

Proposed Amendments to Bankruptcy Rule 3001; new Rule 3002.1
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Rules_Comments
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To the Bankruptcy Rules Advisory Committee:

I am an attorney who concentrates his practice in the bankruptcy area, as well as a member of the Chapter 7 Trustee panel for the Western District of New York.

I write this email in support of the proposed amendment to Bankruptcy Rule 3001 and the addition of Rule 3002.1 now up for comment.

As to Rule 3001:

In my role as a Chapter 7 Trustee, the current creditor practice of submitting "bare" claims causes additional investigation and written requests for backup information. As a number of the "claim buyers" fail to respond, I then need to file claim objections, clogging up the Court's calendar, only to have the creditor provide the information prior to the hearing date.

I would support a requirement that mandates attaching the last open end credit card statement as well as having the date of the debtor's last payment or date of the last "actual" charge by the debtor disclosed on the form.

That information would expedite the claim review process, ferret out the statute of limitation barred claims which are now occurring with more frequency, and focus on correction of creditor abuses which plague our current system in the mass sale of claims.

In the past year, I have discovered claims:

- filed against an incorrect debtor or in a joint case, not clearly designated as the debt of only one of the debtors.
- failed to properly identify the original creditor and fail to set forth the "chain of title" showing the right to file the claim.
- filed even though the statute of limitations to enforce the debt had expired; in one case the stale nature was clearly set out in the face of the claim.

As to Rule 3002.1:

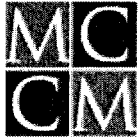
In my role as a debtor's attorney, I note that some mortgage lenders do notify counsel when there is a payment or interest rate change and I appreciate that practice.

However, recently with regard to one of my Chapter 7 clients, we had a great deal of difficulty confirming the post-discharge balance, as the lender did not account or provide notice of the post-discharge application of payments, rate increases or tax escrow calculations. It took several months to ascertain the correct balance and delayed my client's refinance of her mortgage.

In Chapter 13 cases where the pre-petition defaults are cured under the plan, I have seen problems in how the lender applies the payments, especially where the mortgage has been sold during the case.

Thank you for allowing me to comment on these rules.

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