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THE INTRACTABLE PROBLEM OF BANKRUPTCY ETHICS: SQUARE PEG, ROUND HOLE

Nancy B. Rapoport*

I. INTRODUCTION

I have spent a large part of my career to date focusing on the issue of how bankruptcy lawyers should behave.¹ In part, my attraction to this

* Dean and Professor of Law, University of Houston Law Center. An earlier version of this Article was presented at Hofstra University School of Law's 2001 Legal Ethics Conference, *Legal Ethics: What Needs Fixing?* Many thanks to Professor Roy Simon for inviting me to participate in the conference; to my research assistants, H.C. Chang and Alison Chien; to Susan Evangelist (who always saves my bacon); to Jack Ayer, Chuck Kettlewell, George Kuney, Ronald Mann, Jay Westbrook, and Jeff Van Niel for reviewing earlier drafts; and to Harlin Womble, for sending me valuable e-mails after my presentation at the University of Texas School of Law's Twentieth Annual Bankruptcy Conference in November 2001. Let me tell you: There is nothing so scary as describing a pointy-headed intellectual's theory (mine) of bankruptcy ethics to a group of very experienced bankruptcy lawyers.

1. See, e.g., C.R. Bowles, Jr. & Nancy B. Rapoport, *Has the DIP's Attorney Become the Ultimate Creditors' Lawyer in Bankruptcy Reorganization Cases?*, 5 AM. BANKR. INST. L. REV. 47, 49 (1997) [hereinafter *DIP's Attorney*]; Nancy B. Rapoport, *Our House, Our Rules: The Need for a Uniform Code of Bankruptcy Ethics*, 6 AM. BANKR. INST. L. REV. 45, 46-47 (1998) [hereinafter Rapoport, *Our House*]; Nancy B. Rapoport, *Seeing the Forest and the Trees: The Proper Role of the Bankruptcy Attorney*, 70 IND. L.J. 783, 785 (1995) [hereinafter Rapoport, *Forest and Trees*]; Nancy B. Rapoport, *Turning and Turning in the Widening Gyre: The Problem of Potential Conflicts of Interest in Bankruptcy*, 26 CONN. L. REV. 913, 916-17 (1994) [hereinafter Rapoport, *Potential Conflicts*]; Nancy B. Rapoport, *Turning the Microscope on Ourselves: Self-Assessment by Bankruptcy Lawyers of Potential Conflicts of Interest in Columbus, Ohio*, 58 OHIO ST. L.J. 1421, 1422-23 (1997) [hereinafter Rapoport, *Microscope*].

Some wonderful recent conflicts articles include: John D. Ayer, *Professional Responsibility in Bankruptcy Cases*, in 1 CHAPTER 11 BUSINESS REORGANIZATIONS 1 (ALI-ABA Course of Study, SB37, May 8-10, 1993); Michael L. Cook, *Conflict of Interest Issues in Bankruptcy Reorganization Cases*, in ETHICS IN CONTEXT 111 (PLI N.Y. Prac. Skills Course, Handbook Series No. F0-0059, 1999); Arthur J. Gonzalez, *Conflicts of Interest and Other Ethical Issues Facing Bankruptcy Lawyers: Is Disinterestedness Necessary to Preserve the Integrity of the Bankruptcy System?*, 28 HOFSTRA L. REV. 67, 67 (1999) (discussing ethical issues facing bankruptcy lawyers); Karen Gross & Jeanne M. Weisneck, *Selected Bibliography on Ethics for Bankruptcy Professionals*, 68 AM. BANKR. L.J. 419, 419-20 (1994) (listing articles addressing the issue of bankruptcy ethics); William I. Kohn et al., *Deciphering Conflicts of Interest in Bankruptcy Representation: An Update*, 105 COM. L.J. 95, 96 (2000) (discussing current conflicts of interest

subject stems from my first year of practice at a law firm, when I was asked to do a conflicts check. I can't remember whether the conflicts check involved a new client or a current client, and I can't remember whether the client was a secured creditor or an unsecured creditor.² What I do remember is that, as I was filling out the computer form that would initiate the check, I marked every single current client as potentially adverse. Not surprisingly, the completed check was over an inch thick, and it took a while to clear the "conflicts."

In addition to first-year associate naiveté, there was something substantive going on. I knew, even as a fledgling associate, that if we represented a creditor in a bankruptcy case, then there was at least the chance that our client was going to be fighting over the same dollars that other creditors also wanted. If our client was an unsecured creditor, for example, why wouldn't it want to disqualify other unsecured creditors so that its piece of the pie was at least a little bit larger? Why wouldn't it want to see if it could prove that a secured creditor's claim was improperly perfected, so that it could free up that collateral for division

rules applicable to bankruptcy attorneys); Gerald K. Smith, *Conflicts of Interest in Workouts and Bankruptcy Reorganization Cases*, 48 S.C. L. REV. 793, 810 (1997) (discussing the ethical implications of conflicts related to workouts and reorganizations); Gerald K. Smith, *Standards For the Employment of Professionals in Bankruptcy Cases: A Response to Professor Zywicki's "Case for Retaining the Disinterestedness Requirement for Debtor in Possession's Professionals,"* 18 MISS. C. L. REV. 327, 327 (1998) [hereinafter Smith, *Standards for Employment*] (proposing an alternative method for "more fair and efficient administration" of the bankruptcy system); Hon. Susan Pierson Sonderby & Kathleen M. McGuire, *A Gray Area in the Law? Recent Developments Relating to Conflicts of Interest and the Retention of Attorneys in Bankruptcy Cases*, 105 COM. L.J. 237, 238 (2000) (collecting and analyzing recent court decisions relating to bankruptcy conflicts of interest); Jay Lawrence Westbrook, *Fees and Inherent Conflicts of Interest*, 1 AM. BANKR. INST. L. REV. 287, 287 (1993) (discussing ethics and fee arrangements with respect to representation of debtors in possession); Charles W. Wolfram, *The Boiling Pot of Lawyer Conflicts in Bankruptcy*, 18 MISS. C. L. REV. 383, 383 (1998) (discussing the shortcomings of traditional ethics rules with respect to bankruptcy conflicts of interest, especially as regards small bankruptcies); Todd J. Zywicki, *Mend It, Don't End It: The Case for Retaining the Disinterestedness Requirement for Debtor in Possession's Professionals*, 18 MISS. C. L. REV. 291, 293 (1998) (discussing the necessity of the "disinterestedness" requirement for bankruptcy attorneys); Christopher M. Ashby, Comment, *Bankruptcy Code Section 327(a) and Potential Conflicts of Interest—Always or Never Disqualifying?*, 29 HOUS. L. REV. 433, 436-37 (1992) (discussing the disqualification test and potential conflicts of interest in the bankruptcy context); Alexander G. Benisatto & Alyson M. Fiedler, Note, *The Disinterested Standard of Section 327(a): Applying an Equitable Solution for Potential Conflicts in Small Bankruptcies*, 7 AM. BANKR. INST. L. REV. 363, 363 (1999) (discussing why the American Law Institute and National Bankruptcy Review Commission apparently "sidestep[ped] the entire field" of bankruptcy ethics); Joseph D. Vaccaro & Marc R. Milano, Note, *Section 327(a): A Statute in Conflict: A Proposed Solution to Conflicts of Interest in Bankruptcy*, 5 AM. BANKR. INST. L. REV. 237, 241 (1997) (discussing current ethics rules as they relate to bankruptcy and proposing a new model).

2. I was an associate in Morrison & Foerster from 1986-1991. We didn't represent too many debtors in bankruptcy cases, but we had a thriving practice in creditor-side representation.

among the unsecured creditors? Likewise, if we represented a secured creditor, wouldn't our client always be trying to defend against attacks from unsecured creditors?³ The potential conflicts were almost infinite.⁴

Of course, bankruptcy cases don't involve internecine war on the scale that I had imagined.⁵ Most of the time, most of the creditors are acting in concert, trying to make the most money from an enterprise that is hemorrhaging money. But sometimes, creditors don't act in concert. Sometimes, they *do* fight. How was I supposed to be able to predict, when I was doing a conflicts check, which ones would cooperate with each other and which ones would engage in skirmishes?

That, in a nutshell, is the problem with current ethics codes. They assume that lawyers will know, at the beginning of a case, whose interests will diverge.⁶ Perhaps that is a safe assumption in traditional litigation, with one plaintiff and one defendant, when it is clear that a lawyer should not represent both sides in the same case.⁷ But it's a foolish assumption in a complex Chapter 11 case.⁸ So either the use of state ethics codes or the nature of bankruptcy cases has to give if we're going to help bankruptcy lawyers stay on the straight and narrow. And the nature of bankruptcy cases isn't likely to change.

II. A BETTER WAY TO DESCRIBE CONFLICTS OF INTEREST IN BANKRUPTCY CASES: DTACS

What I love about bankruptcy cases (especially Chapter 11 cases) is the multiple ways in which the parties' interests align, depending on the issue at hand.⁹ At first, the line-up is easy: it's the debtor¹⁰ against the

3. And don't even get me started on partnerships, holding companies, and the like.

4. Walter Effross has compared the strategy choices in Chapter 11 cases to a game of Go. See Rapoport, *Our House*, *supra* note 1, at 65 n.99. And it's not just a naïve new associate who can get confused by the difficulties of dealing with bankruptcy conflicts. Sophisticated lawyers have had problems with these issues as well. See, e.g., *United States v. Gellene*, 182 F.3d 578, 581 (7th Cir. 1999) (affirming the fraud conviction of a partner at a major New York law firm, who had claimed it was "bad judgment" that led him to conclude that he did not need to disclose certain connections in a Chapter 11 bankruptcy case); *In re Leslie Fay Cos.*, 175 B.R. 525, 526-27 (Bankr. S.D.N.Y. 1994) (holding that Weil, Gotshal & Manges had failed to disclose "disabling conflicts" even though it had represented all debtors "competently and loyally"); see also Karen Donovan, *John Gellene Sentenced To 15 Months*, NAT'L L.J., Aug. 10, 1998, at A6.

5. At least, not all of them.

6. See Rapoport, *Microscope*, *supra* note 1, at 1422 & n.5.

7. See MODEL RULES OF PROF'L CONDUCT R. 1.7(a) (2001) [hereinafter MODEL RULES].

8. Without beating some seriously dead horses, see cases cited *supra* note 4.

9. For now, I'm referring to commercial Chapter 11 cases. I'll discuss the distinction between commercial cases and consumer cases later in this Article. See *infra* notes 45-46 and accompanying text.

creditors.¹¹ Creditors want to be paid, and the debtor wants to survive as an enterprise (and may therefore not want to pay 100 cents on the dollar).

Things start to get muddy as soon as the value of a claim becomes an issue.¹² Perhaps the claim of a secured creditor isn't fully secured (the value of the asset is less than the value of the claim).¹³ Perhaps the secured claim wasn't properly perfected,¹⁴ which turns the secured claim into an unsecured claim. If an unsecured creditor starts gunning for a secured creditor, all sorts of problems with the claim might be discovered.

To put an ethics spin on it, try this: You routinely represent a bank that often forgets to file the financing statement that would perfect a security interest. In a newly filed bankruptcy case, you want to represent the estate's largest unsecured creditor. Your unsecured creditor client can't make a claim against the secured property and will only be able to recover from unsecured assets. Those assets will get bigger if the security interest of the bank is found to be defective. There's an automatic conflict of interest: You know something about the bank that your unsecured creditor client could use against the bank. If, on the other hand, your bank client always perfects its security interests and always takes enough collateral to oversecure its claim, then the secured creditor and the unsecured creditor are in two different universes, as far as the bankruptcy case is concerned. The secured creditor will be paid from the value of the collateral, and the unsecured creditor will be paid from unsecured assets—no conflict of interest.

Valuation isn't the only part of the case that might raise some conflicts issues. Assume that the secured bank has done something terribly, terribly wrong to the debtor, such as micromanaging the

10. Bankruptcy mavens will notice that I haven't used the more proper "debtor in possession" ("DIP") term. *See* 11 U.S.C. § 1101(1) (1994). This Article involves ethics issues predominantly, and not bankruptcy issues; therefore, I'm using the more generic term in order to keep the flow of the discussion moving.

11. The debtor-versus-creditor tension at the start of the case is true whether the case was initiated by the debtor (a voluntary case), *see* 11 U.S.C. § 301 (1994), or by the creditors (an involuntary case), *see id.* § 303. Prepackaged Chapter 11 cases, in which the debtor and most of the significant creditors agree, before the filing of the bankruptcy petition, how the estate is to be administered, may not be as overtly adversarial as traditional bankruptcy cases, but the basic adversarial facts remain: The creditors have claims against the debtor.

12. Valuation can come into play near the beginning of a case, *see, e.g., id.* § 362(d), (g) (determining debtor's equity in property with respect to stay relief motions), in the middle of a case, *see, e.g., id.* § 544 (describing criteria for exercise of the trustee's avoidance powers), or when a plan of reorganization is being confirmed, *see id.* § 1129.

13. *See id.* § 506.

14. *See id.* § 544(a)(3).

debtor's business into the ground. The debtor might have a cause of action against the bank¹⁵ or want to subordinate the bank's claim behind that of the other creditors in the case. If the debtor wins, the unsecured creditors win, too; any recovery from the bank will put more unsecured assets into the bankruptcy estate, and the unsecured creditors will receive a larger payout than they would have had the bank behaved properly. In such a scenario, the debtor and the unsecured creditors are not in conflict with each other, but their interests do conflict with those of the bank.

The problem with most bankruptcy conflicts is that they spring up for a particular issue—if that issue is raised in the case—and then they disappear. In an earlier article, I called these conflicts “dormant, temporary, actual conflicts” (“DTACs”).¹⁶ A DTAC might not ever occur, depending on the choices that the parties in the case may make (e.g., not to fight over whether a claim was properly perfected or not to subordinate a claim). If the conflict does occur, it is likely to be issue-specific, meaning that, after the particular issue is resolved, the conflict disappears. While the issue is being litigated, there is an actual conflict; afterwards, like the *Titanic* slipping under the waves for the last time, it's as if the conflict never occurred.

State ethics codes don't cover DTACs. They should, since DTACs can occur in other fields (such as family law or class actions¹⁷), but they don't. So what is a bankruptcy lawyer to do—pretend that a bankruptcy case works just like any other traditional litigation case? Assume that the state ethics rules don't apply? Or hope for a change in the ethics rules?

III. THE PROBLEM WITH CURRENT ETHICS RULES

I'm not a fan of the current *Model Rules of Professional Conduct*. For one thing, I think that they focus too much on the litigation side of lawyering and not enough on the transactional side.¹⁸ They also put more faith in the adversary system than I think is prudent.¹⁹ I would want to see significant reform even if the rules could handle the situations that

15. For example, a “lender liability” lawsuit. Those types of lawsuits have waxed and waned in popularity. See, e.g., Steven A. Meyerowitz, *Note from the Senior Executive Editor*, 118 *BANKING L.J.* 197, 198 (2001) (“U.S.-based banks continue to be wary of lender liability lawsuits.”).

16. See Rapoport, *Potential Conflicts*, *supra* note 1, at 916.

17. See *id.* at 966-69, 972-75.

18. See Rapoport, *Forest and Trees*, *supra* note 1, at 790-91.

19. See *id.* at 787.

arise in bankruptcy cases. But there is another reason to rethink state ethics codes: the changing nature of legal practice.

Enough has been said about the ethics problems of multijurisdictional practice that I need not repeat it here,²⁰ except to point out that most Chapter 11 bankruptcy lawyers have a national practice. The high-profile bankruptcy lawyers are involved in cases all over the country, and I am willing to hazard a guess that they do not hold state licenses in each jurisdiction. What happens when something that is ethical in one jurisdiction (for example, referral fees in Texas²¹) is unethical in another (referral fees in most other states²²)? No matter what we do to fix other, long-standing problems in state ethics codes, we are going to have to spend significant time grappling with the ethics issues raised by an increasingly multijurisdictional world.

A. *A Partial Solution: A Federal Code of Bankruptcy Ethics*

We can't cure all of the ills inherent in state ethics codes without a total revamp, and Ethics 2000²³ and similar attempts to revise the Model Rules aren't total revamps. Although I've testified about the need for separate bankruptcy ethics rules, I found it difficult to draft a workable proposed Model Rule that would cover DTACs.²⁴ But that didn't stop me from arguing that bankruptcy lawyers need a separate set of rules.

20. See Rapoport, *Our House*, *supra* note 1, at 77-78.

21. See *Chachere v. Drake*, 941 S.W.2d 193, 195-96 (Tex. App. 1996) (analyzing TEX. DISCIPLINARY RULES OF PROF'L CONDUCT R. 1.04 (1990) in holding that referral fees are not contrary to public policy, even when referring attorney performs no actual service). The division of fees is legal "unless the manner of the sharing is prevented by operation of law" (i.e., failure to disclose to client). *See id.*

22. See MODEL RULES, *supra* note 7, R. 1.5(e) & cmt. 4 (allowing division of a fee only if: (1) the client is advised and does not object; (2) the fee is reasonable; and (3) *the division is proportional to the service performed by each lawyer*).

23. For the background of Ethics 2000, the American Bar Association committee charged with considering changes in the *Model Rules of Professional Conduct*, see Press Release, ABA, ABA Establishes "Ethics 2000" to Evaluate Legal Ethics (July 24, 1997), available at <http://www.abanet.org/media/jul97/eth2000.html> (last visited Jan. 29, 2002). For the draft changes, see generally COMM'N ON EVALUATION OF THE RULES OF PROF'L CONDUCT, ABA, REPORT WITH RECOMMENDATION TO THE HOUSE OF DELEGATES (2001), available at http://www.abanet.org/cpr/e2k-whole_rpt.doc (last visited Mar. 22, 2002).

24. I'm not the only one who has found it difficult to craft rules for bankruptcy ethics. Even the American Law Institute ("ALI") has refused to take on the subject in its *Restatement of the Law Governing Lawyers*. If you want to read a first-hand account of the ALI's efforts to resolve (and then, ultimately, its decision not to resolve) bankruptcy conflicts, see Smith, *Standards for Employment*, *supra* note 1, at 360-61; Wolfram, *supra* note 1, at 383-85; Todd J. Zywicki, *Of Bubbling Pots and Bankruptcy Ethics: A Comment on Wolfram and Smith*, 18 MISS. C. L. REV. 399, 399-401 (1998).

In a paper that I presented at the Association of American Law Schools (“AALS”) Creditors’ Rights Section meeting a few years ago,²⁵ I argued that bankruptcy lawyers needed a separate set of ethics rules and that it was constitutionally permissible for Congress to create a federal code of bankruptcy ethics.²⁶ The more difficult argument—that federal bankruptcy ethics rules should supplant state ethics rules after a petition has been filed—is trickier, given that states traditionally license (and regulate) the lawyers practicing in their state. But because bankruptcy cases are federal cases, in federal courts, a federal code of ethics makes more sense to me than does the current patchwork quilt of state rules, none of which deal with DTACs.

Not only are state laws incomplete in and of themselves, but they can also conflict with each other. That’s all well and good if a lawyer is admitted in only one state, but what if she’s not? Right now, a hotshot Chapter 11 lawyer may hold more than one state license to practice law. (She could be licensed in New York, Delaware, California, etc.) Each of her licenses requires her to follow that licensing state’s ethics rules.²⁷ When she appears in bankruptcy court,²⁸ that court may have adopted the ethics rules of the state in which it is located, or it may have created its own rules.²⁹ Most of the time, all of the ethics rules will say the same thing; after all, no ethics rule will condone incompetence or conflicts of interest. But the overlay of state and bankruptcy court ethics rules is unnecessarily complex.

Other areas of law have *their* own ethics rules (most notably, those governing the behavior of federal prosecutors), so there is a precedent for specialized rules.³⁰ When I proposed a separate code of ethics for bankruptcy lawyers, I justified it by asking five questions:

25. See Rapoport, *Our House*, *supra* note 1, at 45 n.**. The *American Bankruptcy Institute Law Review* published the papers that had been presented at that meeting in a symposium edition, of which *Our House* was a part.

26. Because the promulgation of bankruptcy laws is reserved to Congress in the Constitution, the promulgation of rules related to lawyers practicing bankruptcy law can also be congressionally created. *See id.* at 74.

27. And those rules can conflict. *See supra* notes 21-22 and accompanying text.

28. If a lawyer is admitted to practice in a federal district court, she is admitted to practice in the federal bankruptcy court of that district as well. *See Rapoport, Our House, supra* note 1, at 45-46 & 46 n.4 (citing NAT’L BANKR. REVIEW COMM’N, FINAL REPORT 39 (1997) (Recommendation No. 3.3.4)).

29. *See Linda S. Mullenix, Multiforum Federal Practice: Ethics and Erie*, 9 GEO. J. LEGAL ETHICS 89, 98-101 (1995); Rapoport, *Our House, supra* note 1, at 51.

30. Other practice areas—e.g., family law, environmental law, military law—have their own ethics rules as well. *See Rapoport, Our House, supra* note 1, at 57-64.

1. Is there a poor fit between the practice area and the general state ethics rules?³¹
2. Is the practice area populated with “repeat players,” so that there are norms within that practice area?³²
3. Is there a problem of overlapping ethics codes in the practice area (e.g., state and federal codes)?³³
4. How easy would it be to impose a single code of ethics on that practice area?³⁴
5. Do the benefits of a single code outweigh the benefits of state-by-state experimentation?³⁵

But even if all of the answers point to a uniform bankruptcy ethics code, the mechanics of establishing such a code are tricky. I’m not particularly worried about a federalism argument: Bankruptcy law is federal.³⁶ I *am* worried about who would be doing the drafting: Congress?³⁷ The federal courts, through advisory committees and their inherent rule-making power?³⁸ On balance, I prefer that the rules come from the courts and not from Congress.³⁹ After all, lawyers will be playing on the courts’ turf.

The second tricky part is determining when the state ethics rules would leave off and the federal rules would kick in. Some DTACs would occur as the debtor slides toward bankruptcy, as creditors jockey for preferential treatment⁴⁰ and cut side deals. But it is not possible to

31. *See id.* at 65.

32. *See id.* at 70.

33. *See id.* at 72-73.

34. *See id.* at 74.

35. *See id.*

36. Even within bankruptcy law, some state-by-state experimentation exists. The Bankruptcy Code, as it is currently written, permits states to “opt out” of the federal exemption scheme in favor of their own exemption statutes. *See* 11 U.S.C. § 522(b) (1994). Note, however, that the federal code is explicitly permitting state experimentation; the state is not forcing the federal law to bend.

37. Too scary to contemplate, given how easily Congress can be lobbied by special interests. *See* Rapoport, *Our House*, *supra* note 1, at 91. The proposed amendments to the Bankruptcy Code—eliminating state exemptions, creating a “means test” to force debtors to file under Chapter 13 rather than giving them the choice of Chapters 13 or 7—have, for the most part, been suggested by the wealthy credit card industry. *See Bankruptcy Reform Takes a Holiday*, 35 *Bankr. Ct. Dec. (LRP)*, at A1, A6 (Nov. 30, 1999).

38. At least, the Advisory Committee to the federal courts would be comprised of appointed, not elected, members, thereby reducing the risk of capture. *See* Rapoport, *Our House*, *supra* note 1, at 91-92.

39. *See id.* at 89-90 & 90 n.217.

40. *See, e.g.*, 11 U.S.C. § 547(b) (1994).

have the federal ethics rules kick in before a bankruptcy petition is filed. Court-promulgated rules only take effect after the court has jurisdiction.⁴¹ The prebankruptcy ethics issues appear to be relegated to state ethics rules, notwithstanding the risk of DTACs outside bankruptcy.⁴² A bright line rule, which suspends the effect of state ethics rules during the bankruptcy case (supplanting the state rules with the bankruptcy ethics rules), is the most workable.⁴³ The true question is whether the creation of federal bankruptcy ethics rules would make the problems better or worse. And the only way to find out is with some empirical research.

IV. TESTING THE HYPOTHESIS

After I wrote the *Our House* article, arguing for a separate federal bankruptcy code of ethics,⁴⁴ I started to wonder whether my solution was too broad. Was it the case that all bankruptcy cases involved DTACs and needed a separate code of ethics, or was it just the complex Chapter 11 cases?

Most bankruptcy lawyers would agree that complex Chapter 11 cases are a world apart from the usual consumer bankruptcy cases (the Chapter 13s and Chapter 7s of the world).⁴⁵ Jean Braucher has studied consumer cases extensively, and her description of consumer cases suggests that they are different in kind from commercial cases.⁴⁶ If commercial cases and consumer cases are different in kind, then might not ethics issues in commercial cases and consumer cases likewise be different in kind? This question cries out for empirical study. Why change the status quo if the change might not be necessary (or even an improvement)?

I am by no means well-versed in empirical studies.⁴⁷ Nonetheless, I've begun a three-part study to test my hypothesis: that the only real difference between traditional ethics issues and bankruptcy ethics issues is in the commercial Chapter 11 context. If my hypothesis is correct, then the only changes that need to be made are those for Chapter 11

41. See MODEL RULES, *supra* note 7, R. 8.5 & cmt. 4 (noting that a lawyer is subject to the ethics rules of the court that has jurisdiction over the proceedings).

42. See Rapoport, *Our House*, *supra* note 1, at 93 & n.233.

43. See *id.* at 94.

44. See *supra* notes 25-26 and accompanying text.

45. Chapter 12 cases, involving family farmers, are beyond the scope of this Article.

46. See Jean Braucher, *Lawyers and Consumer Bankruptcy: One Code, Many Cultures*, 67 AM. BANKR. L.J. 501, 502 (1993).

47. See Rapoport, *Microscope*, *supra* note 1, at 1423 & n.9.

cases. The rest of the time, state ethics codes will be no worse than anything I might propose.

A. *The Docket Study*

The first part of my study consisted of a pilot docket study⁴⁸ to see if ethics issues are regularly represented in cases under Chapters 7, 11, 12, and 13. Research assistants reviewed cases filed in Lincoln, Nebraska,⁴⁹ over a period of four years to see if any of the following types of entries raised ethics issues in consumer or commercial cases:

- appointment of counsel, and any objections to appointment of counsel;
- fee applications, and any objections to fee applications; or
- orders to show cause that related to an attorney's conduct rather than to the case itself.

In addition, the research assistants were supposed to flag any other "interesting" entries in any of the docket sheets.

We studied all of the Chapter 11 and Chapter 12 cases filed during this period, since the total number of Chapter 11⁵⁰ and Chapter 12⁵¹ cases was small. We also selected every tenth case of the cases filed under Chapters 7⁵² or 13.⁵³

Not surprisingly, very little bubbled to the surface as a result of this study. Most likely, the ethics issues were settled informally⁵⁴ and, of the few that did make it onto a docket, the pleadings didn't reveal much useful information about the differences in ethics issues in consumer and commercial cases. Generally speaking, though, different chapters did result in different ethics issues—not enough to provide statistically significant results, but enough to encourage future study.

48. Well, actually, my research assistants did the heavy lifting on this one, after I suggested what sorts of docket entries they should be reviewing to try to tease out the ethics issues.

49. At the time of the study, I was the Dean of the University of Nebraska College of Law, located in Lincoln, Nebraska.

50. Eighteen cases.

51. One hundred seventeen cases.

52. Three hundred fifty-nine cases.

53. Three hundred forty-three cases.

54. Of course, there's always the possibility that my study was flawed.

The ethics issues in the docket study can be grouped as follows:

Chapter	Ethics Issue Presented
7	Mostly competency issues, with some conflicts issues.
11	Mostly conflicts issues (with disgorgement of fees being the usual remedy for conflicts problems).
12	Mostly issues involving the reasonableness of fees.
13	Mostly competency issues, with some conflicts issues.

My tentative conclusion, after the pilot study, is that my hypothesis looks promising. The cases filed under Chapter 11 tended to have more problems with conflicts, and the other cases tended to have more to do with competency and fees. Not that there aren't problems with the structure of the docket study: for one thing, the low stakes of Chapter 7 cases might well cause a lot of lawyers to decide that it's not worth spending the money to raise any ethics issues. Moreover, my consumer vs. commercial classification by chapter is not an exact science. Not all Chapter 7 cases involve consumers, and some Chapter 12 cases involve sophisticated agribusinesses. But, as a rough first cut, the sorting-out of these ethics issues led me to move on to the next stage of my study.

B. The Study of State Disciplinary Cases

If bankruptcy docket sheets weren't illuminating, then perhaps that was due to the fact that the really "meaty" ethics issues are filed against lawyers in state disciplinary proceedings. After all, ethical violations in bankruptcy can give rise to disciplinary action. Although not all disciplinary cases are reported in LEXIS or Westlaw, enough cases were filed to enable my research assistant⁵⁵ to survey the reported decisions to determine whether any interesting patterns emerged.

My research assistant looked at state decisions published during a four-year period. For each case, he recorded: (1) whether the debtor was a business or a person; (2) under what chapter the case was filed; (3) whether the lawyer accused of misconduct was a first-time offender or a repeat offender; (4) the ethics rule involved; and (5) the sanction for the violation (if the lawyer was found to have violated the ethics rule).

Although the number of cases that we found was too small to provide any hope of statistical significance, we did find that the typical sanction differed depending on the ethics violation and—not

55. The remarkable H.C. Chang.

surprisingly—that the sanctions were worse when the lawyer was not a first-time offender. Of the six conflicts cases, the typical sanction was suspension; of the fourteen competency cases, the typical sanction was disbarment. Disgorgement was the typical sanction in both the twenty-two cases involving the reasonableness of fees and the nineteen cases involving disinterestedness under section 327(a). I have not yet had a chance to analyze the disciplinary cases for other patterns—for example, patterns involving the chapter, the type of debtor, or the geographic region.

C. Anecdotal Interviews

Although it would be nice if I could get hard empirical data from docket sheets or reported cases, I don't think that the issues lend themselves to a search of those sources. My next step will be to interview various stakeholders in bankruptcy cases here in Houston to see if any patterns arise. I plan to interview bankruptcy judges, bankruptcy lawyers, standing trustees, lawyers in the Office of the U.S. Trustee, and members of the Commission for Lawyer Discipline.⁵⁶

To date, the most challenging part of the anecdotal interviews has been the application for Internal Review Board approval from the University. Because I will be talking to humans, rather than looking at documents, I needed to be able to explain the risks involved in participating in the study. The most likely risk is that I would hear about unethical behavior, some of which might be reportable to the Commission for Lawyer Discipline. On the other hand, the likelihood of someone revealing his own ethical violation is probably pretty small. I am more likely to hear about unnamed “other” lawyers, which will

56. The Texas State Bar disciplines attorneys through the Commission for Lawyer Discipline, which is composed of nine members—six attorneys and three public members. *See* TEX. R. DISCIPLINARY P. 4.01, *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G, app. A-1 (Vernon 1998). Each member serves a three-year term, unless he or she is disqualified on other grounds. *See id.* R. 4.02. The lawyer members are appointed by the president of the State Bar. *See id.* The public members are appointed by the Texas Supreme Court. *See id.* The president of the State Bar also designates a lawyer member to chair the Commission, and another member to serve as vice chair, each for a one-year term. *See id.* R. 4.05. The Commission will report the final disposition of any disciplinary proceeding or action resulting in the imposition of a sanction, other than the sanction of a private reprimand, to the Clerk of the Texas Supreme Court. *See id.* R. 6.05. All cases involving the professional misconduct or disability of an attorney that have been appealed to the Courts of Appeals or to the Texas Supreme Court must be published in the official reporter system. *See id.* R. 6.06. The final disposition of all disciplinary proceedings or actions is reported to the *Texas Bar Journal* and sent for publication to a newspaper of general circulation in the county where the disciplined attorney lives or works. *See id.* R. 6.07. Private reprimands are published in the *Texas Bar Journal* with the name of the attorney deleted. *See id.*

obviate the need to report the violations. The letter inviting subjects to participate in the study spells out this possible risk.⁵⁷

I hope to ask the bankruptcy lawyers how they do conflicts checks and (at least as important) how they resolve conflicts.⁵⁸ I want to hear examples of ethics problems that standing trustees and U.S. Trustees may have seen. I also want to find out more about the state disciplinary cases that were published—and the ones that weren't (and why). I haven't yet had a chance to start preparing for the interviews, so it's a bit early to tell if this inquiry will be useful to test my hypothesis.

V. ULTIMATE GOAL: DRAFTING SOME NEW RULES

There's a long way yet to go before I can think about what model rules of bankruptcy ethics might look like. Depending on what I see in the anecdotal interviews, I may well want to propose only one simple rule for Chapter 11 cases.⁵⁹ If I'm right about the need for a new rule in Chapter 11 cases, but not in cases filed under Chapters 7, 12, or 13, then some of the problems with enacting a new rule across all bankruptcy cases will be obviated. If, on the other hand, the anecdotal evidence points to problems across bankruptcy chapters, then I will have to grapple with a broader set of rules and their concomitant problems.

The advantages of enacting a rule in Chapter 11 to cover conflicts issues in Chapter 11 are twofold: first, the rule's presence in Chapter 11 makes it clear that the rule does *not* apply in cases under Chapters 7, 12, or 13;⁶⁰ and second, the rule is more likely to apply just in commercial cases, where the likelihood of simultaneous representation of two or more parties is highest. The trick, of course, is in what the rule would say and how it would work vis-à-vis the other ethics rules to which the lawyer might already be subject.

We would want the rule to focus on the actual harm to clients of conflicts of interest in the case, rather than on the assumption that all conflicts are per se disabling. In particular, we would want the rule to recognize that some conflicts are difficult to predict at the onset of a case

57. For a sample of the invitation letter, see *infra* Appendix.

58. Including whether, when they have to refer out a case, they refer the case to the same firm time after time—and whether there are any advantages to repeated referrals (such as reciprocal referrals).

59. Well, it's not so simple a rule that I can suggest it here. I still need some time—and some additional data-gathering—before I can even think about proposing a workable rule.

60. I don't want to get into whether the new ethics rule would apply to railroad reorganizations yet. If I know only a little about Chapter 12 cases, I know even less about railroad reorganizations. So let's assume that the rule is enacted only for the portion of Chapter 11 that doesn't apply to railroad reorganizations.

and that the conflicts that are the most difficult to predict may or may not ever occur in the case.⁶¹ Such conflicts—those that I have called DTACs, for dormant, temporary, actual conflicts—have multiple permutations and varying severity.⁶² We would want the rule to be able to distinguish between the garden-variety actual conflicts that traditional ethics rules cover and this shifting of allegiances that are characteristic of the DTACs in Chapter 11 cases. Most important, we should make sure that the rule protects the clients in the case and not just the lawyers' pocketbooks. The rule should not allow lawyers to circumvent obvious conflicts that adversely affect the lawyer's relationship with the client.

Why might we want to limit this rule to cases under Chapter 11? For one thing, if—as part of the rule—all other rules are to be suspended, we will want to be careful about stepping on the toes of the states' normal regulation of attorney conduct. The fewer lawyers who might be “opting out” of the state ethics rules, the fewer disciplinary cases the bankruptcy judges would have to decide. And, in the first instance, it *would* be the bankruptcy judges who would be hearing allegations of violations of the rules.

For another thing, I still don't have enough of a handle on what distinguishes “consumer” from “commercial” practice, especially in terms of how the two practices differ with respect to conflicts issues. From my e-mail discussions with Harlin Womble, a Texas bankruptcy practitioner, it may well be that the consumer firms that do debtor work don't also do creditor work,⁶³ which reduces (but doesn't eliminate) the number of potential conflicts.

A. *A Very Rough Cut at a Chapter 11 Rule Regarding Conflicts of Interest.*

Let's say that Congress enacted Code § 11xx, which might read something like this:

(a) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

61. See Rapoport, *Potential Conflicts*, *supra* note 1, at 915-16.

62. See *id.* at 924.

63. See E-mail from Harlin Womble, to Nancy B. Rapoport (Nov. 29, 2001) (on file with Author) [hereinafter November E-mail].

- (1) the lawyer reasonably believes that the representation will not be adversely affected; and
- (2) the client consents after consultation.

(b) A lawyer for a party in interest in a Chapter 11 case is not precluded from simultaneously representing other parties in interest in the same case simply because the clients' interests might potentially conflict, provided that:

- (1) the lawyer reasonably believes that the issues likely to be raised in the case are not likely to cause an actual conflict of interest between one client and another client; or

(2)

- (i) the lawyer reasonably believes that any actual conflict of interest between one client and another client that arises during the case is or will be limited to a particular issue raised in the case and that the resolution of that issue will not be material⁶⁴ to the representation of either client; and

- (ii) both clients have consented to the lawyer's representation of each of them with respect to the non-material conflict.

(3)

- (i) the lawyer reasonably believes that any potential conflict of interest between one client and another client that arises during the case is or will be limited to a particular issue raised in the case and that the resolution of that issue will not be material to the representation of either client, and

- (ii) both clients have consented to the lawyer's limited suspension of representation of each of them with respect to, and only for the duration of, the non-material conflict.

(c) A lawyer must withdraw from representing both clients for the remainder of the case if the lawyer concludes that either:

64. My working definition of "material" is "something that involves the client's confidentiality or zealousness concerns."

- (1) any actual conflict of interest between one client and another client that arises during the case is not limited to a particular issue raised in the case; or
 - (2) the resolution of that issue is material to the representation of either client.
- (d) When representation of multiple clients in a single Chapter 11 case is undertaken, the consultation with the clients shall:
- (1) include a written⁶⁵ explanation of the implications of the common representation and the advantages and risks involved; and
 - (2) specifically state, as part of the written explanation, that in the event of a nonmaterial actual conflict, the lawyer may choose to continue the representation of both clients pursuant to (b)(2) above or choose to suspend the representation of both clients for the duration of that nonmaterial conflict pursuant to (b)(3) above.
- (e) If, pursuant to (d), the lawyer chooses to continue the representation of both clients during the conflict, the lawyer must represent both clients fairly and must not:
- (1) prefer one client's interest to the other's; or
 - (2) decide to represent only one client, and not the other.
- (f) This rule shall apply to the exclusion of all other conflict of interest rules to which counsel might be subject, including all state conflict of interest rules of the state or states in which counsel is admitted to practice, all other conflict of interest rules adopted by the bankruptcy court in which the Chapter 11 case was filed, and all other applicable conflict of interest rules for so long as:
- (1) the Chapter 11 case is open; or
 - (2) if the case has been converted to a case under Chapter 7, until that Chapter 7 case has been closed or dismissed.

65. We'd probably have to change the Chapter 11 definitions provision, 11 U.S.C. § 101 (1994), to include a definition of "written" that incorporates the *Uniform Commercial Code* concept of "record," which could be either electronic or paper-based. See U.C.C. § 9-102(69) (2001).

(g) A lawyer who violates this section is subject to sanctions that may include, but are not limited to:

- (1) disallowance of fees relating to the wrongful representation;
- (2) disgorgement of fees;
- (3) a monetary fine; or
- (4) the prohibition from practice in that court, either permanently or for a specified period.

(h) No discipline resulting from a violation of this section shall be used to create reciprocal discipline by another jurisdiction to which the lawyer has been or is currently admitted.

B. *How Would Code § 11xx Work?*

Code § 11xx tries to accomplish three objectives. First, it looks at conflicts on an issue-by-issue basis, in an attempt to distinguish those conflicts that really are pure, unadulterated, actual conflicts from those that are extremely issue-specific. By importing some of the language and some of the structure of Model Rule 1.7,⁶⁶ Code § 11xx tries to distinguish the wholesale representation of every single party in interest in the case (a bad thing) from selective representation of more than one party in interest in a case when the parties' interests are either not likely to conflict or, if they do conflict, will only conflict temporarily and not in a way that affects the entire, case-long representation. Second, when a DTAC does occur, Code § 11xx(b) tries to give the lawyer for multiple parties in interest the option of either continuing to represent the clients (if both clients consent) during the resolution of that particular issue or of suspending⁶⁷ the representation of both clients for the duration of that particular issue. Note the use of "reasonable belief" here: If the lawyer knows or should have known that he could not represent both clients in the resolution of a particular DTAC, then he cannot use § 11xx(b) as a safe harbor. Finally, Code § 11xx(f) intentionally supplants, for a specified time, all other ethics rules to which the lawyer might be

66. See MODEL RULES, *supra* note 7, R. 1.7.

67. I chose the word "suspend" rather than "withdraw" because "withdraw" connotes a permanent stepping-away from the entire representation, while "suspend" reflects the temporary nature of the stepping-away from the issue in question.

subject. Lawyers are already subject to a variety of ethics rules if they are admitted to more than one bar. The last thing that they need is one more layer of confusion. Instead, in the special circumstance of representing a party in interest in a Chapter 11 case, the only discipline to which the lawyer is subject is the one that the bankruptcy judge can mete out.⁶⁸

Let's try to apply Code § 11xx. Under this section, can a lawyer represent both the debtor in possession ("DIP") and a creditor in the case? Not under § 11xx(a), which prohibits a lawyer from representing multiple clients if the representation of that client may be materially limited by the lawyer's responsibilities to another client, which it likely would be. Can a lawyer represent two secured creditors in the same case? Sure, if, for example, each security interest is in different collateral, or if each security interest is incredibly oversecured; but not if a valuation of Secured Creditor #1's interest in the collateral will affect whether Secured Creditor #2's interest is secured, undersecured, or unsecured. (Secured Creditor #2 would love to take more of Secured Creditor #1's value, and Secured Creditor #1 surely doesn't want to give any of its value away.) Can a lawyer represent a secured creditor and a third-party purchaser of some of the DIP's assets (one of which involves the secured creditor's collateral)? Sure, but not on that purchase. There's no reason to drop the representation of the secured creditor generally as long as someone else represents the two clients in the purchase issue. And some of the more esoteric issues that might crop up, such as two unsecured creditors whose interests converge except with regard to favoring a particular plan of reorganization, get resolved more easily with Code § 11xx. Both unsecured creditors can have the same counsel for most of the case, and only if the creditors differ in their vote will the DTAC on the vote call for a decision under § 11xx(b). At first glance, the rule, if cumbersome, doesn't seem horrible to use.⁶⁹

C. Problems with Code § 11xx

I'm not convinced that Code § 11xx can really work, even though I like it better than the patchwork quilt of current ethics rules that are out there. Ignoring the political issue of trying to supplant state ethics codes—not to mention the problem of novice bankruptcy lawyers who

68. Of course, the appeal would go through the same process as any other appeal of a decision in a bankruptcy case.

69. Well, at least it doesn't seem horrible to me.

might not even know that the code section exists⁷⁰—there are several workability problems. All of the phrases in Code § 11xx that require the lawyer to make judgment calls—“reasonably believes,” “material,” “particular issue”—call for bankruptcy expertise, and not all lawyers are that knowledgeable about bankruptcy. Lawyers who repeatedly misjudge the propriety of simultaneous representations will only be disciplined within the structure of the bankruptcy court system. Because those repeated violations will not trigger reciprocal discipline in the states,⁷¹ it is possible that a bad lawyer could violate Code § 11xx repeatedly without fear of being punished by the state in which he is licensed. Another major problem with this draft is that it doesn’t deal directly with imputed disqualification of an entire firm based on one lawyer’s conflicts problems.⁷² Finally, the rough draft above makes no distinction between bad (but innocent) choices about simultaneous representation and deliberate flouting of all conflicts rules. This rule *has* to be one that does more than preserve an oligopoly among the “regular players”—those who appear in every major Chapter 11 case. The danger of preserving an oligopoly is that the oligopoly may assume, over time, that *no* rule applies to its members.

Obviously, this draft needs a lot of work. But someone has to be brave (or foolhardy) enough to test the waters. Even if we were able to overcome the problems with Code § 11xx, there’s still at least one more related rule that we’d have to develop: one that clarifies just exactly who the counsel for the DIP represents.⁷³ Does the DIP counsel represent the DIP (the business being run during the bankruptcy case) or the estate created by the bankruptcy filing? If the DIP counsel really represents the estate, what does that mean in practical terms when deciding what options to pursue as the case develops?⁷⁴

Your head is probably spinning as you consider all of these questions. The good news is that there’s no need to resolve any of these questions now. We should wait until we’ve had a chance to look at the real cases out there. Empirical analysis can indicate whether rules of this

70. Although I have no idea what a novice bankruptcy lawyer would be doing in a Chapter 11 case, at least without supervision (and some hefty malpractice insurance coverage).

71. See § 11xx(h).

72. See November E-mail, *supra* note 63. This problem may well extend beyond the “commercial” practice to the “consumer” practice. Think of conflicts involving husbands and wives, or roommates, or small companies. See, e.g., E-mail from Harlin Womble, to Nancy B. Rapoport (Jan. 4, 2002) (on file with Author).

73. See, e.g., *DIP’s Attorney*, *supra* note 1, at 58-59.

74. Interests of the business owners are often not the same as those of the unsecured creditors, or of the secured creditors, or of a third-party purchaser of the business.

sort would be on the right track. Until we know more about the real world of bankruptcy ethics, we shouldn't make the problems worse by guessing about proposed solutions.⁷⁵

75. If only Congress would likewise hold off on bankruptcy amendments until it had more empirical data about whether the current Code is capable of handling abuses, we'd all be better off.

APPENDIX

EXCERPTS FROM INTERNAL REVIEW BOARD APPLICATION

Attachment #1—Proposed Letter to be Sent to Interviewees

Dear _____ [Judge/Attorney/other bankruptcy professional]:

As part of research funded by _____ and the University of Houston Law Center, I am conducting a series of interviews with bankruptcy professionals and other legal professionals concerning professional responsibility issues in consumer and commercial bankruptcy cases. In order for me to study this topic, I need your cooperation.

Would you please let me know if you would agree to be interviewed, either by me personally or by one of my research assistants, regarding the behavior of bankruptcy lawyers that you have observed? ALL INFORMATION THAT YOU PROVIDE DURING THE INTERVIEW, INCLUDING INFORMATION IDENTIFYING PARTICULAR LAW FIRMS OR INDIVIDUAL ATTORNEYS, WILL BE KEPT STRICTLY CONFIDENTIAL.

If you are interested in participating, please contact Susan Evangelist at (713) 743-2100. If you have any questions, please let me know. Thank you for your consideration. ANY QUESTIONS REGARDING YOUR RIGHTS AS A RESEARCH SUBJECT MAY BE ADDRESSED TO THE UNIVERSITY OF HOUSTON COMMITTEE FOR THE PROTECTION OF HUMAN SUBJECTS ((713) 743-9204). ALL RESEARCH PROJECTS THAT ARE CARRIED OUT BY INVESTIGATORS ARE GOVERNED BY REQUIREMENTS OF THE UNIVERSITY AND THE FEDERAL GOVERNMENT.

Very truly yours,
Nancy B. Rapoport
Dean and Professor of Law

Attachment #2—Proposed Informed Consent Form

INFORMED CONSENT FORM
BANKRUPTCY ETHICS ISSUES STUDY

You are invited to participate in a study regarding the practices and behavior of lawyers in bankruptcy cases. This is part of a research project that involves the review of docket sheets, section 341 meeting transcripts, bankruptcy cases, and cases from the Office of Disciplinary Counsel, along with interviews of professionals who are knowledgeable about bankruptcy practice in this area. Although this research will not provide any direct benefits to you, this research will be helpful in analyzing whether, and how, current ethics codes should be changed to more accurately reflect the unique issues faced by bankruptcy practitioners. This data will be used for educational and publication purposes. The interviews will be taped; the tapes will be stored in a secure location available only to the research staff; and, upon conclusion of the analysis of the research, the tapes will be destroyed. You will be one of approximately 500 subjects participating in this project.

Because we will be studying professional responsibility behavior, there is a risk that we will uncover behavior that should be reported to the Office of Disciplinary Counsel; however, unless we have first-hand knowledge of such behavior, we will not report any such behavior.

We anticipate that this interview will take no more than an hour and a half of your time. ALL INFORMATION THAT YOU PROVIDE DURING THE INTERVIEW, INCLUDING INFORMATION IDENTIFYING PARTICULAR LAW FIRMS OR INDIVIDUAL ATTORNEYS, WILL BE KEPT STRICTLY CONFIDENTIAL. Although we will be recording identifying information regarding each of the interviews, we will maintain strict confidentiality concerning the identities of our interview subjects. At most, individual subjects will only be identified by indicating the membership of the particular group being interviewed (e.g., “a bankruptcy lawyer,” “a bankruptcy judge,” etc.). We will use codes and pseudonyms in any publications, and the list that matches interview subjects with their codes or pseudonyms will be kept separate from the data and will be available only to the Principal Investigator.

Your participation in this study is voluntary. Non-participation will not result in penalty or loss of benefits to which you might otherwise be entitled. You may end your participation at any time.

If you have any questions about this study, please call Nancy Rapoport, Dean and Professor of Law, at (713) 743-2100. She is the Principal Investigator of this study.

We will provide you with a copy of this signed informed consent form for your records.

ANY QUESTIONS REGARDING YOUR RIGHTS AS A RESEARCH SUBJECT MAY BE ADDRESSED TO THE UNIVERSITY OF HOUSTON COMMITTEE FOR THE PROTECTION OF HUMAN SUBJECTS ((713) 743-9204). ALL RESEARCH PROJECTS THAT ARE CARRIED OUT BY INVESTIGATORS ARE GOVERNED BY REQUIREMENTS OF THE UNIVERSITY AND THE FEDERAL GOVERNMENT.

Principal Investigator: Nancy B. Rapoport

Signature: _____

Date: _____

I consent to participating in this research.

Name: _____

(please print)

Signature: _____

Date: _____
