

Exhibit I-3. Judicial Conference Guidelines for Implementing 28 U.S.C. § 156(c)

Guidelines on Use of Outside Facilities and Services

Generally

1. Authority. Section 156(c) of Title 28 authorizes bankruptcy courts to use outside facilities or services to provide notices, dockets, calendars, and other administrative information to parties in bankruptcy cases where the cost of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The statute provides that the use of such facilities and services is subject to any conditions and limitations imposed by the pertinent circuit council.

Comments: Section 156(c) was enacted in recognition that the day-to-day activities and administrative requirements in some large bankruptcy cases are too onerous to be performed efficiently by the bankruptcy clerk's office. Services such as noticing, providing copies of case papers, and processing proofs of claims and interest can sometimes be performed more efficiently outside the bankruptcy clerk's office. The statute authorizes the bankruptcy court to permit third parties to perform these services at the estate's expense.

The need for such outside services is most prevalent in so-called "mega-cases," which are extremely large bankruptcy cases with hundreds or thousands of creditors. The staffing levels of bankruptcy clerks' offices sometimes cannot absorb such dramatic increases in workloads.

Records

2. Custodian. Pursuant to 28 U.S.C. § 156(e), the bankruptcy clerk of court is the official custodian of the records and dockets of the bankruptcy court. As custodian of the records and dockets of the bankruptcy court, the bankruptcy clerk is responsible for the security and integrity of all the bankruptcy court's records and dockets, including those maintained by the debtor or a third party.

Comments: The bankruptcy clerk is responsible for the security and integrity of all the bankruptcy court's records and dockets, including dockets, claims registers, mailing matrices, and other case papers maintained by the debtor or a third party.

How the bankruptcy clerk assures the security and integrity of the records and dockets depends on the procedures utilized in a particular case.

If the estate has hired personnel to work in the bankruptcy clerk's office, the bankruptcy clerk should supervise their work. If the debtor or a third party maintains claims registers, mailing matrices, or other case papers outside the bankruptcy clerk's office, the bankruptcy clerk should institute a system to monitor and check its work.

The bankruptcy clerk should institute safeguards to be included in the procedures used by others.

For example, if the debtor or a third party is to process proofs of claims and produce the claims register, it may be required to issue an acknowledgment when a proof of claim is filed. The notice of the meeting of creditors could state that ac-

knowledgments are to be issued for proofs of claims and that if a creditor does not receive one within a week after filing a proof of claim, the creditor should contact the bankruptcy clerk.

Another example of a safeguard would be to require that the third party submit updated copies of the claims register or mailing matrix to the bankruptcy court on a weekly basis.

3. Filing. Proofs of claim or interest, complaints, motions, applications, objections, and other case papers shall be filed with the bankruptcy clerk's office, which, after noting receipt, upon order of the court, may transmit case papers to an outside entity for maintenance.

Comments: Bankruptcy Rules 3002(b) and 5005(a) require that proofs of claim or interest, complaints, motions, applications, objections, and other case papers be filed with the bankruptcy clerk of court in the district where the case is pending, except as specified by section 1409 of Title 28 and except as a judge permits papers to be filed with the judge.

The bankruptcy court should assure itself of the integrity of the procedures before directing that proofs of claim or interest, or other case papers be transmitted to a third party.

If all case papers are filed in the bankruptcy clerk's office and stamped with the date received, the papers can be picked up by the debtor or a third party for processing at another location. The bankruptcy clerk can copy some papers to make spot checks of their processing by the debtor or a third party.

The bankruptcy clerk can obtain a special post office box for the receipt of proofs of claim in mega-cases. This separates the proofs of claim from other mail and speeds processing.

4. Disposition. The bankruptcy clerk remains responsible for the disposition of case papers after the conclusion of a case in which the bankruptcy court has directed the debtor or a third party to maintain the records.

Comments: Although the order which directs the debtor or a third party to maintain records does not necessarily have to provide for their disposition, the bankruptcy clerk should begin planning for records disposition early in the case.

5. Claims. If debtors or third parties are directed to process proofs of claim and maintain the claims register, they should be directed to perform related functions, such as recording transfers of claims and giving notices of transfer.

Comments: Bankruptcy Rule 3001(e)(2),(3),(4) requires notices of certain transfers of claims. The party which processes proofs of claim and maintains the claims register is best able to give the notices. Bankruptcy Rule 3001 requires that the court enter an order on many transfers. The original notices and orders should be placed in the case files.

Bankruptcy Rule 3004 requires notice to the creditor when the debtor or trustee files a claim in the name of the creditor. The party that processes proofs of claim and maintains the claims register is best able to provide the notice.

6. Public records. Section 107 of the Bankruptcy Code provides that the papers filed in bankruptcy cases and the bankruptcy court's dockets are public records unless the bankruptcy court orders otherwise. Case papers such as proofs of claim remain public records even if the debtor or a third party is directed to process and maintain those records. The bankruptcy clerk should ensure that those records are open to examination at reasonable times without charge.

Comments: Case papers processed and maintained by the debtor or a third party at a location outside the bankruptcy clerk's office should be available for review at that location during normal business hours.

Because it may often be impractical for parties to review case papers where the papers are processed and maintained, the bankruptcy clerk should attempt to make as much information available as is possible.

As an example, if a third party or the debtor processes proofs of claim and interest and generates the claims register, the third party or the debtor should furnish copies of the updated claims register to the bankruptcy court at least weekly.

Personnel

7. Waivers. Personnel employed by the estate to assist the bankruptcy clerk's office are not government employees. They should not be administered oaths of office although they may be asked to sign a waiver of any right to compensation by the government. Because such personnel are not government employees, the bankruptcy clerk may not fire them.

Comments: There is no need to administer an oath of office to personnel paid by the estate to assist the bankruptcy clerk's office in processing a case. Administering an oath to such personnel fosters the false impression that they are government employees.

Administering an oath to a new government employee impresses the employee with the obligations of office and triggers certain restrictions on the employee's activities. A written waiver including a statement of the obligations of personnel employed by the estate to assist the bankruptcy clerk's office is less suggestive of government employment.

The bankruptcy clerk should request that special employees sign a written waiver of any right to receive compensation from the government, civil service retirement credit, or other benefits of government employment. The waiver should also include an acknowledgment that the special employee is to be paid by the estate, is directly accountable to the bankruptcy clerk, and will not receive instructions, directions, or orders from the debtor or the trustee.

The waiver should also specify that the special employees will refrain from discussing pending or impending cases, will not disclose confidential information received during the course of their employment, and will not profit from such confidential information. These obligations are included in the code of conduct for clerks, which require that the clerks impose these specific obligations on their staffs.

8. Supervision. The bankruptcy clerk is responsible for supervising the work of personnel employed by the estate to assist the bankruptcy clerk's office.

Comments: The bankruptcy clerk of court may select personnel to be employed by the estate to work in the bankruptcy clerk's office pursuant to section 156(c). If authorized by the order directing the estate to employ the personnel, the bankruptcy clerk may specify the terms of their employment. Due to the nature of such special employees' work, the bankruptcy clerk or a designated deputy clerk should supervise their work.

For the ease of supervision, it is desirable that the special employees work in the bankruptcy clerk's office if sufficient space is available. This also makes it easier to maintain security for the case papers processed by special employees.

9. Favoritism. Personnel employed by the estate to assist the bankruptcy clerk's office may not provide special services for the debtor or the trustee. The bankruptcy clerk should strive to avoid any appearance that these personnel favor the debtor or any other party while performing official duties.

Comments: While they are assisting the bankruptcy clerk's office, special employees should not be in contact with the debtor, except on official business or to receive their paychecks. They should not receive instructions, directions, or orders from the debtor or the trustee.

The bankruptcy clerk should strive to avoid any impression that the special employees favor the debtor or any other party in their work for the bankruptcy clerk's office. For this reason, the special employees should not work in the debtor's business and assist the bankruptcy clerk's office at the same time. It is desirable that the special employees not be former employees of the debtor.

Facilities

10. Equipment. Any equipment, furniture, or other facilities leased or purchased at the estate's expense for the court's use in a bankruptcy case is property of the estate and will be returned to the estate after its use by the bankruptcy court.

Comments: Because section 156(c) prohibits charging the cost of such equipment, furniture, or other facilities to the United States, the bankruptcy clerk should explain to the seller or lessor that the estate—not the bankruptcy court—is responsible for payment.

Services

11. Copies. If the bankruptcy clerk selects a commercial copy service to provide copies of papers in one or more cases, the bankruptcy clerk must exercise care to avoid the appearance of favoritism in the selection. The bankruptcy clerk should request written proposals for the work as part of the clerk's determination of which commercial copy service is best qualified to provide such a service. If the cost of the copies is expected to total more than \$25,000, the bankruptcy clerk should make a formal solicitation of written proposals for the work. If a very large case is filed without advance notice, the bankruptcy clerk may not have time to solicit formal written proposals for the copy services. In such an instance, the clerk may solicit proposals orally and document the solicitation and responses.

Comments: The bankruptcy clerk's office may not be able to efficiently handle the volume of copy requests in a mega-case. With planning and the bankruptcy clerk's assistance, a private copy service may be able to provide copies of case papers at a lower price than the bankruptcy clerk's office. This saves time for the bankruptcy clerk's office and saves money for the parties. The time savings is particularly important in mega-cases, in which copy requests could otherwise require much of the bankruptcy clerk's office's time.

The bankruptcy clerk must exercise care to avoid the appearance of favoritism in the selection of a copy service to provide copies in a mega-case. The bankruptcy clerk should make at least an informal survey to determine which copy service is best qualified to provide copies on the basis of reliability, price per copy, and additional services to be provided, such as maintaining a duplicate file for review by the public.

Advertising is required for most government purchases of more than \$25,000 by 41 U.S.C. § 5. Although the bankruptcy court's designation of a copy service is not a government purchase of services, it does convey a valuable business opportunity.

Basic fairness requires that all qualified copy centers be allowed to submit proposals if the bankruptcy clerk anticipates that more than \$25,000 worth of copies will be requested in a year. If time permits, the bankruptcy clerk should send written requests for proposals to each of the local copy services, which are capable of performing the work in a timely manner. If time permits and the bankruptcy clerk anticipates that more than \$25,000 worth of copies will be requested in a year, copies of all of the written proposals should be sent for review to the Contracts Branch of the Contracts and Services Division of the Administrative Office before a particular proposal is selected.

Proposals for making copies should be solicited on a contingent basis before a mega-case is filed. If it has not been done, the request for proposals can be conveyed orally or hand-delivered with instructions that they be returned within 48 hours.

The order designating the copy service can also require that the parties file an extra copy of all case papers except proofs of claim. The intake and docket clerks can process the copies along with the originals, and the copy service can pick up the copies and an updated docket sheet once a day. The parties can then order copies by docket numbers or can place standing orders for copies.

The request for proposals should require the copy center to maintain a duplicate case file from which copies will be made. The request may also require that the copy center make the duplicate file available for review without charge during normal business hours.

Notices

12. Mailing lists. A debtor in a voluntary case must file a list containing the names and addresses of its creditors, even if the debtor or a third party is ordered to mail all notices in the case. If the debtor or a third party is directed to maintain the mailing matrix in a case, it shall make copies of the matrix available as requested by other parties or the bankruptcy court.

Comments: Bankruptcy Rule 1007(a) requires that debtors in voluntary cases file mailing lists with their petitions unless the petitions are accompanied by schedules of liabilities or Chapter 13 statements. Other parties may need to review the list. Another party or the bankruptcy clerk's office may need the list in order to provide a notice.

In certain circumstances the bankruptcy court may permit the debtor to file the mailing list in the form of a computer tape. The bankruptcy clerk shall take steps to ensure that the mailing list is maintained properly and that it is protected against loss or damage.

13. Certificates of service. The bankruptcy court or the bankruptcy clerk should approve the form and content of any notice not provided by the clerk's office and should receive from the person providing notice a certificate of service which includes a copy of the notice and a list of persons to whom it was mailed.

Comments: Pursuant to the Bankruptcy Noticing Guidelines adopted by the Judicial Conference in March 1986, the parties shall file certificates of service for the notices which they provide. If counsel for the party signs a certificate of service, the certificate may generally state that notice was given to certain parties (such as the parties on the mailing matrix as of a certain date). If someone else signs the certificate, the certificate shall be accompanied by a list of the names and addresses of the parties served.

To ease the burden of reviewing the form and content of notices not prepared by the bankruptcy clerk's office, the bankruptcy clerk and the bankruptcy court can develop form notices for various circumstances. The bankruptcy court can specify the required contents for certain notices in its local rules.

Miscellaneous

14. Assistance. The Bankruptcy Division of the Administrative Office should be consulted when unusual questions or problems arise concerning outside facilities or services.

Comments: Mega-cases often present unusual questions or problems, such as the need to hire additional personnel on an expedited basis or to address unique circumstances in the meeting of creditors notice. The Bankruptcy Division can either answer the questions or refer them to the appropriate office.