TO: Honorable Anthony J. Scirica, Chair
Standing Committee on Rules of Practice
and Procedure

FROM: Honorable Adrian G. Duplantier, Chair
Advisory Committee on Bankruptcy Rules

DATE: May 7, 1999

RE: Report of the Advisory Committee on Bankruptcy Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met on March 18-19, 1999, at the Airlie Center in Warrenton, Virginia. The Advisory Committee considered public comments regarding two packages of proposed amendments to the Bankruptcy Rules that were published in August, 1998.

The first package, titled the "Litigation Package," includes proposed amendments to 27 Bankruptcy Rules that would substantially revise procedures relating to litigation (other than adversary proceedings) in bankruptcy courts. Complete revisions of Rules 9013(motions) and 9014 (contested matters) are the primary focus of the Litigation Package. The Committee received 176 letters or E-mail messages, and heard 14 witnesses testify at a public hearing in Washington, D.C., on January 28, 1999, commenting on the Litigation Package. Most of the commentators opposed the proposed amendments or suggested substantial revisions. In view of the numerous comments, the Advisory Committee decided to study further the Litigation Package. The Committee will not be presenting to the Standing Committee at its June 1999 meeting any of the proposed amendments included in the Litigation Package.

The second package of proposed amendments published in August, 1998, includes miscellaneous revisions to six Bankruptcy Rules (Rules 1007, 1017, 2002(a), 2002(j), 4003, 4004, and 5003) and two Official Bankruptcy Forms (Form 1 -- Voluntary Petition, and Form 7 -- Statement of Financial Affairs). The Advisory Committee received 17 letters or E-mail messages commenting on these proposed amendments (no witnesses testified on these amendments at the public hearing). At its meeting at the Airlie Center, the Advisory Committee considered these comments and decided to study further the proposed amendments to Rules 1007 and 2002(j) and Official Bankruptcy Forms 1 and 7. The Committee approved the proposed amendments to Rules 1017, 2002(a), 4003, 4004, and 5003, and will present them to the Standing Committee at its June 1999 meeting for final approval and transmission to the Judicial Conference.

The Advisory Committee also approved a preliminary draft of proposed amendments to Bankruptcy Rules 1007, 2002(c) and (g), 3016, 3017, 3020, and 9020, and will present them to the Standing Committee at its June 1999 meeting with a request that they be published for

comment.

The Advisory Committee discussed the recommendations of the Standing Committee's Subcommittee on Technology regarding electronic service under Civil Rule 5 and the expansion of the 3-day mail rule under Civil Rule 6(e) to include electronic service. The Advisory Committee also discussed alternative drafts of amendments to Civil Rules 5, 6(e), 77(d), and 4(d) prepared by Professor Edward H. Cooper at the request of the Subcommittee on Technology. The Advisory Committee supports the suggested amendments to Civil Rule 5 that would permit electronic service on consent of the parties, the expansion of the 3-day rule to include any method of service other than personal delivery, and amendments to Civil Rule 77(d) to permit the clerk to use electronic service when giving notice of entry of a judgment. Since Bankruptcy Rule 7005 makes Civil Rule 5 applicable to adversary proceedings, any amendments to Civil Rule 5 to permit electronic service will apply in adversary proceedings without the need to amend the Bankruptcy Rules. But if the Standing Committee approves for publication proposed amendments to Civil Rule 5(b) regarding electronic service, the Advisory Committee will request that proposed amendments to Bankruptcy Rule 9006(f) (expanding the 3-day rule) and 9022(a) (authorizing the clerk to send notice of entry of a judgment or order by electronic means) be published at the same time.

The proposed amendments that will be presented to the Standing Committee for final approval and transmission to the Judicial Conference, the preliminary draft of proposed amendments that will be presented with a request for publication, and the preliminary draft of proposed amendments ready for publication if the proposed amendments to Civil Rule 5 on electronic service are approved for publication, are set forth below under "Action Items."

II. Action Items

A. Proposed Amendments to Bankruptcy Rules 1017, 2002(a), 4003, 4004, and 5003 Submitted for Final Approval by the Standing Committee and Transmittal to the Judicial Conference.

1. *Public Comment.*

The Preliminary Draft of the Proposed Amendments to the Federal Rules of Bankruptcy Procedure and related committee notes were published for comment by the bench and bar in August 1999. A public hearing on the preliminary draft was held on January 28, 1999, in Washington, D.C.

Sixteen letters or E-mail messages were received and no witnesses testified regarding the proposed amendments to Bankruptcy Rules 1017, 2002(a), 4003, 4004, or 5003. The comments contained in these letters and E-mail messages are summarized on a rule-by-rule basis following the text

of each rule in the GAP Report (see pages 4 - 15 below). These comments were reviewed at the Advisory Committee meeting and, as a result, several revisions were made to the published draft. The post-publication revisions are identified in the GAP Report.

2. *Synopsis of Proposed Amendments:*

(a) Rule 1017(e) is amended to permit the court to grant a timely request for an extension of time to file a motion to dismiss a chapter 7 case under §707(b), whether the court rules on the request before or after the expiration of the 60-day time limit for filing the extension request.

(b) Rule 2002(a) is amended to avoid the expense of sending to all creditors notice of a hearing on a request for compensation or reimbursement of expenses if the request does not exceed $1,000. The current rule provides that notice is not necessary if the amount of the request does not exceed $500. The amendment also eliminates certain ambiguities in the current rule.

(d) Rule 4003(b) is amended to permit the court to grant a timely request for an extension of time to object to a list of claimed exemptions, whether the court rules on the request before or after the expiration of the 30-day time limit for filing an objection. The amendments also extend the rule to apply to an objection filed by any party in interest, instead of limiting it to objections filed by a trustee or creditor.

(e) Rule 4004(c)(1) is amended to delay the granting of a discharge in a chapter 7 case while a motion for an extension of time to file a motion to dismiss the case under § 707(b) is pending.

(f) Rule 5003 is amended to permit the United States and the state in which the court is located to file statements designating safe harbor mailing addresses for notice purposes. The amendment requires the clerk to maintain a register of these addresses. Failure to use a mailing address in the register does not invalidate any notice that is otherwise effective under applicable law.

2. *Text of Proposed Amendments to Rules 1017, 2002, 4003, 4004, and 5003.*

Rule 1017. Dismissal or Conversion of Case; Suspension

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(e) DISMISSAL OF AN INDIVIDUAL DEBTOR'S CHAPTER 7 CASE FOR SUBSTANTIAL ABUSE. The court may dismiss an individual debtor's case for substantial abuse under § 707(b) only on motion by the United States trustee or on the court's own motion and after a hearing on notice to the debtor, the trustee, the United States trustee, and any other entities as the court directs.

(1) A motion to dismiss a case for substantial abuse may be filed by the United States trustee only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request filed by the United States trustee before the time has expired, the court for cause extends the time for filing the motion to dismiss. The United States trustee shall set forth in the motion all matters to be submitted to the court for its consideration at the hearing.

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COMMITTEE NOTE

This rule is amended to permit the court to grant a timely request filed by the United States trustee for an extension of time to file a motion to dismiss a chapter 7 case under § 707(b), whether the court rules on the request before or after the expiration of the 60-day period.

Reporter's Note on Text of Rule 1017(e). The above text of Rule 1017(e) is not based on the text of the rule in effect on this date. The above text embodies amendments that have been promulgated by the Supreme Court in April 1999 and, unless Congress acts with respect to the amendments, will become effective on December 1, 1999.

Public Comment on Proposed Amendments to Rule 1017(e):

(1) Hon. Christopher M. Klein (Bankr. E.D. Cal.) asked whether Rule 1017(e)(1) permits the court to extend the time for the court to dismiss the case for substantial abuse *sua sponte*.

(2) Peter C. Fessenden, Esq. (Brunswick, Maine) supports all the proposed amendments.

GAP Report on Rule 1017(e). No changes since publication.

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

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(a) TWENTY-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i), and (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 20 days' notice by mail of:

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(6) ~~hearings on all applications for compensation or reimbursement of expenses totaling in excess of $500~~ a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds $1,000;

COMMITTEE NOTE

Paragraph(a)(6) is amended to increase the dollar amount from $500 to $1,000. The amount was last amended in 1987, when it was changed from $100 to $500. The amendment also clarifies that the notice is required only if a particular entity is requesting more than $1,000 as compensation or reimbursement of expenses. If several professionals are requesting compensation or reimbursement, and only one hearing will be held on all applications, notice under paragraph (a)(6) is required only with respect to the entities that have requested more than $1,000. If each applicant requests $1,000 or less, notice under paragraph (a)(6) is not required even though the aggregate amount of all applications to be considered at the hearing is more than $1,000.

If a particular entity had filed prior applications or had received compensation or reimbursement of expenses at an earlier time in the case, the amounts previously requested or awarded are not considered when determining whether the present application exceeds $1,000 for the purpose of applying this rule.

Public Comment on Proposed Amendments to Rule 2002(a):

(1) Hon. Arthur J. Spector (on behalf of the four bankruptcy judges in the E.D. Mich.) supports the proposed amendments.

(2) Terrence H. Dunn, Clerk (D. Ore.) Supports the proposed amendments.

(3) Peter C. Fessenden, Esq. (Brunswick, Maine) suggests that the $500 dollar amount be maintained. Also, "the rule should be amended to clarify that notice and opportunity for hearing on a fee application is required if the *aggregate total* fee application exceeds the threshold amount." Based on his experience as a chapter 13 trustee for over 18 years, even $500 can be a significant burden on debtors. The bankruptcy judges in Maine take seriously their responsibility to review fee applications; "inefficiency and padding are ferreted out and disallowed. Raising the level of unscrutinized fees to $1,000 may impose an unfair burden on those least able to afford it." Regardless of the dollar amount used, he comments that the existing and proposed rule is ambiguous. Are notice and hearing escaped if

the *particular request* is less than $500/$1,000, or if the *total aggregate* fees to date are less than that amount? Especially in chapter 13, counsel could "fly below radar" simply by spreading out fee requests to receive court approval without any meaningful review. Rule 2002(a)(6) should clarify that notice and opportunity for hearing are waived only if the application indicates that the total aggregate fees do not exceed the dollar limit in the rule.

GAP Report on Rule 2002(a). No changes since publication.

Rule 4003. Exemptions

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(b) ~~OBJECTIONS~~ OBJECTING TO A CLAIM OF EXEMPTIONS. ~~The trustee or any creditor may file objections~~ A party in interest may file an objection to the list of property claimed as exempt only within 30 days after ~~the conclusion of~~ the meeting of creditors held ~~pursuant to Rule 2003(a)~~ under §341(a) is concluded or within 30 days after ~~the filing of~~ any amendment to the list or supplemental schedules is filed, whichever is later. ~~unless, within such period, further time is granted by the court.~~ The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension. Copies of the objections shall be delivered or mailed to the trustee, ~~and to~~ the person filing the list, and the attorney for ~~such~~ that person.

COMMITTEE NOTE

This rule is amended to permit the court to grant a timely request for an extension of time to file objections to the list of claimed exemptions, whether the court rules on the request before or after the expiration of the 30-day period. The purpose of this amendment is to avoid the harshness of the present rule which has been construed to deprive a bankruptcy court of jurisdiction to grant a timely

request for an extension if it has failed to rule on the request within the 30-day period. See In re Laurain, 113 F.3d 595 (6th Cir. 1997); Matter of Stoulig, 45 F.3d 957 (5th Cir. 1995); In re Brayshaw, 912 F.2d 1255 (10th Cir. 1990). The amendments clarify that the extension may be granted only for cause. The amendments also conform the rule to § 522(l) of the Code by recognizing that any party in interest may file an objection or request for an extension of time under this rule. Other amendments are stylistic.

Public Comment on Proposed Amendments to Rule 4003:

(1) Hon. Arthur J. Spector (on behalf of the four bankruptcy judges in the E.D. Mich.) supports the proposed amendments that will obviate the possibility of harsh results such as those created in *In re Laurain*, 113 F.3d 595 (6th Cir. 1997).

(2) Hon. Leslie Tchaikovsky (on behalf of nine Bankr. Judges of N.D. Cal.) suggests that Rule 4003(b) be further revised to clarify that an objection to an exemption is governed by Rule 9014. Also, further amend the rule to provide that the time limit for objecting to exemptions does not apply to chapter 11 cases and, in such cases, to permit the court to set a deadline.

(3) Shirley C. Arcuri, Esq., on behalf of the Local Rules Advisory Committee (Bankr. M.D. Fla.), expressed support for the proposed amendments to Rule 4003(b) that will allow trustees additional time, if warranted, to file objections to claims of exemption. Trustees are sometimes forced to file objections even if they are unsure of the merits in order to meet the 30-day time limit. Some of these are subsequently withdrawn. The amendment will allow trustees more time to determine the merits of an objection before filing it.

(4) Martha L. Davis, General Counsel, Executive Office for United States Trustees, commented that the reference to an objection to claimed exemptions filed by the "trustee or a creditor" is incomplete. Section 552(l) refers to a "party." They suggest similar language in Rule 4003(b) because the United States trustee sometimes finds it necessary to object to a debtor's claim of exemptions, particularly in chapter 11.

(5) Judy B. Calton. Esq., on behalf of the Advisory Committee of the

Bankruptcy Court for the Eastern District of Michigan, expressed support for the proposed amendments to Rule 4003(b), but is concerned that the inclusion of this provision might, by negative implication, be deemed to preclude the court from granting extensions of exclusivity or the time to assume or reject nonresidential leases if the statutory time period expires where a timely filed request for extension is pending. She suggests that similar provisions be placed in other rules with respect to such requests and/or the language permitting enlargement of time in Rule 9006(b) be strengthened.

(6) Peter C. Fessenden, Esq. (Brunswick, Maine) supports the proposed amendments.

GAP Report on Rule 4003. The words "trustee or creditor" were replaced by "party in interest" to conform to § 522(l) of the Bankruptcy Code which permits any party in interest to object to claimed exemptions. Style revisions also were made to the published draft.

Rule 4004. Grant or Denial of Discharge

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(c) GRANT OF DISCHARGE.

(1) In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case ~~pursuant to~~ under Rule 1017(e), the court shall forthwith grant the discharge unless:

~~(a)~~(A) the debtor is not an individual,

~~(b)~~(B) a complaint objecting to the discharge has been filed,

~~(e)~~(C) the debtor has filed a waiver under § 727(a)(10),

~~(d)~~(D) a motion to dismiss the case under ~~pursuant to~~ Rule 1017(e) is pending,

~~(e)~~(E) a motion to extend the time for filing a complaint objecting to discharge is pending, ~~or~~

(F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e)(1) is pending, or

~~(f)~~(G) the debtor has not paid in full the filing fee prescribed by 28 U.S.C. §1930(a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. §1930(b) that is payable to the clerk upon the commencement of a case under the Code.

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COMMITTEE NOTE

Subdivision (c) is amended so that a discharge will not be granted while a motion requesting an extension of time to file a motion to dismiss the case under § 707(b)is pending. Other amendments are stylistic.

Public Comment on Proposed Amendments to Rule 4003:

(1) Hon. Christopher M. Klein (E.D. Cal.) asks whether the court may extend the time *sua sponte*? Consider revising the rule to take into

account undeserved discharges in cases that should be dismissed. There has been a problem when the debtor does not attend the meeting of creditors, which the trustee keeps continuing, and ultimately the case gets dismissed for failure to prosecute, but the discharge has been automatically entered under Rule 4004(c). Since section 349 does not provide that dismissal vacates the discharge, there is an opportunity for manipulation in which a debtor gets the benefit of a discharge without giving up nonexempt property to creditors.

(2) Peter C. Fessendon, Esq. (Brunswick, Maine) supports the proposed amendments.

GAP Report on Rule 4004. No changes since publication except for style revisions.

Rule 5003. Records Kept By the Clerk

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(e) *Register of Mailing Addresses of Federal and State Governmental Units.* The United States or the state or territory in which the court is located may file a statement designating its mailing address. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a register that includes these mailing addresses, but the clerk is not required to include in the register more than one mailing address for each department, agency, or instrumentality of the United States or the state or territory. If more than one address for a department, agency, or instrumentality is included in the register, the clerk shall also include information that would enable a user of the register to determine the circumstances when each address is applicable, and mailing notice to only one applicable address is sufficient to provide effective notice. The clerk shall update the register

annually, effective January 2 of each year. The mailing address in the register is conclusively presumed to be a proper address for the governmental unit, but the failure to use that mailing address does not invalidate any notice that is otherwise effective under applicable law.

~~(e)~~ (f) *Other Books and Records of the Clerk.* The clerk shall ~~also~~ keep ~~such~~ any other books and records ~~as may be~~ required by the Director of the Administrative Office of the United States Courts.

COMMITTEE NOTE

Subdivision (e) is added to provide a source where debtors, their attorneys, and other parties may go to determine whether the United States or the state or territory in which the court is located has filed a statement designating a mailing address for notice purposes. By using the address in the register -- which must be available to the public -- the sender is assured that the mailing address is proper. But the use of an address that differs from the address included in the register does not invalidate the notice if it is otherwise effective under applicable law.

The register may include a separate mailing address for each department, agency, or instrumentality of the United States or the state or territory. This rule does not require that addresses of municipalities or other local governmental units be included in the register, but the clerk may include them.

Although it is important for the register to be kept current, debtors, their attorneys, and other parties should be able to rely on mailing addresses listed in the register without the need to continuously inquire as to new or amended addresses. Therefore, the clerk must update the register, but only once each year.

To avoid unnecessary cost and burden on the clerk and to keep the register a reasonable length, the clerk is not required to include more than one mailing address for a particular agency, department, or instrumentality of the United States or the state or territory. But if more than one address is included, the clerk is required to include information so that a person using the register could determine when each address should be used. In any event, the inclusion of more than one address for a particular department, agency, or instrumentality, does not

impose on a person sending a notice the duty to send it to more than one address.

Public Comment on Proposed Amendments to Rule 5003:

(1) The Bankruptcy Judges and Clerk of the District of South Carolina commented that the amendments will require significant administrative time and effort in the clerk's office for a product that is optional. It would be better to permit the court to solicit from all creditors, including credit card companies and governmental units, one address for noticing purposes.

(2) Terrence H. Dunn, Clerk (D. Ore.) opposes this change, which would require extensive administrative effort in the clerks' office while stating that a failure to use the address in the register does not invalidate the notice. Expansion of the electronic noticing contract for bankruptcy courts will help eliminate the need for this proposal. The increasing number of pro se debtors will negate the effect of this rule since many are not sophisticated enough to check the register. If this rule is kept, the court should maintain these records only on its PACER system rather than wasting time and money printing paper copies and mailing.

(3) Arthur J. Fried, General Counsel, Social Security Administration, opposes the proposed amendments to this rule because they provide that a debtor's failure to comply will not affect the validity of the notice if the governmental unit has notice or actual knowledge in time to participate. While this may appear to protect the debtor, in practice it may result in adverse consequences, i.e., failure to give timely notice to the appropriate component of SSA may result in the continued collection of overpayments that normally would be suspended as a result of the automatic stay. Monthly Social Security benefits may be inadvertently withheld. Notice failures also will result in added time and expense to the courts because of contempt proceedings when the stay is violated due to poor notice of the case.

(4) Shirley C. Arcuri, Esq., Local Rules Advisory Committee (Bankr. M.D. Fla.) supports the amendments to this rule because they provide certainty as to where to send notices to governmental agencies.

(5) Hon. Christopher M. Klein (Bankr. E.D. Cal.) commented that the concept of a clearinghouse for addresses is appealing, but the details raise questions. Since updated only once each year, some addresses will be obsolete. The

conclusive presumption of an obsolete address raises concerns especially in an era when the Postal Service seems to be getting less efficient at forwarding mail. If the address contains an error, is the conclusive presumption operative? The burdens on clerks may be greater than anticipated. Given the opportunity for misunderstanding when something does not happen when and as anticipated, this proposal should not be adopted in its present form.

(6) The Executive Office for United States Attorneys commented that the register is a good idea, but multiple addresses for agencies are needed so that an agency can have different addresses for offices handling different types of loans. Suggests eliminating the information requirement enabling the user to determine which address is applicable. The failure to use the provided mailing address does not invalidate notice, so the purpose of this provision is unclear and its effectiveness is uncertain.

(7) Barry K. Lander, Clerk, on behalf of the Bankruptcy Clerks' Advisory Group, wrote that this rule would require extensive administrative effort by clerks' offices without a clear purpose because failure to use the specified address would not invalidate an otherwise valid notice.

(8) Peter H. Arkison, Esq. (Bellingham, WA) suggested that the register should be expanded to include local governmental units such as cities and counties.

(9) Stephen J. Csontos, Sr. Legislative Counsel, Tax Division, U.S. Dept. of Justice, expressed concern about the limitation that the clerk is not obligated to list more than one address for an agency. The IRS might want to use more than one address in the future (depending on the type of proceeding) as a result of the pending reorganization of the IRS along functional lines. While most clerks will cooperate, the proposed rule would give clerks the right to deny such a request arbitrarily. Proposes language stating that "the clerk may include more than one mailing address ..." (rather than "the clerk is not required to include more than one ...").

(10) Karen Cordry, Esq., on behalf of Bankruptcy and Taxation Working Group, National Association of Attorneys General, suggests that action on this amendment be delayed until it is possible to assess the likelihood of new legislation, which may deal with these issues. The register is a useful concept, but the restrictions on it make it less helpful (even harmful).

Opposes excluding other states and municipalities, and limiting it to one address for each agency. Updating only once each year is not sufficient (forwarding addresses are limited in time, certainly less than one year). Since the address is conclusively presumed to be the correct one, if an agency moves and notifies the debtor, the debtor may still send notices to the old address (i.e., room for abuse). It is important that it be accurate (updated) and mandatory (not optional), or it will be of little value. A properly constructed, updated, mandatory register that is on the Internet would be very useful.

(11) Peter C. Fessenden, Esq. (Brunswick, Maine) supports the proposed amendments.

GAP Report on Rule 5003. No changes since publication.

B. Preliminary Draft of Proposed Amendments to Bankruptcy Rules 1007, 2002(c) and (g), 3016, 3017, 3020, and 9020 Submitted for Approval to Publish for Comment.

1. *Synopsis of Proposed Amendments:*

(a) Rule 1007 is amended so that, if the debtor knows that a creditor is an infant or incompetent person, the debtor will be required to include in the list of creditors and schedules the name, address, and legal relationship of any representative upon whom process would be served in an adversary proceeding against the infant or incompetent person. This information will enable the clerk to mail notices required under Rule 2002 to the appropriate representative.

(b) Rule 2002(c) is amended to assure that parties entitled to notice of a hearing on confirmation of a plan are given adequate notice of any injunction included in the plan that would enjoin conduct not otherwise enjoined by operation of the Bankruptcy Code.

(c) Rule 2002(g) is amended to clarify that where a creditor or indenture trustee files both a proof of claim which includes a mailing address and a separate request designating a different mailing address, the last paper filed determines the proper address, and that a request designating a mailing address is effective only with respect to a particular case. The amendments also clarify that a filed proof of claim is considered a request designating a mailing address if a notice of no dividend has been given under Rule 2002(e), but has been superseded by a subsequent notice of possible dividend under Rule 3002(c)(5). A new paragraph has been added to assure that notices to an infant or incompetent person are mailed to the person's legal representative identified in the debtor's schedules or list of creditors.

(d) Rule 3016 is amended to assure that entities whose conduct would be enjoined under a plan, rather than by operation of the Bankruptcy Code, are given adequate notice of the proposed injunction. The amendment would require that the plan and disclosure statement describe in specific and conspicuous language all acts to be enjoined and to identify the entities that would be subject to the injunction.

(e) Rule 3017 is amended to assure that entities whose conduct would be enjoined under a plan, but who would not ordinarily receive copies of the plan and disclosure statement or information regarding the confirmation hearing because they are neither creditors nor equity security holders, are provided with adequate notice of the proposed injunction, the confirmation hearing, and the deadline for

objecting to confirmation of the plan.

(f) Rule 3020 is amended so that, if a plan contains an injunction against conduct not otherwise enjoined under the Code, the order confirming the plan must describe in detail all acts enjoined and identify the entities subject to the injunction. The amendment also requires that notice of entry of the order of confirmation be mailed to all known entities subject to the injunction.

(g) Rule 9020 is amended to delete provisions that delay for 10 days the effectiveness of an order of civil contempt issued by a bankruptcy judge and that render the order subject to *de novo* review by the district court. Other procedural provisions in the rule are replaced with a statement that a motion for an order of contempt made by the United States trustee or a party in interest is governed by Rule 9014 (contested matters).

2. *Text of Preliminary Draft of Proposed Amendments Submitted for Approval to Publish*:

Rule 1007. Lists, Schedules and Statements; Time Limits

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(m) *Infants and Incompetent Persons.* If the debtor knows that a person on the list of creditors or schedules is an infant or incompetent person, the debtor also shall include the name, address, and legal relationship of any person upon whom process would be served in an adversary proceeding against the infant or incompetent person in accordance with Rule 7004(b)(2).

COMMITTEE NOTE

Subdivision (n) is added to enable the person required to mail notices under Rule 2002 to mail them to the appropriate guardian or other representative when the debtor knows that a creditor or other person listed is an infant or incompetent person.

The proper mailing address of the representative is determined in accordance with Rule 7004(b)(2), which requires mailing to the person's dwelling

house or usual place of abode or at the place where the person regularly conducts a business or profession.

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

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(c) *Content of Notice.*

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(3) *Notice of Hearing on Confirmation When Plan Provides for an Injunction.* If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the notice required under Rule 2002(b)(2) shall:

(A) include in conspicuous language (bold, italic, or highlighted text) a statement that the plan proposes an injunction;

(B) describe briefly the nature of the injunction; and

(C) identify the entities that would be subject to the injunction.

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~~(g) ADDRESSES OF NOTICES. All notices required to be mailed under this rule to a creditor, equity security holder, or indenture trustee shall be addressed as such entity or an authorized agent may direct in a filed request; otherwise, to the address shown in the list of creditors or the schedule, whichever is filed later. If a different address is stated in a proof of claim duly filed, that address shall be used unless a notice of no dividend has been given.~~

(g) *Addressing Notices.*

(1) Notices required to be mailed under Rule 2002 to a creditor, indenture trustee, or equity security holder shall be addressed as such entity or an authorized agent has directed in its last request filed in the particular case. For the purposes of this subdivision --

(A) a proof of claim filed by a creditor or indenture trustee that designates a mailing address constitutes a filed request to mail notices to that address, unless a notice of no dividend has been given under Rule 2002(e) and a later notice of possible dividend under Rule 3002(c)(5) has not been given; and

(B) a proof of interest filed by an equity security holder that designates a mailing address constitutes a filed request to mail notices to that address.

(2) If a creditor or indenture trustee has not filed a request designating a mailing address under Rule 2002(g)(1), the notices shall be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request designating a mailing address under Rule 2002(g)(1), the notices shall be mailed to the address shown on the list of equity security holders.

(3) If a list or schedule filed under Rule 1007 includes the name and address of a legal representative of an infant or incompetent person, and a person other than that representative files a request or proof of claim designating a

name and mailing address that differs from the name and address of the representative included in the list or schedule, unless the court orders otherwise, notices under Rule 2002 shall be mailed to the representative included in the list or schedules and to the name and address designated in the request or proof of claim.

COMMITTEE NOTE

Subdivision (c)(3) is added to assure that parties given notice of a hearing to consider confirmation of a plan under subdivision (b) are given adequate notice of an injunction provided for in the plan if it would enjoin conduct that is not otherwise enjoined by operation of the Code.

This new requirement is not applicable to an injunction contained in a plan if it is substantially the same as an injunction provided under the Code. For example, if a plan contains an injunction against acts to collect a discharged debt from the debtor, Rule 2002(c)(3) would not apply because that conduct would be enjoined under § 524(a)(2) upon the debtor's discharge. But if a plan provides that creditors will be enjoined from asserting claims against persons who are not debtors in the case, the notice of the confirmation hearing must include the information required under Rule 2002(c)(3) because that conduct would not be enjoined by operation of the Code. See § 524(e).

The requirement that the notice identify the entities that would be subject to the injunction requires only reasonable identification under the circumstances. If the entities that would be subject to the injunction cannot be identified by name, the notice may describe them by class or category if reasonable under the circumstances. For example, it may be sufficient for the notice to identify the entities as "all creditors of the debtor" and for the notice to be published in a manner that satisfies due process requirements.

This rule is not intended to affect any determination of whether, or to what extent, a plan may provide for injunctive relief. The validity and effect of any injunction provided for in a plan are substantive law matters that are beyond the scope of these rules.

Subdivision (g) has been revised to clarify that where a creditor or indenture trustee files both a proof of claim which includes a mailing address and a separate request designating a mailing address, the last paper filed determines the proper address. The amendments also clarify that a request designating a mailing address is effective only

with respect to a particular case.

Under Rule 2002(g), a duly filed proof of claim is considered a request designating a mailing address if a notice of no dividend has been given under Rule 2002(e), but has been superseded by a subsequent notice of possible dividend under Rule 3002(c)(5). A duly filed proof of interest is considered a request designating a mailing address of an equity security holder.

Rule 2002(g)(3) is added to assure that notices to an infant or incompetent person under this rule are mailed to the appropriate guardian or other legal representative. Under Rule 1007(m), if the debtor knows that a creditor is an infant or incompetent person, the debtor is required to include in the list and schedule of creditors the name and address of the person upon whom process would be served in an adversary proceeding in accordance with Rule 7004(b)(2). If the infant or incompetent person, or another person, files a request or proof of claim designating a different name and mailing address, the notices would have to be mailed to both names and addresses until the court resolved the issue as to the proper mailing address.

The other amendments to Rule 2002(g) are stylistic.

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

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(c) *Injunction Under a Plan.* If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or highlighted text) all acts to be enjoined and identify the entities that would be subject to the injunction.

COMMITTEE NOTE

Subdivision (c) is added to assure that entities whose conduct would be enjoined under a plan, rather than by operation of the Code, are given adequate notice of the proposed injunction.

This requirement is not applicable to an injunction contained in a plan if it is substantially the same as an injunction provided under the Code. For example, if a plan

contains an injunction against acts to collect a discharged debt from the debtor, Rule 3016(c) would not apply because that conduct would be enjoined nonetheless under § 524(a)(2). But if a plan provides that creditors will be permanently enjoined from asserting claims against persons who are not debtors in the case, the plan and disclosure statement must highlight the injunctive language and comply with the requirements of Rule 3016(c). See § 524(e).

The requirement that the plan and disclosure statement identify the entities that would be subject to the injunction requires reasonable identification under the circumstances. If the entities that would be subject to the injunction cannot be identified by name, the plan and disclosure statement may describe them by class or category. For example, it may be sufficient for the subjects of the injunction to be identified as "all creditors of the debtor."

This rule is not intended to affect any determination of whether, or to what extent, a plan may provide for injunctive relief. The validity and effect of any injunction provided for in a plan are substantive law matters that are beyond the scope of these rules.

Rule 3017. Court Consideration of Disclosure Statement in a Chapter 9 Municipality ~~and~~ or Chapter 11 Reorganization Case

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(f) *Notice and Transmission of Documents to Entities Subject to an Injunction Under a Plan.* If a plan provides for an injunction against conduct not otherwise enjoined under the Code and an entity that would be subject to the injunction is not a creditor or equity security holder, at the hearing held under Rule 3017(a), the court shall consider procedures for providing the entity with:

(1) at least 25 days' notice of the time fixed for filing objections and the hearing on confirmation of the plan containing the information described in Rule 2002(c)(3); and

(2) to the extent feasible, a copy of the plan and disclosure statement.

COMMITTEE NOTE

Subdivision (f) is added to assure that entities whose conduct would be enjoined under a plan, rather than by operation of the Code, and who will not receive the documents listed in subdivision (d) because they are neither creditors nor equity security holders, are provided with adequate notice of the proposed injunction.

This rule recognizes the need for adequate notice to subjects of an injunction, but that reasonable flexibility under the circumstances may be required. If a known and identifiable entity would be subject to the injunction, and the notice, plan, and disclosure statement could be mailed to that entity, the court should require that they be mailed at the same time that the plan, disclosure statement and related documents are mailed to creditors under Rule 3017(d). If mailing notices and other documents is not feasible because the entities subject to the injunction are described in the plan and disclosure statement by class or category and they cannot be identified individually by name and address, the court may require that notice under Rule 3017(f)(1) be published.

This rule does not address any substantive law issues relating to the validity or effect of any injunction provided under a plan, or any due process or other constitutional issues relating to notice. These issues are beyond the scope of these rules and are left for judicial determination.

Rule 3020. Deposit; Confirmation of Plan in a Chapter 9 Municipality or ~~a~~ Chapter 11 Reorganization Case

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(c) *Order of Confirmation.*

(1) The order of confirmation shall conform to the appropriate Official Form ~~and~~ . If the plan provides for an injunction against conduct not otherwise enjoined under the Code, the order of confirmation shall (1) describe in reasonable detail all acts enjoined; (2) be specific in its terms regarding the injunction; and (3) identify the entities subject to the injunction.

(2) Notice of entry of the order of confirmation ~~notice of entry thereof~~ shall be mailed promptly ~~as provided in Rule 2002(f)~~ to the debtor, the trustee, creditors, equity security holders, ~~and~~ other parties in interest, and, if known, to any identified entity subject to an injunction provided for in the plan against conduct not otherwise enjoined under the Code.

(3) Except in a chapter 9 municipality case, notice of entry of the order of confirmation shall be transmitted to the United States trustee as provided in Rule 2002(k).

COMMITTEE NOTE

Subdivision (c) is amended to provide notice to an entity subject to an injunction provided for in a plan against conduct not otherwise enjoined by operation of the Code. This requirement is not applicable to an injunction contained in a plan if it is substantially the same as an injunction provided under the Code.

The requirement that the order of confirmation identify the entities subject to the injunction requires only reasonable identification under the circumstances. If the entities that would be subject to the injunction cannot be identified by name, the order may describe them by class or category if reasonable under the circumstances. For example, it may be sufficient for the order to identify the entities as "all creditors of the debtor."

This rule is not intended to affect any determination of whether, or to what extent, a plan may provide for injunctive relief. The validity and effect of any injunction provided for in a plan are substantive law matters that are beyond the scope of these rules.

Rule 9020 Contempt Proceedings

Rule 9014 governs a motion for an order of contempt made by the United States trustee or a party in interest.

~~(a) CONTEMPT COMMITTED IN PRESENCE OF BANKRUPTCY JUDGE. Contempt committed in the presence of a bankruptcy judge may be determined summarily by a bankruptcy judge. The order of contempt shall recite the facts and shall be signed by the bankruptcy judge and entered of record.~~

~~(b) OTHER CONTEMPT. Contempt committed in a case or proceeding pending before a bankruptcy judge, except when determined as provided in subdivision (a) of this rule, may be determined by the bankruptcy judge only after a hearing on notice. The notice shall be in writing, shall state the essential facts constituting the contempt charged and describe the contempt as criminal or civil and shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense. The notice may be given on the court's own initiative or on application of the United States attorney or by an attorney appointed by the court for that purpose. If the contempt charged involves disrespect to or criticism of a bankruptcy judge, that judge is disqualified from presiding at the hearing except with the consent of the person charged.~~

~~(c) SERVICE AND EFFECTIVE DATE OF ORDER; REVIEW. The clerk shall serve forthwith a copy of the order of contempt on the entity named therein. The order shall be effective 10 days after service of the order and shall have the same force and effect as an order of contempt entered by the district court unless, within the 10 day period, the entity named therein serves and files objections prepared in the manner provided in Rule 9033(b). If timely objections are filed, the order shall be reviewed as provided in Rule 9033.~~

~~(d) RIGHT TO JURY TRIAL. Nothing in this rule shall be construed to~~

~~impair the right to jury trial whenever it otherwise exists.~~

COMMITTEE NOTE

The amendments to this rule cover a motion for an order of contempt filed by the United States trustee or a party in interest. This rule, as amended, does not address a contempt proceeding initiated by the court sua sponte. Neither the Bankruptcy Rules nor the Federal Rules of Civil Procedure provide procedures for sua sponte contempt orders.

Whether the court is acting on motion under this rule or is acting sua sponte, these amendments are not intended to extend, limit, or otherwise affect either the contempt power of a bankruptcy judge or the role of the district judge regarding contempt orders. Issues relating to the contempt power of bankruptcy judges are substantive and are left to statutory and judicial development, rather than procedural rules.

This rule, as amended in 1987, delayed for ten days from service the effectiveness of a bankruptcy judge's order of contempt and rendered the order subject to de novo review by the district court. These limitations on contempt orders were added to the rule in response to the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, which provides that bankruptcy judges are judicial officers of the district court, but does not specifically mention contempt power. See 28 U.S.C. § 151. As explained in the committee note to the 1987 amendments to this rule, no decisions of the courts of appeals existed concerning the authority of a bankruptcy judge to punish for either civil or criminal contempt under the 1984 Act and, therefore, the rule as amended in 1987 "recognizes that bankruptcy judges may not have the power to punish for contempt." Committee Note to 1987 Amendments to Rule 9020.

Since 1987, several courts of appeals have held that bankruptcy judges have the power to issue civil contempt orders. See, e.g., Matter of Terrebonne Fuel and Lube, Inc., 108 F.3d 609 (5th Cir. 1997); In re Rainbow Magazine, Inc., 77 F.3d 278 (9th Cir. 1996). Several courts have distinguished between a bankruptcy judge's civil contempt power and criminal contempt power. See, e.g., Matter of Terrebonne Fuel and Lube, Inc., 108 F.3d at 613, n. 3 ("[a]lthough we find that bankruptcy judge's [sic] can find a party in civil contempt, we must point out that bankruptcy courts lack the power to hold persons in criminal contempt."). For other decisions regarding criminal contempt power, see, e.g., In re Ragar, 3 F.3d 1174 (8th Cir. 1993); Matter of Hipp, Inc., 895 F.2d 1503 (5th Cir. 1990). To the extent that Rule 9020, as amended in 1987, delayed the effectiveness of civil contempt orders and required de novo review by the district court, the rule may have been unnecessarily restrictive in view of judicial decisions recognizing that bankruptcy judges have the power to hold parties in civil contempt.

Subdivision (d), which provides that the rule shall not be construed to impair the right to trial by jury, is deleted as unnecessary and is not intended to deprive any party of

the right to a jury trial when it otherwise exists.

C. Preliminary Draft of Proposed Amendments to Bankruptcy Rules 9006(f) and 9022(a) Submitted for Approval to Publish for Comment if Proposed Amendments to Civil Rule 5(b) to Permit Electronic Service are Published.

1. *Introduction.*

The following preliminary draft of proposed amendments to Bankruptcy Rules 9006(f) and 9022(a) should be published only if proposed amendments to Civil Rule 5(b) permitting electronic service of papers are published at the same time. Minor conforming revisions to these drafts may be necessary before publication if the draft of proposed amendments to Civil Rule 5(b) approved by the Advisory Committee on Civil Rules at its April 19-20, 1999, meeting is revised before its publication.

1. *Synopsis of Proposed Amendments:*

(a) Rule 9006(e) is amended to expand the 3-day rule so that it will apply to any method of service, including service by electronic means, authorized under proposed amendments to Civil Rule 5(b), other than service by personal delivery.

(b) Rule 9022(a) is amended to authorize the clerk to serve notice of entry of a judgment or order of a bankruptcy judge by any method of service, including service by electronic means, permitted under the proposed amendments to Civil Rule 5(b).

3. *Text of Preliminary Draft of Proposed Amendments to Rules 9006(f) and 9022(a) Submitted for Approval to Publish if Proposed Amendments to Civil Rule 5(b) Authorizing Service by Electronic Means are Published:*

Rule 9006. Time

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(f) *Additional Time after Service by Mail or Under Rule 5(b)(2)(C) or (D) F. R. Civ. P.* When there is a right or requirement to do some act or undertake some proceedings within a prescribed period after service of a notice or other paper and the notice or paper other than process is served by mail or under Rule 5(b)(2)(C) or (D) F. R. Civ. P., three days shall be added to the prescribed period.

COMMITTEE NOTE

Rule 5(b) F. R. Civ. P., which is made applicable in adversary proceedings by Rule 7005, is being restyled and amended to authorize service by electronic means -- or any other means not otherwise authorized under Rule 5(b) -- if consent is obtained from the person served. The amendment to Rule 9006(f) is intended to extend the three-day "mail rule" to service under Rule 5(b)(2)(D), including service by electronic means. The three-day rule also will apply to service under Rule 5(b)(2)(C) F. R. Civ. P. when the person served has no known address and the paper is served by leaving a copy with the clerk of the court.

Rule 9022. Notice of Judgment or Order

(a) *Judgment or Order of Bankruptcy Judge.* Immediately on the entry of a judgment or order the clerk shall serve a notice of entry ~~by mail~~ in the manner provided ~~by Rule 7005~~ in Rule 5(b) F. R. Civ. P. on the contesting parties and on other entities as the court directs. Unless the case is a chapter 9 municipality case, the clerk shall forthwith transmit to the United States trustee a copy of the judgment or order. Service of the notice shall be noted in the docket. Lack of notice of the entry does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002.

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COMMITTEE NOTE

Rule 5(b) F. R. Civ. P., which is made applicable in adversary proceedings by Rule 7005, is being restyled and amended to authorize service by electronic means -- or any other means not otherwise authorized under Rule 5(b) -- if consent is obtained from the person served. The amendment to Rule 9022(a) authorizes the clerk to serve notice of entry of a judgment or order by electronic means if the person served consents, or to use any other means of service authorized under Rule 5(b), including service by mail. This amendment conforms to the amendments made to Rule 77(d) F. R. Civ. P.

III. Information Items

A. *Proposed Bankruptcy Legislation.*

Last year, the Advisory Committee reported that Congress was considering comprehensive legislation that would significantly change the Bankruptcy Code and related statutes. Among other provisions, the bills would have expressly required the Advisory Committee or the Judicial Conference to amend or add new Bankruptcy Rules and Official Bankruptcy Forms. Any of these bills, if enacted, would have required substantial revisions to the Rules and Forms. Although both the Senate and the House of Representatives passed bankruptcy bills in 1998, a conference was necessary to resolve differences. The House of Representatives passed the conference report, but the Senate did not before the 105th Congress adjourned in October.

Comprehensive bankruptcy reform legislation similar to those considered last year has been introduced in the 106th Congress in 1999. As of the date of this report, the House of Representatives passed H.R. 833 and the Senate Judiciary Committee approved S.625. The Advisory Committee is monitoring these legislative developments closely.

B. *Attorney Conduct.*

At its meeting in March 1999, the Advisory Committee heard a report on a recent survey conducted by the Federal Judicial Center on attorney conduct in bankruptcy cases. The report has been furnished to Professor Coquillette for consideration by the committee on attorney conduct.

Attachment:

Draft minutes of the meeting of the Advisory Committee on Bankruptcy Rules, March 18-19, 1999.