COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

TO: Honorable Alicemarie H. Stotler, Chair
Standing Committee on Rules of Practice
and Procedure

FROM: Honorable Paul Mannes, Chair
Advisory Committee on Bankruptcy Rules

SUBJECT: Proposed Amendments to Bankruptcy Rules 1006, 1007, 1019, 2002, 2015, 3002, 3016, 4004, 5005, 7004, 8008, and 9006

DATE: May 14, 1994

On behalf of the Advisory Committee on Bankruptcy Rules, it is my honor to submit proposals to amend the Federal Rules of Bankruptcy Procedure.

I request that the preliminary draft of these proposed amendments be circulated to the bench and bar and that views and comments be solicited. I further request that the Advisory Committee be permitted to conduct a public hearing to afford an opportunity for the oral presentation of views.

The proposed amendments are as follows:

(1) Rule 1006(a) is amended to include within the scope of the rule any fees prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1930(b) that is payable to the clerk upon commencement of a case. This fee will be payable in installments in the same manner that the filing fee prescribed by 28 U.S.C. § 1930(a) is payable in installments pursuant to Rule 1006(b).

(2) Rule 1007(c) is amended to provide that schedules and statements filed prior to conversion of a case to another chapter are treated as filed in the converted case, regardless of the chapter the case was in prior to conversion. The rule now provides that schedules and statements filed prior to conversion

are treated as filed in the converted case only if the case was in chapter 7 prior to conversion. Since 1991, the same official forms for schedules and statements have been used in all cases and, therefore, limiting this provision to cases that were in chapter 7 prior to conversion is no longer necessary.

(3) Rule 1019(7) is abrogated. Subdivision (7) provides that, in a case converted to chapter 7, an extension of time to file claims against a surplus granted pursuant to Rule 3002(c)(6) shall be applicable to postpetition, pre-conversion claims. This subdivision is abrogated to conform to the abrogation of Rule 3002(c)(6) and the addition of Rule 3002(d).

(4) Rule 2002, which governs notices, is amended in several respects. Subdivision (a)(4) -- requiring notice of the time for filing claims against a surplus in a chapter 7 case -- is abrogated to conform to the abrogation of Rule 3002(c)(6) (see below). To reduce expenses in administering chapter 7 cases, subdivision (f)(8) is amended to eliminate the need to mail to all parties copies of the summary of the chapter 7 trustee's final account. Subdivision (h), which permits the court to eliminate the need to send notices to creditors who have failed to file claims, is revised in several ways: (1) to clarify that such an order may not be issued if creditors still have time to file claims because it is a "no asset" case and a "notice of no dividend" has been sent; (2) to clarify that an order under this subdivision does not affect notices that must be sent to parties who are not creditors; (3) to provide that a creditor who is an infant, an incompetent person, or a governmental unit is entitled to receive notices if the time for that creditor to file a claim has been extended under Rule 3002(c)(1) or (c)(2); and (4) to delete cross-references to Rule 2002(a)(4) and Rule 3002(c)(6), which are being abrogated.

(5) Rule 2015(b) and (c) are amended to clarify that a debtor in possession or trustee in a chapter 12 case, or a debtor engaged in business in a chapter 13 case, does not have to file an inventory of the debtor's property unless the court so directs.

(6) Rule 3002(c)(6) is abrogated, and new Rule 3002(d) is added, to make the rule consistent with section 726 of the Bankruptcy Code which provides that, under certain circumstances, a creditor holding a claim that has been tardily filed may be entitled to receive a distribution in a chapter 7 case.

(7) Rule 3016(a) is abrogated because it could have the effect of extending the debtor's exclusive period for filing a chapter 11 plan without the court, after notice and a hearing, finding cause for an extension as is required by section 1121(d) of the Bankruptcy Code.

(8) Rule 4004(c) is amended to delay the debtor's discharge in a chapter 7 case if there is a pending motion to extend the time for filing a complaint objecting to discharge or if the filing fee has not been paid in full.

(9) Rule 5005(a) is amended to authorize local rules that permit documents to be filed, signed. or verified by electronic means, provided that such means are consistent with technical standards, if any, established by the Judicial Conference. The rule also provides that a document filed by electronic means constitutes a "written paper" for the purpose of applying the rules and constitutes a public record open to examination. The purpose of these amendments is to facilitate the filing, signing, or verification of documents by computer-to-computer transmission without the need to reduce them to paper form in the clerk's office.

(10) Rule 7004 is amended to conform to the 1993 amendments to Rule 4 of the Federal Rules of Civil Procedure. First, cross-references to subdivisions of F.R.Civ.P. 4 are changed to conform to the new structure of the Civil Rule. Second, substantive changes to Rule 4 F.R.Civ.P. that became effective in 1993 are implemented in Rule 7004 to the extent that they are consistent with the continuing availability under Rule 7004 of service by first class mail as an alternative to the methods of personal service provided under Rule 4 F.R.Civ.P.

(11) Rule 8008 is amended to permit district courts and, where bankruptcy appellate panels have been authorized, circuit councils to adopt local rules to allow filing, signing, or verification of documents by electronic means in the same manner and with the same limitations that are applicable to bankruptcy courts under Rule 5005(a), as amended.

(12) Rule 9006 is amended to conform to the abrogation of Rule 2002(a)(4) and the renumbering of Rule 2002(a)(8).

Drafts of the proposed amendments, and Advisory Committee Notes explaining them, are attached.

Rule 1006. Filing Fee

(a) GENERAL REQUIREMENT. Every petition shall be accompanied by the ~~prescribed~~ filing fee except as provided in subdivision (b) of this rule. For the purpose of this rule, "filing fee" means the filing fee prescribed by 28 U.S.C. § 1930(a)(1)-(a)(5) and any other fee prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code.

(b) PAYMENT OF FILING FEE IN INSTALLMENTS.

(1) Application for Permission to Pay Filing Fee in Installments. A voluntary petition by an individual shall be accepted for filing if accompanied by the debtor's signed application stating that the debtor is unable to pay the filing fee except in installments. The application shall state the proposed terms of the installment payments and that the applicant has neither paid any money nor transferred any property to an attorney for services in connection with the case.

(2) Action on Application. Prior to the meeting of creditors, the court may order the filing fee paid to the clerk or grant leave to pay in installments and fix the number, amount and dates of payment. The number of installments shall not exceed four, and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the

court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition.

(3) Postponement of Attorney's Fees. The filing fee must be paid in full before the debtor or chapter 13 trustee may pay an attorney or any other person who renders services to the debtor in connection with the case.

COMMITTEE NOTE

The Judicial Conference prescribes miscellaneous fees pursuant to 28 U.S.C. § 1930(b). In 1992, a $30 miscellaneous administrative fee was prescribed for all chapter 7 and chapter 13 cases. The Judicial Conference fee schedule was amended in 1993 to provide that an individual debtor may pay this fee in installments.

Subdivision (a) of this rule is amended to clarify that every petition must be accompanied by any fee prescribed under 28 U.S.C. 1930(b) that is required to be paid when a petition is filed, as well as the filing fee prescribed by 28 U.S.C. § 1930(a). By defining "filing fee" to include Judicial Conference fees, the procedures set forth in subdivision (b) for paying the filing fee in installments will also apply with respect to any Judicial Conference fee required to be paid at the commencement of the case.

Rule 1007. Lists, Schedules and Statements; Time Limits

* * *

(c) TIME LIMITS. The schedules and statements, other than the statement of intention, shall be filed with the petition in a voluntary case, or if the petition is accompanied by a list of all the debtor's creditors and their addresses, within 15 days thereafter, except as otherwise provided in subdivisions (d), (e), and (h) of this rule. In an involuntary case the schedules and statements, other than the statement of intention, shall be filed by the debtor within 15 days after entry of the order for relief. Schedules and statements ~~previously~~ filed prior to the conversion of a case to another chapter ~~in a pending chapter 7 case~~ shall be deemed filed in ~~a superseding~~ the converted case unless the court directs otherwise. Any extension of time for the filing of the schedules and statements may be granted only on motion for cause shown and on notice to the United States trustee and to any committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code, trustee, examiner, or other party as the court may direct. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.

COMMITTEE NOTE

Subdivision (c) is amended to provide that schedules and statements filed prior to the conversion of a case to another chapter shall be deemed filed in the converted case, whether or not the case was a chapter 7 case prior to conversion. This amendment is in recognition of the 1991 amendments to the Official Forms that abrogated the Chapter 13 Statement and made the same forms for schedules and statements applicable in all cases.

This subdivision also contains a technical correction. The phrase "superseded case" creates the erroneous impression that conversion of a case results in a new case that is distinct from the original case. The effect of conversion of a case is governed by § 348 of the Code.

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

When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case:

* * * *

~~(7) EXTENSION OF TIME TO FILE CLAIMS AGAINST SURPLUS. Any extension of time for the filing of claims against a surplus granted pursuant to Rule 3002(c)(6), shall apply to holders of claims who failed to file their claims within the time prescribed, or fixed by the court pursuant to paragraph (6) of this rule, and notice shall be given as provided in Rule 2002.~~

COMMITTEE NOTE

Subdivision (7) is abrogated to conform to the abrogation of Rule 3002(c)(6) and the addition of Rule 3002(d). If a proof of claim is tardily filed after a case is converted to a chapter 7 case, the claim may be allowed to the extent that the creditor, as the holder of an unsecured claim proof of which is tardily filed, is entitled to receive a distribution under section 726 of the Code.

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

(a) TWENTY-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i) and (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 20 days notice by mail of (1) the meeting of creditors pursuant to § 341 of the Code; (2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice; (3) the hearing on approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent; ~~(4) the date fixed for the filing of claims against a surplus in an estate as provided in Rule 3002(c)(6);~~ ~~(5)~~ (4) in a chapter 7 liquidation, a chapter 11 reorganization case, and a chapter 12 family farmer debt adjustment case, the hearing on the dismissal of the case, unless the hearing is pursuant to § 707(b) of the Code, or the conversion of the case to another chapter; ~~(6)~~ (5) the time fixed to accept or reject a proposed modification of a plan; ~~(7)~~ (6)

hearings on all applications for compensation or reimbursement of expenses totalling in excess of $500; ~~(8)~~ (7) the time fixed for filing proofs of claims pursuant to Rule 3003(c); and ~~(9)~~ (8) the time fixed for filing objections and the hearing to consider confirmation of a chapter 12 plan.

* * * *

(c) CONTENT OF NOTICE.

* * * *

(2) Notice of Hearing on Compensation. The notice of a hearing on an application for compensation or reimbursement of expenses required by subdivision ~~(a)(7)~~ (a)(6) of this rule shall identify the applicant and the amounts requested.

* * * *

(f) OTHER NOTICES. Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, all creditors, and indenture trustees notice by mail of

* * * *

(8) a summary of the trustee's final report ~~and account~~ in a chapter 7 case if the net proceeds realized exceed $1,500.

* * * *

(h) NOTICES TO CREDITORS WHOSE CLAIMS ARE FILED. In a chapter 7 case, ~~the court may,~~ after 90 days following the

first date set for the meeting of creditors pursuant to § 341 of the Code or, if a notice of insufficient assets to pay a dividend has been given to creditors pursuant to subdivision (e) of this rule, after 90 days following the mailing of a notice of the time for filing claims pursuant to Rule 3002(c)(5), the court may~~,~~ direct that all notices required by subdivision (a) of this rule~~, except clause (4) thereof,~~ be mailed only to the debtor, the trustee, all indenture trustees, creditors ~~whose claims~~ who hold claims for which proofs of claim have been filed, and creditors, if any, who are still permitted to file claims by reason of an extension granted under Rule ~~3002(c)(6)~~ 3002(c)(1) or (c)(2).

(i) NOTICES TO COMMITTEES. Copies of all notices required to be mailed under this rule shall be mailed to the committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or to their authorized agents. Notwithstanding the foregoing subdivisions, the court may order that notices required by subdivision (a)(2), (3) and ~~(7)~~ (6) of this rule be transmitted to the United States trustee and be mailed only to the committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or to their authorized agents and to the creditors and equity security holders who serve on the trustee or debtor in possession and file a request that all notices be mailed to them. A committee appointed pursuant to § 1114 shall

receive copies of all notices required by subdivisions (a)(1), ~~(a)(6)~~ (a)(5), (b), (f)(2), and (f)(7), and such other notices as the court may direct.

* * * *

(k) NOTICES TO UNITED STATES TRUSTEE. Unless the case is a chapter 9 municipality case or unless the United States trustee otherwise requests, the clerk, or some other person as the court may direct, shall transmit to the United States trustee notice of the matters described in subdivisions (a)(2), (a)(3), ~~(a)(5)~~ (a)(4), ~~(a)(9)~~ (a)(8), (b), (f)(1), (f)(2), (f)(4), (f)(6), (f)(7), and (f)(8) of this rule and notice of hearings on all applications for compensation or reimbursement of expenses. Notices to the United States trustee shall be transmitted within the time prescribed in subdivision (a) or (b) of this rule. The United States trustee shall also receive notice of any other matter if such notice is requested by the United States trustee or ordered by the court. Nothing in these rules shall require the clerk or any other person to transmit to the United States trustee any notice, schedule, report, application or other document in a case under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq.

* * * *

COMMITTEE NOTE

Paragraph (a)(4) is abrogated to conform to the abrogation of Rule 3002(c)(6). The remaining paragraphs of subdivision (a) are renumbered, and references to these paragraphs contained in other subdivisions of this

rule are amended accordingly.

Paragraph (f)(8) is amended so that a summary of the trustee's final account, which is prepared after distribution of property, does not have to be mailed to the debtor, all creditors, and indenture trustees in a chapter 7 case. Parties are sufficiently protected by receiving a summary of the trustee's final report that informs parties of the proposed distribution of property.

Subdivision (h) is amended (1) to provide that an order under this subdivision may not be issued if a notice of no dividend is given under Rule 2002(e) and the time for filing claims has not expired as provided in Rule 3002(c)(5); (2) to clarify that notices required to be mailed by subdivision (a) to parties other than creditors must be mailed to those entities despite an order issued under subdivision (h); (3) to provide that if the court, pursuant to Rule 3002(c)(1) or 3003(c)(2), has granted an extension of time to file a proof of claim, the creditor for whom the extension has been granted must continue to receive notices despite an order issued under subdivision (h); and (4) to delete references to subdivision (a)(4) and Rule 3002(c)(6), which have been abrogated.

Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case

* * * *

(b) CHAPTER 12 TRUSTEE AND DEBTOR IN POSSESSION. In a chapter 12 family farmer's debt adjustment case, the debtor in possession shall perform the duties prescribed in clauses ~~(1)-(4)~~ (2)-(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this paragraph.

(c) CHAPTER 13 TRUSTEE AND DEBTOR.

(1) Business Cases. In a chapter 13 individual's debt adjustment case, when the debtor is engaged in business, the debtor shall perform the duties prescribed by clauses ~~(1)-(4)~~ (2)-(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court.

* * * *

COMMITTEE NOTE

Under subdivision (a)(1), the trustee in a chapter 7 case and, if the court directs, the trustee or debtor in possession in a chapter 11 case is required to file and transmit to the United States trustee a complete inventory of the debtor's

property within 30 days after qualifying as trustee or debtor in possession, unless such an inventory has already been filed. Subdivisions (b) and (c) are amended to clarify that a debtor in possession and trustee in a chapter 12 case, and a debtor in a chapter 13 case where the debtor is engaged in business, are not required to file and transmit to the United States trustee a complete inventory of the property of the debtor unless the court so directs. If the court so directs, the court also fixes the time limit for filing and transmitting the inventory.

Rule 3002. Filing Proof of Claim or Interest

(a) NECESSITY FOR FILING. An unsecured creditor or an equity security holder must file a proof of claim or interest in accordance with this rule for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004 and 3005.

* * * *

(c) TIME FOR FILING. In a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt adjustment case, a proof of claim shall be filed within 90 days after the first date set for the meeting of creditors called pursuant to § 341(a) of the Code, except as follows:

* * * *

~~(6) In a chapter 7 liquidation case, if a surplus remains after all claims allowed have been paid in full, the court may grant an extension of time for the filing of claims against the surplus not filed within the time herein above prescribed.~~

(d) TARDILY FILED CLAIM IN CHAPTER 7 CASE. Notwithstanding subdivision (a) of this rule, if a creditor files a proof of claim in a chapter 7 case after the expiration of the time for filing the proof of claim prescribed in subdivision (c) of this rule, the creditor, as

the holder of an unsecured claim proof of which is tardily filed, is entitled to receive a distribution to the extent provided under section 726 of the Code.

COMMITTEE NOTE

The abrogation of subdivision (c)(6) and the addition of subdivision (d) are designed to make this rule consistent with § 726 of the Code. Section 726(a)(2)(C) and § 726(a)(3) recognize that in a chapter 7 case a creditor holding a claim that has been tardily filed may be entitled to receive a distribution.

This amendment is not intended to resolve the issue of whether a claim of the kind entitled to priority under § 507 of the Code has the right to priority in distribution under § 726(a)(1) if the proof of claim is tardily filed. Compare, e.g., In re Century Boat Co., 986 F.2d 154 (6th Cir. 1993), with In re Mantz, 151 B.R. 928 (9th Cir. BAP 1993). The resolution of this issue and any other issues regarding priority in distribution are left to the courts as matters of substantive law and statutory interpretation.

Rule 3016. Filing of Plan and Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases

~~(a) TIME FOR FILING PLAN. 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.~~

~~(b)~~ (a) IDENTIFICATION OF PLAN. Every proposed plan and any modification thereof shall be dated and, in a chapter 11 case, identified with the name of the entity or entities submitting or filing it.

~~(c)~~ (b) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure statement pursuant to § 1125 or evidence showing compliance with § 1126(b) of the Code shall be filed with the plan or within a time fixed by the court.

COMMITTEE NOTE

Section 1121(c) gives a party in interest the right to file a chapter 11 plan after expiration of the period when only the debtor may file a plan. Under § 1121(d), the exclusive period in which only the debtor may file a plan may be extended, but only if a party in interest so requests and the court, after notice and a hearing, finds cause for an extension. Subdivision (a) is abrogated because it could have the effect of extending the debtor's exclusive period for filing a plan without satisfying the requirements of § 1121(d). The abrogation of subdivision (a) does not affect the court's discretion with respect to the scheduling of hearings on the approval of disclosure statements when more than one plan has been filed.

Rule 4004. Grant or Denial of Discharge

* * * *

(c) GRANT OF DISCHARGE. In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case pursuant to Rule 1017(e), the court shall forthwith grant the discharge unless (1) the debtor is not an individual, (2) a complaint objecting to the discharge has been filed, (3) the debtor has filed a waiver under § 727(a)(10), ~~or~~ (4) a motion to dismiss the case under Rule 1017(e) is pending, (5) a motion to extend the time for filing a complaint objecting to discharge is pending, or (6) the debtor has not paid in full the filing fee prescribed by 28 U.S.C. § 1930(a) and any fee prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code. Notwithstanding the foregoing, on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within such period, the court may defer entry of the order to a date certain.

* * * *

COMMITTEE NOTE

Subsection (c) is amended to delay entry of the order of discharge if a motion under Rule 4004(b) to extend the time for filing a complaint objecting to discharge is pending. This subdivision also is amended

to delay entry of the discharge order if the debtor has not paid in full the filing fee and the administrative fee required to be paid upon the commencement of the case. If the debtor is authorized to pay the fees in installments in accordance with Rule 1006, the discharge order will not be entered until the final installment has been paid.

Rule 5005. Filing and Transmittal of Papers

(a) FILING.

(1) Place of Filing. The lists, schedules, statements, proofs of claim or interest, complaints, motions, applications, objections and other papers required to be filed by these rules, except as provided in 28 U.S.C. § 1409, shall be filed with the clerk in the district where the case under the Code is pending. The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and they shall be forthwith transmitted to the clerk. The clerk shall not refuse to accept for filing any petition or other paper presented for the purpose of filing solely because it is not presented in proper form as required by these rules or any local rules or practices.

(2) Filing by Electronic Means. A court by local rule may permit documents to be filed, signed, or verified by electronic means, provided such means are consistent with technical standards, if any, established by the Judicial Conference of the United States. A document filed by electronic means in accordance with this rule constitutes a written paper for the purpose of applying these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107 of the Code.

* * * *

COMMITTEE NOTE

The rule is amended to permit, but not require, courts to adopt local rules that allow filing, signing, or verifying of documents by electronic means. However, such local rules must be consistent with technical standards, if any, promulgated by the Judicial Conference of the United States.

An important benefit to be derived by permitting filing by electronic means is that the extensive volume of paper received and maintained as records in the clerk's office will be reduced substantially. With the receipt of electronic data transmissions by computer, the clerk may maintain records electronically without the need to reproduce them in tangible paper form.

Judicial Conference standards governing the technological aspects of electronic filing will result in uniformity among judicial districts to accommodate an increasingly national bar. By delegating to the Judicial Conference the establishment and future amendment of national standards for electronic filing, the Supreme Court and Congress will be relieved of the burden of reviewing and promulgating detailed rules dealing with complex technological standards. Another reason for leaving to the Judicial Conference the formulation of technological standards for electronic filing is that advances in computer technology occur often, and changes in the technological standards may have to be implemented more frequently than would be feasible by rule amendment under the Rules Enabling Act process.

It is anticipated that standards established by the Judicial Conference will govern technical specifications for electronic data transmission, such as requirements relating to the formatting of data, speed of transmission, means to transmit copies of supporting documentation, and security of communication procedures. In addition, before procedures for electronic filing are implemented, standards must be established to assure the proper maintenance and integrity of the record and to provide appropriate access and retrieval mechanisms. These matters will be governed by local rules until system-wide standards are adopted by the Judicial Conference.

Rule 9009 requires that the Official Forms shall be observed and used "with alterations as may be appropriate." Compliance with local rules and any Judicial Conference standards with respect to the

formatting or presentation of electronically transmitted data, to the extent that they do not conform to the Official Forms, would be an appropriate alteration within the meaning of Rule 9009.

These rules require that certain documents be in writing. For example, Rule 3001 states that a proof of claim is a "written statement." Similarly, Rule 3007 provides that an objection to a claim "shall be in writing." Pursuant to the new subdivision (a)(2), any requirement under these rules that a paper be written may be satisfied by filing the document by electronic means, notwithstanding the fact that the clerk neither receives nor prints a paper reproduction of the electronic data.

Section 107(a) of the Code provides that a "paper" filed in a case is a public record open to examination by an entity at reasonable times without charge, except as provided in § 107(b). The amendment to subdivision (a)(2) provides that an electronically filed document is to be treated as such a public record.

Although under subdivision (a)(2) electronically filed documents may be treated as written papers or as signed or verified writings, it is important to emphasize that such treatment is only for the purpose of applying these rules. In addition, local rules and Judicial Conference standards regarding verification must satisfy the requirements of 28 U.S.C. § 1746.

Rule 7004. Process; Service of Summons, Complaint

(a) SUMMONS; SERVICE; PROOF OF SERVICE. Rule ~~4(a), (b), (c)(2)(C)(i), (d), (e) and (g)-(j)~~ 4(a), (b), (c)(1), (d)(1), (e)-(j), (l), and (m) F.R.Civ.P. applies in adversary proceedings. Personal service pursuant to Rule ~~4(d)~~ 4(e)-(j) F.R.Civ.P. may be made by any person not less than 18 years of age who is not a party and the summons may be delivered by the clerk to any such person.

(b) SERVICE BY FIRST CLASS MAIL. In addition to the methods of service authorized by Rule ~~4(e)(2)(C)(i) and (d)~~ 4(e) -(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

(2) Upon an infant or an incompetent person, by mailing a copy of the summons and complaint to the person upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such defendant in the courts of general jurisdiction of that state. The summons and complaint in such case shall be addressed to the person required to be served at that person's dwelling house or usual place of abode or at the place where the person

regularly conducts a business or profession.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to ~~also~~ the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to such officer or agency. The court shall allow a reasonable time for service under this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the

Attorney General of the United States.

(5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service under this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in

the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if a copy of the summons and complaint is mailed to the entity upon whom service is prescribed to be served by any statute of the United States or by the law of the state in which service is made when an action is brought against such defendant in the court of general jurisdiction of that state.

(8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision.

(9) Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing copies of the summons and complaint to the debtor at the address shown in the petition or statement of affairs or to such other address as the debtor may designate in a filed writing

and, if the debtor is represented by an attorney, to the attorney at the attorney's post-office address.

(10) Upon the United States trustee, when the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending.

(c) SERVICE BY PUBLICATION. If a party to an adversary proceeding to determine or protect rights in property in the custody of the court cannot be served as provided in Rule ~~4(d) or (i)~~ 4(e)-(j) F.R.Civ.P. or subdivision (b) of this rule, the court may order the summons and complaint to be served by mailing copies thereof by first class mail postage prepaid, to the party's last known address and by at least one publication in such manner and form as the court may direct.

(d) NATIONWIDE SERVICE OF PROCESS. The summons and complaint and all other process except a subpoena may be served anywhere in the United States.

~~(e) SERVICE ON DEBTOR AND OTHERS IN FOREIGN COUNTRY. The summons and complaint and all other process except a subpoena may be served as provided in Rule 4(d)(1) and (d)(3) F.R.Civ.P. in a foreign country (A) on the debtor, any person required to perform the duties of a debtor, any~~

~~general partner of a partnership debtor, or any attorney who is a party to a transaction subject to examination under Rule 2017; or (B) on any party to an adversary proceeding to determine or protect rights in property in the custody of the court; or (C) on any person whenever such service is authorized by a federal or state law referred to in Rule 4(e)(2)(C)(i) or (e) F.R.Civ.P.~~

~~(f)~~ (e) SUMMONS: TIME LIMIT FOR SERVICE. If service is made pursuant to Rule ~~4(d)(1)-(6)~~ 4(e)-(j) F.R.Civ.P. it shall be made by delivery of the summons and complaint within 10 days following issuance of the summons. If service is made by any authorized form of mail, the summons and complaint shall be deposited in the mail within 10 days following issuance of the summons. If a summons is not timely delivered or mailed, another summons shall be issued and served.

(f) PERSONAL JURISDICTION. If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service in accordance with this rule or the subdivisions of Rule 4 F.R.Civ.P. made applicable by these rules is effective to establish personal jurisdiction over the person of any defendant with respect to a case under the Code or a civil proceeding arising under the Code, or arising in or related to a case under the Code.

~~(g) EFFECT OF AMENDMENT TO RULE 4 F.R.CIV.P. The~~

~~subdivisions of Rule 4 F.R.Civ.P. made applicable by these rules shall be the subdivisions of Rule 4 F.R.Civ.P. in effect on January 1, 1990, notwithstanding any amendment to Rule 4 F.R.Civ.P. subsequent thereto.~~

COMMITTEE NOTE

The purpose of these amendments is to conform the rule to the 1993 revisions of Rule 4 F.R.Civ.P. Rule 7004, as amended, continues to provide for service by first class mail as an alternative to the methods of personal service provided under Rule 4 F.R.Civ.P.

Rule 4(d)(2) F.R.Civ.P. provides a procedure by which the plaintiff may request by first class mail that the defendant waive service of the summons. This procedure is not applicable in adversary proceedings because it is not necessary in view of the availability of service by mail under Rule 7004(b). However, if a written waiver of service of a summons is made in an adversary proceeding, Rule 4(d)(1) F.R.Civ.P. applies so that the defendant does not thereby waive any objection to the venue or the jurisdiction of the court over the person of the defendant.

Subdivisions (b)(4) and (b)(5) are amended to conform to the 1993 amendments to Rule 4(i)(3) F.R.Civ.P., which protect the plaintiff from the hazard of losing a substantive right because of failure to comply with the requirements of multiple service when the United States or an officer, agency, or corporation of the United States is a defendant. These subdivisions also are amended to require that the summons and complaint be addressed to the civil process clerk at the office of the United States attorney.

Subdivision (e), which has governed service in a foreign country, is abrogated and Rule 4(f) and (h)(2) F.R.Civ.P., as substantially revised in 1993, are made applicable in adversary proceedings.

The new subdivision (f) is consistent with the 1993 amendments to F.R.Civ.P. 4(k)(2). It clarifies that service or filing a waiver of service in accordance with this rule or the applicable subdivisions of

F.R.Civ.P. 4 is sufficient to establish personal jurisdiction over the defendant. See the committee note to the 1993 amendments to Rule 4 F.R.Civ.P.

Subdivision (g) is abrogated. This subdivision was promulgated in 1991 so that anticipated revisions to Rule 4 F.R.Civ.P. would not affect service of process in adversary proceedings until further amendment to Rule 7004.

Rule 8008. Filing and Service

(a) FILING. Papers required or permitted to be filed with the clerk of the district court or the clerk of the bankruptcy appellate panel may be filed by mail addressed to the clerk, but filing shall not be timely unless the papers are received by the clerk within the time fixed for filing, except that briefs shall be deemed filed on the day of mailing. An original and one copy of all papers shall be filed when an appeal is to the district court; an original and three copies shall be filed when an appeal is to a bankruptcy appellate panel. The district court or bankruptcy appellate panel may require that additional copies be furnished. Rule 5005(a)(2) applies to papers filed with the clerk of the district court or the clerk of the bankruptcy appellate panel if filing by electronic means is authorized by local rule promulgated pursuant to Rule 8018.

* * * *

COMMITTEE NOTE

This rule is amended to permit, but not require, district courts and, where bankruptcy appellate panels have been authorized, circuit councils to adopt local rules that allow filing of documents by electronic means, subject to the limitations contained in Rule 5005(a)(2). See the committee note to the 199__ amendments to Rule 5005.

Rule 9006. Time

* * * *

(c) REDUCTION.

* * * *

(2) Reduction Not Permitted. The court may not reduce the time for taking action under Rules ~~2002(a)(4) and (a)(8)~~ 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2), 4003(a), 4004(a), 4007(c), 8002, and 9033(b).

* * * *

COMMITTEE NOTE

Subdivision (c)(2) is amended to conform to the abrogation of Rule 2002(a)(4) and the renumbering of Rule 2002(a)(8) to Rule 2002(a)(7).

DRAFT

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of February 24 -25, 1994
Sea Island, Georgia

Minutes

The Advisory Committee on Bankruptcy Rules met at The Cloister in Sea Island, Georgia. The following members were present:

Bankruptcy Judge Paul Mannes, Chairman
Circuit Judge Alice M. Batchelder
District Judge Adrian G. Duplantier
District Judge Eduardo C. Robreno
Honorable Jane A. Restani, United States Court of International Trade
Bankruptcy Judge James J. Barta
Bankruptcy Judge James W. Meyers
Professor Charles J. Tabb
Henry J. Sommer, Esquire
Kenneth N. Klee, Esquire
Gerald K. Smith, Esquire
Leonard M. Rosen, Esquire
Neal Batson, Esquire
Professor Alan N. Resnick, Reporter

The following former members also attended the meeting:

District Judge Joseph L. McGlynn, Jr.
Ralph R. Mabey, Esquire
Herbert P. Minkel, Esquire

The following additional persons also attended all or part of the meeting:

District Judge Thomas S. Ellis, III, member, Committee on Rules of Practice and Procedure, and liaison with this Committee
Bankruptcy Judge Lee M. Jackwig, member, Committee on Automation and Technology
Professor Daniel R. Coquillette, Reporter, Committee on Rules of Practice and Procedure
Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure, and Assistant Director, Administrative Office of the U.S. Courts
John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the U.S. Courts
Patricia S. Channon, Attorney, Bankruptcy Division, Administrative Office of the U. S. Courts
Richard G. Heltzel, Clerk, U.S. Bankruptcy Court, Eastern District of California
Gordon Bermant, Director, Planning and Technology Division, Federal Judicial Center

Elizabeth C. Wiggins, Research Division, Federal Judicial Center

District Judge Alicemarie H. Stotler, chair, Committee on Rules of Practice and Procedure, was ill and could not attend. Circuit Judge Edward Leavy, former chair of the Advisory Committee, was unable to attend due to an en banc hearing. District Judge Paul A. Magnuson, chair of the Committee on the Administration of the Bankruptcy System, also was unable to attend. William F. Baity, acting director, Executive Office for United States Trustees, U.S. Department of Justice, was unable to attend.

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

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

INTRODUCTORY MATTERS

Minutes of the September 1993 Meeting. The Committee approved the minutes of the September 1993 meeting with one change. On page 3, paragraph 3, of the draft, the phrase "bankruptcy rules require" should be changed to "Bankruptcy Rule 8002 will require."

Report on the January 1994 Meeting of the Committee on Rules of Practice and Procedure, ("Standing Committee"). The Reporter reviewed the issue of filing by facsimile transmission ("fax filing"). Fed.R.Civ.P. 5(e) and Fed.R.App.P. 25(a) allow fax filing under Judicial Conference guidelines, and Fed.R.Bankr.P. 7005 incorporates the civil rule for adversary proceedings. The Advisory Committee on Bankruptcy Rules is on record as strongly opposing fax filing, because it is outdated technology and a burden on the clerks. Guidelines for fax filing were proposed in 1993, however, by the Judicial Conference Committee on Court Administration and Case Management. Both the Standing Committee and the Committee on Automation and Technology opposed the draft guidelines, and the Judicial Conference declined to adopt them. The Standing Committee, however, must put forward a substitute proposal at the September 1994 meeting of the Judicial Conference. At its January 1994 meeting, the Standing Committee decided not to allow fax filing on a routine basis and to exempt bankruptcy courts from any requirement to accept fax filings.

Professor Resnick also reported that the Standing Committee had expressed concern about Congress enacting rules changes outside the Rules Enabling Act process, as a provision in S. 540, the

bankruptcy bill currently pending, would do. Amendments to Rule 8002 and 8006 are pending at the Supreme Court and will take effect August 1, 1994, absent congressional action to the contrary. No bankruptcy rules amendments were before the January 1994 Standing Committee meeting, and there was sentiment by Standing Committee members, he said, that advisory committees should exercise restraint in proposing amendments.

With respect to the style revisions to the rules, Professor Resnick reported that Bryan Garner had submitted the proposed draft of the civil rules and the Advisory Committee on Civil Rules is in the process of line-by-line review. The intent is to make only style changes, not substantive ones, he said.

Professor Resnick said that the Judicial Conference has guidelines on access to materials. He said that committee members should be careful about circulating memoranda that do not represent committee positions. Mr. Sommer observed in response that rules committee meetings are open to the public (28 U.S.C. § 2073(c).) and that committee records also are public.

PUBLISHED DRAFT RULES

Published (Preliminary Draft) Amendments to Rules 8018, 9029, and Proposed New Rule 9037. Professor Resnick reviewed the history of these proposals for "common rules" concerning local rules and technical amendments. He described the initiating of the amendments by the Standing Committee, the negotiating of the language with the other advisory committees, and the publication of similar amendments for the appellate, civil, and criminal rules. The last time the proposals were considered by the Advisory Committee was in February 1993, and several changes were introduced after that, which the committee had not had a chance to consider prior to publication of the preliminary draft. Most of these were stylistic or involved minor changes to the committee notes. There were two changes that were substantive, however.

The first was an insert to the amendments to Rules 8018(a)(2) and 9029(a)(2) that would prohibit a court from enforcing any local rule imposing a requirement of form in a way that would cause a party to lose rights if the failure to conform to the requirement was a "negligent failure." Mr. Rosen asked how other "non willful" failures would be treated under the rule and suggested that the appropriate standard ought to be "non willful," rather than negligence. Professor Coquillette said this was a good suggestion and might be adopted if the other advisory committees concur. Judge Robreno said he thought it "revolutionary" to have rules that do not have to be followed, but wondered whether his comment might be too late to have any effect. The Reporter said it was not too late. Judge Meyers

said he thought the concept of repeated noncompliance (as an indicator of willfulness) should be part of the committee note, and the Reporter agreed to suggest it, if it is not already in there. **A motion to approve the amendment to Rule 9029(a) subject to changing the word "negligent" to "non willful" carried by a vote of 10-1.**

The second substantive change is in Rules 8018(b) and 9029(b) and involves the prohibition of sanctions for noncompliance with a local requirement unless the alleged violator had actual notice of the requirement "in the particular case." The Reporter stated that the proposed standard would relieve an attorney of any duty to seek rules out and could spawn additional disputes in a bankruptcy setting, due to the incidence of litigation within a case. Participants in such litigation may not have been active in the earlier stages of a case; they may enter a proceeding months, or even years, after any mass mailing of the judge's rules and likely were not present when such rules may have been stated orally. These conditions, which are typical of bankruptcy litigation, may generate disputes over whether a party had actual notice of a requirement. Although the committee directed that the record reflect its consideration of this issue, no motion was made and no vote taken concerning the addition of "in the particular case" to the rule.

Professor Resnick reviewed the three comment letters the committee had received concerning the published draft. Bankruptcy Judge Fenning's letter cautioned the committee against appearing to support one-judge-only standing orders, so long as they are published, rather than court-wide procedures under local rules applicable to all judges in a district. Judge Barta said he was surprised that no comments had been received about proposed Rule 9037, the technical amendments rule. The committee is on record as opposing this rule, the Reporter said, but the Standing Committee published it anyway. **A motion to reaffirm the committee's opposition to Rule 9037 failed on a tie vote.**

AMENDMENTS RELATED TO CIVIL RULES AMENDMENTS

Rule 9014 and the 1993 Amendments to Fed.R.Civ.P. 26. The Reporter stated that the recent amendments to Rule 26 governing discovery automatically apply in adversary proceedings (through Rule 7026) and in contested matters (through Rule 9014), which are expedited proceedings initiated by motion. Although there does not appear to be any reason to exclude adversary proceedings from the provisions of Rule 26, contested matters could suffer undue delay if the requirements of Rule 26(a)(1)-(4), (mandatory disclosure), and 26(f), (mandatory discovery meeting), are followed. Rule 26 itself permits courts, by local rule or order, to opt out of the mandatory disclosure and meeting requirements.

In the event the committee thought it appropriate to make the mandatory disclosure and meeting requirements inapplicable to contested matters nationally, the Reporter had drafted an amendment to Rule 9014 for this purpose. After discussion, **a motion to defer action and study the operation of discovery deadlines in contested matters overall carried by a 6-0 vote.**

Rule 7004 and the 1993 Amendments to Fed.R.Civ.P. 4. The 1991 amendments to the bankruptcy rules "froze" the Fed.R.Civ.P. 4 (to which reference is made in Rule 7004 and parts of which are incorporated into the bankruptcy rules by Rule 7004) to the version of the rule that was in effect on January 1, 1990. This action was taken because amendments to Rule 4 were pending, but their final form was still uncertain. Rule 4 now has been amended, and it is time to amend Rule 7004 to conform to the new Rule 4. The Reporter had prepared a draft for this purpose. In addition, the Reporter had drafted a new subdivision (f) to cover service and personal jurisdiction over a party who is a non-resident of the United States having contacts with the United States sufficient to justify application of United States law but insufficient contact with any single state to support jurisdiction under a state long-arm statute. The new subdivision tracks a similar new provision in Rule 4. **A motion to adopt the Reporter's draft carried by a vote of 6-2.** The amendments to Rule 4 included creating a new Rule 4.1 to cover "other" process, not a summons or subpoena. These provisions formerly were in a subdivision of Rule 4 that was not incorporated by Rule 7004. The Reporter said he had consulted with Professor Lawrence P. King, a former member and former Reporter to the committee, about the history of not incorporating the subdivision. Professor King had said the subdivision was left out intentionally so that it would not apply to the servicee of motions. Rule 4.1 also contains territorial limits on service that are inconsistent with the nationwide service provisions of Rule 7004. **There was no opposition to the Reporter's recommendation that Rule 4.1 not be incorporated into the bankruptcy rules.**

PROPOSED AMENDMENTS

Rule 1006. Professor Resnick stated that the Judicial Conference in 1992 had prescribed a $30 administrative fee for chapter 7 and chapter 13 cases, payable at filing. As originally prescribed, this fee was not payable in installments as is the filing fee for such cases. In late 1993, however, the Judicial Conference had amended the schedule of fees prescribed under 28 U.S.C. § 1930(b) to permit payment of the $30 fee in installments. Professor Resnick had proposed two drafts to incorporate the administrative fee into the rule on installment payments. **A motion to adopt the shorter draft, amending Rule 1006(a), carried on an 8-3 vote.** The Reporter stated that there also had been a proposal by the president of the National Association of Consumer Bankruptcy

Attorneys to amend Rule 1006(b) to permit installment payments of filing fees to be made to a standing chapter 13 trustee (who would pay the fees to the clerk). The Reporter had drafted an amendment to implement the suggestion, and also had asked the Federal Judicial Center to conduct a survey to evaluate the suggested amendment. Ms. Wiggins reported the results of the survey. Most respondents thought such an amendment unnecessary and that no purpose would be served by mixing court fees and payments intended for creditors, she said. Nine courts permit such arrangements under the existing rule and are satisfied with how their systems work. **A motion to adopt the proposed amendment to Rule 1006(B) failed by a vote of 0-9.**

Rules 1007(c) and 1019. At the September 1993 meeting, the Committee had voted to delete from Rule 1007(c) the reference to "chapter 7," which dated to a time when there were separate schedules for a chapter 7 case and a chapter 13 case. At that meeting, a member of the Committee had suggested that the phrase "superseding case" or "superseded case" should be replaced to avoid giving the erroneous impression that conversion of a case to another chapter creates a new case. The Reporter, accordingly, presented draft amendments to the two rules in which these phrases appear. Rule 1019 also contains the phrase "original petition," which gives the erroneous impression that there is a second petition in a converted case. **There was a consensus that the amendments to Rule 1007(c) should be approved. With respect to Rule 1019, the Committee discussed a number of changes to the draft, but referred the rule back to the Reporter for further study.**

Rule 2002(f)(8). The present rule requires notice to the debtor, all creditors, and indenture trustees of "a summary of the trustee's final report and account in a chapter 7 case if the net proceeds realized exceed $1,500." The trustee's "final report" is a separate document than the trustee's "final account," and the current practice is to mail only the final report. The final report is filed and mailed prior to distribution of dividends, while the final account is completed after the distribution. The Reporter's memorandum to the committee points out that, once the final report is circulated, there probably is no reason to incur the expense of mailing the final account to all creditors. The United States trustee receives the final account and, as the supervisor of chapter 7 trustees, should review it. The proposed amendment would delete the words "and account" from the rule. **A motion to adopt the proposed amendment carried, 12-0. The Committee rejected a proposal to amend Rule 2002(f)(8) to restrict the mailing of the summary of the trustee's final report to only those creditors who have filed claims.**

Rule 2002(h). This rule authorizes the court to direct that, after the period for filing claims has expired, the court may direct that notices be sent only to creditors who have filed

claims. The Reporter reviewed his memorandum dated January 9, 1994, which detailed various suggestions for amendments, two from deputy clerks of court, several related to deleting references to Rule 3002(c)(6) which the Committee separately had voted to abrogate, and several further amendments suggested by Professor Resnick. **The Committee approved amendments to Rule 2002(h) that would assure the mailing of notices to the debtor, the trustee, and all creditors during any 90-day claims filing period arising from notification by the trustee that newly discovered assets may be available for distribution. The Committee rejected a proposal to amend subdivision (h) to extend the period during which all creditors receive notices until the time has expired for the filing of a claim on behalf of a creditor by the debtor or the trustee. The Committee referred the proposed amendments to Rule 2002(h) and the Committee Note to the style subcommittee with the following instructions: 1) make sure line 12 does not exclude the debtor, the trustee, and the U.S. trustee from receiving notices, 2) make sure that creditors who filed claims late are not excluded from receiving notices, and 3) reorganize the Committee Note to state simply that the rule is being amended "as follows" and list the changes. A motion to approve the proposed amendments as described above, subject to further work by the style subcommittee, carried unanimously.**

Rule 3002. The Reporter briefly reviewed the history of various proposals to amend this rule that have been considered by the Committee and noted that the case law concerning the status of a late-filed proof of claim remains very unsettled. The Committee declines to take a position on the issue. Nevertheless, the language of Rule 3002(a), especially when read together with Rule 3009, leads to the conclusion that an unsecured creditor who misses the deadline for filing claims may not have an "allowed claim" and may not receive any distribution in a chapter 7 case. This conclusion, however, conflicts with the provisions of § 726 of the Code that indicate that a late-filed claim can be an "allowed" claim, at least in some instances, and expressly direct payment of "tardily filed" claims under certain circumstances. To clear up any conflict between the Code and the rules on this issue, the Reporter had drafted amendments that would add a new subdivision (d) to the rule and delete existing subdivision (c)(6) as unnecessary if (d) were added. The proposed subdivision (d) would state that a late claim may be allowed to the extent the creditor would be authorized to receive a distribution by § 726. Mr. Rosen offered alternative language to accomplish the same result. **A motion to approve the amendments as redrafted to incorporate Mr. Rosen's suggestions carried, with none opposed. A motion to approve conforming changes to the proposed Committee Note also carried, with none opposed.**

Rules 3017, 3018, and 3021 and Proposed Amendments Regarding the Record Date for Voting and Distribution. Rule 3017(d) requires that certain documents in a chapter 11 case be mailed to

creditors and equity security holders so that they can vote on the plan. Rule 3018(a) governs the right to vote on a plan. The Reporter explained that both provisions contain language stating that the record date for determining who the equity security holders are is the date the order approving the disclosure statement was entered on the court's docket. The Reporter stated that Mr. Klee had suggested that these rules be amended because using the entry date of the order causes unnecessary delay. The Reporter, accordingly, had drafted alternate amendments to the two rules, one set of amendments would give the court discretion to order that the record date be the date the court announces its approval of the disclosure statement, and the other set would give the court greater flexibility in fixing a record date. **A motion to postpone consideration of these proposals to the next meeting carried, with none opposed.** The proposed amendment to Rule 3021 would permit the plan or order confirming the plan to designate a record date for distribution that is difference than the date on which distribution commences. This change would permit the debtor to ascertain who are the equity security holders entitled to receive distribution prior to commencing actual distribution. **A motion to adopt the Reporter's draft amendment carried, 11-0.**

Rule 8002. The Reporter had drafted an amendment creating a new subdivision (d) of the rule that would deem a prisoner's notice of appeal to have been timely filed if it was deposited in the prison's internal mail system on or before the last day for filing. The proposal would conform Rule 8002 to a 1993 amendment to Fed.R.App.P. 4(c) and would reflect the decision in In re Flanagan, 999 F.2d 753 (3rd Cir. 1993), in which the court of appeals held that a pro se prisoner's notice of appeal from an order of the bankruptcy court is "filed" at the moment of delivery to prison authorities for forwarding to the bankruptcy court. **A motion to take no action carried by a vote of 8-4.**

SUBCOMMITTEE REPORTS

Subcommittee on Technology

At the request of the Subcommittee on Technology, Mr. Bermant led a discussion of "the virtual bankruptcy court." Committee members expressed divergent views concerning the pros and cons of technological developments that could largely replace the courtroom, in which a judge, lawyers, and parties are physically present, with video conferencing equipment and computers operated by a judge, lawyers, and parties who all may be in different locations. Judges and lawyers both stated that people will continue to need and want direct contact with colleagues and adversaries, even if such contact is not absolutely necessary to accomplish their work. On the other

hand, if the individuals do not all have to be physically present at every proceeding, much time and energy can be saved and other efficiencies realized in the utilization of judicial time. For example, a judge could handle a case from another district without having to travel.

Judge Barta, chairman of the subcommittee, reported that the subcommittee had met twice and had drafted two amendments that would authorize courts to accept electronic filings. These are discussed below. Judge Barta stated that the report requested by the Committee on the future of technology and the rules was not yet complete due to the raising at the first subcommittee meeting of several issues that require further inquiry. The philosophy anchoring the report would be that the Advisory Committee should take a leading role in adopting rules to implement changing technology, he said. One result of the Committee's having stepped forward is Rule 9036, which now permits delivery of information from the court by means other than paper; the next step, he said, is to authorize the court to receive documents other than on paper. Judge Barta said he expects the report to be finished in time for the Standing Committee to consider it in connection with any request to publish the proposed electronic filing amendments.

Rule 5005. The subcommittee on technology proposed adding a new subdivision (a)(2) that would authorize a court by local rule to "permit documents to be filed, signed or verified by electronic means" consistent with any technical standards established by the Judicial Conference. **A motion to adopt the proposed amendment carried, with none opposed. On further motions, the Committee approved the deletion of lines 12 - 15 (no intent to permit filing by facsimile transmission) and lines 68 - 71 (no intent to affect any statute requiring a "writing" or "signature") of the proposed Committee Note.**

Rule 8008(a). The subcommittee's proposed amendment to the rule would authorize a district court or bankruptcy appellate panel by local rule to accept electronic filings. **A motion to adopt the amendment carried, with none opposed.**

Subcommittee on Alternative Dispute Resolution

Professor Tabb, chairman of the subcommittee, requested guidance on the need for proposed amendments concerning alternative dispute resolution. The consensus was that, although some districts operate local, voluntary programs, there is not a need for national rules at this time. A need could arise if Congress were to mandate an ADR program for the bankruptcy courts. Accordingly, the subcommittee's work remains investigatory at this time.

Subcommittee on Forms

Mr. Sommer, chairman of the subcommittee, reported that, in addition to considering proposals for amendments that had been referred to it at the September 1993 meeting, the subcommittee would undertake a conversion to "plain English" for forms that go to the public.

Subcommittee on Local Rules

Judge Duplantier, chairman of the subcommittee, reported that the subcommittee had met to discuss the outstanding issues concerning the proposed uniform numbering system for local rules developed by Ms. Channon. The system is based on the national rule numbers and the subcommittee had requested that Ms. Channon add uniform numbers based on the Part VIII rules governing appeals for use by a district court or bankruptcy appellate panel. The subcommittee had approved the proposed numbering system subject to that addition. The subcommittee also had requested Ms. Channon to prepare a new memorandum explaining the system and stating the topics on which rules now exist that had been omitted and the reasons for the omission. The memorandum also would describe the difficulties a district might experience in adapting certain types of rules, such as those titled "Chapter 13 Cases," to the numbering system. Judge Duplantier said that at this point the subcommittee favored some kind of publication and solicitation of comment from the courts and the bar. **A motion to approve the proposed system, circulate it to the judges and clerks for comment, and release it to the "bankruptcy press," carried unanimously.**

"EXCUSABLE NEGLECT"

The Committee discussed briefly whether to undertake a review of the rules for the purpose of restricting the "balancing test" standard announced by the Supreme Court in Pioneer Investment Services v. Brunswick Associates, 113 S.Ct. 1489 (1993). The consensus appeared to be that it is too soon to assess the impact of the Court's decision, and **a motion to table the matter carried by a vote of 6-2.**

FUTURE MEETINGS

The next meeting of the Committee will be September 22-23, 1994, in New York City.

The chairman requested Judge Duplantier to investigate whether the Committee could meet in Lafayette, Louisiana, in mid-to-late March 1995. The Committee also agreed on Portland,

Oregon, as the site for a meeting in August 1995, and on Arizona for a meeting in February or March of 1996.

Respectfully submitted,

Patricia S. Channon

DRAFT

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of February 24 -25, 1994
Sea Island, Georgia

Minutes

The Advisory Committee on Bankruptcy Rules met at The Cloister in Sea Island, Georgia. The following members were present:

Bankruptcy Judge Paul Mannes, Chairman
Circuit Judge Alice M. Batchelder
District Judge Adrian G. Duplantier
District Judge Eduardo C. Robreno
Honorable Jane A. Restani, United States Court of International Trade
Bankruptcy Judge James J. Barta
Bankruptcy Judge James W. Meyers
Professor Charles J. Tabb
Henry J. Sommer, Esquire
Kenneth N. Klee, Esquire
Gerald K. Smith, Esquire
Leonard M. Rosen, Esquire
Neal Batson, Esquire
Professor Alan N. Resnick, Reporter

The following former members also attended the meeting:

District Judge Joseph L. McGlynn, Jr.
Ralph R. Mabey, Esquire
Herbert P. Minkel, Esquire

The following additional persons also attended all or part of the meeting:

District Judge Thomas S. Ellis, III, member, Committee on Rules of Practice and Procedure, and liaison with this Committee
Bankruptcy Judge Lee M. Jackwig, member, Committee on Automation and Technology
Professor Daniel R. Coquillette, Reporter, Committee on Rules of Practice and Procedure
Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure, and Assistant Director, Administrative Office of the U.S. Courts
John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the U.S. Courts
Patricia S. Channon, Attorney, Bankruptcy Division, Administrative Office of the U. S. Courts
Richard G. Heltzel, Clerk, U.S. Bankruptcy Court, Eastern District of California
Gordon Bermant, Director, Planning and Technology Division, Federal Judicial Center

Elizabeth C. Wiggins, Research Division, Federal Judicial Center

District Judge Alicemarie H. Stotler, chair, Committee on Rules of Practice and Procedure, was ill and could not attend. Circuit Judge Edward Leavy, former chair of the Advisory Committee, was unable to attend due to an en banc hearing. District Judge Paul A. Magnuson, chair of the Committee on the Administration of the Bankruptcy System, also was unable to attend. William F. Baity, acting director, Executive Office for United States Trustees, U.S. Department of Justice, was unable to attend.

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

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

INTRODUCTORY MATTERS

Minutes of the September 1993 Meeting. The Committee approved the minutes of the September 1993 meeting with one change. On page 3, paragraph 3, of the draft, the phrase "bankruptcy rules require" should be changed to "Bankruptcy Rule 8002 will require."

Report on the January 1994 Meeting of the Committee on Rules of Practice and Procedure, ("Standing Committee"). The Reporter reviewed the issue of filing by facsimile transmission ("fax filing"). Fed.R.Civ.P. 5(e) and Fed.R.App.P. 25(a) allow fax filing under Judicial Conference guidelines, and Fed.R.Bankr.P. 7005 incorporates the civil rule for adversary proceedings. The Advisory Committee on Bankruptcy Rules is on record as strongly opposing fax filing, because it is outdated technology and a burden on the clerks. Guidelines for fax filing were proposed in 1993, however, by the Judicial Conference Committee on Court Administration and Case Management. Both the Standing Committee and the Committee on Automation and Technology opposed the draft guidelines, and the Judicial Conference declined to adopt them. The Standing Committee, however, must put forward a substitute proposal at the September 1994 meeting of the Judicial Conference. At its January 1994 meeting, the Standing Committee decided not to allow fax filing on a routine basis and to exempt bankruptcy courts from any requirement to accept fax filings.

Professor Resnick also reported that the Standing Committee had expressed concern about Congress enacting rules changes outside the Rules Enabling Act process, as a provision in S. 540, the

bankruptcy bill currently pending, would do. Amendments to Rule 8002 and 8006 are pending at the Supreme Court and will take effect August 1, 1994, absent congressional action to the contrary. No bankruptcy rules amendments were before the January 1994 Standing Committee meeting, and there was sentiment by Standing Committee members, he said, that advisory committees should exercise restraint in proposing amendments.

With respect to the style revisions to the rules, Professor Resnick reported that Bryan Garner had submitted the proposed draft of the civil rules and the Advisory Committee on Civil Rules is in the process of line-by-line review. The intent is to make only style changes, not substantive ones, he said.

Professor Resnick said that the Judicial Conference has guidelines on access to materials. He said that committee members should be careful about circulating memoranda that do not represent committee positions. Mr. Sommer observed in response that rules committee meetings are open to the public (28 U.S.C. § 2073(c).) and that committee records also are public.

PUBLISHED DRAFT RULES

Published (Preliminary Draft) Amendments to Rules 8018, 9029, and Proposed New Rule 9037. Professor Resnick reviewed the history of these proposals for "common rules" concerning local rules and technical amendments. He described the initiating of the amendments by the Standing Committee, the negotiating of the language with the other advisory committees, and the publication of similar amendments for the appellate, civil, and criminal rules. The last time the proposals were considered by the Advisory Committee was in February 1993, and several changes were introduced after that, which the committee had not had a chance to consider prior to publication of the preliminary draft. Most of these were stylistic or involved minor changes to the committee notes. There were two changes that were substantive, however.

The first was an insert to the amendments to Rules 8018(a)(2) and 9029(a)(2) that would prohibit a court from enforcing any local rule imposing a requirement of form in a way that would cause a party to lose rights if the failure to conform to the requirement was a "negligent failure." Mr. Rosen asked how other "non willful" failures would be treated under the rule and suggested that the appropriate standard ought to be "non willful," rather than negligence. Professor Coquillette said this was a good suggestion and might be adopted if the other advisory committees concur. Judge Robreno said he thought it "revolutionary" to have rules that do not have to be followed, but wondered whether his comment might be too late to have any effect. The Reporter said it was not too late. Judge Meyers

said he thought the concept of repeated noncompliance (as an indicator of willfulness) should be part of the committee note, and the Reporter agreed to suggest it, if it is not already in there. **A motion to approve the amendment to Rule 9029(a) subject to changing the word "negligent" to "non willful" carried by a vote of 10-1.**

The second substantive change is in Rules 8018(b) and 9029(b) and involves the prohibition of sanctions for noncompliance with a local requirement unless the alleged violator had actual notice of the requirement "in the particular case." The Reporter stated that the proposed standard would relieve an attorney of any duty to seek rules out and could spawn additional disputes in a bankruptcy setting, due to the incidence of litigation within a case. Participants in such litigation may not have been active in the earlier stages of a case; they may enter a proceeding months, or even years, after any mass mailing of the judge's rules and likely were not present when such rules may have been stated orally. These conditions, which are typical of bankruptcy litigation, may generate disputes over whether a party had actual notice of a requirement. Although the committee directed that the record reflect its consideration of this issue, no motion was made and no vote taken concerning the addition of "in the particular case" to the rule.

Professor Resnick reviewed the three comment letters the committee had received concerning the published draft. Bankruptcy Judge Fenning's letter cautioned the committee against appearing to support one-judge-only standing orders, so long as they are published, rather than court-wide procedures under local rules applicable to all judges in a district. Judge Barta said he was surprised that no comments had been received about proposed Rule 9037, the technical amendments rule. The committee is on record as opposing this rule, the Reporter said, but the Standing Committee published it anyway. **A motion to reaffirm the committee's opposition to Rule 9037 failed on a tie vote.**

AMENDMENTS RELATED TO CIVIL RULES AMENDMENTS

Rule 9014 and the 1993 Amendments to Fed.R.Civ.P. 26. The Reporter stated that the recent amendments to Rule 26 governing discovery automatically apply in adversary proceedings (through Rule 7026) and in contested matters (through Rule 9014), which are expedited proceedings initiated by motion. Although there does not appear to be any reason to exclude adversary proceedings from the provisions of Rule 26, contested matters could suffer undue delay if the requirements of Rule 26(a)(1)-(4), (mandatory disclosure), and 26(f), (mandatory discovery meeting), are followed. Rule 26 itself permits courts, by local rule or order, to opt out of the mandatory disclosure and meeting requirements.

In the event the committee thought it appropriate to make the mandatory disclosure and meeting requirements inapplicable to contested matters nationally, the Reporter had drafted an amendment to Rule 9014 for this purpose. After discussion, **a motion to defer action and study the operation of discovery deadlines in contested matters overall carried by a 6-0 vote.**

Rule 7004 and the 1993 Amendments to Fed.R.Civ.P. 4. The 1991 amendments to the bankruptcy rules "froze" the Fed.R.Civ.P. 4 (to which reference is made in Rule 7004 and parts of which are incorporated into the bankruptcy rules by Rule 7004) to the version of the rule that was in effect on January 1, 1990. This action was taken because amendments to Rule 4 were pending, but their final form was still uncertain. Rule 4 now has been amended, and it is time to amend Rule 7004 to conform to the new Rule 4. The Reporter had prepared a draft for this purpose. In addition, the Reporter had drafted a new subdivision (f) to cover service and personal jurisdiction over a party who is a non-resident of the United States having contacts with the United States sufficient to justify application of United States law but insufficient contact with any single state to support jurisdiction under a state long-arm statute. The new subdivision tracks a similar new provision in Rule 4. **A motion to adopt the Reporter's draft carried by a vote of 6-2.** The amendments to Rule 4 included creating a new Rule 4.1 to cover "other" process, not a summons or subpoena. These provisions formerly were in a subdivision of Rule 4 that was not incorporated by Rule 7004. The Reporter said he had consulted with Professor Lawrence P. King, a former member and former Reporter to the committee, about the history of not incorporating the subdivision. Professor King had said the subdivision was left out intentionally so that it would not apply to the servicee of motions. Rule 4.1 also contains territorial limits on service that are inconsistent with the nationwide service provisions of Rule 7004. **There was no opposition to the Reporter's recommendation that Rule 4.1 not be incorporated into the bankruptcy rules.**

PROPOSED AMENDMENTS

Rule 1006. Professor Resnick stated that the Judicial Conference in 1992 had prescribed a $30 administrative fee for chapter 7 and chapter 13 cases, payable at filing. As originally prescribed, this fee was not payable in installments as is the filing fee for such cases. In late 1993, however, the Judicial Conference had amended the schedule of fees prescribed under 28 U.S.C. § 1930(b) to permit payment of the $30 fee in installments. Professor Resnick had proposed two drafts to incorporate the administrative fee into the rule on installment payments. **A motion to adopt the shorter draft, amending Rule 1006(a), carried on an 8-3 vote.** The Reporter stated that there also had been a proposal by the president of the National Association of Consumer Bankruptcy

Attorneys to amend Rule 1006(b) to permit installment payments of filing fees to be made to a standing chapter 13 trustee (who would pay the fees to the clerk). The Reporter had drafted an amendment to implement the suggestion, and also had asked the Federal Judicial Center to conduct a survey to evaluate the suggested amendment. Ms. Wiggins reported the results of the survey. Most respondents thought such an amendment unnecessary and that no purpose would be served by mixing court fees and payments intended for creditors, she said. Nine courts permit such arrangements under the existing rule and are satisfied with how their systems work. **A motion to adopt the proposed amendment to Rule 1006(B) failed by a vote of 0-9.**

Rules 1007(c) and 1019. At the September 1993 meeting, the Committee had voted to delete from Rule 1007(c) the reference to "chapter 7," which dated to a time when there were separate schedules for a chapter 7 case and a chapter 13 case. At that meeting, a member of the Committee had suggested that the phrase "superseding case" or "superseded case" should be replaced to avoid giving the erroneous impression that conversion of a case to another chapter creates a new case. The Reporter, accordingly, presented draft amendments to the two rules in which these phrases appear. Rule 1019 also contains the phrase "original petition," which gives the erroneous impression that there is a second petition in a converted case. **There was a consensus that the amendments to Rule 1007(c) should be approved. With respect to Rule 1019, the Committee discussed a number of changes to the draft, but referred the rule back to the Reporter for further study.**

Rule 2002(f)(8). The present rule requires notice to the debtor, all creditors, and indenture trustees of "a summary of the trustee's final report and account in a chapter 7 case if the net proceeds realized exceed $1,500." The trustee's "final report" is a separate document than the trustee's "final account," and the current practice is to mail only the final report. The final report is filed and mailed prior to distribution of dividends, while the final account is completed after the distribution. The Reporter's memorandum to the committee points out that, once the final report is circulated, there probably is no reason to incur the expense of mailing the final account to all creditors. The United States trustee receives the final account and, as the supervisor of chapter 7 trustees, should review it. The proposed amendment would delete the words "and account" from the rule. **A motion to adopt the proposed amendment carried, 12-0. The Committee rejected a proposal to amend Rule 2002(f)(8) to restrict the mailing of the summary of the trustee's final report to only those creditors who have filed claims.**

Rule 2002(h). This rule authorizes the court to direct that, after the period for filing claims has expired, the court may direct that notices be sent only to creditors who have filed

claims. The Reporter reviewed his memorandum dated January 9, 1994, which detailed various suggestions for amendments, two from deputy clerks of court, several related to deleting references to Rule 3002(c)(6) which the Committee separately had voted to abrogate, and several further amendments suggested by Professor Resnick. **The Committee approved amendments to Rule 2002(h) that would assure the mailing of notices to the debtor, the trustee, and all creditors during any 90-day claims filing period arising from notification by the trustee that newly discovered assets may be available for distribution. The Committee rejected a proposal to amend subdivision (h) to extend the period during which all creditors receive notices until the time has expired for the filing of a claim on behalf of a creditor by the debtor or the trustee. The Committee referred the proposed amendments to Rule 2002(h) and the Committee Note to the style subcommittee with the following instructions: 1) make sure line 12 does not exclude the debtor, the trustee, and the U.S. trustee from receiving notices, 2) make sure that creditors who filed claims late are not excluded from receiving notices, and 3) reorganize the Committee Note to state simply that the rule is being amended "as follows" and list the changes. A motion to approve the proposed amendments as described above, subject to further work by the style subcommittee, carried unanimously.**

Rule 3002. The Reporter briefly reviewed the history of various proposals to amend this rule that have been considered by the Committee and noted that the case law concerning the status of a late-filed proof of claim remains very unsettled. The Committee declines to take a position on the issue. Nevertheless, the language of Rule 3002(a), especially when read together with Rule 3009, leads to the conclusion that an unsecured creditor who misses the deadline for filing claims may not have an "allowed claim" and may not receive any distribution in a chapter 7 case. This conclusion, however, conflicts with the provisions of § 726 of the Code that indicate that a late-filed claim can be an "allowed" claim, at least in some instances, and expressly direct payment of "tardily filed" claims under certain circumstances. To clear up any conflict between the Code and the rules on this issue, the Reporter had drafted amendments that would add a new subdivision (d) to the rule and delete existing subdivision (c)(6) as unnecessary if (d) were added. The proposed subdivision (d) would state that a late claim may be allowed to the extent the creditor would be authorized to receive a distribution by § 726. Mr. Rosen offered alternative language to accomplish the same result. **A motion to approve the amendments as redrafted to incorporate Mr. Rosen's suggestions carried, with none opposed. A motion to approve conforming changes to the proposed Committee Note also carried, with none opposed.**

Rules 3017, 3018, and 3021 and Proposed Amendments Regarding the Record Date for Voting and Distribution. Rule 3017(d) requires that certain documents in a chapter 11 case be mailed to

creditors and equity security holders so that they can vote on the plan. Rule 3018(a) governs the right to vote on a plan. The Reporter explained that both provisions contain language stating that the record date for determining who the equity security holders are is the date the order approving the disclosure statement was entered on the court's docket. The Reporter stated that Mr. Klee had suggested that these rules be amended because using the entry date of the order causes unnecessary delay. The Reporter, accordingly, had drafted alternate amendments to the two rules, one set of amendments would give the court discretion to order that the record date be the date the court announces its approval of the disclosure statement, and the other set would give the court greater flexibility in fixing a record date. **A motion to postpone consideration of these proposals to the next meeting carried, with none opposed.** The proposed amendment to Rule 3021 would permit the plan or order confirming the plan to designate a record date for distribution that is difference than the date on which distribution commences. This change would permit the debtor to ascertain who are the equity security holders entitled to receive distribution prior to commencing actual distribution. **A motion to adopt the Reporter's draft amendment carried, 11-0.**

Rule 8002. The Reporter had drafted an amendment creating a new subdivision (d) of the rule that would deem a prisoner's notice of appeal to have been timely filed if it was deposited in the prison's internal mail system on or before the last day for filing. The proposal would conform Rule 8002 to a 1993 amendment to Fed.R.App.P. 4(c) and would reflect the decision in In re Flanagan, 999 F.2d 753 (3rd Cir. 1993), in which the court of appeals held that a pro se prisoner's notice of appeal from an order of the bankruptcy court is "filed" at the moment of delivery to prison authorities for forwarding to the bankruptcy court. **A motion to take no action carried by a vote of 8-4.**

SUBCOMMITTEE REPORTS

Subcommittee on Technology

At the request of the Subcommittee on Technology, Mr. Bermant led a discussion of "the virtual bankruptcy court." Committee members expressed divergent views concerning the pros and cons of technological developments that could largely replace the courtroom, in which a judge, lawyers, and parties are physically present, with video conferencing equipment and computers operated by a judge, lawyers, and parties who all may be in different locations. Judges and lawyers both stated that people will continue to need and want direct contact with colleagues and adversaries, even if such contact is not absolutely necessary to accomplish their work. On the other

hand, if the individuals do not all have to be physically present at every proceeding, much time and energy can be saved and other efficiencies realized in the utilization of judicial time. For example, a judge could handle a case from another district without having to travel.

Judge Barta, chairman of the subcommittee, reported that the subcommittee had met twice and had drafted two amendments that would authorize courts to accept electronic filings. These are discussed below. Judge Barta stated that the report requested by the Committee on the future of technology and the rules was not yet complete due to the raising at the first subcommittee meeting of several issues that require further inquiry. The philosophy anchoring the report would be that the Advisory Committee should take a leading role in adopting rules to implement changing technology, he said. One result of the Committee's having stepped forward is Rule 9036, which now permits delivery of information from the court by means other than paper; the next step, he said, is to authorize the court to receive documents other than on paper. Judge Barta said he expects the report to be finished in time for the Standing Committee to consider it in connection with any request to publish the proposed electronic filing amendments.

Rule 5005. The subcommittee on technology proposed adding a new subdivision (a)(2) that would authorize a court by local rule to "permit documents to be filed, signed or verified by electronic means" consistent with any technical standards established by the Judicial Conference. **A motion to adopt the proposed amendment carried, with none opposed. On further motions, the Committee approved the deletion of lines 12 - 15 (no intent to permit filing by facsimile transmission) and lines 68 - 71 (no intent to affect any statute requiring a "writing" or "signature") of the proposed Committee Note.**

Rule 8008(a). The subcommittee's proposed amendment to the rule would authorize a district court or bankruptcy appellate panel by local rule to accept electronic filings. **A motion to adopt the amendment carried, with none opposed.**

Subcommittee on Alternative Dispute Resolution

Professor Tabb, chairman of the subcommittee, requested guidance on the need for proposed amendments concerning alternative dispute resolution. The consensus was that, although some districts operate local, voluntary programs, there is not a need for national rules at this time. A need could arise if Congress were to mandate an ADR program for the bankruptcy courts. Accordingly, the subcommittee's work remains investigatory at this time.

Subcommittee on Forms

Mr. Sommer, chairman of the subcommittee, reported that, in addition to considering proposals for amendments that had been referred to it at the September 1993 meeting, the subcommittee would undertake a conversion to "plain English" for forms that go to the public.

Subcommittee on Local Rules

Judge Duplantier, chairman of the subcommittee, reported that the subcommittee had met to discuss the outstanding issues concerning the proposed uniform numbering system for local rules developed by Ms. Channon. The system is based on the national rule numbers and the subcommittee had requested that Ms. Channon add uniform numbers based on the Part VIII rules governing appeals for use by a district court or bankruptcy appellate panel. The subcommittee had approved the proposed numbering system subject to that addition. The subcommittee also had requested Ms. Channon to prepare a new memorandum explaining the system and stating the topics on which rules now exist that had been omitted and the reasons for the omission. The memorandum also would describe the difficulties a district might experience in adapting certain types of rules, such as those titled "Chapter 13 Cases," to the numbering system. Judge Duplantier said that at this point the subcommittee favored some kind of publication and solicitation of comment from the courts and the bar. **A motion to approve the proposed system, circulate it to the judges and clerks for comment, and release it to the "bankruptcy press," carried unanimously.**

"EXCUSABLE NEGLECT"

The Committee discussed briefly whether to undertake a review of the rules for the purpose of restricting the "balancing test" standard announced by the Supreme Court in Pioneer Investment Services v. Brunswick Associates, 113 S.Ct. 1489 (1993). The consensus appeared to be that it is too soon to assess the impact of the Court's decision, and **a motion to table the matter carried by a vote of 6-2.**

FUTURE MEETINGS

The next meeting of the Committee will be September 22-23, 1994, in New York City.

The chairman requested Judge Duplantier to investigate whether the Committee could meet in Lafayette, Louisiana, in mid-to-late March 1995. The Committee also agreed on Portland,

Oregon, as the site for a meeting in August 1995, and on Arizona for a meeting in February or March of 1996.

Respectfully submitted,

Patricia S. Channon

S. 540

BANKRUPTCY AMENDMENTS ACT OF 1994

Passed the Senate on April 21, 1994

* * * *

SEC. 112. SERVICE OF PROCESS IN BANKRUPTCY PROCEEDINGS ON AN INSURED DEPOSITORY INSTITUTION.

Rule 7004 of Bankruptcy Rules is amended—

(1) in subsection (b) by striking "In addition" and inserting "Except as provided in subdivision (h), in addition"; and

(2) by adding at the end the following new subdivision:

"(h) SERVICE OF PROCESS ON AN INSURED DEPOSITORY INSTITUTION.—Notwithstanding any other provision of this rule or any other rule or law, service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) shall be made by certified mail addressed to an officer of the institution unless—

"(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

"(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

"(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.".