February 7, 2022

Submitted Electronically

Judicial Conference of the United States
Committee on Rules of Practice and Procedure
Advisory Committee on Bankruptcy Rules
Washington, DC 20544

Re: Proposed Amendments to the Federal Rules of Bankruptcy Procedure
Docket ID: USC-RULES-BK-2021-0002

Ladies and Gentlemen:

The National Bankruptcy Conference ("NBC") is a voluntary, non-partisan, not-for-profit organization composed of about 60 of the nation's leading bankruptcy judges, professors, and practitioners. The NBC has provided advice to Congress regarding bankruptcy legislation for approximately 80 years. We enclose a Fact Sheet providing further information about the NBC.

A subgroup of the NBC's Court System and Bankruptcy Administration Committee (or Courts Committee for short) reviewed the proposed changes (both amendments and restyling revisions) to certain of the Federal Rules of Bankruptcy Procedure that were circulated in preliminary draft form via a request for comment package prepared by the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States and dated August 2021. The subgroup prepared draft comments regarding the proposed changes, which draft was then approved by the full Courts Committee and the NBC's Executive Committee. The final set of NBC Courts Committee comments are detailed in this letter.

Consistent with the scope of the restyling project, we have generally limited our comments about the proposed restyled rules to drafting concerns specifically associated with the proposed restyling changes. Nevertheless, we note that certain of the existing rules may contain substantive problems that would be carried forward through the restyling process. To address this possibility, it may be appropriate to include commentary that any preexisting substantive issues are not being ratified through the adoption of restyled rules.

Restyled Rules Generally

- The commentary accompanying the restyled rules makes clear that the revisions are intended to be stylistic only and without substantive effect. We suggest that the promulgation of the final rules include a stronger feature than commentary – such as a specific rule of interpretation or a declarative statement in the Supreme Court order adopting the new rules – to make clear that the restyled rules must be interpreted to avoid any substantive difference with the current rules.

- The restyled rules, without explanation, shift the capitalization used in the current rules for such words as "title," "chapter," "subchapter," and the like. This change creates

discord between the rules and the statute (the latter of which consistently uses the lower-case style used in the current rules, *see, e.g.*, 11 U.S.C. §§ 101(19), (30), (35A)(F), (51C); 103(g)). This unnecessary asymmetry between the statute and the rules is likely to exacerbate inconsistent use of capitalized words in briefing and opinions. Moreover, the titles, sections, and other subdivisions of the United States Code are not proper nouns. Because we believe the rules should track the statute enacted by Congress and perceive harm resulting from this change with no offsetting benefit, we suggest this stylistic shift be rejected.

- Although the addition of bullet points to certain of the rules might improve their visual appearance, we believe that it will be difficult and cumbersome for courts and parties to try to correctly cite any given bullet point. We therefore recommend that this change be rejected and that more traditional numbered or lettered designations be used for the items in these lists. There are also some instances where very short lists are now given bullets (e.g., in 3002.1 throughout, 3004(b), 3012(a), 3015(h)(2), and 6004(f)(1)(A)), which adds visual clutter more than it improves anything.

- Several of the restyled rules (including 3015(h)(1) and 3019(b)(2)(A)) change the phrase "the clerk, or some other person as the court may direct" to "the clerk or the court's designee". There is a question whether a court (as a collection of judges) can specify the "designee" by local rule. Recent Seventh Circuit precedent, specifically *In re Steenes*, 918 F.3d 554 (7th Cir. 2019), and *In re Cherry*, 963 F.3d 717 (7th Cir. 2020), cast doubt on whether a local rule, form, or general order can substitute for discretion vested in a judge by the Bankruptcy Code itself. Here, of course, the delegation is specified in a rule, not the statute, and so the concerns are less. But just as a matter of plain English usage, we have less trouble interpreting "as the court may direct" to mean a court can specify a particular class of entities in a local rule (or chambers rule) than we do with the use of the phrase "the court's designee." As such, we suggest not making these changes.

- In some of the restyled rules (e.g., 4003(a) and 4008(a)), reference is made to a specific form. Forms change on a different schedule than do the rules, creating the possibility that a renumbering of the form may make these references invalid. The current rules make no mention of a specific form number. Presumably you have thought through the cross-referencing problem, but we highlight it as a concern.

Restyled Rule 3001

- There appears to be a typo in (a) ("isa").

- The stylistic change to (b) arguably has changed the purpose of the rule. Previously, it was a filing rule about who could file a proof of claim. Now, it is a permissive rule about who may sign a proof of claim. And it could be read to validate an unsigned proof of claim as it only says the creditor "may" sign the claim. (The official form says the proof of claim "must" be signed, but that language is inconsistent now with the rule.) Also, this

provision works with Rule 3001(f), which specifies a signed proof of claim is prima facie evidence. To avoid any substantive change, we suggest the language revert to the passive voice and read, "A proof of claim must be signed by the creditor or the creditor's agent except as provided in Rules 3004 and 3005." Also, we suggest the heading should be "Who Must Sign a Proof of Claim".

- In (c)(3), we suggest changing "a case with an individual debtor" to "a case regarding an individual debtor" for purposes of clarity. It is unclear that "with" necessarily references the debtor being a debtor in the case, as opposed to being involved (for example, as could be the case with a corporate chapter 11 debtor that loaned money to individual debtors).

- In (e)(2)(B), although this carries forward language in the current rule, we suggest changing "immediately" to "promptly".

- In the last phrase of (e)(2)(C), we suggest reverting to the old passive voice – "the transferee shall [perhaps change this to "will" if the goal is to eliminate every "shall"] be substituted for the transferor" – so as to allow local practice to control here and not leave an implication that the court must enter an order.

- In (e)(4)(A), it would be more concise to write "setting forth" rather than "that sets forth" toward the end of the sentence.

- In (e)(4)(B), although this carries forward language in the current rule, we suggest changing "immediately" to "promptly".

- Also in (e)(4)(B), the "it" in the last sentence creates potential pronoun ambiguity; we suggest just using "an objection". The period is missing at the end of the same sentence.

Restyled Rule 3002

- In (b), the revised language adds "in the district where the case is pending and" to the text. This new language appears to be borrowing from Rule 5005. It is redundant and confusing – where else does one file a proof of claim but the district where the case is pending? Do you file the proof of claim somewhere other than the case itself? We suggest this new language be removed.

- It is not clear why the ordering of (c)(6) and (c)(7) was transposed from the current rule. We suggest not reordering in order to minimize the difficulties associated with researching case law interpreting the current rule.

Restyled Rule 3002.1

- As written, HELOCs are literally subject to both (b)(1) and (b)(3). The obvious intent is that HELOCs only need to comply with (b)(3). This ambiguity could be fixed by adding a clause to (b)(1) that states "except as provided in paragraph (3),".

- Although part of the substantive changes, there is a stylistic issue with the new last sentence in (e). It allows the court to shorten the time period for challenging a payment change notice, but it uses the definite article "the" to refer to "the party". That would seem to be a reference back to earlier in the subsection about the party bringing the motion. It makes no sense that a party bringing a motion would want to shorten the time period for so doing – such a party could just bring the motion earlier. We suggest that the last sentence should substitute "a party in interest" for "the party", which is consistent also with the comment that it is intended to allow a party in interest to move to shorten the time.

- In (f)(2)(A), "debtor's counsel" should be changed to "debtor's attorney" to be consistent with the usage in the rest of the rule.

- The usage in (f), (g), and (h) describes a "mortgage claim." That is not a defined term and is also overbroad to the extent a mortgage can be on something other than the debtor's principal residence. Although the intent seems to be to apply these subsections only to "mortgages" covered by the rule, it would be better to use the word "claim" here or make clear these subsections apply to mortgages to which the rule applies, perhaps by a reference back to subsection (a). If the intent was to cover mortgages on real property other than the debtor's residence, then the rule should make that clear, using language that mimics the Bankruptcy Code and that accounts for different usages across state law (e.g., deeds of trust) – "a claim secured by real property".

Restyled Rule 3003

- Consider whether the change of the word "scheduled" to "shown" alters terminology that has become so familiar in practice that changing it would be unduly disruptive and perhaps invite new disputes that do not exist under the current language.

- It is not clear why the ordering of (c)(4) and (c)(5) was transposed from the current rule. We suggest not reordering in order to minimize the difficulties associated with researching case law interpreting the current rule.

Restyled Rule 3006

In (b), the change from "shall" to "must" regarding the court's order in the sentence at the end feels too strong. We suggest using "may" here instead.

Restyled Rule 3007

- In (a)(2)(A), we suggest that the reference to first-class mail should be restored to avoid an implication that other forms of mail – certified or registered – are required.

- In (b), the new heading is incomplete and potentially misleading. We suggest "**Demanding Relief Requiring an Adversary Proceeding.**"

- In (f), there is potential pronoun ambiguity regarding the "it"; we suggest using "that claim" instead.

Restyled Rule 3012

In (c)(B), there is potential pronoun ambiguity with "it", especially if clause (B) is read separately from clause (A). We suggest using "the proof of claim" instead.

Restyled Rule 3013

The current rule reads "on motion after hearing on notice as the court may direct." The new rule changes that to "notice and a hearing" and then reads "the notice must be served as the court directs." This is a substantive change to the extent "notice and a hearing" is a bankruptcy term of art as directed in Bankruptcy Code section 102(1), which includes the concept of notice as directed by the court. The change is an improvement, even if substantive. We believe it would be best if this rule just said "after notice and a hearing" without the last sentence.

Restyled Rule 3015

- In (b) generally, the stylistic change modifies the mandatory 14-day requirement for filing a chapter 13 plan into a permissive one. We suggest the first sentence in new (b)(1) instead read, "The debtor must file a chapter 13 plan with the petition or within 14 days after it is filed."

- In (b)(1), there is potential pronoun ambiguity with "it". We suggest using "the petition" instead.

Restyled Rule 3016

In (a), the stylistic change incorrectly omits "or modification" from the second sentence.

Restyled Rule 3017

The rephrasing in (a)(1)(B) could be read as if every chapter 11 disclosure statement needs to be sent to the Securities Exchange Commission, at least those not covered by the small business case rules of Rule 3017.1. Although arguably the current rule requires that, the current phrasing is more likely understood within the context of Rule 2002(j), to require it only when the SEC has requested notice. The committee might consider adding "if notice is required to the Commission under Rule 2002,".

Restyled Rule 3017.1

The rewording of (a)(3) creates confusion that does not exist in the current rule, particularly when clause (3) is read with the prefatory language. We suggest either (i) moving the "if a timely objection is filed" language to the end of clause (3) as in the current rule rather than making that language an initial modifier; or (ii) redrafting per the existing sentence construction: "set the date . . . of the disclosure statement to be held if a timely objection is filed; and".

Restyled Rule 3019

- For (a), consider whether further stylistic revision would be helpful in dividing this subdivision into four paragraphs, one for each sentence.

- In (b), we suggest that the rule should revert to the previous language stating, "If the debtor is an individual . . .". The revision to "a plan in an individual debtor's case" can be confusing on a first read as "individual" in this context could be a natural person or refer to something like "solo."

Restyled Rule 3020

In (a), the change from "consideration" to "funds" is too limiting. There could be non-cash consideration (such as new securities of the reorganized debtor or a successor/purchaser entity) that should be deposited before the effective date. We suggest sticking with "consideration" and then changing "The funds" in the last sentence" to "Any funds deposited" to more closely track the current rule. Note as well that it is unclear whether the revision makes clear that it prohibits comingling of funds. By requiring a new account – "established for the exclusive purpose" – the current rule removes any ambiguity about what needs to happen.

Restyled Rule 4001

- In (a)(2), the form of permissible evidence is stated as "an affidavit or a verified motion." That is an anomaly in federal practice. Under 28 U.S.C. § 1746, an unsworn declaration made under penalty of perjury in the form provided can satisfy this standard. Although the words track exactly the current rule, we suggest that either the rule change or the comments reflect the subtle misrepresentation.

- In (a)(2)(B), the "it" creates potential pronoun ambiguity; we suggest changing to "additional or other notice" for clarity and completeness.

- In (a)(3)(A)(i) and (d)(2), we suggest eliminating the hyphens in "debtor-in-possession"; this form varies from the statute (*see* 11 U.S.C. § 1101(1)) and many other restyled rules (e.g., Rules 3020(a), 6004(c), 6004(f), 6006(b), 6007(a)). Moreover, the phrase is not a compound modifier that should be hyphenated in this context.

- In (b)(1)(B), the current rule states that the motion "shall consist of . . . a concise statement of the relief requested, not to exceed five pages . . . ." The revision simply

requires that the motion include such a statement if less than five pages. If the intent is to allow more than a concise statement of the relief if the motion is less than five pages, then the revised rule could be shortened by stating: "The motion must include a concise statement of the relief requested. That statement must not be longer than five pages. If the motion exceeds five pages, the motion must begin with this statement."

- In (b)(1)(B)(ii)-(iii), there is potential pronoun ambiguity with "it" and "its"; we suggest using "the cash collateral" instead.

- In (b)(2), the revised text states that "the court may authorize using only the cash collateral necessary to avoid . . ." The use of the definite article "the" here could be confusing. We suggest that it be changed to "the court may authorize using only that portion of the cash collateral which is necessary to avoid . . . ."

- In (c)(1)(B) and (d)(1)(B), the same comment as was made above regarding (b)(1)(B) is applicable.

Restyled Rule 4002

In (a)(2), a debtor is required to attend "a hearing" on a complaint objecting to discharge. Since an objection to discharge must be commenced by an adversary complaint under Rule 7001(4), there will likely be many hearings. The intent of this rule is unclear; there is no similar duty stated in section 521. Perhaps the language could be revised to only refer to the trial on the objection to discharge, or to a hearing at which the court has been requested to enter a final judgment on the objection to discharge.

Restyled Rule 4003

- In (b)(2), we suggest adding "to the claimed fraudulent exemption" after "file an objection" to avoid confusion and to make clear that the objection only may affect a fraudulently claimed objection and not all exemptions.

- In (c), we suggest adding "by the objection" at the end of the final sentence for clarity and completeness.

- In (d), we suggest replacing "as Rule 7004 provides" with "in the manner Rule 7004 provides" for clarity.

Restyled Rule 4004

In (b)(1), we suggest adding "to object" after "time" and before "has expired" in the last sentence for purposes of parallelism.

Restyled Rule 4008

In (a), we suggest changing "file the agreement" to "file an agreement" since there may be multiple applicable agreements for which the debtor may request an extension, rather than just a single agreement.

Restyled Rule 5001

Left unsaid by the current rule or the revision is where the hearing is "held" if the parties are connected remotely. It is substantive, and thus likely not within the present remit, but we suggest: "A hearing is considered conducted within the district if persons appearing at the hearing are doing so by using methods of communication operated or approved by the court."

Restyled Rule 5003

- In (a)(1), we suggest leaving some clarifying language after the word "activity" for clarity and completeness. The existing "activity in that case" phrase seems sufficient and superior to the restyled text.

- In (e)(2), the numerical designation is italicized inconsistently with other similar designations.

- In (e)(2)(D), we suggest retaining "any" before "notice" in the penultimate line to make clear that the reference is to a particular notice, not notice in general.

Restyled Rule 5005

In the last bullet point in (a)(1), we suggest inserting "required" between "other" and "papers" to clarify that the scope of the section is only those papers required to be filed by these rules.

Restyled Rule 5011

In (c), there may be more than one proceeding or contested matter affected by the motion to withdraw or to abstain. We suggest the final clause be amended to read "stay any or all contested matters or proceedings until the motion is decided."

New Part VI title

It appears that the drafters are attempting to remove nominalizations from the section and rule titles. We note that the nominalization in the existing rules replicates the language of subchapter II of chapter 7 of the Bankruptcy Code ("Collection, Liquidation, and Distribution of the Estate"). The restyled title also substitutes "Property of the Estate" for "Estate", which is also a departure from the titles of multiple chapters and subchapters of the Code (none of which refer to "property of the estate"). That latter change is potentially of substantive significance, given the case law that holds, e.g., that an avoidance cause of action is not "property of the estate" (because section 541(a)(3) provides that only property "recovered" via an avoidance action is property of the estate).

Restyled Rule 6001

The restyled rule modifies the word "transfer" with the adjective "postpetition", which could unduly restrict the scope and effect of Rule 6001s's assignment of the burden of proof. E.g., what if the defense to a section 549 action is that the transfer occurred prepetition rather than postpetition? Would that mean that Rule 6001 does not explicitly place the burden of proof on

the defendant, because the defendant is asserting the validity of a prepetition transfer? We suggest not making this change.

Restyled Rule 6002

- In (a), we do not follow why "required by the Code" was changed to "required by § 543" (other than perhaps based on the definitional point made in the 1983 Advisory Committee Note). This seems likely a change with potential substantive effect insofar as other statutory sections beyond section 543 (e.g., section 362(a) or 542) might arguably be applicable. We suggest leaving the broader reference to the "the Code" generally to avoid an unintended limiting consequence.

- In (b), the grammatical structure of the last clause implies that "disbursements" are distinct from "administration", whereas the existing rule makes clear that the former is included within the latter. To avoid confusion, we suggest redrafting the last clause to "whether the custodian's administration has been proper, including whether disbursements have been reasonable."

Restyled Rule 6003

The restyled title could be made even more succinct by deleting the (probably unnecessary) reference to "Made Immediately After the Petition Is Filed".

Restyled Rule 6004

- Regarding the bulleted list in (d):

    - The first bullet item lists "creditors". "All creditors" notices pursuant to Rule 2002(a) (language that is retained in the proposed restyled Rule 2002(a)) may well be a "sacred phrase" that should be retained.

    - The second bullet item lists "indenture trustees". Proposed restyled Rule 2002(a) uses the "all indenture trustees" language, which perhaps should also be replicated here (especially since the third bullet item uses the "any committees" locution).

    - The third bullet item inserts references to sections 705 and 1102 (probably to conform to the language used in existing and proposed restyled Rules 6004(g)(1) and 6007(a) & (b)) that are not referenced in the existing rule (which simply refers to "committees appointed or elected pursuant to the Code" generally). There may be a possibility that committees (e.g., for a constituency other than creditors or equity security holders) could be elected or appointed pursuant to some other Code provision (such as section 105 or by court order pursuant to section 1181(b)), so it is probably better to retain the language from the existing rule to avoid inadvertently limiting the scope of the rule.

- In (f)(1)(A), In the last bullet item, the initial comma should be placed after rather than before the "or" so as to properly set off "if sold in bulk,".

- Also in (f)(1)(A), the phrase "price received" (in the existing rule) is replaced with "amount paid" (in the proposed restyled rule). To better account for the possibility of noncash consideration, "price paid" or "consideration paid" or "consideration given" might be better.

- Regarding (f)(1)(B) & (C), the existing rule about filing of the statement by an auctioneer applies only "If the property is sold by an auctioneer," whereas the proposed restyled rule in (B) applies "If the property is sold by auction,". There may be auctions in which there is no auctioneer (e.g., auctions conducted by counsel at a law firm office or virtually, in open court, or even by the court). As such, the existing language should be retained in (B) and the title of (B) should be changed to: "If by Auctioneer." Likewise, the title of (C) should be changed to: "If Not by Auctioneer." and the word "auction" in the introductory clause of (C) should be changed to "an auctioneer".

- The changed language in (f)(2) is potentially illogical – how can the sale be "complete" if the applicable transaction documents have yet to be signed? We suggest just striking "When a sale is complete," as it deviates from the current rule and has unclear meaning and effect. In addition, the existing rule and its title refer to "execute" and "execution", respectively, whereas the proposed restyled rule and its title refer to "sign" and "signing", respectively. Execution may be a broader concept than signing insofar as execution would include procuring any necessary witnesses, attestations, notarizations, etc., so we suggest retaining the existing language.

- In (g), although hyphenating "consumer-privacy" throughout may be grammatically better, that does deviate from the usage in Bankruptcy Code section 332 and this probably is a term of art that should remain consistent (i.e., unhyphenated).

- In the last sentence of (g)(1), the initial reference to "It" creates potential pronoun ambiguity and should probably be changed to "The motion".

Restyled Rule 6005

For clarity, we suggest adding "as an appraiser or auctioneer" at the end of the last sentence.

Restyled Rule 6006

- Comprehensively eliminating all nominalizations from titles makes the title to proposed restyled Rule 6006(b) unduly long and cumbersome. We suggest changing the title to "**Requiring Assumption or Rejection of a Contract or Lease.**" Those nominalizations

("**Assumption**" and "**Rejection**") are consistent with the nominalization ("**Assignment**") used in the title of proposed restyled Rule 6006(d).

- In (d), we suggest deleting "an" from the title as unnecessary and awkward and to conform to the suggested change to the title of proposed restyled Rule 6006(b).

- In (e)(1)(A), the initial reference to "they" creates potential pronoun ambiguity, so we suggest changing "they are all" to "all of the contracts and leases are". Consistent with the second possible change to the title to (e)(2) discussed below, the title to (e)(1) could be changed to "**Assumption or Assignment.**"

- Regarding (e)(2), we do not believe it is accurate to characterize that language as an exception, since rejection is not covered by the terms of (e)(1), so we suggest changing the title of (e)(2) to "**Authority to Reject.**" or simply "**Rejection.**" Consider also changing the title to (e)(1) to "**Assumption or Assignment.**" and the title to (e)(2) to "**Rejection.**" for conciseness and to create appropriate parallelism between the titles.

Restyled Rule 6007

- We suggest deleting "**; Objections**" from the title as unnecessary and for conciseness. Many other rules (e.g., Rule 6004) include procedures governing objections without any specific mention of "Objections" in the title. The references to "objections" in the titles to Rule 6007 subdivisions should suffice.

- For the title of (a)(1), we suggest conforming to that of Rule 6004(a)(1), i.e., "**In General.**" There is no need to repeat "Notice" in both the general (a) and the (a)(1) titles.

- Regarding the bulleted list in (a)(1):

    - The second bullet item lists "creditors". "All creditors" notices pursuant to Rule 2002(a) (language that is retained in the proposed restyled Rule 2002(a)) may well be a "sacred phrase" that should be retained.

    - The third bullet item lists "indenture trustees". Proposed restyled Rule 2002(a) uses the "all indenture trustees" language, which perhaps should also be replicated here (especially since the fourth bullet item uses the "any committees" locution).

- The same points from the immediately preceding comment also apply to the third and fourth bullet items in (b)(1).

- In (b)(3), separating the last clause from the rest of this provision by an em dash is a cumbersome construction. Perhaps introduce the provision as follows: "Unless the court orders otherwise, an order granting the motion to abandon property effects . . ."

Restyled Rule 6008

The new title is cumbersome. We suggest conforming it to the title for Bankruptcy Code section 722, i.e., "Redemption" or "Redemption of Property".

Restyled Rule 6009

This proposed restyling is extremely troublesome, particularly "the Debtor's Interests" and the "act on the debtor's behalf" language. Acting "on behalf of" another is legal term-of-art language connoting that one is the agent of another (the principal) with the ability to bind the principal. We do not believe that is the substantive nature of a trustee's appearance in an action against an individual debtor. The trustee would be acting solely on behalf of and in the interest of the debtor's estate and ***not*** the individual debtor and should have no substantive ability to bind the debtor in that action (for example, think of a pending state-court suit on a potentially nondischargeable debt in an asset chapter 7 case in which the court grants the creditor stay relief to liquidate its claim in the pending action). The nature of a trustee's standing to appear, prosecute, or defend any pending action by or against the debtor, and the substantive effect thereof, will be very context-specific, so this provision has to be very carefully phrased to be substance neutral. We suggest retitling Rule 6009 as follows: "Trustee or Debtor in Possession Prosecuting and Defending Proceedings." We also suggesting changing the language in (a) to: "appear in, prosecute, or defend any pending action or proceeding by or against the debtor; or". Alternatively, the existing language is superior to the restyling and should be left alone.

Restyled Rule 6010

In the first sentence, we suggest insertion of the word "of" after the word "transfer".

Restyled Rule 6011

- In (a)(4), the "they" creates potential pronoun ambiguity, especially if clause (4) is read on a standalone basis. We suggest changing to "the records" for clarity.

- In (b)(1)(B), the "it" creates potential pronoun ambiguity. We suggest replacing with "the notice".

- In (c), the "it" creates potential pronoun ambiguity. We suggest deleting phrase ", but not file it" and adding a new sentence: "The trustee must not file the proof of compliance."

* * *

We hope these comments are helpful during the process of finalizing revisions to the Federal Rules of Bankruptcy Procedure. Please contact us if the NBC's Courts Committee can be of further assistance.

Sincerely,

Whitman L. Holt
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Encl.

National Bankruptcy Conference

A non-profit, non-partisan, self-supporting organization of approximately sixty lawyers, law professors and bankruptcy judges who are leading scholars and practitioners in the field of bankruptcy law. Its primary purpose is to advise Congress on the operation of bankruptcy and related laws and any proposed changes to those laws.

History. The National Bankruptcy Conference (NBC) was formed from a nucleus of the nation's leading bankruptcy scholars and practitioners, who gathered informally in the 1930's at the request of Congress to assist in the drafting of major Depression-era bankruptcy law amendments, ultimately resulting in the Chandler Act of 1938. The NBC was formalized in the 1940's and has been a resource to Congress on every significant piece of bankruptcy legislation since that time. Members of the NBC formed the core of the Commission on the Bankruptcy Laws of the United States, which in 1973 proposed the overhaul of our bankruptcy laws that led to enactment of the Bankruptcy Code in 1978, and were heavily involved in the work of the National Bankruptcy Review Commission (NBRC), whose 1997 report initiated the process that led to significant amendments to the Bankruptcy Code in 2005. Most recently, the Conference played a leading role in developing the Small Business Reorganization Act of 2019, Pub. L. 116-54.

Current Members. Membership in the NBC is by invitation only. Among the NBC's 60 active members are leading bankruptcy scholars at major law schools, as well as current and former judges from eleven different judicial districts and practitioners from leading law firms throughout the country who have been involved in most of the major corporate reorganization cases of the last three decades. The NBC includes leading consumer bankruptcy experts and experts on commercial, employment, pension, mass tort, and tax-related bankruptcy issues. It also includes former members of the congressional staff who participated in drafting the Bankruptcy Code as originally passed in 1978 and former members and staff of the NBRC. The current members of the NBC and their affiliations are set forth on the second page of this fact sheet.

Policy Positions. The Conference regularly takes substantive positions on issues implicating bankruptcy law and policy. It does not, however, take positions on behalf of any organization or interest group. Instead, the NBC seeks to reach a consensus of its members - who represent a broad spectrum of political and economic perspectives - based on their knowledge and experience as practitioners, judges, and scholars. The Conference's positions are considered in light of the stated goals of our bankruptcy system: debtor rehabilitation, equal treatment of similarly situated creditors, preservation of jobs, prevention of fraud and abuse, and economical insolvency administration. Conferees are always mindful of their mutual pledge to "leave their clients at the door" when they participate in the deliberations of the Conference.

Technical and Advisory Services to Congress. To facilitate the work of Congress, the NBC offers members of Congress, Congressional Committees and their staffs the services of its Conferees as non-partisan technical advisors. These services are offered without regard to any substantive positions the NBC may take on matters of bankruptcy law and policy.

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