

The Romano Law Firm

A FULL SERVICE LAW FIRM

Cleveland: 50 Public Square • 400 Terminal Tower • Cleveland, Ohio 44113 • (216) 621-7777
Elyria: 300 4th Street • Elyria, Ohio 44035 • (440) 328-3177
Columbus: 3455 Mill Run Drive • Suite 311 • Hilliard, Ohio 43026 • (614) 850-0777
Washington Courthouse: 122 W. Market Street • Wash. Courthouse, Ohio 43160 • 740-313-4737
Wilmington: 97 N. South Street • Wilmington, Ohio 45177 • 937-556-4143
Toll Free: 1-877-621-7774 • Facsimile (216) 621-7780 and (614) 850-0778

February 18, 2010

09-BK-154

Peter J. McCabe, Secretary
Committee on Rules of Practice and Procedures
Administrative Office of the United States Courts
Thurgood Marshall Federal Judiciary Building
Washington, DC 20544

Re: Comments on proposed Bankruptcy Rule 3001(c) and 3002.1

Mr. McCabe:

Proposed Rule 3001(c) and 3002.1 seek to require additional evidentiary material be attached to a Proof of Claim filed in a bankruptcy proceeding and, specifically as it pertains to Proposed Rule 3002.1, for claims filed by a secured claim secured by a debtor's primary residence. Focusing primarily on the practice of bankruptcy law, my firm as been dealing with issues related to a creditor's requirements under 11 U.S.C. § 502 and the associated 3000 series of the Rules of Bankruptcy Procedure. For the following reasons, these rules, as proposed, should be adopted by the Rules Committee.

Proposed Rule 3001(c) should be adopted by the Rules Committee. Currently, Rule 3001 requires a creditor to attach some proof via additional documentation to prove the *prima facie* validity of the claim; that the claiming creditor and the amount owed are valid. However, Rule 3001 does not have a corresponding sanction enumerated in the Bankruptcy Code that the new rule proposes.

First, Proposed Rule 3001 will provide the required sanction for failure to provide sufficient *prima facie* evidence to support the claim. Contrary to opposing views presented, Proposed Rule 3001(c) will eliminate the need for litigation, not create it. As the Code and Rules currently stand - with no formal requirement to provide specific documentation in support of a proof of claim - litigation is being created in two ways: (1) to force creditors to comply with Rule 3001(a) and 9009 and Paragraph 7 of Official Form 10, and; (2) to provide sufficient evidence of the actual amount owed. In its current status, a creditor has no requirement, nor impetus, to provide either actual proof of ownership of a debt or the amount owed. Opponents take painstaking efforts to argue that a debtor listing a debt owed in Schedule F of the Voluntary Petition is acknowledgment enough to prove that the debt is owed. Thus, under this analysis, a creditor is only required to approximate the amount of the debt. The Bankruptcy Court is a court of equity. If this Panel takes the opposition's arguments seriously, it would have to consider only allowing the lesser of the two amounts listed (Schedule F vs. the Proof of Claim) be paid by the Court. This position is equally ludicrous because it, too, would only create more litigation.

Second, contrary to opposing arguments, Proposed Rule 3001 is only a burden on debt buyers. Counter-arguments that there will be an increase in perjury claims is pure hyperbole. Additionally, opponents of the proposed rule argue that there are already penalties in place for a creditor's failure(s) regarding proof of claims. However, the federal statutes cited are criminal penalties for perjury, not civil sanctions for failure to provide documents proving entitlement to a claim. Put simply, arguments against the proposed rule amounts to no more than red herrings and misinformation for the purpose of keeping the *status quo*.

The truth is, debt buyers and other collection agencies purchase debts at pennies on the dollar and attempt to maximize on its collection efforts. That includes, but is not limited to, refusing to accept or retain any documents associated with that debt. Document retention would increase the costs of collection thereby reducing profits. This, alone, is why debt buyers and collection agencies are against the rule change. The proposed rule change has the effect of requiring debt buyers and collection agencies to prove both ownership and validity of a debt. These are requirements they already have in both State and Federal court that they do not have in the Bankruptcy Court. Rule 3001 requires the creditor to attach documents, but Chapter 5 of the Bankruptcy Code does not include failure to comply with Rule 3001 as a basis for objecting to a claim. Current case law supports this contention. The current state of the law in the Bankruptcy Court does not require a creditor to provide any substantive supporting documentation to show the *prima facie* validity of the claim. Why? Because there is currently no remedy for failure to do so. Chapter 5 of the Bankruptcy Code and the Rules are both silent on the issue. The proposed rule change codifies the substantive and procedural rules these same creditors have in every other Court and extends them to the Bankruptcy Court as well.

Proposed Rule 3002.1 should be adopted by the Rules Committee. As a threshold matter, the clarity that proposed rule 3002.1 provides will reduce litigation stemming from disagreements between the debtor, the chapter 13 trustee, and the secured creditor as to the amount paid by the chapter 13 trustee. Codifying a specific procedure for remedy will reduce the litigation created both in the Bankruptcy Court during the chapter 13 process and in the State Court after discharge. The resolution of any/all discrepancies occurring during the chapter 13 process via this very specific dispute resolution mechanism will virtually eliminate litigation.

The proposed rule changes have the effect of making the claims process more efficient. As it currently stands, if a creditor does not provide sufficient *prima facie* evidence of the validity of it's claim, litigation is *created* when a debtor questions ownership and validity. The proposed rule change will force creditors to provide that documentation. Further, clarifying the procedure for remedying mortgage claim discrepancies will be more streamlined. Each rule change will have the effect of *reducing* litigation in the Federal and State Courts. For the reasons enumerated above, the proposed rule changes should be adopted.

Sincerely,

/s/ Joseph M. Romano

JOSEPH M. ROMANO
THE ROMANO LAW FIRM
50 Public Square
400 Terminal Tower
Cleveland, OH 44113