UNITED STATES BANKRUPTCY COURT
District of Vermont

CHAMBERS OF
Colleen A. Brown
United States Bankruptcy Judge

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06 - BK-016

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Hon. Thomas S. Zilly, Chair
Committee on Rules of Practice & Procedure
of the Judicial Conference of the United States

Re: Comments on Bankruptcy Rules 3001, 8003 and 8005, and Official Form B10

Dear Judge Zilly:

I submit these comments with respect to proposed rules dealing with appeals (8003 and 8005), the proof of claim form (B 10) and the corresponding proof of claim rule (3001).

Since the Judicial Conference promulgated the Privacy Policy on Public Access to Electronic Case Files (the "Privacy Policy"), in September 2001, personal identifying data related to court cases has generally been protected from exposure via WebPACER and CM/ECF. However, I believe a large loophole continues to exist in bankruptcy cases, and a substantial amount of highly sensitive data is still publicly available, in attachments to proofs of claim.

Having monitored filings for compliance with the Privacy Policy over the course of the past few years, the staff in our clerk's office has observed that highly personal information is contained on many, if not most, proofs of claim filed by medical offices, health care providers, and hospitals; and that complete social security numbers are frequently contained on supporting documentation for wage claims. Inclusion of this information is understandable, since proofs of claim are typically filed directly by creditors, who likely do not realize that such filings are public records and readily accessible via the internet. Moreover, these individuals are not likely to be familiar with the rules regarding redaction of personal information. Creditors attach copies of invoices as supporting documentation to comply with the instructions on the proof of claim form (Form B10). When a health care provider creditor attaches invoices, however, those invoices may include highly sensitive and personal information, such as specific names of tests, laboratory or surgical procedures, and/or medication administered – the disclosure of which often leaves little doubt as to the nature of the patient's health condition. Hence, in connection with wage claims and medical proofs of claim, bankruptcy courts frequently would prefer to have less information on the attachments.

Second, a related, inverse issue arises when an employee files a proof of the claim for unpaid wages. Although the claim form asks only for the last four digits of the wage claimant's social security number, the trustee actually needs the full social security number when he or she pays the claim. If the wage claimant creditor complies with the directions on Form B10 and includes only the redacted social security number, then the case trustee does not have enough information to pay the claim and comply with his/her tax reporting obligations. Thus, in this instance more information is needed.

As more court users access bankruptcy records via the internet, I suggest that it may be appropriate for the Bankruptcy Rules Committee to include specific provisions in the rules and forms to address proof of claim privacy concerns, specifically in regard to proofs of claim for medical and wage claims. Accordingly, I propose that both Bankruptcy Rule 3001(c) and the Official Form B10 be amended to include language that

(i) specifically prohibits the attachment of any document that discloses personal information, which is defined to include social security numbers, account numbers, and the names of minor children, ***as well as any other information of a highly personal nature***;

(ii) clearly specifies that the supporting documentation need only specify the date of services, the general nature of services (e.g. medical, legal, home repair, etc.), and the amount due as of a particular date; and

(iii) unequivocally places responsibility for redacting confidential or personal data from all supporting documentation upon the filer.

I would further suggest that procedures be formulated so that to the extent the case trustee or court needs further information to supplement the proof of claim, the creditor is so notified and given an opportunity to submit the document in a manner that does not make any personal information publicly available.

Third, I would suggest that the Bankruptcy Rules Committee consider modifying Bankruptcy Rules 8003(b) and 8005 to better coordinate the two prongs of the interlocutory appeals process. As it stands now, a party who wishes to appeal an interlocutory order of the bankruptcy court files both a motion for a stay and a motion for leave to appeal in the bankruptcy court. However, the two motions are adjudicated by different courts. The bankruptcy court enters a determination on the motion for a stay pending appeal, but transmits the motion for leave to appeal to the district court (or bankruptcy appellate panel), to be decided by that court. Generally, the bankruptcy court, being familiar with the case, is in a position to rule expeditiously on the stay motion. By contrast, the district court or BAP is typically not familiar with the case and may need more time to adjudicate the motion for leave to appeal. Therefore, it could easily come to pass that a bankruptcy court would grant a stay pending appeal before the appellate court has granted leave to appeal. This result is procedurally awkward.

My suggestion is to consolidate these two motions in one court, so that the motions could be decided at the same time, using the language currently found in Rule 8005, namely, "A motion . . . .,must ordinarily be presented to the bankruptcy judge in the first instance . . . " If this procedure were adopted, the motions would be decided in tandem and the relief granted or denied on both motions would be coordinated. This would not diminish the authority of the district court over these issues because if the bankruptcy court were to deny the relief, the rules already provide that the movant may appeal the decision to the district court.

Thank you for your consideration of these comments and suggestions. Should you or members of the committee have questions about this letter, I would be happy to address them.

Sincerely,

Colleen A. Brown