

Survey on the Federal Rules of Bankruptcy Procedure

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This Federal Judicial Center publication was undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development for the improvement of judicial administration. The views expressed are those of the authors and not necessarily those of the Federal Judicial Center.

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Summary

The Long-Range Planning Subcommittee of the Judicial Conference's Advisory Committee on Bankruptcy Rules is undertaking a comprehensive review of the Federal Rules of Bankruptcy Procedure to determine whether they should be modified. At the advisory committee's request, staff in the Research Division of the Federal Judicial Center developed a questionnaire to help the subcommittee learn the views of various participants in the bankruptcy system concerning the rules and related forms.

The questionnaire contained questions about the organization, scope, and format of the Federal Rules of Bankruptcy Procedure and forms; the relationship between the rules and the Bankruptcy Code; the incorporation of various Federal Rules of Civil Procedure into the Bankruptcy Rules; and local bankruptcy rules. The Center sent the questionnaire to bankruptcy, district, and circuit judges, other bankruptcy court personnel, law professors, and bankruptcy practitioners.

Most of the respondents to the questionnaire indicated that they did not see a need to change the rules and forms, had not experienced problems with the rules and forms, or had no opinion on the particular changes being asked about. For each question, however, there were some respondents (ranging from 9% to almost 32%) who reported problems or indicated that they thought the rules should be changed in some way. The questions with the highest percentage of affirmative responses concerned whether there are matters the Bankruptcy Rules and forms should address but currently do not, and whether any of the Bankruptcy Rules or forms should be clarified to eliminate ambiguity, incompleteness, or vagueness. Many respondents provided specific comments about changes that could be made to improve the rules and related forms (see the Results section and appendices for more detailed information about these comments).

The Long-Range Planning Subcommittee reviewed an earlier version of this report and the full set of survey comments. In an August 1995 conference call with Center staff, the subcommittee identified three areas of potential change that warranted further study: issues related to litigation practice; issues related to attorney admissions and ethics; and inconsistencies between the hearing requirements in Bankruptcy Code provisions that use "after notice and a hearing" or a similar phrase, as defined in 11 U.S.C. § 102, and those in the related Bankruptcy Rules.

The subcommittee also identified other matters concerning specific aspects of the federal rules and forms, largely unrelated to long-range planning, that the advisory committee might want to consider further. Examples of these matters are presented in the section titled Long-Range Planning Subcommittee's Recommendations.

The subcommittee also noted a number of suggestions respondents made to bring the rules and forms into conformity with the Bankruptcy Reform Act of 1994. Most of these suggestions had already been or were being addressed by the advisory committee. In addition, the subcommittee referred survey comments concerning the forms to the committee's Subcommittee on Forms.

At its September 1995 meeting, the Advisory Committee on Bankruptcy Rules established two subcommittees. One subcommittee is examining issues related to attorney conflicts of interest. The other is examining rules related to litigation in bankruptcy, and its focus is on motions practice.

Introduction and Methods

The Long-Range Planning Subcommittee of the Judicial Conference's Advisory Committee on Bankruptcy Rules is undertaking a comprehensive review of the Federal Rules of Bankruptcy Procedure and related forms to determine whether they should be modified. At the advisory committee's request, staff in the Research Division of the Federal Judicial Center conducted a survey to help the subcommittee learn the views of various participants in the bankruptcy system concerning the rules and related forms. The Center sent a questionnaire to bankruptcy, district, and circuit judges, other bankruptcy court personnel, law professors, and bankruptcy practitioners (see Table 1 and related text for more information about the sample and response rates).

The questionnaire contained six questions about the Federal Rules of Bankruptcy Procedure and forms and one question about local bankruptcy rules. We also asked bankruptcy practitioners and law professors about the nature and extent of their bankruptcy-related work. For each question about the federal rules, we asked for a "yes," "no," or "no opinion" response and for an explanation of any "yes" response. The seven questions we asked all groups surveyed follow.

Survey Questions

1. Should the current organization of the Federal Rules of Bankruptcy Procedure and related forms be revised? [Response options to this question as well as Questions 2–6 were "yes," "no," or "no opinion."]

If YES, please describe the problem(s) with the current organization of the rules and related forms and how the organization might be improved.

2. Do the Federal Rules of Bankruptcy Procedure and related forms cover matters that would be better left to the discretion of individual judges or districts?

If YES, please list below each rule or form and briefly describe the subject matter that you think ought to be left to the discretion of individual judges or districts and why.

3. Are there any matters that should be addressed by the Federal Rules of Bankruptcy Procedure and related forms but currently are not?

If YES, please describe below each matter that you think ought to be addressed by the rules and related forms and where within the current organi-

zation (and any reorganization you proposed in Question 1) of the rules and related forms it should be addressed.

4. Other than the inconsistencies created by the Bankruptcy Reform Act of 1994, are there any inconsistencies between the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and related forms that you have found problematic?

If YES, please list each code provision(s) and the inconsistent rule(s) or form(s) and describe the nature of the inconsistency and how it might be remedied.

5. Should any of the Federal Rules of Bankruptcy Procedure or related forms be clarified to eliminate ambiguity, incompleteness, or vagueness?

If YES, please list each rule or form and describe the ambiguity, incompleteness, or vagueness and how the rule or form might be clarified.

6. The Federal Rules of Bankruptcy Procedure make various Federal Rules of Civil Procedure, or modifications thereof, applicable to bankruptcy matters. Have you found any of the incorporated rules to be problematic due to a failure to take into account differences between bankruptcy and other civil litigation?

If YES, please list the rule or rules and describe the nature of the problem and how it might be remedied.

7. Please provide any comments you have about the purpose, scope, format, and organization of local bankruptcy rules, including their relationship to the Federal Rules of Bankruptcy Procedure and district court local rules. If your comments are district-specific, please identify the district.

[Respondents were also asked to provide any other comments or proposals they thought would assist the Advisory Committee on Bankruptcy Rules in its review of the Federal Rules of Bankruptcy Procedure.]

Table 1 shows the number of people in each group who were sent the questionnaire and the number who responded. The questionnaire was mailed in January and February of 1995; a second copy of the questionnaire was mailed to the bankruptcy judges, clerks of the bankruptcy courts, and bankruptcy administrators in April and to bankruptcy practitioners in the U.S. attorneys' offices in May. Those who had already responded were given an opportunity to supplement their earlier responses, and those who had not responded were invited to do so.

Table 1
Recipients of and respondents to the questionnaire

	Number of Recipients	Number of Responses	Response Rate
Bankruptcy judges	334	159	48%
Chief district judges (93) and sample of other district judges (151)	244	106	43%
Chief circuit judges (13) and sample of other circuit judges (75)	88	30	34%
Clerks of bankruptcy courts (including the Clerk of the Ninth Circuit Bankruptcy Appellate Panel)	96	47	49%
Bankruptcy administrators	6	2	33%
Chapter 13 trustees (the membership list of the National Association of Chapter 13 Trustees)	182	47	26%
Chapter 7 trustees (sampled from the membership list of the National Association of Bankruptcy Trustees)	300	68	23%
Bankruptcy practitioners in the U.S. attorneys' offices, the Commercial Litigation Branch of the Civil Division of DOJ, the Environmental and Natural Resources Division of DOJ, and the Tax Division of DOJ	344	64	19%
Law schools ^a	178	21	12%
Bankruptcy practitioners ^a	1,373	176	13%
Total	3,145	720	23%

Note: DOJ = Department of Justice.

a. The Center sent copies of the questionnaire to the deans of the 178 law schools listed in the *Association of American Law Schools Directory of Law Teachers* with the request that they be forwarded to the appropriate part- and full-time members of the faculty; no more than one questionnaire was returned from any law school. The sample of bankruptcy practitioners was drawn from the membership lists of the following organizations: ABA Family Law Section, Bankruptcy Committee; ABA Business Law Section, Business Bankruptcy Committee; ABA Litigation Section, Bankruptcy/Insolvency Committee; ABA General Practice Section, Bankruptcy Committee; ABA Law Practice Management Section, Bankruptcy Interest Group; American Bankruptcy Institute, Rules Committee; National Bankruptcy Conference; and the National Association of Consumer Bankruptcy Attorneys. We attempted to avoid sending duplicate questionnaires to persons belonging to more than one of these organizations. The questionnaire also was distributed at the March meeting of the Rules Subcommittee of the ABA Business Bankruptcy Committee; many who attended this meeting had received the questionnaire in another capacity.

The questionnaire was also sent to the heads of the following bankruptcy-related organizations, with the invitation to submit a consolidated response.

- American Bankruptcy Institute, Rules Committee
- American Bar Association (ABA), Family Law Section, Bankruptcy Committee
- ABA Business Law Section, Business Bankruptcy Committee
- ABA Litigation Section, Bankruptcy/Insolvency Committee
- ABA General Practice Section, Bankruptcy Committee
- ABA Law Practice Management Section, Bankruptcy Interest Group
- Association of Insolvency Accountants
- Commercial Law League of America
- National Association of Bankruptcy Trustees
- National Association of Chapter 13 Trustees
- National Association of Consumer Bankruptcy Attorneys
- National Bankruptcy Conference
- National Conference of Bankruptcy Clerks
- National Conference of Bankruptcy Judges
- Turnaround Management Association

Responses were received only from the Commercial Law League of America and the ABA Business Law Section, Rules Subcommittee of the Business Bankruptcy Committee (although the subcommittee chair did not respond on behalf of the subcommittee, two individual members responded to the questionnaire at the subcommittee chair's request that members do so; other members may have responded during the normal course of the survey). Two other organizations, upon hearing of the survey, also submitted responses: the Bankruptcy Clerks' Advisory Group of the Administrative Office of the U.S. Courts and the National Association of Attorneys General. In addition, the Executive Office for United States Trustees distributed the questionnaire within the Executive Office and to its regional offices and submitted a consolidated report.

Finally, the questionnaire was reprinted in *Bankruptcy Court Decisions* in March 1995, with an invitation for interested readers to respond by May 15, 1995. Only four people responded directly to the published questionnaire; these respondents are included in the group of

“bankruptcy practitioners” referred to in the text of the Results section and the tables in Appendix A of this report.

Results

In this section we present the responses to the “yes/no” questions for all respondents combined and for bankruptcy judges, clerks of the bankruptcy courts, and bankruptcy practitioners separately. More detailed information about the responses of different groups is provided in Appendix A. We also briefly summarize the respondents’ explanatory comments. The categories into which we sorted the comments to each question are set out in Appendix B. The full text of the comments (excluding information that could be used to identify respondents) was given to the Long-Range Planning Subcommittee and is available from the Federal Judicial Center on request.

Because the survey was exploratory and asked primarily about perceived problems with the rules and forms, it is possible that those who think the rules are problematic responded at a higher rate than those who find the rules satisfactory. Thus, the percentages of “yes” responses shown below may overstate the number of persons who think the rules are problematic.

Organization of the Bankruptcy Rules and Forms

As Table 2 shows, a relatively small percentage (16.2) of the respondents thought the current organization of the federal rules and related forms should be revised. The percentages of affirmative responses for bankruptcy judges, bankruptcy clerks of court, and bankruptcy practitioners were 17.0%, 25.5%, and 22.2%, respectively. Those who supported revision made a number of suggestions for improvement, some of which are paraphrased below.

- Revise the rules concerning requests for relief (e.g., applications, motions, contested matters, adversary proceedings) and consolidate them into a single part of the rules.
- Consolidate all notice and service requirements into a single section of the rules and cross-reference rules to which they apply.
- Reorganize the rules so that they better parallel the Bankruptcy Code.

- Renumber the rules to correspond to the appropriate Bankruptcy Code sections.
- Include an official table cross-referencing the rules and the Bankruptcy Code.
- Revise the index to the rules to make it more thorough and subject-specific.
- Add subheadings to the table of contents (e.g., in Part III, subheadings could include Rules of General Applicability, Chapter 7 Rules, Chapter 11 Rules, and Chapter 13 Rules).
- Reposition or renumber the forms to track the applicable rules.
- Format the forms so that they can be computer-generated more easily.

Table 2
Responses to the question, Should the current organization of the Federal Rules of Bankruptcy Procedure and related forms be revised?

Response	Number	Percentage
Yes	117	16.2
No	345	47.7
No opinion	243	33.6
Missing/unclear	19	2.6
Total	724	

Matters the Bankruptcy Rules Should Not Address

Only 9% of the respondents reported that the rules cover matters that would be better left to the individual judges or districts (see Table 3). The percentages of “yes” responses for particular groups were as follows: bankruptcy judges: 15.1%; clerks of bankruptcy courts: 14.9%; and bankruptcy practitioners: 7.2%. Some of the respondents’ suggestions are summarized below.

- There should be judicial discretion to modify the time frames for filing objections to discharge, dischargeability complaints, and objections to claims of exemptions.
- Application of the discovery rules should be left to the discretion of the court or amended altogether.

- The procedures for giving notice of dismissal or conversion are too cumbersome when a case is filed without payment of fees or without the required list of creditors, statements, and schedules. The court should be able to establish streamlined procedures.
- The interpretation of Rule 5005(a) prohibiting the clerk from refusing any paper offered for filing places an unreasonable burden on the court and the clerk's office. The courts should be allowed to adopt local procedures to efficiently and cost-effectively deal with filings that do not comply with the Bankruptcy Rules or Bankruptcy Code or that are unnecessary (e.g., discovery materials).
- Courts should have discretion regarding the nunc pro tunc approval of the employment of professionals.
- Local procedures may be needed to govern motions practice and adversary proceedings. For example, some districts have developed efficient local procedures for handling certain types of motions (motions for relief from the automatic stay, motions to dismiss, motions to modify the chapter 13 plan, motions for the turnover of a vehicle).
- Notice requirements in the rules should serve as guidelines that the court may tailor to the needs of the case; alternatively, some of the notice requirements in the rules should be modified.
- Procedures to allow the bankruptcy court to comment on motions for withdrawal of the reference should be adopted by district courts; alternatively, they should be incorporated into the federal rules.

Table 3
Responses to the question, Do the Federal Rules of Bankruptcy Procedure and related forms cover matters that would be better left to the discretion of individual judges or districts?

Response	Number	Percentage
Yes	65	9.0
No	419	57.9
No opinion	216	29.8
Missing/unclear	24	3.3
Total	724	

Matters the Bankruptcy Rules Should Address

As Table 4 shows, a substantial number of respondents reported that there were matters that should be addressed by the rules but currently are not. The percentages of “yes” responses were as follows: all respondents: 31.8%; bankruptcy judges: 44.7%; clerks of bankruptcy courts: 42.6%; and bankruptcy practitioners: 40.6%.

Table 4
Responses to the question, Are there any matters that should be addressed by the Federal Rules of Bankruptcy Procedure and related forms but currently are not?

Response	Number	Percentage
Yes	230	31.8
No	180	24.9
No opinion	289	39.9
Missing/unclear	25	3.5
Total	724	

We sorted the comments to Question 3 into the categories shown in Appendix B. The comments covered many subject areas; some illustrative suggestions for additions to the rules are as follows:

- a set of rules addressing attorney admission, appearance pro hac vice, appearance and withdrawal, and discipline;
- specific rules for chapter 9 cases instead of referencing chapter 11 provisions;
- a more comprehensive set of rules for chapter 13;
- detailed procedures concerning withdrawal of the reference, comparable to those for appeal;
- more specific procedures for requesting administrative expenses;
- new or more specific provisions relating to claims (trading in claims; need to file proofs of claims; deadlines for filing proofs of claims; treatment of late filed claims; service of proofs of claims; objections to claims);
- expansion of provisions relating to exemptions and objections thereto;

- a rule regarding the impact of the dismissal of a case on pending adversary proceedings;
- a rule concerning nunc pro tunc allowance of applications for the employment of professionals; and
- various new provisions concerning adversary proceedings and motions practice (use of affidavits at hearings; presumptive response time for motions set forth in Part VII and Rules 9013 and 9014).

In addition, a number of respondents suggested adding specific forms and suggested additions to the rules so that they would conform to the Bankruptcy Reform Act of 1994.

Inconsistencies Between the Bankruptcy Code and Rules

Approximately 14% of the respondents reported that there were inconsistencies between the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (see Table 5). The percentages of “yes” responses for bankruptcy judges, bankruptcy clerks of court, and bankruptcy practitioners were 22.0%, 23.4%, and 15.0%, respectively. See Appendix B for a list of the categories into which we sorted the comments to this question. The noted inconsistencies include the following:

- 11 U.S.C. §§ 501, 502, and 726 and Rule 3002: The statutes and rules are not consistent with respect to the deadline for filing claims and the treatment of late filed claims.
- 11 U.S.C. §§ 501 and 502 and Rule 3021: It is unclear whether a proof of claim must be filed to receive a distribution.
- 11 U.S.C. § 502 and Rule 3007: Rule 3007 mentions the “hearing,” whereas section 502 seems to indicate that an objection to a claim can be handled on notice and opportunity for a hearing, as defined by 11 U.S.C. § 102(1).
- 11 U.S.C. § 727(a)(10) and Rule 4004(c): The Code requires a judge’s approval before a discharge can be waived; the rule suggests that the filing of a waiver is sufficient.
- 11 U.S.C. §§ 102(1) and 1125(b) and Rule 3017(a), (b), and (e): The Code does not require a hearing on the disclosure statement, but the rule assumes one is required.
- 11 U.S.C. §§ 1307(b) and 1208(b) and Rule 1017(d): These statutory provisions use language that gives the debtor the ability to

dismiss a case as a matter of right; the rule requires that the debtor file an appropriate motion.

- 11 U.S.C. § 329 and Rule 2017: Section 329(a) limits the examination of attorney payments to those made after one year before the filing of the petition, but the examination under the rule is not limited to one year.
- 11 U.S.C. § 363 and Rule 7001: These provisions create confusion as to whether the sale of property should be treated as a contested matter or an adversary proceeding.
- 11 U.S.C. § 1121(c) and Rule 3016(a): Rule 3016(a) provides: “A party in interest, other than the debtor, who is authorized to file a plan under § 1121(c) of the Code may not file a plan after entry of an order approving a disclosure statement unless confirmation of the plan relating to the disclosure statement has been denied or the court otherwise directs.” However, section 1121(c) provides no limitation on the right of a party in interest other than the debtor to file a plan after the expiration of the debtor’s 120-day exclusivity period. The rule thus appears to place a restriction on the filing of a plan where Congress intended no such restriction.
- 11 U.S.C. § 1121(d) and Rule 3016(a): Section 1121(d) provides that the debtor’s exclusivity period may be extended for cause, yet the rule de facto extends the exclusivity period if the debtor has obtained approval of a disclosure statement.
- 11 U.S.C. §§ 502 and 1126 and Rule 3018: Section 502 provides that a claim is deemed allowed unless a party in interest objects, and section 1126 limits the right to vote on a plan to holders of allowed claims. Because Rule 3018 permits the court to temporarily allow a claim for voting purposes, it can be read as enlarging rights granted under the Code.
- 11 U.S.C. § 524 and Rule 4008: These provisions contain inconsistencies and ambiguities regarding reaffirmation agreements.

Table 5

Responses to the question, Other than the inconsistencies created by the Bankruptcy Reform Act of 1994, are there any inconsistencies between the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and related forms that you have found problematic?

Response	Number	Percentage
Yes	99	13.7
No	350	48.3
No opinion	245	33.8
Missing/unclear	30	4.1
Total	724	

Ambiguous, Incomplete, and Vague Provisions in the Rules and Forms

As Table 6 shows, a substantial number of respondents (28%) thought some aspect of the rules or related forms could be clarified to eliminate ambiguity, incompleteness, or vagueness. The percentages of affirmative responses for each group were as follows: bankruptcy judges, 42.1%; clerks of bankruptcy courts, 57.4%; and bankruptcy practitioners, 29.4%. Not surprisingly, many of the comments in response to this question overlapped with those given in response to other survey questions, particularly Question 3, and were very specific. The most pervasive problems identified were those relating to appeals, claims, exemptions, notice and service, motions practice, and adversary proceedings, and to specific forms. Appendix B presents other subject areas identified as problematic.

Table 6

Responses to the question, Should any of the Federal Rules of Bankruptcy Procedure or related forms be clarified to eliminate ambiguity, incompleteness, or vagueness?

Response	Number	Percentage
Yes	203	28.0
No	157	21.7
No opinion	328	45.3
Missing/unclear	36	5.0
Total	724	

Problems Regarding Incorporated Civil Rules

Approximately 19% of all respondents found at least some of the incorporated Civil Rules to be problematic (see Table 7). The percentages of affirmative responses for bankruptcy judges, bankruptcy clerks of court, and other bankruptcy practitioners were somewhat higher: 28.9%, 23.4%, and 22.8%, respectively. Some of the areas respondents found problematic are described below.

- The discovery rules, even with the opt-out provisions, do not work well in some (or most) contested matters and adversary proceedings because of the time sensitivity of bankruptcy matters. This is true also of the pretrial procedures set forth in Civil Rule 16 and incorporated by Bankruptcy Rule 7016.
- Civil Rules 59 and 60 (incorporated with modifications by Bankruptcy Rules 9023 and 9024) do not translate well to bankruptcy motions practice. These rules refer to a motion for a new trial and a motion to alter or amend a judgment, but in bankruptcy motions practice, the request is more like a motion for reconsideration of an order.
- Bankruptcy Rule 7054 should state the particular types of orders peculiar to bankruptcy that are final for appeal purposes.
- Civil Rule 5(e) (incorporated by Bankruptcy Rule 7005) concerning the acceptance of papers for filing is problematic in bankruptcy matters.
- Bankruptcy Rule 9021 (incorporating Civil Rule 58 with modifications) is problematic for two reasons. First, the last sentence in Rule 58 says “attorneys shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course.” Because the bankruptcy courts enter so many routine orders, this part of Rule 58 is excessively burdensome. Second, some court decisions have led to the necessity of preparing a separate form of judgment in every contested matter. However, the Advisory Committee Note to Bankruptcy Rule 9021 suggests that a separate judgment is not always required.
- The Civil Rules concerning juries should be incorporated into the Bankruptcy Rules.

- Various suggestions for improving the service requirements in adversary proceedings and contested matters were identified. For example, the applicability of Bankruptcy Rule 7005 to contested matters should be automatic, rather than left to the discretion of the court, so that a party’s attorney will always be served.
- The computation of time under Bankruptcy Rule 9006 and Civil Rule 6 should be consistent.

Table 7
Responses to the question, The Federal Rules of Bankruptcy Procedure make various Federal Rules of Civil Procedure, or modifications thereof, applicable to bankruptcy matters. Have you found any of the incorporated rules to be problematic due to a failure to take into account differences between bankruptcy and other civil litigation?

Response	Number	Percentage
Yes	137	18.9
No	361	49.9
No opinion	192	26.5
Missing/unclear	34	4.7
Total	724	

Purpose, Scope, Format, and Organization of Local Bankruptcy Rules

We also asked survey recipients to provide comments about the purpose, scope, format, and organization of local bankruptcy rules. A number of the comments focus on the uniform renumbering of the local rules; these comments have been passed on to members of the Advisory Committee on Bankruptcy Rules working on this project.

A number of other comments address, with reference to particular districts, the effectiveness, scope, and specificity of local rules. A few of these comments propose remedies to problems identified in responses to other survey questions (e.g., a local rule specifying that the chapter 13 trustees maintain the claims register and original proofs of claim; a local rule providing that, as soon as a motion for relief from the stay is filed, involved parties receive notice advising them that they have a given pe-

riod of time to file a response, and that if no response is filed, the judge will enter an order granting the relief unless a problem is uncovered sua sponte).

Long-Range Planning Subcommittee's Recommendations

The Long-Range Planning Subcommittee reviewed this report and the full set of survey comments. In an August 1995 conference call with Federal Judicial Center staff, the subcommittee identified the following three areas for possible further study.

- *Issues related to litigation practice.* The overarching question is whether the Bankruptcy Rules related to the various types of requests for relief in bankruptcy (applications, motions, contested matters, adversary proceedings) should be consolidated. A related question concerns the extent to which the Bankruptcy Rules should parallel the Civil Rules. More specific topics for study include rules of pleading, notice and service, responses to pleadings, discovery, taking of testimony, entry of orders and judgment, post-judgment motions, and appeals.
- *Issues related to attorney admissions and ethics.* This inquiry would address a number of interrelated issues concerning the admission of attorneys to practice in bankruptcy courts (e.g., the desirability of a national bankruptcy bar, admissions pro hac vice, local counsel rules), the employment and compensation of attorneys (e.g., issues relating to nunc pro tunc approval of employment), and attorney conduct and ethics (e.g., qualification and disqualification; conflicts of interest; contempt, sanctions, and other penalties for misconduct; and the desirability of a code of conduct for attorneys specific to bankruptcy).
- *Inconsistencies in the hearing requirements.* Inconsistencies between the hearing requirements of Code provisions that use “after notice and a hearing” or a similar phrase, as defined in 11 U.S.C. § 102, and the hearing requirements in related Bankruptcy Rules would be studied.

The subcommittee also identified other matters, largely unrelated to long-range planning, that the Advisory Committee on Bankruptcy Rules might want to consider further. The most prominent are as follows:

- various issues relating to claims and distribution (claims for administrative expenses; trading in claims; the need to file proofs of claims; deadlines for filing proofs of claims; treatment of late filed claims; service of proofs of claims; objections to claims; whether a claim must be filed to receive a distribution);
- time frames for filing objections to discharge and dischargeability complaints, and related issues;
- various provisions relating to exemptions and objections thereto;
- the addition of detailed procedures concerning withdrawal of the reference, comparable to those for appeal; a provision to allow the bankruptcy court to comment on motions for withdrawal of the reference;
- specific rules for chapter 9 cases instead of referencing chapter 11 provisions; a more comprehensive and tailored set of rules for chapter 12 and 13 cases; additional rules for cases ancillary to foreign proceedings; more generally, whether there should be separate rules for different chapters of the Code;
- provisions related to the joint administration, substantive consolidation, and separation of cases;
- inconsistencies and ambiguities in the removal and remand procedures (28 U.S.C. § 1452 and Rule 9027(a); Rule 9027(d) and Rules 7001 and 9014);
- various provisions relating to the filing of papers and the payment of filing fees (e.g., complications arising when a debtor defaults on installment payments after plan confirmation; payment of filing fees on the reopening of a case; inconsistency between the requirements in Rules 9011 and 1006 and those in Rule 5005(a));
- various provisions related to the sale of property;
- provisions relating to the dismissal and transfer of cases filed in an improper venue; and
- closing of chapter 11 cases.

In addition, the reader is referred to the comments in the section “Inconsistencies Between the Bankruptcy Code and Rules.”

The subcommittee also noted a number of suggestions respondents made to bring the rules and forms into conformity with the Bankruptcy Reform Act of 1994. Most of these suggestions had already been or were being addressed by the advisory committee. In addition, the subcommit-

tee referred survey comments concerning forms to the committee's Subcommittee on Forms. Although suggestions for rules changes are included in some of these comments, many relate to the clarity and organization of the forms, and their consistency with related Code and rule provisions.

Action by the Bankruptcy Rules Committee

At its September 1995 meeting, the Advisory Committee on Bankruptcy Rules established two subcommittees. One subcommittee, chaired by Gerald K. Smith, is examining issues related to attorney conflicts of interest. The other subcommittee, chaired by Kenneth N. Klee, is examining rules related to litigation in bankruptcy; its focus is on motions practice.

Appendix A Responses to “Yes/No” Questions

Question 1: Should the current organization of the Federal Rules of Bankruptcy Procedure and related forms be revised?

Bankruptcy Judges (Including Chiefs)

Response	Number	Percentage
Yes	27	17.0
No	100	62.9
No opinion	29	18.2
Missing/unclear	3	1.9
Total	159	

District Judges (Including Chiefs)

Response	Number	Percentage
Yes	3	2.8
No	27	25.5
No opinion	73	68.9
Missing/unclear	3	2.8
Total	106	

Circuit Judges (Including Chiefs)

Response	Number	Percentage
Yes	2	6.7
No	5	16.7
No opinion	22	73.3
Missing/unclear	1	3.3
Total	30	

Question 1 (continued)

Clerks of the Bankruptcy Courts

Response	Number	Percentage
Yes	12	25.5
No	28	59.6
No opinion	7	14.9
Missing/unclear	0	0.0
Total	47	

Bankruptcy Administrators

Response	Number	Percentage
No	1	50.0
No opinion	1	50.0
Total	2	

Chapter 13 Trustees

Response	Number	Percentage
Yes	7	14.9
No	28	59.6
No opinion	12	25.5
Missing/unclear	0	0.0
Total	47	

U.S. Attorneys

Response	Number	Percentage
Yes	9	14.1
No	25	39.1
No opinion	29	45.3
Missing/unclear	1	1.6
Total	64	

Question 1 (continued)

Chapter 7 Trustees

Response	Number	Percentage
Yes	12	17.6
No	32	47.1
No opinion	21	30.9
Missing/unclear	3	4.4
Total	68	

Bankruptcy Practitioners

Response	Number	Percentage
Yes	40	22.2
No	91	50.6
No opinion	41	22.8
Missing/unclear	8	4.4
Total	180	

Law Schools

Response	Number	Percentage
Yes	5	23.8
No	8	38.1
No opinion	8	38.1
Missing/unclear	0	0.0
Total	21	

Question 2: Do the Federal Rules of Bankruptcy Procedure and related forms cover matters that would be better left to the discretion of individual judges or districts?

Bankruptcy Judges (Including Chiefs)

Response	Number	Percentage
Yes	24	15.1
No	107	67.3
No opinion	25	15.7
Missing/unclear	3	1.9
Total	159	

District Judges (Including Chiefs)

Response	Number	Percentage
Yes	7	6.6
No	25	23.6
No opinion	71	67.0
Missing/unclear	3	2.8
Total	106	

Circuit Judges (Including Chiefs)

Response	Number	Percentage
Yes	1	3.3
No	8	26.7
No opinion	20	66.7
Missing/unclear	1	3.3
Total	30	

Question 2 (continued)

Clerks of the Bankruptcy Courts

Response	Number	Percentage
Yes	7	14.9
No	30	63.8
No opinion	10	21.3
Missing/unclear	0	0.0
Total	47	

Bankruptcy Administrators

Response	Number	Percentage
No	2	100.0
Total	2	

Chapter 13 Trustees

Response	Number	Percentage
Yes	6	12.8
No	28	59.6
No opinion	12	25.5
Missing/unclear	1	2.1
Total	47	

U.S. Attorneys

Response	Number	Percentage
Yes	1	1.6
No	42	65.6
No opinion	21	32.8
Missing/unclear	0	0.0
Total	64	

Question 2 (continued)

Chapter 7 Trustees

Response	Number	Percentage
Yes	4	5.9
No	39	57.4
No opinion	19	27.9
Missing/unclear	6	8.8
Total	68	

Other Bankruptcy Practitioners

Response	Number	Percentage
Yes	13	7.2
No	125	69.4
No opinion	32	17.8
Missing/unclear	10	5.6
Total	180	

Law Schools

Response	Number	Percentage
Yes	2	9.5
No	13	61.9
No opinion	6	28.6
Missing/unclear	0	0.0
Total	21	

Question 3: Are there any matters that should be addressed by the Federal Rules of Bankruptcy Procedure and related forms but currently are not?

Bankruptcy Judges (Including Chiefs)

Response	Number	Percentage
Yes	71	44.7
No	47	29.6
No opinion	37	23.3
Missing/unclear	4	2.5
Total	159	

District Judges (Including Chiefs)

Response	Number	Percentage
Yes	16	15.1
No	9	8.5
No opinion	78	73.6
Missing/unclear	3	2.8
Total	106	

Circuit Judges (Including Chiefs)

Response	Number	Percentage
Yes	2	6.7
No	1	3.3
No opinion	26	86.7
Missing/unclear	1	3.3
Total	30	

Question 3 (continued)

Clerks of the Bankruptcy Courts

Response	Number	Percentage
Yes	20	42.6
No	12	25.5
No opinion	15	31.9
Missing/unclear	0	0.0
Total	47	

Bankruptcy Administrators

Response	Number	Percentage
No	1	50.0
No opinion	1	50.0
Total	2	

Chapter 13 Trustees

Response	Number	Percentage
Yes	14	29.8
No	15	31.9
No opinion	16	34.0
Missing/unclear	2	4.3
Total	47	

U.S. Attorneys

Response	Number	Percentage
Yes	15	23.4
No	14	21.9
No opinion	34	53.1
Missing/unclear	1	1.6
Total	64	

Question 3 (continued)

Chapter 7 Trustees

Response	Number	Percentage
Yes	13	19.1
No	27	39.7
No opinion	22	32.4
Missing/unclear	6	8.8
Total	68	

Bankruptcy Practitioners

Response	Number	Percentage
Yes	73	40.6
No	50	27.8
No opinion	49	27.2
Missing/unclear	8	4.4
Total	180	

Law Schools

Response	Number	Percentage
Yes	6	28.6
No	4	19.0
No opinion	11	52.4
Missing/unclear	0	0.0
Total	21	

Question 4: Other than the inconsistencies created by the Bankruptcy Reform Act of 1994, are there any inconsistencies between the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and related forms that you have found problematic?

Bankruptcy Judges (Including Chiefs)

Response	Number	Percentage
Yes	35	22.0
No	88	55.3
No opinion	31	19.5
Missing/unclear	5	3.1
Total	159	

District Judges (Including Chiefs)

Response	Number	Percentage
Yes	3	2.8
No	36	34.0
No opinion	65	61.3
Missing/unclear	2	1.9
Total	106	

Circuit Judges (Including Chiefs)

Response	Number	Percentage
Yes	3	10.0
No	6	20.0
No opinion	20	66.7
Missing/unclear	1	3.3
Total	30	

Question 4 (continued)

Clerks of the Bankruptcy Courts

Response	Number	Percentage
Yes	11	23.4
No	26	55.3
No opinion	10	21.3
Missing/unclear	0	0.0
Total	47	

Bankruptcy Administrators

Response	Number	Percentage
No	1	50.0
No opinion	1	50.0
Total	2	

Chapter 13 Trustees

Response	Number	Percentage
Yes	7	14.9
No	26	55.3
No opinion	13	27.7
Missing/unclear	1	2.1
Total	47	

U.S. Attorneys

Response	Number	Percentage
Yes	7	10.9
No	33	51.6
No opinion	24	37.5
Missing/unclear	0	0.0
Total	64	

Question 4 (continued)

Chapter 7 Trustees

Response	Number	Percentage
Yes	3	4.4
No	34	50.0
No opinion	25	36.8
Missing/unclear	6	8.8
Total	68	

Bankruptcy Practitioners

Response	Number	Percentage
Yes	27	15.0
No	89	49.4
No opinion	50	27.8
Missing/unclear	14	7.8
Total	180	

Law Schools

Response	Number	Percentage
Yes	3	14.3
No	11	52.4
No opinion	6	28.6
Missing/unclear	1	4.8
Total	21	

Question 5: Should any of the Federal Rules of Bankruptcy Procedure or related forms be clarified to eliminate ambiguity, incompleteness, or vagueness?

Bankruptcy Judges (Including Chiefs)

Response	Number	Percentage
Yes	67	42.1
No	41	25.8
No opinion	48	30.2
Missing/unclear	3	1.9
Total	159	

District Judges (Including Chiefs)

Response	Number	Percentage
Yes	12	11.3
No	12	11.3
No opinion	79	74.5
Missing/unclear	3	2.8
Total	106	

Circuit Judges (Including Chiefs)

Response	Number	Percentage
Yes	2	6.7
No opinion	27	90.0
Missing/unclear	1	3.3
Total	30	

Clerks of the Bankruptcy Courts

Response	Number	Percentage
Yes	27	57.4
No	5	10.6
No opinion	15	31.9
Missing/unclear	0	0.0
Total	47	

Question 5 (continued)

Bankruptcy Administrators

Response	Number	Percentage
No	1	50.0
No opinion	1	50.0
Total	2	

Chapter 13 Trustees

Response	Number	Percentage
Yes	11	23.4
No	14	29.8
No opinion	20	42.6
Missing/unclear	2	4.3
Total	47	

U.S. Attorneys

Response	Number	Percentage
Yes	16	25.0
No	15	23.4
No opinion	31	48.4
Missing/unclear	2	3.1
Total	64	

Chapter 7 Trustees

Response	Number	Percentage
Yes	10	14.7
No	22	32.4
No opinion	30	44.1
Missing/unclear	6	8.8
Total	68	

Question 5 (continued)

Bankruptcy Practitioners

Response	Number	Percentage
Yes	53	29.4
No	43	23.9
No opinion	65	36.1
Missing/unclear	19	10.6
Total	180	

Law Schools

Response	Number	Percentage
Yes	5	23.8
No	4	19.0
No opinion	12	57.1
Missing/unclear	0	0.0
Total	21	

Question 6: The Federal Rules of Bankruptcy Procedure make various Federal Rules of Civil Procedure, or modifications thereof, applicable to bankruptcy matters. Have you found any of the incorporated rules to be problematic due to a failure to take into account differences between bankruptcy and other civil litigation?

Bankruptcy Judges (Including Chiefs)

Response	Number	Percentage
Yes	46	28.9
No	85	53.5
No opinion	26	16.4
Missing/unclear	2	1.3
Total	159	

District Judges (Including Chiefs)

Response	Number	Percentage
Yes	10	9.4
No	38	35.8
No opinion	55	51.9
Missing/unclear	3	2.8
Total	106	

Circuit Judges (Including Chiefs)

Response	Number	Percentage
Yes	5	16.7
No	5	16.7
No opinion	18	60.0
Missing/unclear	2	6.7
Total	30	

Question 6 (continued)

Clerks of the Bankruptcy Courts

Response	Number	Percentage
Yes	11	23.4
No	26	55.3
No opinion	10	21.3
Missing/unclear	0	0.0
Total	47	

Bankruptcy Administrators

Response	Number	Percentage
No	2	100.0
Total	2	

Chapter 13 Trustees

Response	Number	Percentage
Yes	4	8.5
No	23	48.9
No opinion	15	31.9
Missing/unclear	5	10.6
Total	47	

U.S. Attorneys

Response	Number	Percentage
Yes	9	14.1
No	36	56.3
No opinion	19	29.7
Missing/unclear	0	0.0
Total	64	

Question 6 (continued)

Chapter 7 Trustees

Response	Number	Percentage
Yes	8	11.8
No	38	55.9
No opinion	16	23.5
Missing/unclear	6	8.8
Total	68	

Bankruptcy Practitioners

Response	Number	Percentage
Yes	41	22.8
No	93	51.7
No opinion	30	16.7
Missing/unclear	16	8.9
Total	180	

Law Schools

Response	Number	Percentage
Yes	3	14.3
No	15	71.4
No opinion	3	14.3
Missing/unclear	0	0.0
Total	21	

Appendix B

Subject Categories of Survey Comments

Question 1: Should the current organization of the Federal Rules of Bankruptcy Procedure and related forms be revised? If YES, please describe the problem(s) with the current organization of the rules and related forms and how the organization might be improved.

General comments about the organization of the rules
Improved index, table of contents, cross-referencing, and titles of rules
Numbering of the rules to parallel the Bankruptcy Code
Organization, format, and referencing of forms
Organization of notice and service requirements
Organization of the rules concerning adversary proceedings, contested matters, and appeals
Reorganization of the rules to parallel the Bankruptcy Code
Comments unrelated to the organization of the rules but given in response to Question 1
 Claims
 Forms
 Local rules
 Motions practice and adversary proceedings
 Notice and service
 Miscellaneous comments: Specific rule provisions
 (objections to exemptions; bonding of debtor in possession; abandonment and filing of a “no asset” final report; automatic stay)
 Miscellaneous comments: Policy issues
 (discretion given to a bankruptcy court; the trustee system; appointment of bankruptcy judges; relitigation of divorce proceedings; ADR)

Question 2: Do the Federal Rules of Bankruptcy Procedure and related forms cover matters that would be better left to the discretion of individual judges or districts? If YES, please list below each rule or form and briefly describe the subject matter that you think ought to be left to the discretion of individual judges or districts and why.

Automatic stay

Claims

Discharge/dischargeability

Discovery

Dismissal, conversion, and transfer of cases

Employment and compensation of professionals

Exemptions

Filing of papers and payment of filing fees

Forms

Judgments

Motions practice and adversary proceedings

Notice and service

Records

Time periods (generally)

Withdrawal of the reference

Miscellaneous comments (redemption; petition preparers; class actions; 9000 series of rules; notice of appearance)

General comments regarding judicial discretion and the scope of the Bankruptcy Rules

Question 3: Are there any matters that should be addressed by the Federal Rules of Bankruptcy Procedure and related forms but currently are not? If YES, please describe below each matter you think ought to be addressed by the rules and related forms and where within the current organization (and any reorganization you proposed in Question 1) of the rules and forms it should be addressed.

Administrative expenses
Appeal and stay pending appeal
Attorney admissions and discipline/appearance and withdrawal/ representation of corporation by counsel
Automatic stay and relief from the automatic stay
Bankruptcy Reform Act
Chapter 9
Chapter 11
Chapter 13
Claims
Contempt
Deposit in court and disbursement of funds by court
Discharge/dischargeability
Discovery and Rule 2004 examinations
Dismissal and conversion of cases
Distribution
Employment and compensation of professionals
Ethics and penalties for misconduct
Exemptions
Filing of papers and payment of filing fees
Forms
Fraudulent transfers
Joint administration/substantive consolidation/separated cases
Judgments and orders
Jury trials
Local rules

Question 3 (continued)

Motions practice and adversary proceedings

Notice and service

Records

Report and accounting

Sales of property

Trustees

U.S. trustee

Valuation/reimbursement to secured creditors

Withdrawal of the reference

Miscellaneous comments (in forma pauperis; discretion of court to relax rules; mandamus; burden of proof; bonding of debtor in possession; international insolvencies; ADR; liens)

General comments regarding the desirability of uniformity of practice across districts and according parity to rules that augment but do not conflict with the Bankruptcy Code

Question 4: Other than the inconsistencies created by the Bankruptcy Reform Act of 1994, are there any inconsistencies between the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and related forms that you have found problematic? If YES, please list below each code provision(s) and the inconsistent rule(s) or form(s) and describe the nature of the inconsistency and how it might be remedied.

Administrative expenses
Appeal and stay pending appeal
Automatic stay and relief from the automatic stay
Bankruptcy Reform Act of 1994
Claims and distribution
Contempt
Discharge/dischargeability
Disclosure statements
Discovery
Dismissal, conversion, and transfer of cases
Duties of debtor
Employment and compensation of professionals
Exemptions
Filing of papers and payment of filing fees
Forms
Involuntary petitions
Meeting of creditors
Motions practice and adversary proceedings (including hearings, offer of judgment, sanctions, motion to compromise)
Notice and service
Plans (chapters 11 and 13)
Reaffirmation agreements
Records
Removal
Reopening of case

Question 4 (continued)

Miscellaneous comments (case closing; collective bargaining; burden of proof; rights of partnership trustee; cases ancillary to foreign proceedings)

General comments regarding inconsistencies between the Bankruptcy Code and Bankruptcy Rules

Question 5: Should any of the Federal Rules of Bankruptcy Procedure or related forms be clarified to eliminate ambiguity, incompleteness, or vagueness? If YES, please list below each rule or form and describe the ambiguity, incompleteness, or vagueness, and how the rule or form might be clarified.

Administrative expenses
Appeal and stay pending appeal
Attorney appearance
Bankruptcy Reform Act of 1994
Case closing
Claims
Contempt
Definitions
Discharge/dischargeability
Disclosure statement
Discovery and Rule 2004 examinations
Dismissal, conversion, transfer, and reopening of cases
Duties of debtor and trustee
Employment and compensation of professionals
Exemptions
Filing of papers (including amendments to petition and related papers)
and payment of filing fees
Forms
Judgments, proposed findings of fact and conclusions of law, and orders
Motions practice and adversary proceedings (subsumes some more specific related categories)
Notice and service
Plans (chapters 11 and 13)
Post-judgment motions
Reaffirmation agreements
Removal
Sanctions
Withdrawal of the reference

Question 5 (continued)

Miscellaneous comments (cases ancillary to foreign proceedings; chapter 9; joint administration and consolidation; abandonment or disposition of property; use, sale, and lease of property; involuntary petition; U.S. trustee)

General comments (e.g., the benefit of clarifying versus the drawbacks of changing the rules and the drawback of using commentary to explain rules)

Question 6: The Federal Rules of Bankruptcy Procedure make various Federal Rules of Civil Procedure, or modifications thereof, applicable to bankruptcy matters. Have you found any of the incorporated rules to be problematic due to a failure to take into account differences between bankruptcy and other civil litigation? If YES, please list below the rule or rules and describe the nature of the problem and how it might be remedied.

Appeal and stay pending appeal

Class actions

Computation of time

Default judgments

Discovery and Rule 2004 examinations

Dismissal of proceedings

Filing of papers and payment of filing fees

Judgments and orders

Juries

Local rules

Offer of judgment

Post-judgment motions

Pretrial procedures

Response times (generally)

Rules of pleading

Sanctions

Service

Summary judgment

Taking of testimony

Withdrawal of the reference

Miscellaneous comments unrelated to Question 6

General comments (e.g., the benefits and disadvantages of incorporating Civil Rules into the Bankruptcy Rules)

General Comments: Respondents were also asked to provide any other comments or proposals they thought would assist the Advisory Committee on Bankruptcy Rules in its review of the Federal Rules of Bankruptcy Procedure.

ADR

Appeal and stay pending appeal

Bankruptcy Reform Act of 1994

Case closing

Chapter 13

Claims

Computation of time and time periods generally

Contempt

Deposit in court

Discharge/dischargeability

Disclosure statements

Discovery and Rule 2004 examinations

Dismissal and conversion of cases

Disqualification

Employment and compensation of professionals

Exemptions

Filing of papers (including amendments to petition and related papers)
and payment of filing fees

Forms

Index to rules

Joint administration

Judgments and orders

Jury trials

Local rules

Meeting of creditors

Motions practice and adversary proceedings

Notice and service

Plans (chapters 11 and 13)

General Comments (continued)

Protective orders

Records

Removal

Sales of assets

Sanctions

Special masters

Trustees

U.S. trustee

Verification of papers, oaths, affirmations, and related matters

General comments about the Bankruptcy Rules

General (broader policy issues)

General (information about respondents; nonsubstantive comments)