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OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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**TO: Hon. David F. Levi, Chair
Standing Committee on Rules of Practice and Procedure**

**FROM: Hon. Thomas S. Zilly, Chair
Advisory Committee on Bankruptcy Rules**

DATE: May 8, 2007

RE: Report of the Advisory Committee on Bankruptcy Rules

I. INTRODUCTION

The Advisory Committee on Bankruptcy Rules met on March 29-30, 2007, at Marco Island, Florida.

* * * * *

As a result of the meeting and other subsequent action, the Advisory Committee recommends a series of action items to the Standing Committee.

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Third, the Committee recommends for publication amendments to four rules (including Rule 9006(a), the Time Template Rule) and two new rules.

* * * * *

And, sixth, the Committee recommends for publication a proposed amendment to Official Form 8 and new Official Form 27 as outlined in this report.

* * * * *

C. Preliminary Draft of Proposed Amendments to Bankruptcy Rules 4008, 7052, 9006, and 9021, and Preliminary Draft of Proposed New Rules 1017.1 and 7058.

The Advisory Committee recommends that the Standing Committee approve the following proposed amendments to the Bankruptcy Rules for publication for comment.

1. Synopsis of Proposed New Rules and Amendments.

- (a) **Rule 1017.1** is new. It establishes a procedure for the consideration of a certification by a debtor that exigent circumstances warrant the postponement of the debtor's obligation to obtain prepetition credit counseling.
- (b) **Rule 4008** is amended to require the entity filing a reaffirmation agreement to file with the agreement a cover sheet on the appropriate Official Form. The cover sheet will include the information necessary for the court to determine whether there is a presumption that the agreement presents an undue hardship for the debtor.
- (c) **Rule 7052** is amended to clarify that entry of judgment in an adversary proceeding means the entry of a judgment or order under the Bankruptcy Rules rather than under the Federal Rules of Civil Procedure.
- (d) **Rule 7058** is new, and it makes Rule 58 of the Federal Rules of Civil Procedure applicable in adversary proceedings. It is added in connection with the amendment to Rule 9021.
- (a) **Rule 9006 (Time Computation Template Rule)** replaces subdivision (a) with the template being adopted throughout the Federal Rules for computing time. There are minor differences in the Committee Note that include changes specific to bankruptcy law and practice. The amendment is offered in conjunction with proposed amendments to the deadlines set out in 39 rules. Those amendments include changes only in the time periods. They are set out separately in this report to distinguish them from proposed changes in the computation of time in this rule.
- (e) **Rule 9021** is amended in connection with the addition of Rule 7058. Since that rule governs in adversary proceedings, Rule 9021 no longer needs to make Rule 58 of the Federal Rules of Civil Procedure applicable in those actions. This amendment and the addition of Rule 7058 results in the explicit adoption of the separate document requirement for judgments in adversary proceedings, while the effectiveness of an order or judgment in other actions within the case is determined under Rule 5003, which does not include the separate document requirement.

2. Text of Proposed Amendments to Rules 4008, 7052, 9006,* and 9021, and Proposed New Rules 1017.1 and 7058.

**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE****

**Rule 1017.1. Exemption from Prepetition Credit
Counseling Requirement**

1 A certification filed by an individual debtor under
2 § 109(h)(3) of the Code shall be deemed satisfactory to the
3 court unless the court, on its own motion or on motion of a
4 party in interest filed no later than 14 days after the filing of
5 the certification and served on the debtor and the United
6 States trustee, enters an order finding that the certification is
7 not satisfactory. The order shall be entered no later than 21
8 days after the filing of the certification and shall specify why
9 the certification is not satisfactory.

*Text of Rule 9006 included in time-computation section, *supra*.

**New materials is underlined; matter to be omitted is lined through.

COMMITTEE NOTE

This rule is new. It provides that a debtor's certification under § 109(h)(3) of the Code concerning exemption from the prepetition credit counseling requirement will be deemed satisfactory (thus permitting the debtor to obtain the counseling within 30 days after filing the petition) unless the court enters an order finding the certification is not satisfactory within 21 days after the certification is filed. The deadline for court action allows the debtor time to complete the counseling, or request a further extension pursuant to § 109(h)(3)(B), within the 30-day exemption period. The rule also requires that any motion for an order rejecting the certification must be made within 14 days after the certification is filed in order to provide the court sufficient time to act within the 21-day period.

Rule 4008. Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement^{*}**

- 1 (a) FILING OF REAFFIRMATION AGREEMENT.
- 2 A reaffirmation agreement shall be filed no later than 60 days
- 3 after the first date set for the meeting of creditors under
- 4 § 341(a) of the Code. The reaffirmation agreement shall be
- 5 accompanied by a cover sheet, prepared as prescribed by the

^{***} Incorporates amendments approved by the Committee on Rules of Practice and Procedure that are due to take effect on December 1, 2008, if the Judicial Conference and Supreme Court approve and if Congress takes no action otherwise.

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6 appropriate Official Form. The court may, at any time and in
7 its discretion, enlarge the time to file a reaffirmation
8 agreement.

9 * * * * *

COMMITTEE NOTE

Subdivision (a) of the rule is amended to require that the entity filing the reaffirmation agreement with the court also include Official Form 27, the Reaffirmation Agreement Cover Sheet. The form includes information necessary for the court to determine whether the proposed reaffirmation agreement is presumed to be an undue hardship for the debtor under § 524(m) of the Code.

Rule 7052. Findings by the Court

1 Rule 52 F.R.Civ.P. applies in adversary proceedings. In
2 these proceedings, the reference in Rule 52 F.R.Civ.P. to the
3 entry of judgment under Rule 58 F.R.Civ.P. shall be read as
4 a reference to the entry of a judgment or order under Rule
5 5003(a).

COMMITTEE NOTE

The rule is amended to clarify that the reference in Rule 52 F.R.Civ.P. to Rule 58 F.R.Civ.P. and its provisions is construed as a reference to the entry of a judgment or order under Rule 5003(a).

Rule 7058. Entering Judgment in Adversary Proceeding

1 Rule 58 F.R.Civ.P. applies in adversary proceedings. In
2 these proceedings, the reference in Rule 58 F.R.Civ.P. to the
3 civil docket shall be read as a reference to the docket
4 maintained by the clerk under Rule 5003(a).

COMMITTEE NOTE

This rule is new. It makes Rule 58 F.R.Civ.P. applicable in adversary proceedings and is added in connection with the amendments to Rule 9021.

* * * * *

RULE 9021. Entry of Judgment

1 ~~Except as otherwise provided herein, Rule 58 F.R.Civ.P.~~
2 ~~applies in cases under the Code. Every judgment entered in~~
3 ~~an adversary proceeding or contested matter shall be set forth~~

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4 ~~on a separate document.~~ A judgment or order is effective
5 when entered as provided in under Rule 5003. The reference
6 in Rule 58 F.R.Civ.P. to Rule 79(a) F.R.Civ.P. shall be read
7 as a reference to Rule 5003 of these rules.

COMMITTEE NOTE

The rule is amended in connection with the amendment that adds Rule 7058. The entry of judgment in adversary proceedings is governed by Rule 7058, and the entry of a judgment or order in all other proceedings is governed by this rule.

F. Proposed Amendment to Official Form 8 and new Official Form 27

The Advisory Committee recommends that the Standing Committee approve the following proposed amendment to Official Form 8 and new Official Form 27 for publication for comment.

I. Synopsis of Proposed Amendment and New Form.

A proposed amendment to Official Form 8 and new Official Form 27, which the Advisory Committee requests be published for comment by bench and bar in August 2007, are summarized below. The forms and committee notes follow the summary.

(a) *Official Form 8, Chapter 7 Individual Debtor's Statement of Intention –*

The form was amended to implement the changes to the Code in 2005 by adding a section covering personal property subject to an unexpired lease.

Comments on Amendments to Official Form 8:

Comment 06-BK-002 was submitted by Hon. Elizabeth Perris (Bankr. D. Ore.) Judge Perris asserted that the form was misleading to debtors, particularly those debtors filing without the assistance of an attorney, and that many debtors did not provide all of the required responses.

Changes Made After Publication:

The Committee rewrote the form and recommends that the revised version be published for comment.

(b) *Official Form 27, Reaffirmation Agreement Cover Sheet –*

This form is new. It requires the disclosure of financial information necessary for the court to make its determination under § 524(m) of the Code as to whether the reaffirmation agreement creates a presumption of undue hardship.

2. Proposed amendment to Official Form 8 and new Official Form 27

FORMS SEPARATELY ATTACHED

United States Bankruptcy Court
 District Of _____

In re _____
 Debtor

Case No. _____
 Chapter 7

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

PART A – Debts secured by property of the estate (attach additional pages if necessary)

- I have filed a schedule of assets and liabilities which includes debts secured by property of the estate.
- I intend to do the following with respect to the property of the estate that secures those debts:

Description of Property which Secures Debt: _____ Creditor's Name: _____	Property will be (indicate one): <input type="checkbox"/> Surrendered <input type="checkbox"/> Retained	If Property is to be Retained, indicate one: <input type="checkbox"/> Property will be claimed as Exempt <input type="checkbox"/> Property will not be claimed as Exempt	If Property is to be Retained, indicate all applicable items: <input type="checkbox"/> Property will be Redeemed <input type="checkbox"/> Debt will be Reaffirmed <input type="checkbox"/> Lien will be Avoided pursuant to § 522(f) <input type="checkbox"/> Other. Explain _____ _____
Description of Property which Secures Debt: _____ Creditor's Name: _____	Property will be (indicate one): <input type="checkbox"/> Surrendered <input type="checkbox"/> Retained	If Property is to be Retained, indicate one: <input type="checkbox"/> Property will be claimed as Exempt <input type="checkbox"/> Property will not be claimed as Exempt	If Property is to be Retained, indicate all applicable items: <input type="checkbox"/> Property will be Redeemed <input type="checkbox"/> Debt will be Reaffirmed <input type="checkbox"/> Lien will be Avoided pursuant to § 522(f) <input type="checkbox"/> Other. Explain _____ _____
Description of Property which Secures Debt: _____ Creditor's Name: _____	Property will be (indicate one): <input type="checkbox"/> Surrendered <input type="checkbox"/> Retained	If Property is to be Retained, indicate one: <input type="checkbox"/> Property will be claimed as Exempt <input type="checkbox"/> Property will not be claimed as Exempt	If Property is to be Retained, indicate all applicable items: <input type="checkbox"/> Property will be Redeemed <input type="checkbox"/> Debt will be Reaffirmed <input type="checkbox"/> Lien will be Avoided pursuant to § 522(f) <input type="checkbox"/> Other. Explain _____ _____

All four columns of Part A (including both parts of column one) must be completed for each debt which is secured by property of the estate. Complete the four columns separately for each debt. If more boxes are needed to describe all debts secured by property of the estate, complete and number additional copies of Page 1 of Form 8 as needed.

In the second column, by checking "Surrendered," the debtor indicates that the debtor intends to relinquish possession and control of the property. By checking "Retained," the debtor indicates that the debtor intends to retain possession and control of the property.

In the fourth column, if the debtor intends to retain the property, the debtor must state what actions the debtor intends to take with respect to the property and the debt. **This may require checking more than one line.** For example:

- The debtor may intend to exempt the property pursuant to 11 U.S.C. § 522 and avoid the lien or security interest under 11 U.S.C. § 522(f).
- The debtor may intend to redeem the property under 11 U.S.C. § 722 by paying the holder of the lien or security interest the amount of the allowed secured claim in full at the time of redemption.
- The debtor may intend to enter into an agreement with the creditor under 11 U.S.C. § 524(c) to reaffirm the debt.

PART B – Personal property subject to unexpired leases (attach additional pages if necessary)

I have filed a schedule of executory contracts and unexpired leases which includes personal property subject to an unexpired lease.

I intend to do the following with respect to the personal property which is subject to an unexpired lease:

Description of Leased Property:	Lessor's Name:	Lease will be Assumed pursuant to 11 U.S.C. § 365(p)(2): YES _____ NO _____
Description of Leased Property:	Lessor's Name:	Lease will be Assumed pursuant to 11 U.S.C. § 365(p)(2): YES _____ NO _____
Description of Leased Property:	Lessor's Name:	Lease will be Assumed pursuant to 11 U.S.C. § 365(p)(2): YES _____ NO _____

All three columns of Part B must be completed for each unexpired lease. Complete the three columns separately for each debt. If more boxes are needed to describe all unexpired leases, complete and number additional copies of Page 2 of Form 8 as needed

Date: _____

Signature of Debtor

DECLARATION OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section.

Printed or Typed Name, and Title, if any, of Bankruptcy Petition Preparer Social Security No. (Required under 11 U.S.C. § 110.)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person or partner who signs this document.

Address

X _____
Signature of Bankruptcy Petition Preparer

Date

Names and Social Security Numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

FORM 8

COMMITTEE NOTE

The form is amended to conform to § 362(h), which was added to the Code, and § 521(a)(2), which was amended, by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (April 20, 2005), by expanding the questions directed to the debtor regarding leased personal property and property subject to security interests. The form is also amended to require the debtor to complete a series of columns describing the property and setting out what actions the debtor intends to take for each listed asset. The amended form is intended to elicit more complete information about the debtor's intentions with regard to property subject to security interests and personal property leases than has been obtained under the current version of the form.

United States Bankruptcy Court

District of _____

In re _____

Debtor

Case No. _____

Chapter _____

**REAFFIRMATION AGREEMENT
COVER SHEET**

This form must be completed in its entirety and filed within the time set under Rule 4008. It may be filed by any party to the reaffirmation agreement. The filer also must attach a copy of the reaffirmation agreement to this cover sheet.

Debtor's Name and Address

Creditor's Name and Address

- 1. Amount of debt as of commencement of case: \$ _____
Describe collateral, if any, securing debt: _____
- 2. _____

- 3. Amount of debt being reaffirmed: \$ _____
- 4. Repayment term of reaffirmation: _____ months.
- 5. Monthly payment under reaffirmation: \$ _____
- 6. Annual percentage rate under reaffirmation: \$ _____
- 7. Debtor's monthly income at reaffirmation: \$ _____
- 8. Income from Schedule I, line 16: \$ _____
Explain any difference in the amounts set out on lines 7 and 8: _____
- 9. _____

- 10. Debtor's monthly expenses at reaffirmation (without this reaffirmed debt): \$ _____
- 11. Current expenditures from Schedule J, line 18: \$ _____
Explain any difference in the amounts set out on lines 10 and 11: _____
- 12. _____

- Check this box if the amount on Line 10 of this form exceeds the amount on Line 7 of this Form. If these expenses exceed the income, a presumption of undue hardship arises.
- Check this box if the debtor was not represented by counsel during the course of negotiating this reaffirmation agreement.

FILER'S CERTIFICATION

I _____ hereby certify that the attached agreement is a true and correct copy of the reaffirmation agreement between the parties identified on this Reaffirmation Agreement Cover Sheet.

Signature

DEBTOR'S CERTIFICATION

[see Fed. R. Bankr. P. 4008(b)]

I certify that any explanation contained on lines 9 or 12 of this form is true and correct.

Signature (Debtor)

Signature (Joint Debtor, if any)

COMMITTEE NOTE

This form is new. It requires the disclosure of financial information necessary for the court to make its determination under § 524(m) of the Code as to whether the reaffirmation agreement creates a presumption of undue hardship.

The form also includes a supplemental debtor's certification that any explanation of the difference between the income and expenses reported on schedules I and J and the income and expenses reported in the debtor's statement in support of the reaffirmation agreement is true and correct. This supplemental debtor's certification is designed to implement the requirements of Bankruptcy Rule 4008(b).