ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of March 8-10, 2006
Chapel Hill N.C.

The following members attended the meeting:

District Judge Thomas S. Zilly, Chairman
Circuit Judge R. Guy Cole, Jr.
District Judge Irene M. Keeley
District Judge William H. Pauley III
District Judge Richard A. Schell
District Judge Laura Taylor Swain
Bankruptcy Judge Christopher M. Klein
Bankruptcy Judge Mark B. McFeeley
Bankruptcy Judge James D. Walker, Jr.
Bankruptcy Judge Eugene R. Wedoff
Dean Lawrence Ponoroff
G. Eric Brunstad, Jr., Esquire
J. Christopher Kohn, Esquire
J. Michael Lamberth, Esquire
K. John Shaffer, Esquire

The following persons also attended the meeting:

Professor Jeffrey W. Morris, Reporter
Circuit Judge Edward Leavy, former chairman
District Judge Adrian G. Duplantier, former chairman
Bankruptcy Judge Paul Mannes, former chairman
Bankruptcy Judge Thomas Small, former chairman
Bankruptcy Judge Eric L. Frank, former member
Professor Alan N. Resnick, former reporter, former member
Howard L. Adelman, Esquire, former member
Circuit Judge Harris L. Hartz, liaison from the Committee on Rules of Practice and Procedure (Standing Committee)
Professor Edward J. Janger, advisor to the Committee
Professor Daniel R. Coquillette, reporter to the Standing Committee
Professor Daniel J. Capra, reporter to the Advisory Committee of Evidence Rules (participated by telephone).
Peter G. McCabe, secretary of the Standing Committee
Donald F. Walton, Acting Deputy Director, Executive Office for U.S. Trustees (EOUST)
Mark A. Redmiles, National Civil Enforcement Coordinator, EOUST
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
Professor Melissa B. Jacoby, advisor to the Committee

Interim Dean Gail B. Agrawal, University of North Carolina School of Law
Patricia S. Ketchum, advisor to the Committee
John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the U.S. Courts (Administrative Office)
James Ishida, Rules Committee Support Office, Administrative Office
James H. Wannamaker, Bankruptcy Judges Division, Administrative Office
Stephen Scott Myers, Bankruptcy Judges Division, Administrative Office
Elizabeth Wiggins, Federal Judicial Center (FJC)
Philip S. Corwin, Butera & Andrews, Washington, D.C.
Jeffrey A. Tassey, Tassey & Associates, Washington, D.C.
Karl F. Kaufman, Sidley Austin Brown & Wood, Washington, D.C.

The following person was unable to attend the meeting:

Bankruptcy Judge Dennis Montali, liaison from the Committee on the Administration of the Bankruptcy System (Bankruptcy Administration Committee)

The following summary of matters discussed at the meeting should be read in conjunction with the memoranda and other written materials referred to, all of which are on file in the office of the Secretary of the Standing Committee. Votes and other action taken by the Committee and assignments by the Chairman appear in **bold**.

Introductory Matters

The Chairman welcomed the members, former members, liaisons, advisers, staff, and guests to the meeting. He commended the staff of the Administrative Office on their efforts in compiling and organizing many changes to the agenda material made just days before the meeting. The Chairman specially praised the support provided by Gail Mitchell and Judith Krivit, and he commended John Rabiej, James Isida, James Wannamaker, and Scott Myers on their efforts as well.

The Chairman directed the Committee's attention to the minutes of the previous two meetings. **The Committee voted without objection to approve the minutes of the September 2005 meeting in Santa Fe. It also approved minor corrections to the minutes of the March 2005 meeting in Sarasota, Florida.**

The Chairman and Mr. McCabe briefed the Committee on the January 2006 meeting of the Standing Committee. Copies of the Standing Committee minutes were distributed to the attendees.

Judge Klein reported on the most recent meeting of the Bankruptcy Administration Committee. He said that none of the issues under consideration by the Bankruptcy Administration Committee had any bankruptcy rule implications.

Judge Klein also reported on most recent meeting of the Committee on Evidence Rules. He stated that the Evidence Rules Committee is not currently proposing any amendments to the rules.

Judge Walker reported on the most recent meeting of the Committee on Civil Rules. He discussed revisions of Civil Rules 8, 15, 26, 33 & 36, and said that the Civil Rules Committee is currently working on two broad topics: (1) setting forth a uniform computation of time under the rules; and (2) changes to rule 56 and notice pleading.

The Chairman remarked that due to late-filed comments on certain rules and forms, a number of agenda items would be discussed "out of order." He explained that the time-frame between the end of the comment period and the spring meeting this year was very short, and that there had been no published cutoff date for submitting comments to the interim rules at all. As a result, many comments were received after the agenda materials were initially compiled, and consideration of some of the new comments required changes in the organizational structure of the agenda materials. To avoid a similar problem next year, he suggested possibly moving the spring meeting from March to April.

Action Items

Rules Published in 2005 (Agenda Item 3)

In memos dated February 6, 2006, February 16, 2006, and February 22, 2006, the Reporter described the public comments and the comments of the Style Subcommittee of the Standing Committee to proposed amendments published in 2005 to Rule 1014, 3001, 3007, 4001, 6006, 7001.1 and proposed new Rules 6003, 9005.1 and 9037. The Chairman said that discussion of the proposed changes to Rule 9037 regarding privacy would be tabled until Thursday, when Professor Capra would be able to participate by telephone.

Rules 7001.1 and 9005.1. Because there were no comments to the proposed changes to Rule 7001.1 regarding the time for filing a corporate ownership statement, and proposed Rule 9005.1 regarding the applicability of FRCP 5.1 in cases under the Code, the Chairman entertained motions to approve each rule as published. **The motions to recommend final approval of Rules 7001.1 and 9005.1 as published carried without dissent.**

Rule 3001 and Form 10. The Chairman then took up the proposed changes and comments to Rule 3001 and asked to Committee to focus on the Reporter's February 22, 2006, memo (at Agenda Item 3(a)). The Chairman noted that changes to Official Form 10 would be considered in conjunction with the proposed changes to Rule 3001.

The Reporter summarized the proposed changes to Rule 3001 as: limiting the length of attachments to a proof of claim form (generally 25 pages, and 5 pages where the attachment evidences the perfection of a security interest); a requirement for excerpts and a summary to describe what would otherwise be voluminous attachments; and a change in the rule to require submission of "copies" of a writing as opposed to "original or duplicates" to evidence a claim.

The Reporter summarized the comments into three categories: (1) no change is needed; (2) the costs in preparing a summary and excerpting relevant portions of the writing would be too expensive; and (3) the five-page limit for evidence of perfection of a security interest was too short.

Some members of the Committee agreed that there may be a benefit to limiting attachments to preserve court resources, such as limited bandwidth available to upload and store voluminous attachments, but that the need to excerpt portions of the writing and to create a summary whenever the arbitrary page limit was reached would be costly to claimants. Professor Resnick and Judge Wedoff suggested withdrawing the rule because they thought it might create a trap for the unwary creditor and because they thought technology would catch up.

The Reporter noted that withdrawing all proposed amendments to Rule 3001 would leave in effect a provision in the rule that allows claimants to submit an original writing (as opposed to a copy or duplicate) as evidence a claim. He pointed out that because of electronic filing many courts have sought authorization to destroy any paper claims and attachments after they are scanned and placed on the electronic claims docket, and that claimants may not realize that their original documents may not be returned. Therefore, he suggested pulling only the proposed amendments that deal with page limits.

Mr. Waldron commented that the page limitation changes were suggested not only to preserve court resources, but because some "bulk claims filers" had complained that many courts already impose non-uniform limits on attachment length by local rule or general order. The proposed amendments to the national rule would make any limitations uniform.

The Chairman summarized the Committee's discussion as two alternative motions: to withdraw the proposed amendments to 3001 in their entirety; or withdraw only the page limit proposals. **The Committee voted without dissent to withdraw all proposed amendments to Rule 3001.**

Ms. Ketchum summarized the proposed changes to Form 10. The changes are described in detail at Agenda Items 9(b) and 9(b).

In light of the Committee's decision to withdraw the proposed amendments to Rule 3001, Ms. Ketchum indicated the changes to Form 10 dealing with page limits would be deleted. Ms. Ketchum noted, however, that the current version of Form 10 at box 7 admonishes the claimant: "DO NOT SEND ORIGINAL DOCUMENTS" as an attachment to the claim. She said that this directive may be inconsistent with current Rule 3001, which, as the Reporter pointed out, allows the claimant to attach either original *or* duplicate documents in support of the claim. Several members were in favor of some sort of warning on the claim form because it was likely that any documents submitted to the court would be destroyed after they were scanned into electronic versions. Professor Resnick suggested revisiting Rule 3001 and removing the reference to original documents in that rule. The consensus was that there was no need to revise the rule, but that the language on Form 10 should be strengthened to warn that any attachments to the proof of claim would be destroyed. A motion was made to recommend changing the admonishment to

"DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING"; to approve all stylistic changes; and to remove the proposed language regarding page limits to attachments. **The motion carried without opposition.**

Rule 1014. The Joint Subcommittee on Venue (the "Joint Subcommittee") reviewed the comments to the published amendments to Rules 1014, 3007, 4001 and 6006 and new Rule 6003. The Reporter's memo of March 1, 2006, at Agenda Item 3(a) discusses the Joint Subcommittee's recommendations. The Joint Subcommittee Noted that no comments have been received with respect to the proposed amendments to Rule 1014 and recommended that the rule be promulgated as published. **A motion to recommend final approval of the published amendments to Rule 1014 carried without opposition.**

Rule 3007. The Reporter and Mr. Shaffer reviewed the comments to proposed Rule 3007 amendments dealing with omnibus claims objections and described the recommendations made by the Joint Subcommittee concerning the comments. The Reporter's March 1, 2006, memo at Agenda Item 3(a) contains a black-line version of the changes recommended by the Joint Subcommittee.

The Joint Subcommittee rejected comments that suggested allowing the local court to "opt in" or "opt out" of the proposed amendments to Rule 3007 because it believed the rule was already limited in scope and that additional discretion would frustrate the goal of creating a uniform, national standard for omnibus claims objections. In discussing the proposed changes, a Committee member suggested changing the word "replaced" in 3007(d)(3) with "amended."

Judge Wedoff moved that the Committee recommend final approval of Rule 3007 with the changes suggested by the Joint Subcommittee and with the substitution of "amended" for "replaced" in 3007(d)(3). **The motion carried without opposition.**

Rule 4001. The Reporter's March 1, 2006, memo at Agenda Item 3(a) discusses the Joint Subcommittee's review and recommendations with respect to the Rule 4001 comments, and contains a black-line version of the rule illustrating many of the proposed changes.

As published, the changes to Rule 4001 required that motions under subsections (b), (c), and (d) contain an introductory summary no longer than three pages. A comment by the National Bankruptcy Conference (NBC) suggested that the three-page cut-off was too limiting, and that instead the rule should simply require "a brief introductory statement." The Joint Subcommittee rejected this change as too open-ended, but, as an alternative, suggested changing the proposed page limit for the introductory statement from three to five pages.

The Joint Subcommittee supported suggestions that the introductory statement be contain cross-references to the material provisions in the motions or proposed orders, and that motions for authority to obtain credit under subsection (c) should explain the extent to which any interim relief might impact the estate if the court later refuses to grant final relief as requested.

The NBC and Judge Marvin Isgur recommended that service under the proposed changes to 4001(b), (c) and (d) be expanded to include service on all persons who have requested service of all pleadings. The Joint Subcommittee rejected this suggestion because it would create an inconsistency with the service requirements under subsection (a) of the rule, and because including a like change in subsection (a) would require republication and would delay adoption of the existing recommended changes.

The Joint Subcommittee considered the NBC's objection to an explicit reference to Rule 9024 in the proposed changes to 4001. In light of the NBC's comments, the Joint Subcommittee recommended removing the reference to Rule 9024, but suggested language to make clear that the court may grant "appropriate relief if it determines that the introductory statement in the motion did not adequately disclose a material element of the agreement or proposed order."

After an initial discussion, **the Committee voted to recommend the following changes to the proposed amendments to Rule 4001:**

- **the page limit for the introductory statements contemplated in subsections (b), (c) and (d) was changed from three to five pages;**
- **the phrasing regarding introductory statements was changed from "shall include an introductory statement …" to "shall consist of, or if … more than five pages .. begin with, a concise statement …"** (to address Judge Isgur's concern that if the entire motion was five pages or less, that a separate introduction need not be set out).

The Committee agreed with the Joint Subcommittee's reasoning and **voted not to recommend that service in subsections (b), (c), and (d) be expanded to include parties requesting service.**

The changes to the rule as published included a new subsection (c)(1)(B) that contains a list of certain significant provisions, which, if present in the motion, must be listed in the introductory statement to draw attention to their existence. The new subsection also required the movant to "explain why" any of the provisions on the (c)(1)(B) list, if present in the proposed credit agreement or order, were necessary. The NBC recommended that the "explain why" language be removed. The Joint Subcommittee agreed with NBC's recommendation. Although there was divergence of opinion as to whether an "explain why" provision would elicit useful information, **the Committee voted to omit such a requirement in the rule.**

The NBC also recommended that the list of significant provisions to be disclosed in the introductory statement of a motion to obtain credit be expanded to require disclosure of any provisions: setting deadlines to file a plan or disclosure agreement; to obtain disclosure statement approval; or for the entry of a confirmation order. The Joint Subcommittee supported the NBC's recommendation. **The Committee agreed and voted to recommend augmenting the list at subdivision (c)(1)(B) to require disclosure in the introductory statement of "the establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order."**

There were diverging opinions about the proposed new Rule 4001(c)(1)(C). As published, subsection (c)(1)(C) made explicit reference to the applicability of Rule 9024 if a court determines later in the case that an introductory statement did not adequately disclose material elements of the credit agreement. The NBC commented that a specific reference to Rule 9024 in Rule 4001 could be construed to mean that applicability of Rule 9024 was somehow different in other rules. The Joint Subcommittee suggested replacing the Rule 9024 reference with: "the court may grant appropriate relief if it determines that [the summary] did not adequately disclose a material element of the [credit agreement]." Some Committee members said that even the Joint Subcommittee's proposal inappropriately created an inference that the court's ability to revisit an order or action was different in Rule 4001 than in other rules. **Upon motion, the Committee voted to recommend deleting subdivision (c)(1)(C) from the proposed amendments to the Rule 4001.**

The Committee voted to recommend final approval of the proposed changes to Rule 4001 (as amended at the meeting) without dissent. The Reporter distributed a copy of the rule with revisions to the Committee on Friday.

Rule 6003 ("First Day Orders"): The Joint Subcommittee reviewed the comments to Rule 6003 and agreed with suggestions that motions to reject unexpired leases should not be limited during the first 20 days of a bankruptcy case. The Joint Subcommittee Noted that the standard to allow rejection of a lease was easily met, and almost all such motions are allowed. Accordingly, prohibiting the debtor from rejecting leases during the first 20 days of the case created the possibility of unnecessary rental obligations without any corresponding benefits. **The Committee agreed with the Joint Subcommittee and voted to recommend final approval of the proposed changes to Rule 6003 as published after deleting references to the rejection of executory contracts or unexpired leases.**

Rule 6006 (Omnibus Motions to Assume, Assign or Reject Executory Contracts and Leases): The published amendment to Rule 6006 added a new subsection setting procedures for and limiting the use of omnibus motions to assume, reject or assign multiple executory contracts or unexpired leases in certain circumstances. The Joint Subcommittee recommended a change in the published language to include motions "to assume, but not assign to more than one assignee unexpired leases of real property." **The Committee voted to recommend final approval of the proposed amendments to Rule 6006 as published, with the changes suggested by the Joint Subcommittee.**

Standing Committee Style Subcommittee Recommendations regarding the Published Rules (Rules 3001, 3007, 4001, 6003, 6006): The Style Subcommittee of the Standing Committee suggested a number of changes to the published rules as set out at Agenda Item 3(b). The Reporter reviewed the suggested changes and made recommendations in his memo, also set out at Agenda Item 3(a). **The Committee voted to recommend approval of all style changes supported in the Reporter's memo.**

Rule 9037: The Reporter and Professor Capra (who participated by telephone), discussed the comments on Rule 9037 (the bankruptcy rule version of the E-Government Rule) and recommended changes. The basis for discussion was The Reporter's March 6, 2006, memo

distributed at the committee meeting, which contained a copy of the rule with suggested amendments. The primary changes in March 6 version of the rule as compared to the rule as published were:

- Published subdivision (d)(1) became (a)(2)
- Published subdivisions (c) and (d) were combined into a new (c)(1) and (c)(2)
- An exemption from the redaction requirement was added for financial account numbers in forfeiture actions
- A new subdivision was proposed at the end of the rule (subdivision (g)), to state explicitly that parties and their counsel have the duty to redact documents, not the clerk or court reporters
- Stylistic changes offered by the Style Subcommittee of the Standing Committee

The Reporter reviewed the newly proposed subdivision (g), (Duty to Redact) at lines 61-69, which had been proposed by the Court Reporters Association. The first sentence in subdivision (g), which affirmatively puts the responsibility for redaction on the parties and their counsel, was supported by the Federal Magistrate Judges Association. The Reporter recommended deleting all of subdivision (g) because it was not the sort of position normally taken in the Rules. The Committee reviewed the changes set out in the March 6 memo. After discussion, **the Committee approved the changes in Rule 9037(a)(1) and additionally changed lines 8-9 to read "and an individual's tax identification number." It approved the new subdivision (a)(2) and corresponding deletion of former subdivision (d)(1). It approved the insertion of "whose decision becomes part of the record" in subdivision (b)(2) and it approved the insertion of subdivision (b)(5) (redaction requirement in forfeiture proceedings) at lines 28-29. Finally, it voted to delete proposed subdivision (g) and voted to recommend final approval of the rule with the changes discussed above.**

Interim Rules (Agenda Item 4)

The Chairman told the Committee that there has been almost uniform adoption of the Interim Rules, as shown by Agenda Item 4(b), a chart summarizing adoption sorted by court. The Chairman said that since adoption, comments had been received only on Rules 1007, 1015, 2002, 2015, 2015.3, 3016, and 8001. The Reporter prepared a summary of the comments at Agenda Item 4(c).

The Chairman moved that the Committee recommend publishing as proposed national rules those Interim Rules that received no comments. **The Committee voted without dissent to recommend publishing for public comment as proposed new national rules all Interim Rules that received no comments, namely: the proposed amendments to Rules 1006, 1010, 1011, 1017, 1019, 1020, 2003, 2007.1, 3002, 3003, 3017.1, 3019, 4002, 4003, 4004, 4006, 4007, 4008, 5003, 6004, 8003, 9006, 9009 and proposed new Rules 1021, 2007.2, 2015.1, 2015.2, 5008, 5012 and 6001.**

Rules 1010, 1011, *Agenda Item 6(b)*: Although not part of the interim rule changes, the Reporter recommended amending Rules 1010 and 1011 to make Rule 7007.1 (requirement to file ownership statement) applicable in involuntary petitions. He argued that the process of filing an

adversary proceeding is akin to filing a complaint and that Rule 1010 already requires the petitioning creditors to serve the summons and a copy of the involuntary petition in the manner of service of a summons and complaint. The Reporter's suggested revisions to Rules 1010 and 1011 are set out at Agenda Item 6(b). **The Committee approved the Reporter's suggested changes to Rules 1010 and 1011 with minor stylistic changes to Rule 1010, and deletion of the last sentence in the Committee Note for Rule 1011 and voted to recommend the rules be published for public comment 2006.**

Rule 1007: The Reporter reported a number of problems related to the new requirement for individual debtors to complete credit counseling prepetiton and file the appropriate certificate. In his February 24, 2006, memo at Agenda Item 4(c), the Reporter recommended: changing subdivision (b)(3) of the rule to permit the debtor to file a statement that he or she had completed credit counseling but had not received the certificate yet; and adding a new provision to subdivision (c) allowing the debtor to file the certificate within 15 days after commencement of the case if the new provision in subdivision (b)(3) was applicable. The Reporter also proposed a new Director's Form that clerks could use to apprise debtors that filing a case without first completing the credit counseling requirement could result in case dismissal, the payment of a new filing fee for a subsequent case, and a limit of the automatic stay in the subsequent case.

The Committee supported the proposed amendments to the rule with suggested changes to the proposed language at new subdivision (b)(3)(B). Judge Wedoff advocated language changes to the Reporter's suggested form, as well as making the form an Official Form that the debtor would be required to complete and file with the petition. **After discussion, the Committee voted to recommend reformatting subdivision (b)(3) into (b)(3)(A) – (D) and adding new language at subdivision (b)(3)(B).**

At the Chairman's suggestion, Judge Wedoff agreed to draft a proposed official form for the Committee's consideration, and agreed to make changes to subdivision (b)(3) that would require use of the new form. Judge Wedoff's revisions were distributed the following day and **the Committee voted 12-1 to recommend subdivision (b)(3) and proposed new Official Form 23A, as revised by Judge Wedoff. The Committee also recommended redesignating Official Form 23 (a "Statement of Completion" signed by the debtor) as Form 23B.** After the meeting was completed, some members suggested additional stylistic changes to newly designated Form 23A, and suggested redesignating it as Exhibit D to the petition, to help ensure that debtors would not confuse it with the Statement of Completion form. **The Committee voted by e-mail to approve the stylistic changes to the new form, and changed its designation to Exhibit D of the petition. The Committee also amended its prior vote and voted to leave the designation for Form 23 unchanged.**

The Reporter discussed a problem raised by Judge Karen Overstreet regarding completion of the approved financial management course by individual debtors in chapter 7 and 13. Some debtors, rather than filing the Official Form 23 as required by Interim Rule 1007(b)(7), file instead a certificate created by the agency performing the personal financial management course. Judge Oversteet suggested amending subdivision (b)(7) to allow alternative filings, either Official Form 23, or a "certificate of completion" generated by the provider.

The Reporter recommended that no change be made to the subdivision (b)(7) because the problem will likely resolve itself as practitioners and debtor education providers become more familiar with distinctions under the Code between prepetition credit counseling and postpetition debtor education. **The Committee agreed with the Reporter's recommendation.**

The Committee voted to recommend that the new Exhibit D and all recommended changes to Rule 1007 discussed above be published for public comment, and additionally that the new Exhibit D go into effect October 1, 2006. The Committee also recommended that the proposed Rule 1007 changes be incorporated into Interim Rule 1007 to be recommended to the courts for adoption as a local rule effective October 1, 2006.

Rule 2002: The Reporter discussed a request made by the NBC that a mechanism be created in the Rules to implement new creditor noticing requirements under § 342(f) and (g) of the Code, added by BAPCPA. The new Code provisions allow a creditor to treat a notice as potentially ineffective until it is received by a person or subdivision that the creditor has designated to receive notices under the Bankruptcy Code so long as the creditor has established "reasonable procedures" to ensure that notice is sent to the correct person and organizational subdivision. But the additions to § 342 do not describe how a creditor establishes it has "reasonable procedures" in place if it wishes to assert that a particular notice was not effective under § 342(g).

In his February 24, 2006, memo at Agenda Item 4(c), The Reporter proposed language to be included in a new Rule 2002(g)(5) that would provide creditors with procedures to comply with § 342(f) and (g). After discussion, Judge Wedoff volunteered to rewrite the proposed language to reflect comments from the Committee. A revised version of Rule 2002(g)(5) with a proposed Committee Note was distributed to the Committee on Thursday. **The Committee voted to recommend the proposed Rule 2002(g)(5) and the proposed Committee Note as revised by Judge Wedoff with minor stylistic changes.** The stylistic changes were incorporated into a final draft of the rule distributed at the meeting.

Referencing Agenda Item 4(h), the Chairman and the Reporter outlined draft chapter 15 rules proposed by Judge Samuel Bufford. The proposed chapter 15 rules were comprehensive and would be relevant to many of the changes addressed in Interim Rules 2002(p) and (q), 3002(c)(6), and 5012.

Because of time constraints, and because there are relatively few chapter 15 cases, most of which are administered by sophisticated counsel, the Chairman recommended that Judge Bufford's proposed rules first be considered by a subcommittee before review by the full Committee. The Reporter agreed with this approach, but believed that some of Judge Bufford's suggestions could be addressed by changes to existing rules.

In his February 8, 2006, memo at Agenda Item 4(h), the Reporter suggested changes to Rule 2002 that would address some of the concerns raised by Judge Bufford. At page 9 of his memo, the Reporter added new paragraphs 3 and 4 to Rule 2002(p) which, if adopted, would require that notice to a foreign creditor be given in the official language of the country to which the notice is sent, and that notice of a creditor with a foreign address be delivered in the same

manner that notices in legal proceedings are delivered in the foreign country. However, the Reporter did not recommend the changes because he believed the requirements could be unnecessarily expensive for the debtor.

A number of Committee members said that the proposed notice might not even be effective. For example, if all the transactions between the debtor and the foreign creditor were conducted in English, or some other language that was not the "official language" of the creditor's country, requiring notice in the "official language" of the creditor could be less effective than if the notice was provided in English. A member suggested that there could also be problems if the creditor was from a country with more than one "official language." **The Committee voted not to amend Rule 2002(p) with the proposed new paragraphs 3 and 4.**

The Reporter did recommend amending Rule 2002(q)(1) and (2) to include the United States trustee in the list of entities who must receive notice of a petition for recognition, or of a court's intention to communicate with foreign courts or foreign representatives. The Committee agreed that the United States trustee should receive notice of these events, but some members thought it would be more appropriate to amend 2002(k), which already contained a list of events that required notice to the United States trustee. **On motion, the Committee rejected the Reporter's proposed amendment to Rule 2002(q) and instead recommended adding Rule 2002(q)(1) and (2) to the list in Rule 2002(k). The Chairman referred Judge Bufford's proposed chapter 15 rules to the Subcommittee on Technology and Cross Border Insolvency.**

The Committee voted to recommend that the proposed changes to Rule 2002 as discussed above be published for public comment.

Rules 4008; 4004(c)(1); 9006(b)(3) and (c)(2): Judge Wedoff discussed a need to amend Rule 4008 to improve clarity, and to ensure that a discharge was not entered before the court reviewed, and, if necessary, held a hearing, with respect to any reaffirmation agreements. **The Committee approved the proposed amendments to Rule 4008 as set out at Agenda Item 7(b), with minor stylistic changes, and recommended publishing the rule for public comment.** A version with stylistic changes was distributed to the Committee the next day. **The Committee also voted to amend Rule 9006(b)(3) and (c)(2) by adding Rule 4008 to the respective lists in those rule subdivisions, and to recommend publishing the changes for public comment.**

Judge Wedoff also recommended at Agenda Item 7(b) that Rule 4004(c)(1) be amended by adding a new subdivision (K) that would provide for entry of the discharge unless a motion to extend the time to file a reaffirmation agreement under 4008(a) was pending. However, the Committee failed to consider the proposed change to Rule 4004(c)(1) during the meeting. **After the meeting, the Committee approved the proposed addition of subdivision (K) by e-mail and recommended publishing Rule 4004(c)(1) as amended.**

Rule 8001, *Agenda Item 4(g)*: Judge Klein referred the Committee to the Reporter's February 3, 2006, memo at Agenda Item 4(g) discussing three proposed changes to Rule 8001.

Judge Klein first discussed a technical revision at subdivision f(1) (lines 23-25 of the rule as set forth in The Reporter's memo), that deleted the reference to the temporary procedural requirements set out in the uncodified provision of BAPCPA. Judge Hartz discussed some problems with use of the word "effective" in the change. **After discussion, the Committee voted to recommend the change to subdivision (f)(1) as set out in the Reporter's memo to be published for public comment**.

Judge Klein next discussed a new subdivision (f)(5) proposed to reinforce the idea that certification by the lower court does not mean the court of appeals will exercise its discretion and accept the case. In effect, the new (f)(5) requires the proponent of the direct appeal to seek permission from the court of appeals in accordance with F.R. App. P. 5. There was considerable discussion regarding the proposed language for (f)(5) and some members thought that the new provision was unnecessary. No member moved to withdraw the proposed amendment in its entirety, however, and the Reporter incorporated the suggested changes into a rewrite that was distributed to the Committee the next day. The primary change to the proposed language was to require the party desiring to pursue the direct appeal to seek permission from the appellate court no later than 30 days after certification by the lower court. **The Committee voted to recommend for publication for public comment, the proposed subdivision (f)(5) as revised.**

The last item Judge Klein discussed was a change to subdivision (e) of the rule which redesignated (e) as (e)(1) and created a new (e)(2). The new (e)(2) provides a procedure for transferring an appeal to the bankruptcy appellate panel after an election to have the appeal heard by the district court had been made. It explicitly recognizes the district court's authority to transfer an appeal to a bankruptcy appellate panel if all the parties seek the transfer, but also recognized the district court's authority to retain jurisdiction despite a transfer request. Judge Klein explained that the proposed addition was designed to prevent strategic behavior by the parties and to prevent the waste of judicial resources. **The Committee voted to recommend for publication for public comment, the redesignation of subdivision (e) as (e)(1) and the addition of subdivision (e)(2)**.

Agenda Item 5, Report by the Attorney Conduct and Health Care Subcommittee

Judge Schell reported on two items referred to the Attorney Conduct and Health Care Subcommittee at the Santa Fe Committee meeting. The first issue concerned June 21, 2005 letter from the ABA Task Force on Attorney Discipline, and the second issue concerned a proposal by Judge Paul Mannes to allow corporate creditors to be represented by non-attorneys where the claim amount is small.

In its letter, the ABA Task Force noted that BAPCPA imposes new duties on individual debtor attorneys in chapter 7 of "reasonable investigation," and "inquiry." The ABA Task Force is concerned about how these new duties might impact issues of attorney discipline, suspension, and disbarment. It suggests that the Committee include in the Federal Rules of Bankruptcy Procedure a recommendation that each bankruptcy court consider implementing an appropriate review and discipline process (or review such processes already in place) with the new attorney

duties in mind and with an aim to protect the rights of both the attorneys and debtors likely to be impacted by the statutory requirements.

The subcommittee recommended no action on the Task Force's proposal for several reasons: (1) the proposal is beyond the scope of the Committee, which is to recommend rules of bankruptcy procedure; (2) Rule 9011 already provides a procedure to discipline attorneys in cases; and (3) procedures for disciplining attorneys are generally promulgated by the district court, not the bankruptcy court.

The subcommittee also recommended no action on Judge Mannes's proposal because there is a significant body of case law prohibiting corporate entities from appearing in federal court without counsel. The subcommittee also believed that Congress may have implicitly addressed the matter when it amended § 341(c) with BAPCPA to allow some unrepresented creditors to appear and be heard at the meeting of creditors. The subcommittee concluded that Congress' express approval of unrepresented creditors at a § 341 arguably implies it decided not to allow creditors to appear in other aspects of the case without an attorney. **The Committee agreed with the subcommittee and rejected: (1) the proposal of the ABA Task Force on Attorney Discipline to make suggestions to bankruptcy courts regarding attorney discipline; and (2) Judge Mannes's proposal to allow the participation of corporate creditors without attorneys in cases where the claim amount is small.**

Report of the Business Subcommittee; Small Business Forms

The Reporter's February 4, 2006, memo, at Agenda Item 6(c), provides an overview of the Business Subcommittee's work. As described in the memo, the subcommittee proposed three new official forms: Form 25B, Small Business Disclosure Statement; Form 25C, Periodic Financial Reporting Form for Small Business Debtors; and Form 26, Reporting Form for Related Entities in which the Debtor Holds a Substantial or Controlling Interest. In addition, the subcommittee proposed minor changes to Form 25A, Small Business Plan (previously recommended for publication at the Committee's Santa Fe meeting). The subcommittee also proposed amendments to Bankruptcy Rules 2015, 2015.2, 3016, 9009 and a new Rule 2015.3. Judge Swain and Professor Janger reviewed the Business Subcommittee's proposals.

Rule 2015(a)(6), *Agenda Item 4(e)*: Professor Janger said that the proposed addition of subdivision (a)(6) to Rule 2015 was necessary to implement new requirements set forth in BAPCPA that a small business debtor submit certain periodic reports to the trustee. In its review of the rule, the Committee changed "15 days" at line 14 to "20 days" and added the following sentence to the end of 2015(a)(6): "The obligation to file reports under this subdivision terminates on the effective date of the Plan, dismissal, or conversion of the case." The Committee added the following to the end of the Committee Note: "Reporting under this rule does not relieve the debtor or the trustee of any other obligations to provide information or documents to the United States trustee." **The Committee without objection voted to recommend the proposed amendment and Committee Note for publication for public comment.**

Form 25C, *Agenda Item 6(c)(4)*: Professor Janger explained that the subcommittee designed new Official Form 25C "Small Business Operating Report," to collect the information required by proposed Rule 2015(a)(6). Professor Resnick suggested several stylistic changes, including globally changing "you" to "the debtor" and "did you" to "have you." A number of members thought that the "Projections" table on page four should be redesigned to report whether actual financial numbers were higher or lower than projected numbers. And Judge Wedoff suggested regrouping certain questions so that negative information was easier to identify. **Upon motion, the Committee voted to recommend Official Form 25C for publication for public comment, after review by the Style Subcommittee.**

Rules 3016(d) and 9009 *Agenda Items 4(e) and 6(c)(6)*: Professor Janger explained that although the small business plan and disclosure statement forms developed by the Business Subcommittee were proposed as official forms, such forms are not statutorily required. Accordingly, the subcommittee recommended adding a subdivision (d) to Rule 3016 that allows the court to approve plans and disclosure statements that conform to the official forms or to approve forms used by local rule. It also recommended amending Rule 9009 to start with the phrase, "Except as provided in Rule 3016(d) …," to allow for permissive use of the new forms. Mr. Walton and Judge Wedoff argued that § 1125(f)(2) of the Code and § 433 of BAPCPA require use of the new official forms. **After further discussion, the Committee voted to recommend the addition of Rule 3016(d), and the changes to Rule 9009 for publication for public comment.**

Rule 3016(b) *Agenda Item (4)(f)*: The Reporter suggested a new change to Rule 3016(b). As amended by the Interim Rules, Rule 3016(b) addresses a change in the Code that allows the plan document to also serve as the disclosure statement in a small business case. To comply with the rule, the plan proponent must specially designate the document so that parties will know that a separate disclosure statement will not be filed. The Reporter suggested changing the new language in 3016(b) to make clear that the *court* must determine that the document filed can serve both as a plan and disclosure statement, and that the proponent's mere designation of the document as a plan and disclosure statement does not end the matter. **The Committee voted to recommend Rule 3016(b) for publication for public comment *without* the Reporter's suggested change.**

Form Small Business Plan, *Agenda Item 6(c)(1)*: Professor Janger described minor changes to the small business plan previously approved by the Committee last fall, including a change in the caption, and the addition of section 3.03 to the plan (regarding priority tax claims). Additionally, the Business Subcommittee drafted and recommended a Committee Note for the form plan. The Committee suggested changing the caption so that it included the name of the proponent and the date of the submission (i.e., "*Debtor's* Plan of Reorganization dated _____"). Mr. Walton suggested that the plan should be mandatory, but the Chairman rejected the motion as having been previously considered and voted on. **The Committee approved the plan and official comments with changes, and voted without opposition to publish the form plan for public comment.**

Small Business Disclosure Statement (Form 25B), *Agenda Item 6(c)(2)*: Judge Swain and Professor Janger provided an overview of the process the Business Subcommittee took in

developing its recommendation for a form disclosure statement. The new Form 25B was developed over the course of many subcommittee conference calls and represented the input of all the subcommittee members including considerable input from John Byrnes of the EOUST.

Professor Janger described the subcommittee's belief that there were three basic objectives of the new forms: (1) to provide adequate information to creditors, both sophisticated and unsophisticated; (2) to provide information to help the judge to evaluate the plan's compliance with § 1129 of the Code; and (3) to aid help an unsophisticated debtor's counsel comply with the statutory confirmation requirements. Professor Janger said that the new form was a product of compromise and that the majority of the subcommittee believed it met the objectives set by Congress to create a form to balance: (1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and (2) economy and simplicity for debtors.

Mr. Walton spoke on behalf of the EOUST. He said that the EOUST was appreciative of the subcommittee's efforts. But he thought the subcommittee's form was still too complex and full of legalese for the typical unsecured creditor. In particular, the EOUST is sensitive to creditor complaints that participation in chapter 11 cases is prohibitively expensive, especially in small cases, because hiring counsel to interpret the documents filed in the case usually costs more than any potential recovery. Accordingly, Mr. Walton advocated a simpler form as being much more likely to encourage creditor involvement in small cases.

Mr. Walton also took issue with one of the Business Subcommittee's suggested purposes of the form disclosure statement. He believed it was unlikely that a court would rely on a disclosure statement to determine whether a plan was confirmable or not. In closing, Mr. Walton recommended that the subcommittee's proposed disclosure statement be rejected, and that instead the subcommittee be reconvened to consider a simpler "Plain English" form disclosure statement based on the draft submitted by the EOUST at Agenda Item 6(c)(2).

Judge Swain responded that although the Business Subcommittee only recently received the EOUST's draft disclosure statement, it *had* considered the document. Moreover, she noted, early in the process the subcommittee considered and rejected a similar document advocated by the EOUST as misleading or simply inaccurate.

Mr. Brunstad said that he preferred the form disclosure statement prepared by the Business Subcommittee because it provided more information. And Judge Walker said he thought the subcommittee's effort was probably the "lowest level" version of a disclosure statement likely to be useful, even if it wasn't drafted in terms preferred by some creditors. Judge Klein supported use of the subcommittee's form because it tells the creditor up front how much and when it is likely to receive a distribution, and because the form would also be useful in guiding unsophisticated debtor's lawyers through a chapter 11 confirmation.

The Chairman suggested the Committee go through the subcommittee's proposed disclosure statement and then vote on whether or not to recommend it. Mr. Janger told the Committee that if the form were adopted that he would amend it to include a table of contents, and to conform the caption to the changes that the Committee already approved for the form

plan. Members of the Committee suggested some stylistic changes and the following additional changes:

- A new subsection II-G entitled "Claims Objections" stating that "Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are set forth in Article __ of the Plan."
- Mr. Shaffer suggested changing existing exhibit D to require the most recently filed operating report (instead of all operating reports) and suggested deleting existing exhibit C, (tax returns).

There was also some discussion of the possibility that adoption of the subcommittee's form would not preclude adoption of a draft prepared by the EOUST as an alternative.

The Committee voted without dissent to approve the changes noted above and to recommend the Business Subcommittee's form disclosure statement for publication for public comment.

Possible Combined Form Plan and Disclosure Statement, *Agenda Item 6(c)(3)*: The Business Subcommittee reported that it has not attempted to draft a proposed combined plan and disclosure statement for use in small business cases. The Chairman moved to table the project for a year so that the subcommittee would have the benefit of comments on the form plan and form disclosure statement that the Committee just recommended for publication. Judge Swain seconded the motion. **The Committee voted without dissent to defer the decision of whether the Business Subcommittee should draft and propose a combined form plan and disclosure statement.**

Rule 2015.3, Form 26, *Agenda Item 6(c)(5)*: Professor Janger explained that the Business Subcommittee proposed a new Rule 2015.3 and a new Official Form 26 to address a new requirement imposed by § 419 of BAPCPA that the debtor make periodic reports of valuation, profitability and operations concerning entities in which it has a substantial or controlling interest. An initial problem faced by the subcommittee was that the term "substantial or controlling interest" is not defined in the Code, but rather is a factual determination that the court ultimately must decide. However, the subcommittee believed that some guidance was needed so that parties would know when to fill out the form. The subcommittee elected to set a presumption that 20% control or ownership is a substantial or controlling interest.

Another issue, explained Professor Janger, is that the statutory reporting requirement appears to address only debtors, not the estate, debtors in possession, or trustees. The subcommittee elected to require reporting from the debtor in possession and any trustee because it thought such entities would more likely be able to fulfill the reporting requirements. **After making a number of stylistic changes, the Committee voted to recommend Form 26, Rule 2015.3, and the accompanying Committee Note be published for public comment.**

Means-Test Forms

Agenda Item 7(a) (Means-Test Form Review): Judge Wedoff reported on the recommendations of the Means-Test Working Group with respect to changes in two of the means-test forms (Forms 22A and 22C). The working group, consisting of Judge Wedoff, Judge Frank, and Mr. Redmiles, discussed in detail the suggestions and comments received from the NBC, the Financial Services Roundtable (FSR), and others, as well as suggestions developed internally. Many of the suggestions had already been considered and rejected by the Committee when it recommended the means-test forms in the summer of 2005. The changes recommended by working group and the NBC's February 17, 2006 comments were included at Agenda Item 7(a). The FSR comments were distributed at the meeting.

The working group suggested a number of stylistic changes in the means-test forms to improve clarity. And it recommended other changes (in the "Other Necessary Expenses" categories for child care and telecommunications, and the "Other payments on secured claims" category, for example) to more closely track the statutory language and IRS definitions. The working group also reworded the instructions at line 17 of Form 22C (Chapter 13) so that the debtor would always be directed to complete part III of the form, regardless of whether the debtor was above or below the state median. The changes recommended by the working group were incorporated into the forms included as Agenda Item 7(a). In reviewing the changes, the Committee removed the words "in Default" in the middle column of table in the "Other secured claims" box (line 43 on Form 22A, and line 48 on Form 22C). **The Committee voted to recommend adopting all the changes proposed by the working group as set out in Forms 22A and 22C at Agenda Item 7(a) (as amended) and also recommended that the changes become effective October 1, 2006.**

The working group considered but rejected the following suggestions:

(1) A suggestion by the NBC that the chapter 13 form be revised to allow a deduction of income used to pay the debtor's household expenses but not actually received by the debtor (such has payment by a grandparent of a child's school tuition) from the calculation of disposable income. *The working group recommended no change.*

(2) A suggestion by the NBC to allow inclusion of expenses in an "Other Necessary Expenses" box even if such expenses do not fit into the IRS Other Necessary Expense categories listed on the form. *The working group recommended no change, as provisions for listing "Additional Expense Claims" already exist at the end of the means-test forms.*

(3) A suggestion by the NBC that non-filing spousal income not be counted in the calculation of the § 707(b)(7) safe harbor, if it can be shown that the non-filing spouse's income is not being contributed to the debtor's household income. *The working group noted that this suggestion was considered and rejected by the Committee at its last meeting.*

(4) The FSR suggested that the projected chapter 13 expenses multiplier in the chapter 7 and 13 forms indicate a cap of 10%. *The working group recommended no changes because the form currently directs the debtor to use the actual*

multiplier as reported by the United States trustee, and no multiplier is greater than 10%.

(5) The FSR suggested removing language in the forms that allows the debtor to argue unemployment income is "a benefit received under the Social Security Act" and that it should therefore be excluded from the CMI calculation. *The working group recommended no changes because this issue was considered and rejected by the Committee at its last meeting.*

(6) The FSR suggested that the chapter 7 form be changed to require that below-median-income filers complete the expense portion of the form even though such filers are not subject to a presumption of abuse. *The working group recommended no changes because this issue was considered and rejected by the Committee at its last meeting.*

(7) The FSR suggested changing the forms to allow an automobile ownership deduction only if the debtor is actually making lease or note payments on an owned vehicle. *The working group recommended no changes because this issue was considered and rejected by the Committee at its last meeting.*

(8) The FSR suggested deleting line 13 from the chapter 13 form (which allows the debtor to contend that a non-filing spouse's income was not contributed to household expenses). *The working group recommended no changes because this issue was considered and rejected by the Committee at its last meeting.*

(9) The FSR suggested deleting the "Additional Expense Claims" categories at the end of the chapter 7 and 13 forms. *The working group recommended no changes because this issue was considered and rejected by the Committee at its last meeting.*

Forms (Other than Means-Test Forms and Small Business Forms)

The Chairman advised the Committee that the EOUST has strongly requested that the rules require the use of data-enabled forms and that the Administrative Office produce data-enabled forms. The Chairman referred the matter to the Subcommittee on Technology and Cross Border Insolvency for consideration.

Mr. Ketchum reported to the Committee on the work of the Forms Subcommittee.

Agenda Item 9(b), Form 10: Ms. Ketchum reminded the Committee that it already approved the changes proposed for Form 10 when it discussed proposed amendments to Rule 3001 earlier in the meeting. She noted, however, that there had been some discussion about whether to replace the word "copies" in box 7 with the word "duplicates." **The Committee voted without dissent to approve use of the word "copies."**

Agenda Item 9(c)(1): Ms. Ketchum described the need to conform the forms to incorporate the requirement that if a "minor child" is listed, that the name, address, and legal relationship of any person described in Rule 1007(m) also be included. Ms. Ketchum explained that the conforming language was needed in Forms 4, 6B, 6G, 6H and 7. **The Committee**

approved all of the "minor child" conforming language changes made to Forms 4, 6B, 6G, and 6H, and recommended the changes be published for public comment.

Ms. Ketchum said there had been a minor change to the declaration page for Form 6 to indicate that an additional page was being filed. She proposed changing the direction to report the total number of pages listed on the summary of schedules page from "plus 1" to "plus 2." Judge Frank asked whether it was possible to remove the "plus" language altogether. **After a discussion, the Committee approved the "plus 2 change" and recommended that the change become effective on October 1, 2006.**

Ms. Ketchum described an additional change to Form 7 at question 3. The new language directs the debtor not to list creditor payments that aggregate less than $600. **The Committee approved the change, and voted to recommend the change be published for public comment.**

Ms. Ketchum described suggested changes to Form 6B (questions 13, 14 and 21) which referenced new Rule 2015.3. The Committee alternatively discussed changing or deleting the proposed language. **After discussion, the Committee voted to delete the suggested changes to questions 13, 14 and 21 of Form 6B.**

Ms. Ketchum described changes to Forms 9G, 9H, and 9I. Forms 9G and 9H had been changed to include "Family Fisherman" and 9I was amended to include a reference to Rule 3002(c)(1) at the deadline for a governmental unit to file a proof of claim. **The Committee approved the changes to 9G, 9H and 9I and voted to recommend they go into effect October 1, 2006.**

Agenda Item 9(c)(2): Ms. Ketchum reviewed several changes to the forms that were needed to capture statistical information required by BAPCPA and noted that if approved, such changes should go into effect October 1, 2006.

Form 1. A number of changes were made. Ms. Ketchum noted new language requiring debtors to identify themselves as "tax exempt" rather than "nonprofit" in the middle box, and new language added to the "Chapter 11 Debtors" box. A Committee member suggested the introductory language in the middle box to "Check one box," and members discussed changing the choice between "Consumer/Non-Business" and "Business" to "Debts are primarily consumer debts (personal family household debt)" and "Debts are primarily business debts" so that the distinction more closely follows language used in the Code.

Ms. Ketchum noted that there was newly proposed language on the third page of Form 1 whereby individual debtors certified they had completed the credit counseling requirement. But the Committee decided the new language was not necessary in light of the prior decision to create a new Official Form 23A which would require a similar certification and would warn the debtor that the failure to complete credit counseling prepetition would result in dismissal of the case unless an exception applied.

Form 5. Ms. Ketchum reviewed suggested changes made to conform Form 5 to Form 1. Committee members suggested additional conforming changes.

Form 6. Ms. Ketchum described the addition of boxes needed to collect statistical information at Form 6-Summary, 6D, 6E, 6F, 6I, and 6J. And she noted that Form 6-Summary was redesigned to collect additional statistical information. The Committee suggested a number of stylistic changes.

The Committee approved the suggested changes to Forms 1, 5, 6-Summary, 6D, 6E, 6F, 6I and 6J, and asked Ms. Ketchum to incorporate the changes into final versions for review by the Forms Subcommittee. The Committee voted to recommend that the changes go into effect October 1, 2006.

The Chairman recapped the recommended changes to the forms. **To be published for public comment: Forms 3A, 3B, 4, 6B, 6G, 6H, 7, 10, 24, 25A, 25B, 25C, and 26. To be published for public comment *and* to go into effect in October 1, 2006: Forms 1, 5, 6-Summary, 6D, 6E, 6F, 6I, 6J, 6-Declaration, 9G, 9H, 9I, 22A, 22C, and 23. In addition, all other forms amended in October 2005 are to be published for comment.**

Additional Action Items

Rule 1005, *Agenda Item 9(d)*: The Reporter said that although the Committee had already updated the forms to incorporate the BAPCPA changes that increased the time between chapter 7 discharges from six to eight years, a conforming change was also required for Rule 1005. **The Committee voted to recommend the conforming change to Rule 1005 to be published for public comment.**

Rule 1015, *Agenda Item 4(g)*: The Reporter recommended a technical change to Rule 1015(b) to update references in the rule in accordance with nomenclature changes made by BAPCPA to section 522 of the Code. **The Committee approved the technical changes to Rule 1015(b) without objection.**

Agenda Item 10: The Reporter discussed the Standing Committee's appointment of an Ad Hoc Committee to consider the propriety of introducing new time computational rules for adoption by the Appellate, Bankruptcy, Civil, and Criminal Rules Committees. He noted that this was a multi-step process and that the Ad Hoc Committee's first task was to identify the time computational rules among each set of rules, and to propose amendments to harmonize the counting of days under each set of rules. He referred the Committee to Judge Kravitz's January 20, 2006, memo which included a template for the time computational rules including Bankruptcy Rule 9006. The Reporter also prepared a revised Rule 9006 that incorporated the Ad Hoc Committee's suggestions. **The Committee approved Judge Kravitz's memo as a template for reviewing and recommending changes to Rule 9006. The Chairman asked the Reporter to study further the changes and to prepare a list of all bankruptcy rules with time periods.**

Agenda Item (6)(a): The Reporter addressed an issue that had arisen in partial response to In re State Line Motel, Inc., 322 B.R. 123 (9th Cir. BAP 2005), which held that service of an objection to claim is sufficient if it is mailed or otherwise delivered to a claimant under Rule 3007. The court rejected the argument made by many that service should be in the manner of a complaint as set out in Rule 7004. The Reporter said that the State Line at least raises the issue of whether the rules should be amended to clarify the service requirements for an objection to a proof of claim. However, the Reporter recommended no amendments to the rules at this time. He noted that two bankruptcy opinions had been published since State Line came out, and both accepted the State Line reasoning. He argued that the consistent decisions of the courts on this issue suggest that it is premature for the Rules Committee to weigh in on the issue. **After discussing the Reporter's recommendation, the Committee voted to make no changes to the rules with respect to proper service of an objection to a proof of claim.**

Agenda Item 7(d): The Reporter discussed a proposed amendment to Rule 1007 that would required a chapter 13 debtor to provide annual income updates, but recommended no action at this time. **The Committee took no action.**

Agenda Item 8(a): Judge Adam's proposal to amend the separate document provisions of Rule 9021 – Santa Fe Agenda Item 10(a). **The Chairman deferred the subcommittee report until the next meeting.**

Agenda Item 8(b): Judge Klein reviewed a proposed change suggested by Judge Rasure to Rule 3002(c)(5) to require the filing of a proof of claim by a date certain in a case with newly discovered assets so that the trustee and the court can more easily identify untimely claims. **The Committee approved the proposed change to Rule 3002(c)(5) to be published for public comment.**

Information and Discussion Matters

Agenda Item 11, Report concerning the restyling of the Civil Rules; impact on bankruptcy rules: The Chairman referred the Committee to the Reporter's memo at Agenda Item 11. **No action was taken.**

Agenda Item 12, E-Government Rule – Bankruptcy Rule 9037: The Chairman noted that the Committee considered and made changes to 9037 earlier in the meeting.

Agenda Item 13, Report of Joint Subcommittee on Venue and Chapter 11 Matters: The Chairman noted that the Joint Subcommittee previously made its report in the context of its review of the comments to Rules 1014, 3007, 4001 and 6006 and new Rule 6003.

Agenda Item 14, Revision of Director's Procedural Forms 240, Reaffirmation Agreement, and 281, Appearance of Child Support Creditor or Representative: **The Chairman asked the Forms Subcommittee to review proposed changes presented by Ms. Ketchum to Director's Forms 240 and 281.**

Agenda Item 15, Discussion on electronic transmission of agenda materials: **No action.**

Agenda Item 16, Discussion of place and time for the Spring 2007 meeting: The Chairman asked members to e-mail suggestions.

Administrative Matters

The Chairman recognized the excellent work of Howard Adelman, Judge Eric Frank, and Professor Alan Resnick and thanked them for their contributions to the Committee over the years. To commemorate their contributions, the Chairman presented each individual with a certificate signed by Director of the Administrative Office, Ralph Leonidas Mecham, and Chief Justice John G. Roberts, Jr. As an additional token of appreciation, the Committee also presented Professor Resnick with a bowl engraved with the name of each committee chairman who served while Professor Resnick was the reporter or a committee member.

Respectfully submitted,

Stephen "Scott" Myers