section involving both the bankruptcy court and the district court. A rule on procedure is critical.

Thank you for handling this matter for me.

Very truly yours,

GERALDINE MUND
United States Bankruptcy Judge

GM:yg

RECEIVED 1/11/96

95-BK-3

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE
7th FLOOR, FEDERAL BUILDING
275 CHESTNUT STREET
MANCHESTER, N.H. 03101

JAMES E. YACOS
BANKRUPTCY JUDGE

603-666-7775
(FTS 834-7775)

January 5, 1996

Peter G. McCabe,
Secretary of the Committee
on Rules of Practice and Procedure
Administrative Office of the
United States Courts
1 Columbus Circle-NE
Washington, D.C. 20544

RE: Preliminary Drafts of Proposed Amendments To Bankruptcy Rules

Dear Mr. McCabe:

This is a response and comment as requested with regard to the preliminary draft of proposed bankruptcy rules circulated by the committee on September 1995. My comment is addressed to Rule 9011.

This Rule requires that every petition, pleading, written motion and other paper filed with the bankruptcy court (with certain exceptions not here pertinent) be signed by an attorney or a party. The Rule implies, and it certainly has been the universal understanding of the Rule in the past, that an unsigned paper will not be accepted for filing and docketing by the Clerk. However, that major principle is not made explicit in the rule, either in its original form or in the amended form.

Rule 9011 goes on to state that "an unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party." The use of the word "stricken" implies than an unsigned paper has in fact been accepted for filing by the Clerk.

It should be made explicit that the concept of striking unsigned papers in a court file only arises where the clerks inadvertently and through mistake accept an unsigned document for filing. Otherwise, an ambiguity exists in the rule that may suggest to parties and their attorneys that the Clerk must accept an unsigned document subject only to the power to strike set forth in

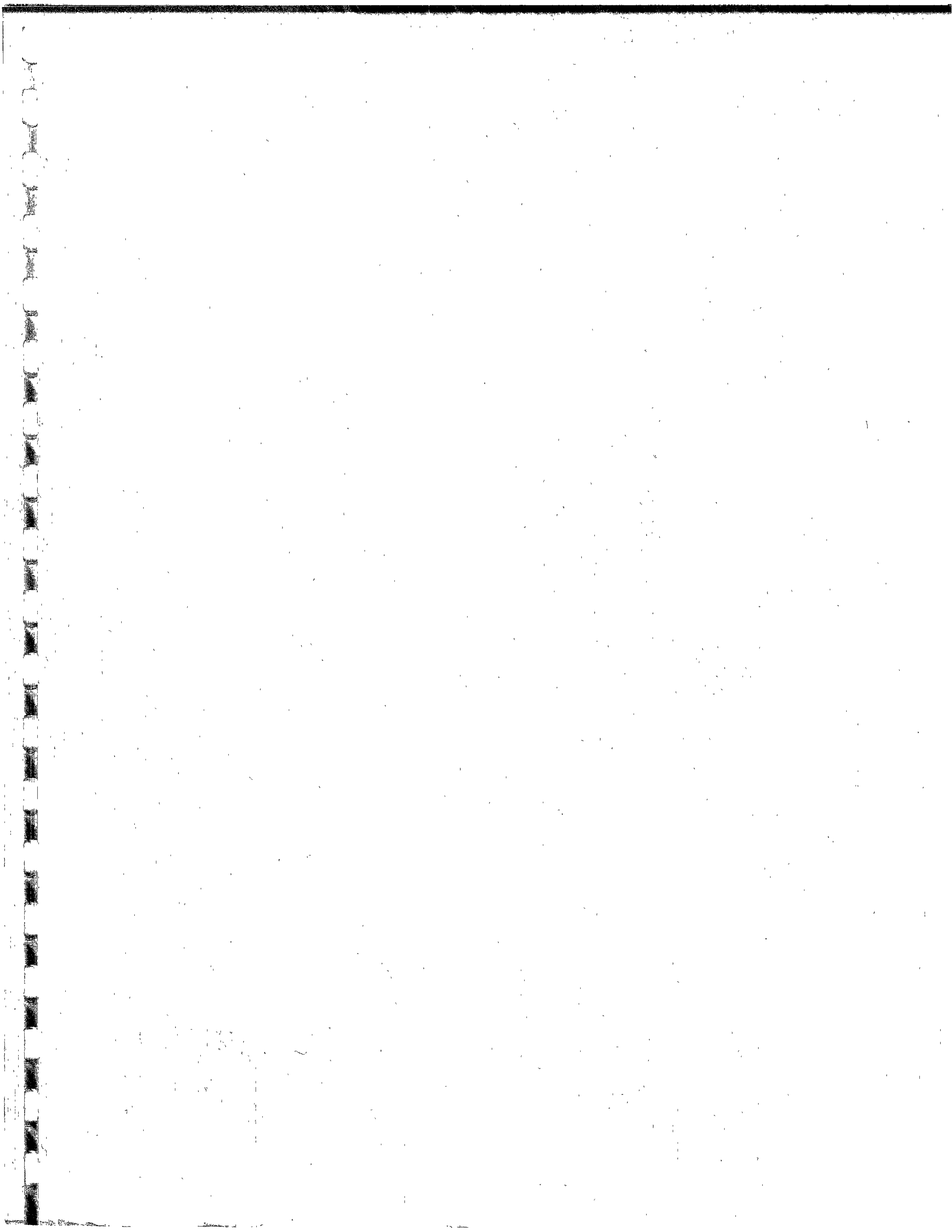
the Rule. It might even be better to eliminate any reference to striking a filed but unsigned document unless it is made clear that the holding of the document in the file till a signature is provided does not have a retroactive effect of validating an earlier filing that was not legally effective as of that earlier date if some deadline is involved.

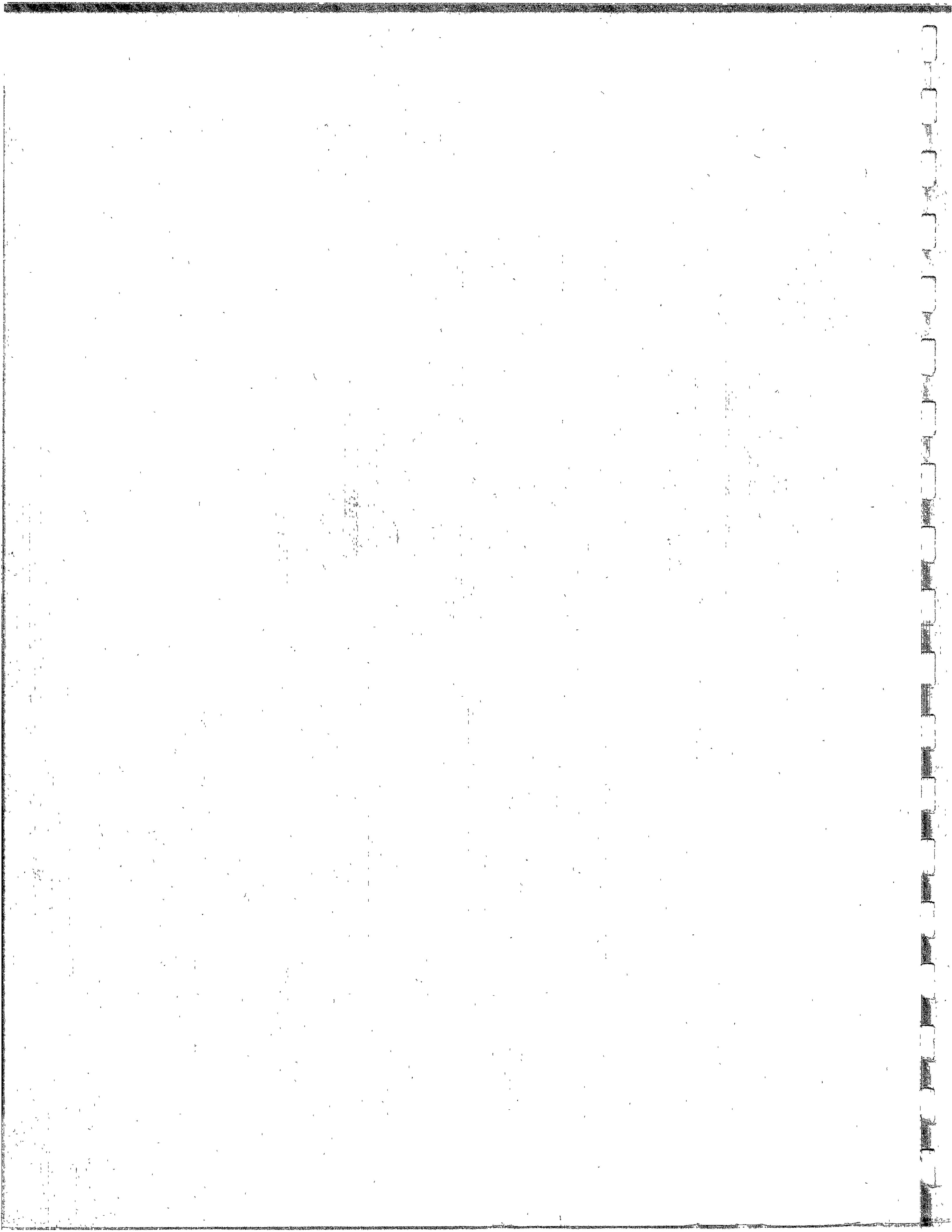
Indeed, I believe it should be made explicit in the Rule that unsigned documents will not be accepted for filing by the Clerk. This will eliminate any question or ambiguity in that area and is important since legal rights stemming from deadlines of various types often depend upon a legally effective filing of the document on or before a certain date. All parties involved either way with such deadlines should have a clear statement that an unsigned document submitted for filing does not constitute a legally effective filing.

Very truly yours,

James E. Yacos
Bankruptcy Judge

cc: George A. Vannah, Clerk





APPENDIX B

PRELIMINARY DRAFT OF PROPOSED AMENDMENTS

PUBLISHED IN SEPTEMBER 1995

PRELIMINARY DRAFT
OF PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 1019. Conversion of Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to Chapter 7 Liquidation Case

1 When a chapter 11, chapter 12, or
2 chapter 13 case has been converted or
3 reconverted to a chapter 7 case:
4 * * * * *
5 (3) CLAIMS FILED BEFORE CONVERSION
6 ~~IN SUPERSEDED CASES~~. All claims
7 actually filed by a creditor ~~in the~~
8 ~~superseded case~~ before conversion of the
9 case are ~~shall be~~ deemed filed in the
10 chapter 7 case.
11 * * * * *
12 (5) FILING FINAL REPORT AND
13 SCHEDULE OF POSTPETITION DEBTS.

---

*New matter is underlined; matter to be omitted is lined through.

14 (A) *Conversion of Chapter 11*
15 *or Chapter 12 Case*. Unless the
16 court directs otherwise, if a
17 chapter 11 or chapter 12 case is
18 converted to chapter 7, the debtor
19 in possession or, if the debtor is
20 not a debtor in possession, the
21 trustee serving at the time of
22 conversion, shall:
23 (i) not later than 15
24 days after conversion of the
25 case, file a schedule of
26 unpaid debts incurred after
27 the filing of the petition and
28 before conversion of the case,
29 including the name and address
30 of each holder of a claim; and
31 (ii) not later than 30
32 days after conversion of the
33 case, file and transmit to the

34 United States trustee a final
35 report and account;
36 (B) *Conversion of Chapter 13*
37 *Case*. Unless the court directs
38 otherwise, if a chapter 13 case is
39 converted to chapter 7,
40 (i) the debtor, not
41 later than 15 days after
42 conversion of the case, shall
43 file a schedule of unpaid
44 debts incurred after the
45 filing of the petition and
46 before conversion of the case,
47 including the name and address
48 of each holder of a claim; and
49 (ii) the trustee, not
50 later than 30 days after
51 conversion of the case, shall
52 file and transmit to the
53 United States trustee a final

54 report and account;

55 (C) *Conversion After*

56 *Confirmation of a Plan.* Unless the

57 court orders otherwise, if a

58 chapter 11, chapter 12, or chapter

59 13 case is converted to chapter 7

60 after confirmation of a plan, the

61 debtor shall file:

62 (i) a schedule of

63 property not listed in the

64 final report and account

65 acquired after the filing of

66 the petition but before

67 conversion, except if the case

68 is converted from chapter 13

69 to chapter 7 and § 348(f)(2)

70 does not apply;

71 (ii) a schedule of

72 unpaid debts not listed in the

73 final report and account

74 incurred after confirmation
75 but before the conversion; and
76 (iii) a schedule of
77 executory contracts and
78 unexpired leases entered into
79 or assumed after the filing of
80 the petition but before
81 conversion.
82 (D) *Transmission to United*
83 *States Trustee.* The clerk shall
84 forthwith transmit to the United
85 States trustee a copy of every
86 schedule filed pursuant to Rule
87 1019(5).
88 ~~Unless the court directs otherwise, each~~
89 ~~debtor in possession or trustee in the~~
90 ~~superseded case shall: (A) within 15~~
91 ~~days following the entry of the order of~~
92 ~~conversion of a chapter 11 case, file a~~
93 ~~schedule of unpaid debts incurred after~~

94 ~~commencement of the superseded case~~
95 ~~including the name and address of each~~
96 ~~creditor; and (B) within 30 days~~
97 ~~following the entry of the order of~~
98 ~~conversion of a chapter 11, chapter 12,~~
99 ~~or chapter 13 case, file and transmit to~~
100 ~~the United States trustee a final report~~
101 ~~and account. Within 15 days following~~
102 ~~the entry of the order of conversion,~~
103 ~~unless the court directs otherwise, a~~
104 ~~chapter 13 debtor shall file a schedule~~
105 ~~of unpaid debts incurred after the~~
106 ~~commencement of a chapter 13 case, and a~~
107 ~~chapter 12 debtor in possession or, if~~
108 ~~the chapter 12 debtor is not in~~
109 ~~possession, the trustee shall file a~~
110 ~~schedule of unpaid debts incurred after~~
111 ~~the commencement of a chapter 12 case.~~
112 ~~If the conversion order is entered after~~
113 ~~confirmation of a plan, the debtor shall~~

114 ~~file (A) a schedule of property not~~
115 ~~listed in the final report and account~~
116 ~~acquired after the filing of the~~
117 ~~original petition but before entry of~~
118 ~~the conversion order; (B) a schedule of~~
119 ~~unpaid debts not listed in the final~~
120 ~~report and account incurred after~~
121 ~~confirmation but before entry of the~~
122 ~~conversion order; and (C) a schedule of~~
123 ~~executory contracts and unexpired leases~~
124 ~~entered into or assumed after the filing~~
125 ~~of the original petition but before~~
126 ~~entry of the conversion order. The~~
127 ~~clerk shall forthwith transmit to the~~
128 ~~United States trustee a copy of every~~
129 ~~schedule filed pursuant to this~~
130 ~~paragraph.~~

* * * * *

COMMITTEE NOTE

The amendments to subdivisions (3) and (5) are technical corrections and

stylistic changes. The phrase "superseded case" is deleted because it creates the erroneous impression that conversion of a case results in a new case that is distinct from the original case. Similarly, the phrase "original petition" is deleted because it erroneously implies that there is a second petition with respect to a converted case. See § 348 of the Code.

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

1 In a chapter 11 reorganization
2 case, a debtor that is a small business
3 may elect to be considered a small
4 business by filing a written statement
5 of election not later than 60 days after
6 the date of the order for relief or by a
7 later date as the court, for cause, may
8 fix.

COMMITTEE NOTE

This rule is designed to implement §§ 1121(e) and 1125(f) that were added to the Code by the Bankruptcy Reform Act of 1994.

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

1 (a) TWENTY-DAY NOTICES TO PARTIES
2 IN INTEREST. Except as provided in
3 subdivisions (h), (i), and (l) of this
4 rule, the clerk, or some other person as
5 the court may direct, shall give the
6 debtor, the trustee, all creditors and
7 indenture trustees at least ~~not less~~
8 ~~than~~ 20 days' ~~days~~ notice by mail of:
9 (1) the meeting of creditors
10 ~~pursuant to~~ under § 341
11 or § 1104(b) of the
12 Code;
13 * * * * *
14 (n) CAPTION. The caption of every
15 notice given under this rule shall
16 comply with Rule 1005. The caption of
17 every notice required to be given by the

18 debtor to a creditor shall include the
19 information required to be in the notice
20 by § 342(c) of the Code.

* * * * *

COMMITTEE NOTE

Paragraph (a)(1) is amended to include notice of a meeting of creditors convened under § 1104(b) of the Code for the purpose of electing a trustee in a chapter 11 case. The court for cause shown may order the 20-day period reduced pursuant to Rule 9006(c)(1).

Subdivision (n) is amended to conform to the 1994 amendment to § 342 of the Code. As provided in § 342(c), the failure of a notice given by the debtor to a creditor to contain the information required by § 342(c) does not invalidate the legal effect of the notice.

Rule 2007.1. Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case

1 (a) ORDER TO APPOINT TRUSTEE OR
2 EXAMINER. In a chapter 11 reorganization
3 case, a motion for an order to appoint a

4 trustee or an examiner ~~pursuant to~~ under
5 § 1104(a) or § ~~1104(b)~~ 1104(c) of the
6 Code shall be made in accordance with
7 Rule 9014.

8 (b) ELECTION OF TRUSTEE.

9 (1) *Request for an Election.*
10 A request to convene a meeting of
11 creditors for the purpose of
12 electing a trustee in a chapter 11
13 reorganization case shall be filed
14 and transmitted to the United
15 States trustee in accordance with
16 Rule 5005 within the time
17 prescribed by § 1104(b) of the
18 Code. Pending court approval of
19 the person elected, any person
20 appointed by the United States
21 trustee under § 1104(d) and
22 approved in accordance with
23 subdivision (c) of this rule shall

24 serve as trustee.

25 *(2) Manner of Election and*
26 *Notice.* An election of a trustee
27 under § 1104(b) of the Code shall
28 be conducted in the manner provided
29 in Rules 2003(b)(3) and 2006.
30 Notice of the meeting of creditors
31 convened under § 1104(b) shall be
32 given as provided in Rule 2002.
33 The United States trustee shall
34 preside at the meeting. A proxy
35 for the purpose of voting in the
36 election may be solicited only by a
37 committee of creditors appointed
38 under § 1102 of the Code or by any
39 other party entitled to solicit a
40 proxy pursuant to Rule 2006.

41 *(3) Appointment and Resolution*
42 *of Disputes.* If it is not
43 necessary to resolve a dispute

44 regarding the election or if the
45 court has resolved all such
46 disputes, the United States trustee
47 shall promptly appoint the person
48 elected to be trustee and file an
49 application for approval of the
50 appointment in accordance with
51 subdivision (c) of this rule. If
52 it is necessary to resolve a
53 dispute regarding the election, the
54 United States trustee shall
55 promptly file a report informing
56 the court of the dispute. Not
57 later than the date on which the
58 report is filed, the United States
59 trustee shall mail a copy of the
60 report to any party in interest
61 that has made a request to convene
62 a meeting under § 1104(b) or to
63 receive a copy of the report, and

64 to any committee appointed under
65 § 1102 of the Code. Unless a
66 motion for the resolution of the
67 dispute is filed not later than 10
68 days after the United States
69 trustee files the report, any
70 person appointed by the United
71 States trustee under § 1104(d) and
72 approved in accordance with
73 subdivision (c) of this rule shall
74 serve as trustee.
75 ~~(b)~~ (c) APPROVAL OF APPOINTMENT.
76 An order approving the appointment of a
77 trustee elected under § 1104(b) or
78 appointed under § 1104(d), or the
79 appointment of an examiner ~~pursuant to~~
80 ~~§ 1104(c)~~ under § 1104(d) of the Code,
81 shall be made ~~only~~ on application of the
82 United States trustee~~,~~. The application
83 shall state ~~stating~~ the name of the

84 person appointed~~, the names of the~~
85 ~~parties in interest with whom the United~~
86 ~~States trustee consulted regarding the~~
87 ~~appointment,~~ and, to the best of the
88 applicant's knowledge, all the person's
89 connections with the debtor, creditors,
90 any other parties in interest, their
91 respective attorneys and accountants,
92 the United States trustee, and persons
93 employed in the office of the United
94 States trustee. Unless the person has
95 been elected under § 1104(b), the
96 application shall state the names of the
97 parties in interest with whom the United
98 States trustee consulted regarding the
99 appointment. The application shall be
100 accompanied by a verified statement of
101 the person appointed setting forth the
102 person's connections with the debtor,
103 creditors, any other party in interest,

104 their respective attorneys and
105 accountants, the United States trustee,
106 and any person employed in the office of
107 the United States trustee.

COMMITTEE NOTE

This rule is amended to implement the 1994 amendments to § 1104 of the Code regarding the election of a trustee in a chapter 11 case.

This rule requires the United States trustee to file an application for court approval of the appointment of the elected person in accordance with Rule 2007.1(c). Court approval is necessary primarily because of the requirement under § 1104(b) that the person be disinterested.

The procedures for reporting disputes to the court derive from similar provisions in Rule 2003(d) applicable to chapter 7 cases. An election may be disputed by a party in interest or by the United States trustee. For example, if the United States trustee believes that the person elected is ineligible to serve as trustee because the person is not "disinterested," the United States trustee may file a report disputing the election.

The word "only" is deleted from subdivision (b), redesignated as subdivision (c), to avoid any negative inference with respect to the availability of procedures for obtaining review of the United States trustee's acts or failure to act pursuant to Rule 2020.

Rule 3014. Election ~~Pursuant to~~ Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or ~~and~~ Chapter 11 Reorganization Case ~~Cases~~

1 An election of application of
2 § 1111(b)(2) of the Code by a class of
3 secured creditors in a chapter 9 or 11
4 case may be made at any time prior to
5 the conclusion of the hearing on the
6 disclosure statement or within such
7 later time as the court may fix. If the
8 disclosure statement is conditionally
9 approved pursuant to Rule 3017.1, and a
10 final hearing on the disclosure
11 statement is not held, the election of
12 application of § 1111(b)(2) may be made

13 not later than the date fixed pursuant
14 to Rule 3017.1(a)(2) or another date the
15 court may fix. The election shall be in
16 writing and signed unless made at the
17 hearing on the disclosure statement.
18 The election, if made by the majorities
19 required by § 1111(b)(1)(A)(i), shall be
20 binding on all members of the class with
21 respect to the plan.

COMMITTEE NOTE

This amendment provides a deadline for electing application of § 1111(b)(2) in a small business case in which a conditionally approved disclosure statement is finally approved without a hearing.

Rule 3017. Court Consideration of Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases

1 (a) HEARING ON DISCLOSURE STATEMENT
2 AND OBJECTIONS ~~THERETO~~. Except as

3 provided in Rule 3017.1, after a
4 disclosure statement is filed in
5 accordance with Rule 3016(b) ~~Following~~
6 ~~the filing of a disclosure statement as~~
7 ~~provided in Rule 3016(c)~~, the court
8 shall hold a hearing on ~~not less than~~ at
9 least 25 ~~days~~ days' notice to the
10 debtor, creditors, equity security
11 holders and other parties in interest as
12 provided in Rule 2002 to consider ~~such~~
13 the disclosure statement and any
14 objections or modifications thereto.
15 The plan and the disclosure statement
16 shall be mailed with the notice of the
17 hearing only to the debtor, any trustee
18 or committee appointed under the Code,
19 the Securities and Exchange Commission,
20 and any party in interest who requests
21 in writing a copy of the statement or
22 plan. Objections to the disclosure

23 statement shall be filed and served on
24 the debtor, the trustee, any committee
25 appointed under the Code, and any ~~such~~
26 other entity ~~as may be~~ designated by the
27 court, at any time before the disclosure
28 statement is approved ~~prior to approval~~
29 ~~of the disclosure statement~~ or by ~~such~~
30 an earlier date as the court may fix.
31 In a chapter 11 reorganization case,
32 every notice, plan, disclosure
33 statement, and objection required to be
34 served or mailed pursuant to this
35 subdivision shall be transmitted to the
36 United States trustee within the time
37 provided in this subdivision.
38 (b) DETERMINATION ON DISCLOSURE
39 STATEMENT. Following the hearing the
40 court shall determine whether the
41 disclosure statement should be approved.
42 (c) DATES FIXED FOR VOTING ON PLAN

43 AND CONFIRMATION. On or before approval
44 of the disclosure statement, the court
45 shall fix a time within which the
46 holders of claims and interests may
47 accept or reject the plan and may fix a
48 date for the hearing on confirmation.
49 (d) TRANSMISSION AND NOTICE TO
50 UNITED STATES TRUSTEE, CREDITORS, AND
51 EQUITY SECURITY HOLDERS. Upon ~~On~~
52 approval of a disclosure statement,
53 ~~unless~~ -- except to the extent that the
54 court orders otherwise with respect to
55 one or more unimpaired classes of
56 creditors or equity security holders~~,~~
57 -- the debtor in possession, trustee,
58 proponent of the plan, or clerk as
59 ~~ordered by~~ the court orders shall mail
60 to all creditors and equity security
61 holders, and in a chapter 11
62 reorganization case shall transmit to

63 the United States trustee,

64 (1) the plan~~,~~ or a ~~court approved~~

65 court-approved summary of the

66 plan;

67 (2) the disclosure statement

68 approved by the court;

69 (3) notice of the time within

70 which acceptances and

71 rejections of ~~such~~ the plan

72 may be filed; and

73 (4) any ~~such~~ other information as

74 the court may direct,

75 including any court opinion ~~of~~

76 ~~the court~~ approving the

77 disclosure statement or a

78 ~~court approved~~ court-approved

79 summary of the opinion.

80 In addition, notice of the time fixed

81 for filing objections and the hearing on

82 confirmation shall be mailed to all

83 creditors and equity security holders in
84 accordance with ~~pursuant to~~ Rule
85 2002(b), and a form of ballot conforming
86 to the appropriate Official Form shall
87 be mailed to creditors and equity
88 security holders entitled to vote on the
89 plan. ~~In the event~~ If the ~~opinion of~~
90 ~~the~~ court opinion is not transmitted or
91 only a summary of the plan is
92 transmitted, the ~~opinion of the~~ court
93 opinion or the plan shall be provided on
94 request of a party in interest at the
95 plan proponent's expense ~~of the~~
96 ~~proponent of the plan~~. If the court
97 orders that the disclosure statement and
98 the plan or a summary of the plan shall
99 not be mailed to any unimpaired class,
100 notice that the class is designated in
101 the plan as unimpaired and notice of the
102 name and address of the person from whom

103 the plan or summary of the plan and
104 disclosure statement may be obtained
105 upon request and at the plan proponent's
106 expense ~~of the proponent of the plan~~,
107 shall be mailed to members of the
108 unimpaired class together with the
109 notice of the time fixed for filing
110 objections to and the hearing on
111 confirmation. For the purposes of this
112 subdivision, creditors and equity
113 security holders shall include holders
114 of stock, bonds, debentures, notes, and
115 other securities of record on ~~at~~ the
116 date the order approving the disclosure
117 statement is ~~was~~ entered or another date
118 fixed by the court, for cause, after
119 notice and a hearing.
120 (e) TRANSMISSION TO BENEFICIAL
121 HOLDERS OF SECURITIES. At the hearing
122 held pursuant to subdivision (a) of this

123 rule, the court shall consider the
124 procedures for transmitting the
125 documents and information required by
126 subdivision (d) of this rule to
127 beneficial holders of stock, bonds,
128 debentures, notes, and other securities,
129 ~~and~~ determine the adequacy of <u>the</u> ~~such~~
130 procedures, and enter <u>any</u> ~~such~~ orders ~~as~~
131 the court deems appropriate.

COMMITTEE NOTE

<u>Subdivision (a)</u> is amended to provide that it does not apply to the extent provided in new Rule 3017.1, which applies in small business cases.

<u>Subdivision (d)</u> is amended to provide flexibility in fixing the record date for the purpose of determining the holders of securities who are entitled to receive documents pursuant to this subdivision. For example, if there may be a delay between the oral announcement of the judge's order approving the disclosure statement and entry of the order on the court docket, the court may fix the date on which the judge orally approves the disclosure statement as the record date so that the parties may

expedite preparation of the lists necessary to facilitate the distribution of the plan, disclosure statement, ballots, and other related documents.

The court may set a record date pursuant to subdivision (d) only after notice and a hearing as provided in § 102(1) of the Code. Notice of a request for an order fixing the record date may be included in the notice of the hearing to consider approval of the disclosure statement mailed pursuant to Rule 2002(b).

If the court fixes a record date pursuant to subdivision (d) with respect to the holders of securities, and the holders are impaired by the plan, the judge also should order that the same record date applies for the purpose of determining eligibility for voting pursuant to Rule 3018(a).

Other amendments to this rule are stylistic.

Rule 3017.1 Court Consideration of Disclosure Statement in a Small Business Case

1 (a) CONDITIONAL APPROVAL OF
2 DISCLOSURE STATEMENT. If the debtor is
3 a small business and has made a timely

4 election to be considered a small
5 business in a chapter 11 case, the court
6 may, on application of the plan
7 proponent, conditionally approve a
8 disclosure statement filed in accordance
9 with Rule 3016(b). On or before
10 conditional approval of the disclosure
11 statement, the court shall:
12 (1) fix a time within which
13 the holders of claims
14 and interests may accept
15 or reject the plan;
16 (2) fix a time for filing
17 objections to the
18 disclosure statement;
19 (3) fix a date for the
20 hearing on final
21 approval of the
22 disclosure statement to
23 be held if a timely

24 objection is filed; and

25 (4) fix a date for the

26 hearing on confirmation.

27 (b) APPLICATION OF RULE 3017. Rule

28 3017(a), (b), (c), and (e) do not apply

29 to a conditionally approved disclosure

30 statement. Rule 3017(d) applies to a

31 conditionally approved disclosure

32 statement, except that conditional

33 approval is considered approval of the

34 disclosure statement for the purpose of

35 applying Rule 3017(d).

36 (c) FINAL APPROVAL.

37 (1) *Notice.* Notice of the

38 time fixed for filing objections

39 and the hearing to consider final

40 approval of the disclosure

41 statement shall be given in

42 accordance with Rule 2002 and may

43 be combined with notice of the

44 hearing on confirmation of the
45 plan.
46 (2) *Objections.* Objections to
47 the disclosure statement shall be
48 filed, transmitted to the United
49 States trustee, and served on the
50 debtor, the trustee, any committee
51 appointed under the Code and any
52 other entity designated by the
53 court at any time before final
54 approval of the disclosure
55 statement or by an earlier date as
56 the court may fix.
57 (3) *Hearing.* If a timely
58 objection to the disclosure
59 statement is filed, the court shall
60 hold a hearing to consider final
61 approval before or combined with
62 the hearing on confirmation of the
63 plan.

COMMITTEE NOTE

This rule is added to implement § 1125(f) that was added to the Code by the Bankruptcy Reform Act of 1994.

The procedures for electing to be considered a small business are set forth in Rule 1020. If the debtor is a small business and has elected to be considered a small business, § 1125(f) permits the court to conditionally approve a disclosure statement subject to final approval after notice and a hearing. If a disclosure statement is conditionally approved, and no timely objection to the disclosure statement is filed, it is not necessary for the court to hold a hearing on final approval.

Rule 3018. Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

1 (a) ENTITIES ENTITLED TO ACCEPT OR
2 REJECT PLAN; TIME FOR ACCEPTANCE OR
3 REJECTION. A plan may be accepted or
4 rejected in accordance with § 1126 of
5 the Code within the time fixed by the
6 court pursuant to Rule 3017. Subject to
7 subdivision (b) of this rule, an equity

8 security holder or creditor whose claim
9 is based on a security of record shall
10 not be entitled to accept or reject a
11 plan unless the equity security holder
12 or creditor is the holder of record of
13 the security on the date the order
14 approving the disclosure statement is
15 entered <u>or on another date fixed by the</u>
16 <u>court, for cause, after notice and a</u>
17 <u>hearing</u>. For cause shown, the court
18 after notice and hearing may permit a
19 creditor or equity security holder to
20 change or withdraw an acceptance or
21 rejection. Notwithstanding objection to
22 a claim or interest, the court after
23 notice and hearing may temporarily allow
24 the claim or interest in an amount which
25 the court deems proper for the purpose
26 of accepting or rejecting a plan.

* * * * *

COMMITTEE NOTE

Subdivision (a) is amended to provide flexibility in fixing the record date for the purpose of determining the holders of securities who are entitled to vote on the plan. For example, if there may be a delay between the oral announcement of the judge's decision approving the disclosure statement and entry of the order on the court docket, the court may fix the date on which the judge orally approves the disclosure statement as the record date for voting purposes so that the parties may expedite preparation of the lists necessary to facilitate the distribution of the plan, disclosure statement, ballots, and other related documents in connection with the solicitation of votes.

The court may set a record date pursuant to subdivision (a) only after notice and a hearing as provided in § 102(1) of the Code. Notice of a request for an order fixing the record date may be included in the notice of the hearing to consider approval of the disclosure statement mailed pursuant to Rule 2002(b).

If the court fixes the record date for voting purposes, the judge also should order that the same record date shall apply for the purpose of distributing the documents required to be distributed pursuant to Rule 3017(d).

Rule 3021. Distribution Under Plan

1 After confirmation of a plan,
2 distribution shall be made to creditors
3 whose claims have been allowed, to
4 interest holders ~~of stock, bonds,~~
5 ~~debentures, notes, and other securities~~
6 ~~of record at the time of commencement of~~
7 ~~distribution whose claims or equity~~
8 ~~security~~ whose interests have not been
9 disallowed, and to indenture trustees
10 who have filed claims pursuant to Rule
11 3003(c)(5) ~~and which~~ that have been
12 allowed. For the purpose of this rule,
13 creditors include holders of bonds,
14 debentures, notes, and other debt
15 securities, and interest holders include
16 the holders of stock and other equity
17 securities, of record at the time of
18 commencement of distribution unless a
19 different time is fixed by the plan or

20 the order confirming the plan.

COMMITTEE NOTE

This rule is amended to provide flexibility in fixing the record date for the purpose of making distributions to holders of securities of record. In a large case, it may be impractical for the debtor to determine the holders of record with respect to publicly held securities and also to make distributions to those holders at the same time. Under this amendment, the plan or the order confirming the plan may fix a record date for distributions that is earlier than the date on which distributions commence.

This rule also is amended to treat holders of bonds, debentures, notes, and other debt securities the same as any other creditors by providing that they shall receive a distribution only if their claims have been allowed. Finally, the amendments clarify that distributions are to be made to all interest holders -- not only those that are within the definition of "equity security holders" under § 101 of the Code -- whose interests have not been disallowed.

Rule 8001. Manner of Taking Appeal; Voluntary Dismissal

1 (a) APPEAL AS OF RIGHT; HOW TAKEN.

2 An appeal from a ~~final~~ judgment, order,
3 or decree of a bankruptcy judge to a
4 district court or bankruptcy appellate
5 panel as permitted by 28 U.S.C.
6 § 158(a)(1) or (a)(2) shall be taken by
7 filing a notice of appeal with the clerk
8 within the time allowed by Rule 8002.
9 An appellant's failure ~~Failure of an~~
10 ~~appellant~~ to take any step other than
11 ~~the~~ timely filing ~~of~~ a notice of appeal
12 does not affect the validity of the
13 appeal, but is ground only for such
14 action as the district court or
15 bankruptcy appellate panel deems
16 appropriate, which may include dismissal
17 of the appeal. The notice of appeal
18 shall (1) conform substantially to the
19 appropriate Official Form, (2) ~~shall~~
20 contain the names of all parties to the
21 judgment, order, or decree appealed from

22 and the names, addresses, and telephone
23 numbers of their respective attorneys,
24 and (3) be accompanied by the prescribed
25 fee. Each appellant shall file a
26 sufficient number of copies of the
27 notice of appeal to enable the clerk to
28 comply promptly with Rule 8004.

29 (b) APPEAL BY LEAVE; HOW TAKEN. An
30 appeal from an interlocutory judgment,
31 order, or decree of a bankruptcy judge
32 as permitted by 28 U.S.C. § 158(a)(3)
33 shall be taken by filing a notice of
34 appeal, as prescribed in subdivision (a)
35 of this rule, accompanied by a motion
36 for leave to appeal prepared in
37 accordance with Rule 8003 and with proof
38 of service in accordance with Rule 8008.

39 * * * * *

40 (e) ELECTION TO HAVE APPEAL HEARD
41 BY THE DISTRICT COURT ~~CONSENT TO APPEAL~~

42 ~~TO BANKRUPTCY APPELLATE PANEL.~~ ~~Unless~~
43 ~~otherwise provided by a rule promulgated~~
44 ~~pursuant to Rule 8018, consent to have~~
45 ~~an appeal heard by a bankruptcy~~
46 ~~appellate panel may be given in a~~
47 ~~separate statement of consent executed~~
48 ~~by a party or contained in the notice of~~
49 ~~appeal or cross appeal. The statement~~
50 ~~of consent shall be filed before the~~
51 ~~transmittal of the record pursuant to~~
52 ~~Rule 8007(b), or within 30 days of the~~
53 ~~filing of the notice of appeal,~~
54 ~~whichever is later.~~ An election to have
55 an appeal heard by the district court
56 under 28 U.S.C. § 158(c)(1) may be made
57 only by a statement of election
58 contained in a separate writing filed
59 within the time prescribed by 28 U.S.C.
60 § 158(c)(1).

COMMITTEE NOTE

This rule is amended to conform to the Bankruptcy Reform Act of 1994 which amended 28 U.S.C. § 158. As amended, a party may -- without obtaining leave of the court -- appeal from an interlocutory order or decree of the bankruptcy court issued under § 1121(d) of the Code increasing or reducing the time periods referred to in § 1121.

Subdivision (e) is amended to provide the procedure for electing under 28 U.S.C. § 158(c)(1) to have an appeal heard by the district court.

Rule 8002. Time for Filing Notice of Appeal

* * * * *

1 (c) EXTENSION OF TIME FOR APPEAL.
2 (1) The bankruptcy judge may
3 extend the time for filing the
4 notice of appeal by any party ~~for a~~
5 ~~period not to exceed 20 days from~~
6 ~~the expiration of the time~~
7 ~~otherwise prescribed by this rule~~ .

8 unless the judgment, order, or
9 decree appealed from:
10 (A) grants relief from an
11 automatic stay under § 362,
12 § 922, § 1201, or § 1301;
13 (B) authorizes the sale
14 or lease of property or the
15 use of cash collateral under
16 § 363;
17 (C) authorizes the
18 obtaining of credit under
19 § 364;
20 (D) authorizes the
21 assumption or assignment of an
22 executory contract or
23 unexpired lease under § 365;
24 (E) approves a disclosure
25 statement under § 1125, or;
26 (F) confirms a plan under
27 § 943, § 1129, § 1225, or

28 § 1325 of the Code.
29 (2) A request to extend the
30 time for filing a notice of appeal
31 must be made by written motion
32 filed before the time for filing a
33 notice of appeal has expired,
34 except that such a motion filed not
35 later ~~request made no more~~ than 20
36 days after the expiration of the
37 time for filing a notice of appeal
38 may be granted upon a showing of
39 excusable neglect ~~if the judgment~~
40 ~~or order appealed from does not~~
41 ~~authorize the sale of any property~~
42 ~~or the obtaining of credit or the~~
43 ~~incurring of debt under § 364 of~~
44 ~~the Code, or is not a judgment or~~
45 ~~order approving a disclosure~~
46 ~~statement, confirming a plan,~~
47 ~~dismissing a case, or converting~~

48 ~~the case to a case under another~~
49 ~~chapter of the Code~~. An extension
50 of time for filing a notice of
51 appeal may not exceed 20 days from
52 the expiration of the time for
53 filing a notice of appeal otherwise
54 prescribed by this rule or 10 days
55 from the date of entry of the order
56 granting the motion, whichever is
57 later.

COMMITTEE NOTE

Subdivision (c) is amended to provide that a request for an extension of time to file a notice of appeal must be filed within the applicable time period. This amendment will avoid uncertainty as to whether the mailing of a motion or an oral request in court is sufficient to request an extension of time, and will enable the court and the parties in interest to determine solely from the court records whether a timely request for an extension has been made.

The amendments also give the court discretion to permit a party to file a notice of appeal more than 20 days after

expiration of the time to appeal otherwise prescribed, but only if the motion was timely filed and the notice of appeal is filed within a period not exceeding 10 days after entry of the order extending the time. This amendment is designed to protect parties that file timely motions to extend the time to appeal from the harshness of the present rule as demonstrated in In re Mouradick, 13 F.3d 326 (9th Cir. 1994), where the court held that a notice of appeal filed within the 3-day period expressly prescribed by an order granting a timely motion for an extension of time did not confer jurisdiction on the appellate court because the notice of appeal was not filed within the 20-day period specified in subdivision (c).

The subdivision is amended further to prohibit any extension of time to file a notice of appeal -- even if the motion for an extension is filed before the expiration of the original time to appeal -- if the order appealed from grants relief from the automatic stay, authorizes the sale or lease of property, use of cash collateral, obtaining of credit, or assumption or assignment of an executory contract or unexpired lease under § 365, or approves a disclosure statement or confirms a plan. These types of orders are often relied upon immediately after they are entered and should not be reviewable on appeal after the expiration of the original appeal period under Rule 8002(a) and (b).

Rule 8020. Damages and Costs for Frivolous Appeal

1 If a district court or bankruptcy
2 appellate panel determines that an
3 appeal from an order, judgment, or
4 decree of a bankruptcy judge is
5 frivolous, it may, after a separately
6 filed motion or notice from the district
7 court or bankruptcy appellate panel and
8 reasonable opportunity to respond, award
9 just damages and single or double costs
10 to the appellee.

COMMITTEE NOTE

This rule is added to clarify that a district court hearing an appeal, or a bankruptcy appellate panel, has the authority to award damages and costs to an appellee if it finds that the appeal is frivolous. By conforming to the language of Rule 38 F.R.App.P., this rule recognizes that the authority to award damages and costs in connection with frivolous appeals is the same for district courts sitting as appellate courts, bankruptcy appellate panels, and

courts of appeals.

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

1 (a) SIGNATURE. Every petition,
2 pleading, written motion, and other
3 paper ~~served or filed in a case under~~
4 ~~the Code on behalf of a party~~
5 ~~represented by an attorney~~, except a
6 list, schedule, or statement, or
7 amendments thereto, shall be signed by
8 at least one attorney of record in the
9 attorney's individual name, or, if the
10 party is not represented by an attorney,
11 shall be signed by the party. ~~whose~~
12 ~~office address and telephone number~~
13 ~~shall be stated. A party who is not~~
14 ~~represented by an attorney shall sign~~
15 ~~all papers and state the party's address~~
16 ~~and telephone number.~~ Each paper shall

17 state the signer's address and telephone
18 number, if any. ~~The signature of an~~
19 ~~attorney or a party constitutes a~~
20 ~~certificate that the attorney or party~~
21 ~~has read the document; that to the best~~
22 ~~of the attorney's or party's knowledge,~~
23 ~~information, and belief formed after~~
24 ~~reasonable inquiry it is well grounded~~
25 ~~in fact and is warranted by existing law~~
26 ~~or a good faith argument for the~~
27 ~~extension, modification, or reversal of~~
28 ~~existing law; and that it is not~~
29 ~~interposed for any improper purpose,~~
30 ~~such as to harass or to cause~~
31 ~~unnecessary delay or needless increase~~
32 ~~in the cost of litigation or~~
33 ~~administration of the case. If a~~
34 ~~document is not signed, it~~ An unsigned
35 paper shall be stricken unless ~~it is~~
36 ~~signed promptly after the~~ omission of

37 the signature is corrected promptly
38 after being called to the attention of
39 the ~~person whose signature is required~~
40 attorney or party. ~~If a document is~~
41 ~~signed in violation of this rule, the~~
42 ~~court on motion or on its own~~
43 ~~initiative, shall impose on the person~~
44 ~~who signed it, the represented party, or~~
45 ~~both, an appropriate sanction, which may~~
46 ~~include an order to pay to the other~~
47 ~~party or parties the amount of the~~
48 ~~reasonable expenses incurred because of~~
49 ~~the filing of the document, including a~~
50 ~~reasonable attorney's fee.~~
51 (b) REPRESENTATIONS TO THE COURT.
52 By presenting to the court (whether by
53 signing, filing, submitting, or later
54 advocating) a petition, pleading,
55 written motion, or other paper, an
56 attorney or unrepresented party is

57 certifying that to the best of the
58 person's knowledge, information, and
59 belief, formed after an inquiry
60 reasonable under the circumstances, --
61 (1) it is not being presented
62 for any improper purpose, such as
63 to harass or to cause unnecessary
64 delay or needless increase in the
65 cost of litigation;
66 (2) the claims, defenses, and
67 other legal contentions therein are
68 warranted by existing law or by a
69 nonfrivolous argument for the
70 extension, modification, or
71 reversal of existing law or the
72 establishment of new law;
73 (3) the allegations and other
74 factual contentions have
75 evidentiary support or, if
76 specifically so identified, are

77 likely to have evidentiary support
78 after a reasonable opportunity for
79 further investigation or discovery;
80 and
81 (4) the denials of factual
82 contentions are warranted on the
83 evidence or, if specifically so
84 identified, are reasonably based on
85 a lack of information or belief.
86 (c) SANCTIONS. If, after notice
87 and a reasonable opportunity to respond,
88 the court determines that subdivision
89 (b) has been violated, the court may,
90 subject to the conditions stated below,
91 impose an appropriate sanction upon the
92 attorneys, law firms, or parties that
93 have violated subdivision (b) or are
94 responsible for the violation.
95 (1) *How Initiated.*
96 (A) *By Motion.* A motion

97 for sanctions under this rule
98 shall be made separately from
99 other motions or requests and
100 shall describe the specific
101 conduct alleged to violate
102 subdivision (b). It shall be
103 served as provided in Rule
104 7004. The motion for
105 sanctions may not be filed
106 with or presented to the court
107 unless, within 21 days after
108 service of the motion (or such
109 other period as the court may
110 prescribe), the challenged
111 paper, claim, defense,
112 contention, allegation, or
113 denial is not withdrawn or
114 appropriately corrected,
115 except that this limitation
116 shall not apply if the conduct

117 alleged is the filing of a
118 petition in violation of
119 subdivision (b). If
120 warranted, the court may award
121 to the party prevailing on the
122 motion the reasonable expenses
123 and attorney's fees incurred
124 in presenting or opposing the
125 motion. Absent exceptional
126 circumstances, a law firm
127 shall be held jointly
128 responsible for violations
129 committed by its partners,
130 associates, and employees.
131 (B) *On Court's*
132 *Initiative*. On its own
133 initiative, the court may
134 enter an order describing the
135 specific conduct that appears
136 to violate subdivision (b) and

137 directing an attorney, law
138 firm, or party to show cause
139 why it has not violated
140 subdivision (b) with respect
141 thereto.
142 (2) *Nature of Sanction;*
143 *Limitations.* A sanction imposed
144 for violation of this rule shall be
145 limited to what is sufficient to
146 deter repetition of such conduct or
147 comparable conduct by others
148 similarly situated. Subject to the
149 limitations in subparagraphs (A)
150 and (B), the sanction may consist
151 of, or include, directives of a
152 nonmonetary nature, an order to pay
153 a penalty into court, or , if
154 imposed on motion and warranted for
155 effective deterrence, an order
156 directing payment to the movant of

157 some or all of the reasonable
158 attorneys' fees and other expenses
159 incurred as a direct result of the
160 violation.
161 (A) Monetary sanctions
162 may not be awarded against a
163 represented party for a
164 violation of subdivision
165 (b)(2).
166 (B) Monetary sanctions
167 may not be awarded on the
168 court's initiative unless the
169 court issues its order to show
170 cause before a voluntary
171 dismissal or settlement of the
172 claims made by or against the
173 party which is, or whose
174 attorneys are, to be
175 sanctioned.
176 (3) *Order*. When imposing

177 sanctions, the court shall describe
178 the conduct determined to
179 constitute a violation of this rule
180 and explain the basis for the
181 sanction imposed.
182 (d) INAPPLICABILITY TO DISCOVERY.
183 Subdivisions (a) through (c) of this
184 rule do not apply to disclosures and
185 discovery requests, responses,
186 objections, and motions that are subject
187 to the provisions of Rules 7026 through
188 7037.
189 ~~(b)~~ (e) VERIFICATION. Except as
190 otherwise specifically provided by these
191 rules, papers filed in a case under the
192 Code need not be verified. Whenever
193 verification is required by these rules,
194 an unsworn declaration as provided in 28
195 U.S.C. § 1746 satisfies the requirement
196 of verification.

197 ~~(e)~~ (f) COPIES OF SIGNED OR
198 VERIFIED PAPERS. When these rules
199 require copies of a signed or verified
200 paper, it shall suffice if the original
201 is signed or verified and the copies are
202 conformed to the original.

COMMITTEE NOTE

This rule is amended to conform to the 1993 changes to F.R.Civ.P. 11. For an explanation of these amendments, see the advisory committee note to the 1993 amendments to F.R.Civ.P. 11.

The "safe harbor" provision contained in subdivision (c)(1)(A), which prohibits the filing of a motion for sanctions unless the challenged paper is not withdrawn or corrected within a prescribed time after service of the motion, does not apply if the challenged paper is a petition. The filing of a petition has immediate serious consequences, including the imposition of the automatic stay under § 362 of the Code, which may not be avoided by the subsequent withdrawal of the petition. In addition, a petition for relief under chapter 7 or chapter 11 may not be withdrawn unless the court orders dismissal of the case for cause after notice and a hearing.

Rule 9015. Jury Trials

1 (a) APPLICABILITY OF CERTAIN
2 FEDERAL RULES OF CIVIL PROCEDURE. Rules
3 38, 39, and 47-51 F.R.Civ.P., and Rule
4 81(c) F.R.Civ.P. insofar as it applies
5 to jury trials, apply in cases and
6 proceedings, except that a demand made
7 pursuant to Rule 38(b) F.R.Civ.P. shall
8 be filed in accordance with Rule 5005.
9 (b) CONSENT TO HAVE TRIAL CONDUCTED
10 BY BANKRUPTCY JUDGE. If the right to a
11 jury trial applies, a timely demand has
12 been filed pursuant to Rule 38(b)
13 F.R.Civ.P., and the bankruptcy judge has
14 been specially designated to conduct the
15 jury trial, the parties may consent to
16 have a jury trial conducted by a
17 bankruptcy judge under 28 U.S.C.
18 § 157(e) by jointly or separately filing

19 a statement of consent within any
20 applicable time limits specified by
21 local rule.

COMMITTEE NOTE

This rule provides procedures relating to jury trials. This rule is not intended to expand or create any right to trial by jury where such right does not otherwise exist.

Rule 9035. Applicability of Rules in Judicial Districts in Alabama and North Carolina

1 In any case under the Code that is
2 filed in or transferred to a district in
3 the State of Alabama or the State of
4 North Carolina and in which a United
5 States trustee is not authorized to act,
6 these rules apply to the extent that
7 they are not inconsistent with any
8 federal statute ~~the provisions of title~~
9 ~~11 and title 28 of the United States~~

10 ~~Code~~ effective in the case.

COMMITTEE NOTE

Certain statutes that are not codified in title 11 or title 28 of the United States Code, such as § 105 of the Bankruptcy Reform Act of 1994, Pub. L. 103-394, 108 Stat. 4106, relate to bankruptcy administrators in the judicial districts of North Carolina and Alabama. This amendment makes it clear that the Bankruptcy Rules do not apply to the extent that they are inconsistent with these federal statutes.

Agenda Item 4

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ALAN N. RESNICK, REPORTER

RE: PROPOSED NEW RULE 9015 -- JURY TRIALS

DATE: FEBRUARY 21, 1996

The package of proposed amendments that have been published for comment includes the following new Rule 9015 on jury trials:

Rule 9015. Jury Trials

1 (a) APPLICABILITY OF CERTAIN FEDERAL RULES OF CIVIL
2 PROCEDURE. Rules 38, 39, and 47-51 F.R.Civ.P., and Rule
3 81(c) F.R.Civ.P. insofar as it applies to jury trials, apply
4 in cases and proceedings, except that a demand made pursuant
5 to Rule 38(b) F.R.Civ.P. shall be filed in accordance with
6 Rule 5005.
7 (b) CONSENT TO HAVE TRIAL CONDUCTED BY BANKRUPTCY
8 JUDGE. If the right to a jury trial applies, a timely
9 demand has been filed pursuant to Rule 38(b) F.R.Civ.P., and
10 the bankruptcy judge has been specially designated to
11 conduct the jury trial, the parties may consent to have a
12 jury trial conducted by a bankruptcy judge under 28 U.S.C.
13 § 157(e) by jointly or separately filing a statement of
14 consent within any applicable time limits specified by local
15 rule.

COMMITTEE NOTE

This rule provides procedures relating to jury trials. This rule is not intended to expand or create any right to trial by jury where such right does not otherwise exist.

At the Standing Committee meeting in January 1995, when a similar draft was considered and approved as an Interim Rule, Judge Frank H. Easterbrook, a member of the Standing Committee, suggested that the Advisory Committee consider adding to the rule a provision that requires that any new party added after the original parties have filed written consents to the bankruptcy judge presiding at the jury trial receive notice from the clerk of the opportunity to expressly consent, and that the bankruptcy judge may not preside if the newly-added party fails to so consent. He expressed concern that a judgement could be void if the jury trial proceeds in the bankruptcy court, rather than the district court, if an added party does not consent. Judge Easterbrook mentioned a similar rule, Civil Rule 73(b), that governs consent to have a magistrate judge exercise civil trial jurisdiction.

I informed the Advisory Committee of Judge Easterbrook's concern at the Advisory Committee meeting in March 1995 when proposed Rule 9015 was approved. The Advisory Committee did not find it necessary to address this in the rule.

Judge Restani, our liaison to the Advisory Committee on Civil Rules, has informed us that Judge Easterbrook's comment regarding consent to a magistrate judge's exercise of civil trial jurisdiction under Civil Rule 73(b) (which he made during the discussion of jury trials in bankruptcy courts) has resulted in a report on Rule 73(b) written by Professor Edward H. Cooper, Reporter to the Civil Committee, that was included in the Civil

Committee agenda materials. Prof. Cooper has suggested that the problem of newly-added parties could be cured by adding to Civil Rule 73(b) the following language: "If a new party is added after all earlier-joined parties have consented, the new party must be notified of the consents and given an opportunity to consent. If a new party does not consent [within the period set by local rule], the district judge must vacate the reference to the magistrate judge." A copy of Prof. Cooper's report is attached. Judge Restani has reported that at least two members of the Civil Committee said that present Civil Rule 73(b) is a trap.

Judge Restani, in her letter reporting on the November 1995 meeting of the Civil Rules Committee, has suggested that "we may wish to reconsider our approach to consent to bankruptcy judge jury trials."

In my opinion, the published draft of Rule 9015(b) does not need to be changed to expressly provide that newly-added parties must receive notice from the clerk, or that they must consent, with respect to a jury trial before a bankruptcy judge. The statute, 28 U.S.C. § 157(e), provides that "the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court <u>and with the express consent of all the parties</u>."[emphasis added]. Proposed Rule 9015(b) states that "the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) by jointly or separately filing a statement of consent within any applicable time limits specified by local rule." This must mean

that <u>all</u> parties, regardless of when they became parties to the proceeding, must consent.

I should add that there are significant differences between 28 USC § 157(e) (on jury trials in bankruptcy cases) and 28 USC § 636(c) (on trials before magistrate judges). One difference is that § 157(e) merely requires express consent by all parties, whereas § 636(c) is a lengthy and detailed statute that expressly requires the clerk to send notice to parties of their right to consent. In view of this statutory requirement that the clerk send notice of the right to consent, it probably makes sense to provide in the Civil Rules that the clerk must give notice to newly-added parties of consents previously filed. In contrast, there is nothing in the statutes or the Bankruptcy Rules that require the clerk to give notice to parties regarding the right to consent to jury trials in bankruptcy court. Again, I would leave proposed Rule 9015 as it was published.

Nonetheless, to satisfy any concerns that Judge Easterbrook or others may have, the Advisory Committee may wish to consider adding a second paragraph to the published Committee Note to Rule 9015, as follows:

COMMITTEE NOTE

> This rule provides procedures relating to jury trials. This rule is not intended to expand or create any right to trial by jury where such right does not otherwise exist.
>
> <u>If a new party is added to the proceeding after all other parties have filed statements of consent under subdivision (b), a bankruptcy judge may not preside at the jury trial unless the new party files a statement of consent. Any local rule that prescribes a</u>

time limit for filing a statement of consent should provide an opportunity for any new party to consent if all other parties have previously filed timely statements of consent.

Prof. Cooper's Reports

B

Rule 73 (b) (Civil Rules)

This suggestion arises from a remark made by Judge Easterbrook during the January, 1995 meeting of the Standing Committee. The discussion topic was proposed interim rules for jury trials in bankruptcy courts. He observed that Rule 73(b) is a trap because it happens that after all original parties have consented to civil trial before a magistrate judge, a new party is joined and matters proceed before the magistrate judge without getting the consent of the new party. He asserts that any resulting judgment is void. And so the Seventh Circuit rules. See, e.g., Mark I, Inc. v. Gruber, 7th Cir.1994, 38 F.3d 369, resting in Jaliwala v. U.S., C.A.7th, 1991, 945 F.2d 221. (In Brook, Weiner, Sered, Kreger & Weinberg v. Coreq, Inc., 7th Cir. 1995, 31 Fed.Rules Serv.3d 754, the court ruled that a successor to a party who consented to a magistrate-judge trial is bound by the consent.)

This problem could be cured by adding one or two new sentences at the end of the first paragraph of Rule 73(b). on the theory that it makes sense to incorporate current style conventions when a substantive change is made to a rule, the new material is set out here at the end of the introductory paragraph of the Style Committee draft. It could as easily be added to the end of the first paragraph of current Rule 73(b).

(b) Consent Procedure. When a magistrate judge has been designated to exercise civil trial jurisdiction, the clerk must give the parties written notice of their opportunity to consent under 28 U.S.C. § 636(c). To signify their consent, the parties must [within the period set by local rule] jointly or separately file an election consenting to this exercise of authority. <u>If a new party is added after all earlier-joined parties have consented, the new party must be notified of the consents and given an opportunity to consent. If a new party does not consent [within the period set by local rule], the district judge must vacate the reference to the magistrate Judge.</u>

(1) A district judge or magistrate judge may be informed of a party's response to the clerk's notification only if all parties consent to referring the case to a magistrate judge.

(2) A district judge, magistrate judge, or other court official may again advise the parties of the availability of a magistrate judge, but, in so doing, must also advise the parties that they are free to withhold consent without adverse substantive consequences.

(3) For good cause - either on the judge's own

initiative or when a party shows extraordinary circumstances - the district judge may vacate a reference to a magistrate judge under this rule.

The style draft deletes the present reference to time limits set by local rule. Presumably local rules setting time limits remain appropriate as not inconsistent with the rule. If the reference seems a useful warning, it can be restored readily.

The Rule 73(b) proposal was in the materials for the April 1995 meeting, but was not brought up for discussion. There is no burning need to consider this question. When time permits, however, it may be wise to take a look.

28 USC §636

§ 635. Expenses

(a) Full-time United States magistrates serving under this chapter shall be allowed their actual and necessary expenses incurred in the performance of their duties, including the compensation of such legal assistants as the Judicial Conference, on the basis of the recommendations of the judicial councils of the circuits, considers necessary, and the compensation of necessary clerical and secretarial assistance. Such expenses and compensation shall be determined and paid by the Director under such regulations as the Director shall prescribe with the approval of the conference. The Administrator of General Services shall provide such magistrates with necessary courtrooms, office space, furniture and facilities within United States courthouses or office buildings owned or occupied by departments or agencies of the United States, or should suitable courtroom and office space not be available within any such courthouse or office building, the Administrator of General Services, at the request of the Director, shall procure and pay for suitable courtroom and office space, furniture and facilities for such magistrate in another building, but only if such request has been approved as necessary by the judicial council of the appropriate circuit.

(b) Under such regulations as the Director shall prescribe with the approval of the conference, the Director shall reimburse part-time magistrates for actual expenses necessarily incurred by them in the performance of their duties under this chapter. Such reimbursement may be made, at rates not exceeding those prescribed by such regulations, for expenses incurred by such part-time magistrates for clerical and secretarial assistance, stationery, telephone and other communications services, travel, and such other expenses as may be determined to be necessary for the proper performance of the duties of such officers: *Provided, however,* That no reimbursement shall be made for all or any portion of the expense incurred by such part-time magistrates for the procurement of office space. (As amended Oct. 17, 1968, Pub.L. 90–578, Title I, § 101, 82 Stat. 1112; Oct. 10, 1979, Pub.L. 96–82, § 8(a), 93 Stat. 646.)

Revision Notes

Based on title 28, U.S.C., 1940 ed., §§ 597, 597a, 597b, 597c (May 28, 1896, ch. 252, §§ 21, 24, 29 Stat. 184, 186; Aug. 1, 1946, ch. 721, §§ 1–4, 60 Stat. 752, 753).

The provision of section 597c of title 28, U.S.C., 1940 ed., excepting commissioners in the Territory of Alaska was omitted as unnecessary since this exception is implicit in the revised section. The words "in each judicial district" limit the section to the commissioners in the districts enumerated in chapter 5 which includes Hawaii, Puerto Rico, and District of Columbia but omits Alaska, Canal Zone, [Guam] and Virgin Islands.

Salaries of park commissioners are provided by section 634 of this title.

Changes were made in phraseology.

Editorial Notes

Change of Name of United States Magistrate. United States magistrate appointed under section 631 of this title to be known as United States magistrate judge after Dec. 1, 1990, with any reference to United States magistrate or magistrate in this title, or in any other Federal statute, etc., deemed a reference to United States magistrate judge appointed under section 631 of this title, see section 321 of Pub.L. 101–650, set out as a note under section 631 of this title.

§ 636. Jurisdiction, powers, and temporary assignment

(a) Each United States magistrate serving under this chapter shall have within the territorial jurisdiction prescribed by his appointment—

(1) all powers and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;

(2) the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgements, affidavits, and depositions;

(3) the power to conduct trials under section 3401, title 18, United States Code, in conformity with and subject to the limitations of that section, and

(4) the power to enter a sentence for a misdemeanor or infraction with the consent of the parties.

(b)(1) Notwithstanding any provision of law to the contrary—

(A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court

proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C) the magistrate shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

(2) A judge may designate a magistrate to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts. A judge may designate a magistrate to serve as a special master in any civil case, upon consent of the parties, without regard to the provisions of rule 53(b) of the Federal Rules of Civil Procedure for the United States district courts.

(3) A magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

(4) Each district court shall establish rules pursuant to which the magistrates shall discharge their duties.

(c) Notwithstanding any provision of law to the contrary—

(1) Upon the consent of the parties, a full-time United States magistrate or a part-time United States magistrate who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate may exercise such jurisdiction, if such magistrate meets the bar membership requirements set forth in section 631(b)(1) and the chief judge of the district court certifies that a full-time magistrate is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.

(2) If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the district court judge or the magistrate may again advise the parties of the availability of the magistrate, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrates shall include procedures to protect the voluntariness of the parties' consent.

(3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal directly to the appropriate United States court of appeals from the judgment of the magistrate in the same manner as an appeal from any other judgment of a district court. In this circumstance, the consent of the parties allows a magistrate designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States.

(4) Notwithstanding the provisions of paragraph (3) of this subsection, at the time of reference to a magistrate, the parties may further consent to appeal on the record to a judge of the district court in the same manner as on an appeal from a judgment of the district court to a court of appeals. Wherever possible the local rules of the district court and the rules promulgated by the conference shall endeavor to make such appeal inexpensive. The district court may affirm, reverse, modify, or remand the magistrate's judgment.

(5) Cases in the district courts under paragraph (4) of this subsection may be reviewed by the appropriate United States court of appeals upon petition for leave to appeal by a party stating specific objections to the judgment. Nothing in this paragraph shall be construed to be a limitation on any party's right to seek review by the Supreme Court of the United States.

(6) The court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate under this subsection.

(7) The magistrate shall, subject to guidelines of the Judicial Conference, determine whether the record taken pursuant to this section shall be taken by electronic sound recording, by a court reporter, or by other means.

(d) The practice and procedure for the trial of cases before officers serving under this chapter, and for the taking and hearing of appeals to the district courts, shall conform to rules promulgated by the Supreme Court pursuant to section 2072 of this title.

(e) In a proceeding before a magistrate, any of the following acts or conduct shall constitute a contempt of the district court for the district wherein the magistrate is sitting: (1) disobedience or resistance to any lawful order, process, or writ; (2) misbehavior at a hearing or other proceeding, or so near the place thereof as to obstruct the same; (3) failure to produce, after having been ordered to do so, any pertinent document; (4) refusal to appear after having been subpenaed or, upon appearing, refusal to take the oath or affirmation as a witness, or, having taken the oath or affirmation, refusal to be examined according to law; or (5) any other act or conduct which if committed before a judge of the district court would constitute contempt of such court. Upon the commission of any such act or conduct, the magistrate shall forthwith certify the facts to a judge of the district court and may serve or cause to be served upon any person whose behavior is brought into question under this section an order requiring such person to appear before a judge of that court upon a day certain to show cause why he should not be adjudged in contempt by reason of the facts so certified. A judge of the district court shall thereupon, in a summary manner, hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a judge of the court, or commit such person upon the conditions applicable in the case of defiance of the process of the district court or misconduct in the presence of a judge of that court.

(f) In an emergency and upon the concurrence of the chief judges of the districts involved, a United States magistrate may be temporarily assigned to perform any of the duties specified in subsection (a) or (b) of this section in a judicial district other than the judicial district for which he has been appointed. No magistrate shall perform any of such duties in a district to which he has been temporarily assigned until an order has been issued by the chief judge of such district specifying (1) the emergency by reason of which he has been transferred, (2) the duration of his assignment, and (3) the duties which he is authorized to perform. A magistrate so assigned shall not be entitled to additional compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties in accordance with section 635.

(g) A United States magistrate may perform the verification function required by section 4107 of title 18, United States Code. A magistrate may be assigned by a judge of any United States district court to perform the verification required by section 4108 and the appointment of counsel authorized by section 4109 of title 18, United States Code, and may perform such functions beyond the territorial limits of the United States. A magistrate assigned such functions shall have no authority to perform any other function within the territory of a foreign country.

(h) A United States magistrate who has retired may, upon the consent of the chief judge of the district involved, be recalled to serve as a magistrate in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a magistrate may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference, subject to the restrictions on the payment of an annuity set forth in section 377 of this title or in subchapter III of chapter 83, and chapter 84, of title 5 which are applicable to such magistrate. The requirements set forth in subsections (a), (b)(3), and (d) of section 631, and paragraph (1) of subsection (b) of such section to the extent such paragraph requires membership of the bar of the location in which an individual is to serve as a magistrate, shall not apply to the recall of a retired magistrate under this subsection or section 375 of this title. Any other requirement set forth in section 631(b) shall apply to the recall of a retired magistrate under this subsection or section 375 of this title unless such retired magistrate met such requirement upon appointment or reappointment as a magistrate under section 631.

(As amended Oct. 17, 1968, Pub.L. 90–578, Title I, § 101, 82 Stat. 1113; Mar. 1, 1972, Pub.L. 92–239, §§ 1, 2, 86 Stat. 47; Oct. 21, 1976, Pub.L. 94–577, § 1, 90 Stat. 2729; Oct. 28, 1977, Pub.L. 95–144, § 2, 91 Stat. 1220; Oct. 10, 1979, Pub.L. 96–82, § 2, 93 Stat. 643; Oct. 12, 1984, Pub.L. 98–473, Title II, § 208, 98 Stat. 1986; Nov. 8, 1984, Pub.L. 98–620, Title IV, § 402(29)(B), 98 Stat. 3359; Nov. 14, 1986, Pub.L. 99–651, Title II, § 201(a)(2), 100 Stat. 3647; Nov. 15, 1988, Pub.L. 100–659, § 4(c), 102 Stat. 3918; Nov. 18, 1988, Pub.L. 100–690, Title VII, § 7322, 102 Stat. 4467; Nov. 19, 1988, Pub.L. 100–702, Title IV, § 404(b)(1), Title X, § 1014, 102 Stat. 4651, 4669; Dec. 1, 1990, Pub.L. 101–650, Title III, § 308(a), 104 Stat. 5112.)

38 F.3d 369 printed in FULL format.

MARK I, INC., Plaintiff-Appellee, v. CYRIL GRUBER, Defendant-Appellant.

No. 94-1429

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

38 F.3d 369; 1994 U.S. App. LEXIS 29696

September 7, 1994, Argued
October 24, 1994, Decided

PRIOR HISTORY: [**1] Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 89 C 7190. Rebecca R. Pallmeyer, Magistrate Judge.

COUNSEL: For MARK I. INCORPORATED, Plaintiff-Appellee: Peter J. Karabas, Elizabeth E. Fiesman, ABRAMSON & FOX, Chicago, IL.

For CYRIL GRUBER, Defendant-Appellant: Alexander D. Kerr, Jr., Richard W. Hillsberg, TISHLER & WALD, Chicago, IL.

JUDGES: Before POSNER, Chief Judge, and WELLFORD * and EASTERBROOK, Circuit Judges.

* Hon. Harry W. Wellford, of the Sixth Circuit, sitting by designation.

OPINIONBY: EASTERBROOK

OPINION: [*370] EASTERBROOK, Circuit Judge. Magistrate judges may conduct civil trials and enter final judgments, if all of the parties consent. 28 U.S.C. @ 636(c); Geras v. Lafayette Display Fixtures, Inc., 742 F.2d 1037 (7th Cir. 1984). Because this procedure entails a trial without the judicial-independence guarantees of Article III, the litigants' consent must be voluntary and explicit. Geaney v. Carlson, 776 F.2d 140, 142 (7th Cir. 1985). Passive acquiescence in a decision made by others does not suffice. Silberstein v. Silberstein, 859 F.2d 40, 42 (7th Cir. 1988). [**2] Unlike some courts, e.g., New York Chinese TV Programs, Inc. v. U.E. Enterprises, Inc., 996 F.2d 21 (2d Cir. 1993), we do not insist that the consent be in writing, but it must be on the record and unequivocal. King v. Ionization International, Inc., 825 F.2d 1180, 1185 (7th Cir. 1987); Lovelace v. Dall, 820 F.2d 223, 226 (7th Cir. 1987). Unless each litigant expressly assents, the case must be tried by a district judge.

The need for unanimous consent sets a trap that may be sprung when parties join the case after the litigants have opted for decision by a magistrate judge. For then the newly arrived party may assume that the original choice is conclusive; or everyone may overlook the problem. But the original choice is not dispositive. Unless the latecomer, too, consents, the whole proceeding before the magistrate judge may be set at naught. Jaliwala v. United States, 945 F.2d 221 (7th Cir. 1991); see also Atlantic Mutual Insurance Co. v. Northwest Airlines, Inc., 24 F.3d 958 (7th Cir. 1994). Aware of this booby trap, district [**3] courts have promulgated rules addressing the problem. For example, Local Rule 1.72(B) of the Northern District of Illinois provides that "whenever a

party is added to a case the district judge or magistrate judge to whom the case is assigned will direct the clerk to mail to the additional party a notice of the availability of a magistrate judge to exercise jurisdiction. . . . Where the consent is not filed within [the time fixed], the magistrate judge will promptly send the case to the Executive Committee for reassignment to the calendar of the district judge to whom the case was previously assigned."

This suit, originally between Mark I, Inc., and R.G. International Corp., was assigned to a magistrate judge after both parties signed consent forms in May 1990. Magistrate judge Lefkow granted summary judgment to Mark I, holding that R.G.'s retention of sheets of decorative stickers, after the revocation of their consignment for sale, was conversion. 1991 U.S. Dist. LEXIS 12546 (N.D. Ill.). The case was set for trial to determine damages and transferred to magistrate judge Pallmeyer. Before trial began, R.G. went out of business. In April 1992 Mark I filed [**4] an amended complaint adding Cyril Gruber and Ernest Robertson as defendants. Gruber and Robertson owned 50 percent apiece of R.G.'s stock, and Gruber made the decision to retain the stickers. The magistrate judge did not initiate the inquiry for which the local rule called, and no one else paid any attention to @ 636(c). Robertson followed R.G. into bankruptcy and disappeared from this case. Gruber did not complain about the magistrate judge's role, but neither did he expressly consent to it. A trial was held in May 1993, and in December 1993 the magistrate judge awarded more [*371] than $ 500,000 against Gruber. 1993 U.S. Dist. LEXIS 17631.

At our request, the parties filed supplemental briefs addressing the consequences of the lack of Gruber's formal authorization. Offered a belated opportunity to make his wishes known, Gruber has declined to consent. The case therefore must be remanded for decision by a district judge unless some earlier act establishes Gruber's waiver of the safeguards provided in Article III.

R.G.'s consent cannot be attributed directly to Gruber; he and the corporation have been represented by different law firms and have managed their interests [**5] in the litigation independently. As a rule, a corporate officer's acts are imputed to the corporation, rather than the other way 'round. Only when the firm so neglects the corporate forms that it is nothing but a name for a proprietorship or partnership of its managers is it possible to impute corporate acts (and debts) to managers and investors. What is more, neglect of forms is a necessary but not sufficient condition for "piercing the corporate veil." Under most states' law, it is also necessary to show that the managers or investors used the corporate form to perpetrate an injustice. See Sea-Land Services, Inc. v. Pepper Source, 941 F.2d 519 (7th Cir. 1991) (Illinois law). R.G. International was incorporated in Connecticut. Mark I has not argued that Connecticut law freely permits the attribution of corporate acts to managers and investors; indeed, it has not cited any state case on this subject. Our own investigation did not turn up any unusual rules in Connecticut law. See SFA Folio Collections, Inc. v. Bannon, 217 Conn. 220, 585 A.2d 666 (1991); Season-All Industries, Inc. v. R.J. Grosso, Inc., 213 Conn. 486, 569 A.2d 32 (1990). [**6] The record does not permit a decision about the extent to which R.G. International observed corporate forms; at all events, Mark I does not contend that Gruber used the corporate form to commit a fraud or otherwise perpetrate an injustice in this suit. To the extent there is an "alter ego" doctrine independent of veilpiercing theories, see NLRB v. International Measurement and Control Co., 978 F.2d 334 (7th Cir. 1992); Esmark, Inc. v. NLRB, 887 F.2d 739 (7th Cir. 1989), Mark I has not supplied adequate grounds for invoking it here. Throughout this litigation, Mark I has recognized that R.G.

and Gruber are separate. It would have been simple for Mark I to remind the magistrate judge of the need to inquire whether Gruber would consent under @ 636(c)--or to ask the magistrate judge to find that R.G.'s consent binds Gruber. That was not done, so there is no basis for finding the essential express consent, see New York Chinese TV Programs, 996 F.2d at 24-25.

Unless remarks made by Gruber's counsel at oral argument are themselves the necessary consent. Inquiries from the bench about this subject [**7] took counsel by surprise. The lawyer representing Gruber blurted out:

I am testing my sieve-like memory on pieces of paper, but my recollection is yes, . . . it was the intention of Gruber to consent to the proceeding. . . . Mr. Gruber had some involvement with the case and the initial decision in the consent at the corporate level.

Even assuming that the lawyer's "sieve-like memory" responded correctly to prodding, we do not believe that these answers show the essential explicit consent by Gruber. Consenting on behalf of a corporation is one thing; consenting on behalf of yourself is quite another. Managers need not pay corporate debts, and exposure to personal liability concentrates the mind. What Gruber's "intention" might have been cannot be dispositive--for unless we overrule the cases holding that express assent on the record is essential, one's thoughts do not satisfy @ 636(c). Consent to trial and final decision by a magistrate waives several constitutional rights. Waivers should be explicit and on the record. Spur-of-the-moment recollections by counsel do not satisfy this standard. We need not decide whether a representation of counsel (as opposed to the litigant [**8] personally) could suffice under @ 636(c), because the lack of time to reflect before making this representation renders it ineffectual as a waiver of constitutional guarantees. Compare United States v. Teague, 953 F.2d 1525 (11th Cir. 1992) (en banc), with United States v. Martinez, 883 F.2d 750 (9th Cir. 1989), vacated on other grounds, 928 F.2d 1470 [*372] (1991). The magistrate judge consequently lacked authority to enter a final decision.

The judgment is vacated, and the case is remanded for decision by a judge appointed under Article III of the Constitution.

CONCURBY: HARRY W. WELLFORD

CONCUR: HARRY W. WELLFORD, Circuit Judge, concurring: This circuit has a very strict rule with respect to required consent of a party before a magistrate judge may enter a valid final judgment as to that party's interests. In Jaliwala v. United States, 945 F.2d 221 (7th Cir. 1991), this court went so far as to dismiss an appeal in a judgment exceeding $ 160,000,000 because an intervenor party had not consented orally or in writing to trial by the magistrate judge. As in this case, "both attorneys were [**9] surprised by the disclosure of the defect" during questioning at oral argument. Id. at 223. Appellee argued, as does Mark I, Inc. here, that consent should be implied, but this court held that "conditional or implied consent is inconsistent with what this court requires to evince a party's consent." Id. at 224.

While I feel that defendant Gruber received a windfall in this result, I must concur in the judgment to remand for the reasons indicated by Judge Easterbrook.

Agenda Item 5

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ALAN N. RESNICK, REPORTER

RE: PROPOSED AMENDMENTS TO RULE 8002(c)

DATE: February 20, 1996

The package of proposed amendments that was published for public comment in September 1995, and that will be presented to the Standing Committee for final approval in June 1996, contains several proposed amendments to Rule 8002 (Time for Filing Notice of Appeal).

At the Standing Committee meeting in July 1995, when Judge Mannes and I were presenting the package of proposed amendments with a request for publication, one member of the Standing Committee made a suggestion to add language to the committee note to Rule 8002(c), and another member made a specific comment regarding the proposed amendments to Rule 8002(c). The purpose of this memorandum is to inform you of the suggestion and comment.

Professor Hazard's Suggestion.

Professor Geoffrey C. Hazard, Jr., a member of the Standing Committee, suggested that a statement be added to the Committee Note indicating that a party who files a motion to extend the time, which is later denied, would have no recourse unless the notice of appeal itself had been timely filed within the 10-day appeal period. I agreed to bring this suggestion to the Advisory Committee for its consideration.

For your consideration, I drafted the following language for as an additional sentence to be added to the Committee Note:

"If a party fails to file a notice of appeal before the expiration of the time prescribed in Rule 8002(a) and (b) for filing the notice, and the court does not grant a motion to extend the time to file the notice, the appellate court may not hear the appeal."

I believe that this sentence would satisfy Professor Hazard's concern that the note contain a clear warning to parties who fail to file a timely notice of appeal. If this sentence (or a similar sentence) is added, I suggest that it be added to the end of the second paragraph of the Committee Note that has been published for comment.

The following is the published draft of the proposed amendments to Rule 8002(c), showing the above sentence in bold and underlining in the second paragraph of the Committee Note:

Rule 8002. Time for Filing Notice of Appeal

* * * * *

1 (c) EXTENSION OF TIME FOR APPEAL.
2 (1) The bankruptcy judge may extend the time
3 for filing the notice of appeal by any party ~~for a~~
4 ~~period not to exceed 20 days from the expiration~~
5 ~~of the time otherwise prescribed by this rule~~ ,
6 unless the judgment, order, or decree appealed
7 from:
8 (A) grants relief from an automatic stay
9 under § 362, § 922, § 1201, or § 1301;
10 (B) authorizes the sale or lease of property
11 or the use of cash collateral under § 363;
12 (C) authorizes the obtaining of credit under

13 § 364;

14 (D) authorizes the assumption or assignment

15 of an executory contract or unexpired lease

16 under § 365;

17 (E) approves a disclosure statement under §

18 1125, or;

19 (F) confirms a plan under § 943, § 1129, §

20 1225, or § 1325 of the Code.

21 (2) A request to extend the time for filing a

22 notice of appeal must be made by written motion

23 filed before the time for filing a notice of

24 appeal has expired, except that such a motion

25 filed not later ~~request made no more~~ than 20 days

26 after the expiration of the time for filing a

27 notice of appeal may be granted upon a showing of

28 excusable neglect ~~if the judgment or order~~

29 ~~appealed from does not authorize the sale of any~~

30 ~~property or the obtaining of credit or the~~

31 ~~incurring of debt under § 364 of the Code, or is~~

32 ~~not a judgment or order approving a disclosure~~

33 ~~statement, confirming a plan, dismissing a case,~~

34 ~~or converting the case to a case under another~~

35 ~~chapter of the Code.~~ An extension of time for

36 filing a notice of appeal may not exceed 20 days

37 from the expiration of the time for filing a

38 notice of appeal otherwise prescribed by this rule

39 or 10 days from the date of entry of the order

40 granting the motion, whichever is later.

COMMITTEE NOTE

Subdivision (c) is amended to provide that a request for an extension of time to file a notice of appeal must be filed within the applicable time period. This amendment will avoid uncertainty as to whether the mailing of a motion or an oral request in court is sufficient to request an extension of time, and will enable the court and the parties in interest to determine solely from the court records whether a timely request for an extension has been made.

The amendments also give the court discretion to permit a party to file a notice of appeal more than 20 days after expiration of the time to appeal otherwise prescribed, but only if the motion was timely filed and the notice of appeal is filed within a period not exceeding 10 days after entry of the order extending the time. This amendment is designed to protect parties that file timely motions to extend the time to appeal from the harshness of the present rule as demonstrated in In re Mouradick, 13 F.3d 326 (9th Cir. 1994), where the court held that a notice of appeal filed within the 3-day period expressly prescribed by an order granting a timely motion for an extension of time did not confer jurisdiction on the appellate court because the notice of appeal was not filed within the 20-day period specified in subdivision (c). **If a party fails to file a notice of appeal before the expiration of the time prescribed in Rule 8002(a) and (b) for filing the notice, and the court does not grant a motion to extend the time to file the notice, the appellate court may not hear the appeal.**

The subdivision is amended further to prohibit any extension of time to file a notice of appeal -- even if the motion for an extension is filed before the expiration of the original time to appeal -- if the order appealed from grants relief from the automatic stay, authorizes the sale or lease of property, use of cash collateral, obtaining of credit, or assumption or assignment of an executory contract or unexpired lease under § 365, or approves a disclosure statement or confirms a plan. These types of orders are often relied upon immediately after they are entered and should not be reviewable on appeal after the expiration of the original appeal period under Rule 8002(a) and (b).

Judge Easterbrook's Comment.

Hon. Frank H. Easterbrook, a member of the Standing Committee, focused on the proposed amendment that is designed to overrule the case of In re Mouradick, 13 F3d 326 (9th Cir. 1994). In that case, a party filed a timely motion to extend the time to appeal based on excusable neglect. The court granted the motion and ordered that the notice of appeal may be filed within 3-day period after the motion was granted. However, the court order extending the time was issued more than 20 days after the expiration of the time to file a notice of appeal. Under Rule 8002(c), the court may extend the time to appeal, but only for a period not to exceed 20 days after the expiration of the original appeal period. Although the party filed a timely motion to extend, and filed a notice of appeal within the 3-day period prescribed in the order granting the extension motion, the Court of Appeals held that the appellate court lacked jurisdiction over the appeal because the notice of appeal was filed more than 20 days after expiration of the original appeal period.

The proposed amendments to Rule 8002(c) are designed to overrule Mouradick and conform to Rule 4(a)(5) of the Federal Rules of Appellate Procedure. In essence, the amendment gives the appellant until the end of the 20-day period following the expiration of the original appeal period, or 10 days after entry of the order granting the extension motion, whichever occurs later, to file the notice of appeal.

Judge Easterbrook asked me why the Advisory Committee would

choose to conform to Rule 4(a)(5) of the Appellate Rules (which applies to civil cases), rather than to conform to Rule 4(b) of the Appellate Rules (which applies to criminal cases). Under Rule 4(b), the court may extend the time to file a notice of appeal based on excusable neglect in a criminal case, but only for a period not to exceed 30 days from the expiration of the original appeal period. That is, there is no provision similar to the one that is found in Appellate Rule 4(a)(5) and the proposed amendments to Rule 8002(c), which permits the filing of the notice of appeal within 10 days after the court grants a timely extension motion. Judge Easterbrook commented that Rule 4(b) applicable to criminal cases provides a more definite cut-off time for appeals and prevents delay, and indicated that he was surprised that the Advisory Committee on Bankruptcy Rules would not adopt that approach for bankruptcy cases where the rules are designed to expedite cases and avoid delay.

I responded to Judge Easterbrook's question by reporting that members of the Advisory Committee had strong views that parties who file timely motions for relief should not be penalized by delay caused by a judge or clerk.

You may recall that the Advisory Committee considered several alternatives regarding this issue, including a draft of an amendment clarifying the rule to codify the Mouradick decision. In particular, my memorandum on this subject considered at the September 1994 meeting included as an alternative draft a provision stating that: "An order extending

the time for filing a notice of appeal is void if it is not entered within 20 days from the expiration of the time otherwise prescribed by this rule." The Advisory Committee rejected this approach.

I do not recommend any changes to the proposed amendments, nor do I recommend reconsideration of the proposed amendments to Rule 8002(c). I merely want to keep you informed of Judge Easterbrook's comment.

Agenda Item 6

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ALAN N. RESNICK, REPORTER

RE: BANKRUPTCY RULE 9011

DATE: February 20, 1996

Proposed amendments to Bankruptcy Rule 9011 were published for comment in September 1995 and, subject to further action by the Advisory Committee, will be presented to the Standing Committee for approval in June 1996. A copy of the proposed amendments is attached.

As is my usual practice, I again reviewed the package of proposed amendments to see if I can find any unintended glitches or need for clarification. I think I found one in the proposed amendment to Rule 9011. The purpose of this memorandum is to recommend a clarifying change in the first sentence of subdivision (b) of the published draft.

Subdivision (a) of the proposed amendments continues the present exceptions now contained in Rule 9011(a). That is, an attorney is not required to sign "a list, schedule, or statement, or amendments thereto." These excepted documents have been carved out of the rule since the original version of Rule 9011 was adopted in 1983. The reasons for these exceptions are that the debtor is required to verify these documents under Rule 1008 and attorneys are not expected to verify or investigate the accuracy the list of creditors, schedules of assets, liabilities, or current income and expenses, the statement of financial affairs, and the statement of intention, that are filed under § 521(1) and (2) of the Code.

Proposed Rule 9011(b), however, states that "By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that .... (3) the allegations and other factual contentions have evidentiary support..." This provision -- which is being added to the rule for the first time -- does not expressly carve out as exceptions the list, schedules and statements that an attorney is not required to sign under subdivision (a). Of course, the exceptions in Rule 9011(a) for these documents would be meaningless if they are not also carved out -- either impliedly or expressly -- as exceptions in Rule 9011(b). Although I think that courts would (or at least should) interpret subdivision (b) to apply only to those documents required to be signed under subdivision (a), I think it would be best to clarify the first sentence of subdivision (b) so that there will be no ambiguity.

Therefore, I recommend that the first sentence of Rule 9011(b), to conform to the exceptions set forth in the first sentence of Rule 9011(a), read as follows:

> "By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, <u>except a list, schedule, or statement, or amendments thereto,</u> an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances ..."

This change is for clarification purposes only and I am confident that it does not require any re-publication for comment.

PROPOSED AMENDMENTS TO RULE 9011 PUBLISHED FOR COMMENT:

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

1 (a) SIGNATURE. Every petition, pleading, written motion,
2 and other paper ~~served or filed in a case under the Code on~~
3 ~~behalf of a party represented by an attorney~~, except a list,
4 schedule, or statement, or amendments thereto, shall be signed
5 by at least one attorney of record in the attorney's
6 individual name, or, if the party is not represented by an
7 attorney, shall be signed by the party. ~~whose office address~~
8 ~~and telephone number shall be stated. A party who is not~~
9 ~~represented by an attorney shall sign all papers and state the~~
10 ~~party's address and telephone number.~~ Each paper shall state
11 the signer's address and telephone number, if any. ~~The~~
12 ~~signature of an attorney or a party constitutes a certificate~~
13 ~~that the attorney or party has read the document; that to the~~
14 ~~best of the attorney's or party's knowledge, information, and~~
15 ~~belief formed after reasonable inquiry it is well grounded in~~
16 ~~fact and is warranted by existing law or a good faith argument~~
17 ~~for the extension, modification, or reversal of existing law;~~
18 ~~and that it is not interposed for any improper purpose, such~~
19 ~~as to harass or to cause unnecessary delay or needless~~
20 ~~increase in the cost of litigation or administration of the~~
21 ~~case. If a document is not signed, it~~ An unsigned paper shall
22 be stricken unless ~~it is signed promptly after the~~ omission of

23 the signature is corrected promptly after being called to the
24 attention of the ~~person whose signature is required~~ attorney
25 or party. ~~If a document is signed in violation of this rule,~~
26 ~~the court on motion or on its own initiative, shall impose on~~
27 ~~the person who signed it, the represented party, or both, an~~
28 ~~appropriate sanction, which may include an order to pay to the~~
29 ~~other party or parties the amount of the reasonable expenses~~
30 ~~incurred because of the filing of the document, including a~~
31 ~~reasonable attorney's fee.~~

32 (b) REPRESENTATIONS TO THE COURT. By presenting to the
33 court (whether by signing, filing, submitting, or later
34 advocating) a petition, pleading, written motion, or other
35 paper, an attorney or unrepresented party is certifying that
36 to the best of the person's knowledge, information, and
37 belief, formed after an inquiry reasonable under the
38 circumstances, --

39 (1) it is not being presented for any improper
40 purpose, such as to harass or to cause unnecessary delay
41 or needless increase in the cost of litigation;

42 (2) the claims, defenses, and other legal
43 contentions therein are warranted by existing law or by
44 a nonfrivolous argument for the extension, modification,
45 or reversal of existing law or the establishment of new
46 law;

47 (3) the allegations and other factual contentions
48 have evidentiary support or, if specifically so

49 identified, are likely to have evidentiary support after
50 a reasonable opportunity for further investigation or
51 discovery; and

52 (4) the denials of factual contentions are warranted
53 on the evidence or, if specifically so identified, are
54 reasonably based on a lack of information or belief.

55 (c) SANCTIONS. If, after notice and a reasonable
56 opportunity to respond, the court determines that subdivision
57 (b) has been violated, the court may, subject to the
58 conditions stated below, impose an appropriate sanction upon
59 the attorneys, law firms, or parties that have violated
60 subdivision (b) or are responsible for the violation.

61 (1) *How Initiated.*

62 (A) *By Motion.* A motion for sanctions under
63 this rule shall be made separately from other
64 motions or requests and shall describe the specific
65 conduct alleged to violate subdivision (b). It
66 shall be served as provided in Rule 7004. The
67 motion for sanctions may not be filed with or
68 presented to the court unless, within 21 days after
69 service of the motion (or such other period as the
70 court may prescribe), the challenged paper, claim,
71 defense, contention, allegation, or denial is not
72 withdrawn or appropriately corrected, except that
73 this limitation shall not apply if the conduct
74 alleged is the filing of a petition in violation of

75 subdivision (b). If warranted, the court may award
76 to the party prevailing on the motion the
77 reasonable expenses and attorney's fees incurred in
78 presenting or opposing the motion. Absent
79 exceptional circumstances, a law firm shall be held
80 jointly responsible for violations committed by its
81 partners, associates, and employees.
82 (B) *On Court's Initiative*. On its own
83 initiative, the court may enter an order describing
84 the specific conduct that appears to violate
85 subdivision (b) and directing an attorney, law
86 firm, or party to show cause why it has not
87 violated subdivision (b) with respect thereto.
88 (2) *Nature of Sanction; Limitations*. A sanction
89 imposed for violation of this rule shall be limited to
90 what is sufficient to deter repetition of such conduct or
91 comparable conduct by others similarly situated. Subject
92 to the limitations in subparagraphs (A) and (B), the
93 sanction may consist of, or include, directives of a
94 nonmonetary nature, an order to pay a penalty into court,
95 or , if imposed on motion and warranted for effective
96 deterrence, an order directing payment to the movant of
97 some or all of the reasonable attorneys' fees and other
98 expenses incurred as a direct result of the violation.
99 (A) Monetary sanctions may not be awarded
100 against a represented party for a violation of

101 subdivision (b)(2).

102 (B) Monetary sanctions may not be awarded on
103 the court's initiative unless the court issues its
104 order to show cause before a voluntary dismissal or
105 settlement of the claims made by or against the
106 party which is, or whose attorneys are, to be
107 sanctioned.

108 (3) *Order*. When imposing sanctions, the court
109 shall describe the conduct determined to constitute a
110 violation of this rule and explain the basis for the
111 sanction imposed.

112 (d) INAPPLICABILITY TO DISCOVERY. Subdivisions (a)
113 through (c) of this rule do not apply to disclosures and
114 discovery requests, responses, objections, and motions that
115 are subject to the provisions of Rules 7026 through 7037.

116 ~~(b)~~ (e) VERIFICATION. Except as otherwise specifically
117 provided by these rules, papers filed in a case under the Code
118 need not be verified. Whenever verification is required by
119 these rules, an unsworn declaration as provided in 28 U.S.C.
120 § 1746 satisfies the requirement of verification.

121 ~~(c)~~ (f) COPIES OF SIGNED OR VERIFIED PAPERS. When these
122 rules require copies of a signed or verified paper, it shall
123 suffice if the original is signed or verified and the copies
124 are conformed to the original.

COMMITTEE NOTE

This rule is amended to conform to the 1993 changes to F.R.Civ.P. 11. For an explanation of these

amendments, see the advisory committee note to the 1993 amendments to F.R.Civ.P. 11.

The "safe harbor" provision contained in subdivision (c)(1)(A), which prohibits the filing of a motion for sanctions unless the challenged paper is not withdrawn or corrected within a prescribed time after service of the motion, does not apply if the challenged paper is a petition. The filing of a petition has immediate serious consequences, including the imposition of the automatic stay under § 362 of the Code, which may not be avoided by the subsequent withdrawal of the petition. In addition, a petition for relief under chapter 7 or chapter 11 may not be withdrawn unless the court orders dismissal of the case for cause after notice and a hearing.

Agenda Item 7

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ALAN N. RESNICK, REPORTER

RE: RULE 2004 EXAMINATIONS

DATE: February 19, 1996

Bankruptcy Rule 2004 provides a procedure for broad discovery in bankruptcy cases. On motion, the court may order the examination of any entity on any subject relating to the debtor's acts, conduct, property, liabilities, financial condition, or discharge, or to the administration of the estate. Rule 2004 examinations are usually unrelated to any pending adversary proceeding or contested matter. In fact, courts have held that a Rule 2004 examination is inappropriate when it relates to pending litigation. Once an adversary proceeding or contested matter is commenced, any examination relating thereto should be limited to the traditional discovery rules under Rules 7026-37. Considering the broad scope of the examination, and the fact that it is usually unrelated to any pending litigation, Rule 2004 examinations are often viewed as "fishing expeditions."

The text of the current Rule 2004 is as follows:

Rule 2004. Examination

(a) EXAMINATION ON MOTION. On motion of any party in interest, the court may order the examination of any entity.

(b) SCOPE OF EXAMINATION. The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may

also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

(c) COMPELLING ATTENDANCE AND PRODUCTION OF DOCUMENTARY EVIDENCE. The attendance of an entity for examination and the production of documentary evidence may be compelled in the manner provided in Rule 9016 for the attendance of witnesses at a hearing or trial.

(d) TIME AND PLACE OF EXAMINATION OF DEBTOR. The court may for cause shown and on terms as it may impose order the debtor to be examined under this rule at any time or place it designates, whether within or without the district wherein the case is pending.

(e) MILEAGE. An entity other than a debtor shall not be required to attend as a witness unless lawful mileage and witness fee for one day's attendance shall be first tendered. If the debtor resides more than 100 miles from the place of examination when required to appear for an examination under this rule, the mileage allowed by law to a witness shall be tendered for any distance more than 100 miles from the debtor's residence at the date of the filing of the first petition commencing a case under the Code or the residence at the time the debtor is required to appear for the examination, whichever is the lesser.

Proposed Amendments Relating to Examinations in Other Districts

Under Rule 2004(a), an examination may not be compelled unless the court orders it. Rule 2004(c) provides that "[t]he attendance of an entity for examination ... may be compelled in the manner provided in Rule 9016 for the attendance of witnesses at a hearing or trial." Rule 9016 provides that Civil Rule 45 applies in cases under the Code. Therefore, the provisions of Civil Rule 45 on compelling the attendance of witnesses at a hearing or trial govern the attendance of an entity at a Rule 2004 examination -- but only if the court orders the examination.

At the Advisory Committee meeting in September 1995, the

Committee discussed suggestions to amend Rule 2004. The Committee voted, 7-4, to amend Rule 2004(c) for the purpose of clarify that a bankruptcy court could order an examination outside the district in which the case is pending, and that an attorney admitted in the district where the case is pending could sign the subpoena regardless of the place of the examination. In particular, the following amendments were approved in September:

1 (c) COMPELLING ATTENDANCE AND PRODUCTION OF DOCUMENTARY
2 EVIDENCE. The attendance of an entity for examination and
3 the production of documentary evidence, whether it is to be
4 held within or without the district in which the case is
5 pending, may be compelled in the manner provided in Rule
6 9016 for the attendance of witnesses at a hearing or trial.
7 An attorney as officer of the court may issue and sign a
8 subpoena on behalf of the court for the district in which
9 the examination is to be held if the attorney is authorized
10 to practice in that court or in the court in which the case
11 is pending.

COMMITTEE NOTE

Subdivision (c) is amended to clarify that an examination ordered pursuant to Rule 2004(a) may be held outside the district in which the case is pending if the subpoena is issued by the court for the district in which the examination is to be held and is served in the manner provided in Rule 45 F.R.Civ.P., made applicable by Rule 9016.

The subdivision is amended further to clarify that, in addition to the procedures for the issuance of a subpoena set forth in Rule 45 F.R.Civ.P., an attorney may issue and sign a subpoena on behalf of the court for the district in which a Rule 2004 examination is to be held if the attorney is authorized to practice either in the court in which the

case is pending or in the court for the district in which the examination is to be held. This provision supplements the procedures for the issuance of a subpoena set forth in Rule 45(a)(3)(A) and (B) F.R.Civ.P. and is consistent with one of the purposes of the 1991 amendments to Rule 45, which is to ease the burdens of interdistrict law practice.

Should Rule 2004(a) Be Amended?

The Committee also discussed briefly whether the motion under Rule 2004(a) must be on notice or whether it may be ex parte. The text of the rule merely states that a motion is required, and Rule 9013 requires that a motion be on notice (at least to the trustee or debtor in possession, and other entities as "the court directs"). Therefore, a literal application of the Rules would require, in all cases, that notice of the motion be served (at least on the trustee or debtor in possession). However, the original Committee Note (1983) states that the motion "may be heard ex parte or it may be heard on notice." I read this to mean that it is up to the judge; he or she may entertain a Rule 2004(a) motion ex parte or, if he or she so desires, may require that the trustee or debtor in possession, or the entity to be examined or any other entity, be served with the motion.

A poll of the judges on the Committee revealed that some judges routinely handle motions for Rule 2004 examinations ex parte while others do not. My discussions with a bankruptcy practitioner after the meeting, and my reading (see Collier on Bankruptcy, ¶ 2004.03[2] ("The motion is filed and usually granted *ex parte*..." [emphasis added])), has confirmed that courts differ on whether they grant these motions ex parte.

A suggestion was made at the meeting that a party should be able to take a Rule 2004 examination without the need for any motion or court order. That is, Rule 2004 examinations should be treated the same way that depositions are treated under the Civil Rules. Civil Rule 30(a) permits a party to depose a witness without leave of court, and Rule 45 permits an attorney to issue the subpoena on behalf of the court to compel attendance at the deposition. The Committee asked me to draft alternative proposals for discussion at the next meeting.

There are five alternatives for Committee action (or inaction) regarding Rule 2004(a):

(1) Do nothing.

(2) Amend the rule to clarify -- consistent with the Committee Note and the prevailing practice today -- that the judge has the discretion to require notice of the motion to the person to be examined, or to entertain the motion <u>ex parte</u>.

(3) Amend the rule to expressly require a motion on notice to the entity to be examined, so that the entity always has an opportunity to challenge the motion and persuade the court that he or she should not be examined.

(4) Amend the rule to provide that the motion always may be made <u>ex parte</u>.

(5) Delete the requirement for any motion or court order, treating Rule 2004 examinations the same way that the Civil Rules treat depositions.

Although the bankruptcy judges on the Committee may prove me

wrong, I suspect that _ex parte_ motions are routinely granted in most situations and probably affords little or no protection to the entity to be deposed. If a person believes he or she should not be examined, the burden falls on that person to move to quash the subpoena or for some form of protective order. I also suspect -- but have no empirical evidence to support this and may be proven wrong -- that the vast majority of motions for a Rule 2004 examination that are entertained after notice to the entity to be examined are not challenged. If these beliefs are accurate, it may be more efficient for the judicial system and the parties to avoid the necessity of filing any motion and obtaining an order (either on notice or _ex parte_) before issuing the subpoena to the entity to be examined.

One disadvantage of permitting a lawyer to issue a subpoena for a Rule 2004 examination without leave of court is that, in some cases, this privilege will be abused. But is that any different than occasional abuses that now exist under the Civil Rule practice? A person who believes that he or she is being abused, or for any reason should be protected in connection with the Rule 2004 examination, should be able to move for a protective order.

On the other hand, requiring a motion and court order before permitting a party in interest to engage in a "fishing expedition" unrelated to any pending litigation has some appeal. Bankruptcy cases differ from most civil litigation in that there are numerous parties in interest (sometimes thousands) who have

standing to seek an examination of any entity despite the absence of any issue that is joined. A $500 trade creditor in a billion dollar reorganization may seek to examine a shareholder or another creditor regarding its financial relationship to the debtor -- again, unrelated to any litigation. Perhaps Rule 2004(a) should continue to require any party seeking an examination of another entity to state the reason for the examination in motion papers, signed and subject to sanctions under Rule 9011.

If the Committee adopts an amendment that permits the issuance of a subpoena to compel a Rule 2004 examination without a court order, I would recommend that this change not be applicable to any examination of the debtor. The current rule has a special provision in subdivision (d) that provides that "for cause shown and on terms as it may impose" the court may order the examination of the debtor. Since the debtor must appear at the meeting of creditors held under § 341 of the Code, and any party in interest may attend and examine the debtor at that time, I would maintain the current protection that requires a court order and showing of "cause" before such an examination could be compelled. In addition, there is likely to be greater potential for abuse of the subpoena power (especially for harassment by angry creditors) if it could be used against a debtor without leave of court.

I also suggest that, if the requirement for an order is eliminated, the rule clarify that the court has the discretion to

quash any subpoena or order any other appropriate relief. In considering this, I thought about adding a provision that merely incorporates Civil Rule 26(c) on protective orders (which is in the process of being amended -- proposed amendments have been published for comment). After further analysis, I thought that Civil Rule 26(c), which applies to traditional litigation and is applicable in adversary proceedings, would not be appropriate where there is no pending litigation. First, Rule 26(c) requires "good cause shown" to obtain a protective order. In view of the "fishing expedition" nature of a Rule 2004 examination, I prefer keeping the burden of persuasion where it is now -- i.e., on the person seeking the examination. In addition, Rule 26(c) is limited to orders "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Although a bankruptcy court may issue such an order in connection with a Rule 2004 examination, I believe that the bankruptcy court should have discretion to go beyond these purposes. For example, if an examiner is appointed to investigate certain matters, or the trustee is investigating a particular matter, the examiner or trustee may ask the court to quash a subpoena or otherwise limit Rule 2004 examinations sought by various other parties if uncontrolled discovery will in some way thwart the investigation.

For the sake of discussion, I offer five alternative actions regarding Rule 2004 (listed in order from the least to the most extensive change in current practice).

Alternative #1 -- Do Nothing.

The Committee should consider the fact that the Advisory Committee, to the best of my recollection, has not received any letters, within at least the past eight years, complaining about Rule 2004(a). Despite some ambiguity as to whether the motion may be ex parte, this may be an area that is not "broken" and that, in practice, works well. That does not mean that it cannot or should not be improved, but the Committee should take that fact into consideration when considering the necessity of any amendment to Rule 2004(a) -- especially the deletion of the requirement for a court order under Rule 2004(a).

Alternative #2 -- Clarifying that Motions May Be on Notice or Ex Parte:

Amend Rule 2004(a) as follows:

Rule 2004. Examinations

1 (a) EXAMINATIONS ON MOTION. On motion of any party in
2 interest, the court may order the examination of any entity.
3 The motion may be ex parte unless the court directs
4 otherwise. On motion of any party in interest or any entity
5 whose examination has been ordered under this rule, the
6 court may quash any subpoena issued, limit the scope of any
7 examination, or order any other appropriate relief.

COMMITTEE NOTE

Subdivision (a) is amended to clarify that a motion to examine an entity under this subdivision may be ex parte unless the court directs otherwise.

The second sentence of subdivision (a) is added to clarify that the court, after ordering an examination under this rule, has the discretion to quash any

subpoena or to issue any other order appropriate under the circumstances upon a motion filed by a party in interest or the entity whose examination is being sought. Although the court may order relief of the type specified in Rule 26(c) F.R.Civ.P. relating to protective orders in civil litigation, the court's discretion to control the use of Rule 2004 in a particular case is not so limited.

Alternative #3 -- Motions on Notice:

Amend Rule 2004(a) as follows:

Rule 2004. Examinations

1 (a) EXAMINATIONS ON MOTION. On motion of any party in
2 interest, and after notice and a hearing, the court may
3 order the examination of any entity. Notice of the motion
4 shall be served on the entity to be examined and any other
5 entity the court directs. On motion of any party in interest
6 or any entity whose examination has been ordered under this
7 rule, the court may quash any subpoena issued, limit the
8 scope of any examination, or order any other appropriate
9 relief.

COMMITTEE NOTE

Subdivision (a) is amended to prohibit the issuance of an order under this rule *ex parte*. Any motion for an order under Rule 2004(a) must be on notice to the entity to be examined and any other entity the court directs.

The second sentence of subdivision (a) is added to clarify that the court, after ordering an examination under this rule, has the discretion to quash any subpoena or to issue any other order appropriate under the circumstances upon a motion filed by a party in interest or the entity whose examination is being sought. Although the court may order relief of the type specified in Rule 26(c) F.R.Civ.P. relating to protective orders in civil litigation, the court's discretion to control the use of Rule 2004 in a particular case is not so limited.

Alternative #4 -- Ex Parte Motions:

Amend Rule 2004(a) as follows:

Rule 2004. Examinations

1 (a) EXAMINATIONS ON MOTION. On ex parte motion of any
2 party in interest, the court may order the examination of
3 any entity. On motion of any party in interest or any entity
4 whose examination has been ordered under this rule, the
5 court may quash any subpoena issued, limit the scope of any
6 examination, or order any other appropriate relief.

COMMITTEE NOTE

Subdivision (a) is amended to provide that any motion under this subdivision may be ex parte.

The second sentence of subdivision (a) is added to clarify that the court, after ordering an examination under this rule, has the discretion to quash any subpoena or to issue any other order appropriate under the circumstances upon a motion filed by a party in interest or the entity whose examination is being sought. Although the court may order relief of the type specified in Rule 26(c) F.R.Civ.P. relating to protective orders in civil litigation, the court's discretion to control the use of Rule 2004 in a particular case is not so limited.

Alternative #5 -- No Court Order Required:

Amend Rule 2004(a) as follows:

Rule 2004. Examinations

1 (a) EXAMINATIONS ~~ON MOTION. On motion of any party in~~
2 ~~interest, the court may order the examination of any entity.~~
3 Any party in interest may examine any entity in accordance
4 with this rule without leave of court unless the person to

5 be examined is the debtor or is confined in a prison, or the
6 court otherwise directs. On motion of any party in interest
7 or any entity whose examination is sought under this rule,
8 the court may quash any subpoena issued, limit the scope of
9 any examination, or order any other appropriate relief.

COMMITTEE NOTE

Subdivision (a) is amended to delete the requirement for a court order where a party in interest desires to examine an entity in accordance with this rule, unless the entity to be examined is the debtor or a person confined to a prison. A party may compel an entity to attend an examination by causing a subpoena to be issued in accordance with Rule 45 F.R.Civ.P., which is made applicable by subdivision (c) and Rule 9016.

The debtor may be examined under this rule only if the court so orders in accordance with subdivision (c). The requirement for a court order applicable to persons confined to a prison conforms to Rule 30(a)(2) F.R.Civ.P.

The amendment also clarifies that the court has discretion to order that examinations not be compelled in the absence of a court order obtained before the issuance of a subpoena. This provision is designed to give the court the power to limit the broad discovery process when necessary in the particular case, especially in a complex case in which multiple examinations that may be sought by different parties are inappropriate.

The second sentence of subdivision (a) is added to clarify that the court, even after the issuance of a subpoena, has the discretion to quash the subpoena or to issue any other order appropriate under the circumstances. Although the court may order relief of the type specified in Rule 26(c) F.R.Civ.P. relating to protective orders in civil litigation, the court's discretion to control the use of Rule 2004 in a particular case is not so limited.

Agenda Item 8

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ALAN N. RESNICK, REPORTER

RE: BANKRUPTCY RULES 2002(a) AND 1017.

DATE: FEBRUARY 16, 1996

Section 707(a)(3) of the Code provides that the United States trustee may request dismissal of a case if the debtor fails to timely file the list of creditors, schedules, and statement of financial affairs. Under Rules 1017(a) and 2002(a), notice of the hearing on dismissal of a case -- including dismissal under § 707(a)(3) -- must be sent by the clerk to all creditors. The only exceptions to the requirement that notice of the hearing be sent to all creditors are for motions to dismiss a case under § 707(b) for substantial abuse of chapter 7 and motions to dismiss for failure to pay the filing fee -- in which cases notice must be given only to the trustee and the debtor.

At the Advisory Committee meeting on September 7-8, 1995, the Committee considered several cost-cutting suggestions made by the Administrative Office of the United States Courts. One suggestion was to impose on the United States trustee, rather than the clerk, the burden of sending notices to all creditors when the U.S. trustee files a motion under § 707(a)(3) for dismissal of a case for failure to timely file the list of creditors, schedules, and statement of financial affairs. The Committee did not adopt this suggestion.

Pat Channon made another suggestion that would eliminate the cost of sending notice of the hearing on dismissal of a case

under § 707(a)(3). She suggested that Rule 1017 be amended to provide that the notice of a hearing on dismissal under § 707(a)(3) be limited to the debtor and the trustee. As a result of this change, motions to dismiss for failure to timely file lists, statements, and schedules would be treated in the manner that the Rules now treat motions to dismiss under § 707(b) for substantial abuse of chapter 7, or for failure to pay the filing fee.

The sense of the Committee was that Pat's suggestion was a good one. The Committee asked me to prepare a draft of such amendments for discussion at the next meeting.

In addition to implementing this suggestion, I made several stylistic changes. Among others, I divided current subsection (d) into numbered paragraphs and moved it to the end (it becomes new subdivision (f)) to have a more logical sequence of subdivisions.

I also want to alert you to one change that may be considered substantive, but I think it is merely a clarification. In the new subdivision (f), I added references to motions to suspend a case and motions to dismiss a case for substantial abuse of chapter 7 pursuant to § 707(b), to clarify that such motions are contested matters governed by Rule 9014.

I also corrected an inconsistency between Rules 2002(a) and 1017(b) by adding language to Rule 2002(a) to make it clear that it is not necessary to send to all creditors notice of the hearing on dismissal for failure to pay the filing fee.

In presenting the following draft of Rule 2002, I included (without showing the changes with underlines or strikeouts) the proposed amendments that were published for comment in September 1995 and that will be presented to the Standing Committee for approval in June 1996. In essence, I am assuming that the changes published in 1995 will be made.

The proposed amendments to Rules 1017 and 2002 are as follows:

Rule 1017. Dismissal or Conversion of Case; Suspension

(a) VOLUNTARY DISMISSAL; DISMISSAL FOR WANT OF PROSECUTION OR OTHER CAUSE. Except as provided in §§ 707(a)(3), 707(b), 1208(b), and 1307(b) of the Code, and in Rule 1017(b), (c), and (e), a case shall not be dismissed on motion of the petitioner or for want of prosecution or other cause, or by consent of the parties, prior to a hearing on notice as provided in Rule 2002. For such notice the debtor shall file a list of all creditors with their addresses within the time fixed by the court unless the list was previously filed. If the debtor fails to file the list, the court may order the preparing and filing by the debtor or other entity.

(b) DISMISSAL FOR FAILURE TO PAY FILING FEE.

(1) For failure to pay any installment of the filing fee, the court may after hearing on notice to the debtor and the trustee dismiss the case.

(2) If the case is dismissed or the case closed without full payment of the filing fee, the installments collected shall be distributed in the same manner and proportions as if the filing fee had been paid in full.

(3) Notice of dismissal for failure to pay the filing fee shall be given within 30 days after the dismissal to creditors appearing on the list of creditors and to those who have filed claims, in the

26 manner provided in Rule 2002.

27 (c) DISMISSAL OF VOLUNTARY CHAPTER 7 CASE FOR FAILURE
28 TO TIMELY FILE LIST OF CREDITORS, SCHEDULES, AND STATEMENT
29 OF FINANCIAL AFFAIRS.

30 (1) A voluntary chapter 7 liquidation case may be
31 dismissed pursuant to § 707(a)(3) for the debtor's
32 failure to timely file documents as required by §
33 521(1) of the Code only on motion filed by the United
34 States trustee.

35 (2) The United States trustee shall serve notice
36 of the motion on the debtor, the trustee, and any other
37 entities the court directs.

38 (3) Notice of dismissal pursuant to § 707(a)(3)
39 shall be given in the manner provided in Rule 2002
40 within 30 days after the dismissal to any creditor to
41 whom notice of the meeting of creditors under § 341 has
42 been sent, and to any creditor who has filed a proof of
43 claim.

44 ~~(c)~~ (d) SUSPENSION. A case shall not be dismissed or
45 proceedings suspended pursuant to § 305 of the Code prior to
46 a hearing on notice as provided in Rule 2002(a).

47 ~~(d) PROCEDURE FOR DISMISSAL OR CONVERSION. A proceeding~~
48 ~~to dismiss a case or convert a case to another chapter,~~
49 ~~except pursuant to §§706(a), 707(b), 1112(a), 1208(a) or~~
50 ~~(b), or 1307(a) or (b) of the Code, is governed by Rule~~
51 ~~9014. Conversion or dismissal pursuant to §§706(a), 1112(a),~~

Moved to (f)

52 ~~1208(b), or 1307(b) shall be on motion filed and served as~~
53 ~~required by Rule 9013. A chapter 12 or chapter 13 case~~
54 ~~shall be converted without court order on the filing by the~~
55 ~~debtor of a notice of conversion pursuant to §§1208(a) or~~
56 ~~1307(a), and the filing date of the notice shall be deemed~~
57 ~~the date of the conversion order for the purposes of~~
58 ~~applying §348(c) of the Code and Rule 1019. The clerk shall~~
59 ~~forthwith transmit to the United States trustee a copy of~~
60 ~~the notice.~~

moved to (f)

61 (e) DISMISSAL OF INDIVIDUAL DEBTOR'S CHAPTER 7 CASE
62 FOR SUBSTANTIAL ABUSE. An individual debtor's case may be
63 dismissed for substantial abuse pursuant to § 707(b) only on
64 motion by the United States trustee or on the court's own
65 motion and after a hearing on notice to the debtor, the
66 trustee, the United States trustee, and such other parties
67 in interest as the court directs.

68 (1) A motion by the United States trustee shall
69 be filed not later than 60 days following the first
70 date set for the meeting of creditors held pursuant to
71 § 341(a), unless, before such time has expired, the
72 court for cause extends the time for filing the motion.
73 The motion shall advise the debtor of all matters to be
74 submitted to the court for its consideration at the
75 hearing.

76 (2) If the hearing is on the court's own motion,
77 notice thereof shall be served on the debtor not later

78 than 60 days following the first date set for the
79 meeting of creditors pursuant to § 341(a). The notice
80 shall advise the debtor of all matters to be considered
81 by the court at the hearing.
82 (f) PROCEDURE FOR DISMISSAL OR CONVERSION.
83 (1) A proceeding to dismiss a case, suspend a
84 case, or convert a case to another chapter, except
85 pursuant to §§706(a), 707(b), 1112(a), 1208(a) or (b),
86 or 1307(a) or (b) of the Code, is governed by Rule
87 9014.
88 (2) Conversion or dismissal pursuant to §§706(a),
89 1112(a), 1208(b), or 1307(b) shall be on motion filed
90 and served as required by Rule 9013.
91 (3) A chapter 12 or chapter 13 case shall be
92 converted without court order on the filing by the
93 debtor of a notice of conversion pursuant to §§1208(a)
94 or 1307(a), and the filing date of the notice shall be
95 deemed the date of the conversion order for the
96 purposes of applying §348(c) of the Code and Rule 1019.
97 The clerk shall forthwith transmit to the United States
98 trustee a copy of the notice.

COMMITTEE NOTE

Rule 2002(a) and this rule currently require notice to all creditors of a motion to dismiss a voluntary chapter 7 case for the debtor's failure to file a list of creditors, schedules, and statement of financial affairs within the time provided in § 707(a)(3) of the Code.

This rule is amended to provide that the United States trustee, who is the only entity with standing to file a motion to dismiss under § 707(a)(3), is required to serve the motion on only the debtor, the trustee, and any other entities the court directs. This amendment is for the purpose of avoiding the expense of sending notices of the motion to all creditors. If notice of the meeting of creditors has been sent to creditors, the amendment requires that notice of dismissal be sent to those creditors, as well as to creditors who file proofs of claim. If creditors have not been notified of the commencement of the case and no proofs of claim are filed, it is not necessary for any notices to be sent to creditors.

New subdivision (f) is the same as current subdivision (d), except that it provides that a motion to suspend a case or to dismiss a case for substantial abuse of chapter 7 pursuant to § 707(b) is a contested matter governed by Rule 9014.

Other amendments to this rule are stylistic or for clarification.

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

1 (a) TWENTY-DAY NOTICES TO PARTIES IN INTEREST. Except
2 as provided in subdivisions (h), (i), and (l) of this rule,
3 the clerk, or some other person as the court may direct,
4 shall give the debtor, the trustee, all creditors and
5 indenture trustees at least 20 days' notice by mail of
6 (1) the meeting of creditors under § 341 or § 1104(b) of the
7 Code;
8 * * * * *
9 (4) in a chapter 7 liquidation, a chapter 11 reorganization
10 case, and a chapter 12 family farmer debt adjustment case,
11 the hearing on the dismissal of the case <u>or the conversion</u>

12 of the case to another chapter, unless the hearing is
13 pursuant to § 707(a)(3) or § 707(b) of the Code or is on
14 dismissal of the case for failure to pay the filing fee~~, or~~
15 ~~the conversion of the case to another chapter~~

****

COMMITTEE NOTE

Paragraph (a)(4) is amended to conform to the amendments to Rule 1017. If the United States trustee files a motion to dismiss a case for the debtor's failure to file the list of creditors, schedules, or the statement of financial affairs within the time specified in § 707(a)(3), the amendments to this rule and to Rule 1017 eliminate the requirement that all creditors receive notice of the hearing.

This paragraph is amended further to conform to Rule 1017(b) which requires that notice of the hearing on dismissal of a case for failure to pay the filing fee be served on only the debtor and the trustee.

Agenda Item 9

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ALAN N. RESNICK, REPORTER

RE: BANKRUPTCY RULE 9009

DATE: FEBRUARY 22, 1996

Hon. Alan H. W. Shiff, United States Bankruptcy Judge for the District of Connecticut, in his letter of June 6, 1995, has informed us that the Bankruptcy Judges Advisory Committee has voted to accept a recommendation of its Subcommittee on the Bankruptcy Code, Rules and Official Forms, that Rule 9009 be amended as follows:

Rule 9009. Forms

1 The Official Forms prescribed by the Judicial
2 Conference of the United States shall be observed and used
3 ~~with alterations as may be appropriate~~. Forms may be
4 combined ~~and,~~ their contents may be rearranged to permit
5 economies in their use~~.~~ , and a reference to local rules may
6 be added. The Director of the Administrative Office of the
7 United States Courts may issue additional forms for use
8 under the Code. The forms shall be construed to be
9 consistent with these rules and the Code.

Judge Shiff writes that "[i]t was the sense of the Committee that the rule should be amended to clarify the use of alterations, so that they do not distort or obliterate the mandated official forms." Judge Shiff attached to his letter copies of Bancap Forms for the Notice of the Commencement of the Case, Meeting of Creditors, and Fixing of Dates (Official Form

No. 9) as examples of the Committee's concerns.

Although I am sympathetic to the problem pointed out in Judge Shiff's letter (we have spent too many painful hours over the years laboring over detailed language changes to these forms to then see others tinker with them), I do not support the suggested amendments to Rule 9009.

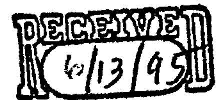
There are several forms, such as Form 9, that should not be changed by courts, except in rare situations. For example, it should not be necessary for courts to change the Official Form 9 notices sent by the clerk at the beginning of a case. Similarly, the voluntary petition (Form 1), involuntary petition (Form 5), and statement of financial affairs (Form 7), should not be altered.

However, there are other forms that are intended to be used by attorneys or judges that are frequently altered to fit the particular case. For example, the confirmation order in a chapter 11 case (Form 15) is only a skeleton form that is often altered in medium and large cases. In fact, the Bankruptcy Code itself contemplates additions to confirmation orders (see § 1141(d) which says that "except as otherwise provided in ... the order confirming the plan," confirmation discharges the debtor from debts; § 1141(c) which says that "except as otherwise provided in the ... order confirming the plan," property is free and clear of claims and interests, etc.). It also is common for injunctions to be included in confirmation orders (see § 524(g)). In sum, Form 15 is intended to be altered to meet the needs of

each case.

Other forms usually drafted by lawyers, such as the ballot form (Form 14), powers of attorney (Forms 11A and 11B), and proofs of claim (Form 10), also are frequently altered.

Therefore, I do not think that Rule 9009 should be amended to delete the language "with alterations as may be appropriate." Perhaps there is some other way to encourage clerks and courts to refrain from varying from certain official forms (most notably Form 9).



UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

ALAN H. W. SHIFF
BANKRUPTCY JUDGE

UNITED STATES COURTHOUSE
915 LAFAYETTE BOULEVARD
BRIDGEPORT, CT 06604
TELEPHONE (203) 579-5806

June 6, 1995

94-BK-L

Mr. Peter G. McCabe
Assistant Director for Judges' Program
Administrative Office of the United States Courts
Washington, D.C. 20544

Re: Rule 9009 F.R.Bankr.P.

Dear Mr. McCabe:

On May 12, 1995, the Bankruptcy Judges Advisory Committee voted to accept the recommendation of its Subcommittee on the Bankruptcy Code, Rules, and Official Forms on a proposed amendment to Rule 9009. It was the sense of the Committee that the rule should be amended to clarify the use of alterations, so that they do not distort or obliterate the mandated official forms. I attach copies of Bancap Forms B9A, B9E, and B9I as examples of the Committee's concern.

I also attach a proposed amendment to Rule 9009, including a copy of the current rule with proposed additions and deletions. The Committee has also authorized me to attach a form of Notice of Commencement of Case Under Chapter 13, Meeting of Creditors, Confirmation Hearing, and Fixing Dates. We believe that this form is compatible with our proposed amendment.

Very truly yours,

Alan H. W. Shiff
United States Bankruptcy Judge

AHWS:cdh
Enclosures (6)
cc: The Honorable Judith K. Fitzgerald
The Honorable Stacey W. Cotton
The Honorable Enrique S. Lamoutte
Mr. Francis F. Szczebak, Chief, Bankruptcy Division

RULE 9009

The Official Forms prescribed by the Judicial Conference of the United States shall be observed and used ~~with alterations as may be appropriate~~. Forms may be combined ~~and~~, their contents may be rearranged to permit economies in their use~~.~~, and a reference to local rules may be added. 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.

RULE 9009

The Official Forms prescribed by the Judicial Conference of the United States shall be observed and used. Forms may be combined, their contents may be rearranged to permit economies in their use, and a reference to local rules may be added. 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.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ________________

NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 13, MEETING OF CREDITORS, CONFIRMATION HEARING, AND FIXING DATES

CASE NUMBER:
IN RE: NAME OF DEBTOR(S)

DATE FILED (CONVERTED):

ADDRESS OF DEBTOR(S):

SOCIAL SECURITY/TAX ID. NOS. OF DEBTOR(S):

NAME/ADDRESS/TELEPHONE NUMBER
OF ATTORNEY FOR DEBTOR:

NAME/ADDRESS/TELEPHONE NUMBER
OF TRUSTEE:

MEETING OF CREDITORS
DATE/TIME/LOCATION:

HEARING ON CONFIRMATION OF PLAN
DATE/TIME/LOCATION:

PROOF OF CLAIM DEADLINE:

OBJECTION TO CONFIRMATION OF PLAN:

(space for local rules)

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

COMMENCEMENT OF CASE:

CREDITORS MAY NOT TAKE CERTAIN ACTIONS:

MEETING OF CREDITORS:

PROOF OF CLAIM:

PURPOSE OF A CHAPTER 13 FILING:

915 Lafayette Boulevard
ridgeport, CT 06604

UNITED STATES BANKRUPTCY COURT

District of Connecticut

NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 7
OF THE BANKRUPTCY CODE,
MEETING OF CREDITORS, AND FIXING OF DATES
(Individual or Joint Debtor No Asset Case)

Case Number: 95-50210 AHWS
Date Filed (or Converted): 02/13/95

IN RE(NAME OF DEBTOR)
Seth H. Krate, 045-72-7933
Kristen J. Krate, 129-66-1162

ADDRESS OF DEBTOR
(4 pages)
33 Paul Street
Danbury, CT 06810

NAME/ADDRESS OF TRUSTEE
Alan D. Sibarium
P.O. Box 341
Farmington, CT 06034

Telephone Number: (203) 675-1450

NAME/ADDRESS OF ATTORNEY FOR THE DEBTOR
Francis G. Pennarola
Gager and Henry
30 Main St., #204
Danbury, CT 06810

Telephone Number: (203) 743-6363

DATE/TIME/LOCATION OF MEETING OF CREDITORS
April 5, 1995 at 9:30 am
Office of the U.S. Trustee
James English Building
105 Court Street, Suite 402
New Haven, CT 06511

Discharge of Debts: Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Types of Debts: 06/05/95

AT THIS TIME THERE APPEAR TO BE NO ASSETS AVAILABLE FROM WHICH PAYMENT MAY BE MADE TO UNSECURED CREDITORS. DO NOT FILE A PROOF OF CLAIM UNTIL YOU RECEIVE NOTICE TO DO SO.

OMMENCEMENT OF CASE. A petition for liquidation under chapter 7 of the Bankruptcy Code has been filed in this court by or against the person or persons named above as the debtor, and an order for relief has been entered. You will not receive notice of all documents filed in this case. All documents filed with the court, including lists of the debtor's property, debts, and property claimed as exempt are available for inspection at the office of the clerk of the bankruptcy ourt.

REDITORS MAY NOT TAKE CERTAIN ACTIONS. A creditor is anyone to whom the debtor owes money or property. Under the Bankruptcy Code, the debtor is granted certain protection against creditors. Common examples of prohibited actions by creditors are contacting the debtor to demand repayment, taking action against the debtor to collect money owed to creditors or to take property of the debtor, and starting or continuing foreclosure actions, repossessions, wage deductions. If unauthorized actions are taken by a creditor against a debtor, the court may penalize that creditor. A creditor who is considering taking ction against the debtor or the property of the debtor should review Sec. 362 of the Bankruptcy Code and may wish to seek legal advice. The staff of the clerk of the bankruptcy court is not permitted to give legal advice.

EETING OF CREDITORS. The debtor (both husband and wife in a joint case) is required to appear at the meeting of creditors on the date and at the place set rth above for the purpose of being examined under oath. Attendance by creditors at the meeting is welcomed, but not required. At the meeting, the creditors ay elect a trustee other than the one named above, elect a committee of creditors, examine the debtor, and transact such other business as may properly come before the meeting. The meeting may be continued or adjourned from time to time by notice at the meeting, without further written notice to creditors.

QUIDATION OF THE DEBTOR'S PROPERTY. The trustee will collect the debtor's property and turn any that is not exempt into money. At this time, however, appears from the schedules of the debtor that there are no assets from which any distribution can be paid to creditors. If at a later date it appears that there are assets from which a distribution may be paid, the creditors will be notified and given an opportunity to file claims.

XEMPT PROPERTY. Under state and federal law, the debtor is permitted to keep certain money or property as exempt. If a creditor believes that an emption of money or property is not authorized by law, the creditor may file an objection. An objection must be filed not later than 30 days after the onclusion of the meeting of creditors.

DISCHARGE OF DEBTS. The debtor is seeking a discharge of debts. A discharge means that certain debts are made unenforceable against the debtor ersonally. Creditors whose claims against the debtor are discharged may never take action against the debtor to collect the discharged debts. If a creditor elieves that the debtor should not receive any discharge of debts under Sec. 727 of the Bankruptcy Code or that a debt owed to the creditor is not dischargeable under Sec. 523(a)(2),(4), or (6) of the Bankruptcy Code, timely action must be taken in the bankruptcy court by the deadline set forth above labeled "Discharge of Debts." Creditors considering taking such action may wish to seek legal advice.
o obtain a list of creditors, **there is a charge of .50 per page, plus an additional $15.00 search fee per case.** ayable to Clerk, U.S. Bankruptcy Court. For number of pages see address of debtor on top right corner of this notice. ****

For the Court: Thomas H. Abraham, Clerk of the Bankruptcy Court

2/14/95
Date

FORM B9A 0001

Bancap 341 7/24/92 amc

915 Lafayette Boulevard
Bridgeport, CT 06604

UNITED STATES BANKRUPTCY COURT

District of Connecticut

NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 11
OF THE BANKRUPTCY CODE,
MEETING OF CREDITORS, AND FIXING OF DATES
(Individual or Joint Debtor Case)

Case Number: 95-50109 AHWS
Date Filed (or Converted): 01/24/95

IN RE(NAME OF DEBTOR)
Daniel Stevenson, 040-40-7488

ADDRESS OF DEBTOR
144 Grassy Plain Terrace
Bethel, CT 06801

NAME/ADDRESS OF TRUSTEE

Telephone Number:

NAME/ADDRESS OF ATTORNEY FOR THE DEBTOR
Maximino Medina, Jr.
Zeldes, Needle & Cooper, P.C.
1000 Lafayette Boulevard
P.O. Box 1740
Bridgeport, CT 06601
Telephone Number: (203) 333-9441

DATE/TIME/LOCATION OF MEETING OF CREDITORS
March 2, 1995 at 10:00 am
Office of the U.S. Trustee
James English Building
105 Court Street, Suite 402
New Haven, CT 06511

Filing Claims: Deadline to File a Proof of Claim is 05/31/95

Discharge of Debts: Deadline to File a Complaint to Determine Dischargeability of Certain Types of Debts: 05/01/95

COMMENCEMENT OF CASE. A petition for reorganization under chapter 11 of the Bankruptcy Code has been filed in this court by or against the person or persons named above as the debtor, and an order for relief has been entered. You will not receive notice of all documents filed in this case. All documents filed with the court, including lists of the debtor's property, debts, and property claimed as exempt are available for inspection at the office of the clerk of the bankruptcy court.
CREDITORS MAY NOT TAKE CERTAIN ACTIONS. A creditor is anyone to whom the debtor owes money or property. Under the Bankruptcy Code, the debtor is granted certain protection against creditors. Common examples of prohibited actions by creditors are contacting the debtor to demand repayment, taking action against the debtor to collect money owed to creditors or to take property of the debtor, and starting or continuing foreclosure actions, repossessions, or wage deductions. If unauthorized actions are taken by a creditor against a debtor, the court may penalize that creditor. A creditor who is considering taking action against the debtor or the property of the debtor should review Sec. 362 of the Bankruptcy Code and may wish to seek legal advice. The staff of the clerk of the bankruptcy court is not permitted to give legal advice.
MEETING OF CREDITORS. The debtor (both husband and wife in a joint case) is required to appear at the meeting of creditors on the date and at the place set forth above for the purpose of being examined under oath. Attendance by creditors at the meeting is welcomed, but not required. At the meeting, the creditors may examine the debtor and transact such other business as may properly come before the meeting. The meeting may be continued or adjourned from time to time by notice at the meeting, without further written notice to the creditors.
EXEMPT PROPERTY. Under state and federal law, the debtor is permitted to keep certain money or property as exempt. If a creditor believes that an exemption of money or property is not authorized by law, the creditor may file an objection. An objection must be filed not later than 30 days after the conclusion of the meeting of creditors.
DISCHARGE OF DEBTS. The debtor may seek a discharge of debts. A discharge means that certain debts are made unenforceable against the debtor personally. Creditors whose claims against the debtor are discharged may never take action against the debtor to collect the discharged debts. If a creditor believes that the debtor should not receive a discharge under Sec. 1141(d)(3)(c) of the Bankruptcy Code, timely action must be taken in the bankruptcy court in accordance with Bankruptcy Rule 4004(a). If a creditor believes that a debt owed to the creditor is not dischargeable under Sec. 523(a)(2),(4), or (6) of the Bankruptcy Code, timely action must be taken in the bankruptcy court by the deadline set forth above labeled "Discharge of Debts." Creditors considering taking such action may wish to seek legal advice.
PROOF OF CLAIM. Schedules of creditors have been or will be filed pursuant to Bankruptcy Rule 1007. Any creditor holding a scheduled claim which is not listed as disputed, contingent, or unliquidated as to amount may, but is not required to, file a proof of claim in this case. Creditors whose claims are not scheduled or whose claims are listed as disputed, contingent, or unliquidated as to amount and who desire to participate in the case or share in any distribution must file their proofs of claim. A creditor who desires to rely on the schedule of creditors has the responsibility for determining that the claim is listed accurately. The place to file a proof of claim, either in person or by mail, is the office of the clerk of the bankruptcy court. Proof of claim forms are available in the clerk's office of any bankruptcy court.
PURPOSE OF CHAPTER 11 FILING. Chapter 11 of the Bankruptcy Code enables a debtor to reorganize pursuant to a plan. A plan is not effective unless approved by the court at a confirmation hearing. Creditors will be given notice concerning any plan, or in the event the case is dismissed or converted to another chapter of the Bankruptcy Code. The debtor will remain in possession of its property and will continue to operate any business unless a trustee is appointed.

To obtain a copy of the list of creditors, **there is a charge of .50 per page, plus an additional $15.00 search fee.** payable to Clerk, U.S. Bankruptcy Court. For number of pages see address of debtor on top right corner of this notice. ****

For the Court: Thomas H. Abraham, Clerk of the Bankruptcy Court
1/25/95
Date

FORM B9E 0001

Bancap 341 7/24/92 amc

915 Lafayette Boulevard
Bridgeport, CT 06604

UNITED STATES BANKRUPTCY COURT

District of Connecticut

NOTICE OF COMMENCEMENT OF CASE UNDER CHAPTER 13
OF THE BANKRUPTCY CODE,
MEETING OF CREDITORS, AND FIXING OF DATES

Case Number: 95-50707 AHWS
Date Filed (or Converted): 05/15/95

IN RE(NAME OF DEBTOR)
Harold D. Gaines, 049-54-2734
Lanette R. Gaines, 044-52-8503

ADDRESS OF DEBTOR
4 Garland Circle
Trumbull, CT 06611

NAME/ADDRESS OF TRUSTEE
Jeffrey Sapir
399 Knollwood Road
White Plains, NY 10603

Telephone Number: (914) 328-7272

NAME/ADDRESS OF ATTORNEY FOR DEBTOR
Elena L. Cahill
2336 Main Street
Stratford, CT 06497

Telephone Number: (203) 378-6675

DATE/TIME/LOCATION OF MEETING OF CREDITORS *
June 29, 1995 at 10:00 am
915 Lafayette Boulevard
Room 333
Bridgeport, CT 06604

DATE/TIME/LOCATION OF HEARING ON CONFIRMATION OF PLAN *
June 29, 1995 at 2:00 pm
US Bankruptcy Court
915 Lafayette Boulevard
Room 123
Bridgeport, CT 06604

Filing Claims: Deadline to File a Proof of Claim is 09/27/95

[X] The debtor has filed a plan [ ] A plan has not been filed as of this date
Written objections to the confirmation of the Chapter 13 Plan shall be filed and sent to the debtor and trustee no later than 2 days prior to the above confirmation hearing date.

COMMENCEMENT OF CASE. An individual's debt adjustment case under chapter 13 of the Bankruptcy Code has been filed in this court by the debtor or debtors named above, and an order for relief has been entered. You will not receive notice of all documents filed in this case. All documents filed with the court, including lists of the debtor's property and debts, are available for inspection at the office of the clerk of the bankruptcy court.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS. A creditor is anyone to whom the debtor owes money. Under the Bankruptcy Code, the debtor is granted certain protection against creditors. Common examples of prohibited actions by creditors are contacting the debtor to demand repayment, taking action against the debtor to collect money owed to creditors or to take property of the debtor, and starting or continuing foreclosure actions, repossessions, or wage deductions. Some protection is also given to certain codebtors of consumer debts. If unauthorized actions are taken by a creditor against a debtor, or a protected codebtor, the court may punish that creditor. A creditor who is considering taking action against the debtor or the property of the debtor, or any codebtor, should review Sec. 362 and 1301 of the Bankruptcy Code and may wish to seek legal advice. The staff of the clerk of the bankruptcy court is not permitted to give legal advice.

MEETING OF CREDITORS. The debtor (both husband and wife in a joint case) is required to appear at the meeting of creditors on the date and at the place set forth above labeled "Date/Time/Location of Meeting of Creditors" for the purpose of being examined under oath. Attendance by creditors at the meeting is welcomed, but not required. At the meeting, the creditors may examine the debtor and transact such other business as may properly come before the meeting. The meeting may be continued or adjourned from time to time by notice at the meeting, without further written notice to the creditors.

PROOF OF CLAIM. Except as otherwise provided by law, in order to share in any payment from the estate, a creditor must file a proof of claim by the date set forth above labeled "Filing Claims." The place to file the proof of claim, either in person or by mail, is the office of the clerk of the bankruptcy court. Proof of claim forms are available in the clerk's office of any bankruptcy court.

PURPOSE OF A CHAPTER 13 FILING. Chapter 13 of the Bankruptcy Code is designed to enable a debtor to pay debts in full or in part over a period of time pursuant to a plan. A plan is not effective unless approved by the bankruptcy court at a confirmation hearing. Creditors will be given notice in the event the case is dismissed or converted to another chapter of the Bankruptcy Code.

SPECIAL NOTICE TO DEBTORS

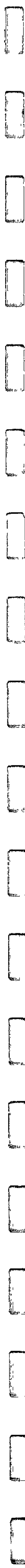
FAILURE OF THE DEBTOR TO ATTEND THE ABOVE SCHEDULED MEETING OF CREDITORS OR CONFIRMATION HEARING MAY RESULT IN THE DISMISSAL OF YOUR CASE WITHOUT FURTHER NOTICE.

For the Court: Thomas H. Abraham
Clerk of the Bankruptcy Court

5/16/95
Date

FORM B9I 0001

Bancap 341 7/24/92 amc



Agenda Item 10

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
225 E. TEMPLE STREET, STE. 1560
LOS ANGELES, CALIFORNIA 90012

GERALDINE MUND
JUDGE

(213) 894-3021

January 5, 1996

RECEIVED
JAN 15 1996
U.S. BANKRUPTCY COURT
DISTRICT OF MARYLAND
GREENBELT

The Honorable Paul Mannes
United States Bankruptcy Judge
District of Maryland
6500 Cherrywood Lane
Greenbelt, Maryland 20770

Re: Section 110

Dear Paul:

Irving Hill, a senior District Judge, is in the process of preparing either an opinion or a general order on the handling of Section 110 cases in our district. If he gives me consent to send you the draft (or if he has finalized it as an opinion), I will send it to you. In the meantime I provide a chart that I prepared that shows the procedure that we think is probably appropriate. We also spoke to Gary Klein at the National Consumer Law Center, who was one of the drafters of Section 110 (with Henry Sommers). He said that it was their intent that the Bankruptcy Court would enter final orders on Sections 110(b) through Section 110(g). However, that is not at all clear in the statute.

Perhaps the critical issues for the rule-making authority are as follows:

1. What kind of notice is given to the preparer? Can this be service by mail or must it be personal service (particularly if they never identify themselves)?

2. Who imposes the fine and is this a final judgment for which an appeal is available?

3. Can the Court act on its own motion or must it depend on a motion by a party in interest?

4. Please note that the motion to impose a fine procedure is different if it is brought by the debtor, a creditor or the trustee than if it is brought by the United States Trustee in that the United States Trustee cannot seek payment.

5. Where does the motion for payment have to be filed? If you read Section (I)(1) it sounds as though the Bankruptcy Court certifies the fact to the District Court and then, if a

motion is filed in the District Court, the District Court orders the bankruptcy petition preparer to pay the sanction. However, we had a lot of trouble trying to figure out exactly what the Bankruptcy Court is certifying to the District Court, if no motion for payment is filed. Also we had a problem determining who would initially litigate the debtor's actual damages, etc. It doesn't seem a very good use of the District Court's time to hold these little trials on cases with which they are not familiar. Therefore we decided that the motion for payment should be filed in the Bankruptcy Court, the bankruptcy judge would make all of the determinations and then certify that matter to the District Court in some sort of report and recommendation procedure. This needs to be laid out by the rules.

5. Are any or all of these actions filed in the bankruptcy case or are they in a miscellaneous case? What about the motion that goes to the District Court? Do they have to open their own file? Is there a fee to be paid?

This chart does not cover the injunction provisions of Section 110(j), which appear to be very clear. This is filed and determined in the Bankruptcy Court and is handled as any other injunction or adversary proceeding would be.

If I can be of further assistance, please let me know.

Very truly yours,

GERALDINE MUND
United States Bankruptcy Judge

GM:yg
Enclosure

§110 IMPOSITION OF FINE AND MOTION FOR PAYMENT

Bankruptcy or related case dismissed due to failure to file papers. §110(i)(l)

Negligence or intentional disregard of FRBP or Bankruptcy Code. §110(l)(i)

Preparer violates section 110.

Document not signed and preparer's name and address not printed on document. §110(b);
Document does not contain preparer's social security number. §110(c);
Debtor not furnished with a copy of document at time of signing. §110(d);
Preparer executed document on behalf of debtor. §110(e);
Preparers used the word "legal" or similar term in advertising. §110(f);
Preparer collected filing fees. §110(g);
Preparer did not file a disclosure statement within 10 days of the filing of the petition. §110(h);
Preparer did not turn over excessive fees after court order. §110(h) [see process on motion to disallow fees].

Preparer commits any fraudulent, unfair, or deceptive act. §110(i)(l)

Motion to Impose a Fine [and for payment under §110(i)(1)] brought by the debtor, a creditor or the trustee. §110(i)

Motion to Impose a Fine brought by the UST. §110(i)

Notice is given and the preparer has an opportunity to respond in writing. If written response is received, hearing set unless the Court orders otherwise. The Court determines if a fine is to be imposed, the amount of the fine, and orders the fine to be paid. The U.S. Attorney is notified of the order to pay a fine. If there is a motion for payment under §110(i)(1), the Court determines if certification is to be made to the District Court and, if so, certifies the fact and motion for payment under §110(i)(1) to the District Court.

Bankruptcy Judge Certifies to District Court for hearing on motion for payment under §110(i)(1)

District Judge decides monetary award due debtor and movant under §110(i)(1)

Bankruptcy Judge gives order imposing fine or not imposing fine.

Court on its own motion can serve a Notice of Intent To Impose a Fine. §110(i)

Notice is given and the preparer has an opportunity to respond in writing. If written response is received, hearing set unless the Court orders otherwise. The Court determines if a fine is to be imposed, the amount of the fine, and orders the fine to be paid. The U.S. Attorney is notified of the order to pay a fine.

Bankruptcy Judge gives order imposing fine or not imposing fine.

Appeal

§110(i) Flowchart [December 14, 1995]

SECTION 110 (11 U.S.C. § 110)

§ 110. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.

(a) In this section—

(1) "bankruptcy petition preparer" means a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing; and

(2) "document for filing" means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

(b)(1) A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer's name and address.

(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.

(c)(1) A bankruptcy petition preparer who prepares a document for filing shall place on the document, after the preparer's signature, an identifying number that identifies individuals who prepared the document.

(2) For purposes of this section, the identifying number of a bankruptcy petition preparer shall be the Social Security account number of each individual who prepared the document or assisted in its preparation.

(3) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.

(d)(1) A bankruptcy petition preparer shall, not later than the time at which a document for filing is presented for the debtor's signature, furnish to the debtor a copy of the document.

(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than

$500 for each such failure unless the failure is due to reasonable cause.

(e)(1) A bankruptcy petition preparer shall not execute any document on behalf of a debtor.

(2) A bankruptcy petition preparer may be fined not more than $500 for each document executed in violation of paragraph (1).

(f)(1) A bankruptcy petition preparer shall not use the word "legal" or any similar term in any advertisements, or advertise under any category that includes the word "legal" or any similar term.

(2) A bankruptcy petition preparer shall be fined not more than $500 for each violation of paragraph (1).

(g)(1) A bankruptcy petition preparer shall not collect or receive any payment from the debtor or on behalf of the debtor for the court fees in connection with filing the petition.

(2) A bankruptcy petition preparer shall be fined not more than $500 for each violation of paragraph (1).

(h)(1) Within 10 days after the date of the filing of a petition, a bankruptcy petition preparer shall file a declaration under penalty of perjury disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor.

(2) The court shall disallow and order the immediate turnover to the bankruptcy trustee of any fee referred to in paragraph (1) found to be in excess of the value of services rendered for the documents prepared. An individual debtor may exempt any funds so recovered under section 522(b).

(3) The debtor, the trustee, a creditor, or the United States trustee may file a motion for an order under paragraph (2).

(4) A bankruptcy petition preparer shall be fined not more than $500 for each failure to comply with a court order to turn over funds within 30 days of service of such order.

(i)(1) If a bankruptcy case or related proceeding is dismissed because of the failure to file bankruptcy papers, including papers specified in section 521(1) of this title, the negligence or intentional disregard of this title or the Federal Rules of Bankruptcy Procedure by a bankruptcy petition preparer, or if a bankruptcy petition preparer violates this section or commits any fraudulent, unfair, or deceptive act, the bankruptcy court shall certify that fact to the district court, and the district court, on motion of the debtor, the trustee, or a creditor and after a hearing, shall order the bankruptcy petition preparer to pay to the debtor—

(A) the debtor's actual damages;

(B) the greater of—

(i) $2,000; or

(ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and

(C) reasonable attorneys' fees and costs in moving for damages under this subsection.

(2) If the trustee or creditor moves for damages on behalf of the debtor under this subsection, the bankruptcy petition preparer shall be ordered to pay the movant the additional amount of $1,000 plus reasonable attorneys' fees and costs incurred.

(j)(1) A debtor for whom a bankruptcy petition preparer has prepared a document for filing, the trustee, a creditor, or the United States trustee in the district in which the bankruptcy petition preparer resides, has conducted business, or the United States trustee in any other district in which the debtor resides may bring a civil action to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of this section or from further acting as a bankruptcy petition preparer.

(2)(A) In an action under paragraph (1), if the court finds that—

(i) a bankruptcy petition preparer has—

(I) engaged in conduct in violation of this section or of any provision of this title a violation of which subjects a person to criminal penalty;

(II) misrepresented the preparer's experience or education as a bankruptcy petition preparer; or

(III) engaged in any other fraudulent, unfair, or deceptive conduct; and

(ii) injunctive relief is appropriate to prevent the recurrence of such conduct,

the court may enjoin the bankruptcy petition preparer from engaging in such conduct.

(B) If the court finds that a bankruptcy petition preparer has continually engaged in conduct described in subclause (I), (II), or (III) of clause (i) and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, or has not paid a penalty imposed under this section, the court may enjoin the person from acting as a bankruptcy petition preparer.

(3) The court shall award to a debtor, trustee, or creditor that brings a successful action under this subsection reasonable attorney's fees and costs of the action, to be paid by the bankruptcy petition preparer.

(k) Nothing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.

Agenda Item 11

Form B1

United States Bankruptcy Court

District of

VOLUNTARY PETITION

NAME OF DEBTOR (If individual, enter Last, First, Middle)	NAME OF JOINT DEBTOR (Spouse) (Last, First, Middle)
ALL OTHER NAMES used by the debtor in the last 6 years (include married, maiden, and trade names)	ALL OTHER NAMES used by the joint debtor in the last 6 years (include married, maiden and trade names)
SOC. SEC./ TAX I.D. NO. (If more than one, state all)	SOC. SEC./ TAX I.D. NO. (If more than one, state all)
STREET ADDRESS OF DEBTOR (No. and Street, City, State and zip code)	STREET ADDRESS OF JOINT DEBTOR (No. and Street, City, State and zip code)
COUNTY of Residence or of the Principal Place of Business :	COUNTY of Residence or of the Principal Place of Business :
MAILING ADDRESS OF DEBTOR (if different from street address)	MAILING ADDRESS OF JOINT DEBTOR (If different from street address)
LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR (If different than street address above)	VENUE: (Check any applicable box) ☐ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceeding the date of this petition or for a longer part of such 180 days than in any other District. ☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

INFORMATION REGARDING THE DEBTOR (Check the Applicable Boxes)

TYPE OF DEBTOR (Check any applicable box)

☐ Individual(s) ☐ Railroad
☐ Corporation ☐ Stockbroker
☐ Partnership ☐ Commodity Broker
☐ Other ____________

NATURE OF DEBT (Check one box)

☐ Consumer/Non-Business ☐ Business

CHAPTER OR SECTION OF BANKRUPTCY CODE UNDER WHICH THE PETITION IS FILED (Check one box)

☐ CHAPTER 7 ☐ CHAPTER 11 ☐ CHAPTER 13
☐ CHAPTER 9 ☐ CHAPTER 12
☐ SEC. 304 – Case ancillary to foreign proceeding

SMALL BUSINESS (Chapter 11 only)

☐ Debtor is a small business as defined in 11 U.S.C. § 101
☐ Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

SMALL BUSINESS (Chapter 11 only)

☐ Debtor is a small business as defined in 11 U.S.C. 101.
☐ Debtor is and elect to be considered a small business under 11 U.S.C. §1121(e) (optional)

FILING FEE (Check one box)

☐ Filing Fee is attached
☐ Filing Fee to be paid in installments (Applicable to individuals only.) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

STATISTICAL /ADMINISTRATIVE INFORMATION (Estimates Only)

THIS SPACE FOR COURT USE ONLY

☐ Debtor estimates that funds will be available for distribution to unsecured creditors.
☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

ESTIMATED NUMBER OF CREDITORS

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

ESTIMATED ASSETS (Check only the highest applicable category)

$0 to $50,000	$50,001 to $100,000	$100,001 to $ 500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $100 million	More than $100 million
☐	☐	☐	☐	☐	☐	☐

ESTIMATED LIABILITIES (Check only the highest applicable category)

$0 to $50,000	$50,001 to $100,000	$100,001 to $ 500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $100 million	More than $100 million
☐	☐	☐	☐	☐	☐	☐

Voluntary Petition
PAGE 2

Name of Debtor________________________

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

PRIOR BANKRUPTCY CASE FILED WITHIN LAST 6 YEARS (If more than one, attach additional sheet)		
Location Where Filed	Case Number	Date Filed

PENDING BANKRUPTCY CASE FILED BY ANY SPOUSE, PARTNER, OR AFFILIATE OF THIS DEBTOR (If more than one, attach additional sheet)		
Name of Debtor	Case Number	Date
Relationship	District	Judge

SIGNATURES

SIGNATURE(S) OF DEBTOR (Individual/Joint)

I (we) declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and who has filed under chapter 7.] I (we) 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.

I (we) request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X________________________
Signature of the Debtor

X________________________
Signature of Joint Debtor

____
Telephone number (if not represented by attorney)

Date:

SIGNATURE OF DEBTOR (Corporation/Partnership)

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

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

X________________________
Signature of Authorized Individual

____
Printed Name of Authorized Individual

____
Title of Authorized Individual

Date:

SIGNATURE OF ATTORNEY

X________________________
Signature of Debtor(s)' Attorney

____
Printed Name of Debtor(s)' Attorney

____
Firm Name

____
Address

____

____
Telephone Number

Date:

SIGNATURE OF NON-ATTORNEY PETITION PREPARER

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

____
Printed or Typed Name of Bankruptcy Petition Preparer

____
Social Security Number

____
Address

____

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

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

X________________________
Signature of Bankruptcy Petition Preparer

Date:

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

EXHIBIT A

(To be completed if debtor is a corporation requesting relief under chapter 11)

☐ Exhibit A is attached and made a part of this petition.

EXHIBIT B

(To be completed if petitioner is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

Date: ________________________
Signature of Debtor(s)' Attorney

Exhibit "A"

[If debtor is a corporation filing under chapter 11 of the Code, this Exhibit "A" shall be completed and attached to the petition.]

[Caption as in Form 16B]

Exhibit "A" to Voluntary Petition

1. Debtor's employer identification number is ______________.

2. Is debtor a publicly held corporation? (check one box) ☐ yes ☐ no

3. If any of debtor's securities are registered under section 12 of the Securities and Exchange Act of 1934, the SEC file number is ______________.

4. The following financial data is the latest available information and refers to debtor's condition on ______________.

a. Total assets $ ______________

b. Total liabilities $ ______________

		Approximate number of holders
Fixed, liquidated secured debt	$ ______	______
Contingent secured debt	$ ______	______
Disputed secured claims	$ ______	______
Unliquidated secured debt	$ ______	______

		Approximate number of holders
Fixed, liquidated unsecured debt	$ ______	______
Contingent unsecured debt	$ ______	______
Disputed unsecured claims	$ ______	______
Unliquidated unsecured debt	$ ______	______
Number of shares of preferred stock	______	______
Number of shares of common stock	______	______

Exhibit "A" continued

Comments, if any: ____
____
____
____

5. Brief description of debtor's business: ______________________________
____
____

6. List the name of any entity that directly or indirectly owns, controls, or holds, with power to vote, 20% or more of the voting securities of debtor: ______________________
____
____
____

7. List the names of all corporations 20% or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held, with power to vote, by debtor: ______
____
____
____

COMMITTEE NOTE

The form has been substantially amended to simplify its format and make the form easier to complete correctly. The Latin phrase "In re" has been deleted as unnecessary. The instructions concerning venue have been changed to recognize the nonjurisdictional nature of venue requirements. The amount of information requested in the boxes labeled "Type of Debtor" and "Nature of Debt" has been reduced, and the reporting by a corporation of whether it is a publicly held entity has been moved to Exhibit "A" of the petition. The box labeled "Representation by Attorney" has been deleted; the information it contained is requested in the signature boxes on the second page of the form.

In the statistical information section, the labels on the ranges of estimated assets and liabilities have been rewritten to improve the accuracy of reporting. Requests for information in chapter 11 and chapter 12 cases concerning the number of the debtor's employees and equity security holders have been deleted.

The second page of the form has been simplified so that a debtor need only sign the petition once. The request for information concerning the filing of a plan has been deleted.

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

[Caption as in Form 16B]

APPLICATION TO PAY FILING FEES IN INSTALLMENTS

1. In accordance with Fed.R.Bankr.P. 1006, I apply for permission to pay the filing fee amounting to $______________ in installments.

2. I certify that I am unable to pay the filing fee(s) except in installments.

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

4. I propose the following terms for the payment of the filing fee(s):*

$ __________ With the filing of the petition

$ __________ On or before ______________________

$ __________ On or before ______________________

$ __________ On or before ______________________

$ __________ On or before ______________________

* The number of installments proposed shall not exceed four (4), and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition. Fed.R.Bankr.P. 1006(b)(2).

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

____
Signature of Attorney Date

____
Signature(s) of Applicant(s) Date
(In a joint case, both spouses must sign.)

____
Name of Attorney

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

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document. I also certify that the debtor has not paid me for services in connection with this case and that I will not accept money or any other property from the debtor before the filing fee is paid in full.

____
Printed or Typed Name of Bankruptcy Petition Preparer

____
Social Security No.

____

____
Address

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

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

X ____
Signature of Bankruptcy Petition Preparer

____
Date

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

UNITED STATES BANKRUPTCY COURT
____________________ DISTRICT OF ____________________

In re ______________________________,
Debtor

Case No. ____________

Chapter ____________

ORDER

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

IT IS FURTHER ORDERED that until the filing fee is paid in full the debtor shall not pay, and no person shall accept, any money for services in connection with this case, and the debtor shall not relinquish, and no person shall accept, any property as payment for services in connection with this case.

BY THE COURT

Date: ____________________

____
United States Bankruptcy Judge

COMMITTEE NOTE

The form has been reorganized and the paragraphs numbered. The debtor's certification concerning payment for services in the case has been placed ahead of the statement of proposed terms for installment payment of court fees. Acknowledgement by the debtor of the potential consequences of failure to pay any installment when due has been added. (See 11 U.S.C. § 707(a)(2).)

FORM B6F

In re ________________________________, Debtor

Case No. ______________ (If known)

SCHEDULE F—CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and account number, if any, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H—Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contigent, place an "X" in the column labeled "Contigent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Report total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

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

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							

_______ continuation sheets attached

Subtotal ▶ $

Total ▶ $

(Report total also on Summary of Schedules)

COMMITTEE NOTE

The form is amended to add to the column labels a reference to community liability for claims. The amendment is technical and corrects an editorial oversight.

Form B8
DRAFT

Form 8. INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

[Caption as in Form 16B]

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

1. I have filed a schedule of assets and liabilities which includes consumer debts secured by property of the estate.
2. I intend to do the following with respect to the property of the estate which secures those consumer debts:

a. *Property to Be Surrendered.*

Description of Property	Creditor's name

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

Description of Property	Creditor's name	Property is claimed as exempt	Property will be redeemed pursuant to § 722	Debt will be reaffirmed pursuant to § 524(c)

Date: ____________________

____
Signature of Debtor

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

I certify that I am a bankruptcy petitioner preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

______________________________ ______________
Printed or Typed Name of Bankruptcy Petition Preparer Social Security No.

____

____
Address

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

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

X______________________________ ______________
Signature of Bankruptcy Petition Preparer Date

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

COMMITTEE NOTE

The form is amended to conform more closely to the language of the Bankruptcy Code. The amendments also make clear that the form is not intended to take a position regarding whether the options stated on the form are the only choices available to the debtor. Compare Lowry Federal Credit Union v. West, 882 F.2d 1543 (10th Cir. 1989), with In re Taylor, 3 F.3d 1512 (11th Cir. 1993).

Form B9A (Individual or Joint Debtor No Asset Case)

United States Bankruptcy Court

______________________ District of ______________________

NOTICE OF
CHAPTER 7 BANKRUPTCY CASE, MEETING OF CREDITORS, & DEADLINES

[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on ______________________(date).] *or* [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter __ on ________ (date) and was converted to a case under chapter 7 on __________.]
You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

SEE REVERSE SIDE FOR IMPORTANT EXPLANATIONS

CASE NUMBER:

DEBTOR(s):	Address of debtor(s)	Social Security/Taxpayer ID Nos.

Debtor(s) Attorney (name and address)	Bankruptcy Trustee (name and address)
Telephone number	Telephone number

DEADLINES:

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

Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Types of Debts:

Deadline to Object to Exemptions:
Thirty (30) days after the *conclusion* of the meeting of creditors.

MEETING OF CREDITORS:

Date & time:
Location:

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

PLEASE DO NOT FILE A PROOF OF CLAIM UNLESS YOU RECEIVE A NOTICE TO DO SO

Address of the Bankruptcy Clerk's Office:

Telephone number:

Hours Open:

For the Court:

Clerk of the Bankruptcy Court

Date

EXPLANATIONS

FILING OF CHAPTER 7 BANKRUPTCY CASE.
A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS.
Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.

MEETING OF CREDITORS.
A meeting of creditors is scheduled for the date, time and location listed on the front side. The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors. Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

DO NOT FILE A PROOF OF CLAIM AT THIS TIME.
There does not appear to be any property available to the trustee to pay creditors. You therefore should not file a proof of claim at this time. If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim.

DISCHARGE OF DEBTS.
The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor should not receive a discharge under Bankruptcy Code § 727(a) OR that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Types of Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.

EXEMPT PROPERTY.
The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.

BANKRUPTCY CLERK'S OFFICE.
Any paper that you file in this bankruptcy case must be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.

LEGAL ADVICE.
The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

REFER TO OTHER SIDE FOR IMPORTANT DEADLINES AND NOTICES.

Form B9B (Corporation/Partnership No Asset Case)

United States Bankruptcy Court

________________________ District of ________________________

NOTICE OF
CHAPTER 7 BANKRUPTCY CASE, MEETING OF CREDITORS, & DEADLINES

[A chapter 7 bankruptcy case concerning the debtor [corporation] *or* [partnership] listed below was filed on _______________(date).] *or* [A bankruptcy case concerning the debtor [corporation] *or* [partnership] listed below was originally filed under chapter __ on _______ (date) and was converted to a case under chapter 7 on _________.]
You may be a creditor of the debtor. You may want to consult an attorney to protect your rights.
All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

SEE REVERSE SIDE FOR IMPORTANT EXPLANATIONS

CASE NUMBER:

DEBTOR:	Address of debtor	Taxpayer Id. Nos.

Debtor's Attorney (name and address)	Bankruptcy Trustee (name and address)
Telephone number	Telephone number

MEETING OF CREDITORS:

Date & time:
Location:

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

PLEASE DO NOT FILE A PROOF OF CLAIM UNLESS YOU RECEIVE A NOTICE TO DO SO

Address of the Bankruptcy Clerk's Office:

Telephone number:
Hours Open:

For the Court:

Clerk of the Bankruptcy Court

Date

EXPLANATIONS

FILING OF CHAPTER 7 BANKRUPTCY CASE.
A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor listed on the front side, and an order for relief has been entered.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS.
Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures.

MEETING OF CREDITORS.
A meeting of creditors is scheduled for the date, time and location listed on the front side. The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors. Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

DO NOT FILE A PROOF OF CLAIM AT THIS TIME.
There does not appear to be any property available to the trustee to pay creditors. You therefore should not file a proof of claim at this time. If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim.

BANKRUPTCY CLERK'S OFFICE.
Any paper that you file in this bankruptcy case must be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts, at the bankruptcy clerk's office.

LEGAL ADVICE.
The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

REFER TO OTHER SIDE FOR IMPORTANT DEADLINES AND NOTICES.

Form B9C (Individual or Joint Debtor Asset Case)

United States Bankruptcy Court

_______________ District of _______________

NOTICE OF
CHAPTER 7 BANKRUPTCY CASE, MEETING OF CREDITORS, & DEADLINES

[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on _______________ (date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter __ on ________ (date) and was converted to a case under chapter 7 on __________.]
You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

SEE REVERSE SIDE FOR IMPORTANT EXPLANATIONS

CASE NUMBER:

DEBTOR(s):	Address of debtor(s)	Social Security/Taxpayer ID Nos.

Debtor(s) Attorney (name and address)	Bankruptcy Trustee (name and address)
Telephone number	Telephone number

DEADLINES:

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

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): For a governmental unit:

Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Types of Debts:

Deadline to Object to Exemptions:

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

MEETING OF CREDITORS:

Date & time:
Location:

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Address of the Bankruptcy Clerk's Office:

Telephone number:
Hours Open:

For the Court:

Clerk of the Bankruptcy Court

Date

EXPLANATIONS

FILING OF CHAPTER 7 BANKRUPTCY CASE.
A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS.
Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.

MEETING OF CREDITORS.
A meeting of creditors is scheduled for the date, time and location listed on the front side. The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors. Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

CLAIMS.
A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedule of claims filed by the debtor.

DISCHARGE OF DEBTS.
The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor should not receive a discharge under Bankruptcy Code § 727(a) OR that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Types of Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.

EXEMPT PROPERTY.
The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.

LIQUIDATION OF THE DEBTOR'S PROPERTY AND PAYMENT OF CREDITORS' CLAIMS.
The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property that is not exempt. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you should file a Proof of Claim, as described above.

BANKRUPTCY CLERK'S OFFICE.
Any paper that you file in this bankruptcy case must be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.

LEGAL ADVICE.
The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

REFER TO OTHER SIDE FOR IMPORTANT DEADLINES AND NOTICES.

Form B9D (Corporation/Partnership Asset Case)

United States Bankruptcy Court

_______________________ District of _______________________

NOTICE OF
CHAPTER 7 BANKRUPTCY CASE, MEETING OF CREDITORS, & DEADLINES

[A chapter 7 bankruptcy case concerning the debtor [corporation] *or* [partnership] listed below was filed on _______________ (date)]. *or* [A bankruptcy case concerning the debtor [corporation] *or* [partnership] listed below was originally filed under chapter __ on ________ (date) and was converted to a case under chapter 7 on _________.]
You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

SEE REVERSE SIDE FOR IMPORTANT EXPLANATIONS

CASE NUMBER:

DEBTOR:	Address of debtor	Taxpayer Id. Nos.

Debtor's Attorney (name and address)	Bankruptcy Trustee (name and address)
Telephone number	Telephone number

DEADLINES:

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

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit):

For a governmental unit:

MEETING OF CREDITORS:

Date & time:
Location:

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Address of the Bankruptcy Clerk's Office:

For the Court:

Clerk of the Bankruptcy Court

Telephone number:

Hours Open:

Date

EXPLANATIONS

FILING OF CHAPTER 7 BANKRUPTCY CASE.
A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor listed on the front side, and an order for relief has been entered.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS.
Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures.

MEETING OF CREDITORS.
A meeting of creditors is scheduled for the date, time and location listed on the front side. The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors. Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

CLAIMS.
A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedule of claims filed by the debtor.

LIQUIDATION OF THE DEBTOR'S PROPERTY AND PAYMENT OF CREDITORS' CLAIMS.
The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you should file a Proof of Claim, as described above.

BANKRUPTCY CLERK'S OFFICE.
Any paper that you file in this bankruptcy case must be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts, at the bankruptcy clerk's office.

LEGAL ADVICE.
The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

REFER TO OTHER SIDE FOR IMPORTANT DEADLINES AND NOTICES.

Form B9E (Individual or Joint Debtor Case)

United States Bankruptcy Court

_______________ District of _______________

NOTICE OF
CHAPTER 11 BANKRUPTCY CASE, MEETING OF CREDITORS, & DEADLINES

[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _______________(date).] *or* [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter __ on ________ (date) and was converted to a case under chapter 11 on _________.]
You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

SEE REVERSE SIDE FOR IMPORTANT EXPLANATIONS

CASE NUMBER:

DEBTOR(s):	Address of debtor(s)	Social Security/Taxpayer ID Nos.

Debtor(s) Attorney (name and address)

Telephone number

DEADLINES:

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

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

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

Deadline to File a Complaint Objecting to Discharge of the Debtor:
First date set for hearing on confirmation of plan.
Notice of that date will be sent at a later time

Deadline to Object to Exemptions:
Thirty (30) days after the *conclusion* of the meeting of creditors.

MEETING OF CREDITORS:

Date & time:
Location:

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Address of the Bankruptcy Clerk's Office:

Telephone number:

Hours Open:

For the Court:

Clerk of the Bankruptcy Court

Date

EXPLANATIONS

FILING OF CHAPTER 11 BANKRUPTCY CASE.
A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be notified of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. The debtor will remain in possession of its property and may continue to operate any business unless a trustee is serving.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS.
Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.

MEETING OF CREDITORS.
A meeting of creditors is scheduled for the date, time and location listed on the front side. The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors. Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

CLAIMS.
A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules of creditors that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all *or* if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim against the debtor in the bankruptcy case. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice.

DISCHARGE OF DEBTS.
The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Types of Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline. If you believe that the debtor should not receive a discharge under Bankruptcy Code § 1141(d)(3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.

EXEMPT PROPERTY.
The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.

BANKRUPTCY CLERK'S OFFICE.
Any paper that you file in this bankruptcy case must be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.

LEGAL ADVICE.
The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

REFER TO OTHER SIDE FOR IMPORTANT DEADLINES AND NOTICES.

Form B9E (Alt.) (Individual or Joint Debtor Case)

United States Bankruptcy Court

____________________ District of ______________________

NOTICE OF
CHAPTER 11 BANKRUPTCY CASE, MEETING OF CREDITORS, & DEADLINES

[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on ______________________(date).] *or* [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter __ on ________ (date) and was converted to a case under chapter 11 on __________.]
You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

SEE REVERSE SIDE FOR IMPORTANT EXPLANATIONS

CASE NUMBER:

DEBTOR(s):	Address of debtor(s)	Social Security/Taxpayer ID Nos.

Debtor(s) Attorney (name and address)

Telephone number

DEADLINES:

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

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): For a governmental unit:

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

Deadline to File a Complaint Objecting to Discharge of the Debtor:
First date set for hearing on confirmation of plan.
Notice of that date will be sent at a later time

Deadline to Object to Exemptions:
Thirty (30) days after the *conclusion* of the meeting of creditors.

MEETING OF CREDITORS:

Date & time:
Location:

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Address of the Bankruptcy Clerk's Office:

Telephone number:
Hours Open:

For the Court:

Clerk of the Bankruptcy Court

Date

EXPLANATIONS

FILING OF CHAPTER 11 BANKRUPTCY CASE.
A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be notified of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. The debtor will remain in possession of its property and may continue to operate any business unless a trustee is serving.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS.
Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.

MEETING OF CREDITORS.
A meeting of creditors is scheduled for the date, time and location listed on the front side. The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors. Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

CLAIMS.
A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules of creditors that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all *or* if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, or you might not be paid any money on your claim against the debtor in the bankruptcy case.

DISCHARGE OF DEBTS.
The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Types of Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline. If you believe that the debtor should not receive a discharge under Bankruptcy Code § 1141(d)(3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.

EXEMPT PROPERTY.
The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.

BANKRUPTCY CLERK'S OFFICE.
Any paper that you file in this bankruptcy case must be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.

LEGAL ADVICE.
The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

REFER TO OTHER SIDE FOR IMPORTANT DEADLINES AND NOTICES.

Form B9F (Corporation/Partnership Case)

United States Bankruptcy Court

_________________________ District of _________________________

NOTICE OF
CHAPTER 11 BANKRUPTCY CASE, MEETING OF CREDITORS, & DEADLINES

[A chapter 11 bankruptcy case concerning the debtor [corporation] *or* [partnership] listed below was filed on _______________(date).] *or* [A bankruptcy case concerning the debtor [corporation] *or* [partnership] listed below was originally filed under chapter __ on ________ (date) and was converted to a case under chapter 11 on __________.]
You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

SEE REVERSE SIDE FOR IMPORTANT EXPLANATIONS

CASE NUMBER:

DEBTOR:	Address of debtor	Taxpayer Id. Nos.

Debtor's Attorney (name and address)

Telephone number

DEADLINES:

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

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

Deadline to File a Complaint Objecting to Discharge of the Debtor:
First date set for hearing on confirmation of plan.
Notice of that date will be sent at a later time

MEETING OF CREDITORS:

Date & time:
Location:

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Address of the Bankruptcy Clerk's Office:

Telephone number:

Hours Open:

For the Court:

Clerk of the Bankruptcy Court

Date

EXPLANATIONS

FILING OF CHAPTER 11 BANKRUPTCY CASE.
A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be notified of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. The debtor will remain in possession of its property and may continue to operate any business unless a trustee is serving.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS.
Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures.

MEETING OF CREDITORS.
A meeting of creditors is scheduled for the date, time and location listed on the front side. The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors. Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

CLAIMS.
A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules of creditors that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all *or* if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim against the debtor in the bankruptcy case. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice.

DISCHARGE OF DEBTS.
The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor should not receive a discharge under Bankruptcy Code § 1141(d)(3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.

BANKRUPTCY CLERK'S OFFICE.
Any paper that you file in this bankruptcy case must be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts, at the bankruptcy clerk's office.

LEGAL ADVICE.
The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

REFER TO OTHER SIDE FOR IMPORTANT DEADLINES AND NOTICES.

Form B9F (Alt.) (Corporation/Partnership Case)

United States Bankruptcy Court

_______________________ District of _______________________

NOTICE OF
CHAPTER 11 BANKRUPTCY CASE, MEETING OF CREDITORS, & DEADLINES

[A chapter 11 bankruptcy case concerning the debtor [corporation] *or* [partnership] listed below was filed on _______________(date).] *or* [A bankruptcy case concerning the debtor [corporation] *or* [partnership] listed below was originally filed under chapter __ on ________ (date) and was converted to a case under chapter 11 on __________.]
You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

SEE REVERSE SIDE FOR IMPORTANT EXPLANATIONS

CASE NUMBER:

DEBTOR:	Address of debtor	Taxpayer Id. Nos.

Debtor's Attorney (name and address)

Telephone number

DEADLINES:

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

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): For a governmental unit:

Deadline to File a Complaint Objecting to Discharge of the Debtor:
First date set for hearing on confirmation of plan.
Notice of that date will be sent at a later time

MEETING OF CREDITORS:

Date & time:
Location:

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Address of the Bankruptcy Clerk's Office: For the Court:

Clerk of the Bankruptcy Court

Telephone number:

Hours Open: Date

EXPLANATIONS

FILING OF CHAPTER 11 BANKRUPTCY CASE.
A bankruptcy case under chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be notified of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. The debtor will remain in possession of its property and may continue to operate any business unless a trustee is serving.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS.
Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures.

MEETING OF CREDITORS.
A meeting of creditors is scheduled for the date, time and location listed on the front side. The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors. Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

CLAIMS.
A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules of creditors that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is *not* listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you file a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all *or* if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, or you might not be paid any money on your claim against the debtor in the bankruptcy case.

DISCHARGE OF DEBTS.
The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor should not receive a discharge under Bankruptcy Code § 1141(d)(3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.

BANKRUPTCY CLERK'S OFFICE.
Any paper that you file in this bankruptcy case must be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts, at the bankruptcy clerk's office.

LEGAL ADVICE.
The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

REFER TO OTHER SIDE FOR IMPORTANT DEADLINES AND NOTICES.

Form B9G (Individual or Joint Debtor Family Farmer)

United States Bankruptcy Court

_______________________ District of _______________________

NOTICE OF
CHAPTER 12 BANKRUPTCY CASE, MEETING OF CREDITORS, & DEADLINES

[A chapter 12 bankruptcy case concerning the debtor(s) listed below was filed on ______________________________(date).] *or* [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter __ on ________ (date) and was converted to a case under chapter 12 on __________.]
You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

SEE REVERSE SIDE FOR IMPORTANT EXPLANATIONS

CASE NUMBER:

DEBTOR(s):	Address of debtor(s)	Social Security/Taxpayer ID Nos.

Debtor(s) Attorney (name and address)	Bankruptcy Trustee (name and address)
Telephone number	Telephone number

DEADLINES:

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

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): For a governmental unit:

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

Deadline to Object to Exemptions:

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

Filing of Plan, Hearing on Confirmation of Plan

[The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held: ________________ (Date) ________________ (Time) ________________________________ (Location)] *or*
[The debtor has filed a plan. The plan or a summary of the plan and notice of confirmation hearing will be sent separately.] *or*
[The debtor has not filed a plan as of this date. You will be given separate notice of the hearing on confirmation of the plan.]

MEETING OF CREDITORS:

Date & time:
Location:

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Address of the Bankruptcy Clerk's Office:

Telephone number:
Hours Open:

For the Court:

Clerk of the Bankruptcy Court

Date

EXPLANATIONS

FILING OF CHAPTER 12 BANKRUPTCY CASE.
A bankruptcy case under chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] *or* [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] *or* [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of its property and may continue to operate its business unless the court orders the trustee to take over for the debtor.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS.
Prohibited collection actions are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.

MEETING OF CREDITORS.
A meeting of creditors is scheduled for the date, time and location listed on the front side. The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors. Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

CLAIMS.
A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedule of claims filed by the debtor.

DISCHARGE OF DEBTS.
The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Types of Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.

EXEMPT PROPERTY.
The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.

BANKRUPTCY CLERK'S OFFICE.
Any paper that you file in this bankruptcy case must be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.

LEGAL ADVICE.
The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

REFER TO OTHER SIDE FOR IMPORTANT DEADLINES AND NOTICES.

Form B9H (Corporation/Partnership Family Farmer)

United States Bankruptcy Court

_______________ District of _______________

NOTICE OF
CHAPTER 12 BANKRUPTCY CASE, MEETING OF CREDITORS, & DEADLINES

[A chapter 12 bankruptcy case concerning the debtor [corporation] *or* [partnership] listed below was filed on _______________(date).] *or* [A bankruptcy case concerning the debtor [corporation] *or* [partnership] listed below was originally filed under chapter __ on _______ (date) and was converted to a case under chapter 12 on _________.]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.

NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

SEE REVERSE SIDE FOR IMPORTANT EXPLANATIONS

CASE NUMBER:

DEBTOR:	Address of debtor	Taxpayer Id. Nos.

Debtor's Attorney (name and address)	Bankruptcy Trustee (name and address)
Telephone number	Telephone number

DEADLINES:

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

Deadline to File a Proof of Claim:

For all creditors (except a governmental unit): For a governmental unit:

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

Filing of Plan, Hearing on Confirmation of Plan

[The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held: _______________ (Date) _______________ (Time) _______________________________________ (Location)] *or*
[The debtor has filed a plan. The plan or a summary of the plan and notice of confirmation hearing will be sent separately.] *or*
[The debtor has not filed a plan as of this date. You will be given separate notice of the hearing on confirmation of the plan.]

MEETING OF CREDITORS:

Date & time:
Location:

Creditors May Not Take Certain Actions:

The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

Address of the Bankruptcy Clerk's Office: For the Court:

Clerk of the Bankruptcy Court

Telephone number:
Hours Open:

Date

EXPLANATIONS

FILING OF CHAPTER 12 BANKRUPTCY CASE.
A bankruptcy case under chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] *or* [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] *or* [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of its property and may continue to operate its business unless the court orders the trustee to take over for the debtor.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS.
Prohibited collection actions are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures.

MEETING OF CREDITORS.
A meeting of creditors is scheduled for the date, time and location listed on the front side. <u>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</u> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

CLAIMS.
A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedule of claims filed by the debtor.

DISCHARGE OF DEBTS.
The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Types of Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.

BANKRUPTCY CLERK'S OFFICE.
Any paper that you file in this bankruptcy case must be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts, at the bankruptcy clerk's office.

LEGAL ADVICE.
The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

REFER TO OTHER SIDE FOR IMPORTANT DEADLINES AND NOTICES.

Form B9I

United States Bankruptcy Court

_________________________ District of _________________________

NOTICE OF
CHAPTER 13 BANKRUPTCY CASE, MEETING OF CREDITORS, & DEADLINES

[A chapter 13 bankruptcy case concerning the debtor(s) listed below was filed on ______________________________(date).] *or* [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter __ on ________ (date) and was converted to a case under chapter 13 on __________.]
You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

SEE REVERSE SIDE FOR IMPORTANT EXPLANATIONS

CASE NUMBER:

DEBTOR(s):	Address of debtor(s)	Social Security/Taxpayer ID Nos.

Debtor(s) Attorney (name and address)	Bankruptcy Trustee (name and address)
Telephone number	Telephone number

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

Deadline to File a Proof of Claim:
For all creditors (except a governmental unit): For a governmental unit:

Deadline to Object to Exemptions:
Thirty (30) days after the *conclusion* of the meeting of creditors.

Filing of Plan, Hearing on Confirmation of Plan
[The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held: ________________ (Date) ________________ (Time) ______________________________ (Location)] *or*
[The debtor has filed a plan. The plan or a summary of the plan and notice of confirmation hearing will be sent separately.] *or*
[The debtor has not filed a plan as of this date. You will be given separate notice of the hearing on confirmation of the plan.]

MEETING OF CREDITORS:
Date & time:
Location:

Creditors May Not Take Certain Actions:
The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

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

EXPLANATIONS

FILING OF CHAPTER 13 BANKRUPTCY CASE.
A bankruptcy case under chapter 13 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specified amount to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] *or* [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] *or* [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of its property and may continue to operate its business, if any, unless the court orders the trustee to take over for the debtor.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS.
Prohibited collection actions are listed in Bankruptcy Code § 362 and § 1301. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.

MEETING OF CREDITORS.
A meeting of creditors is scheduled for the date, time and location listed on the front side. The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors. Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.

CLAIMS.
A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedule of claims filed by the debtor.

EXEMPT PROPERTY.
The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.

BANKRUPTCY CLERK'S OFFICE.
Any paper that you file in this bankruptcy case must be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.

LEGAL ADVICE.
The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

REFER TO OTHER SIDE FOR IMPORTANT DEADLINES AND NOTICES.

COMMITTEE NOTE

Forms 9A - 9I (and the alternate versions of Forms 9E and 9F) have been amended, redesigned, and rewritten. Minor conforming changes have been made to respond to amendments made in the Bankruptcy Reform Act of 1994: the longer claims filing period for governmental units in section 502(b)(9) of the Code (see Forms 9C, 9D, 9E(Alt.), 9F(Alt.), 9G, 9H, and 9I); and a reference to dischargeability actions under section 523(a)(15) (see Forms 9A, 9C, 9E, and 9E(Alt.), 9G, and 9H). All of the forms have been substantially revised to make them easier to read and understand. The titles have been simplified. Recipients are told why they are receiving the notice. Explanations are provided on the back of the form and are set in larger type. Plain English is used. Deadlines are highlighted on the front of the form. Recipients are told that papers must be received by the bankruptcy clerk's office by the applicable deadline. The box for the trustee has been deleted from the chapter 11 notices (Forms 9E and 9F and the alternates). Various alternatives are set out in brackets in many of the forms, permitting each bankruptcy clerk's office to tailor the forms even more precisely to fit the needs of a particular case.

UNITED STATES BANKRUPTCY COURT

____________District of ______________

PROOF OF CLAIM

Name of Debtor

Case Number

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. Sec. 503.

Name of Creditor (The person or other entity to whom the debtor owes money or property)

Name and Address Where Notices Should be Sent

Telephone No.

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check box if you have never received any notices from the bankruptcy court in this case.

☐ Check box if the address differs from the address on the envelope sent to you by the court.

THIS SPACE IS FOR COURT USE ONLY

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:

Check here if this claim ☐ replaces ☐ amends a previously filed claim, dated:__________

1. BASIS FOR CLAIM

☐ Goods sold
☐ Services performed
☐ Money loaned
☐ Personal injury/wrongful death
☐ Taxes
☐ Other

☐ Retiree benefits as defined in 11 U.S.C. Sec. 1114(a)
☐ Wages, salaries, and compensation (Fill out below)
Your social security number ______________________
Unpaid compensation for services performed
from ______________ (date) to ______________ (date)

2. DATE DEBT WAS INCURRED

3. IF COURT JUDGMENT, DATE OBTAINED:

4. CLASSIFICATION OF CLAIM. Under the Bankruptcy Code all claims are classified as one or more of the following: (1) Unsecured nonpriority, (2) Unsecured priority, (3) Secured. It is possible for part of a claim to be in one category and part in another. CHECK THE APPROPRIATE BOX OR BOXES that best describe your claim and STATE THE AMOUNT OF THE CLAIM AT TIME CASE FILED.

☐ SECURED CLAIM $__________________
Brief Description of Collateral:
☐ Real Estate ☐ Motor Vehicle ☐ Other (Describe briefly)
Amount of arrearage and other charges at time case filed included in secured claim above, if any $________

☐ UNSECURED NONPRIORITY CLAIM $__________________
A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim.

☐ UNSECURED PRIORITY CLAIM $__________________
Specify the priority of the claim.

☐ Wages, salaries, or commissions (up to $4,000),* earned not more than 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier --- 11 U.S.C. Sec. 507(a)(3)

☐ Contributions to an employee benefit plan --- 11 U.S.C. Sec. 507(a)(4)

☐ Up to $1,800* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use --- 11 U.S.C. Sec. 507(a)(6)

☐ Alimony, maintenance, or support owed to a spouse, former spouse, or child --- 11 U.S.C. Sec. 507(a)(7)

☐ Taxes or penalties owed to governmental units --- 11 U.S.C. Sec. 507(a)(8)

☐ Other --- Specify applicable paragraph of 11 U.S.C. Sec. 507(a)____

*Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

5. TOTAL AMOUNT OF CLAIM AT TIME CASE FILED: $__________ (Unsecured) $__________ (Secured) $__________ (Priority) $__________ (Total)

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

6. CREDITS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

7. SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. If the documents are not available, explain. If the documents are voluminous, attach a summary.

8. TIME-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

THIS SPACE IS FOR COURT USE ONLY

Date	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)

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

Instructions for Proof of Claim Form

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

Definitions

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

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

Proof of Claim – A form filed with the clerk of the bankruptcy court where the bankruptcy case was filed, to tell the bankruptcy court how much the debtor owed a creditor when the bankruptcy case was filed (the amount of the creditor's claim).

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

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

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

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

Items to be completed in proof of claim form (if not already filled in).

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

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

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

2. **Date debt incurred:** Fill in the date when the debt first was owed by the debtor.

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

4. **Classification of Claim:** Check the appropriate place to state whether the claim is a secured claim, an unsecured priority claim, or an unsecured nonpriority claim, and state the amount. If the claim is a secured claim, you must state the type of property that is collateral for the claim, attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured. (See Definitions above) A claim may also be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. For partly secured claims or partly priority claims, state the amount of each part in the applicable separate designated section of the form.)

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

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

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

COMMITTEE NOTE

Explanatory definitions and instructions for completing the form have been added.

Form 14. BALLOT FOR ACCEPTING OR REJECTING A PLAN

[Caption as in Form 16A]

CLASS *[ ]* BALLOT FOR ACCEPTING OR REJECTING PLAN OF REORGANIZATION

[Proponent] filed a plan of reorganization dated *[Date]* (the "Plan") for the Debtor in this case. The Court has *[conditionally]* approved a disclosure statement with respect to the Plan (the "Disclosure Statement"). The Disclosure Statement provides information to assist you in deciding how to vote your ballot. If you do not have a Disclosure Statement, you may obtain a copy from *[name, address, telephone number and telecopy number of proponent/proponent's attorney]*. Court approval of the disclosure statement does not indicate approval of the plan by the Court.

You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and your classification and treatment under the Plan. Your *[claim] [equity interest]* has been placed in class *[ ]* under the Plan. If you hold claims or equity interests in more than one class, you will receive a ballot for each class in which you are entitled to vote.

If your ballot is not received by *[name and address of proponent's attorney or other appropriate address]* on or before *[date]*, and such deadline is not extended, your vote will not count as either an acceptance or rejection of the Plan. If the Plan is confirmed by the Bankruptcy Court it will be binding on you whether or not you vote.

ACCEPTANCE OR REJECTION OF THE PLAN

[At this point the ballot should provide for voting by the particular class of creditors or equity holders receiving the ballot using one of the following alternatives:]

[If the voter is the holder of a secured, priority or general unsecured claim:]

The undersigned, the holder of a Class *[ ]* claim against the Debtor in the unpaid amount of Dollars ($)

[or, if the voter is the holder of a bond, debenture or other debt security:]

The undersigned, the holder of a Class *[ ]* claim against the Debtor, consisting of Dollars ($) principal amount of *[describe bond, debenture or other debt security]* of the Debtor (For purposes of this Ballot, it is not necessary and you should not adjust the principal amount for any accrued or unmatured interest)

[or, if the voter is the holder of an equity interest:]

The undersigned, the holder of Class *[ ]* equity interest in the Debtor, consisting of ______ shares or other interests of *[describe equity interest]* in the Debtor

[In each case, the following language should be included:]

(Check one box only)

[ ] ACCEPTS THE PLAN [ ] REJECTS THE PLAN

Dated: ______________

Print or type name:______________________________

Signature:______________________________

Title (if corporation or partnership)______________________________

Address: ______________________________

____

RETURN THIS BALLOT TO:

[Name and address of proponent's attorney or other appropriate address]

Form 14. BALLOT FOR ACCEPTING OR REJECTING A PLAN

[Caption as in Form 16A]

CLASS *[ ]* BALLOT FOR ACCEPTING OR REJECTING PLAN OF REORGANIZATION

[Proponent] filed a plan of reorganization dated *[Date]* (the "Plan") for the Debtor in this case. The Court has *[conditionally]* approved a disclosure statement with respect to the Plan (the "Disclosure Statement"). The Disclosure Statement provides information to assist you in deciding how to vote your ballot. If you do not have a Disclosure Statement, you may obtain a copy from *[name, address, telephone number and telecopy number of proponent/proponent's attorney].* Court approval of the disclosure statement does not indicate approval of the plan by the Court.

You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and your classification and treatment under the Plan. Your *[claim] [equity interest]* has been placed in class *[ ]* under the Plan. If you hold claims or equity interests in more than one class, you will receive a ballot for each class in which you are entitled to vote.

If your ballot is not received by *[name and address of proponent's attorney or other appropriate address]* on or before *[date]*, and such deadline is not extended, your vote will not count as either an acceptance or rejection of the Plan. If the Plan is confirmed by the Bankruptcy Court it will be binding on you whether or not you vote.

ACCEPTANCE OR REJECTION OF THE PLAN

[At this point the ballot should provide for voting by the particular class of creditors or equity holders receiving the ballot using one of the following alternatives:]

[If the voter is the holder of a secured, priority or general unsecured claim:]

The undersigned, the holder of a Class *[ ]* claim against the Debtor in the unpaid amount of Dollars ($)

[or, if the voter is the holder of a bond, debenture or other debt security:]

The undersigned, the holder of a Class *[ ]* claim against the Debtor, consisting of Dollars ($) principal amount of *[describe bond, debenture or other debt security]* of the Debtor <u>(For purposes of this Ballot, it is not necessary and you should not adjust the principal amount for any accrued or unmatured interest)</u>

[or, if the voter is the holder of an equity interest:]

The undersigned, the holder of Class *[ ]* equity interest in the Debtor, consisting of ______ ~~number of~~ shares or other interests of *[describe equity ~~security~~ interest]* ~~of~~ in the Debtor

[In each case, the following language should be included:]

(Check one box only)

[ ] ACCEPTS THE PLAN [ ] REJECTS THE PLAN

Dated: ______________

Print or type name:______________________________

Signature:______________________________

Title (if corporation or partnership)______________________________

Address: ______________________________

RETURN THIS BALLOT TO:

[Name and address of proponent's attorney or other appropriate address]

COMMITTEE NOTE

The form has been substantially amended to simplify its format and make it easier to complete correctly.

Directions or blanks for proponent to complete the text of the ballot are in italics and enclosed within brackets. A ballot should include only the applicable language from the alternatives shown on this form and should be adapted to the particular requirements of the case.

If the plan provides for creditors in a class to have the right to reduce their claims so as to qualify for treatment given to creditors whose claims do not exceed a specified amount, the ballot should make provisions for the exercise of that right. See section 1122(b) of the Code.

If debt or equity securities are held in the name of a broker/dealer or nominee, the ballot should require the furnishing of sufficient information to assure that duplicate ballots are not submitted and counted and that ballots submitted by a broker/dealer or nominee reflect the votes of the beneficial holders of such securities. See Rule 3017(e).

In the event that more than one plan of reorganization is to be voted upon, the form of ballot will need to be adapted to permit holders of claims or equity interests (a) to accept or reject each plan being proposed, and (b) to indicate preferences among the competing plans. See section 1129(c) of the Code.

FORM 17. NOTICE OF APPEAL UNDER 28 U.S.C. § 158(a) or (b) FROM A JUDGMENT, ORDER, OR DECREE OF A BANKRUPTCY COURT

[Caption as in Form 16A, 16B, or 16D, as appropriate]

NOTICE OF APPEAL

______________________________, the plaintiff [*or* defendant *or* other party] appeals under 28 U.S.C. § 158(a) or (b) from the judgment, order, or decree of the bankruptcy court (describe) entered in this adversary proceeding [*or other proceeding, describe type*] on the ____________ day of __________, (year) .

The names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys are as follows:

Dated: ________________________

Signed: ____
Attorney for Appellant

Attorney Name: __________________________________
(and Identification No., if required)

Address: ____

____

Tel No: ____

If a Bankruptcy Appellate Panel Service is authorized to hear this appeal, each party has a right to have the appeal heard by the district court. The appellant may exercise this right only by filing a separate statement of election at the time of the filing of this notice of appeal.

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

COMMITTEE NOTE

The form has been amended to conform to Rule 8001(a), which requires the notice to contain the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys. A party filing a notice of appeal pro se should provide equivalent information.

Form 18. DISCHARGE OF DEBTOR

[Caption as in Form 16A]

DISCHARGE OF DEBTOR

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

Dated: ______________________

BY THE COURT

____

United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

EXPLANATION OF BANKRUPTCY DISCHARGE

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

Collection of Discharged Debts Prohibited

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

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

Debts that are Discharged

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

a. Debts for most taxes;

b. Debts that are in the nature of alimony, maintenance, or support;

c. Debts for most student loans;

d. Debts that the bankruptcy court specifically decides, during the bankruptcy case, are not discharged;

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

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

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

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

This information is only a general summary of the bankruptcy discharge and there are exceptions to these general rules. The law is complicated, so you may want to consult an attorney to determine the exact effect of the discharge in your case.

COMMITTEE NOTE

The discharge order has been simplified by deleting paragraphs which had detailed some, but not all, of the effects of the discharge. Formerly incomplete and, arguably, technically incorrect material has been replaced with a plain English explanation of the discharge. This explanation is to be printed on the reverse of the order, to increase understanding of the bankruptcy discharge among creditors and debtors. The bracketed sentence in the second paragraph should be included when the case involves community property.

Form 20A. Notice of Motion or Objection

[Caption as in Form 16A.]

NOTICE OF [MOTION TO] [OBJECTION TO]

__________________________ has filed papers with the court to [relief sought in motion or objection]. Your rights may be affected. You should read these papers carefully and discuss them with your lawyer, if you have one in this bankruptcy case. (If you do not have a lawyer, you may wish to consult one.)

If you do not want the court to [relief sought in motion or objection], or if you want the court to consider your views on the [motion] [objection], then by (date) , you or your lawyer must:

[File with the court a written request for a hearing {or, *if the court has ordered an answer*, an answer explaining your position}, and mail a copy to

{movant's attorney's name and address}

{names and addresses of others to be served}

If you mail your {request} {answer} to the court for filing, you must mail it early enough so the court will receive it by the date stated above.]

[Attend the hearing scheduled to be held on (date) , (year), at ____________a.m./p.m. in Courtroom ____, United States Bankruptcy Court, {address}.

[Other steps required to oppose a motion or objection under local rule or court order.]

If you or your lawyer do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Date:__________________

Signature:______________________
Name:
Business Address:

Form 20B. Notice of Objection to Claim

[Caption as in Form 16A.]

NOTICE OF OBJECTION TO CLAIM

_______________ has filed an objection to your claim in this bankruptcy case. Your claim may be reduced, modified, or eliminated. You should read these papers carefully and discuss them with your lawyer, if you have one.

If you do not want the court to eliminate or change your claim, or if you want the court to consider your views on the objection, then by __(date)__, you or your lawyer must:

{If required by local rule or court order.} [File with the court a written response to the objection, explaining your position, and mail a copy to

{objector's attorney's name and address}

{names and addresses of others to be served}

If you mail your response to the court for filing, you must mail it early enough so that the court will receive it by the date stated above.]

Attend the hearing on the objection, scheduled to be held on __(date)__, (year), at _______a.m./p.m. in Courtroom ___, United States Bankruptcy Court, {address}.

If you or your attorney do not take these steps the court may decide that you do not oppose the objection to your claim.

Date:_________________

Signature:____________________
Name:
Business Address:

COMMITTEE NOTE

These forms are new. They are intended to provide uniform, plain English explanations to parties regarding what they must do to respond in certain contested matters which occur frequently in consumer bankruptcy cases. Such explanations have been given better in some courts than in others. The forms are intended to make bankruptcy proceedings more fair, equitable, and efficient, by aiding parties, who sometimes do not have counsel, in understanding the applicable rules. These forms also will ensure that bankruptcy proceedings comply with the principles of due process, which require understandable notice of procedures that must be followed. Memphis Light, Gas and Water Division v. Craft, 436 U.S. 1 (1978); Finberg v. Sullivan, 634 F.2d 50 (3rd Cir. 1980)(en banc). It is hoped that use of these forms also will decrease the number of inquiries to bankruptcy clerks' offices.

Form 20A should be used upon the filing of a motion to dismiss or convert a case, a motion to modify a chapter 12 or chapter 13 plan, a motion for relief from the automatic stay, an objection to exemptions, or an objection to confirmation of a chapter 12 or chapter 13 plan. Form 20B should be used when there is an objection to a claim.

These forms are not intended to dictate the specific procedures to be used by different bankruptcy courts. The forms contain optional language that can be used or adapted, depending on local procedures. Similarly, the signature line will be adapted to identify the actual sender of the notice in each circumstance. All adaptations of the form should carry out the intent to give notice of applicable procedures in easily understood language.

The forms also contain a notice to assist persons with disabilities in obtaining information about how to gain access to the court.

Agenda Item 12

[AO Letterhead]

(Date)

MEMORANDUM TO: JUDGES, UNITED STATES COURTS OF APPEAL
JUDGES, UNITED STATES DISTRICT COURTS
JUDGES, UNITED STATES BANKRUPTCY COURTS
CIRCUIT EXECUTIVES

SUBJECT: Uniform Numbering System for Local Bankruptcy Rules (ACTION REQUIRED)

ACTION DUE DATE: April 15, 1997

Federal Rule of Bankruptcy Procedure 9029 as amended December 1, 1995, requires that local bankruptcy rules conform to a uniform numbering system prescribed by the Judicial Conference of the United States. The Judicial Conference on March 12, 1996, adopted a resolution prescribing a numbering system for local rules of court (including bankruptcy local rules) that corresponds with the relevant Federal Rules of Practice and Procedure. The attached uniform numbering system for local bankruptcy rules is intended to assist and guide courts in the renumbering process.

Uniform numbering based on the numbers used in the Federal Rules of Bankruptcy Procedure will make it easier for attorneys or parties to search for relevant local rules. The attached material will be especially helpful in renumbering those local rules that do not correspond to any specific Federal Rule of Bankruptcy Procedure. The cross-references listed in the column labeled "See Also LBR" are intended to assist in locating other topics or local rules related to the rule that is the starting point. An alphabetical listing is attached also.

Local courts are free to use as local rule numbers any relevant numbers in the Federal Rules of Bankruptcy Procedure, regardless of whether they appear in the attached material. Courts also may add other numbers to the system and may provide further cross-references for the convenience of practitioners. Courts should use the attached numbering system as a helpful template or suggested method for numbering local rules, but need not follow it rigidly.

Description of the Suggested Numbering System

The uniform numbering system for local bankruptcy rules consists of a four-digit national rule number, a dash, and a fifth digit, starting with 1. For instance, local rules relating to chapter 13 trustees are assigned the uniform number 2015-5 and local rules relating to United States trustees are assigned the uniform number 2020-1.

Local rule topics for which there is no related national rule have been assigned to the part of the national rules to which each topic is most closely related. These topics are assigned available, unused numbers within the part, starting with 1070, 2070, etc. For example, rules related to attorney admission and discipline are assigned to uniform numbers 2090-1 and 2090-2.

Converting to Uniform Numbering

The existence of a uniform local rule number should not be interpreted as a recommendation that any district needs a local rule on the topic. The numbering system was derived from a review of existing local rules and represents the subjects on which bankruptcy courts actually have local rules. Some courts have few rules; others many. No court has a rule on every topic for which a uniform number has been assigned.

Likewise, many national rules address matters about which there is no apparent need for local rules. Accordingly, users may perceive "gaps" in the numbering system, where there is no uniform local rule number assigned to a national rule. This exclusion of various national rules from the uniform local rule numbering system is deliberate, but is not intended to preclude a district from prescribing a local rule using one or more numbers not found in the attached material. Practitioners and other researchers will benefit most, however, when a court uses both the uniform number and the topic name in the attached material, as that will permit searching both by number and by topic.

A deadline of April 15, 1997, has been set for local courts to implement the new system. Questions about the uniform numbering system for local bankruptcy rules should be addressed to Patricia S. Channon, senior attorney in the Bankruptcy Judges Division, at telephone: (202) 273-1908.

Leonidas Ralph Mecham
Director

Attachments

cc: Clerks, United States Courts of Appeal
Clerks, United States District Courts
Clerks, United States Bankruptcy Courts
Bankruptcy Administrators

Agenda Item 13

DRAFT

RULE 2014 - EMPLOYMENT OF PERSONS PURSUANT TO § 327, § 1103, OR § 1104

(a) **Motion for an Order of Employment.** An order approving employment pursuant to § 327, § 1103, or § 1104 of the Code shall be made [in accordance with Rule 9014] only on motion of the trustee, debtor in possession or committee. The motion shall be filed and transmitted to the United States trustee, unless the case is a Chapter 9 municipality case, and served on the creditors included on the list filed pursuant to Rule 1007(d), any committees which have been appointed, the debtor and trustee, if one has been appointed, and on such other entities as the court may direct. The motion shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the movant's knowledge that the person to be employed (1) is not a creditor, or an equity security holder of the debtor; (2) is not and was not an investment banker for any outstanding security of the debtor; (3) has not been, within three years before the date of the filing of the petition, an investment banker for a security of the debtor, or an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the debtor; (4) is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor or of an investment banker specified above; (5) is not an insider of the debtor as that term is defined in the Bankruptcy Code; and (6) that there is no substantial risk that the person's representation will be materially and adversely affected by the person's own interests or duties to another client, former client, or third person.

AFF0F4D1

(1) **Hearing.** The court may authorize employment or commence a hearing on a motion for authorization to employ no earlier than 10 days after service of the motion.

(2) **Notice.** Notice of the time to object to continued employment and of any hearing on a motion for authorization to employ or objection to continued employment shall be given in accordance with Rule 2002.

(3) **Termination of Employment.** If the court declines to continue the employment of the professional, the court shall also make such further orders as are appropriate concerning compensation and sanctions.

(b) Verified Statement of Professional. The motion shall be accompanied by a verified statement of the person to be employed stating that the person (1) is not a creditor, or an equity security holder of the debtor; (2) is not and was not an investment banker for any outstanding security of the debtor; (3) has not been, within three years before the date of the filing of the petition, an investment banker for a security of the debtor, or an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the debtor; (4) is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor or of an investment banker specified above; (5) is not an insider of the debtor as that term is defined in the Bankruptcy Code; and (6) there is no substantial risk that the person's representation will be materially and adversely affected by the person's own interests or duties to another client, former client, or third person. The verified statement shall also include, to the extent reasonably necessary to determine whether the person has or represents an adverse interest, the following information: (1) the person's personal, business or professional relationships with (A) the debtor, (B) the directors, officers, employees and owners of a debtor entity, (C) secured and unsecured creditors of the debtor, and (D) parties having contractual relationships with the debtor; (2) the person's duties to another current client, former client, or third person which might affect the

quality or extent of the person's representation; (3) compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case and the source of such compensation; and (4) whether the person has shared or agreed to share the compensation with any other person and, if so, the particulars of any such sharing or agreement to share other than the details of any agreement for the sharing of the compensation with a member or regular associate of the partnership, corporation or person.

(c) Supplemental Verified Statement. A supplemental verified statement shall be filed and transmitted to the United States trustee, unless the case is a Chapter 9 municipality case, and served on the creditors on the list filed pursuant to Rule 1007(d), any committees which have been appointed, the debtor and the trustee, if one has been appointed, and on such other entities as the court may direct, within 15 days after the person learns of or discovers any matter that is required to be disclosed under this rule, which has not been disclosed previously in the initial or any supplemental verified statement.

(d) Services Rendered by Member or Associate of Firm of Employed Professional. If a partnership, corporation or named person is employed, any partner, member, or regular associate of the partnership, corporation, or named person may act as the person so employed, without further order of the court.

2/20/96

FILE NO.:
FEEDBACK:
REVIEWED: GKS
COPIES TO:

JAMES C. FRENZEL, P. C.
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GEORGIA & NORTH CAROLINA

PHONE (404) 266-9961
FAX (404) 231-4192

February 12, 1996

Gerald K. Smith, Esq.
Lewis & Roca LLP
40 N. Central Avenue, #1800
Phoenix, Arizona 85004-4429

RE: ABA Professional Ethics in Bankruptcy Cases Subcommittee

Dear Jerry:

I have received and reviewed the proposed amendments to Rules 2014 and 2002, and the comments of other members of the Subcommittee forwarded with your correspondence of January 29, 1996.

Although the rules, which are subject to amendment, are primarily aimed at attorneys for the debtor-in-possession and committees, and our practice normally involves secured creditors and creditors, there is some interdisciplinary effect.

Procedurally, the following comments:

(1) I concur with Mickey Sheinfeld about reference to service in accordance with Rule 9014, which I think has been resolved by the proposed amendment to Rule 2002.

(2) The 2014(a)(3) provision seems to be almost punitive in nature and invites further disgorgement or denial of fees in addition to Section 328(c) denial of compensation.

(3) I would suggest in 2014(a)(1) that the term "interim" be inserted and that the procedure be revised to allow interim or temporary employment until such time as a hearing after notice can be held on the issue of authorization of employment in order to allow for the following:

(A) Representation of the debtors-in-possession without a great deal of risk between the time a petition is filed and a hearing is held and the order authorizing employment has been entered;

(B) Allowing a court to award compensation in quantum meruit for a firm ultimately determined not to qualify or to be not disinterested after a hearing and prior to an entry of an order for full-time employment; and

(C) Allowing some certainty and authority for dealing with counsel for the debtor by secured creditors, lenders, lessors and others represented by counsel in order to have at least have some prima facie authority and binding effect until formally appointed.

From a substantive point of view, I concur with the concerns expressed about the deletion from 2014 of a reference to "the person's connections with the debtor, creditor, any party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee." Although the reference in the earlier Rule was vague and indefinite, my suggestion is to consider the inclusion of "personal, business, or professional relationship" with the same entities. This would allow creditors, secured creditors, attorneys for landlords, and other parties in interest to determine lack of true disinterestedness and the existence of material or adverse interest which would disqualify an applicant early in a case or would cause disqualification of an applicant later in the case.

With all that said, the amendments to the Rules would appear to be an improvement both procedurally and substantively, but, like sausage, you will probably need substantial input to analyze the proposed amendments from various angles in order to catch all the potential flaws and controversies.

Best personal regards.

Sincerely,

James C. Frenzel

JCF:cmj

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Mitchell A. Seider
Direct Dial: (713)754-6260

January 3, 1996

VIA FAX (602) 262-5747

Gerald K. Smith, Esq.
Lewis and Roca LLP
40 North Central Avenue
Phoenix, Arizona 85004-4429

Susan M. Freeman, Esq.
Lewis and Roca LLP
40 North Central Avenue
Phoenix, Arizona 85004-4429

RE: ABA Ethics Committee

Dear Jerry and Susan:

I apologize for not responding to your request sooner. I hope that my comments are not too late, if they are otherwise useful.

My first concern with the proposed revision of Rule 2014 is that it invites litigation over retention decisions. If Rule 9014 applies to employment, it is not difficult to imagine some parties insisting that they must have discovery in connection with the retention hearing and thereby delay the case at a critical stage. Additionally, some parties might use the employment process as leverage for advancement of their interests. For example, a lender might bring an objection to debtor's chosen counsel into negotiations of a cash collateral order.

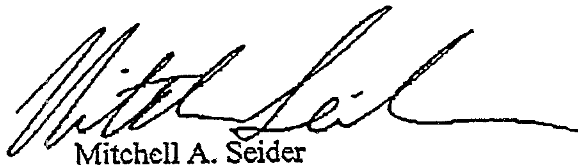
My second concern is that the disclosure that would be made under section (b) allows the professional (at least lawyers) to limit disclosure to economic relationships recognized under state law as creating obligations for the applicant. This standard for disclosure appears more concrete than the present "connections". My own view, and I am sure I am in the minority, is that the present

abstract requirement of Rule 2014 that "connections" be disclosed, is better because it requires disclosure of relationships which may appear to creditors to jeopardize the loyalty of the applicant. I am not sure the proposed revision would require debtor's counsel to disclose that her husband is a director of the debtor's lender.

I would suggest that subsection (a) be modified to stay any discovery until the 30th day of the case, allow for entry of a preliminary retention order with final consideration at the hearing on the first fee application, and require any objection to the retention arising from the disclosed relationships to be brought at the time of the final hearing on retention. I would also suggest that subsection (a)(6) be modified to require the moving person to represent that "there is no substantial risk that the person's representation will be materially and adversely affected by the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants" etc. I would also suggest the same type of modification to the requirements of the verified statement under subsection (b)(1). If Rule 2014 is to be modified, an effort should be made for amendment of section 328 (it seems the logical place) to provide a safe harbor for fees and expenses incurred while working under a retention order entered upon full disclosure.

Again, I apologize for not sending these ideas to you sooner. Please accept my best wishes for a healthy and happy new year.

Sincerely,



Mitchell A. Seider

cc: Myron M. Sheinfeld (Firm)

0005913.01

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Myron M. Sheinfeld
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January 5, 1996

VIA FAX: (602) 262-5747

Gerald K. Smith, Esq.
Susan M. Freeman, Esq.
Lewis and Roca LLP
40 North Central Avenue
Phoenix, Arizona 85004-4429

RE: ABA Ethics Committee

Dear Gerry and Susan:

Mindful of the fact that Mitch has written on January 3, 1996, I am supplementing his comments with my own in connection with the proposed draft Rule 2014.

I am concerned about the reference in an order approving employment being made in accordance with Rule 9014. Is the service of Rule 9014 consistent with the service which is proposed in the revised Rule 2014? Is Rule 9014 service consistent with Rule 2002 service? Service under Rule 9014 is in the manner provided for service of a summons and complaint by Rule 7004. It would seem that an appropriate amendment of Rule 2002, as you suggest, can accomplish the necessary notice. Accordingly, I do not understand the necessity for a reference to Rule 9014 in Rule 2014.

I question whether "professionals" as used in the suggested draft is adequate. I am inclined to believe that employment of "attorneys, accountants, appraisers, auctioneers or other professionals" would be a better description than the generic term "professionals".

In connection with the provisions dealing with Supplemental Verified Statement, I suggest that the consequence of failure to file a supplemental verified statement should be set forth.

0006029.01

Gerald K. Smith, Esq.
Susan M. Freeman, Esq.
January 5, 1996
Page 2

I wonder whether there should be a requirement that the Supplemental Verified Statement be served on other entities as the court may direct, as you have provided in subparagraph (a).

As to the Klausner material, I think this can be readily adapted to a presentation at the spring meeting. It is my belief that some of the material is extremely useful: (1) the discussion in connection with an attorney for a debtor-in-possession having a duty to creditors is appealing; and (2) representation of a debtor creating inherent conflict is contemporary.

I am not too keen on the conflict hypothetical approach.

During the Texas Bankruptcy Conference, we had meaningful discussions about some of the issues set forth in Klausner's material. The discussions brought excellent reviews and commentary from the audience. Those areas of discussion dealt with the role of the attorney for the debtor-in-possession, multi-debtor representation as creating a conflict, the duty of disclosure, and the obligation to continually supplement that disclosure.

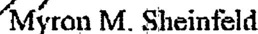
I think ethical issues concerning the proposed purchase of assets and the plan of reorganization are equally susceptible to a good panel discussion.

As I understand your thinking, you wish to create a joint program at a luncheon which will involve participation by both committees. I am in favor.

There is a Conflicts of Interest Task Force of the ABA Business Section which was created to address conflict of interest issues in law practice. The task force prepared a memorandum with forms. Some of the material is excellent and could provide a framework for discussion if we do a program with the Task Force on Ethics and the Economics of Chapter 11 practice. You may have that material. If you do not, please let me know, and I will ship it to you.

I hope 1996 is happy and heathy for both of you and your families.

Sincerely,



Myron M. Sheinfeld

MMS/jmw

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LEWIS AND ROCA LLP
LAWYERS

Memorandum August 23, 1995

To	From	Phoenix
Gerald K. Smith	Susan M. Freeman SMF	

Re: Rules Committee - Interim Employment

You asked for my further thoughts on the draft Restatement of the Law Governing Lawyers and case law on the ability of a bankruptcy court to compensate counsel never authorized to be employed vis-a-vis the ABA's proposed Bankruptcy Rules 2014 and 2016.

I am attaching a copy of draft Restatement section 201 with its commentary. Note in particular Comment c(iv). It indicates that the propriety of the lawyer's action in connection with conflicts of interest should be determined based only on facts and circumstances the lawyer knew or should have known at the time of undertaking or continuing a representation. The comment states that the lawyer's action should not be evaluated in light of information that only became known later and that could not reasonably have been anticipated. I think application of that standard would be appropriate for courts exercising discretion under Bankruptcy Code § 328(c) in deciding whether to deny compensation to a professional if at any time during the professional's employment, the professional is not a disinterested person or represent or holds an adverse interest. The ABA's draft Rules 2014 and 2016 would apply the same objective standard for authorizing compensation.

The importance of an interim employment rule is underscored by cases like *In re Weibel*, 176 B.R. 209 (9th Cir. BAP 1994) holding that even useful and necessary services by lawyers acting on behalf of a debtor in possession cannot be compensated on a quantum meruit basis if there was never an order authorizing employment. A recent Ninth Circuit case is in accord, *In re Occidental Financial Group, Inc.*, 40 F.3d 1059 (9th Cir. 1994). When an order has been entered approving counsel's employment and the court later learns the professional is not disinterested or holds or represents an adverse interest, courts repeatedly have exercised discretion to decide whether or not to deny compensation, even if disinterestedness was absent from the beginning. In some cases all compensation is denied. *E.g. In re Prince*, 40 F.3d 356 (11th Cir. 1994); *Rome v. Braunstein*, 19 F.3d 54 (1st Cir. 1994); *In re Haldeman Pipe & Supply Co.*, 417 F.2d 1302 (9th Cir. 1969). In other cases courts have not required total disgorgement. *E.g. Grey v. English*, 30 F.3d 1319 (10th Cir. 1994) ($91,576 fees disallowed as sanction, roughly 20% of total fees sought; $375,146 fees allowed;

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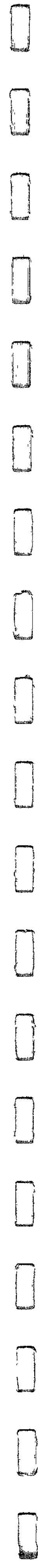
counsel also required to pay $28,977 expenses in replacing trustee); *In re Anderson*, 936 F.2d 199 (5th Cir. 1991) ($82,500 allowed; $318,830 sought); *In re Leslie Fay Companies, Inc.*, 175 B.R. 525 (Bankr. S.D.N.Y. 1994) (counsel to pay costs of examiner and committee in dealing with disinterestedness issues, including $80,000 examiner's professional fees); *In re Rusty Jones, Inc.*, 134 B.R. 321 (Bankr. N.D. Ill. 1991) (60% reduction in requested fees); *In re Al Gelato Continental Desserts, Inc.*, 99 B.R. 404 (Bankr. N.D. Ill. 1989) (10% reduction in fees); *In re Kendavis Industries International, Inc.*, 91 B.R. 742 (Bankr. N.D. Tex. 1988) (50% reduction in fees).

The *Federated* case I previously cited to you is a bit of an anomaly. *In re Federated Department Stores, Inc.*, 44 F.3d 1310 (6th Cir. 1994). The court effectively held that the bankruptcy court could not have entered a valid order authorizing employment of the professional since the professional was indisputably on the checklist of *per se* disqualified parties under Bankruptcy Code § 101(14) (defining disinterestedness). The court recognized the inequity of denying compensation to a professional providing a valuable service in reliance on a bankruptcy court order, and authorized compensation earned prior to the date the circuit court unequivocally held that a person like the *Federated* professional could not be employed. *Federated* is similar to other cases in authorizing some compensation on an equitable basis for an attorney that was employed in the first place. It appears to say, however, that if a professional is indisputably not disinterested, so the court and professional clearly know the employment order was invalid, the professional cannot blithely assume he has gotten away with something (at least if an appeal is taken). I don't think the case is inconsistent with the ABA draft Rules 2014 and 2016. If the professional knew he was on the *per se* list of disqualified parties, he could not rely on an interim employment order. He would not meet the objective of standard for good faith belief in employability under the draft ABA Rule or under draft Restatement Section 201 Comment c.

SMF

SMF:mhm



[explain the source, amount, and terms of any such arrangement].

13. There is no agreement of any nature, other than the partnership agreement of [firm] as to the sharing of any compensation to be paid to [firm], except ____________.

14. No attorney in the firm has any other connection with the debtor, creditors, United States Trustee or any employee of that office, or any other parties in interest, except ____________.

15. No attorney in the firm has any other interest, direct or indirect, which may be affected by the proposed representation, except ____________________.

[Where appropriate, the attorney may state the nature and scope of the inquiry upon which the declaration statements are made. Any pertinent information which counsel believes will satisfy any concerns of disqualification also may be included.]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on [date].

____
Signature

unrelated to the debtor or the estate, except __________ [describe or attach any waivers of conflicts obtained from such clients].

10. No attorney in the firm has previously represented a creditor, holder of 5 percent or more of any equity securities of a debtor having 300 or more equity security holders, equity security holder of any other debtor, general partner, lessor, lessee, party to an executory contract, or person who is otherwise adverse or potentially adverse to the debtor or the estate, on any matter substantially related to the bankruptcy case, except __________ [describe or attach any waivers of conflicts obtained from such former clients].

11. No attorney in the firm represents an insider of the debtor or the debtor's parent, subsidiary, or other affiliate, except __________ [if any such representation, describe that client's relationship with the debtor, including intercompany claims, asset transfers, overlapping creditors, creditor guaranties and subordination agreements, jointly-owned assets, shared officers, directors or owners].

12. No attorney in the firm has been paid fees prepetition or holds a security interest, guarantee or other assurance of compensation for services performed and to be performed in the case, except __________

5. No attorney in the firm is in control of the debtor or is a relative of a general partner, director, officer or person in control of the debtor, except ________.

6. No attorney in the firm is a general or limited partner of a partnership in which the debtor is also a general or limited partner, except ________________.

7. No attorney in the firm is or has served as an officer, director, or employee of a financial advisor which has been engaged by the debtor in connection with the offer, sale, or issuance of a security of the debtor within two years before the filing of the petition, except ____________.

8. No attorney in the firm has represented a financial advisor of the debtor in connection with the offer, sale, or issuance of a security of the debtor within three years before the filing of the petition, except ____________.

9. No attorney in the firm presently represents a creditor, holder of 5 percent or more of any equity securities of a debtor having 300 or more equity security holders, equity security holder of any other debtor, general partner, lessor, lessee, party to an executory contract of the debtor, or person otherwise adverse or potentially adverse to the debtor or estate, on any matter, whether such representation is related or

PROPOSED ATTORNEY DECLARATION FORM

[CAPTION AS IN FORM NO. 1]

[Attorney], a partner in [firm], submits the following statement in compliance with 11 U.S.C. § § 328(a) and 329(a) and Bankruptcy Rules 2014 and 2016.

1. [Firm] represented the debtor during the past year in [describe generally]. In connection with that representation, [describe when services were rendered and when payment was received].

2. [Firm] holds a retainer balance of $______ in connection with the prior representation/or is owed $______ for these prepetition services, and holds a guarantee by ______________, who is related to the debtor as ______________, or holds a security interest in ______________ which is owned by ______________, obtained on ___________.

3. No attorney in [firm] holds a direct or indirect equity interest in the debtor [including stock, stock warrants, a partnership interest in a debtor partnership] or has a right to acquire such an interest, except ______________.

4. No attorney in the firm is or has served as an officer, director or employee of the debtor within two years before the petition filing, except __________.

PROPOSED AMENDMENT TO BANKRUPTCY RULE 2016

(c) If an attorney's employment is terminated, the court shall nevertheless determine compensation for services and reimbursement of expenses from the estate under otherwise applicable standards, provided the attorney declaration accompanying the application for employment and any supplemental attorney declaration were filed by the attorney with the good faith belief, formed after inquiry appropriate to the circumstances of the case, that he disclosed all material facts and met all requirements for representation of the debtor in possession or trustee. Termination of the attorney's employment does not mean an attorney declaration was not filed in good faith.

filing. Any bar date for objections to further employment shall be set not less than 20 days after service of the notice, and shall provide that the court will set a hearing to consider any timely objections.

(f) **Supplemental Attorney Declaration.** A supplemental attorney declaration shall be filed within 15 days after the occurrence of any event, or the discovery of any fact, which is subject to disclosure pursuant to subsections (a) and (c) of this rule. Such supplemental verified statement shall be served on the parties listed in subsection (e) and such other parties in interest as the court may direct.

(d) **Initial Employment.** The court shall evaluate the disclosures pursuant to subsection (c), which may or may not be indicia of disqualification. It may approve employment of counsel for a debtor in possession or trustee on an interim basis, without notice and a hearing.

(e) **Continued Employment.** The court may authorize continued employment by counsel for a debtor in possession or trustee after notice and a hearing. The attorney shall serve on the committee of unsecured creditors, if appointed, any other committees appointed in the case, the creditors on the list required by rule 1007(d), the United States trustee, any trustee appointed in the case, and such other parties in interests as the court may direct:

(1) the application to approve employment;

(2) the attorney declaration;

(3) the initial employment order; and

(4) either a notice of a hearing on further employment, or a notice of a date by which objections to further employment shall be filed and served on interim counsel, as the court directs.

Any hearing on continued employment shall be set not less than 20 days after notice of the hearing is served, and shall take place within 45 days of the application

lessor, lessee, party to an executory contract, or person who is otherwise adverse or potentially adverse to the debtor or the estate, on any matter substantially related to the bankruptcy case, describing or attaching any waivers of conflicts obtained from such former clients;

11. represents an affiliate or insider of the debtor, describing the affiliate's or insider's relationship with the debtor, including intercompany claims, asset transfers, overlapping creditors, creditor guaranties and subordination agreements, jointly-owned assets, shared officers, directors or owners;

12. has been paid fees prepetition or holds a security interest, guarantee or other assurance of compensation for services performed and to be performed in the case, with an explanation of the source, amount, and terms of any such arrangement;

13. has any agreement or understanding with anyone else for sharing compensation for services rendered in or in connection with the case, describing the particulars of any arrangement other than those within the attorney's own firm;

14. has any other connection with the debtor, creditors, United States Trustee or any employee of that office, or any other parties in interest; and

15. has any other interest, direct or indirect, which may be affected by the proposed representation.

6. is a general or limited partner of a partnership in which the debtor is also a general or limited partner;

7. is or has served as an officer, director, or employee of a financial advisor which has been engaged by the debtor in connection with the offer, sale, or issuance of a security of the debtor within two years before the filing of the petition;

8. has represented a financial advisor of the debtor in connection with the offer, sale, or issuance of a security of the debtor within three years before the filing of the petition;

9. presently represents a creditor, holder of 5 percent or more of any equity securities of a debtor having 300 or more equity security holders, equity security holder of any other debtor, general partner, lessor, lessee, party to an executory contract of the debtor, or person otherwise adverse or potentially adverse to the debtor or the estate, on any matter whether such representation is related or unrelated to the debtor or the estate, describing or attaching any waivers of conflicts obtained from such clients;

10. previously represented a creditor, holder of 5 percent or more of any equity securities of a debtor having 300 or more equity security holders, equity security holder of any other debtor, general partner,

"ABA DRAFT"

PROPOSED AMENDMENT TO BANKRUPTCY RULE 2014

(c) **Attorney Declaration.** The attorney declaration required by subsection (a) of this rule shall disclose all connections of the attorney or his firm with the debtor, creditors, or any other parties in interest, whether or not such connections would constitute a basis for disqualification, including whether the attorney, the attorney's firm or any other attorney in the firm:

1. represented the debtor within one year of the petition filing, including a description of the services, and dates performed and paid;

2. is a creditor of the debtor, including by reason of unpaid fees for prepetition services, and the amount, security held, and other particulars of any such claim;

3. holds any direct or indirect equity interest in the debtor, including stock, stock warrants, a partnership interest in a debtor partnership or right to acquire such an interest;

4. is or has served as an officer, director or employee of the debtor within two years before the petition filing;

5. is in control of the debtor or is a relative of a general partner, director, officer or person in control of the debtor;

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Agenda Item 14-15

CHAMBERS OF SAMUEL L. BUFFORD
BANKRUPTCY JUDGE
CENTRAL DISTRICT OF CALIFORNIA
ROYBAL BUILDING
255 EAST TEMPLE STREET, SUITE 1582
LOS ANGELES, CALIFORNIA 90012
(213) 894-0992

October 11, 1995

Professor Kenneth Klee
Harvard Law School
1525 Massachusetts Ave.
Griswold Bldg. Room 308
Cambridge, MA 02138

Re: Bankruptcy Motion Practice

Dear Ken:

BCD reports that you are chairing a subcommittee of the Bankruptcy Rules Committee relating to motion practice in bankruptcy courts. I am writing to give some thoughts on what you should look at in this process.

First of all, it is extremely important to remember that bankruptcy motion practice, like bankruptcy procedure generally, is the tip of the tail of a dog. The tail is federal district court practice, and the dog is state court practice. Local practices in an area such as Southern California, to the extent that they are not driven by the federal rules, are dictated by state court practice, where 95 percent of our lawyers practice exclusively. Most of the remaining lawyers practice mainly also in the state courts, and only occasionally in federal courts (including bankruptcy). Only a handful of specialists practice exclusively in federal courts, and more than half of these practice exclusively in bankruptcy courts.

I think that it is a very bad idea to write bankruptcy rules that make bankruptcy court practice differ substantially from those courts where the vast majority of lawyers practice. This would promote the system that we are trying to move away from, where bankruptcy practice is dominated by specialists, and no other lawyer can obtain justice in a bankruptcy court.

It appears that one train wreck on the subject of procedures in bankruptcy courts is now already unavoidable. It now appears likely that we will be required to dismember our local rules and to scatter their contents in a wide variety of places where they will be difficult or impossible to find. For example, we now have a single local rule governing motion practice, with a second rule for emergency motions and a third providing additional

requirements for relief from stay motions. These rules (and all our other local rules) are based on the local rules for the district court, which in turn are based on the Los Angeles County Superior Court local rules. A lawyer familiar with the state court and district court local rules can easily find his or her way in our local rules. However, it now appears that we must change our local rules so that no lawyer who is not a bankruptcy specialist will have any hope of finding his or her way in our local rules. Apparently, this is water over the dam that cannot be retrieved.

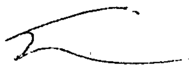
I am writing to ask that your subcommittee not cause any further train wrecks on the subject of practice in the bankruptcy courts. Insofar as I can tell, there is no substantial dissatisfaction with motion procedure in California state and federal district courts. The procedures in our court largely reflect those procedures. I urge that your subcommittee not tinker with this system.

Assuming that you leave the overall motion practice system in place, there is still some substantial good that your subcommittee can do, and I urge that you focus on these matters. Between the Bankruptcy Code and the Bankruptcy Rules, there is a good bit of confusion on the subject of what constitutes an "application", as opposed to a "motion", and which applications or motions require "notice and a hearing", as defined in Bankruptcy Code § 102(1). Jack Ayer has published an article detailing the confusion on this subject. If your subcommittee can make a recommendation to straighten out this mess, you would make a valuable contribution to bankruptcy procedure.

I would be happy to discuss these matters further.

I hope that you are having a good year at Harvard.

Best regards,



SAMUEL L. BUFFORD

SLB:gjf

cc: Judge Paul Mannes
Prof. Alan Resnick
M. Frank Szczebak

Agenda Item 16-17

UNITED STATES COURT OF INTERNATIONAL TRADE
ONE FEDERAL PLAZA
NEW YORK, NY 10278-0001

CHAMBERS OF
JANE A. RESTANI
JUDGE

November 13, 1995

Honorable Paul Mannes
United States Bankruptcy Court
for the District of Maryland
6500 Cherrywood Lane #385
Greenbelt, Maryland 20770

Re: Civil Rules Committee Meeting
November 9-10, 1995

Dear Judge Mannes:

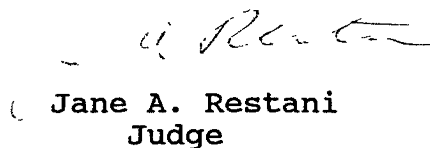
The Committee has begun amending Rule 23 on class actions. It is forwarding its first revision to the Standing Committee for informational purposes. The Committee voted to omit district court certification for interlocutory appeal of class certification decisions. It also voted a preliminary merits test for certification of (b)(3) classes, a tightening of the superiority criterion, and one of the factors for (b)(3) certification will balance public interest and individual benefit against the burden of litigation. A copy of the reporter's draft with the voted on provisions marked is attached.

The 3rd Circuit's disapproval this year of a settlement class in In re General Motors Corp., Pick-Up Truck Fuel Tanks Product Liability Litigation, 55 F. 3d 768-823 has led the Committee to request the bar to provide a list of factors which, if applied by the court, could provide some protection against the perceived evils of settlement classes. I assume the Committee will likely vote to allow some form of settlement class procedures. (A settlement class is defined as a class that could not be certified for adjudication).

Another item of interest to us is the reporter's more developed view of Judge Easterbrook's comment on Rule 73(b) (related to BR 9015). The reporter's statement is attached. If you recall we previously decided not to address this. At least two people at the meeting said the present rule was a trap. We may wish to reconsider our approach to consent to bankruptcy judge jury trials.

Finally, there was a report on H.R. 1058 on securities litigation, which has passed the House and Senate in different forms. The best guess is that some version will become law. John Rabiej's memo on this and other rules related legislation is attached.

Very truly yours,



Jane A. Restani
Judge

Attachments

cc: Professor Alan N. Resnick
Hofstra University School of Law

Ms. Patricia Channon:
Administrative Office of the U.S. Courts
(Please include this in the agenda book for next meeting).

A.

Rule 23. Class Actions

(a) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all ~~only~~ if – with respect to the claims, defenses, or issues certified for class action treatment –

(1) the ~~class-is~~ members are so numerous that joinder of all members is impracticable~~,~~;

(2) there are questions of law or fact common to the class~~,~~;

(3) ~~the-claims-or-defenses-of-the-representative-parties-are typical--of--the--claims--or-defenses~~ the representative parties' positions typify those of the class~~,~~; and

(4) the representative parties and their attorneys will fairly and adequately discharge the fiduciary duty to protect the interests of ~~the~~ all persons while members of the class until relieved by the court from that fiduciary duty.

(b) ~~Class--Actions--Maintainable~~ When Class Actions May be Maintained. An action may be ~~maintained~~ certified as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class ~~which~~ that would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class ~~which~~ that would as a practical matter be dispositive of the interests of the other members

30 not parties to the adjudications or substantially
31 impair or impede their ability to protect their
32 interests; or

33 (2) ~~the-party-opposing-the-class-has-acted-or-refused-to-act~~
34 ~~on-grounds-generally-applicable-to-the-class,-thereby~~
35 ~~making-appropriate~~ final injunctive or declaratory relief
36 ~~or-corresponding-declaratory-relief~~ may be appropriate
37 with respect to the class as a whole; or

38 (3) the court finds (i) that the questions of law or fact
39 common to the certified class ~~members-of-the-class~~
40 predominate over ~~any~~ individual questions ~~affecting-only~~
41 ~~individual-members~~ included in the class action, (ii)
42 that the ~~probability of success on the merits of the~~
43 ~~claim [by or against members of the class] warrants the~~
44 ~~burdens of certification~~, and (iii) that a class action
45 is ~~superior-to-other-available-methods~~ and necessary for the
46 fair and efficient ~~adjudication~~ disposition of the
47 controversy. The matters pertinent to ~~the~~ these findings
48 include:

49 (A) the ~~interest-of-members-of-the-class-in-individually~~
50 ~~controlling--the--prosecution--or--defense--of~~ the
51 practical ability of individual class members to
52 pursue their claims without class certification and
53 their interests in maintaining or defending
54 separate actions;

55 (B) the extent and nature of any related litigation
56 ~~concerning-the-controversy-already-commenced-by-or~~
57 ~~against~~ involving class members ~~of-the-class~~;

58 (C) the desirability ~~or-undesirability~~ of concentrating
59 the litigation ~~of--the--claims~~ in the particular
60 forum;

[Handwritten, lines 40–44: merits of the class claims, issues, or defenses are not insubstantial]

[Handwritten, lines 46–56: [alternative] The prospect of success on the merits of the class claims, issues, or defenses is sufficient to warrant the costs and burdens imposed by certification,]

[Handwritten, right margin: Approved; NOT VOTED ON]

(D) the likely difficulties ~~likely-to-be-encountered-in the-management-of~~ in managing a class action that will be eliminated or significantly reduced if the controversy is adjudicated by other available means;

(E) the probable success on the merits of the class claims, issues, or defenses;

(F) ~~the significance of~~ whether the public interest in and ~~private values of~~ benefits the probable relief to individual class members ~~in relation to the complexities of the issues and~~ justifies the burdens of the litigation; and

Approved

(G) the opportunity to settle on a class basis claims that could not be litigated on a class basis or could not be litigated by [or against?] a class as comprehensive as the settlement class; or

Discussed; To be Studied Further

(4) the court finds that permissive joinder should be accomplished by allowing putative members to elect to be included in a class. The matters pertinent to this finding will ordinarily include:

(A) the nature of the controversy and the relief sought;

(B) the extent and nature of the members' injuries or liability;

(C) potential conflicts of interest among members;

(D) the interest of the party opposing the class in securing a final and consistent resolution of the matters in controversy; and

(E) the inefficiency or impracticality of separate actions to resolve the controversy; or

(5) the court finds that a class certified under subdivision

90 (b)(2) should be joined with claims for individual
91 damages that are certified as a class action under
92 subdivision (b)(3) or (b)(4).

93 (c) Determination by Order Whether Class Action to Be ~~Maintained~~
94 Certified; Notice and Membership in Class; Judgment; ~~Actions~~
95 ~~Conducted Partially as Class Actions~~ Multiple Classes and
96 Subclasses.

97 (1) ~~As soon as practicable after the commencement of an action~~
98 ~~brought as a class action, the court shall determine by~~
99 ~~order whether it is to be so maintained. An order under~~
100 ~~this subdivision may be conditional, and may be altered~~
101 ~~or amended before the decision on the merits.~~ When
102 persons sue or are sued as representatives of a class,
103 the court shall determine by order whether and with
104 respect to what claims, defenses, or issues the action
105 should be certified as a class action.

106 (A) An order certifying a class action must describe the
107 class. When a class is certified under subdivision
108 (b)(3), the order must state when and how putative
109 members (i) may elect to be excluded from the
110 class, and (ii) if the class is certified only for
111 settlement, may elect to be excluded from any
112 settlement approved by the court under subdivision
113 (e). When a class is certified under subdivision
114 (b)(4), the order must state when, how, and under
115 what conditions putative members may elect to be
116 included in the class; the conditions of inclusion
117 may include a requirement that class members bear a
118 fair share of litigation expenses incurred by the
119 representative parties.

120 (B) An order under this subdivision may be [is]
121 conditional, and may be altered or amended before

~~the-decision-on-the-merits~~ final judgment.

(2) (A) When ordering that an action be certified as a class action under this rule, the court must direct that appropriate notice be given to the class. The notice must concisely and clearly describe the nature of the action, the claims or issues with respect to which the class has been certified, the right to elect to be excluded from a class certified under subdivision (b)(3), the right to elect to be included in a class certified under subdivision (b)(4), and the potential consequences of class membership. [A defendant may be ordered to advance the expense of notifying a plaintiff class if, under subdivision (b)(3)(E), the court finds a strong probability that the plaintiff class will win on the merits.]

(i) In any class action certified under subdivision (b)(1) or (2), the court shall direct a means of notice calculated to reach a sufficient number of class members to provide effective opportunity for challenges to the class certification or representation and for supervision of class representatives and class counsel by other class members.

(ii) In any class action ~~maintained~~ certified under subdivision (b)(3), the court shall direct to ~~the~~ members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort[, but individual notice may be limited to a sampling of class members if the cost of individual notice is excessive in relation to the

155 generally small value of individual members'
156 claims.] The notice shall advise each member
157 that ~~(A)--the--court--will--exclude--the--member~~
158 ~~from-the-class-if-the-member-so-requests-by-a~~
159 ~~specified--date;--(B)--the--judgment,--whether~~
160 ~~favorable-or-not,-will-include-all-members-who~~
161 ~~do-not-request-exclusion;--and--(C)~~ any member
162 who does not request exclusion may, if the
163 member desires, enter an appearance through
164 counsel.

165 (iii) In any class action certified under
166 subdivision (b)(4), the court shall direct a
167 means of notice calculated to accomplish the
168 purposes of certification.

169 (3) Whether or not favorable to the class,

170 (A) The judgment in an action ~~maintained~~ certified as a
171 class action under subdivision (b)(1) or ~~(b)~~ (2)~~,~~
172 ~~whether--or--not--favorable--to--the--class,~~ shall
173 include and describe those whom the court finds to
174 be members of the class~~.~~;

175 (B) The judgment in an action ~~maintained~~ certified as a
176 class action under subdivision (b)(3)~~,-whether-or~~
177 ~~not--favorable--to--the--class,~~ shall include and
178 specify or describe those to whom the notice
179 provided in subdivision (c)(2)(A)(ii) was directed,
180 and who have not requested exclusion, and whom the
181 court finds to be members of the class~~.~~; and

182 (C) The judgment in an action certified as a class
183 action under subdivision (b)(4) shall include all
184 those who elected to be included in the class and
185 who were not earlier dismissed from the class.

(4) ~~When--appropriate--(A)~~ An action may be ~~brought--or maintained~~ certified as a class action –

(A) with respect to particular claims, defenses, or issues; or

(B) ~~a--class--may--be--divided--into--subclasses--and--each subclass-treated-as-a-class,-and-the-provisions-of this--rule--shall--then--be--construed--and--applied accordingly~~ by or against multiple classes or subclasses, which need not satisfy the requirement of subdivision (a)(1).

(d) Orders in Conduct of Class Actions. ~~In-the-conduct-of-actions to-which-this-rule-applies,-the-court-may-make-appropriate orders:~~

(1) Before determining whether to certify a class the court may decide a motion made by any party under Rules 12 or 56 if the court concludes that decision will promote the fair and efficient adjudication of the controversy and will not cause undue delay.

(2) As a class action progresses, the court may make orders that:

(A) ~~(1)~~ determine~~ing~~ the course of proceedings or prescrib~~ing~~e measures to prevent undue repetition or complication in ~~the~~ presenting~~ation-of~~ evidence or argument;

(B) ~~(2)~~ requir~~ing~~e, ~~for-the-protection-of~~ to protect the members of the class or otherwise for the fair conduct of the action, ~~that~~ notice ~~be-directed~~ to some or all ~~of-the~~ members of:

(i) refusal to certify a class;

215 (ii) any step in the action; ~~, or of~~

216 (iii) the proposed extent of the judgment; ~~,~~ or ~~of~~

217 (iv) the members' opportunity ~~of the members~~ to
218 signify whether they consider the
219 representation fair and adequate, to intervene
220 and present claims or defenses, ~~or~~ to
221 otherwise come into the action, or to be
222 excluded from or included in the class;

223 (C) ~~(3)~~ impose~~ing~~ conditions on the representative
224 parties, class members, or ~~on~~ intervenors;

225 (D) ~~(4)~~ require~~ing~~ that the pleadings be amended to
226 eliminate ~~therefrom~~ allegations ~~as to~~ about
227 representation of absent persons, and that the
228 action proceed accordingly;

229 (E) ~~(5)~~ deal~~ing~~ with similar procedural matters.

230 (3) ~~The orders~~ An order under subdivision (d)(2) may be
231 combined with an order under Rule 16~~,~~ and may be altered
232 or amended ~~as may be desirable from time to time~~.

233 (e) Dismissal ~~or~~ and Compromise.

234 (1) Before a certification determination is made under
235 subdivision (c)(1), the court must approve any dismissal,
236 compromise, or amendment to delete class issues in an
237 action in which persons sue [or are sued] as
238 representatives of a class.

239 (2) An ~~class~~ action certified as a class action shall not be
240 dismissed or compromised without the approval of the
241 court, and notice of ~~the~~ a proposed dismissal or
242 compromise shall be given to all members of the class in
243 such manner as the court directs.

244 (3) A proposal to dismiss or compromise an action certified as
245 a class action may be referred to a magistrate judge or
246 a person specially appointed for an independent
247 investigation and report to the court on the fairness of
248 the proposed dismissal or compromise. The expenses of
249 the investigation and report and the fees of a person
250 specially appointed shall be paid by the parties as
251 directed by the court.

252 (f) Appeals. A court of appeals may in its discretion permit an
253 appeal from an order of a district court granting or denying
254 a request for class action certification under this rule if
255 application is made to it within ten days after entry of the
256 order. An appeal does not stay proceedings in the district
257 court unless the district judge or the court of appeals so
258 orders.

Approved

B

Rule 73 (b)

This suggestion arises from a remark made by Judge Easterbrook during the January, 1995 meeting of the Standing Committee. The discussion topic was proposed interim rules for jury trials in bankruptcy courts. He observed that Rule 73(b) is a trap because it happens that after all original parties have consented to civil trial before a magistrate judge, a new party is joined and matters proceed before the magistrate judge without getting the consent of the new party. He asserts that any resulting judgment is void. And so the Seventh Circuit rules. See, e.g., Mark I, Inc. v. Gruber, 7th Cir.1994, 38 F.3d 369, resting in Jaliwala v. U.S., C.A.7th, 1991, 945 F.2d 221. (In Brook, Weiner, Sered, Kreger & Weinberg v. Coreq, Inc., 7th Cir. 1995, 31 Fed.Rules Serv.3d 754, the court ruled that a successor to a party who consented to a magistrate-judge trial is bound by the consent.)

This problem could be cured by adding one or two new sentences at the end of the first paragraph of Rule 73(b). on the theory that it makes sense to incorporate current style conventions when a substantive change is made to a rule, the new material is set out here at the end of the introductory paragraph of the Style Committee draft. It could as easily be added to the end of the first paragraph of current Rule 73(b).

(b) Consent Procedure. When a magistrate judge has been designated to exercise civil trial jurisdiction, the clerk must give the parties written notice of their opportunity to consent under 28 U.S.C. § 636(c). To signify their consent, the parties must [within the period set by local rule] jointly or separately file an election consenting to this exercise of authority. <u>If a new party is added after all earlier-joined parties have consented, the new party must be notified of the consents and given an opportunity to consent. If a new party does not consent [within the period set by local rule], the district judge must vacate the reference to the magistrate Judge.</u>

(1) A district judge or magistrate judge may be informed of a party's response to the clerk's notification only if all parties consent to referring the case to a magistrate judge.

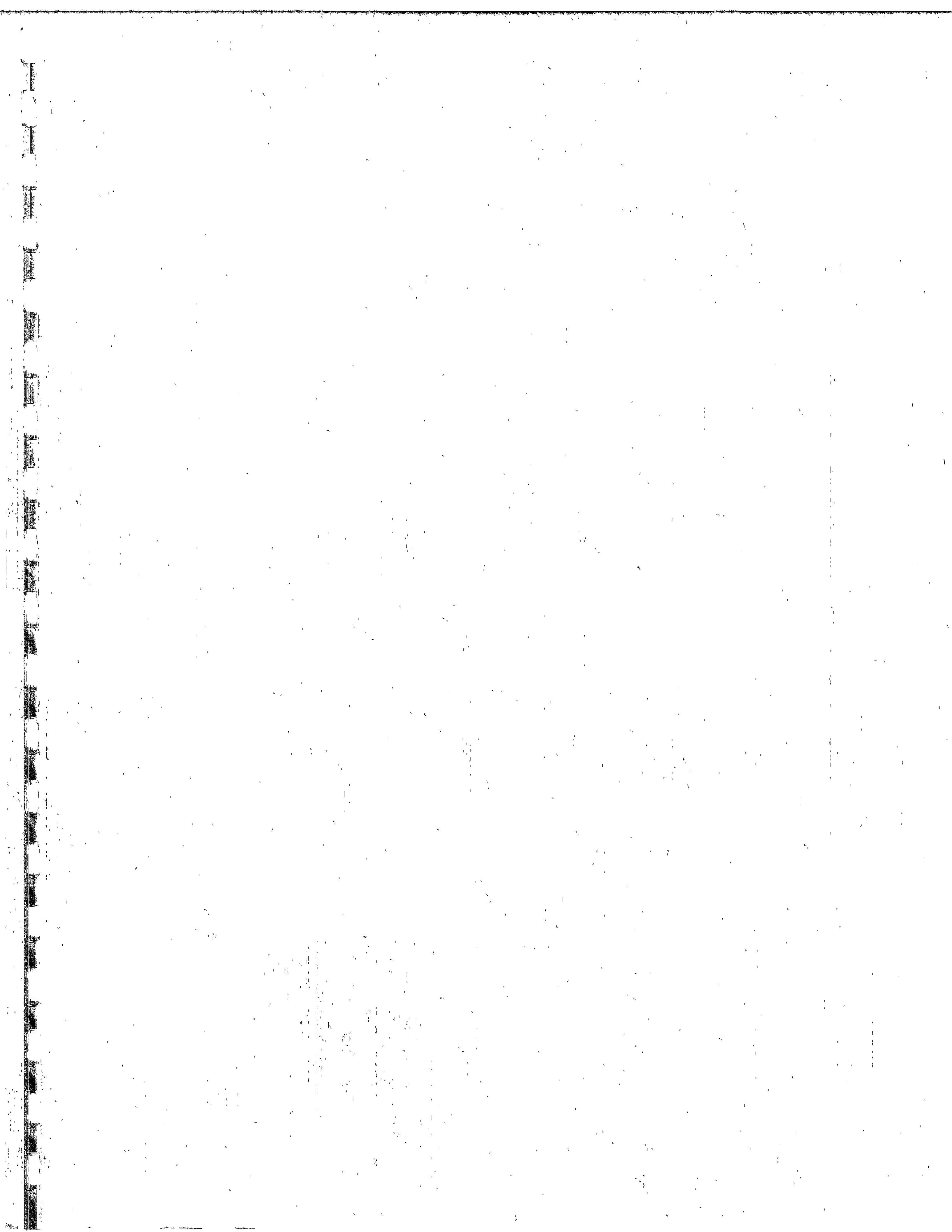
(2) A district judge, magistrate judge, or other court official may again advise the parties of the availability of a magistrate judge, but, in so doing, must also advise the parties that they are free to withhold consent without adverse substantive consequences.

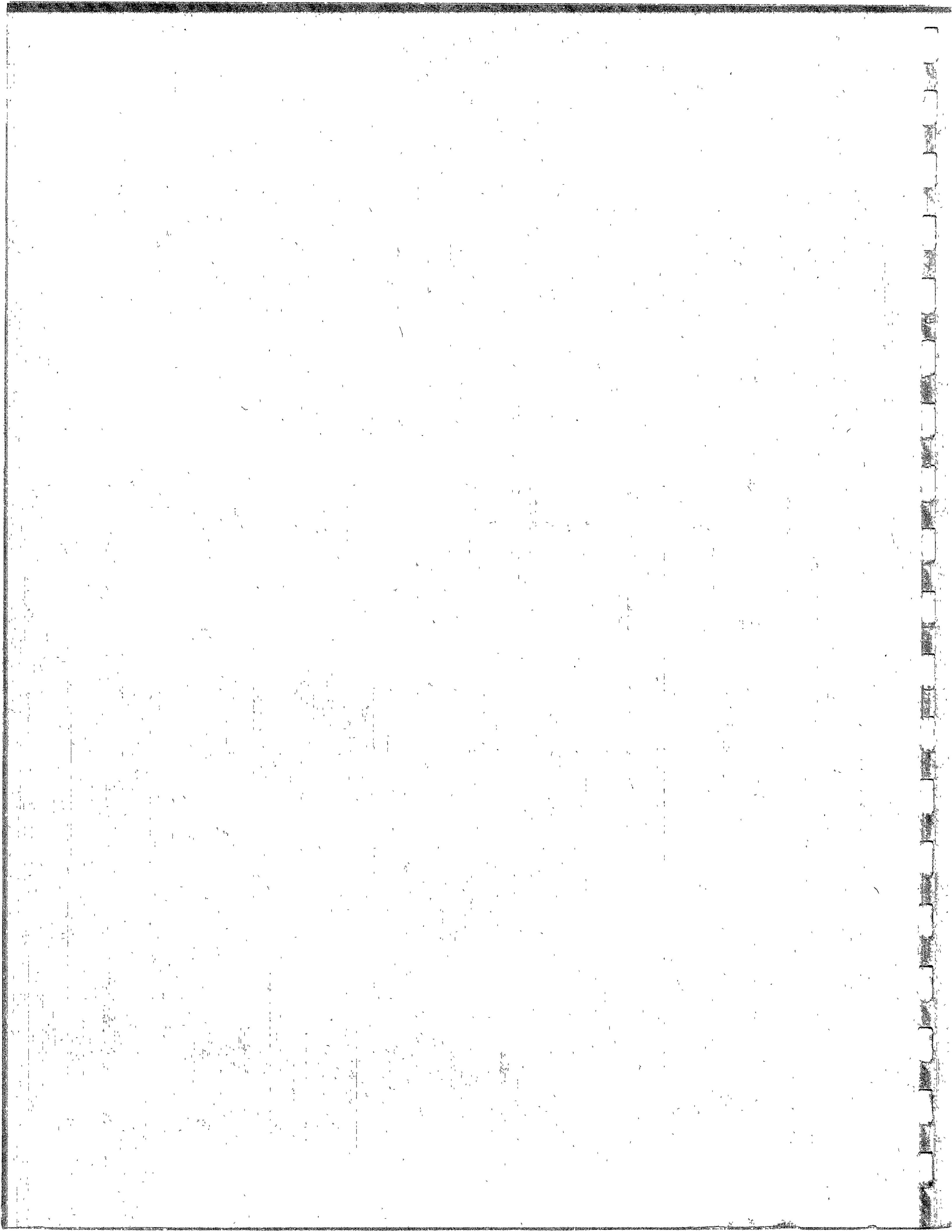
(3) For good cause - either on the judge's own

initiative or when a party shows extraordinary circumstances - the district judge may vacate a reference to a magistrate judge under this rule.

The style draft deletes the present reference to time limits set by local rule. Presumably local rules setting time limits remain appropriate as not inconsistent with the rule. If the reference seems a useful warning, it can be restored readily.

The Rule 73(b) proposal was in the materials for the April 1995 meeting, but was not brought up for discussion. There is no burning need to consider this question. When time permits, however, it may be wise to take a look.





ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

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CHIEF, RULES COMMITTEE
SUPPORT OFFICE

October 12, 1995

MEMORANDUM TO ADVISORY COMMITTEE ON CIVIL RULES

SUBJECT: *Pending Legislation Affecting Civil Rules*

Private Securities Litigation Reform Act of 1995

The House of Representatives passed the *Private Securities Litigation Reform Act* on March 8, 1995 (H.R. 1058). The bill was part of the Republican's *Contract With America*, and it was passed expeditiously with little modification. On June 28, 1995, the Senate substituted and passed its version of a securities bill for H.R. 1058. Both bills contain many procedure-related provisions. No conference has yet been scheduled to resolve the major differences between the Senate and House versions.

Judge Patrick E. Higginbotham appointed a subcommittee to review the bills' rules-related implications. Judge Anthony J. Scirica chairs the subcommittee with members Judge C. Roger Vinson, Judge David S. Doty, Phillipp A. Wittmann, and Professor Thomas D. Rowe. The subcommittee, Professor Edward H. Cooper, and Judge Higginbotham met on several occasions with officials of the Securities and Exchange Commission and staffers of principal members of Congress. The meetings were productive, and several of the rules-related provisions in the bills were later revised.

Both bills, however, still retain specific sanction procedures that are inconsistent with Rule 11. The Senate bill would require a "court (to) include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure" in any private action arising under title 15. It later adopts "a presumption that the appropriate sanction for failure of the complaint or the responsive pleading or motion to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of all the reasonable attorneys' fees and other expenses incurred as a direct result of the violation." Whether the sanction provision, which seemingly applies only to the "complaint or the responsive pleading or motion," circumscribes the initial obligation of the court to review compliance with all requirements of Rule 11(b) is unclear. (A copy of the sanctions' provisions is included.) The House bill adopts a more straightforward fee-shifting mechanism with discretion vested in the court to impose sanctions for the filing of

abusive litigation.

Senator Arlen Specter attempted to insert an alternative sanction provision suggested by Judge Higginbotham. (See attached excerpts of *Congressional Record*, pp. S 9164- 9169, which also include copies of letters from several judges opposing the sanction provision.) The proposed substitute would retain the discretion of the court in reviewing and sanctioning the filing of abusive litigation, consistent with Rule 11. (See S 9164.) Consideration of Senator Specter's amendment was tabled by a vote of 57 - 38.

The differences between the House and Senate sanction provisions are marked. Efforts continue to be made to substitute Senator Specter's amendment as a substitute for both provisions during the to-be-scheduled conference. (See letter from Senator Specter to Senator Alphonse D'Amato.)

Civil Rule 30

Congressman Carlos J. Moorhead, chairman of the Subcommittee on Courts and Intellectual Property of the House Judiciary Committee, introduced H.R. 1445, which would require stenographic recording of all oral depositions unless otherwise ordered by the court or stipulated by the parties. It would undo amendments to Rule 30(b) that took effect on December 1, 1993. Stenographers and their association have steadfastly opposed the 1993 amendments. The House is likely to pass the bill.

The 1993 amendments allow the parties to decide which recording method will be used in a particular case and are designed to facilitate use of modern technology, while ensuring an accurate record. The amendments were prescribed only after extensive discussion, including two separate publications for comment, and despite strong opposition from stenographers.

Judge Higginbotham sent a letter to key Congressional leaders urging them to oppose the bill. (A copy of his letter and a strong dissenting statement are included in the Congressional Committee Report accompanying H.R. 1445, which is attached.) No similar bill has been introduced in the Senate.

Other Bills

On March 7, 1995, the House of Representatives passed the *Attorney Accountability Act of 1995* (H.R. 988). The bill would undo much of the 1993 amendments to Civil Rule 11 and would establish a modified "loser-pays" mechanism in diversity actions. Senator Orrin G. Hatch introduced the *Civil Justice Fairness Act of 1995* (S. 672) on April 4, 1995. It contains "loser-pays" and Rule 11 provisions similar to ones in the House-passed bill. No hearings have been held specifically on the bill.

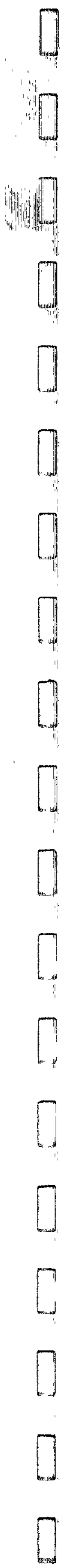
On March 10, 1995, the House of Representatives passed the *Common Sense Product*

Liability and Legal Reform Act of 1995 (H.R. 956). The bill would limit the amount of punitive damages in all civil cases to the greater of $250,000 or three times the amount of economic damages. The Senate passed the *Product Liability Fairness Act of 1995* - as an amended H.R. 956. The bill included a cap on punitive damages, but the limit was set at the greater of $250,000 or two times compensatory damages, and it applied only to product liability suits. The Senate earlier had defeated an amendment that would have extended the limits on punitive damages to all civil actions.

John K. Rabiej

John K. Rabiej

Attachments



Agenda Item 18

AMENDMENTS APPROVED AT THE SEPTEMBER 1995
MEETING OF THE ADVISORY COMMITTEE ON BANKRUPTCY RULES

Rule 1019. Conversion of Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to Chapter 7 Liquidation Case

1 When a chapter 11, chapter 12, or chapter 13 case has been
2 converted or reconverted to a chapter 7 case:
3 (1) *Filing of Lists, Inventories, Schedules,*
4 *Statements.*
5 * * * * *
6 (B) The statement of intention, if required,
7 shall be filed within 30 days following entry of the
8 order of conversion or before the first date set for
9 the meeting of creditors, whichever is earlier. An
10 extension of time may be granted for cause only on
11 written motion filed, or oral request made during a
12 hearing, ~~motion made~~ before the time has expired.
13 Notice of an extension shall be given to the United
14 States trustee and to any committee, trustee, or other
15 party as the court may direct.

* * * * *

COMMITTEE NOTE

Subdivision (1)(B) is amended to clarify that a motion for an extension of time to file a statement of intention must be made by written motion filed before the time expires, or by oral request made at a hearing before the time expires.

Rule 2003. Meeting of Creditors or Equity Security Holders

* * * * *

(d) REPORT TO THE COURT. The ~~presiding officer~~ United States trustee shall transmit to the court the name and address of any person elected trustee or entity elected a member of a creditors' committee. ~~If an election is disputed, the presiding officer shall promptly inform the court in writing that a dispute exists.~~ If it is necessary to resolve a dispute regarding the election, the United States trustee shall promptly file a report informing the court of the dispute. Not later than the date on which the report is filed, the United States trustee shall mail a copy of the report to any party in interest that has made a request to receive a copy of the report. Pending disposition by the court of a disputed election for trustee, the interim trustee shall continue in office. ~~If no motion for the resolution of such election dispute is made to the court within 10 days after the date of the creditors' meeting,~~ Unless a motion for the resolution of the dispute is filed not later than 10 days after the United States trustee files a report of the disputed election for trustee, the

24 interim trustee shall serve as trustee in the

25 case.

* * * * *

COMMITTEE NOTE

Subdivision (d) is amended to require the United States trustee to mail a copy of a report of a disputed election to any party in interest that has requested a copy of it. Also, if the election is for a trustee, the rule as amended will give a party in interest ten days from the filing of the report, rather than from the date of the meeting of creditors, to file a motion to resolve the dispute.

The substitution of "United States trustee" for "presiding officer" is stylistic. Section 341(a) of the Code provides that the United States trustee shall preside at the meeting of creditors. Other amendments are stylistic and designed to conform to [the proposed amendments to] Rule 2007.1(b)(3) regarding the election of a trustee in a chapter 11 case.

Rule 4004. Grant or Denial of Discharge

* * * * *

1 (b) EXTENSION OF TIME. On motion of any party
2 in interest, after hearing on notice, the court
3 may extend for cause the time for filing a
4 complaint objecting to discharge. The motion
5 shall be ~~made~~ <u>filed</u> before such time has expired.

COMMITTEE NOTE

The substitution of the word "filed" for "made" in subdivision (b) is intended to avoid confusion regarding the time when a motion is "made" for the purpose of applying these rules. See, e.g., <u>In re Coggin</u>, 30 F.3d 1443 (11th Cir. 1994). As amended, this rule requires that a motion for an extension of time for filing a complaint objecting to discharge be *filed* before the time has expired.

Rule 4007. Determination of Dischargeability of a Debt

* * * * *

(c) TIME FOR FILING COMPLAINT UNDER § 523(c) IN CHAPTER 7 LIQUIDATION, CHAPTER 11 REORGANIZATION, AND CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT CASES; NOTICE OF TIME FIXED. A complaint to determine the dischargeability of any debt pursuant to § 523(c) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors ~~held pursuant to~~ under § 341(a). The court shall give all creditors not less than 30 days notice of the time so fixed in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may extend for cause ~~extend~~ the time fixed under this subdivision. The motion shall be ~~made~~ filed before the time has expired.

(d) TIME FOR FILING COMPLAINT UNDER § 523(c) IN CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASES; NOTICE OF TIME FIXED. On motion by a debtor for a discharge under § 1328(b), the court shall enter an order fixing a time for ~~the~~ filing ~~of~~ a complaint to determine the dischargeability of any debt pursuant to § 523(c) and shall give not less than 30 days notice of the time fixed to all

24 creditors in the manner provided in Rule 2002. On
25 motion of any party in interest, after hearing on
26 notice, the court may for cause extend the time
27 fixed under this subdivision. The motion shall be
28 ~~made~~ filed before the time has expired.

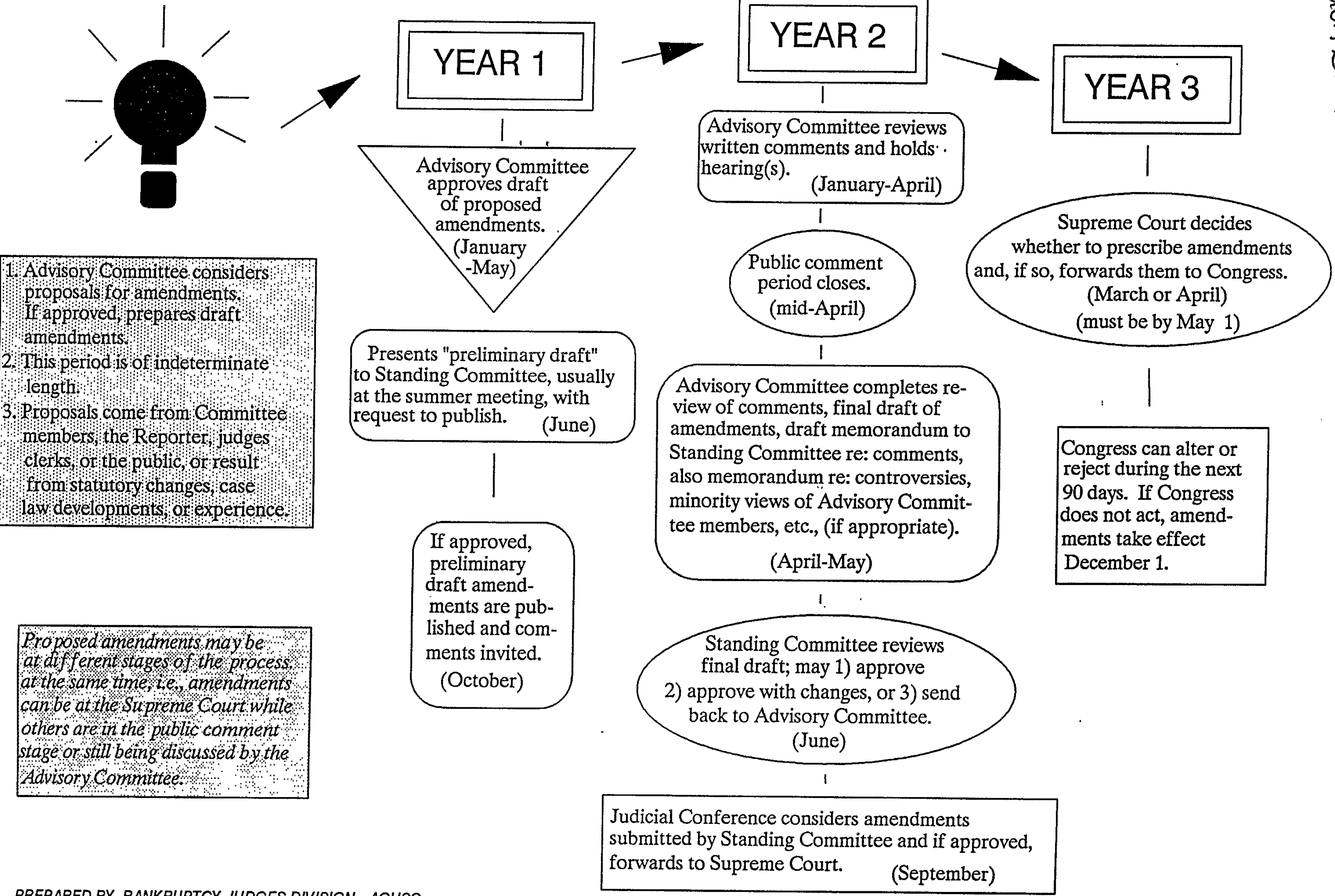
* * * * *

COMMITTEE NOTE

The substitution of the word "filed" for "made" in the final sentences of subdivisions (c) and (d) is intended to avoid confusion regarding the time when a motion is "made" for the purpose of applying these rules. See, e.g., In re Coggin, 30 F.3d 1443 (11th Cir. 1994). As amended, these subdivisions require that a motion for an extension of time be *filed* before the time has expired.

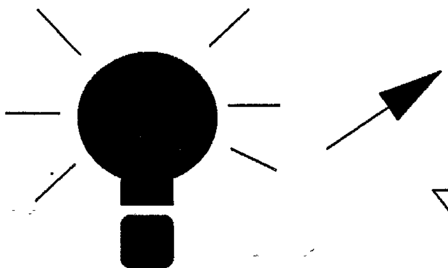
Agenda Item 19-20

THE GESTATION OF AN AMENDMENT



PREPARED BY BANKRUPTCY JUDGES DIVISION - AOUSC

THE GESTATION OF AN AMENDMENT



YEAR 1

1019, 2003, 4004, 4007

YEAR 2

Published for comment:

1019(3), (5), 1020 [new], 2002(a), (n), 2007.1, 3014, 3017, 3017.1 [new], 3018(a), 3021, 8001(a), (b), (e), 8002(c), 8020 [new], 9011, 9015, 9035

YEAR 3

At Supreme Court:

1006(a), 1007(c), 1019(7), 2002(a), (c), (f), (h), (i), (k), 2015(b), (c), 3002(a), (c), 3016, 4004(c), (d) - (f), 5005(a), 7004, 8008(a), 9006(c)

1017, 2002(a)(5), 2004, 2014, 7062, 9014

"Litigation" rules generally

Official Forms

Proposed amendments may be at different stages of the process, at the same time, i.e., amendments can be at the Supreme Court while others are in the public comment stage or still being discussed by the Advisory Committee.

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STATUS LIST OF BANKRUPTCY RULES AMENDMENTS

March 1996

1. "Class of '96." Approved by Judicial Conference 9/95 and transmitted to Supreme Court. Projected effective date 12/1/96.

1006(a)
1007(c)
1019(7)
2002(a), (c), (f), (h), (i), (k)
2015(b), (c)
3002(a), (c)
3016
4004(c), (d) - (f)
5005(a)
7004
8008(a)
9006(c)

2. "Class of '97." Preliminary draft published for comment; public hearing 2/9/96, Washington, D.C.; written comment deadline 3/1/96. Projected effective date 12/1/97.

1019(3), (5)
1020 [new rule]
2002(a), (n)
2007.1
3014
3017
3017.1 [new rule]
3018(a)
3021
8001(a), (b), (e)
8002(c)
8020 [new rule]
9011
9015
9035

3. "Class of '98?" Amendments approved by Advisory Committee September 1995, awaiting assembly of full package and appropriate time to request publication.

1019
2003
4004
4007