ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of September 29 - 30, 2005
Santa Fe, N.M.

Minutes

The following members attended the meeting:

District Judge Thomas S. Zilly, Chairman
District Judge Ernest C. Torres
District Judge Laura Taylor Swain
District Judge Irene M. Keeley
District Judge Richard A. Schell
District Judge William H. Pauley III
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
G. Eric Brunstad, Jr., Esquire
J. Michael Lamberth, Esquire

The following members were unable to attend the meeting:

Circuit Judge R. Guy Cole, Jr.
Dean Lawrence Ponoroff

The following persons also attended the meeting:

Professor Jeffrey W. Morris, Reporter
Professor Edward J. Janger, adviser to the committee
Bankruptcy Judge Dennis Montali, liaison from the Committee on the Administration of the Bankruptcy System (Bankruptcy Administration Committee)
District Judge David F. Levi, chair of the Committee on Rules of Practice and Procedure (Standing Committee)
Circuit Judge Harris L. Hartz, liaison from the Standing Committee
Peter G. McCabe, secretary of the Standing Committee
Donald F. Walton, Acting Deputy Director, Executive Office for U.S. Trustees (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
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
James H. Wannamaker, Bankruptcy Judges Division, Administrative Office
Robert Niemic, Research Division, Federal Judicial Center (FJC)
Philip S. Corwin, Butera & Andrews, Washington, D.C.
Jeffrey A. Tassey, Tassey & Associates, Washington, D.C.
Michael F. McEneney, Sidley Austin Brown & Wood, Washington, D.C.

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, Judge Levi, liaisons, advisers, staff, and guests to the meeting. The Chairman introduced the three new members, Judge Pauley, Mr. Brunstad, and Mr. Lamberth. The Chairman noted that this is the Committee's first meeting in years without Judge A. Thomas Small, the former chairman. Judge Levi commended the Committee on developing the Interim Rules and Official Forms in such a short time in order to implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the bankruptcy reform act). He stated that the remarkable achievement reflects the quality of the people on the Committee and the care of former Chief Justice William H. Rehnquist in selecting the members. Judge Levi praised the former Chief Justice for his support of the rulemaking process and his lightning quick grasp of ideas. Judge Levi stated that Chief Justice John G. Roberts, Jr., also supports the rulemaking process. The Chief Justice has been a member of the Advisory Committee on Appellate Rules for a number of years as an attorney and as a judge.

The Chairman briefed the Committee on the June 2005 meeting of the Standing Committee. The Standing Committee gave its final approval to the proposed amendments to Rules 1009, 5005(a), 5005(c), and 7004. A proposed amendment to Rule 4002 was withdrawn as a result of the passage of the bankruptcy reform legislation. The proposed amendments to Rules 1009, 5005(a), 5005(c), and 7004 were approved by the Judicial Conference at its meeting in September 2005. The Standing Committee also approved the publication of proposed amendments to Rules 3001, 3007(c)-(f), 4001, 6006, and proposed new Rules 6003, 9005.1, and 9037. The Standing Committee approved the publication of proposed amendments to Rules 1014, 3007(b), and 7007.1 at its meeting in January 2005.

The Committee approved the minutes of the March 2005 meeting in Sarasota, Florida, and the August 2005 meeting in Washington, D.C. with minor corrections from Judge Swain and Mr. Kohn.

Judge Montali reported on the June 2005 meeting of the Bankruptcy Administration Committee. Judge Montali stated that the Bankruptcy Administration Committee has developed interim procedures regarding fee waivers in chapter 7 cases, guidance for safeguarding the confidentiality of tax information provided under section 521 of the Bankruptcy Code, and procedures for approving agencies which provide credit counseling and personal financial management training courses in the six judicial districts served by bankruptcy administrators. Mr. Waldron stated that the interim procedures protect the confidentiality of tax information by requiring that a party seeking access to the information must file a written request for the debtor to file the tax returns and a motion for access to tax information which has been filed.

Judge Walker reported on the April 2005 meeting of the Advisory Committee on Civil Rules. He discussed the Civil Rules Committee's work on revision of the class action rules, the electronic discovery rules, and the restyling project. Judge Klein reported on the April 2005 meeting of the Advisory Committee on evidence Rules. He stated that the Evidence Rules Committee does not favor amending the rules unless an amendment is required by an act of Congress or by a decision by the Supreme Court. The Evidence Rules Committee did not propose any amendments for publication in August 2005.

Action Items

Interim Rules and Official Forms. The Chairman reported that the Standing Committee approved the Interim Rules and Official Forms by email ballot in August 2005. The Executive Committee of the Judicial Conference approved the Official Forms and transmitted the Interim Rules for adoption by the courts. After the Interim Rules and Official Forms were distributed to the courts, publishers, and the public, Senator Charles E. Grassley wrote the Chief Justice expressing concern about some of the Interim Rules. The Director of the Administrative Office responded and enclosed a memorandum prepared by the Reporter.

Comments on the Interim Rules and Official Forms may be submitted by mail or electronically through a special link on the federal rulemaking page of the Judiciary's Internet website. The Chairman stated that 20 comments had been received by the time of the meeting. He stated that it might be possible to hold a public hearing on the Interim Rules and Official Forms this winter. The Interim Rules and Official Forms 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 based on the Interim Rules and the comments received on them at some time in 2006. The Committee discussed whether it would be better to publish the proposed new rules and forms early and provide for an extended comment period or to publish the proposed new rules and forms at the usual time in August, when the courts and practitioners have had more experience working with the bankruptcy reform act and the Interim Rules and Official Forms.

Several Committee members stressed the importance of following the normal Rules Enabling Act process. Judge Levi stated that the Rules Enabling Act process derives its legitimacy from its participatory nature and openness to public scrutiny. The Chairman stated

that the Committee tried to follow the spirit of the Rules Enabling Act by posting the Interim Rules and Official Forms on the Internet. The Committee discussed the distinction between correcting minor typos in the Interim Rules and Official Forms and making more significant changes and whether extensive changes are likely in the rules and forms published for comment. The Committee also discussed the distinction between amendments to the rules, which are approved by the Supreme Court and transmitted to Congress, and amendments to the Official Forms, which are prescribed by the Judicial Conference.

Official Forms 22A and 22C. Mr. Redmiles stated that the Internal Revenue Service has separated its local standards for housing and utilities into mortgage/rent expenses and non-mortgage expenses. This requires modification of the Statement of Current Monthly Income and Means Test Calculation, Official Form 22A or 22A(Alt.), and the Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income, Official Form 22C or 22C(Alt.). The Committee considered suggested modifications of Official Forms 22A and 22C drafted by Judge Wedoff and Mr. Redmiles. Mr. Redmiles withdrew his drafts.

In order to preserve the original numbering scheme, the Committee agreed to designate two revised lines as lines 20A and 20B on Official Form 22A and as lines 25A and 25B on Official Form 22C. The IRS has declined to post the separate standards on its own website and will not use the separate standards for tax collection, but the standards will be posted on the EOUST website. In order to give filers information on where to get the required numbers, the Committee agreed to add a reference to the EOUST website to lines 20A and 20B of Official Form 22A and to lines 25A and 25B of Official Form 22C . The Committee agreed to add a section in which a debtor who contends that the process set out in lines 20A and 20B or lines 25A and 25B does not accurately compute the allowance to which the debtor is entitled under the IRS Housing and Utilities Standards can assert that an additional amount should be allowed and can set out the basis for that contention.

The Committee discussed the deduction of actual future payments on secured claims and the directive not to include insurance and taxes on line 41 of the current form 22A. Mr. Frank stated that the debtor is required to pay the insurance and taxes even if the lender does not hold the funds in escrow. Mr. Redmiles stated that the debtor does not get the deduction twice because these payments are backed out of the IRS Standards in the calculation of the deduction on line 20B or on line 25B. The Committee agreed to the change on Official Forms 22A and 22C. **A motion to revise Official Forms 22A(Alt.) and 22C(Alt.) was approved without dissent. A motion to withdraw the existing Official Forms 22A and 22C and to redesignate the amended Official Forms 22A(Alt.) and 22C(Alt.) as Official Forms 22A and 22C was approved without dissent.**

The Committee considered suggested amendments to Form 22C, Statement of Current Monthly Income and Disposable Income Calculation, drafted by Judge Wedoff and Mr. Frank to provide for the calculation of the applicable commitment period for the chapter 13 plan. One draft calculated the applicable commitment period first and then the debtor's disposable income. The other draft reversed the two calculations. Judge Wedoff stated that a compromise approach would require the debtor to make the calculation set out on the draft amendments but would

permit the debtor to contend that the income of the debtor's non-filing spouse should not be counted.

The Committee discussed whether all chapter 13 debtors should be required to calculate the applicable commitment period at the beginning of the case when it is a confirmation issue which will not arise in many cases and much of the information is available on other forms. Several Committee members stated that capturing the information at the beginning of the case on a single form would help debtors, creditors, and the standing trustee and would make the chapter 13 system more efficient. Judge McFeeley stated that spelling out the required information would make it easier for pro se debtors to prepare their repayment plans. The Reporter stated that, if the calculation is not part of the national form, chapter 13 trustees may require debtors to make the calculation on a separate form. Differing local practices could hinder national creditors.

Judge Montali suggested requiring the debtor to furnish the information without making the calculation or selecting a checkbox. Professor Resnick suggested revising the checkboxes on page 1 of the form to avoid an estoppel argument against the debtor. The Committee agreed to preface the checkboxes with the phrase "According to the calculation required by this statement, check the boxes as indicated." **A motion to approve Judge Wedoff's draft amendment of Official Form 22C, as revised, was approved by a vote of 8-4.** Professor Resnick suggested revising the checkboxes on Official Form 22A to read as follows: "According to the calculations required by this statement: ☐ The presumption arises. ☐ The presumption does not arise. (Check the box as directed in Parts I, III, and VI of this statement.)" **A motion to approve the suggested language for Official Form 22A was approved without dissent. The chairman's suggestion to make the same change on Official Form 22C also was approved without dissent.**

The National Bankruptcy Conference has written the Committee expressing concern that, by taking a position on the interpretation of section 707(b), the Official Forms force debtors to make statements, under penalty of perjury, regarding significant issues of law with which the debtors do not agree and which could be considered admissions in later proceedings. The National Bankruptcy Conference expressed concern specifically with including a non-filing spouse's income in the means test and not deducting other necessary expenses unless they fit in the categories listed on the form.

Professor Resnick stated that Official Form 22 should be neutral. He stated that the means test form is a pleading and that the debtor should be allowed to assert a good faith position on the form. Professor Resnick stated that, even if the debtor asserts that the non-filing spouse's income should not be included on Form 22A and, as a result, the clerk does not send creditors an initial presumption of abuse notice within 10 days of the petition, the United States trustee still gets the means test form and could contest the debtor's assertion. Judge Wedoff stated that the safe harbor provision in section 707(b) requires that some debtors include their non-filing spouse's income. He stated that, by excluding the non-filing spouse's income, these debtors would not be required to complete the rest of the form. The Committee also discussed whether debtors should be allowed to deduct other necessary expenses which are not included in

the IRS standards listed on the form. Professor Resnick moved to reconsider inclusion of a non-filing spouse's income and the deduction of other necessary expenses. Several Committee members expressed concern about changing the form just before October 17, 2005, effective date of the bankruptcy reform act. Mr. Walton stated that the form is based on lots of compromises and discussions, which could be upset by reopening the two issues. **The motion to reconsider failed by a vote of 9-4. The Chairman referred the National Bankruptcy Conference's letter and the issues raised by the letter to the Consumer Subcommittee for consideration as part of the revision of the national rules.**

Implementation of Section 522(q). The Interim Rules include an amendment to Rule 4004(c)(1)(I) to implement sections 522(q) and 727(a)(10) of the Bankruptcy Code. The Reporter stated that the Committee limited the provision to chapter 7 cases because section 522(q) only applies in a handful of states where the homestead exemption could exceed $125,000 and discharges in individual chapter 11, 12, and 13 cases are entered only after the completion of plan payments. In addition, the chapter 7 provision requires that the court make a positive finding while the chapter 11, chapter 12, and chapter 13 provisions require negative findings. The Reporter stated that waiting until national rules are enacted may not be appropriate, however, because the debtor may make an early payout under the plan or the choice of law provisions in section 522(b)(3) may extend the geographic reach of those state's high exemption laws. Judge Wedoff stated that the Committee should deal with the issue in order to avoid unnecessary work and inconsistent local procedures in the courts.

Professor Resnick stated that requiring the debtor to state, under penalty of perjury, that section 522(q) does not apply, i.e., that the debtor has not committed a crime, in order to claim a valid homestead exemption could force the debtor to commit perjury. Judge Wedoff stated that section 522(q) has two elements — the felony and the pending proceeding. He stated that, if there is no pending proceeding, there is no perjury and, if the debtor has already been convicted, a creditor could use that conviction to object to the discharge.

The Committee discussed whether the issue could be simplified by requiring a notice that, unless a creditor objects, the court will find that there is no reasonable basis to believe that section 522(q) applies to the debtor and that there are no pending proceedings. Because creditors may not know whether there is a pending proceeding, the Committee also discussed either requiring all individual debtors in chapter 11, chapter 12, and chapter 13 to file a section 522(q) statement or requiring the debtor to file a statement if the debtor claims a homestead exemption which exceeds $125,000. The Committee also discussed the timing of the notice or statement. Should the notice be given or the statement filed at the beginning of the case or should the notice or statement come when the debtor has completed the plan payments or requests a hardship discharge? **By a vote of 8-1, the Committee agreed in principle to require an individual debtor in chapter 11, 12, or 13 case to file a section 522(q) statement if the debtor claims a homestead exemption which exceeds $125,000 and to require that the statement be filed just before the discharge.**

The Reporter presented a draft of Interim Rule 1007(b)(8) and (c). The Committee agreed to strike the phrase "by the debtor" from subdivision (c). The Committee discussed what

would happen if an individual debtor in a chapter 11, 12, or 13 case completes the plan payments and is required to file the statement but does not do so. The Reporter stated that the case would be closed without a discharge. One Committee member stated that, if the debtor no longer has an attorney, the trustee may advise the debtor to file the statement. The Committee agreed to revise subdivision (c) to require that the statement required by subdivision (b)(8) should be filed "not earlier than the date of the last payment made by the debtor under the plan or the date of a motion for entry of discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b)." Mr. Adelman suggested that the phrase "to the best of the debtor's knowledge" be deleted from subdivision (b)(8) since the requirement is included in Rule 1008. The Committee agreed. The Committee agreed to revise the Committee Note to state that creditors receive notice of the time to move for postponement of the discharge, not to object to the statement. **A motion to approve Interim Rule 1007(b)(8) and (c) and the Committee Note as revised was approved without dissent.**

The Reporter presented a draft of Interim Rule 2002(f)(11) to require that creditors be given notice of the time to move for postponement of the discharge under sections 1141(d)(5)(B), 1228(b), or 1328(b) **A motion to approve Interim Rule 2002(f)(11) and the Committee Note was approved without dissent.** The Reporter presented a draft of Interim Rule 4004(c)(3) to provide that the court shall not grant a discharge in an individual chapter 11, 12, or 13 case earlier than 30 days after the filing of the statement required under Rule 1007(b)(8). Because not every debtor is required to file the statement, the Committee agreed to substitute "If the debtor is required to file a statement under Rule 1007(b)(8), the court shall not grant a discharge earlier than 30 days after the filing of the statement." **A motion to approve Interim Rule 4004(c)(3) as revised was approved without dissent.**

Failure to Provide or File Requested Tax Documents. The Reporter stated that the bankruptcy court in the Southern District of New York had noted that section 1228 of the bankruptcy reform act states that the court shall not grant a chapter 7 debtor a discharge unless the debtor has provided requested tax documents to the court. Because the court may not know whether any tax documents have been requested or whether the debtor has filed additional returns with the tax authorities but not with the court, Professor Resnick suggested that the debtor be required to file a statement that all requested income tax returns or transcripts have been filed. Mr. Waldron stated that, as provided in section 315(c) of the bankruptcy reform act, the Director of the Administrative Office has established procedures for safeguarding the confidentiality of tax information. The procedures state that the United States trustee, bankruptcy administrator, trustee, or other party in interest file a written request that a debtor file copies of tax returns with the court. **The Committee agreed in principle that, if a request for tax documents has been made and filed, the debtor must file a statement that all of the tax documents have been provided.**

The Reporter presented a draft of Interim Rule 4004(c)(1)(K) to provide that the court shall not issue the discharge in a chapter 7 case if the debtor has failed to file with the court each federal income tax return or transcript of such tax return as required under section 521(f) of the Code. The Committee agreed to substitute "the debtor has not filed with the court any tax documents required to be filed under § 521(f)." The Committee discussed how the clerk would know whether the debtor had filed all of the tax documents since the debtor may file additional

documents with the tax authorities during the course of the case. The Committee agreed to substitute "a motion to delay discharge, alleging that the debtor has not filed with the court all tax documents required to be filed under § 521(f), is pending." **A motion to approve Interim Rule 4004(c)(1)(K) as revised was approved without dissent.** The Committee agreed to substitute the following for the first paragraph of the Committee Note covering the two amendments to Interim Rule 4004: "Subdivision (c)(1) is amended by adding subparagraph (K) to implement § 1228(a) of Public Law No. 109-8." **A motion to approve the Committee Note as revised was approved without dissent.**

Interim Rule 8001(f). The Reporter stated that Interim Rule 8001(f) covers a direct appeal to the court of appeals from a final judgment, order, or decree of the bankruptcy court and from an appeal of an interlocutory order or decree of the bankruptcy court. Although the Interim Rule suggests that a grant of leave to appeal is required for any interlocutory appeal, section 158(a)(2) of title 28 authorizes interlocutory appeals of interlocutory orders and decrees issued under section 1121(d) of the Bankruptcy Code. The Reporter presented a draft amendment to cover all three forms of appeals. **A motion to approve the proposed amendment to Interim Rule 8001(f) approved without dissent.**

Other Pending Matters Including Comments on the Interim Rules and Official Forms. Bankruptcy Judge Robert E. Grant wrote the Committee concerning the impact of the Interim Rules and the amendment of section 524 of the Bankruptcy Code on the reaffirmation process. The Reporter stated that the proposed amendment to Rule 4008 which was to be effective on December 1, 2005, has been withdrawn as a result of the passage of the bankruptcy reform act but that there still may be a need to require that reaffirmation agreements be filed earlier. Judge Montali suggested that the timing problem could be resolved by dividing Rule 4008 and putting the new section 524(k) provisions in the second paragraph. **A suggestion to defer the matter and consider it as part of the amendment of the national rules was approved without dissent. The matter will be referred to the Consumer Subcommittee for further action.**

The Committee also discussed the comments on the Interim Rules and Official Forms submitted by Bankruptcy Judge Bruce A. Markell, Bankruptcy Judge Robert J. Kressel, and others. The Committee discussed how to disseminate the Interim Rules and clearly indicate the changes since the Interim Rules were originally approved in August. The Chairman suggested distributing "redline" copies of the Interim Rules which are amended and copies of the complete Interim Rules, including the ones which have been amended. A Committee member suggested dating updates to the Interim Rules.

The Committee discussed the small business profitability and compliance report required by section 434 of the bankruptcy reform act. Because the reporting provision is not effective until 60 days after rules are enacted to implement it, the form was not included in the Interim Rules and Official Forms. The Reporter stated he plans to contact experts on bankruptcy insolvency accounting for suggestions for the form.

Model Plan and Disclosure Statement. Professor Janger stated that a group of members of the Business Subcommittee has completed a draft model plan for small chapter 11 debtors and

expects to prepare a draft model disclosure statement for consideration at the March meeting. He stated that the group probably also will prepare a combined model plan and disclosure statement for the March meeting. Professor Janger said the group had shortened the model plan from 12 pages to 5. Professor Resnick stated that the model plan is a "bare bones" plan which can be modified as necessary. He stated that the debtor can use the model plan or write its own plan as long as the plan is not inconsistent with the Bankruptcy Code. Ms. Ketchum suggested that the model plan include a statement that the form can be supplemented or customized. The Committee discussed the model plan and made several changes in the draft. The Committee also discussed the statutory provision for the courts to approve their own model plans and disclosure statements. **A motion to approve the draft model plan in principle was approved without dissent. Further consideration of the model plan and disclosure statement will be on the agenda for the March 2006 meeting.**

Proposed Rule 2002(g)(4), the Bankruptcy Reform Act, and Interim Rule 2002. A pending amendment to Rule 2002(g) would allow an entity to designate an address for the purpose of receiving notices. The proposed amendment is pending before Congress with an effective date of December 1, 2005. The amendment was requested by creditors and endorsed by the Judiciary as a means of providing additional service while saving money. Sections 342(e) and (f), which were added to the Bankruptcy Code by the reform act, provide that a creditor in an individual chapter 7 or 13 case may file a notice of address which must be used by the debtor and the court thereafter in that case and that an entity may file with any bankruptcy court a notice that all courts must use for that creditor in all chapter 7 and chapter 13 cases. The Committee has concluded that the new statutory provisions do not conflict with the proposed amendment to Rule 2002(g)(4), even if the statute gives creditors additional rights.

The Reporter stated that existing Rule 2002(g)(2), provides, however, that in the absence of a notice under Rule 2002(g)(1), notices shall be sent to the address shown on the list of creditors, which does not take into account the new section 342(f). The Reporter suggested that an exception for section 342(f) of the Code be added to Interim Rule 2002(g)(2). **A motion to incorporate an exception for section 342(f) in Interim Rule 2002(g)(2) was approved without dissent. A motion to approve the Interim Rules as amended was approved without dissent.**

Official Form 1, Voluntary Petition. Official Form 1 was intended to function both as a voluntary petition under the appropriate chapter of the Bankruptcy Code and as a petition for recognition under chapter 15. Ms. Ketchum stated that the language in the signature block labeled "Signature of a Foreign Representative of a Recognized Foreign Proceeding" probably works reasonably well for a foreign representative filing a voluntary petition after recognition has been grated, but that the language does not work well for a foreign representative seeking recognition under chapter 15.

Ms. Ketchum suggested revising the form to include two signature blocks: one for filing a voluntary case and one for seeking recognition. Mr. Shaffer suggested using a single signature block for foreign representatives with two checkboxes. Ms. Ketchum presented a draft revision incorporating the suggestion. The draft struck the words "of a Recognized Foreign

Representative" from the title of the signature block, the word "main" from the first sentence of the statement, and the second sentence of the statement in its entirety. The checkboxes were as follows: "☐ The debtor requests relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by § 1515 of title 11 are attached. ☐ Pursuant to § 1511 of title 11, United States Code, the debtor requests relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached." Judge Montali suggested substituting "I request" for "The debtor requests" in each checkbox. The Committee agreed. **A motion to approve the amendment to Official Form 1 as revised was approved without dissent.**

Official Forms 9G and 9H, § 341 Notices for Chapter 12 Family Farmers. Ms. Ketchum stated that the bankruptcy reform legislation amended section 109(f) of the Bankruptcy Code to extend relief under chapter 12 to family fishermen. She stated that the title of the form on page 1 and the first explanation on page 2 refer only to family farmers. She stated that the absence of a reference to family fishermen could be confusing to creditors in a family fishermen case**. The Committee agreed to defer the matter to the March 2006 meeting. The matter will be referred to the Forms Subcommittee.**

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. **The Committee concluded that no change was required in the Interim Rules. The Chairman referred the matter to the Subcommittee on Attorney Conduct and Health Care for further consideration as part of the revision of the national rules.**

Objections to Exemptions. At its meetings in September 2004 and March 2005, the Committee discussed proposed amendments to Rule 4003(b) to extend the time to object to exemptions when the debtor's claim of exemptions has no good faith basis and to Rule 4003(b) to permit creditors to object to the exemption as a defense to a lien avoidance action notwithstanding that the Rule 4003(b) objection period has expired. **The proposed amendment to Rule 4003(d) was approved in principle at the March meeting and both amendments were then referred to the Consumer Subcommittee for further study.**

The Reporter stated that the subcommittee has recommended extending the 30-day objection period in Rule 4003(b) to 60 days after the meeting of creditors and adding a new subdivision (b)(2) which provides that the trustee may file an objection at any time up to one year after the closing of the case if the debtor fraudulently asserted the claim of exemption. The Committee discussed whether a Rule 9011 standard would be better, but agreed to retain the fraud standard and the one-year deadline, which are the same as those for revoking the debtor's discharge under section 727(d) of the Bankruptcy Code. Mr. Brunstad stated that the fraud standard would protect a debtor who innocently submits an unjustified claim of exemptions. Because the trustee is discharged when the case is closed, the Committee agreed to provide in subdivision (b)(2) that the United States trustee also can object up to one year after closing. The Committee agreed to correct the reference to § 522(b)(3) in the first paragraph of the Committee Note. **A motion to approve the proposed amendments and the Committee Note as revised was approved without dissent.**

Director's Procedural Forms. Ms. Ketchum presented draft revisions of Director's Procedural Forms 18J, 18JO, 18F, 18FH, 18W, and 18WH, discharge forms for use in joint cases, chapter 12 cases, and chapter 13 cases. She asked that the Committee members review the drafts and respond by email by October 4, 2005 with any suggested changes.

Ms. Ketchum stated that most of the draft revision of Form B201, Notice to Individual Consumer Debtor under § 342(b) of the Bankruptcy Code, represented a consensus of the Subcommittee on Forms but that the subcommittee was unable to agree on the signature blocks. Ms. Ketchum stated that a pro se debtor must read and sign the notice but there are questions about whether a debtor with an attorney or a bankruptcy petition preparer must file a copy of the notice and who should sign it. Judge Montali stated that section 110 of the Code requires that a petition preparer sign all documents the preparer prepares for filing. The signature blocks for individual or joint debtors and for petition preparers on Official Form 1, Voluntary Petition, include references to obtaining or providing the 342(b) notice. Because section 342(b) requires that the clerk provide a notice to an individual, consumer debtor before the case is filed, several Committee members stated that requiring the debtor to sign and file a copy of the notice would avoid any question about whether the notice has been given. Mr. Frank stated that a separate filing by the debtor's attorney is not needed because the attorney would usually have the debtor sign the notice and retain the signed copy in the attorney's files. The Committee agreed to delete the certification by the debtor's attorney. **A motion to approve Form B201 as revised was approved without dissent.**

Ms. Ketchum presented two versions of a draft revision of Form B240, Reaffirmation Agreement. The two versions differed in where the caption is placed and how much of the form would be filed with the court. The Committee agreed to use Mr. Kohn's version of the form with the caption on the first page and the entire form to be filed. The Committee agreed with Judge Klein's suggestion to substitute the following for the last two sentences of the Order Approving Reaffirmation Agreement: "COURT ORDER: The court grants the debtor's motion and approves the reaffirmation agreement described above." **A motion to approve Form B240 as revised was approved with one dissenting vote.**

Rule 5001(b) and Court Hearings During Emergencies. At its meeting in September 2003, the Committee approved in principle a proposed amendment to Rule 5001(b) which would authorize bankruptcy judges to hold court outside the district in emergencies. Further action was deferred until Congress acted on the related amendment to section 152(c) of title 28. The catastrophic events of Hurricane Katrina brought the matter back to Congress. The Federal Judiciary Emergency Special Sessions Act of 2005, Public Law 109-63, was signed by the President on September 9, 2005. The Committee reviewed the draft language approved in 2003 and agreed to move the phrase "except as provided in 28 U.S.C. § 152(c)(2)" to the end of the rule and to change the statutory reference in the Committee Note to "§ 152(c)(2)." **A motion to approve the proposed amendment and the Committee Note as revised was approved without dissent.**

Information and Discussion Matters

Rules 1005 and 1007 and Official Form 10, Proof of Claim. The Committee discussed the inclusion of federal tax identification numbers other than social security numbers in captions and statements as provided in Rules 1005 and 1007. The Committee discussed the status of the proposed amendment to Official Form 10 to facilitate electronic filing. The Reporter stated that, if the amendment to Form 10 is published in August 2006, it can take effect at the same time as the related amendments to Rule 3001 which were published in August 2005. **The chairman referred these matters to the Subcommittee on Forms.** An amendment to Schedule I of Official Form 6 was requested by the EOUST and published in August 2004. As a result of the enactment of the bankruptcy reform act, the EOUST amendment was withdrawn and Schedule I was amended to require that married debtors in chapter 7, 11, 12, and 13 cases include their non-filing spouses' income, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. The amendment to Schedule I was effective on October 17, 2005. **The Committee endorsed the withdrawal of the EOUST amendment since it is no longer needed.**

Notice of Newly Discovered Assets. Bankruptcy Judge Dana L. Rasure wrote the Committee on behalf of the Bankruptcy Judges Advisory Group concerning timing issues raised by Rule 3002(c)(5). The Committee discussed the matter at the March 2005 meeting and referred it to the Subcommittee on Privacy, Public Access, and Appeals. **The Committee agreed to defer the matter pending the planned study of the time periods in all federal rules.**

Separate Document Requirement. The Subcommittee on Privacy, Public Access, and Appeals has been considering whether Rule 9021 should be amended to address the impact of the recent revision of Civil Rule 58 and whether the separate document requirement should be modified in bankruptcy matters. Professor Resnick stated that many bankruptcy attorneys would be shocked to know that, if a judgment is not set forth in a separate document, judgment is not entered for purposes of appeal until 150 days after the judgment is entered on the docket. Judge Klein said the change in the Civil Rule, which is incorporated by Bankruptcy Rule 9021, took care of the problem because 150 days has passed by the time the appellate court sees the appeal. Because the subcommittee was unable to agree on whether any change is needed in the separate document requirement in bankruptcy matters and, if so, what change, the Chairman suggested taking no action at this time. Professor Resnick suggested referring the issue to the subcommittee to define what is a separate document. **The Committee agreed to refer the issue to the Privacy, Public Access, and Appeals Subcommittee.**

Additional Time to Appeal. The Subcommittee on Technology and Cross Border Insolvency and the full Committee have considered whether Rule 8002 or Rule 9006 should be amended to provide additional time for the appeal of judgments, degrees, or orders in bankruptcy cases. **The Committee deferred action pending the planned study of the time periods in all federal rules.**

Restyled Civil Rules. The Committee discussed the need to review the interplay between the restyled Civil Rules and the Bankruptcy Rules and to send any recommendations for changes in the restyled rules to the Civil Rules Committee by December 15, 2005. All Committee members volunteered to assist in the review. **The Reporter said he and the Chairman would divide the restyled Civil Rules and allocate them to groups of two or three Committee members and staff for review.**

Administrative Matters

The Chairman extended very special thanks for their service to the four members who are leaving the Committee: Judge Torres, Professor Resnick, Mr. Frank, and Mr. Adelman.

The Committee's next regularly scheduled meeting will be at the Carolina Inn, Chapel Hill, N.C., in March 2006. The Chairman stated that three days may be needed for the spring meeting. **Subsequent to the meeting, the Chairman scheduled the meeting for March 8 - 10, 2006.** The Chairman stated that, if a number of substantive comments are received on the Interim Rules and Official Forms, they may be set for a public hearing in Washington. The fall 2006 meeting will be in the West, possibly in Seattle, Jackson Hole, or the Napa Valley. The Chairman asked that Committee members email their preferences to him.

Respectfully submitted,

James H. Wannamaker, III