

ADVISORY COMMITTEE ON BANKRUPTCY RULES

**Meeting of March 10-11, 2005
Sarasota, Florida**

Minutes

The following members attended the meeting:

District Judge Thomas S. Zilly, Chairman
Circuit Judge R. Guy Cole, Jr.
District Judge Ernest C. Torres
District Judge Laura Taylor Swain
District Judge Irene M. Keeley
District Judge Richard A. Schell
Bankruptcy Judge James D. Walker, Jr.
Bankruptcy Judge Christopher M. Klein
Bankruptcy Judge Mark B. McFeeley
Bankruptcy Judge Eugene R. Wedoff
Professor Alan N. Resnick
Eric L. Frank, Esquire
Howard L. Adelman, Esquire
K. John Shaffer, Esquire
J. Christopher Kohn, Esquire
Dean Lawrence Ponoroff

The following persons also attended the meeting:

Professor Jeffrey W. Morris, Reporter
Bankruptcy Judge A. Thomas Small, former chairman
Professor Mary Jo Wiggins, former member
Bankruptcy Judge Dennis Montali, liaison from the Committee on the
Administration of the Bankruptcy System (Bankruptcy Administration Committee)
Circuit Judge Harris L. Hartz, liaison from the Committee on Rules of Practice
and Procedure (Standing Committee)
Professor Daniel R. Coquillette, reporter of the Standing Committee
Peter G. McCabe, secretary of the Standing Committee
Professor Daniel J. Capra, reporter to the Advisory Committee on Evidence Rules
(Evidence Rules Committee) (participated by telephone)
Lawrence A. Friedman, Director, Executive Office for U.S. Trustees (EOUST)
Roberta A. DeAngelis, Assistant U.S. Trustee, Newark, New Jersey
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
Ms. Patricia S. Ketchum, advisor to the Committee
John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of

the U.S. Courts (Administrative Office)
James Ishida, Rules Committee Support Office
James H. Wannamaker, Bankruptcy Judges Division, Administrative Office
Robert Niemic, Research Division, Federal Judicial Center (FJC)

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

Introductory Matters

The Chairman welcomed the members, former members, liaisons, advisers, and guests to the meeting. The Chairman welcomed Dean Ponoroff to the Committee, and noted that this would be the last Committee meeting attended by Judge Small and Professor Wiggins.

The Committee approved the minutes of the September 2004 meeting with two clarifications. In the last sentence of the first full paragraph on page 10, "to Rule 3007" was inserted after "amendment." In the third full paragraph on page 13, "as to Rule 7007.1" was inserted after "dissenting vote" and the final sentence of the paragraph was deleted.

Judge Small briefed the Committee on the January 2005 meeting of the Standing Committee. The Standing Committee approved the proposed amendments to Rules 1014, 3007, and 7007.1 for publication. The Standing Committee discussed the proposed "fast track" amendments to Rules 2002(g), 9001, and 9036 in anticipation of approving them after the close of the comment period on February 15, 2005. No comments were submitted on the three proposed amendments and they were approved by the Committee and by the Standing Committee by email ballot. Judge Small stated that the Standing Committee gave final approval to the proposed new Civil Rule 5.1. He reported that the proposed restyling of the Civil Rules has been completed and the restyled rules have been published for comment. Judge Small stated that the Standing Committee will organize a group including representatives from all of the advisory committees to consider the rules for the computation of time.

Judge Montali and Judge Klein reported on the January 2005 meeting of the Bankruptcy Administration Committee. The Bankruptcy Administration Committee recommend that the Judicial Conference request that Congress create 47 additional judgeships, convert three existing temporary bankruptcy judgeship positions to permanent status, and extend one temporary judgeship for an additional five-year period. Judge Montali stated that 2005 Bankruptcy Court Case Weighting Study is underway. Bankruptcy judges have been divided into five groups. The judges in each group will record the time they devote to cases and other judicial activities for a ten-week period. The voluntary, confidential reports will be used to update the 1988-1989 case weights. Judge Klein stated that the Bankruptcy Administration Committee is keenly interested in the work of the Joint Subcommittee on Venue and Chapter 11 Matters, which met in

conjunction with the Bankruptcy Administration Committee.

Judge Walker reported on the October 2004 meeting of the Advisory Committee on Civil Rules (Civil Rules Committee). He discussed proposed new Civil Rule 5.1, the restyling project, and the Civil Rules Committee's work on class actions and electronic discovery. Judge Walker stated that there is intense interest in electronic discovery, which has been the subject of three public hearings.

Judge Klein reported on the January 2005 meeting of the Evidence Rules Committee. Judge Klein stated that the Evidence Committee's sentiment is not to change the Evidence Rules unless forced to do so by a new statute or a decision by the Supreme Court. Judge Klein stated that the Evidence Committee has an on-going project to inventory the federal common law of privilege even though a statute would be required to establish specific federal privileges.

The Chairman reported that the amendments to Rules 1011, 2002(j), and 9014 and Official Forms 16D and 17 were effective on December 1, 2004.

The Chairman stated that Judge Steven W. Rhodes was the only person to make a timely request to testify at the scheduled public hearings on the proposed amendments to Rule 4002. Judge Rhodes agreed to waive his testimony and the hearings were cancelled. Judge Rhodes discussed his concerns during a teleconference with the Chairman and the Reporter and his 43-page statement was circulated to the Committee.

Action Items

"Fast Track" Notice Amendments. The Committee received only one comment on the proposed "fast track" amendments to Rules 2002(g), 9001, and 9036. The comment by the State Bar of California's Committee on the Federal Courts favored the amendments. The three "fast track" amendments were approved by electronic ballot by the Committee and the Standing Committee before the meeting and were transmitted to the Judicial Conference.

The Committee discussed section 315 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the bankruptcy bill), which, like Rule 2002(g), provides for creditors to register a national or regional address to be used for notices. The Chairman stated that the clerk of the Supreme Court would be informed of the possible conflict between the two provisions. Judge Torres moved to give the Chairman discretion to request that the Supreme Court not transmit the proposed amendment to Congress if the legislation is enacted. **The motion carried without dissent.** The Chairman stated that he would confer with the Reporter and the Chairman of the Subcommittee on Technology and Cross Border Insolvency before acting. Mr. Shaffer asked that the Committee be informed by email. The Committee discussed whether the proposed amendment to Rule 9036 should include a provision that service by electronic means is not effective if the party making service learns that the attempted service did not reach the person to be served. The Committee took no further action on the amendment.

Mandatory Use of Electronic Filing. Proposed amendments to Rule 5005(a)(2), Civil Rule 5(e), and Appellate Rule 25(a) were published for comment in November 2004 at the request of the Committee on Court Administration and Case Management. The three amendments were intended to save time and money for the courts by encouraging electronic filing. The Committee discussed the comments by the American Bar Association and others expressing concern that any court mandating electronic filing should provide appropriate exclusions or exceptions for indigent, disabled, or self-represented litigants. The Committee discussed whether the proposed amendment or the Committee Note should be revised. The Committee also discussed whether the matter should be left to the judicial councils of the circuits, which have the authority to abrogate local bankruptcy rules. Judge Klein moved to revise the proposed amendment by inserting the sentence “Courts requiring electronic filing shall reasonably accommodate parties who cannot feasibly comply with the mandatory electronic filing rule.” **The revised rule was approved by a 9-5 vote. The Chairman directed the Reporter to revise the Committee Note to be consistent with the revision.**

Proposed Amendments to Rules 1009, 4002, 5005(c), and 7004, and Schedule I of Official Form 6. Proposed amendments to Rules 1009, 4002, 5005(c), and 7004, and Schedule I were published for comment in August 2004. The Committee received no negative comments on the proposed amendment to Rule 1009. **A motion to recommend final approval of the proposed amendment to Rule 1009 was approved without dissent.** The Committee received no negative comments on the proposed amendment to Rule 5005(c). **A motion to recommend final approval of the proposed amendment to Rule 5005(c) was approved without dissent.**

The Committee received no negative comments on the proposed amendment to Rule 7004. Bankruptcy Judge James E. Massey, however, called the Committee’s attention to his decision in In re Khalif, 308 B.R. 614 (Bankr. N.D. Ga. 2004) in which the court found that service on the debtor at the address listed in response to question 18 in the statement of financial affairs is not the address anticipated by Rule 7004(b)(9). The Reporter stated that the Committee has already acted to correct this problem by deleting the reference to the statement of financial affairs in the proposed amendment to Rule 7004(b)(9) but that the deletion was not explained in the Committee Note. Judge Wedoff moved to amend the Committee Note by adding the explanatory paragraph set out on pages 4-5 of the Reporter’s memorandum of February 24. **The motion was approved without dissent and the Committee recommended final approval of the proposed amendment to Rule 7004.** The Committee discussed whether to require dual service by mailing to the debtor’s street address and the debtor’s mailing address, if the mailing address is different from the street address. **Dean Ponoroff’s motion to take no action was approved without dissent.**

One comment questioned the relevance of a non-filing spouse’s income and complained that the proposed amendment to Schedule I is unfair to married couples because the reporting requirement does not apply to unmarried couples. The Reporter stated that the Committee discussed the relevance of the information at previous meetings. Judge Wedoff stated that the debtor’s current monthly income under the bankruptcy bill’s means test includes any regular contributions to the debtor’s household expenses and that Schedule I will have to be completely

redone to comply with the bill. The Committee discussed whether to go forward with the published amendment to Schedule I, to table the amendment, or to go forward but refer the matter back to subcommittee if the bankruptcy bill is passed. Judge Torres moved to recommend final approval of the published amendment. **The motion was approved without dissent.** Judge Wedoff moved to table the proposed amendment if the bill passes. Professor Resnick and Judge Walker suggested giving the Chairman discretion to refer the proposed amendment to the Forms Subcommittee if the bill passes. Judge Wedoff agreed to the substitution. **The substitute motion was approved without dissent.**

The Reporter summarized the numerous comments received on the proposed amendment to Rule 4002. The Committee discussed whether the proposed amendment conflicts with the bankruptcy bill, which requires that the debtor submit prepetition tax returns to the trustee seven days before the meeting of creditors, provide identification documents to the trustee or United States trustee as requested, and file copies of payment advises or other evidence of payment with the court. The Committee discussed the provision for the trustee, the United States trustee, or the bankruptcy administrator to waive the production of the financial documents by instructing “otherwise.” The Committee discussed whether to go forward with the published amendment to Rule 4002, to defer the matter to the next meeting, or to approve the proposed amendment but give the Chairman discretion to refer the proposal to subcommittee if the bankruptcy bill passes. Several Committee members stated that the published amendment represented a hard-fought, balanced compromise and would improve the bankruptcy process. They stated that the proposal should go forward with the inclusion of tax transcripts and clarification of the discretion to waive production. Other members stated that Congress chose to require production of certain items but not others and that the rule should not paraphrase the statute. These members urged deferring action until the Committee has a chance to study the bill. **A motion to defer the proposed amendment to the next meeting failed by a 5-9 vote. The Chairman stated that the Standing Committee would be informed of the nature of the dispute.** Judge Walker moved to insert “or, at the debtor’s option, a transcript thereof,” in line 34 of the published amendment. **The motion was approved without dissent.** Judge Wedoff moved to substitute the phrase “Unless the trustee, the United States trustee, or the bankruptcy administrator instructs that the debtor need not do so,” on lines 24-26 of the amendment. **The motion was approved without dissent. A motion to recommend final approval of the proposed amendment as amended carried with one dissenting vote.**

Privacy Template Rule. The E-Government Act of 2002 requires the promulgation of rules to protect the privacy of persons identified in court filings and to govern the availability of documents when they are filed electronically. The E-Government Committee developed a template privacy rule for consideration by the Bankruptcy, Civil, Criminal, and Appellate Rules Committees with the expectation that, as adopted, the four rules would be as uniform as is possible but that deviations from the template may be needed for specific rules. The Committee discussed the need for bankruptcy-specific exceptions from redaction.

The Committee discussed the extent of the waiver under subdivision (g) of the proposed new rule and whether it would extend to information filed under seal. Professor Capra stated

that the waiver only extended to the information listed in subdivision (a). Judge Klein moved to insert “to the extent that such information is filed not under seal and without redaction” at the beginning of line 50. **The motion was approved by a 9-3 vote.**

Judge Montali stated that the reference in line 22 to section 342(b) of the Code should be to section 342(c). Judge Swain stated that the Committee Note to abrogation of Official Form 16C states that the debtor should include the debtor’s full social security number on a notice sent to a creditor, as required by section 342(c), but redact the number on the copy of the notice filed with the court. As a result, she said, the reference to filings subject to section 342 is unnecessary. Judge Swain moved to delete the reference to section 342(b). **The motion was approved without dissent.** The Committee discussed the exemption from redaction in subdivision (b)(1) of the new rule and the possibility that the record of an administrative or agency proceeding including social security numbers would be attached to a proof of claim. Judge Wedoff moved to add “unless filed with a proof of claim” at the end of line 17. **The motion was approved unanimously.**

The Committee discussed the provision for protective orders in subdivision (d) and whether the reference to “in a case” could exclude adversary proceedings. Judge Swain suggested the addition of the language “If necessary to protect private or sensitive information that is not otherwise protected by subdivision (a), the court may in a case or proceeding (1) require redaction of additional information or (2) limit or prohibit remote access by a non-party to a document filed with the court.” Judge Swain moved to make the amendment. **The motion was approved by a 10-2 vote.** Judge McFeeley moved to approve the proposed new rule for publication as amended. **The motion was approved without dissent.**

Mr. Shaffer stated that the requirement in subdivision (b)(1) for the redaction of tax identification numbers conflicts with Rule 1005 which provides that the caption shall include the last four digits of the debtor’s social security number and the full version of any other federal tax identification number. The 2003 Committee Note to Rule 1005 states that publication of the debtor’s employer identification number does not present the same identity theft or privacy protection issues as disclosure of the social security number. Professor Capra stated that redaction of a tax identification number was based on the privacy policy adopted by the Judicial Conference in 2001. The Committee discussed whether the privacy policy covers individuals or all entities and whether there is a need to protect these numbers for non-individuals. Mr. Shaffer suggested that Rules 1005 and 1007(f) and the Official Forms should be amended to require the redaction of tax identification numbers and employer identification numbers. **The Chairman referred the matter to subcommittee.**

Amendments to Rule 3001 to Conform to the Revised Proof of Claim. The Reporter stated that the Subcommittee on Forms has been working to revise Official Form 10 to support the filing of proofs of claim in electronic form. In doing so, the Subcommittee determined that Rule 3001 should be revised to provide that claimants should file duplicates of documents that support their claims and perfection of security interests and that the rule should set limits on the length of documents attached to the proof of claim.

Judge Walker stated that limiting the size of the attachments would facilitate the transmission of claims to the court, the maintenance of the court's computer database, and accessing claims electronically. The Committee discussed whether large attachments actually burden the courts' computer systems or whether it would be sufficient for the attachments to be filed in segments. The Committee also discussed whether summaries are needed. Judge Walker stated that filing relevant excerpts of the documents is a conceptual change, but that filing the proof of claim and excerpts is sufficient to make the assertion that the debtor owes the money. Judge Klein stated that providing less than the full documentation puts the filer "in play" but limits the claim's evidentiary presumption under Rule 3001(f). Judge Torres stated that the page limits make the parties focus on the important issues.

The Reporter stated that "a" should be substituted for the phrase "the trustee or any other" on lines 11-12 and on line 24 because the trustee is a party in interest. **The Committee agreed.** Judge Walker moved to approve the proposed new rule for publication as revised. **The motion was approved on an 8-4 vote.**

Amendments to the Proof of Claim. The draft revision of Official Form 10, Proof of Claim, and its instructions were based on the experiences of creditors and trustees using the form and on the technological changes that have occurred in the courts' processing of claims.

The Reporter suggested that the references in item 7 to page limitations and to the definition of "redacted" on the reverse of the form be in bold. Mr. Adelman suggested that the definition of claim include a cross reference to section 101(5) of the Code. Mr. Shaffer suggested that item 1 refer to the date the case was filed, not the time, to be consistent with section 502 of the Code. Judge Zilly stated that the reference to "30 pages" in the first full paragraph of the second page of the Instructions should be to "25 pages." He suggested that "a redacted copy" be substituted for "relevant excerpts" in the last line of the first page of the Instructions and that ", including any summary" be inserted at the end of the next-to-last sentence of the first full paragraph on the second page of the Instructions. **The Committee approved the changes.**

The Committee discussed adding a reference to post-petition section 1305 claims in the note in italics at the top of the form. Judge Walker suggested that the Committee go forward with this form and then consider the situations in which the form does not work. **The Committee agreed to move the reference to instruction #4 up in item 4 and to add a checkbox in item 4 for "Other."** Judge Montali stated that the priorities in item 5 will change if the bankruptcy reform legislation is enacted. Judge Walker stated that the form could be revised after publication based on the comments and the legislation. Judge Walker moved to approve the revised form for publication at the same time as the proposed amendments to Rule 3001. **The motion was approved by a vote of 11-2.**

Extending the Time to Object to Improperly Claimed Exemptions. The Committee considered amending Rule 4003 to extend the time to object to improperly claimed exemptions at its September 2004 meeting. The matter was referred to the Subcommittee on Consumer

Issues, which recommended permitting the trustee to object to an exemption after the bar date on the ground that the exemption claim is not based on existing law or a non-frivolous argument for the extension, modification, or reversal of existing law. As a safety valve, the debtor or one of the debtor's dependants could move for the allowance of an exemption and bring the issues to resolution.

The Committee discussed whether debtors are gaming the system and receiving exemptions by declaration, whether trustees have enough time to review the exemptions, whether the proposed amendment is over inclusive, and the need for finality. As an alternative to the proposed amendment, the Committee discussed whether the bar date should be extended to 45 or 60 days after the claim of exemptions is filed or to 60 days after the first date set for the meeting of creditors in order to give busy trustees more time to respond. Judge Wedoff moved to approve the proposed amendment for publication. **The motion failed by a vote of 5-8.**

As an alternative, Judge Wedoff suggested striking "before the time to object expires" from line 8 and deleting new subdivisions (b)(2) and (b)(3). He stated that subdivision (b)(3) is unnecessary because the debtor could move to compel abandonment of the property. The Committee discussed whether it would be better to tie the deadline to the completion of the meeting of creditors, which could be continued by the trustee. Mr. Shaffer stated that the original concept for the amendment was closer to the excusable neglect standard in Rule 8002. Judge Wedoff moved to refer the matter to the Consumer Subcommittee. **The Committee agreed.**

Lien Avoidance and Exemptions. The second issue considered by the Consumer Subcommittee was whether Rule 4003 should be amended to authorize a lien holder whose lien is subject to avoidance to object to the debtor's claim of exemption at the time of the avoidance motion. The Committee discussed whether a lienholder has an incentive to challenge the debtor's claim of exemption before the debtor moves to avoid the lien and whether the creditor is required to do so under the existing caselaw. The Committee agreed to substitute "contest" for "object to" in subdivision (d) of the proposed amendment. Judge Wedoff moved to approve the proposed amendment in principle and to refer it to the Consumer Subcommittee. **Ten Committee members agreed and the motion carried.**

Constitutional Challenges. The proposed new Civil Rule 5.1 would replace a portion of existing Civil Rule 24(c) that requires notice to the United States or a state's attorney general when the constitutionality of a statute is challenged. Since Civil Rule 24 is applied in adversary proceedings by Rule 7024, the Reporter presented a new draft rule 7005.1 and an amendment to Rule 9014 to apply Rule 5.1 in adversary proceedings and contested matters. The Committee discussed whether the new civil rule should be applied in contested involuntary cases and ancillary cases. Judge Wedoff moved to approve the Reporter's draft amendments. Dean Ponoroff seconded the motion. The Committee discussed whether the amendments would require publication. Judge Klein moved to create a new 9000 series rule which would apply Civil Rule 5.1 in "cases under the Code." Judge Walker seconded the motion. **The motion was approved without dissent.**

Omnibus Objections to Claims. Mr. Shaffer described the work of the Joint Subcommittee on Venue and Chapter 11 Matters, including the proposed amendment to Rule 1014 which the Standing Committee has approved for publication in August. Mr. Shaffer stated that the Joint Subcommittee was concerned with fundamental fairness, issues that may have an impact on the selection of venue in large chapter 11 cases, and facilitating the management of these cases.

The proposed amendment to Rule 3007 authorizes (within limits) the filing of omnibus objections to claims. **The Committee agreed to use the phrase “Subject to the requirements of” on line 19 of the proposed amendment. After discussing the possibility that courts would opt out of the rule, the Committee agreed to use the phrase “An objection to claims of more than one creditor shall” on lines 39-41.** The Committee discussed whether there could be multiple objections to a single claim. Mr. Shaffer said the Joint Subcommittee neither condoned nor restricted the practice, which Judge Wedoff stated reflects the existing practice and is consistent with the reconsideration of claims under section 502(j) of the Code. Mr. Frank questioned the use of “pleading” in the proposed amendment. The Reporter stated that the Style Subcommittee could substitute “document.” Mr. Adelman moved to approve the proposed amendment for publication with the changes on line 19, lines 39-41, and the substitution of “document” for “pleading.” **The motion carried without dissent.**

Omnibus Motions to Assume, Reject, or Assign Executory Contracts or Unexpired Leases. The proposed amendment to Rule 6006 authorizes the use of omnibus motions to reject multiple executory contracts and unexpired leases. The amendment also authorizes the use of a single motion to assume or assign executory contracts and unexpired leases under certain circumstances. **At Judge Wedoff’s suggestion, the Committee agreed to strike the phrase “Unless otherwise ordered by the court,” on lines 11-12 of the proposed amendment.** It was suggested that Rule 6006 require the same cross reference as Rule 3002(e)(2). **The Committee agreed to insert “and identify the corresponding contract or lease” at the end of line 18.** Judge McFeeley suggested that the Committee Notes for Rules 3007 and 6006 include examples of the consecutively numbered motions, such as “Debtor in Possession’s First Omnibus Motion for Authority to Assume Executory Contracts and Unexpired Leases.” **The Committee agreed.** Mr. Shaffer moved to approve the proposed amendment for publication as amended. **The motion was approved without dissent.**

Motions for Authority to Use Cash Collateral, Obtain Credit, or Obtain Approval of Agreements. Mr. Shaffer stated that cash collateral motions and “first day” matters are among the most contentious issues in large chapter 11 cases. He stated that the Joint Subcommittee took no position on the merits of the specified provisions but that the proponent should be required to highlight them. The Committee discussed the references to Rule 9024 in the proposed amendment since Rule 9024 applies in all the rules. Mr. Shaffer suggested moving the references to the Committee Note. **The Committee agreed.** Mr. Shaffer moved to approve the proposed amendment for publication as amended. **The motion was approved without dissent.**

“First Day” Orders and Interim Relief. Mr. Shaffer stated that proposed new Rule 6003

is an effort to put the brakes on nonessential substantive “first day” matters while providing exceptions for emergencies and nonsubstantive matters. The Reporter stated that the rule is an effort to address concerns that an imbalance in “first day” practice in some districts has influenced venue choice. The Committee discussed including service and notice requirements in the new rule (Alternative One) or leaving that to other applicable rules, such as Rule 9014. Mr. Shaffer moved to approve Alternative Two for publication. **The motion was approved without dissent.** A suggestion to approve the service and notice provisions in Alternative One after striking the words “or notice” died for lack of a motion. **The Chairman referred the issue of service and notice requirements in Rule 2014 to the subcommittee.**

Case Management, Telephonic Participation, and Status Reports. Although it did not have an opportunity to consider the specific draft language, the Joint Subcommittee recommended that the rules require the use of status conferences in chapter 11 cases, authorize appearance at hearings by electronic means, and facilitate the use of other case management techniques which promote participation in chapter 11 cases. Judge Klein stated that bankruptcy bill would amend section 105 of the Code to require that the court hold status conferences. **The Committee took no action on the proposed new Rule 2021.**

Separate Document Rule. The Subcommittee on Privacy, Public Access, and Appeals considered whether to propose an amendment to Rule 9021 that would address the impact of the recent revisions of Civil Rule 58, which is incorporated by Rule 9021. As amended, Civil Rule 58 provides that when a separate document is required, the judgment is deemed entered when it is entered on the docket under Rule 79(a) and when it is either set forth in a separate document or when 150 days have run from the entry on the docket, whichever is earlier. Unable to reach a consensus, the subcommittee transmitted four alternative for consideration by the Committee.

The Committee discussed the four alternatives, the need for finality and speed in bankruptcy matters, the widespread practice of not setting forth judgments in separate documents, and whether contested matters should be exempted from the separate document requirement. The Committee discussed whether contested matters should be subject to the 150-day limit if they were exempted from the separate document requirement and whether Rule 5003 should be amended to clarify what is a final judgement or order in a contested matter. **The sense of the Committee, as expressed by a 5-3 vote, was that the separate document requirement should be eliminated in contested matters. The matter was re-referred to the subcommittee.**

Extension of Time for Appeal. At its meeting in September 2004, the Committee discussed extending the time for filing a notice of appeal by either amending Rule 8002 to enlarge the period or by amending Rule 9006 to changing the method of counting 10-day periods. Concerns were expressed that the period is too short in light of the time needed to process and mail copies of court orders at the Bankruptcy Noticing Center and that it presents a trap for the unwary who are more familiar with the longer deadlines for appeals in civil cases in state and federal courts. The matter was referred to the Subcommittee on Technology and Cross Border Insolvency. After discussing the historical background of the 10-day rule, an informal

survey of bankruptcy judges on the matter, and a memorandum on the 1987/1989 amendment and re-amendment of Rule 9006, the subcommittee recommended that no change be made in either rule. Mr. Rabiej stated that Judge David F. Levi, the chairman of the Standing Committee, has appointed an ad hoc group with representatives from each of the advisory committees to review all of the counting rules. Judge Walker moved to re-refer the matter to the subcommittee until the Standing Committee acts. **The motion carried without objection.**

Discussion Items

Civil Rules Restyling Project. The Civil Rules Committee has been engaged for some time in a project to restyle the Civil Rules from beginning to end. The restyled rules have been published for comment and the comment period runs through December 20, 2005. If approved by the Standing Committee and the Judicial Conference in 2006, and by the Supreme Court in 2007, the restyled rules could take effect on December 1, 2007, unless Congress acts to the contrary. Because the Bankruptcy rules adopt a substantial portion of the Civil Rules for adversary proceedings and contested matters, some of these style changes may require conforming amendments to the Bankruptcy Rules. Because the confirming amendments to the Bankruptcy Rules would not require publication, they could be considered by the Standing Committee in June 2006, along with the restyled Civil Rules. The Chairman recommended that the matter be deferred to the September meeting. **The committee agreed.**

Bankruptcy Reform Legislation. The Committee discussed the bankruptcy bill. The Chairman stated that the Business, Consumer, and Forms Subcommittees will take the lead in drafting amendments to implement the pending legislation. Professor Edward J. Janger of Brooklyn Law School will assist the Business Subcommittee and Professor Melissa B. Jacoby of the University of North Carolina School of Law will assist the Consumer Subcommittee. The Subcommittees on Technology and Cross Border Insolvency, Privacy, Public Access, and Appeals, and Attorney Conduct and Health Care also will be responsible for portions of the bill.

The Chairman stated that the consultants and the Reporter will review the legislation and the memoranda, draft rules, and draft forms memoranda prepared in 2001 and 2002 when passage of a similar bill appeared likely. Copies of the 2001 and 2002 material will be mailed to Committee members. **The Chairman directed the Reporter to report back to the Committee by the end of the month.** A steering committee including the Chairman, selected subcommittee chairs, the Reporter, and the consultants will meet in Washington in April. The Chairman stated that the three subcommittees are tentatively scheduled to meet in May in Washington and may meet in Boston on June 13-14, 2005. The Chairman stated that the full Committee will meet in Washington in July, possibly on July 6 - 8, with the goal of sending proposed interim rules and forms to the Standing Committee and the Judicial Conference by mid-August and then to the courts for adoption.

Rule 3002(c)(5) Notice of Possible Dividend. Writing on behalf of the Bankruptcy Judges Advisory Group, Judge Dana L. Rasura stated that Rule 3002(c)(5) is imprecise. The

rule requires that the clerk notify creditors when it appears that a distribution may be possible in a case initially noticed as a “no-asset” one. Creditors are required to file their claims within 90 days of the mailing of the notice, rather than within 90 days of the date of the notice. Because the mailing date is not set out on the notice and because the BNC “mails” notices at different times depending on whether the notice is sent electronically or by regular mail, it is difficult for creditors to determine the exact deadline. Judge Rasure suggested that the court fix the deadline in the notice and give creditors at least 90 days notice of that deadline. Mr. Kohn suggested that governmental units be given 180 days to file their claims. Ms. Ketchum stated that the extra time is unnecessary because section 502(b)(9) of the Bankruptcy Code provides that governmental units may file claims up to 180 days after the date of the order for relief or such later time as provided by the rules. **The Chairman referred the matter to the Subcommittee on Privacy, Public Access, and Appeals.**

Internet Publication of Sale Notices. Bankruptcy Judge Vincent P. Zurzolo suggested that several rules be amended to require that notices of sales of property valued in excess of \$2,500 be posted on a website maintained by the Administrative office. The Committee was informed that the National Association of Bankruptcy Trustees already maintains such a website for sales of estate property. **A motion to take no action on the suggestion was approved without dissent.**

Applicability of Rule 7007.1 in Involuntary Cases and Ancillary Cases. Rule 7007.1 was added to the rules in 2003. It requires corporations that are parties to adversary proceedings to file a corporate ownership statement so that the court can be made aware of other parties related to the party by stock ownership. The Committee did not apply the new rule to contested matters because it concluded that the short time for contested matters made the operation of the rule ineffective. At the time the Committee did not consider involuntary cases and ancillary cases, which can be viewed as comparable to the adversary proceedings. Rule 1011 requires that an involuntary petition or the petition commencing an ancillary case be served with a summons in the manner provided in Rule 7004 for service of a complaint commencing an adversary proceeding. **The Committee agreed to insert “or a foreign representative” after the word “petitioner” in line 18 and “or with the petition commencing a case ancillary to a foreign proceeding” after the word “petition” in line 19 of the Reporter’s draft amendment of Rule 1010.** Mr. Shaffer moved to table the matter until the September meeting. **The motion was approved without dissent.**

Requiring Creditors to File Superseding Claims in Converted Cases. Thomas J. Yerbich, Court Rules Attorney for the District of Alaska, suggested that Rule 1019(3) be amended to require creditors to file superseding claims in a chapter 11, 12, or 13 case converted to chapter 7. The Reporter stated that requiring creditors to file superseding claims would impose a greater burden on creditors and the clerk than the existing burden on the chapter 7 trustee of having to review previously filed claims for changes. Judge Klein moved to take no action on the suggestion. **The motion was approved without dissent.**

Information Items

Revision of Form B210, Notice of Transfer of Claim. At its meetings in March and September 2004, the Committee considered a proposed new form titled "Notice of Transfer of Claim Other Than for Security." As a result of discussions at the two meetings and consultations with the claims subgroup of the CM/ECF Working Group, the form was modified extensively and then issued as Procedural Form B210 by the Director of the Administrative Office. After the September meeting, the CM/ECF project staff determined that it would be difficult or impracticable for the clerk to insert the required information electronically in the same notice filed by a transferee. As a result, Form B210 will be divided into two parts. The first part will be completed and filed by the transferee. The second part will be completed by the clerk and mailed to the alleged transferor's record address.

History of the Bankruptcy Forms. Ms. Ketchum presented a short history of the bankruptcy forms, including the origin of the Official Forms and the Director's Procedural Forms. The Chairman suggested that the Committee request that West Publishing include frequently used Director's Procedural Forms its publications which include bankruptcy forms and that the courts include links from their websites to both the Official Forms and the Director's Procedural Forms. Ms. Ketchum stated that it would help the publishers if the Committee pointed out the most significant procedural forms, such as the subpoena, summons, notice to individual consumer debtor, reaffirmation agreement, and disclosure of compensation by debtor's attorney. **The Committee agreed to make the request.**

Other Information Items. Additional Information Items are set out in the agenda materials for the meeting.

Administrative Matters

The Chairman gave a brief report on long range planning. The Committee's next regularly scheduled meeting will be in the Eldorado Hotel in Santa Fe on September 29 - 30, 2005. The Chairman asked for suggestions for the spring 2006 meeting.

Respectfully submitted,

James H. Wannamaker, III