ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of February 18 - 19, 1993

Minutes

The Committee met at the Innisbrook Resort in Tarpon Springs, Florida. The following members attended the meeting:

Circuit Judge Edward Leavy, Chairman
Senior District Judge Joseph L. McGlynn, Jr.
District Judge Adrian G. Duplantier
Bankruptcy Judge James J. Barta
Bankruptcy Judge Paul Mannes
Bankruptcy Judge James W. Meyers
Ralph R. Mabey, Esquire
Herbert P. Minkel, Jr., Esquire
Henry J. Sommer, Esquire
Kenneth N. Klee, Esquire
Gerald K. Smith, Esquire
Professor Alan N. Resnick, Reporter

Two former members of the Advisory Committee also attended the meeting: Professor Lawrence P. King, and Bernard Shapiro, Esquire. The following additional persons attended the meeting:

District Judge Robert E. Keeton, Chairman, Committee on Rules of Practice and Procedure, ("Standing Committee"),
District Judge Thomas S. Ellis, III, liaison from the Standing Committee to the Advisory Committee,
Richard Heltzel, Clerk, Eastern District of California,
James Eaglin, Federal Judicial Center,
Peter G. McCabe, Assistant Director, Administrative Office of the United States Courts, ("Administrative Office"), Secretary to the Standing Committee,
John K. Rabiej, Esquire, Chief, Rules Committee Support Office, Administrative Office,
Francis F. Szczebak, Esquire, Chief, Division of Bankruptcy, Administrative Office,
Patricia S. Channon, Esquire, Deputy Assistant Chief, Division of Bankruptcy, Administrative Office, and
John E. Logan, Director, Executive Office for United States Trustees, United States Department of Justice.

Three members were absent: Circuit Judge Alice M. Batchelder, District Judge Harold L. Murphy, and Professor Charles J. Tabb. Richard Goldschmidt, Technology Enhancement Office, Office of Automation and Technology, Administrative Office, attended part of the meeting.

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**.

The Chairman opened the meeting by observing that several new members had been appointed, three of whom were present, and requested that all attendees introduce themselves. (Agenda Item 1)

The Committee approved the draft minutes of the September 1992 meeting and of the March 1989 meeting. (Agenda Item 2)

Rule 7004. The Reporter informed the Advisory Committee that Senator Helms had recently introduced a bill to amend Rule 7004 of the Federal Rules of Bankruptcy Procedure. The bill would add a new subdivision (H) to the rule which would require that service on "an insured depository institution" be by "personal service on an officer of the institution." The Reporter recalled for the Committee that the major bill of 1992, which was not enacted in the rush to adjourn, also had contained a provision to amend Rule 7004. The Chairman, at the March 1992 meeting of the Committee, had requested that Professor King draft a letter opposing the amendment both on substantive grounds and procedurally, as an abrogation of the rules prescribing process. The letter, signed by Judge Keeton, was sent to the Senate Judiciary Committee.

After discussion, Judge Leavy said he would favor sending another letter opposing both the substance and the method by which Senator Helms proposed to amend the rule. Judge Keeton noted that, in addition to putting the Committee on record, a written response would supply those in Congress who support the rules process with supporting material for opposing the Helms bill. Judge Duplantier said the proposed amendment goes far beyond the problem described, but added there seemed no reason to effect service in an adversary proceeding differently than in a regular lawsuit. [Rule 4, Fed. R. Civ. P., provides for service by mail, but requires that the summons and complaint be accompanied by a notice and acknowledgment of receipt form, which must be returned for service to be effec-

tive.] Mr. Klee said a credible showing of actual consideration of the idea by the Committee would be important in defeating the amendment. Mr. Klee also stressed the urgency of the issue, as the existing bill could be tacked onto another, unrelated one and be quickly and quietly enacted. **The Chairman requested that the Reporter, in consultation with Mr. Klee, draft a letter for Judge Keeton's signature opposing this legislation on the merits, supporting the rules making process, and noting impending changes to Fed.R.Civ.P. 4 as part of the Committee's current study of the issue raised, passed unopposed.**

Mr. McCabe reported on the Judicial Electronic Date Interchange ("JEDI"), a project to prescribe standards for the electronic transmission of data between courts and parties. The JEDI standards will be useful in implementing the new Rule 9036 on electronic noticing that is scheduled to take effect August 1, 1993. Advances in electronic capabilities may lead to electronic filings in the courts and, perhaps, to electronic service. He noted that one of the features built into Rule 9036 is a requirement for acknowledgement of receipt of a notice sent electronically by the court, parallel to the option provided in Rule 4, Fed.R.Civ.P. He suggested that these developments could be mentioned in the letter to Senator Helms, as an indication that the rules already are moving in a direction that would alleviate the problem his amendment seeks to address.

Report on December 1992 Meeting of Standing Committee. The Reporter stated that the Standing Committee had approved the revisions to the Official Bankruptcy Forms as proposed by the Advisory Committee. They would be presented to the Judicial Conference in March 1993, he said, and after that become effective. Concerning the proposed amendments to Rules 8002 and 8006, he said that the language of these would track that of the Federal Rules of Appellate Procedure to which they conform with the exception that a determination of whether a motion under Rule 9024 is timely to

toll the time to appeal under Rule 8002 would be based on when the motion is filed, rather than when it is served (as in Fed.R.App.P. 4). This departure, although fully justified and not opposed by the Standing Committee, had sparked a debate about whether it is appropriate in the civil rules to measure the timeliness of post judgment motions from the date of service, Professor Resnick said. (See "Recommendation . . . . .", infra.) He reported that he had made several further style changes to the text of Rules 8006 at the suggestion of the style subcommittee of the Standing Committee, and that the Standing Committee had approved a shortened publication and comment schedule for the two rules, as the amendments are conforming in nature with no controversy expected. Professor Resnick said that a public hearing has been scheduled for April 2, 1993, in Washington, D.C., but that if anyone requests to appear, the actual hearing would be handled by the Reporter and Judge Mannes, who is stationed in nearby Maryland. Professor Resnick added that any comments that come in will be resolved by mail or telephone, as no further meeting of the Advisory Committee is scheduled prior to the June 1993 meeting of the Standing Committee.

Professor Resnick also reported that an Advisory Committee on Evidence Rules had been appointed and that its membership was included in the new committee list just distributed. Lastly, he reported, the civil rules are being "styled" and will be published for comment on the proposed style changes. (Agenda Item 3)

Procedure Respecting "Style" Changes. Judge Keeton reported that the style subcommittee of the Standing Committee had found a number of ambiguities in the civil rules. He said the Advisory Committee on Civil Rules now is dealing substantively with the issues raised by the identification of the ambiguities. Judge Keeton said he wanted to reassure everyone that no style changes would be made to rules without checking with the responsible advisory committee so that it could determine whether the ambiguity involved raises a

substantive issue and deal with any substantive issue that is raised.

Proposed Amendments Requested by the Standing Committee. The Reporter referred the Committee to his memoranda dated January 13 and February 8, 1993, for the history and the texts of the proposed amendments dealing with uniform local rule numbers, technical and conforming amendments, and standing orders. The Standing Committee had requested drafts from each of the Advisory Committees and then had directed the chairs and reporters to meet and reconcile the proposed drafts to make them as uniform as possible. The January 13 memorandum shows the text that resulted from the meeting. The February 8 memorandum contains proposed Committee Notes for the amendments. The Standing Committee's style subcommittee also reviewed the drafts, and Dean Coquillette's memorandum (dated February 5) containing his recommended texts for Committee Notes shows the amendments with the style changes requested by the subcommittee.

In bankruptcy rules, the appropriate location for rules on both uniform numbering of local rules and standing orders would be Rule 9029 and 8018. In the circumstances, the Reporter said, it seemed appropriate to break the existing rule into two subdivisions, (a) and (b), and the draft would reserve subdivision (b) for the subject of standing orders. The Reporter's drafts of Rule 9029 and 8018, as contained in the Reporter's memoranda dated 1/13/93 and 2/8/93, were considered.

Rule 9029(a). Professor King and Mr. Klee said they thought line 19 of the draft rule should be amended to add that the uniform numbering system would be "for local bankruptcy rules," to prevent the bankruptcy courts from having to use a civil or criminal uniform numbering system. Judge Keeton said the Judicial Conference never prescribes anything on its own, but only what the committees propose. He said the rule is needed to give the

Judicial Conference authority to prescribe a system, but any specific system would come from the Advisory Committee responsible for the specific subject matter, through the Standing Committee. **A motion to adopt the Reporter's draft of amended Rule 9029(a) carried, unopposed.** (Agenda Item 6)

Rule 9029(b). The Reporter read the draft as changed by the Standing Committee's style subcommittee. Mr. Klee questioned the term "federal statutes" and asked if that meant one could not be sanctioned for violating case law or the Constitution, as opposed to a statute. Mr. Minkel said the draft assumes that a practitioner has access to the local rules, and that they are readily obtainable, which may not be true. **A motion to approve the draft with slight, further language changes (i.e., deleting the second "with" on line 29, and changing "federal statutes" to "federal law" wherever the former appears) carried unanimously.** (Agenda Item 6)

Rule 8018. This rule is a "mirror image" of Rule 9029, the Reporter said, except that Rule 8018 deals with local rules governing procedure in bankruptcy appeals. **A motion to approve the draft with the same changes as were made in Rule 9029, carried unanimously.** (Agenda Item 6)

Proposed Rule 9037. The Reporter read the text of his draft with the style changes. Professor King opposed including "technical" changes, because no authority is designated to decide whether a change is technical and including "technical" as a kind of change to be made without the Supreme Court or Congress opens the door to litigation over whether a particular change was technical. Mr. Klee agreed. **A motion that the Committee strongly urge Rule 9037 not be adopted carried unanimously.** Judge Mannes observed that the Standing Committee, Judicial Conference, and Supreme Court could go ahead with the proposed rule anyway and he suggested that the Committee recommend that everything after the word "typography" (on line 3) be deleted. **A motion that the Committee urge this**

suggestion as an alternative, in the event that the first suggestion is not adopted by the Standing Committee, also carried unanimously. (Agenda Item 6)

Recommendation on Amending Rules 52(b), 59(b), and 59(e) of the Federal Rules of Civil Procedure. The Reporter said the Standing Committee had asked the Advisory Committee for its recommendations concerning whether certain civil rules that now measure 10-day time periods from when a motion is "served", (or in the case of Rule 52(b), when it is "made"), should be changed to measuring from when the motion is "filed". He noted that Rule 50, Fed.R.Civ.P., uses the phrase "filed and served". He said that, as stated in his memorandum of January 13, 1993, he recommended that the Committee approve a resolution recommending that Rules 52(b), 59(b), and 59(e), (made applicable in bankruptcy by Bankruptcy Rules 7052 and 9023), be amended so that postjudgment motions must be filed not later than 10 days after the entry of judgment. **A motion was made that the Committee recommend that Rules 50, 52, and 59, Fed.R.Civ.P., be made consistent and that the 10-day time periods run from when a motion is filed.** Judge Ellis cautioned the Committee that it should concentrate on those rules that apply in bankruptcy (Rules 52 and 59) and not any which do not (Rule 50), as there may be a reason for the civil rules to use the phrase "served and filed". **The motion then was limited by consensus to Rules 52 and 59. It carried unopposed.** (Agenda Item 7)

Rule 3016(a). Professor Resnick referred the Committee to the Reporter's memorandum dated January 10, 1993, which sets forth the issues and offers three alternate solutions, one of which would be to abrogate the rule and the limits it places on the filing of competing plans. Mr. Klee observed that, although votes on a plan may not be solicited absent a court-approved disclosure statement, a plan could still be filed while the voting was in process, if the rule were abrogated. Copies of the plan could be requested and the press also might publicize its terms, thereby informing creditors

of what they might be able to get by voting "no" to the original plan. Mr. Smith recalled the history of § 1121 and said its provisions were the result of a legislative compromise; the clear intent of Congress, he said, was that the debtor's exclusive period should not be cut off prior to the times specified, but also should not be extended (and competing plans obstructed) when the period has ended. **A motion to adopt alternative (3), abrogating Rule 3016(a) and amending Rule 3017 relating to the scheduling of the disclosure statement hearing, but without the bracketed language shown in the draft, failed by a vote of three in favor to five againts (3-5).** Mr. Smith said he thinks the court should consider all plans and that § 1129(c) requires the court to do so. Mr. Klee disagreed. Both members wanted to abrogate Rule 3016(a), however. The Reporter cautioned that abrogating the rule likely would be interpreted as adoption of a position on the substantive issue of whether the court must schedule a hearing on a disclosure statement for every filed plan or can exercise discretion and thereby prevent consideration of competing plans by the creditors. He suggested as a solution that the Committee consider alternate (1), (abrogating Rule 3016(a)), but dropping the second paragraph of the draft Committee Note on the abrogation. Mr. Sommer suggested that language be added to the first paragraph stating that the Committee neither takes a position nor favors one viewpoint over the other, that abrogation of the rule does not mean the court must schedule a hearing. **A motion to adopt alternate (1), abrogating Rule 3016(a), and to include in the Committee Note a statement that the rule conflicted with the statute and that abrogation is not intended to imply that the court must schedule a hearing on every plan and disclosure statement that is filed, but rather is intended not to take a position, carried with one (1) opposed.** Judge Keeton said he thought abrogation itself "takes a position" on a substantive issue, namely, the court's authority to avoid ruling on competing plans. The Reporter drafted the following sentence to be added to the first paragraph of the Committee Note:

> The abrogation of this subdivision is not intended as an indication of any position with respect to the court's discretion in the scheduling of hearings on the approval of disclosure statements and hearings on plan confirmation when more than one plan has been filed.

Judge Ellis said he thought the Committee should take a straightforward approach and that he preferred the existing first sentence of the second paragraph of the draft Committee Note, which states that the abrogation "does not affect the court's discretion". **A motion to adopt the first paragraph plus the existing first sentence of the second paragraph of the draft Committee Note carried by a vote of six to three (6-3).** (Agenda Item 4)

Rule 4004(c). The Reporter referred the Committee to his memorandum dated 1/12/93 and described Judge Mannes' suggestion to amend this rule so that a debtor will not receive a discharge without completing all installment payments on the filing fee. **A motion to adopt the Reporter's draft amendment to add to the reasons to delay entry of a debtor's discharge the fact that the filing fee has not yet been paid in full carried unopposed.** The Reporter said he had recently received a letter suggesting a further amendment to this rule to bar entry of a discharge during the pendency of a motion to extend the time to file a complaint objecting to discharge. **A motion was made to adopt an additional amendment to this rule as follows: "(5) a motion to extend the time for filing a complaint objecting to discharge is pending".** A motion to amend the motion to restrict it to a "timely motion" died for want of a second. **The motion to adopt the amendment as drafted carried, with two (2) opposed.** (Agenda Item 5)

Rule 2015(b) and (c). The Reporter referrred the Committee to his memorandum dated 1/14/99. He said he agreed with Mr. Sommer that the rules are ambiguous with respect to the duty of a chapter 12 debtor or chapter 13 business debtor to file an inventory. A

motion to adopt the Reporter's draft amendments to require the chapter 12 debtor in possession and chapter 13 business debtor to file an inventory only when directed to do so by the court carried unanimously. (Agenda Item 8)

Rule 4008. The Reporter described the proposal to add a deadline for filing a reaffirmation agreement. Mr. Klee said the proposed language about chapter 11 cases filed by individuals should be deleted for two reasons: 1) corporations and partnerships also can reaffirm, and 2) the confirmation order can tie discharge to some later effective date. **A motion was made to adopt the draft amendment, and Mr. Klee proposed an amendment to the motion to delete the chapter 11 language, which amendment carried by a vote of five to two (5-2).** After further discussion about whether to amend the rule at all, **there was a motion to take up the issue at the next meeting, revisiting it from scratch, which carried by consensus. The pending motion to adopt the proposed amendment was declared moot.** (Agenda Item 9)

Recommendation Regarding Waiver of $30 Administrative Fee. The Reporter briefed the Committee on Mr. Sommer's request that the Committee recommend to the Judicial Conference that it expressly provide in the bankruptcy fee schedule for waiver of this fee based on a debtor's inability to pay. The Reporter said that, if the Committee were to approve such a recommendation, it should consider recommending that any waiver include express authority for bankruptcy judges to grant relief. He added that the Committee might also want to consider requesting that the Judicial Conference permit the fee to be paid in installments if not waived. In response to a request for a history of the fee and for procedural guidance, Mr. McCabe stated that although the Judicial Conference actually prescribed the fee, it did so in response to the appropriations process. Judge Keeton and Mr. Klee expressed concern that granting waiver authority could be an unlawful delegation by the Judicial Conference of its power to prescribe (and waive) fees.

Mr. Minkel made a motion to refer the issue to Mr. McCabe and the Committee on the Administration of the Bankruptcy System ("Bankruptcy Committee"). Judge Leavy suggested tabling the matter, and Mr. McCabe observed that the issue of this fee is "not being fought on the merits." Mr. Mabey opposed tabling and stated his support for referral to the Bankruptcy Committee. He expressed concern about people who can't pay, and said he wanted assurance that someone, such as Mr. McCabe, is looking into the problem. Mr. Szczebak noted that the Bankruptcy Committee had opposed the fee entirely, as inequitable. Professor King suggested that the rule on installment payments also could be adjusted to make the debtor's burden easier, the current terms having been set when the fee was $60. **The consensus was that the matter of a waiver or authority for installment payment of the $30 administrative fee be referred to the Bankruptcy Committee.** (Agenda Item 10)

Proposals to Reduce Costs by Amending Rules 2002, 4004(g), and 6007(a). These proposals were referred by Judge Arnold, Chairman of the Budget Committee, to the Bankruptcy Committee, which referred them to the Advisory Committee. The materials transmitted included an agenda item on the subject from the January 1993 meeting of the Bankruptcy Committee. This agenda item goes through each proposal and concludes that there is no need to amend any of the rules. **The consensus of the Advisory Committee was that the Bankruptcy Committee had analyzed the issues fully and reached the proper conclusion. Accordingly, the Advisory Committee did not need to consider the proposals at this time.** Judge Duplantier said that someone should respond to Judge Arnold explaining what the Committee has done and why. (Agenda Item 11)

Rule 9002. Professor Resnick briefed the Committee about a letter from Chief Bankruptcy Judge Alexander Paskay suggesting an amendment to Rule 9002 to state that if the reference of a case or proceeding is withdrawn to the district court, papers filed after the withdrawal should be filed with the district court. Judge

Leavy questioned whether the rules or a court ought to have to say that if the case is in a certain court, papers in the case are to be filed in that court. **A motion to table the suggestion carried unopposed.** Mr. Klee said he wanted the Reporter to look into adding "proceedings" to Rule 1001 more explicitly than at present so there is no question that the Bankruptcy Rules apply whenever a bankruptcy matter is before the trial court, regardless of whether a district judge or a bankruptcy judge is presiding. (Agenda Item 12)

Rule 4003(b). The Reporter stated that Judge Edith Jones had requested that the Committee consider whether to amend Rule 4003(b) in response to the Supreme Court's holding in Taylor v. Freeland & Kronz, in which the Court held that a chapter 7 trustee could not contest the validity of a claimed exemption after the 30-day period for objecting had expired. The Committee declined to take any action to amend the rule. (Agenda Item 17)

Form 14. Ballot for Accepting or Rejecting Plan. Judge Jones had requested at the September 1992 meeting that the Committee consider whether to amend the ballot form to eliminate the language about competing plans if only one plan were being voted on. The Reporter presented a draft form with instructions added authorizing deletion of the material relating to a competing plan if there is only one plan. A motion was made to adopt the amendment drafted by the Reporter. Mr. Klee said he is dissatisfied with another part of the form that invites creditors who accept more than one plan to state their preferences among the plans. Mr. Klee said he thinks this violates § 1129 of the Code, which requires the court to consider the preferences of creditors, not just accepting creditors. Accordingly, the form should be amended to permit creditors who vote against one or more plans to express their preferences also, he said. By consensus the matter of amending the ballot form was passed to the next meeting for more complete consideration. (Agenda Item 13)

Report of Ad Hoc Subcommittee on Rule 3002. Judge Mannes said the subcommittee recommends that the Committee revisit Rule 3002 with a view toward unlinking the allowance of a claim from the timeliness of its filing. Judge Meyers said he also would like to define "timely" and "tardy". Judge Mannes distributed copies of his letter to Judge Leavy containing the recommendation and of a letter of Professor King, solicited by the subcommittee, giving Professor King's views on whether any amendment is necessary. Noting that the discussion focussed on chapter 13 cases, Mr. Klee said he is concerned about a possible "spillover" effect on tardily filed claims in chapter 11 cases. The chairman directed that the matter be placed on the agenda for the next meeting. (Agenda Item 16)

Report of Subcommittee on Local Rules. Patricia Channon presented a proposed uniform numbering system for local bankruptcy rules. The system would replace the second digit of the national rule number, which is always a zero, with another numeral (2-9) to indicate that a rule is a local rule. Mr. Shapiro said several policy issues remain, which are stated in the written report distributed to the members. Among these, he said, is what to do about local rules that do exist but should not. An example would be local rules related to former Rule 5008, Investment of Estate Funds, which was abrogated as being within the operational responsibility of the United States trustee. Yet local rules on this subject remain. (Agenda Item 15)

Report of Technology Subcommittee. Mr. Heltzel reported that preparations are going forward for three pilot courts, under the auspices of the Committee as approved at the September 1992 meeting, to test implementation of new Rule 9036, which is expected to become effective August 1, 1993. Mr. Heltzel said he would be meeting in March 1993 with representatives of Sears, Citibank, Bank of America/Security Pacific, and the IRS, and that so far these creditors are very enthusiastic. Mr. Heltzel said he would report further to the Committee before August 1, 1993. Mr. Klee said he

was concerned that under proposed Rule 9036 a private entity such as a law firm could be compelled by the court to give notice electronically. Judge Barta explained that the rule contemplates that the clerk, rather than a law firm, would be making any electronic notice transmissions and that the rule requires the court to approve any agreement to give notice in this manner.

Judge Barta reported that the Judiciary is moving ahead in the effort to establish standards for electronic transmissions involving courts, the Electronic Data Interchange (EDI) project. He said the technology subcommittee had arranged for a presentation on EDI to be given later in the meeting. Judge Barta said the subcommittee was continuing to consider proposing amendments that would authorize electronic filing of documents, permit a clerk who had converted a document to electronic form to destroy the paper original, and provide evidentiary effect for electronic data in the court's files.

Judge Barta also reported that there would be on the discussion calendar for the March 1993 session of the Judicial Conference a set of guidelines for facsimile filing with the court. The guidelines were put forward by the Committee on Court Administration and Case Management, and copies were distributed by Judge Barta. The Committee on Automation opposes the guidelines. Judge Keeton inquired whether the Committee had any comments. Judge Leavy said he is opposed to facsimile filing and believed the Committee already was on record as opposed. Professor Resnick noted that Rule 5(e), Federal Rules of Civil Procedure already permits filing of pleadings by facsimile in adversary proceedings "consistent with" any Judicial Conference guidelines. Mr. Klee said there is strong desire by the bar to use facsimile; he said he thought an appropriately high filing fee, such as $5,000 to $10,000, should enable a willing litigant to file by facsimile. Several persons said that experimentation should be allowed, even encouraged, and that some items, such as pictures, can not be

transmitted electronically at present, except by facsimile technology. Judge Keeton said he did not want others taking actions that affect the rules without consulting with the rules committees, and that these guidelines do affect rules, e.g., by permitting courts to establish a filing date based on only a partial transmission. **A motion to oppose the facsimile guidelines carried unanimously.**

Judge Leavy said the technology subcommittee should be looking at the rules from two standpoints, technology that already exists and technology that will exist soon. Mr. Minkel added that he would like the subcommittee also to familiarize itself with all that is now being done, e.g., by third party contractors in the area of claims processing, some of which may not be in conformity with the rules, and recommend whether the rules should be changed. Mr. Klee said that, despite the expressed opposition to facsimile filing, he would like the subcommittee to examine the signature issue in connection with filing by facsimile and subsequent replacement with an original. (Agenda Item 14)

Presentation on Electronic Data Interchange. Mr. Richard Goldschmidt of the Administrative Office described the Electronic Data Interchange process and the participation of the Judiciary in developing a standard to be known as the Judicial Electronic Data Interchange (JEDI). Achieving a standard for JEDI will facilitate electronic filing of documents by the courts. Mr. Goldschmidt said that experience to date has shown that it is hard to get attorneys to participate in electronic filing experiments, due in part to the expenses they incur for new software. Accordingly, it is helpful to offer incentives to participate, such as longer filing hours and access to the court's database for searching of electronically filed documents.

Mr. Goldschmidt also raised several issues that the subcommittee and the Committee will need to examine.

One issue is whether the electronic version of an official form requires approval by the Judicial Conference or could simply be considered as being in a different format. Judge Duplantier said he thought approval may be necessary. Mr. Minkel said conversion to electronic format would be like translating the forms into Chinese. "You need someone who speaks Chinese," he said, in order to know if the job has been done properly. Professor King said there were other matters also to be resolved. One is a definition of filing and what would be required to accomplish filing. A second issue is timing and timely filing, when is something filed and how the time of filing would be determined.

A second issue is how to handle the signature requirement on electronically filed documents. Judge Leavy said he thought this could be handled by an agreement with a filing law firm that says "anyone from this firm who transmits over computer is responsible under Rule 11." He added that he hoped the Committee would "not let Rule 11 slow us down" in moving toward electronic filing. Additional issues include "the creditor name problem" and whether it really is necessary to file claims with the court, since it is the trustee or the debtor in possession who is charged with examining claims. The issue over creditors' names arises because debtors identify institutional creditors, such as Sears and Citibank, by a variety of different names, spellings, and capitalizations. A human looking at a schedule or creditor list can interpret these variations more readily than a computer can. Accordingly, the developers of the computer systems would like to be able to limit the number of variations debtors could use for the names of frequently listed creditors, such as Sears. A related problem, one that arises especially in connection with accomplishing noticing through a centralized facility, is that the zip codes given for creditors on lists and schedules filed by debtors often are incorrect. Without the correct, nine-digit zip code postal rate savings can not be maximized. Although software exists that will supply the correct zip code for any address in the country,

there is no authority for the clerk to alter an address supplied by a debtor.

Mr. Minkel said it is important to see how all the electronic pieces will translate into reality, to see the products --- what the judge, the attorney for the debtor in possession, and the creditor will actually see. The Committee agreed and requested that the technology subcommittee put together a presentation on developments in electronics for a future meeting. Judge Ellis said he thinks all the advisory committees should see the presentation. Judge Leavy agreed and suggested that all the advisory committees could meet together with the Standing Committee for this purpose.

United States Trustee Program. Mr. Logan referred to the memorandum about expediting the closing of chapter 7 cases recently sent to bankruptcy judges by Judge Lloyd D. George, chairman of the Committee on Administration of the Bankruptcy System. Mr. Logan said the United States trustees can not move as decisively toward closing cases or applying the scrutiny contemplated in the Memorandum of Understanding to chapter 11 cases. The Committee discussed chapter 11 closings generally and noted the tension between the Committee's position of record, as expressed in the 1991 Committee Note and amendment to Rule 3022 --- that cases should be closed when fully administered --- and the continued reluctance of attorneys to move to close cases that might later have to be reopened. Mr. Shapiro contrasted the former practices, under which the trustee filed a statement of indebtedness listing every claim and how it was disposed of, with the whole case being audited and the trustee or debtor called to account, and today, when the cases are more complicated, checks are issued electronically, and oversight is not as feasible. Mr. Minkel noted that under the former Chapter X, the trustee needed to get the trustee's bond released and, accordingly, had an incentive to close the case.

Withdrawn Matters. A proposal by Judge Mannes to amend Rule

4004(a) and a request by Judge Barta to consider amending the subpoena form were withdrawn by their proponents.

Respectfully Submitted,

Patricia S. Channon

Patricia S. Channon