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February 7, 2005

Secretary of the Committee on Rules
of Practice and Procedure
Administrative Office of the United States Courts
Washington, DC 20544

**Re: Proposed Amendments to Federal Rule of Bankruptcy Procedure
4002(b) Governing Individual Debtor's Duty to Provide Information**

Dear Hon. Secretary:

The Chicago Bar Association is concerned that the proposed amendments are an undue invasion of a debtor's right to privacy. We further believe that the proposed rule constitutes an unwarranted burden shifting from a debtor to a trustee because a trustee may request that a debtor produce the information required under proposed Rule 4002(b)(2) under the current rules if it needs such information. The Rule therefore will likely result in the production of information that a trustee may not desire or use in many cases. Notwithstanding our concerns about the need for proposed Rule 4002(b)(2), anticipating that the proposed rule or some form of that rule will be adopted, we suggest the modifications described below.

Input and Comments

I. Proposed Rule 4002(b)(2) (I) May Not Promote Uniformity With Respect to Information a Debtor is to Produce, (II) May Delay § 341 Meetings and (III) Does Not Adequately Protect a Debtor's Privacy Rights.

A. Rule 4002(b)(2) - Introductory Paragraph

1. The proposed rule begins with the introductory phrase "Unless the trustee, the United States trustee, or the bankruptcy administrator instructs otherwise". While this phrase may be interpreted as giving a trustee flexibility to address an individual debtor's issues, our concern is that certain trustees within a district may subject a debtor to a vigorous document production while other trustees in the same district may waive, or not require strict adherence to, the document production contemplated by Rule 4002(b).

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It is our suggestion that the introductory phrase be eliminated. If a debtor does not have the requested information it may submit, as the rule provides, a "written statement that the documentation does not exist or is not in the debtor's possession".

2. The proposed rule further provides that "every individual debtor shall bring to the meeting of creditors under § 341 and make available to the trustee the following documents or copies of them ...".

a. Initially, if a trustee "instructs otherwise", a debtor may be required to produce the requested information at any time prior to the § 341 meeting. The time frame for such production may vary from trustee to trustee, causing confusion for debtors' counsel or, perhaps, an undue burden for a debtor. Additionally, if the documents are not produced until the § 341 meeting, the trustee will be required to review the information at the meeting, which will likely unduly delay § 341 meetings (especially if the documents produced are voluminous), requiring a greater imposition of time on the part of the trustee and creditors attending such meetings. Alternatively, the trustee may be required to continue such meetings or delay declaring a case a "no asset" case, again causing the trustee to incur more time for each case.

b. The Committee Note provides that "the materials would not be made available to any other party in interest at the §341 meeting of creditors. Some of the documents may contain otherwise private information that should not be disseminated." The Committee Note further provides that creditors usually do not need such information and if they do, they may proceed under Rule 2004. The Note raises a critical concern: the confidential nature of the information that a debtor is being required to produce. It is unlikely that a trustee will be able to question a debtor at a §341 meeting about the contents of the information without at least partially disseminating it to the creditors in attendance. If the documents are produced in advance, the trustee may be able to process such information in a non-public forum.

c. It is our suggestion that the phrase "every individual debtor shall bring to the meeting of creditors under § 341" in Rule 4002(b)(2) be deleted and replaced with the phrase "every individual debtor shall provide to the trustee, at least 5 days prior to the meeting of creditors under § 341, the following documents ..."

Further, following Section 2(C) we suggest adding the following: The trustee shall treat the information provided by a debtor pursuant to Rule 4002(b) as confidential and shall not disclose such information to any party in interest unless required under Rule 2004.

We believe that these revisions provide a debtor and its counsel with a uniform deadline to produce the required information, provide greater privacy protection to a debtor, and enable a trustee to obtain the information contemplated by the rule and process it before the §341 meeting.

II. A Debtor Should not be Required to Produce its Tax Returns

A. Rule 4002(b)(2)(B) - Tax Returns

1. Under proposed Rule 4002(b)(2)(B), a debtor would be required to produce its tax returns, along with any attachments. This requirement seems to be, in most instances, an unwarranted intrusion of a debtor's privacy. We are informed that providing a tax transcript is a less intrusive means of obtaining the same information. "A tax return transcript shows most line items from [the] tax return (Form 1040, 1040A or 1040EZ) as it was originally filed, including any accompanying forms and schedules. See IRS website (<http://www.irs.gov/individuals/article/0,,id=110571,00.html>). In many cases, a return transcript will meet the requirements of lending institutions such as those offering mortgages and for applying for student loans." *Id.* Moreover, there is no charge for obtaining a tax transcript. *Id.* We have been informed that transcripts provide all of the information reasonably required by trustees, without divulging personal information that a debtor may not wish to risk being disclosed.

2. We believe that a debtor should be given the option of providing transcripts of their tax returns instead of copies of the returns themselves. If this suggestion were accepted, the language for Rule 4002(b)(2)(B) would read "the debtor's most recently filed federal income tax return, including any attachments, or, at the option of the debtor, a transcript of that return."

III. Deposit Account, Brokerage or Other Such Statements Covering the Petition Date May Not Be Available

A. Rule 4002(b)(2)(C) - Bank and Other Financial Account Statements

1. This proposed rule requires a debtor to produce its bank, brokerage and similar statements for a time period that includes the petition date. As a practical matter, this may not be possible as such statements may not be issued prior to the §341 meeting. Further, it often will not be clear from these statements what the balance of these accounts would be as of a particular date. Thus, delaying or continuing the §341 meeting until such statements are issued will likely yield little benefit to a trustee.

2. We recommend deleting the phrase "for the time period that includes the date of the filing of the petition" and replacing it with the phrase "for the time period that includes either the date of the filing of the petition or, if not

available, the most recent statements for such accounts. If a statement including the petition date is not available, a trustee may question a debtor at the § 341 meeting about changes that may have occurred in the account between the statement date and the petition date.

IV. Debtors Can be Expected to Avoid Compliance With The Rule 4002(b) By Alleging that the Documents are not in Their Possession.


A. Rule 4002(b) - No Production Required

1. The proposed rule excuses production if a debtor can “provide a written statement that the documentation does not exist or is not in the debtor’s possession”. Further, the Committee Note to this rule provides that a debtor is not required to “create documents or obtain documents from third parties”. The exceptions to the rule may engulf the rule itself. First, if a bank or other financial account statement including the petition date is not available, is a debtor excused from producing such statements? Next, is a debtor that files its tax returns electronically and does not create a paper copy of the return excused from complying with the rule? Similarly, is a debtor excused from compliance if it receives its bank or other financial account statements electronically but does not create a paper version of such statements? We believe that neither the unavailability of current financial account statements nor the lack of “hard” copies of documents should excuse compliance with Rule 4002(b).

2. We believe that the Rule and the Committee Note should be revised to clearly require production of documents that a debtor can obtain without cost (i.e. a tax transcript) or is available to a debtor electronically.

Please feel free to contact Harold D. Israel from our Bankruptcy and Reorganization Committee if you have any questions regarding our report. Mr. Israel can be reached at 312-583-2333 or e-mail hisrael@kayescholar.com. Thank you for your consideration.

Very truly yours,


Joy V. Cunningham
President

cc: Terrence M. Murphy, Executive Director
Harold D. Israel, Bankruptcy and Reorganization Committee