

## **ADVISORY COMMITTEE ON BANKRUPTCY RULES**

**Meeting of August 3-5, 2005  
Washington, D.C.**

### **Minutes**

The following members attended the meeting:

District Judge Thomas S. Zilly, Chairman  
Circuit Judge R. Guy Cole, Jr.  
District Judge Laura Taylor Swain  
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 members were unable to attend the meeting:

District Judge Ernest C. Torres  
District Judge Richard A. Schell  
District Judge Irene M. Keeley

The following persons also attended the meeting:

Professor Jeffrey W. Morris, Reporter  
Bankruptcy Judge A. Thomas Small, former chairman  
Professor Melissa B. Jacoby, adviser to the committee  
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)  
Clifford J. White, Acting Director, Executive Office for U.S. Trustees (EOUST)  
Donald F. Walton, Acting Deputy Director, EOUST  
Monique K. Bourque, Chief Information Officer, EOUST  
Mark A. Redmiles, National Civil Enforcement Coordinator, EOUST  
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey  
Ms. Patricia S. Ketchum, adviser to the Committee

Suzanne Bingham, Armstrong & Associates International  
Susan Jensen, Counsel, Subcommittee on Commercial and Administrative Law,  
Committee on the Judiciary, House of Representatives  
David Lachmann, Minority Professional Staff, Subcommittee on the Constitution,  
Committee on the Judiciary, House of Representatives  
Henry J. Sommer, Supervising Attorney, Consumer Bankruptcy Assistance  
Project, Philadelphia  
John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of  
the U.S. Courts (Administrative Office)  
James Ishida, Rules Committee Support Office, Administrative Office  
Francis Szczebak, Chief, Bankruptcy Judges Division, Administrative Office  
James H. Wannamaker, Bankruptcy Judges Division, Administrative Office  
Jeffrey N. Barr, Office of Judges Programs, Administrative Office  
Robert Niemic, Research Division, Federal Judicial Center (FJC)  
Elizabeth C. Wiggins, Research Division, 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**. The proposed Interim Rules were approved by the Committee subject to review by the Subcommittee on Style. These minutes do not reflect any stylistic changes made by the subcommittee after the meeting.

### **Introductory Matters**

The Chairman welcomed the members, Judge Small, liaisons, advisers, staff, and guests to the meeting. Judge Small recounted his testimony on implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the Bankruptcy Reform Act) before the House Subcommittee on Commercial and Administrative Law on July 26, 2005.

The Chairman reviewed the history of the development of the Interim Rules and Official Forms to implement the Bankruptcy Reform Act, including numerous conference calls, an organization meeting in Washington on Thursday, April 21, 2005, and subcommittee meetings in Washington on Thursday - Friday, May 5 - 6, 2005, and in Boston on Monday - Wednesday, June 13 - 15, 2005. The Chairman stated that his goal is to transmit the Interim Rules and Official Forms to the Standing Committee by August 11, 2005, and, if the Standing Committee approves, to the Executive Committee of the Judicial Conference by August 18, 2005. The Official Forms would be adopted by the Judicial Conference and the Interim Rules would be recommended for adoption by the courts.

The Interim Rules are expected to apply to bankruptcy cases from October 17, 2005, until final rules are promulgated and effective under the regular Rules Enabling Act process. Meanwhile, the Committee will continue to study the Bankruptcy Reform Act and expects to request permission to publish proposed new and amended rules in August 2006. The proposed

amendments would be based substantially on the Interim Rules, modified as appropriate after considering comments from the bench and bar.

### **Business Rules**

The Committee considered the proposed Interim Rules drafted by the Subcommittee on Business Issues.

**Rule 1007.** The Committee discussed proposed Interim Rule 1007. **A motion to approve the proposed interim rule as drafted was approved without dissent.**

**Rule 1020.** The Committee discussed proposed Interim Rule 1020. The Committee agreed to change “3 days” to “15 days” in line 8 and to change the word “designation” to “statement” in lines 19 and 22. **A motion to approve the proposed interim rule as revised was approved without dissent.**

**Rule 2002.** The Committee discussed proposed Interim Rule 2002. The Committee agreed to substitute “(p), and (q)” for “and (p)” in line 3. The Committee agreed to substitute “make a final determination whether” for “consider a determination that” in line 15. The Committee agreed to substitute “so that” for “and that” in line 16. The Committee agreed to revise the Committee Note to discuss a single 25-day notice for a combined hearing on final approval of the disclosure statement and confirmation of the plan in small business chapter 11 cases. **A motion to approve subsections (a) and (b) of the proposed interim rule as modified was approved without dissent.** The Committee discussed whether to strike “(A) or (B)” in lines 29-30. **A motion to approve subsection (c) of the proposed interim rule as drafted was approved without dissent.** The Committee agreed to strike the words “and may decide to act only on request of a party in interest” from the end of the second paragraph of the Committee Note. **A motion to approve subsection (p) of the proposed interim rule as drafted and the Committee Note as revised was approved without dissent.**

**Rule 2003.** The Committee discussed proposed Interim Rule 2003. **A motion to approve the proposed interim rule as drafted was approved without dissent.**

**Rule 2007.1.** The Committee discussed proposed Interim Rule 2007.1. The Committee agreed to substitute “provide” for “file” in the second line of the second paragraph of the Committee Note. **A motion to approve the proposed interim rule as drafted and the Committee Note as revised was approved without dissent.**

**Rule 2015.** The Committee discussed proposed Interim Rule 2015. Professor Resnick stated that the proposed Interim Rule is based on new section 308 of the Bankruptcy Code, which is not effective until 60 days after rules are prescribed to establish forms to be used to comply with section 308. He stated that no Official Form has been proposed for section 308 reports but that the United States Trustee Program could modify its operating reports or issue a new form to be used until an Official Form is prescribed. **A motion to approve the draft of the**

**proposed interim rule and defer further consideration of it to the regular rules process was approved without dissent.**

Rule 3002. The Committee discussed drafts of proposed Interim Rule 3002(c)(1) prepared by the Business Subcommittee and the Consumer Subcommittee. The Business Subcommittee proposed that a section 1308 claim be filed not later than 60 days after the tax return is filed. The Consumer Subcommittee proposed that a section 1308 claim be filed by the latter of 60 days after the tax return is filed or 180 days after the date of the order for relief. **The Committee approved the Consumer Subcommittee’s draft of Interim Rule 3002(c)(1) and Subcommittee’s Committee Note.** The Committee discussed proposed Interim Rule 3002(c)(6). Professor Resnick questioned whether the existing rules conflict with the provision in section 1514 of the Code for notice to creditors with a foreign address. Judge Wedoff stated that section 1514(d) mandates an individualized determination of the reasonableness of notice for foreign creditors and that the determination cannot be made until the creditor has actually received the notice. **A motion to approve proposed Interim Rule 3002(c)(6) as drafted was approved without dissent.**

Rule 3003. The Committee discussed proposed Interim Rule 3003. **A motion to approve the proposed interim rule as drafted was approved without dissent.**

Rule 3016. The Committee discussed proposed Interim Rule 3016. After initially approving the proposed interim rule as drafted, the Committee agreed to combine the last two sentences of subsection (b) to read as follows: “If the plan is intended to provide adequate information under § 1125(f)(1), it shall so state and Rule 3017 shall apply as if the plan is a disclosure statement.” The Committee discussed subsection (d) and whether the court may require the use of a local form plan and disclosure statement in place of a national form plan and disclosure statement. **A motion to approve proposed Interim Rule 3016(b)(6) as revised, to delete the second paragraph of the Committee Note, and to table further consideration of proposed Interim Rule 3016(d) until the September meeting was approved without dissent.**

Rule 3017.1. The Committee discussed proposed Interim Rule 3017.1. **A motion to approve the proposed interim rule as drafted was approved without dissent.**

Rule 3019. The Committee discussed proposed Interim Rule 3019. The Committee agreed to insert “the entity that proposed the modification,” after “trustee” in line 24. **A motion to approve the proposed interim rule as revised was approved with one dissenting vote.**

Rule 5003. The Committee discussed proposed Interim Rule 5003. **A motion to approve the proposed interim rule as drafted was approved without dissent.**

Rule 6004. The Committee discussed proposed Interim Rule 6004. The Committee agreed to delete “a chapter 9 municipality case or” in lines 9-10, to substitute “notice of” for “report certifying” on line 20, and to substitute “notice” for “report” on line 22. The Committee discussed inserting “, or be preceded by” in line 6 but agreed not to make the change because it

could promote additional litigation. **The Committee approved the proposed interim rule as revised.**

Rule 9006. The Committee discussed proposed Interim Rule 9006. **The Committee approved the proposed interim rule as drafted without dissent.**

### Consumer Rules

The Committee considered the proposed Interim Rules drafted by the Subcommittee on Consumer Issues.

Rule 1006 and Official Forms 3A and 3B. The Committee discussed proposed Interim Rule 1006 and proposed Official Forms 3A and 3B. The Committee agreed to insert “chapter 7” after “voluntary” on line 27. The Committee agreed to delete “*for Permission*” on line 10. The Committee agreed to delete “If the court grants leave to pay the filing fee in installments,” on lines 21-22, to capitalize “all” on line 23, and to insert “of the filing fee” after “installments” on line 23. The Committee discussed inserting “or Bankruptcy Petition Preparer’s” on line 21 after “Attorney’s” so that the debtor would not be prejudiced by paying a petition preparer. The Committee declined to make the change. **A motion to approve the proposed interim rule as revised was approved without dissent.**

The Committee voted 8-2 to delete question 3 on Form 3A because of the change in Rule 9006(b). The Committee discussed adding a question on how much the debtor has paid an attorney or bankruptcy petition preparer but declined to make the change. The Committee voted 7-3 to insert “additional” before “payment” and before “property” in question 4 and to insert “to an attorney or any other person” after “property” in the same question. The Committee agreed to make the order on Form 3A parallel with the order on Form 3B by adding checkboxes for approving the terms of the application or for ordering payments according to a different schedule and by substituting “make any additional payment or transfer any additional property to an attorney or any other person” for “pay any money.”

The Committee discussed adding a checkbox on the order on Form 3B for denial of the application without permitting installment payments for serial filers and other abusers. The Committee agreed to add the sentence “You may obtain this information at [www.uscourts.gov](http://www.uscourts.gov), or from the clerk of court.” to the third paragraph of Form 3B. The Committee discussed deleting question 9 from Form 3B but declined to make the change. The Committee discussed requiring information on the debtor’s current employment but declined to require the information. The Committee agreed to delete “IT IS FURTHER ORDERED THAT” from the order on Form 3B and to revise the following sentence to read “The debtor shall pay the chapter 7 filing fee according to the following terms:” **A motion to approve the proposed Forms 3A and 3B as revised was approved without dissent.**

Rule 1007. The Committee discussed proposed Interim Rule 1007. The Committee agreed to strike “Unless the United States trustee has determined that the requirement does not

apply in the district” in lines 53-55 and to capitalize “an” in line 55. Judge Walker stated that the financial management training certificate should be complete on its face without reference to the United States trustee’s determination. The Committee agreed to insert “in a chapter 7 or chapter 13 case” after debtor in line 55. The Committee agreed to strike “In an involuntary case, they shall be filed by the debtor within 15 days after entry of the order for relief.” on lines 70-71. The Committee agreed to substitute “current” for “currently” on line 48 and to insert “the first date set for” after “after” in line 73. Professor Resnick stated that the clerk’s notice of the relief available under each chapter of the Bankruptcy Code should include a warning that an individual voluntary case may be dismissed automatically if the debtor fails to file the information required by section 521(a)(1) of the Code within 45 days after the petition. **A motion to approve the proposed interim rule as revised was approved without dissent.**

Rule 9006. The Committee discussed Interim Rule 9006(b), which was approved as part of the Business Rules. The Interim Rule limits enlarging the time for filing schedules and statements in a small business case. The Committee made no consumer amendment to Rule 9006.

Rule 1009. The Committee discussed proposed Interim Rule 1009. **A motion to approve the proposed interim rule as drafted was approved without dissent.**

Rule 1017. The Committee discussed proposed Interim Rule 1017. The Committee agreed to substitute “Except as otherwise provided in § 704(b)(2), a” for “A” in line 11 in order to avoid a conflict with that section of the Code. The Committee agreed to a corresponding revision of the Committee Note. **A motion to approve the proposed interim rule and Committee Note as revised was approved without dissent.**

Rule 1019. After the Committee discussed a number of changes in proposed Interim Rule 1019, the Chairman directed the Reporter to redraft the proposed interim rule and Committee Note. **A motion to approve the Reporter’s revised draft of the interim rule and Committee Note was approved without dissent.**

Rule 2002. The Committee discussed proposed Interim Rule 2002. **A motion to approve the proposed interim rule as drafted was approved without dissent.**

Rule 3002. The Consumer Subcommittee’s version of proposed Interim Rule 3002(c) was approved during the discussion of the Business Rules.

Rule 4002. The Committee discussed proposed Interim Rule 4002, which is based in part on a 2003 request by the EOUST. The proposed amendment to Rule 4002 was published for comment in August 2004 but was withdrawn by the Committee after passage of the Bankruptcy Reform Act. The Committee discussed whether to include a provision for a debtor who is unable to comply with section 521(e)(2) due to circumstances beyond the debtor’s control. Several members stated that the debtor could raise the section 521(e)(2)(B) defense at the dismissal hearing. The Committee discussed whether evidence of the debtor’s current income is needed in

light of the means test and the debtor's submission of 60 days worth of payment advices under section 521(a)(1)(B)(iv). Several speakers stated that the pay stubs were part of the 2003 request and could be relevant if the debtor's pay changed just before or after the case filing. The Committee agreed to substitute "payment advice" for "pay stub" in line 33.

The Committee agreed to add a new subsection (b)(5) which provides: "The debtor's obligation to provide tax returns under Rule 4002(b)(3) and (b)(4) is subject to procedures for safeguarding the confidentiality of tax information established by the Director of the Administrative Office of the United States Courts." The Committee agreed to delete the brackets in line 31. The Committee agreed to delete the phrase "or is not in the debtor's possession" from line 50 and from lines 58-59. The Committee agreed that the Committee Note should state that because the rule implements the debtor's duty to cooperate with the trustee, the materials provided to the trustee will not be made available to any other party in interest at the § 341 meeting "other than the Attorney General." **A motion to approve the proposed interim rule as revised was approved without dissent.**

Rule 4003. The Committee discussed proposed Interim Rule 4003. **A motion to approve the proposed interim rule as drafted was approved without dissent.**

Rule 4004. The Committee discussed proposed Interim Rule 4004 and the application of section 522(q) of the Code. The Committee agreed to delete the references to sections 1141(d)(5)(C), 1228(f), and 1328(h) from line 17 because Rule 4004(c) only applies to chapter 7 cases. **A motion to approve the proposed interim rule as revised was approved without dissent.** The Committee agreed to consider the application of section 522(q) in chapter 11, chapter 12, and chapter 13 cases at the September meeting.

Rule 4006. The Committee discussed proposed Interim Rule 4006. **A motion to approve the proposed interim rule as drafted was approved without dissent.**

Rule 4007. The Committee discussed proposed Interim Rule 4007. **A motion to approve the proposed interim rule as drafted was approved without dissent.**

Rule 4008. The Committee discussed proposed Interim Rule 4008. **A motion to approve the proposed interim rule as drafted was approved without dissent.**

Rule 5008. The Committee discussed proposed Interim Rule 5008. **A motion to approve the proposed interim rule as drafted was approved without dissent.**

### Means Test

The Committee considered the Statement of Current Monthly Income developed by the means test working group. The working group, which consisted of Judge Wedoff, Mr. Frank, and Mr. Redmiles, recommended three separate forms because the information is used for different purposes in chapter 7, chapter 11, and chapter 13 cases. The chapter 11 form is shorter

because it includes only income, not expenses. The working group proposed chapter 7 and chapter 13 forms to be used if the Internal Revenue Service does not separate ownership costs from the housing and utilities allowance and the debtor must make the calculation. The working group proposed alternative versions of the forms for use if the IRS does provide the breakout. Judge Wedoff stated that the breakout is needed to avoid including secured debt for the debtor's home mortgage in the means test calculation twice.

The Committee agreed to make the entries for rental income and for income from the operation of a business, profession, or farm net entries and to delete the deductions for business expenses. The Committee agreed to include a deduction for telecommunication services. The Committee agreed to add a deduction for education that is a condition of employment or that is required for a physically or mentally challenged dependent child. The Committee agreed that the entry in Subpart VA for Other Necessary Expenses: Insurance should include only life insurance since there is a separate entry in Subpart VB for health insurance, disability insurance, and health savings accounts.

The Committee discussed at length whether to include a catch-all category of additional expense claims which are not part of the IRS standards and, if the catch-all expenses are listed, whether they should be included in the calculation of disposable income on the form. Mr. White argued that including the catch-all expenses would defeat the objective nature of the form and make the means test more difficult to administer. Several members expressed concern that if the catch-all expenses were included in the calculation, creditors would not be notified that a presumption of abuse has arisen and that they could file a section 707(b) motion to dismiss or convert the case. Other members argued that the legislative history states that the IRS standards are non-exclusive and that it would be better for the debtor to disclose the information on the form rather than raising it later. The Committee agreed that catch-all category of additional expenses should be on the form but not included in the calculation of disposable income on the form. **A motion to approve the five proposed Official Forms as revised was approved without dissent.** The Committee agreed to designate the means test forms as Forms 22A, 22A(Alt.), 22B, 22C, and 22C(Alt.). The Committee agreed to request that the Judicial Conference approve all five forms so that Forms 22A(Alt.) and 22C(Alt.) could replace Forms 22A and 22C if the IRS separates home ownership costs.

### **Health Care Rules**

The Committee considered the proposed Interim Rules drafted by the Subcommittee on Attorney Conduct and Health Care.

**Rule 1021.** The Committee discussed proposed Interim Rule 1021. **A motion to approve the proposed interim rule as drafted was approved without dissent.**

**Rule 2007.2.** The Committee discussed proposed Interim Rule 2007.2. The Committee agreed to insert "within" after "or" in line 7 and to substitute "professional" for "profession" in the third paragraph of the Committee Note. **A motion to approve the proposed interim rule as**



**revised was approved without dissent.**

Rule 2015.1. The Committee discussed proposed Interim Rule 2015.1. After discussing the importance of patient privacy, the Committee agreed to insert “subject to applicable nonbankruptcy law relating to patient privacy” at the end of line 27. **A motion to approve the proposed interim rule as revised was approved without dissent.**

Rule 2015.2. The Committee discussed proposed Interim Rule 2015.2. The Committee agreed to insert “subject to applicable nonbankruptcy law relating to patient privacy” at the end of line 9. **A motion to approve the proposed interim rule as revised was approved without dissent.**

Rule 6011. The Committee discussed proposed Interim Rule 6011. After the Committee agreed to several changes in the proposed Interim Rule, the Chairman directed the Reporter to prepare a revised draft which includes references to applicable nonbankruptcy laws which protect patient privacy.

The Committee considered the Reporter’s revised draft and made further changes. The Committee agreed to insert “BY PUBLICATION” in the title of subsection (a). The Committee agreed to substitute “be obtained and how those records may be claimed; and” for line 10 in the revised draft. The Committee agreed to revise subsection (b) as follows: “NOTICE BY MAIL UNDER § 351(1)(B). Subject to applicable nonbankruptcy law relating to patient privacy, a notice regarding the claiming or disposing of patient records under § 351(1) (B) shall, in addition to including the information in subdivision (a), direct that a patient's family member or other representative who receives the notice inform the patient of the notice, and be mailed to the patient and any family member or other contact person whose name and address have been given to the trustee or the debtor for the purpose of providing information regarding the patient's health care, and to insurance companies known to have provided health care insurance to the patient.” The Committee agreed to insert a new subsection (c) which states “PROOF OF COMPLIANCE WITH NOTICE REQUIREMENT. Unless the court orders the trustee to file proof of compliance with § 351(1)(B) under seal, the trustee shall not file, but shall maintain, the proof of compliance for a reasonable time.” The Committee agreed to redesignate the former subsection (c) as subsection (d). **A motion to approve the proposed interim rule as revised was approved without dissent.**

### **Direct Appeal Rules**

The Committee considered the proposed Interim Rules drafted by the Subcommittee on Privacy, Public Access, and Appeals.

Rule 8001. The Committee discussed proposed Interim Rule 8001 and the proposal that a premature certification be deemed conditional until a timely notice of appeal has been filed. The Committee agreed to strike the portion of subsection 8001(f)(1) after “158(d)(2)” in line 5 and to substitute “shall not be treated as a certification entered on the docket within the meaning

of § 1233(b)(4)(A) of Public Law No. 109-8 until a timely appeal has been taken in the manner required by subdivisions (a) or (b) of this rule and the notice of appeal has become effective under Rule 8002.”

The Committee agreed to substitute “filed” for “made” in line 18, to insert “an interlocutory judgment, order, or decree has been docketed” after “appeal” on line 22. The Committee agreed to strike the portion of subsection (f)(2)(i) after “until” on line 31 and to substitute “while the matter is pending in the bankruptcy court.” **A motion to approve the proposed interim rule as revised was approved without dissent.**

Rule 8003. The Committee discussed proposed Interim Rule 8003. **A motion to approve the proposed interim rule as drafted was approved without dissent.**

Official Form 24. The Committee discussed proposed Official Form 24. The Committee agreed to add “BY ALL PARTIES” to the title of the form. **A motion to approve the proposed new Official Form as revised was approved without dissent.**

### **Official Forms**

The Committee considered the new and revised Official Forms proposed by the Subcommittee on Forms.

Rule 9009. The Committee discussed amending Rule 9009 to incorporate references in the Official Forms to the Interim Rules. The Reporter suggested that the Interim Rule state: “References in the Official Forms to these rules shall include the suggested Interim Rules approved by the Judicial Conference to implement Public Law 109-8. **A motion to approve the proposed interim rule as revised was approved without dissent.**

Official Form 8. The Committee discussed two versions of proposed amendments to Official Form 8, Chapter 7 Individual Debtor's Statement of Intention, and supporting memoranda. The Committee agreed to include leased property pursuant to section 362(h)(1) of the Bankruptcy Code and to correct the spelling of “schedule” and “personal.” **A motion to approve the alternative version of the amended Official Form as revised was approved without dissent.**

Official Form 23. The Committee discussed proposed Official Form 23, Debtor’s Certification of Completion of Instructional Course Concerning Personal Financial Management. The Committee agreed to correct the formatting of the last four checkboxes and to delete “if any” from the text after the last checkbox. **A motion to approve the proposed Official Form as revised was approved without dissent.**

Official Form 19B. The Committee discussed proposed Official Form 19B, Notice to Debtor by Non-Attorney Bankruptcy Petition Preparer. The Committee agreed to substitute “you” for “a potential bankruptcy debtor” in the first paragraph and to substitute “promulgate

rules or guidelines” for “prescribe guidelines” in the last paragraph on the first page. The Committee agreed to strike the final sentence in the last paragraph on page one and to substitute “As required by law, I have notified you of the maximum amount, if any, before preparing any document for filing or accepting any fee from you.” **A motion to approve the proposed Official Form as revised was approved without dissent.**

Official Form 19A. The Committee discussed proposed amendments to Official Form 19A, Certification and Signature of Non-Attorney Bankruptcy Petition Preparer. The Committee agreed to substitute “the accompanying document” for the first “this document” and “that document” for the second “this document” in numbered paragraph 2. The Committee agreed to substitute “or guidelines” for “and guidelines” in numbered paragraph 3. **A motion to approve the proposed amendments as revised was approved without dissent.**

Official Form 18. The Committee discussed proposed amendments to Official Form 18, Discharge of Debtor. The Committee agreed to delete the pair of brackets after “*community property*” in the second paragraph on the second page of the form. **A motion to approve the proposed amendments as revised was approved without dissent.**

Official Form 16A. The Committee discussed proposed amendments to Official Form 16A, Caption (Full). **A motion to approve the proposed amendments as drafted was approved without dissent.**

Official Form 10. The Committee discussed proposed amendments to Official Form 10, Proof Of Claim. **A motion to approve the proposed amendments as drafted was approved without dissent.**

Official Form 1. The Committee discussed proposed amendments to Official Form 1, Voluntary Petition. The Committee agreed to insert “against the debtor” in the first sentence in the box at the bottom of page 2 for a residential tenant. **A motion to approve the proposed amendments as revised was approved without dissent.**

Official Form 4. The Committee discussed proposed amendments to Official Form 4, List of Creditors Holding 20 Largest Unsecured Claims. The Committee agreed to insert “and do not disclose the child’s name” after “a minor child.” **A motion to approve the proposed amendments as revised was approved without dissent.**

Official Form 5. The Committee discussed proposed amendments to Official Form 5, Involuntary Petition. The Committee agreed to change “6 years” to “8 years” in the question on ALL OTHER NAMES on page one and to correct the spelling of “recognition” in the first paragraph of the Request for Relief on page two. **A motion to approve the proposed amendments as revised was approved without dissent.**

Official Form 6. The Committee discussed proposed amendments to Official Form 6, Schedules. The Committee agreed to correct the name of Schedule D on the Form 6 cover sheet

and to correct typographical errors in the schedules. The Committee agreed to insert “reasonably” after “income” in question 17 on Schedule I and after “expenditures” in question 19 on Schedule J in order to conform them to section 521(a)(1)(B)(iv) of the Bankruptcy Code. The Committee agreed to delete the question on Schedule J on chapter 12 and chapter 13 plan payments. The Committee agreed to add the statement “Do not disclose the child’s name” to the second paragraph of Schedule E and the first paragraph of Schedule G. The Committee agreed to substitute “or decrease in expenses anticipated” for “[or decrease] in expenses of more than ten percent anticipated” in the first sentences of the Committee Note for Schedule J. The Committee agreed to strike the last two sentences of the Committee Note for Schedule J.

The Committee discussed how best to gather information on the amount of debt scheduled “in categories which are predominately nondischargeable,” as required by section 159(c)(3)(C) of title 28. The proposed amendments would require the debtor to total the claims on Schedule D, the section 507(a)(1) and 507(a)(8) claims on Schedule E, and the predominately nondischargeable claims on Schedule F and to record the total on the Summary of Schedules. Several Committee members stated that the procedure would put the debtor in a very difficult situation. The Committee agreed to delete the Predominately Nondischargeable Liabilities column on the Summary of Schedules, the Predominately Nondischargeable Debts (PND) column on Schedule F, and the PND instructions. In their place, the Committee agreed to add a Statistical Summary of Certain Liabilities. The new Statistical Summary includes domestic support obligations; taxes and certain other debts owed to governmental units; claims for death or personal injury while intoxicated; student loans; loans from pension or profit-sharing plans; and domestic support, separation, and divorce decree obligations not reported on Schedule E. The Committee agreed to add a statement that the information is for statistical purposes only under 28 U.S.C. § 159. **A motion to approve the proposed amendments to Official Form 6 as revised was approved with one dissenting vote.**

Official Form 7. The Committee discussed proposed amendments to Official Form 7, Statement of Financial Affairs. The Committee agreed to delete the brackets (but not the bracketed language) in the fifth line of the definition of “*In business*” on page 1. The Committee agreed to use the alternative language “may be” instead of “is” in the following sentence. The Committee agreed to use “an asterisk (\*)” in place of “an \*” in question 3(a) and to delete the bracketed language in the same question. The Committee agreed to revise question 3(b) to require non-consumer debtors to list “each payment or other transfer to any creditor made within 90 days immediately preceding the commencement of the case if the aggregate value of all property that constitutes or is affected by such transfer is not less than \$5,000.” The Committee agreed to correct a typographical error in question 10(b). The Committee agreed to combine questions 15(a) and 15(b) and to require all debtors to list all of their addresses for the last three years. **A motion to approve the proposed amendments as revised was approved without dissent.**

Official Form 9A-I. The Committee discussed proposed amendments to Official Form 9A-I, Notice of Commencement of Case under the Bankruptcy Code, Meeting of Creditors, and Deadlines. The Committee agreed to reinsert the following statement on the front of forms 9A

and 9C: “Please Do Not File A Proof of Claim Unless You Receive a Notice To Do So.” The Committee agreed to delete the phrase “and the creditor does not receive the notice in time to file a proof of claim before the deadline,” from the box entitled “Do Not File a Proof of Claim at This Time” on Forms 9A and 9B and from the box entitled “Claims” on Forms 9C-I. The Committee agreed to delete the multiple references to consulting an attorney on the second page and to insert the following statement in the box entitled “**Legal Advice**” at the top of page two: “Consult a lawyer to determine your rights in this case.” The Committee agreed to substitute “any” for “the” in the last line of the Discharge of Debts box on page 2 of Form 9A and 9C. The Committee agreed to delete “or to Request a Hearing on Deferral of Entry of Discharge under § 727 of the Bankruptcy Code” from the box entitled “Deadlines” on Forms 9A and 9C. The Committee agreed to insert “may” after “creditors” in the box entitled “Presumption of Abuse” on Forms 9A and 9C. **A motion to approve the proposed amendments as revised was approved without dissent.**

### **Cross Border Rules**

The Committee considered the proposed Interim Rules drafted by the Subcommittee on Technology and Cross Border Insolvency.

Rule 1007. The Committee discussed proposed Interim Rule 1007. **A motion to approve the proposed interim rule as drafted was approved without dissent.**

Rule 1010. The Committee discussed proposed Interim Rule 1010. The Committee agreed to insert “nonmain” before “proceeding” in the title, in line 3, and in line 6. The Committee agreed to revise the Committee Note to specify that the Interim Rule applies to a petition for recognition of a foreign nonmain proceeding, but not to a petition for recognition of a foreign main proceeding. **A motion to approve the proposed interim rule and the Committee Note as revised was approved without dissent.**

Rule 1011. The Committee discussed proposed Interim Rule 1011. **A motion to approve the proposed interim rule as drafted was approved without dissent.**

Rule 2002. The Committee discussed proposed Interim Rule 2002(q). The Committee agreed to substitute “at least 20 days' notice” for “notice” on line 13 and to substitute “the hearing on the” for “the filing of a” on line 14. The Committee agreed to insert the following sentence after line 14: “The notice shall state whether the petition seeks recognition as a foreign main proceeding or foreign nonmain proceeding.” The Committee agreed to insert “of the petition for recognition of a foreign reorganization” in the first line of the Committee Note and to delete “that a petition for recognition of a foreign proceeding has been filed” from lines 5-6 of the Committee Note. The Committee agreed to delete “to those entities” from the first line of the second paragraph of the Committee Note. **A motion to approve the proposed interim rule and the Committee Note as revised was approved without dissent.**

Rule 2015. The Committee discussed proposed Interim Rule 2015(d). **A motion to**

**approve the proposed interim rule as drafted was approved without dissent.**

Rule 1002.1. The Committee discussed the two proposed alternatives for Interim Rule 1002.1 **A motion not to proceed with the proposed interim rule was approved without dissent.**

Rule 5012. The Committee discussed proposed Interim Rule 5012. **A motion to approve the proposed interim rule as drafted was approved without dissent.**

### **Transmittal to the Courts**

The Committee discussed the proposed transmittal letter to the courts regarding the Interim Rules and Official Forms and the draft general order adopting the Interim Bankruptcy Rules. **A motion to approve the proposed transmittal letter and the draft model general order in substantially the form presented was approved without dissent.**

### **Information Matters**

Form Plan and Disclosure Statement. The Committee discussed developing standard forms for a plan and disclosure statement, as provided in the Bankruptcy Reform Act. Mr. Resnick stated that the Business Subcommittee hopes to have a draft form plan and disclosure statement for consideration at the September meeting.

Letter from the ABA Task Force on Attorney Discipline. The Committee discussed a letter dated June 21, 2005, from the American Bar Association Task Force on Attorney Discipline.

### **Administrative Matters**

The Committee's next regularly scheduled meeting will be in the Eldorado Hotel in Santa Fe on September 29 - 30, 2005.

Respectfully submitted,

James H. Wannamaker, III