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Proposed Changes to Bankruptcy Rule 3001

David Linde to Rules_Comments

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Dear Sirs and Madams,

My name is David Linde and I have been a consumer bankruptcy attorney since 1994. My experience has been that many claims filed in Chapter 13 cases do not even come close to meeting the requirements as provided by Bankruptcy Rule 3001 such as attaching copy of the underlying contract and/or statement. Unfortunately, this has become an ever increasing problem in recent years due to the fact that oftentimes it is now a third-party debt collector that is filing the claim. This is a problem because in the majority of cases those third-party debt collectors contain *none* of the required attachments. All the debt collector attaches is a self-generated document listing the amount allegedly owed and a statement indicating that the documents required by Rule 3001 are no longer available.

The proposed change to Rule 3001(c), new sections (2)(A through D) allow for sanctions against creditors in non-business cases for failure to provide any of the following information with the proof of claim:

(A) Detailed itemization of principal and expenses;
(B) An amount required to cure arrears if a security interest is claimed;
(C) An escrow statement if the secured property is claimed as debtor's principal residence; and
(D) Sanctions precluding the creditor from presenting the required but omitted documentation and information at any subsequent hearing or submission. In addition, the court may award reasonable expenses including attorney's fees caused by the failure to comply with the amended rule.

I cannot state strongly enough how important is it to include a sanction component. Under the current rules, the courts will not generally award attorneys fees and expenses for successful prosecution of an objection to a claim. So in a case where a debtor is paying a "base" or "fixed sum" in a Chapter 13, there is no incentive for the debtor (or debtor's counsel) to file an objection to an unsecured claim when a successful objection merely increases funds available for other unsecured creditors. The integrity of the judicial system demands that the systematic abuse by large institutional creditors cease. Their business models result in repeated flaunting of even the current minimal rules requirements. There is no reason to continue to permit disregard of longstanding principles of proof and documentation simply to accommodate a business model designed to make greater profits for debt collectors and creditors.

I would also like to point out that when it comes to collecting debts, Congress has already addressed this issue, though in a different context. Below I have attached the language of Sec. 802 of the Fair Debt Collection Practices Act. The section in bold I have added for emphasis.

§ 802. Congressional findings and declaration of purpose

(a) **There is abundant evidence of the use of abusive, decep-tive, and unfair debt collection practices by many debt collectors**. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.
(b) **Existing laws and procedures for redressing these injuries are inadequate to protect consumers.**
(c) Means other than misrepresentation or other abusive debt collection practices are available for the effective collec-tion of debts.
(d) Abusive debt collection practices are carried on to a sub-stantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate com-merce.
(e) **It is the purpose of this title to eliminate abusive debt col-lection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged**, and to promote consistent State action to protect consumers against debt collection abuses.

I am sure that the creditor lobby will argue that it is too burdensome if they are require to actually do what Bankruptcy Rule 3001 mandates they must do. That argument is ridiculous. The reason they do not want the law strengthening in favor of the debtor is that is will cut into their bottom line as they will have to actually show proof when they file a Proof of Claim.

Also, keep in mind that the people who have filed for bankruptcy are in a very tenable situation. They are usually on the verge of losing their homes. Their dignity has already taken a hit. And they are overwhelmed by a system that is fairly complex. It is not a good idea to make it even harder on a debtor by allowing creditors the option of disregarding the law with no risk.

In short, the proposed amendments should be strengthened to require that the entity filing a proof of claim provide proof that it is the owner of the claim and disclose whether the statute of limitations has run. It should also require attachments of all contracts on which the claim is based.

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