

10-BK-018

I am an attorney who represents consumer debtors in bankruptcy. Thank you for considering improvements in the Bankruptcy Rules to insure fairness to debtors and creditors alike.

In a Chapter 13 bankruptcy, the accuracy of proofs of claim is an important factor in insuring the success of the debtor's plan. In too many cases, the label "Proof of Claim" is an egregious mislabeling. We repeatedly see "claims" which are nothing more than a restatement of whatever the debtor lists in the petition. Creditors often file only the first page of the claim without providing the evidence which the form requires. Often the attached exhibit is nothing more than a recital of the (redacted) account number and an amount owed. Creditors should be required to prove that they have the right to collect this debt. Debt buyers should be required to provide the full name of the original creditor and subsequent assignees. They should be required to show the date of last payment and last transactions. The creditor should be required to provide the writing on which the claim is based. Too many debt buyers are relying on an electronic database listing only the name, account number, and an amount owed with no evidence to prove the figure claimed.

It is all well and good to state that the creditor, often a debt buyer, should be required to provide the original documents upon request, but if there is no deadline for responding and no penalties for failing to respond, this rule is toothless.

In regard to the rules changes for claims by mortgage creditors, the new forms will be an important step in insuring that claims are accurate. However, creditors should not be allowed to charge expenses to the debtor for providing information which the creditor should already have available.

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