

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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MEMORANDUM

DATE: May 6, 2011

TO: Honorable Lee H. Rosenthal, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Honorable Eugene R. Wedoff, Chair
Advisory Committee on Bankruptcy Rules

SUBJECT: Report of the Advisory Committee on Bankruptcy Rules

I. Introduction

The Advisory Committee on Bankruptcy Rules met on April 7 and 8, 2011, in San Francisco, California.

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Among the matters before the Committee were the proposed rule and form amendments and proposed new forms that were published for comment in August 2010. Thirty-seven comments were submitted in response to the publication. The Committee held a hearing in Washington, D.C., on February 4, 2011, at which six witnesses testified. Through a series of subcommittee conference calls and discussions at the San Francisco meeting, the Committee carefully considered the comments and testimony that were submitted. They are summarized below, along with the changes that the Committee recommends making to the published rules and forms in response to the comments received.

At its April meeting and at an earlier meeting in September 2010, the Committee took action on several matters that it now presents to the Standing Committee. The action items are grouped into three categories:

(a) matters published in August 2010 for which the Committee seeks approval for transmission to the Judicial Conference—amendments to Rules 3001(c), 7054, 7056, Official Form 10, and Official Form 25A; and new Official Forms 10 (Attachment A), 10 (Supplement 1), and 10 (Supplement 2);

(b) matters for which the Committee seeks approval for transmission to the Judicial Conference without publication—amendments to Rules 1007(c), 2015(a), 3001(c), and Official Forms 1 and 9A - 9I;

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II. Action Items

A. Items for Final Approval

1. *Amendments and New Forms Published for Comment in August 2010.* **The Advisory Committee recommends that the proposed amendments and new forms that are summarized below be approved and forwarded to the Judicial Conference. The Advisory Committee recommends that the amended forms and new forms be effective on December 1, 2011. . . .**

Action Item 1. Rule 3001(c) would be amended to provide, in new paragraph (3), requirements for the documentation of claims based on an open-end or revolving consumer credit agreement. Subdivision (c)(1) currently requires the attachment to a proof of claim of the writing, if any, on which a claim or an interest in property is based. That provision would be amended to create an exception for claims governed by paragraph (3) of the subdivision. New paragraph (3) would require for an open-end or revolving consumer credit claim that a statement be filed with the proof of claim that provides the following information to the extent applicable: name of the entity from whom the creditor purchased the account; name of the entity to whom the debt was owed at the time of the account holder's last transaction; date of the account holder's last transaction; date of the last payment on the account; and the charge-off date. This information may be needed by the debtor to associate the claim with a known account, since claims of this type—primarily for credit card debts—are frequently sold one or more times before being held by the claim filer, which may be an entity unknown to the debtor. The required information would also provide a basis for assessing the timeliness of the claim. In addition to this information, which must be routinely provided, a party in interest could obtain a copy of the writing on which an open-end or revolving consumer credit claim is based by requesting it in writing from the holder of the claim.

a. Testimony and comments

Four witnesses testified at the February 4, 2011 hearing on these proposed amendments, and 24 people submitted written comments on them. . . . The major topics they addressed are the following:

Whether there is a need for the amendments. A few representatives of consumer lenders or purchasers of credit card debt questioned the need for the proposed amendments. They noted the low incidence of objections to the claims they file and said that in many cases the debtor has scheduled the debts owed to them, thus acknowledging the validity of their claims.

Lawyers for consumer debtors and a bankruptcy judge supported the rule's requirement that credit card claimants provide specific information to support their claims. They stated that these claimants are ignoring the current requirement for attaching the writing on which the claim is based and that, having purchased the claims in bulk, the claimants generally have very little information about the claims they file. Two comments noted that the U.S. Trustee Program recently entered into a settlement with Capital One Bank for filing thousands of previously discharged claims.

Whether the amendments place an appropriate burden on consumer lenders and debt purchasers. One witness representing the American Bankers Association testified that the proposed amendment would place an unreasonable burden on consumer lenders and debt purchasers and would improperly shift the burden of proof to the creditor. This, he said, would adversely affect an industry that purchased \$100 billion of charged-off debt last year. Several representatives of debt purchasing companies suggested that the rule should acknowledge that compliance with the requirements of Rule 3001(c)(3)(A) entitles the claim to prima facie validity without regard to whether the supporting writing is requested or provided.

Some consumer lawyers commented that the proposed amendment would not place a sufficient burden on credit card claimants. They objected to excepting these types of claims from the general requirement for attachment of the writing on which a claim is based. Some argued for a requirement that a debt buyer who files a claim produce a complete chain of title, and another urged that a full account transaction history be required. One comment stated that the rule should require more diligence, more documentation, and more care in the preparation of a proof of claim given the "sorry state of compliance with existing rules." A representative of the National Association of Consumer Bankruptcy Attorneys characterized the proposed amendment as "quite modest and, at best, barely adequate to deal with widespread problems."

Whether subdivision (c)(3)(A) requires disclosure of the appropriate items of information. Some witnesses and commentators questioned the value of some of the information required to be included in the statement accompanying the proof of claim or suggested other information that should be required. Some comments suggested that particular provisions were ambiguous.

Whether subdivision (c)(3)(B) requires too much or too little of holders of credit card claims. Much of the public comment was addressed to the requirement that the claimant provide the writing on which the claim is based if a party in interest makes a written request for this document. Comments and testimony by some representatives of consumer lenders and bulk claims purchasers argued that a threshold showing of need for the writing should be required of the requesting party, that the rule should clarify the specific writing that should be produced for credit card claims, or that the provision should be deleted.

Some of the consumer bankruptcy lawyers, on the other hand, commented that there was no reason to have this special rule for holders of credit card claims and that they should have to produce the writing without request like all other creditors filing proofs of claim. Others argued that the rule should provide a time limit for the production of the writing in response to a request and that the Committee Note should state that the documentation that must be produced includes the chain of title, the contract upon which the claim is based, and a transaction record.

Some commentators on both sides of the issue said that requiring production of the writing will lead to litigation and delay.

Comments on previously approved amendments to Rule 3001(c). Some commentators representing bulk claims purchasers used this occasion to object to amendments to Rule 3001(c)(2) that were recently approved by the Supreme Court and transmitted to Congress. In particular they expressed displeasure with the requirement that interest, fees, expenses, and other charges included in a claim be itemized and with the authorization of sanctions for the failure to comply with the requirements of Rule 3001(c).

b. Committee consideration

Many of the issues raised in the testimony and written comments were ones that the Advisory Committee had previously considered. The Committee concluded that the proposed rule amendment will permit enforcement of an appropriate disclosure requirement on creditors seeking recovery from bankruptcy estates for claims based on open-end or revolving consumer credit agreements. Under the existing rule, all creditors are required to file the writing on which the claim is based. As reflected in comments from advocates for all affected parties, this requirement is generally not being complied with by credit card claimants. Rather than imposing a new requirement of document production on credit card claimants, the proposed amendments allow those creditors flexibility in providing information that will provide a basis for debtors and trustees to assess whether a claim is valid and enforceable. The proposed amendments for credit card claimants are less stringent than the requirements under existing Rule 3001(c), but they are designed to provide more information than is often provided under current practices. The Committee concluded that the comments and testimony did not provide any reason to revisit the basic decisions that it had previously reached.

The Committee did agree that a deadline for responding to a request for the underlying writing should be imposed. Specifying a time limit will enable the requesting party to determine

when there has been a failure to comply if the request is met with silence. The Committee therefore voted to add a 30-day deadline for responding to a written request under proposed Rule 3001(c)(3)(B). The time would run from when the written request is sent. This time limit would be subject to enlargement or reduction by the court for cause under Rule 9006.

Because there is no deadline for making a request under proposed Rule 3001(c)(3)(B), the Committee discussed the point at which a properly filed proof of claim based on an open-end or revolving credit card agreement would be entitled to be treated under Rule 3001(f) as prima facie evidence of the validity and amount of the claim. If the applicability of subdivision (f) depended upon compliance with proposed subsection (c)(3)(B), it would be uncertain whether the claim was entitled to the benefit of prima facie validity until a written request was made—if and whenever that might occur—and the claimant did or did not provide a proper response. The Committee voted to add to the Committee Note a statement that a proof of claim based on an open-end or revolving credit card agreement that is filed and executed in accordance with Rule 3001(a), (b), (c)(1), (c)(2), (c)(3)(A), and (e) is entitled to the benefit of subdivision (f). Failure of a claimant to comply with proposed Rule (c)(3)(B) would not affect the applicability of subdivision (f), but would subject the claimant to possible sanctions.

Finally, the Committee agreed with one witness that proposed Rule 3001(c)(3) is not intended to apply to home equity lines of credit. Those types of loans, which are secured by a security interest in the debtor's real property, are covered by the pending home mortgage amendments and were not intended to be included within subdivision (c)(3). The Committee therefore added an exception for these types of loans to proposed Rule 3001(c)(3).

Action Item 2. Rule 7054 incorporates Fed. R. Civ. P. 54(a) - (c) for adversary proceedings, and in subdivision (b) it provides for the awarding of costs. The proposed amendment that was published for comment would amend (b) to provide more time—14 days rather than one day—for a party to respond to the prevailing party's bill of costs, and extend from five to seven days the time for seeking court review of the costs taxed by the clerk. The first change was proposed in order to provide a more reasonable period of time for a response, and the latter period was changed to conform to the 2009 time-computation amendments, which changed five-day periods in the rules to seven days. These changes are also intended to make the rule consistent with Civil Rule 54, which was previously amended to adopt the proposed time periods.

One comment was submitted on this proposed amendment. Norman H. Meyer, Jr., Clerk of the U.S. Bankruptcy Court for the District of New Mexico, suggested that both time periods in Rule 7054(b) be extended to 14 days. His district's local rule allows 14 days after entry of the judgment to move for the taxation of costs, 14 days after notice of the motion to object to the bill of costs, and 14 days after the taxation of costs to seek court review.

Because one of the goals of the proposed amendment is to make Rule 7054(b) consistent with the civil rule, the Committee voted unanimously to recommend approval of the amended rule as published.

Action Item 3. **Rule 7056** makes Fed. R. Civ. P. 56 applicable in adversary proceedings. Under Rule 9014(c), Rule 7056 also applies in contested matters unless the court directs otherwise. The amendment was proposed in response to the civil rule's imposition of a new default deadline for filing a motion for summary judgment. Under the civil rule, the deadline for filing a motion for summary judgment is 30 days after the close of all discovery, unless a different time is set by local rule or court order. Because hearings in bankruptcy cases sometimes occur shortly after the close of discovery, the proposed amendment to Rule 7056 bases the default deadline on the scheduled hearing date, rather than on the close of discovery. The deadline for filing a summary judgment motion would be 30 days before the initial date set for an evidentiary hearing on any issue for which summary judgment is sought, unless a local rule or the court sets a different deadline.

No one submitted a comment on this amendment. The Committee voted unanimously to recommend approval of the proposed amendment to Rule 7056 as published.

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2. *Amendments for Which Final Approval is Sought Without Publication.* **The Advisory Committee recommends that the proposed amendments that are summarized below be approved and forwarded to the Judicial Conference. The Advisory Committee recommends that the amended forms be effective on December 1, 2011.** Because the proposed amendments are technical or conforming in nature, the Committee concluded that publication for comment is not required. . . .

Action Item 9. **Rule 1007(c)** would be amended to eliminate a time period that is now inconsistent with Rule 1007(a)(2). Rule 1007(c) prescribes the time limits for filing various documents. Among its provisions is the following sentence: "In an involuntary case, the list in subdivision (a)(2), and the schedules, statements, and other documents required by subdivision (b)(1) shall be filed by the debtor within 14 days of the entry of the order for relief." Rule 1007(a)(2) was amended as of December 1, 2010, to reduce to seven days the time for an involuntary debtor to file the list of creditors. Unfortunately, during the process leading to the amendment of Rule 1007(a)(2), the redundant deadline in subdivision (c) was overlooked. Thus it remains at 14 days, despite the change to seven days in subdivision (a)(2).

Because there is no need to repeat the deadline, the Committee voted unanimously at its September 2010 meeting to delete from subdivision (c) the time limit for filing the list of creditors in an involuntary case. As amended, the sentence would parallel the prior sentence that imposes time limits for filing schedules, statements, and other documents in a voluntary case.

Action Item 10. **Rule 2015(a)** would be amended to correct a reference to 11 U.S.C. § 704 of the Bankruptcy Code. Prior to the 2005 Amendments to the Code, § 704 was not divided into subsections. Rule 2015(a) therefore correctly referred to § 704(8) in requiring the trustee or debtor in possession to file reports and summaries required by that provision. The 2005 Amendments,

however, expanded § 704 and broke it into subsections. What was previously § 704(8) became § 704(a)(8).

In order to correct the now erroneous reference, the Committee voted unanimously at its September 2010 meeting to amend Rule 2015(a) to refer to § 704(a)(8).

Action Item 11. **Rule 3001(c)(1)** would be amended to delete the option of filing with a proof of claim the original of a writing on which a claim is based. As noted above, in response to the August 2010 publication of amendments to Rule 3001(c) and Form 10, Linda Spaight of the Administrative Office's Bankruptcy Court Administration Division submitted a comment pointing out a discrepancy between Rule 3001(c)(1) and paragraph 7 of the instructions for Form 10. The rule requires the attachment of "the original or duplicate" of a writing on which a claim is based, whereas the instructions direct the claimant not to "send original documents, as attachments may be destroyed after scanning."

The Committee concluded that the discrepancy pointed out by Ms. Spaight was created by earlier Committee action, and not by either the pending amendments to Rule 3001(c) or the proposed amendments to Form 10. Ms. Spaight's comment was therefore treated as a suggestion for an amendment to either Form 10 or Rule 3001(c). After discussion, the Committee concluded that the language of the form, rather than of the rule, reflects the current practice of filing copies, not originals, of documents supporting proofs of claim. It therefore voted unanimously to recommend the amendment of Rule 3001(c)(1) to replace "the original or a duplicate" with "a copy of the writing."

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**PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE***

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**Rule 1007. Lists, Schedules, Statements, and Other
Documents; Time Limits**

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2 (c) **TIME LIMITS.** In a voluntary case, the schedules,
3 statements, and other documents required by subdivision
4 (b)(1), (4), (5), and (6) shall be filed with the petition or
5 within 14 days thereafter, except as otherwise provided in
6 subdivisions (d), (e), (f), and (h) of this rule. In an
7 involuntary case, ~~the list in subdivision (a)(2),~~ and the
8 schedules, statements, and other documents required by
9 subdivision (b)(1) shall be filed by the debtor within 14 days
10 ~~of~~ after the entry of the order for relief.

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COMMITTEE NOTE

Subdivision (c). In subdivision (c), the time limit for a debtor in an involuntary case to file the list required by subdivision (a)(2) is deleted as unnecessary. Subdivision (a)(2) provides that the list must be filed within seven days after the entry of the order for relief. The other change to subdivision (c) is stylistic.

Because this amendment is being made to conform to an amendment to Rule 1007(a)(2) that took effect on December 1, 2010, final approval is sought without publication.

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* New material is underlined; matter to be omitted is lined through.

2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

**Rule 2015. Duty to Keep Records, Make Reports, and
Give Notice of Case or Change of Status**

1 (a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee
2 or debtor in possession shall:

3 * * * * *

4 (3) file the reports and summaries required by
5 § 704(a)(8) of the Code, which shall include a statement, if
6 payments are made to employees, of the amounts of
7 deductions for all taxes required to be withheld or paid for
8 and in behalf of employees and the place where these
9 amounts are deposited;

10 * * * * *

COMMITTEE NOTE

Subdivision (a)(3). Subdivision (a)(3) is amended to correct the reference to § 704. The 2005 amendments to the Code expanded § 704 and created subsections within it. The provision that was previously § 704(8) became § 704(a)(8). The other change to (a)(3) is stylistic.

Final approval of this technical amendment is sought without publication.

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Rule 3001. Proof of Claim**

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(c) SUPPORTING INFORMATION.

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(1) *Claim Based on a Writing.* Except for a claim

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governed by paragraph (3) of this subdivision, wWhen a

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claim, or an interest in property of the debtor securing the

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claim, is based on a writing, ~~the original or a duplicate~~ a copy

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of the writing shall be filed with the proof of claim. If the

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writing has been lost or destroyed, a statement of the

9

circumstances of the loss or destruction shall be filed with the

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claim.

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12

(3) *Claim Based on an Open-End or Revolving*

13

Consumer Credit Agreement.

14

(A) When a claim is based on an open-end

15

or revolving consumer credit agreement — except one for

16

which a security interest is claimed in the debtor's real

** Incorporates amendments that are taking effect on December 1, 2011, if Congress takes no action otherwise.

4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

17 property — a statement shall be filed with the proof of claim,
18 including all of the following information that applies to the
19 account:

20 (i) the name of the entity from whom
21 the creditor purchased the account;

22 (ii) the name of the entity to whom the
23 debt was owed at the time of an account holder's last
24 transaction on the account;

25 (iii) the date of an account holder's last
26 transaction;

27 (iv) the date of the last payment on the
28 account; and

29 (v) the date on which the account was
30 charged to profit and loss.

31 (B) On written request by a party in interest,
32 the holder of a claim based on an open-end or revolving
33 consumer credit agreement shall, within 30 days after the

34 request is sent, provide the requesting party a copy of the
35 writing specified in paragraph (1) of this subdivision.

COMMITTEE NOTE

Subdivision (c). Subdivision (c) is amended in several respects. The former requirement in paragraph (1) to file an original or duplicate of a supporting document is amended to reflect the current practice of filing only copies. The proof of claim form instructs claimants not to file the original of a document because it may be destroyed by the clerk's office after scanning.

Subdivision (c) is further amended to add paragraph (3). Except with respect to claims secured by a security interest in the debtor's real property (such as a home equity line of credit), paragraph (3) specifies information that must be provided in support of a claim based on an open-end or revolving consumer credit agreement (such as an agreement underlying the issuance of a credit card). Because a claim of this type may have been sold one or more times prior to the debtor's bankruptcy, the debtor may not recognize the name of the person filing the proof of claim. Disclosure of the information required by paragraph (3) will assist the debtor in associating the claim with a known account. It will also provide a basis for assessing the timeliness of the claim. The date, if any, on which the account was charged to profit and loss ("charge-off" date) under subparagraph (A)(v) should be determined in accordance with applicable standards for the classification and account management of consumer credit. A proof of claim executed and filed in accordance with subparagraph (A), as well as the applicable provisions of subdivisions (a), (b), (c)(2), and (e), constitutes prima facie evidence of the validity and amount of the claim under subdivision (f).

To the extent that paragraph (3) applies to a claim, paragraph (1) of subdivision (c) is not applicable. A party in interest, however, may obtain the writing on which an open-end or revolving consumer credit claim is based by requesting in writing that documentation from the holder of the claim. The holder of the claim must provide the documentation within 30 days after the request is sent. The court, for cause, may extend or reduce that time period under Rule 9006.

Changes Made After Publication

Subdivision (c)(1). The requirement for the attachment of a writing on which a claim is based was changed to require that a copy, rather than the original or a duplicate, of the writing be provided.

Subdivision (c)(3). An exception to subparagraph (A) was added for open-end or revolving consumer credit agreements that are secured by the debtor's real property.

A time limit of 30 days for responding to a written request under subparagraph (B) was added.

Committee Note. A statement was added to clarify that if a proof of claim complies with subdivision (c)(3)(A), as well as with subdivisions (a), (b), (c)(2), and (e), it constitutes prima facie evidence of the validity and amount of the claim under subdivision (f).

Other changes. Stylistic changes were also made to the rule.

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Changes Made After Publication

No changes were made after publication.

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Rule 7056. Summary Judgment

1 Rule 56 F.R.Civ.P. applies in adversary proceedings,
2 except that any motion for summary judgment must be made
3 at least 30 days before the initial date set for an evidentiary
4 hearing on any issue for which summary judgment is sought,
5 unless a different time is set by local rule or the court orders
6 otherwise.

COMMITTEE NOTE

The only exception to complete adoption of Rule 56 F.R.Civ.P. involves the default deadline for filing a summary judgment motion. Rule 56(c)(1)(A) makes the default deadline 30 days after the close of all discovery. Because in bankruptcy cases hearings can occur shortly after the close of discovery, a default deadline based on the scheduled hearing date, rather than the close of discovery, is adopted. As with Rule 56(c)(1), the deadline can be altered either by local rule or court order.

Changes Made After Publication

No changes were made after publication.

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