

Questionnaire on Use of Bankruptcy Rule 7026 - Mandatory Disclosure - in Adversary Proceedings

TO: All Bankruptcy Judges

FROM: A. Thomas Small, Chair, Advisory Committee on Bankruptcy Rules, Judicial Conference of the U.S.

SUBJECT: Questionnaire on Use of Bankruptcy Rule 7026 - Mandatory Disclosure - in Adversary Proceedings

Rule 26 of the Federal Rules of Civil Procedure requires a series of actions by parties including the disclosure of a variety of information and participation in a discovery conference. Civil Rule 26 is made applicable to adversary proceedings (APs) by Bankr. Rule 7026. The purpose of this questionnaire is to obtain bankruptcy judge responses and comments on whether the Advisory Committee on Bankruptcy Rules should recommend an amendment to Bankr. Rule 7026 to exempt certain categories of APs from the mandatory disclosure requirements of Rule 26.

Please note: Because the completed questionnaire will be submitted anonymously, you can take as much time as you may need, but you will not be able to save a partially completed questionnaire and return to it at a later time to complete and submit it. If you wish to print the survey you may use the print button below. Choose landscape orientation in the printer dialog for best results.

Please submit your response by February 13, 2004.

1. In your experience, what categories of APs are generally resolved before the due date for mandatory disclosure requirements under Rule 26? For each AP in the list below please click the box if the AP is generally resolved before the due date for 26(a)(1) - 26(a)(3) disclosures.

Adversary Proceedings	26(a)(1)	26(a)(2)	26(a)(3)
§542 - turnover of property	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
§544 - powers of trustee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

§547 - preference	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
§548 - fraudulent conveyance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Validity, priority or extent of lien	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Approval of sale of property of the estate and of a co-owner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Objection/revocation of discharge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Revocation of confirmation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
§523(a)(2) - credit card abuse/false pretenses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
§523(a)(5) - support/alimony	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
§523(a)(8) - student loan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
§523(a)(15) - divorce/separation property settlement/decree	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Injunctive relief - reinstatement of stay	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Subordination of claim	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Declaratory judgment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Determination of removed cause of action	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please be specific)			
a.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No category of AP is generally resolved before the due date	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. In your experience, what categories of APs generally involve little or no discovery? Please click all that apply.

Adversary Proceedings	
§542 - turnover of property	<input type="checkbox"/>
§544 - powers of trustee	<input type="checkbox"/>
§547 - preference	<input type="checkbox"/>
§548 - fraudulent conveyance	<input type="checkbox"/>
Validity, priority or extent of lien	<input type="checkbox"/>
Approval of sale of property of the estate and of a co-owner	<input type="checkbox"/>
Objection/revocation of discharge	<input type="checkbox"/>
Revocation of confirmation	<input type="checkbox"/>

§523(a)(2) - credit card abuse/false pretenses	<input type="checkbox"/>	
§523(a)(5) - support/alimony	<input type="checkbox"/>	
§523(a)(8) - student loan	<input type="checkbox"/>	
§523(a)(15) - divorce/separation property settlement/decre	<input type="checkbox"/>	
Injunctive relief - reinstatement of stay	<input type="checkbox"/>	
Subordination of claim	<input type="checkbox"/>	
Declaratory judgment	<input type="checkbox"/>	
Determination of removed cause of action	<input type="checkbox"/>	
Other (please be specific)		
a. <input type="text"/>	<input type="checkbox"/>	
b. <input type="text"/>	<input type="checkbox"/>	
c. <input type="text"/>	<input type="checkbox"/>	
No category of AP generally involves little or no discovery	<input type="checkbox"/>	

3. For which categories of APs do you generally, by court order, find that certain or all Rule 26 mandatory disclosures requirements are not appropriate in the circumstances of the action? *Please click all that apply.*

Adversary Proceedings		
§542 - turnover of property	<input type="checkbox"/>	
§544 - powers of trustee	<input type="checkbox"/>	
§547 - preference	<input type="checkbox"/>	
§548 - fraudulent conveyance	<input type="checkbox"/>	
Validity, priority or extent of lien	<input type="checkbox"/>	
Approval of sale of property of the estate and of a co-owner	<input type="checkbox"/>	
Objection/revocation of discharge	<input type="checkbox"/>	
Revocation of confirmation	<input type="checkbox"/>	
§523(a)(2) - credit card abuse/false pretenses	<input type="checkbox"/>	
§523(a)(5) - support/alimony	<input type="checkbox"/>	
§523(a)(8) - student loan	<input type="checkbox"/>	
§523(a)(15) - divorce/separation property settlement/decre	<input type="checkbox"/>	
Injunctive relief - reinstatement of stay	<input type="checkbox"/>	
Subordination of claim	<input type="checkbox"/>	

Declaratory judgment	<input type="checkbox"/>
Determination of removed cause of action	<input type="checkbox"/>
Other (please be specific)	
a. <input type="text"/>	<input type="checkbox"/>
b. <input type="text"/>	<input type="checkbox"/>
c. <input type="text"/>	<input type="checkbox"/>
No category of AP generally requires such an order	<input type="checkbox"/>

4. In your experience, for which categories of APs do all affected parties generally stipulate that the parties will not engage in certain or all Rule 26 mandatory disclosure requirements? Please click all that apply.

Adversary Proceedings	
§542 - turnover of property	<input type="checkbox"/>
§544 - powers of trustee	<input type="checkbox"/>
§547 - preference	<input type="checkbox"/>
§548 - fraudulent conveyance	<input type="checkbox"/>
Validity, priority or extent of lien	<input type="checkbox"/>
Approval of sale of property of the estate and of a co-owner	<input type="checkbox"/>
Objection/revocation of discharge	<input type="checkbox"/>
Revocation of confirmation	<input type="checkbox"/>
§523(a)(2) - credit card abuse/false pretenses	<input type="checkbox"/>
§523(a)(5) - support/alimony	<input type="checkbox"/>
§523(a)(8) - student loan	<input type="checkbox"/>
§523(a)(15) - divorce/separation property settlement/decre	<input type="checkbox"/>
Injunctive relief - reinstatement of stay	<input type="checkbox"/>
Subordination of claim	<input type="checkbox"/>
Declaratory judgment	<input type="checkbox"/>
Determination of removed cause of action	<input type="checkbox"/>
Other (please be specific)	
a. <input type="text"/>	<input type="checkbox"/>
b. <input type="text"/>	<input type="checkbox"/>
c. <input type="text"/>	<input type="checkbox"/>

No category of AP is generally made exempt from mandatory disclosure requirements by parties' stipulation

5. For which categories of APs are the Rule 26 mandatory disclosure requirements honored in the breach or implicitly disregarded by the parties' lawyers or one or more judge(s) of your court? *Please click all that apply.*

Adversary Proceedings	parties' lawyers	judge(s) of court
§542 - turnover of property	<input type="checkbox"/>	<input type="checkbox"/>
§544 - powers of trustee	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
§547 - preference	<input type="checkbox"/>	<input type="checkbox"/>
§548 - fraudulent conveyance	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Validity, priority or extent of lien	<input type="checkbox"/>	<input type="checkbox"/>
Approval of sale of property of the estate and of a co-owner	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Objection/revocation of discharge	<input type="checkbox"/>	<input type="checkbox"/>
Revocation of confirmation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
§523(a)(2) - credit card abuse/false pretenses	<input type="checkbox"/>	<input type="checkbox"/>
§523(a)(5) - support/alimony	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
§523(a)(8) - student loan	<input type="checkbox"/>	<input type="checkbox"/>
§523(a)(15) - divorce/separation property settlement/decrees	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Injunctive relief - reinstatement of stay	<input type="checkbox"/>	<input type="checkbox"/>
Subordination of claim	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Declaratory judgment	<input type="checkbox"/>	<input type="checkbox"/>
Determination of removed cause of action	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Other (please be specific)		
a. <input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. <input type="text"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c. <input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>
The mandatory disclosure requirements are not honored in the breach or implicitly disregarded by the parties or judge(s) for any category of AP.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

6. What categories of APs do you believe should be presumptively exempt under Bankruptcy Rule 7026 from Civil Rule 26 mandatory discovery requirements? In this question, for any AP category where you decide to click the circle labelled "The category should be presumptively exempt, with some exceptions" or "The category should NOT be presumptively exempt, with some exceptions" the hypothetical examples below illustrate how you might go about filling in the blank box to specify the types of APs that you believe should be exempt.

Example 1

Background: If you conclude that §523(a)(8) actions *should be presumptively exempt from Rule 26 mandatory disclosure requirements* -- you might conclude that matters of proof relevant to a finding of undue hardship require significant factual and expert testimony discovery and, therefore, should not be exempt.

Possible Response for Example 1:

§523(a)(8) - student loan

- The whole category should be presumptively exempt.
- None of the category should be presumptively exempt.
- The category should be presumptively exempt, with some exceptions.
- The category should NOT be presumptively exempt, with some exceptions.

Please specify exceptions:

Except for those actions that require discovery relevant to a finding of undue hardship.	   
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Example 2

Background: If you conclude that §523(a)(5) actions *should not be presumptively exempt from Rule 26 mandatory disclosure requirements* -- you might conclude that §523(a)(5) matters affecting the spouse of the

debtor are *exempt* from such disclosures but only for the duration of an official "evaluation" by the State Spousal-Abuse Center.

Possible Response for Example 2:

§523(a)(5) - support/alimony

- The whole category should be presumptively exempt.
- None of the category should be presumptively exempt.
- The category should be presumptively exempt, with some exceptions.
- The category should NOT be presumptively exempt, with some exceptions.

Please specify exceptions:

Except for confidential communications involving the debtor's spouse during an official State Spousal-Abuse Center "evaluation."
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Please review the following categories of APs and click one circle for each category to indicate whether you believe the AP category, or a part of the AP category, should be exempt from Rule 26 mandatory disclosure requirements.

6a. §542 - turnover of property

- The whole category should be presumptively exempt.
- None of the category should be presumptively exempt.
- The category should be presumptively exempt, with some exceptions.
- The category should NOT be presumptively exempt, with some exceptions.

Please specify exceptions:

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6b. §544 - powers of trustee

- The whole category should be presumptively exempt.

- None of the category should be presumptively exempt.
 - The category should be presumptively exempt, with some exceptions.
 - The category should NOT be presumptively exempt, with some exceptions.
- Please specify exceptions:*

6c. **§547 - preference**

- The whole category should be presumptively exempt.
 - None of the category should be presumptively exempt.
 - The category should be presumptively exempt, with some exceptions.
 - The category should NOT be presumptively exempt, with some exceptions.
- Please specify exceptions:*

6d. **§548 - fraudulent conveyance**

- The whole category should be presumptively exempt.
 - None of the category should be presumptively exempt.
 - The category should be presumptively exempt, with some exceptions.
 - The category should NOT be presumptively exempt, with some exceptions.
- Please specify exceptions:*

6e. **Validity, priority or extent of lien**

- The whole category should be presumptively exempt.
- None of the category should be presumptively exempt.
- The category should be presumptively exempt, with some exceptions.
- The category should NOT be presumptively exempt, with some exceptions.

Please specify exceptions:

6f. **Approval of sale of property of the estate and of a co-owner**

- The whole category should be presumptively exempt.
- None of the category should be presumptively exempt.
- The category should be presumptively exempt, with some exceptions.
- The category should NOT be presumptively exempt, with some exceptions.

Please specify exceptions:

6g. **Objection/revocation of discharge**

- The whole category should be presumptively exempt.
- None of the category should be presumptively exempt.
- The category should be presumptively exempt, with some exceptions.
- The category should NOT be presumptively exempt, with some exceptions.

Please specify exceptions:

		<input type="text"/>
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6h. **Revocation of confirmation**

- The whole category should be presumptively exempt.
- None of the category should be presumptively exempt.
- The category should be presumptively exempt, with some exceptions.
- The category should NOT be presumptively exempt, with some exceptions.

Please specify exceptions:

<input type="text"/>

6i. **§523(a)(2) - credit card abuse/false pretenses**

- The whole category should be presumptively exempt.
- None of the category should be presumptively exempt.
- The category should be presumptively exempt, with some exceptions.
- The category should NOT be presumptively exempt, with some exceptions.

Please specify exceptions:

<input type="text"/>

6j. **§523(a)(5) - support/alimony**

- The whole category should be presumptively exempt.
- None of the category should be presumptively exempt.

	<p><input type="checkbox"/> The category should be presumptively exempt, with some exceptions.</p> <p><input type="checkbox"/> The category should NOT be presumptively exempt, with some exceptions.</p> <p><i>Please specify exceptions:</i></p> <div style="border: 1px solid gray; height: 60px; width: 100%;"></div>
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<p>6k. §523(a)(8) - student loan</p>	<p><input type="checkbox"/> The whole category should be presumptively exempt.</p> <p><input type="checkbox"/> None of the category should be presumptively exempt.</p> <p><input type="checkbox"/> The category should be presumptively exempt, with some exceptions.</p> <p><input type="checkbox"/> The category should NOT be presumptively exempt, with some exceptions.</p> <p><i>Please specify exceptions:</i></p> <div style="border: 1px solid gray; height: 60px; width: 100%;"></div>
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<p>6l. §523(a)(15) - divorce/separation property settlement/decree</p>	<p><input type="checkbox"/> The whole category should be presumptively exempt.</p> <p><input type="checkbox"/> None of the category should be presumptively exempt.</p> <p><input type="checkbox"/> The category should be presumptively exempt, with some exceptions.</p> <p><input type="checkbox"/> The category should NOT be presumptively exempt, with some exceptions.</p> <p><i>Please specify exceptions:</i></p> <div style="border: 1px solid gray; height: 60px; width: 100%;"></div>
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6m. **Injunctive relief - reinstatement of stay**

- The whole category should be presumptively exempt.
- None of the category should be presumptively exempt.
- The category should be presumptively exempt, with some exceptions.
- The category should NOT be presumptively exempt, with some exceptions.

Please specify exceptions:

6n. **Subordination of claim**

- The whole category should be presumptively exempt.
- None of the category should be presumptively exempt.
- The category should be presumptively exempt, with some exceptions.
- The category should NOT be presumptively exempt, with some exceptions.

Please specify exceptions:

6o. **Declaratory judgment**

- The whole category should be presumptively exempt.
- None of the category should be presumptively exempt.
- The category should be presumptively exempt, with some exceptions.
- The category should NOT be presumptively exempt, with some exceptions.

Please specify exceptions:

6p. **Determination of removed cause of action**

- The whole category should be presumptively exempt.
- None of the category should be presumptively exempt.
- The category should be presumptively exempt, with some exceptions.
- The category should NOT be presumptively exempt, with some exceptions.

Please specify exceptions:

6q. **Other AP (a)**

please specify category:

- The whole category should be presumptively exempt.
- None of the category should be presumptively exempt.
- The category should be presumptively exempt, with some exceptions.
- The category should NOT be presumptively exempt, with some exceptions.

Please specify exceptions:

6r. **Other AP (b)**

please specify category:

- The whole category should be presumptively exempt.
- None of the category should be presumptively exempt.
- The category should be presumptively exempt, with some exceptions.
- The category should NOT be presumptively exempt, with some exceptions.

Please specify exceptions:

6s. **Other AP (c)**

please specify category:

- The whole category should be presumptively exempt.
- None of the category should be presumptively exempt.
- The category should be presumptively exempt, with some exceptions.
- The category should NOT be presumptively exempt, with some exceptions.

Please specify exceptions:

7. (Optional) Please further explain why certain APs should or should not be exempt from mandatory disclosure of Rule 26.

Please limit your response to 500 words.

8. We welcome any additional comments or suggestions you may have regarding the application of Rule 26 disclosure requirements to adversary proceedings.

Please limit your response to 500 words.

Thank you very much for your help. Please complete the survey by clicking the Submit button below.
