AMERICAN BANKRUPTCY INSTITUTE

06 - BK-056

February 15, 2007

Hon. Thomas S. Zilly
U.S. District Judge
United States Courthouse
700 Stewart Street
Suite 15229
Seattle, WA 98101

Re: Comments on Proposed Rules of Bankruptcy Procedure

Dear Judge Zilly:

Enclosed for your consideration, in your capacity as Chair of the Advisory Committee on Bankruptcy Rules, please find the Report of the American Bankruptcy Institute's Task Force on Bankruptcy Rules, which compiles and summarizes the results of a member survey conducted on the pending rules.

This document, and the attachments described herein, have also been sent electronically to the Rules Comments address at the U.S. Courts website.

Please advise if there is anything else the ABI can do to assist the work of your Committee.

Sincerely,

Samuel J. Gerdano
Executive Director

cc: Prof. Jeffrey W. Morris
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REPORT OF SURVEY ON PROPOSED AMENDMENTS TO FEDERAL RULES OF BANKRUPTCY PROCEDURE

ABI TASK FORCE ON BANKRUPTCY RULES
Joseph S.U. Bodoff, Co-chair
David B. Wheeler, Co-chair

February 2007

INTRODUCTION

In June 2006, the American Bankruptcy Institute established a Task Force on Bankruptcy Rules, consisting of eight members of diverse professional and geographic backgrounds. Led by Joseph S.U. Bodoff of the Boston law firm of Bodoff & Associates and David B. Wheeler of the Charleston, South Carolina office of the law firm of Moore & Van Allen PLLC,[1] the Task Force's initial charge was to provide meaningful input to the Advisory Committee on the proposed amendments to the Federal Rules of Bankruptcy Procedure currently under consideration.

The Task Force ultimately concluded that the best, most efficient way to provide the Advisory Committee with useful information was to conduct a survey. The survey was viewed as a way to compile the views of those members with an opinion about the rules and to report those views to the Advisory Committee for its consideration in making final decisions about Rules changes and was not intended to constitute a statistically valid poll of the desirability of a certain rule.

After a lengthy analysis, 17 rules were selected for the survey. The survey focused only on those rules where (1) the rule itself reflected a policy decision as to how the Bankruptcy Code should be implemented or (2) where the Bankruptcy Code raised an issue that might have been but was not addressed by the proposed rules. Thus, rules that simply restated the concepts contained in the Bankruptcy Code were not included in the survey.

The Task Force decided to use three formats for questions. One format asked the survey participants to state how much he or she agreed or disagreed with a particular statement. A second form of question asked the survey participants to choose one of three to five statements with which he or she most agreed. The third form of question asked the survey participants to "provide recommendations, if any, you may have to

[1] The other members of the Task Force are Steven A. Schwaber of Law Offices of Steven A. Schwaber, San Marino, California, Berry D. Spears of Fulbright & Jaworski L.L.P., Austin, Texas, Brian I. Swett of Winston & Strawn LLP, Chicago, Illinois, Kent V. Snyder of Snyder & Associates, Portland, Oregon, Lynn Lewis Tavenner of Tavenner & Beran, PLC, Richmond, Virginia and Mark P. Williams of Norman, Wood, Kendrick & Turner, Birmingham, Alabama. The practices of the Task Force members include consumer cases, Chapter 7 trustee cases and complex Chapter 11 cases.

improve [the proposed] Rule." This last form of question was posed for each of the 17 rules that were included in the survey.

A pilot survey was conducted before the survey was finalized. Participants in the pilot survey were asked to comment on the clarity of the questions and whether they were neutral in tone, among other things. Based on these comments a number of changes were made to the survey questions prior to its launch.

The survey was conducted online between December 1, 2006 and January 31, 2007. It consisted of five parts – Rules Applicable to All Cases, Consumer Rules, Chapter 11 Rules, Health Care Rules, and Cross-Border Rules. Recognizing that not all survey participants would feel competent to respond to all of the survey questions and because of the length of the survey,[2] participants were invited to respond to all or just some of the survey questions. The questions were grouped by rules and accompanying each rule was a brief description of the rule and the Code provision to which it applied sufficient to enable the survey participants to understand the question. There was also a link to the Rule itself so that the survey participants had the opportunity to review the Rule before responding. Where appropriate, there was a link to a statutory provision or form.[3]

SURVEY RESULTS

Approximately 150 persons responded to the survey. The number of rules covered by each category and the number of respondents for each category are summarized in the following table:

Category	No. of Rules	No. of Respondents[4]
Rules Applicable to All Cases	3	131-141
Consumer Rules	7	76-89
Chapter 11 Rules	3	70-74
Health Care Rules	3	40-72
Cross-Border Cases Rules	2	34

As can be seen from the table, a slightly larger number of participants responded to the Consumer Rules questions than to the Chapter 11 Rules questions, which may be reflective of the fact that the consumer rules changes are far wider reaching than the chapter 11 rules changes.

[2] The estimated time to complete the entire survey was 45 minutes.

[3] The survey is included in this Report as Appendix A.

[4] The range of the number of respondents for each category reflects the fact that not all respondents answered all of the questions in the category.

Comments and/or recommendations for change were elicited for virtually every rule, with a total of 76 comments/recommendations received. The comments and recommendations are contained verbatim in the survey results..

The following is a summary of the responses to the survey questions. The complete survey results are attached to this Report as Appendix B.

RULES APPLICABLE TO ALL CASES

Rule 6004: Use, Sale or Lease of Property.

Fifty-seven (57%) percent[5] of those surveyed felt the language of the Rules should specifically include the trustee as a party required to provide notice to applicable attorneys general. Pertinent comments and/or suggestions included adding the IRS as a mandatory notified party. There was also a comment that attorneys general should be added to the notice requirement only in those situations involving non-profit and regulated businesses.

Rule 8001: Manner of Taking Appeal: Voluntary Dismissal; Certification to Court of Appeals.

Roughly seventy (70%) percent of those surveyed registered concern about the language of Rule 8001(f)(2)(B) providing for mandatory certification and use of the corresponding official form where a majority of appellants and appellees seek certification. As drafted, Subsection (f)(2)(B) of the Rule could be misinterpreted as requiring all appellants and appellees to seek certification. One survey comment suggested that, instead of modifying Subsection (f)(2)(B), (f)(3)(A) could be modified to provide a statement as to whether the certification request is made on behalf of a majority of appellants and a majority of appellees.

Rule 3002: Filing Proof of Claim.

Sixty-four (64%) percent of those surveyed concurred with the sentiment that a creditor with a foreign address should be provided up to an additional sixty (60) days to file a proof of claim after the expiration of the Court's deadline in Chapter 9 or Chapter 11 cases if the creditor can demonstrate it received insufficient notice. It is noteworthy that fifty-four (54%) percent of those surveyed supported the notion of an extension of the proof of claim deadline for those non-foreign creditors who could demonstrate a lack of sufficient notice for the filing deadline. A similar sentiment was expressed by seventy-nine (79%) percent of those surveyed to allow any creditor who can demonstrate

[5] Participants in favor of a particular concept were those that responded with "Agree Strongly" or "Agree Somewhat". Those against were those that responded with "Disagree Strongly" or "Disagree Somewhat".

lack of sufficient notice to request permission to file a proof of claim after the deadline has expired.

CONSUMER RULES

Rule 1007: Lists, Schedules, Statements and Other Documents.

Responding to the apparent absence of the § 342(b) certification required under § 521(a)(1), over seventy-five (75%) percent of those surveyed agreed that Rule 1007(b) should include among its list of related documents all documents identified in § 521(a)(1), including the § 342(b) certification, if applicable. Similarly, over seventy-five (75%) percent of those surveyed agreed that Rule 1007(b) should contain an alternate form of filing indicating the certificate referenced under § 521(a)(1)(b)(iii) (the notice issued by the Clerk of Court generally explaining the bankruptcy process) is inapplicable because the individual's case is not composed primarily of consumer debt. Finally, seventy-nine (79%) percent of those surveyed agreed that a debtor seeking to exempt in excess of the amount of $125,000.00 in residential or related property should be required to do more than is required under proposed Rule 1007(b)(a) and should instead be required to secure authorization for asserting such an "excess exemption" in accordance with the motion practice required for contested matters under existing Bankruptcy Rule 9014.

Rule 1017: Dismissal or Conversion of Case; Suspension.

Seventy-three (73%) percent of those surveyed agreed that a motion to dismiss for abuse under § 707(b) should be required to be initiated within sixty (60) days after the date first set for the meeting of creditors. However, fifty-nine (59%) percent of those surveyed agreed that a moving party other than the U. S. Trustee should be required to establish harm or damage arising out of the alleged abuse in order to prevail on a motion to dismiss or convert under § 707. Specific comments received in connection with this proposed rule include the assertion that such a motion should be required within sixty days from the date upon which the meeting of creditors is actually held, as opposed to the date the 341 meeting is first scheduled.

Rule 2002: Notice to Creditors.

There were three survey questions posed in connection with the consumer provisions[6] proposed rule. There was an almost even split of opinion on the question of whether the notice provisions of Rule 2002(g)(2) should apply if the creditor has previously provided notice pursuant to § 342(c)(2). The rule as drafted in Subsection (g)(2) appears to ignore the provisions of Bankruptcy Code § 342(c)(2). There was also

[6] The survey also posed a question under Rule 2002 relating to notices concerning recognition of foreign proceedings, which appears at page 8 of this Report.

an even split as to whether a creditor must comply with the notice requirements of Rule 2002(g)(2) and (5) if it has previously designated a contact and address pursuant to Bankruptcy Code § 342(c)(2). Sixty-six (66%) percent of those surveyed agreed with the requirements of proposed Rule 2002(g)(5), which requires a creditor to file a statement that designates the name and address of the person or organizational subdivision of the creditor responsible for receiving notices under the Code, along with a description of the procedures established by the creditor to cause such notices to be delivered to the designated person or subdivision.

It is possible that those registering disagreement with the continuing post-petition validity of notice provided under § 342(c)(2) are either unfamiliar with its provisions or are concerned that binding debtor's counsel to notification activities made prior to petition preparation adds an unacceptable burden to debtor representation.

Rule 4003: Exemptions.

Two-thirds (2/3) of those surveyed agreed that sixty (60) days constitutes a reasonable amount of time for a creditor or a trustee to investigate and determine the validity of the debtor's claimed exemptions, including whether the debtor's claimed exemptions are based on the law of the appropriate jurisdiction. A majority of those surveyed disagreed with the proposition that a deadline for objecting to exemptions should be set by the court and not by a federally-adopted rule.

The majority of those surveyed indicated that one year after the close of a case is a reasonable amount of time for a trustee to investigate and determine whether the debtor fraudulently claimed an exemption during the course of a case, as opposed to the court setting a deadline in its discretion or the trustee being allowed to object only through the close of the case. One survey participant felt that extending the time for objecting to exemptions represents an undue extension of the administration of the case. Another participant felt that a shorter deadline should be set, stemming from when the trustee knew or reasonably should have known of the fraud.

Rule 4007: Dischargeability Determination.

Virtually all of those surveyed agreed that proposed Rule 4007 should specify a deadline for filing a complaint under § 1328(a)(4). Two-thirds (2/3) of those surveyed agreed that a new time period for filing a complaint under § 523(c) should apply in a converted case when the time period for filing a complaint in § 523(c) has lapsed in the pre-conversion case.

Rule 4008: Filing a Reaffirmation Agreement; Statement in Support.

Eighty-nine (89%) percent of those surveyed agreed that an Official Form for the required statement in support of a reaffirmation should be created and adopted. There was a relatively even split in response to the assertion that, unless otherwise ordered by the court, the deadline for filing a reaffirmation agreement should be the same as the date for filing an objection to discharge. A significant majority agreed that the statement in support should explain the reasons for any differences between the financial information contained in the statement in support and not provided in Schedules I and J and further that the proposed rule should specify the parties entitled to notice of a filing of a reaffirmation agreement. Finally, seventy-three (73%) percent of those surveyed agreed that the proposed rule should clarify that the sixty (60) day requirement for filing a reaffirmation agreement does not extend the thirty (30) day requirement for entering into a reaffirmation agreement for personal property as specified in § 362(h)(1). There was general comment that the reaffirmation process should be simplified, a goal admittedly made difficult by the recent Code amendments. Those providing comments clearly were in favor of allowing more, rather than less, time for completing the reaffirmation process.

Rule 5008: Presumption of Abuse Notice.

Almost sixty (60%) percent of those surveyed agreed that the clerk should notify creditors when the debtor has failed to file the statement required under Bankruptcy Code § 707(b). A somewhat greater majority supported the proposition that creditors should also be notified if the presumption of abuse is subsequently rebutted or when it is later determined that the presumption did not properly arise.

CHAPTER 11 RULES

Rule 1020: Small Business Election.

Eighty-six (86%) percent of those surveyed agreed that additional guidance is needed with respect to a debtor's amendment of its designation as a small business. survey participants felt that Rule 1020 should set forth the grounds for deadlines and other standards for the debtor to amend its designation as a small business. A vast majority of participants agreed that absent a re-designation by the debtor, the U. S. Trustee and parties in interest should be required to file any objections to the debtor's small business designation within thirty (30) days after the conclusion of the meeting of creditors.

Given several options as to the timing in connection with a debtor's right to amend its small business designation, forty-three (43%) percent agreed that a debtor should be allowed to amend its designation as a matter of right within a specified period determined by the court after notice and a hearing, while thirty-six (36%) percent felt that a re-designation should be permissible only upon court order after notice and a hearing.

Thirteen (13%) percent felt a debtor should be able to amend its designation at any time, four (4%) percent felt that such a designation should not be subject to amendment, and four (4%) percent felt that the debtor should be allowed to amend its designation only within a specified time period.

When asked about notice requirements related to amendment of a small business designation, seventy (70%) percent agreed that such an amendment should be served on the U. S. Trustee and all creditors, twenty-three (23%) percent felt the debtor should be required to serve its amendment only on larger creditors or those requesting notices and seven (7%) percent did not believe service of the amendment to be necessary.

With respect to the time period in which a case may be designated as a small business case due to an inactive and unrepresentative creditors' committee, fifty-nine (59%) percent thought the phrase, "within a reasonable time after the failure of the committee to be sufficiently active and representative" did not provide a workable standard, with a comparable percentage agreeing that the time for a determination whether a committee is sufficiently active and representative should be within a reasonable time after the failure of the committee to be sufficiently active and representative.

Rule 2015.3: Reports of Profitability/Controlling Interest.

Two-thirds (2/3) of those responding indicated their belief that Rule 2015.3 adequately addressed the congressional directive contained in BAPCPA § 419. Thirty-nine (39%) percent of those surveyed agreed that the 2015.3 reports should be submitted at the beginning of the case and afterward no less than once every six (6) months, while thirty-three (33%) percent pegged the frequency of reporting as three months and twenty-eight (28%) percent at twelve (12) months. There was concern expressed about protecting privacy interests while complying with this rule. One suggestion was that such documents be submitted only to the U. S. Trustee. Additional concern was expressed with the requirement the debtor's counsel certify the accuracy of the reports prepared by the debtor.

There was a fairly even split among those responding as to the proposed standards for a non-debtor entity and its equity holders to obtain a protective order against disclosure of Rule 2015.3 information. Thirty-nine (39%) percent supported the proposition that only trade secret or confidential research development or commercial information or information that is scandalous or inflammatory should be protected, while thirty-three (33%) percent linked the protective order to a showing of harm upon the non-debtor entity's business and twenty-eight (28%) percent would preclude the right of a non-debtor entity and its equity holders to seek a protective order with regard to information disclosed under Rule 2015.3.

Rule 3016: Small Business Plan and Disclosure Statement.

The survey sought a consensus on whether disclosure statements and plans for small business debtors should substantially conform with the respective Official Form for other Chapter 11 debtors. No consensus emerged in that there was an almost fifty-fifty split of opinion on these questions.

HEALTH CARE RULES

Rule 1021: Health Care Business Case.

There was almost universal agreement that this rule should contain deadlines for a party to file a motion to have the debtor designated as a "health care business". Over seventy-five (75%) percent of those surveyed agreed that the rule should also contain deadlines for the bankruptcy court to rule on a motion to have the debtor designated as a health care business.

Rule 2015.1: Patient Care Ombudsman.

Over seventy-five (75%) percent of those surveyed agreed that the rule should contain guidelines for the content of the ombudsman's report. Thirty-nine (39%) percent of those surveyed agreed that an ombudsman's report should be filed every six (6) months while thirty-three (33%) percent viewed three (3) months as the appropriate frequency and twenty-eight (28%) percent believed an annual report to be sufficient.

Rule 6011: Disposal of Patient Records in Health Care Business Case.

Seventy-five (75%) percent of those responding agreed that a debtor should be required to notify all applicable state attorneys general of an intent to destroy patient medical records. Virtually all responding agreed that Rule 6011 should set forth a mechanism by which parties may object to the destruction of patient medical records.

CROSS-BORDER CASES RULES

Rule 2002: Notice to Creditors of Recognition of Foreign Proceeding.

Two-thirds (2/3) of those surveyed agreed that all creditors for an entity for which recognition of a foreign proceeding is being sought should be provided notice of the recognition application upon its filing.

Rule 5012: Communications and Cooperation with Foreign Representatives.

A question was posed concerning the amount of notice that effective parties should receive of a court's notice of intent to communicate with a foreign court or representative. Forty-six (46%) percent agreed it should be left to the court's discretion, while twenty-nine (29%) percent felt that the twenty (20) day notice period was appropriate. Seventeen (17%) percent felt ten (10) days should be provided and nine (9%) percent chose thirty (30) days.

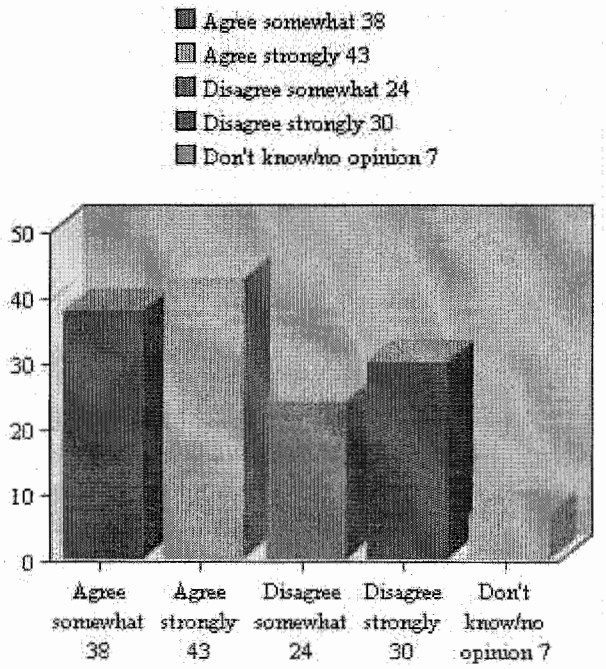
Fifty (50%) percent of those responding indicated that a formal standard for the manner in which parties may participate in a communication with a foreign representative or foreign court should be left to the discretion of the court. On a related note, eighty-five (85%) percent of those responding agreed that the notice of intent to communicate with a foreign court or representative should specify the appropriate manner of participation by parties in interest.

SURVEY ON PROPOSED AMENDMENTS TO FEDERAL RULES OF BANKRUPTCY PROCEDURE

RULES APPLICABLE TO ALL CASES

Rule 6004: Use, Sale or Lease of Property.

Rule 6004 should be amended to require that a debtor to which subsection 363(d) applies must provide notice of a proposed sale of assets to the attorney general of the state or states in which (i) the debtor is organized; (ii) the debtor has its principal place of business; and/or (iii) the subject assets are located.



Comments:

1. The IRS should also be notified.

2. Since the 363(d) sale must be done "in accordance with applicable non bankruptcy law" the state AG will get notice if state law so requires. Applying a national standard doesn't make sense.

3. The burden should not be on debtors to notify state agencies that rarely participate actively in bankruptcy cases about sales. The attorneys general need to be more proactive on their own to enter appearances in cases and monitor.

4. As a practical matter, this would mean that the Debtor would list the AG for each applicable state in the master mailing matrix filed with the Bankruptcy Court. I doubt that each AG will closely monitor each pleading filed in each case, so I am not sure how beneficial this rule will be as a practical matter.

5. Debtor must provide notice of a proposed disposition of assets ...

6. The link, above, does not provide the full text of the rule. Giving of such notice should be required only to the extent that notice is required under non-bankruptcy law. AG's involvements with such entities may, in various states be limited or non-existent (as the case may be). A blanket rule requiring notice(s) as suggested here would be meaningless, and a disservice to the AG's offices who -- in some instances -- would be unable under local law to act in the matter. The rule is too broad.

7. The AG should be able to register for CM/ECF notices in cases in which the AG wants to be notified. No special action should be required of the debtor.

8. The inherent problem with merely serving the respective AG is that they will not know what to do with it. Too many specific agencies and not enough communication. Mere service on the AG will not resolve the technical legal problem if not otherwise in compliance.

9. Such notice should also set forth in detail the reasons or need for such sale.

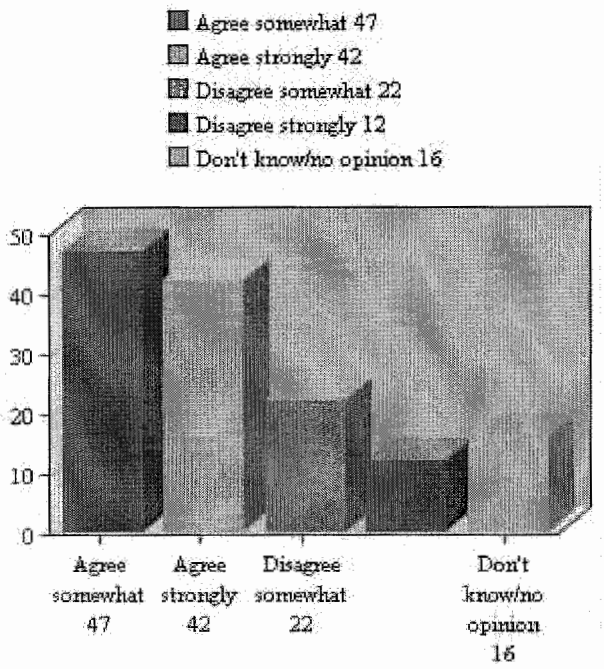
10. All of those Attorneys General may have some regulatory authority over the sale. Getting notice to them sooner rather than later is likely to result in a smoother process that will allow the necessary review processes to be carried out in a timely fashion.

11. Need to dump the and/or. Also need to be clear which state's AG gets notice. If many folks all over the place, then don't change the rule. The AG is too busy to do anything anyway.

12. Add the attorneys general only in the situations where they are needed - particularly for non-profits and regulated businesses. If you put them in for everything as a requirement, they are likely to miss the important ones in the deluge of paper that will come their way. Also, with ECF, they should know which cases they want to monitor and receive service in those cases only.

Rule 8001: Manner of Taking Appeal: Voluntary Dismissal; Certification to Court of Appeals.

Subsection (f)(2)(B) should provide for mandatory certification and use of the corresponding official form where a majority of appellants and appellees seek certification.



Comments:

1. The time for taking an appeal from a bankruptcy court decision should be increased from 10 days to 28.

2. Making this rule change would enhance uniformity, which is especially important when dealing with a substantial rule change, as here.

3. The "majority" of appellants or appellees may be creditors or parties in interest who do not have as significant an interest as others. By permitting a "majority" of parties to create a mandatory direct appeal may adversely affect the real party in interest with the most at stake.

4. While 28 USC 158(d)(2)(B) seemingly requires the court to certify the issue for direct appeal if the "majority" of appellants and appellees concur, I am not convinced that the court is wholly stripped up discretion in the matter. I think it would be better simply to require the parties seeking certification to highlight or flag the fact that the requisite majority exists. Thus I would not amend 8001(f)(2) but instead 8001(f)(3) to provide in (f)(3)(A), after the existing sentence. "The request shall state whether it is made on behalf of a majority of the appellants and a majority of the appellees."

5. We have no BAP in the 3rd circuit, and the remainder of the rule change seems insignificant.

6. Placing jurisdiction of matter in an Appeals court, merely upon the actions of some of the parties is probably bad policy and an unwise invitation to consume scarce judicial resources.

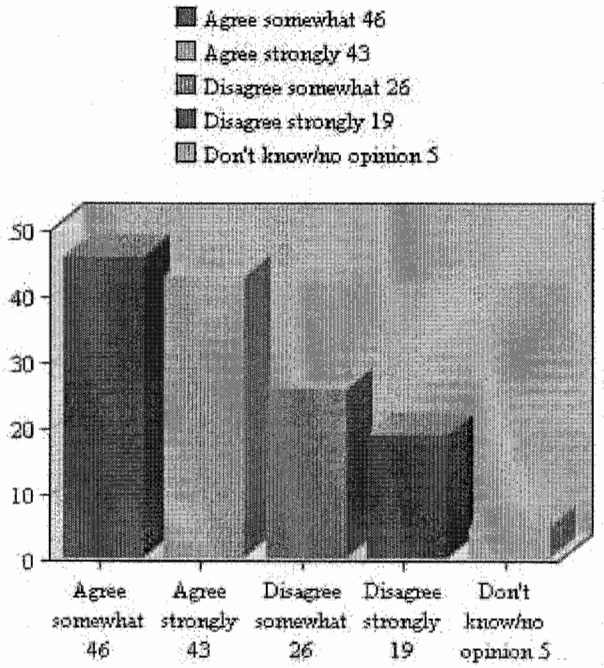
7. Certification should remain a matter of court discretion.

8. The Courts of Appeal are going to be loathe to handle any further appeals. They are comfortable with the two tier process. It serves to weed out any additional appeals.

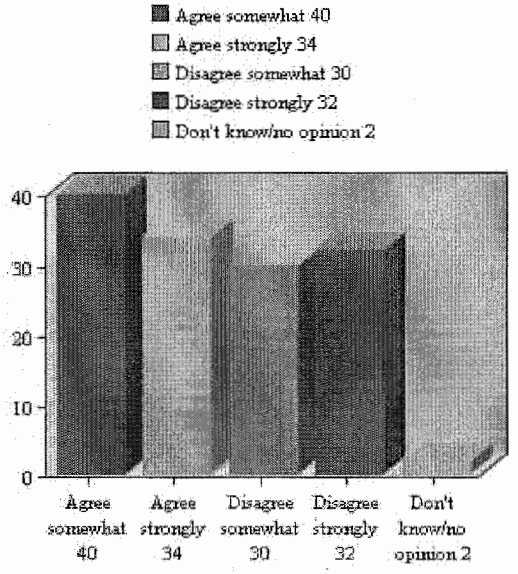
9. Although direct appeals to the circuit were great in the early 80s, the election should be by any of the parties and not require a majority. On necessary issues for limited financial litigants, the use of increased costs could impair access to judicial review.

Rule 3002: Filing Proof of Claim.

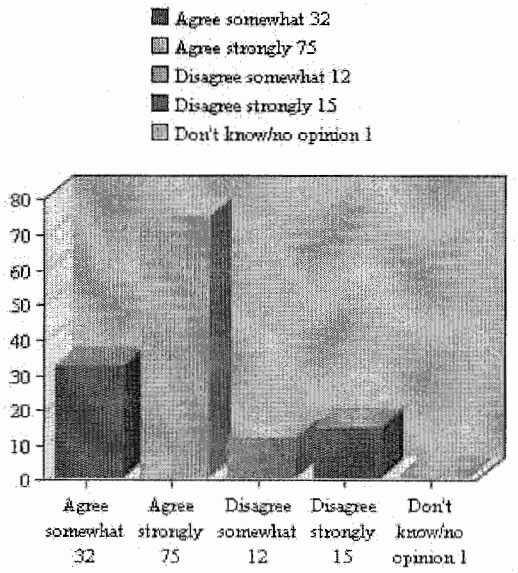
(a) The court should provide a creditor with a foreign address up to an additional 60 days to file a proof of claim after the expiration of the Court's deadline in Chapter 9 or Chapter 11 cases if the creditor can demonstrate that it received insufficient notice.



(b) The extension provided to creditors with foreign addresses should be available to all creditors who can demonstrate they received insufficient notice of the deadline to file a proof of claim.



(c) Any creditor who does not receive notice of the deadline for filing a proof of claim prior to the deadline should be allowed to request permission to file a proof of claim after the deadline has expired.



Comments:

1. Should allow email and other electronic notice as reasonable, inexpensive and likely to reach a party. Otherwise there should be a designated entity in US for receipt of notice.

2. There should be a clarification that the rule does not apply in consumer cases (1) in Chapter 7 cases where there are no nonexempt assets, or (2) in Chapter 13 cases after plan confirmation.

3. The Committee should keep in mind that the claims bar date serves an important role in cases by giving a debtor some finality as to the time in which creditors can assert claims. There is no need to have a rule allowing creditors who do not receive notice of the claims bar to request permission to file claims thereafter; this already is common practice. Case law regarding due process already provides sufficient protection for creditors that do not receive notice of the bar date. Moreover, in our electronic age, the focus should be on making it easier for creditors to file claims, e.g. not requiring paper documents and making the claims bar process uniform in all cases (instead of using claims administrators at varying addresses that just confuse the process) instead of extending the claims period.

4. The extension of up to 60 days for creditors who received insufficient notice of the bar date should not just be limited to Ch. 9 and Ch. 11 cases. It should be available to cases under all chapters.

5. This is always a balancing act between the rights of the individual creditor to receive notice and an efficient Chapter 11 process. I do not see a basis to distinguish between a foreign and a domestic creditor, though. If the notice was bad or insufficient, the creditor is adversely affected regardless of where it is located.

6. If notice was insufficient, under current law, most if not all courts will allow a late-filed claim; so what's the big deal. If anything, 60 days is too long as the creditor has already come to court for permission to file a claim. The creditor should file the claim (or attach a draft of it) when it submits its request for late filing.

7. There must be an ending so that the Trustee or DIP can assess claims. But a 60 day extension would be okay. The burden of showing non-receipt must be on the creditor.

8. While I agree with (a) and (b), I don't agree with (c) as phrased. The rule should not pertain to whether a request for leave to file a late POC can be made. Requests can always be made. If you're asking whether I think they should be granted, I think due process so requires.

9. The claims process is too inflexible. If the debtor makes an error, the Court can correct it. If a creditor makes an error, he is dead meat. This is unfair.

10. Require "return receipt" service of notice to holders of unsecured claims larger than a certain amount, or creditors whose liens are to be modified by the Debtor's proposed plan.

11. The creditor address database should be made available to debtors; creditors which are listed on the datablse which do not receive notice at a listed address should

be allowed to demonstrate they did not receive adequate notice and get additional time to file

12. In an internet world I can communicate faster with someone in Dublin by email than by mail to someone in Hartford. I do not see the problem as one of giving foreigners more time for their letter carrier to deliver the notice as much as it is someone receiving the notice and figuring out what to do next. I would give affected entities the opportunity to show a reasonable basis for requesting more time

13. c - should be allowed to file late claim only if debtor was at fault in not providing adequate address, on schedules or otherwise

14. Case administration will be scrambled if a loose standard is adopted. The cost of making the system hypothetically more perfect and just is offset by the lack of certainty introduced.

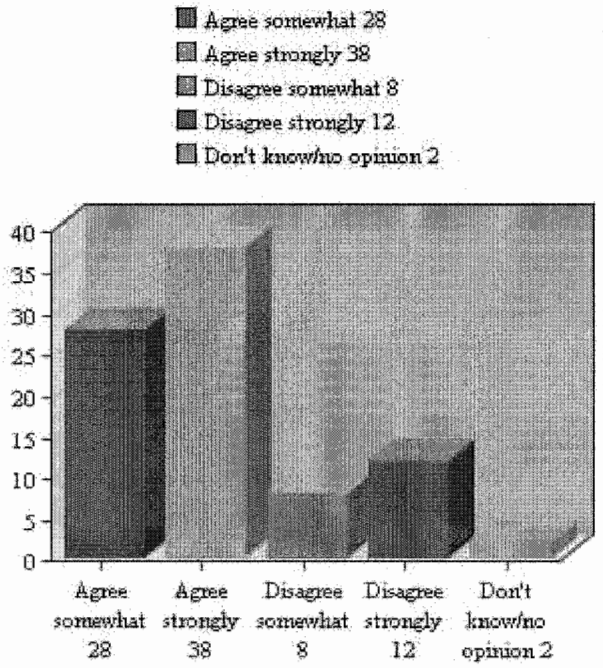
15. This would be an administrative nightmare for trustees.

16. The issue will always be "what is insufficient notice?" I don't know what that means. As for giving a creditor without notice of the deadline an extension, that would unduly prolong the process in every case and the amount of litigation spawned would be prohibitive.

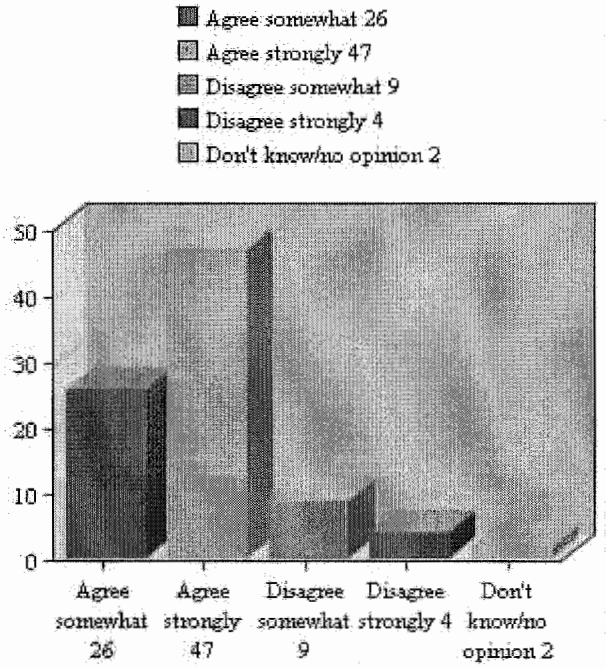
CONSUMER RULES

Rule 1007: Lists, Schedules, Statements and Other Documents.

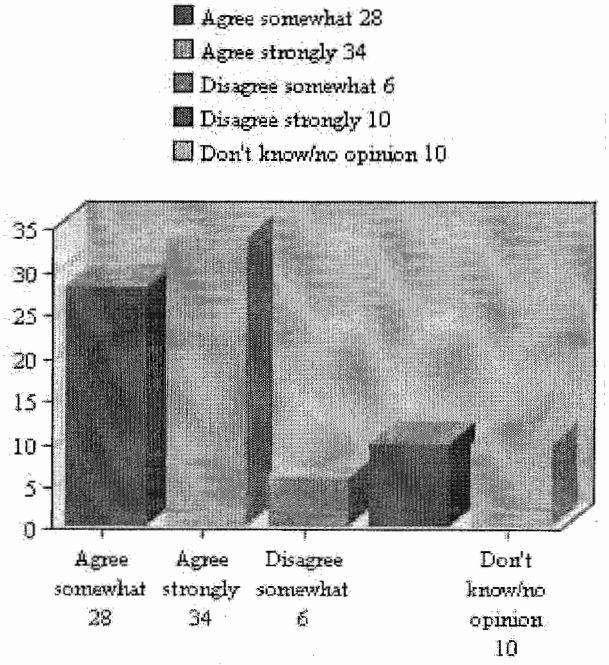
(a) Rule 1007(b) should include among its list of related documents all documents identified in §521(a)(1), including the §342(b) certification, if applicable.



(b) Rule 1007(b) should contain an alternate form of filing indicating the certificate referenced under §521(a)(1)(B)(iii) (the notice issued by the clerk of court generally explaining the bankruptcy process) is inapplicable because the individual's case is not composed primarily of consumer debt.



(c) Requests seeking "excess exemptions," should be subject to Rule 9014 requirements governing contested matters.



Comments:

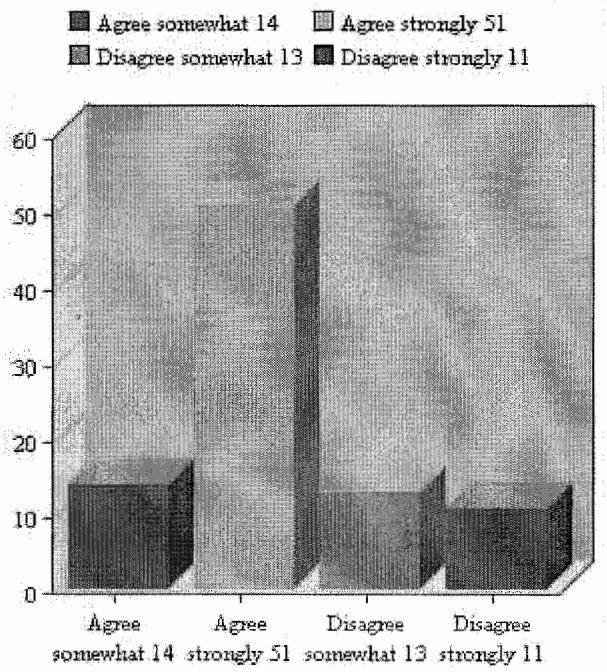
1. Item (c) is not a model of clarity -- I cannot really determine what is being asked.

2. Incorporate VERBATIM 521 duties as they pertain to filing as well as 342 docs. CLARIFY how the Clerk, before the commencement of a case, can give the "debtor" any notice at all. No commencement, no debtor!!

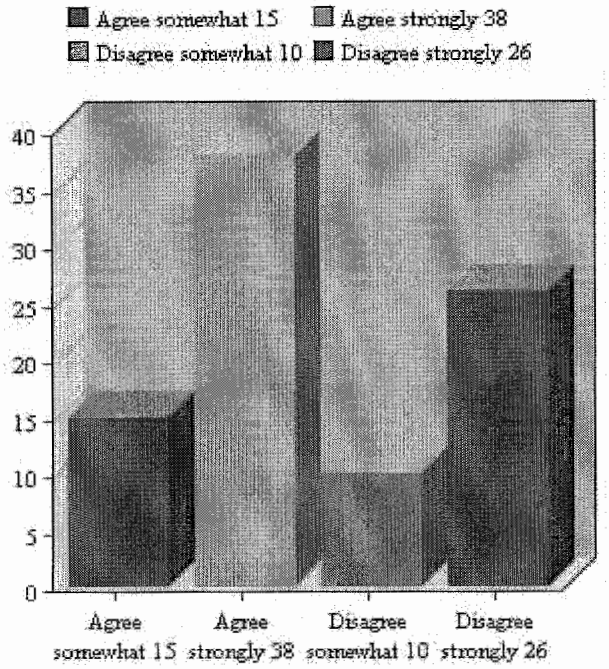
3. Filing a consumer bankruptcy now is so cumbersome with documentation requirements that any effort to simplify the process would help!

Rule 1017: Dismissal or Conversion of Case; Suspension.

(a) Requiring motions to dismiss for abuse under § 707(b) to be brought within sixty (60) days after the date first set for the meeting of creditors allows creditors adequate time to determine whether to bring such a motion.



(b) The moving party (other than the U.S. Trustee) should be required to establish the harm or damage arising out of the alleged abuse it has suffered in order to prevail on a motion to dismiss or convert a case under any subsection of § 707.



Comments:

1. Return to the requirement of "substantial abuse", or delineate what constitutes "abuse".

2. Any requirement "to establish the harm or damage arising out of the alleged abuse it has suffered" should not apply to the U.S. Trustee.

3. Should be 60 days after close of 341. also should provide that if a motion to dismiss is brought and the moving party loses should be required to pay attorney fees

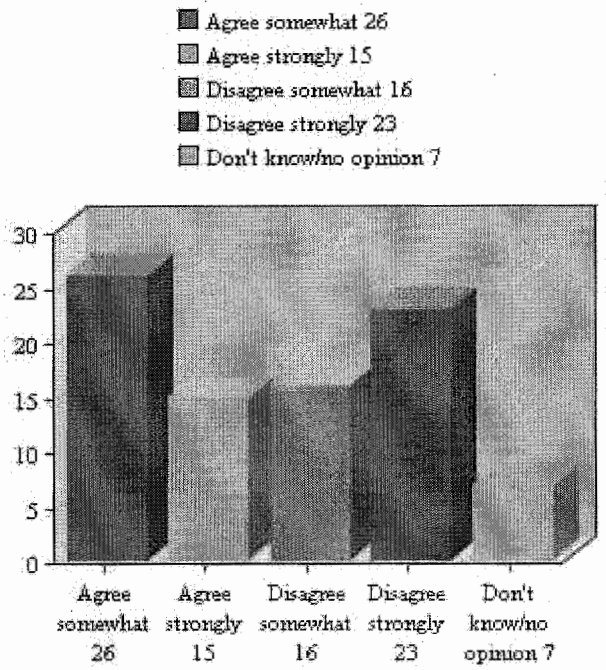
4. In this rule (and all others) I think the time should be 60 days from the date the meeting is actually held, not the date it's scheduled. If the meeting is to provide information, it makes little sense to require creditors to seek extensions if it is not actually held when scheduled (particularly if the delay is the debtor's fault.)

5. The problem in trying to show harm to a specific creditor is that it might not be shown as to that specific creditor when it is otherwise clear that the action could have damaged the creditor body or been an insult to the bankruptcy system.

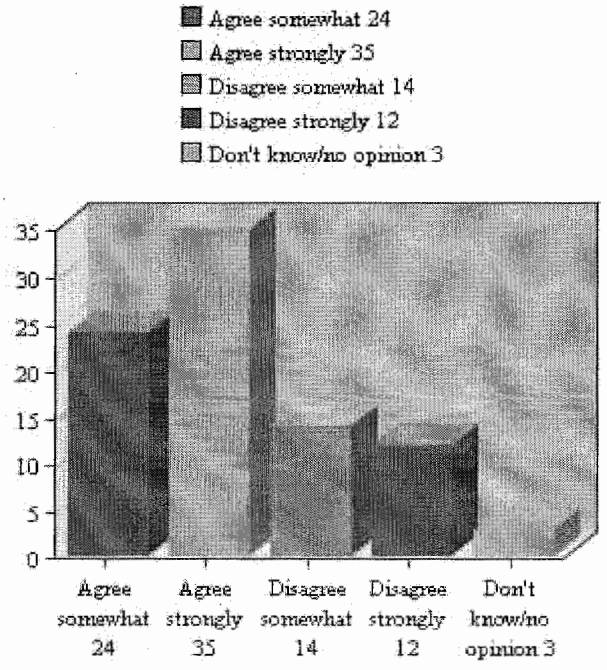
6. The Rule should specify whether analysis under 707(b)(3) requires re-consideration of the (b)(2) calculations regarding income and expense or whether (b)(3) analysis is limited to examination of the Schedule I and J amounts to determine "ability to pay".

Rule 2002: Notice to Creditors.

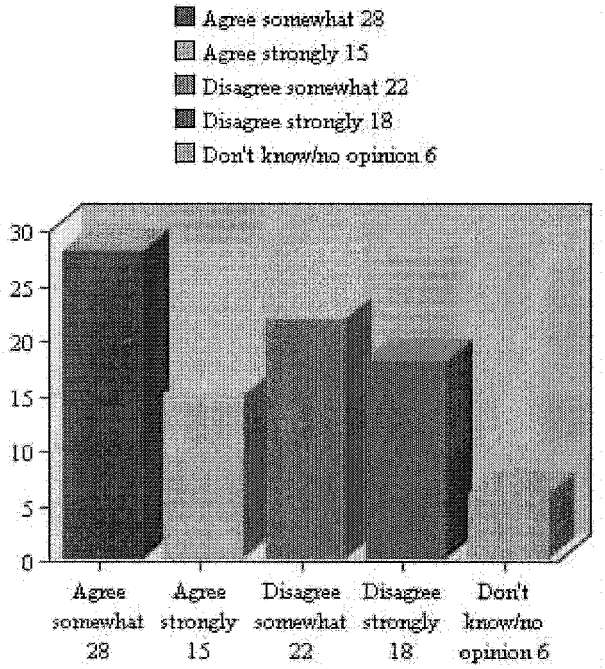
(a) The notice provisions of Rule 2002 (g)(2) should not apply if the creditor has provided, pursuant to § 342(c)(2), desired address information to the debtor prior to the filing of the bankruptcy petition .



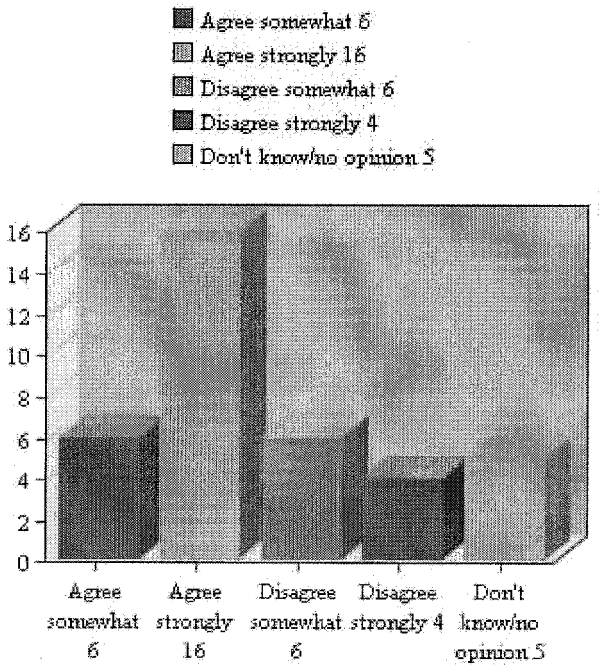
(b) All creditors desiring to take advantage of the § 342(g)(1) procedures for establishing an address as to which notices must be sent should also be required to establish and disclose the procedures by which the notices are directed to the appropriate person in their organization.



(c) A creditor need not comply with the notice requirements of Rule 2002(g)(2) and (5) if it has previously designated a contact and address pursuant to §342(c)(2).



(d) All creditors of an entity for which recognition of a foreign proceeding is being sought should be provided notice of the recognition application upon its filing.



Comments:

1. These notice rules will not work in practice until there is a single, centralized place that debtors' counsel can go to get the creditors' preferred addresses. Individual bankruptcy courts vary widely in their service levels. Not only is this information not available from most courts, but it is inconsistent from jurisdiction to jurisdiction. Creditors should be required to designate one address each for nationwide service.

2. Require creditors to put on each monthly statement to debtor/borrower IN BOLD TYPE the address for notice of filing versus addresses for payment and general correspondence. Make disclosure similar to APR BOLD and BOXED

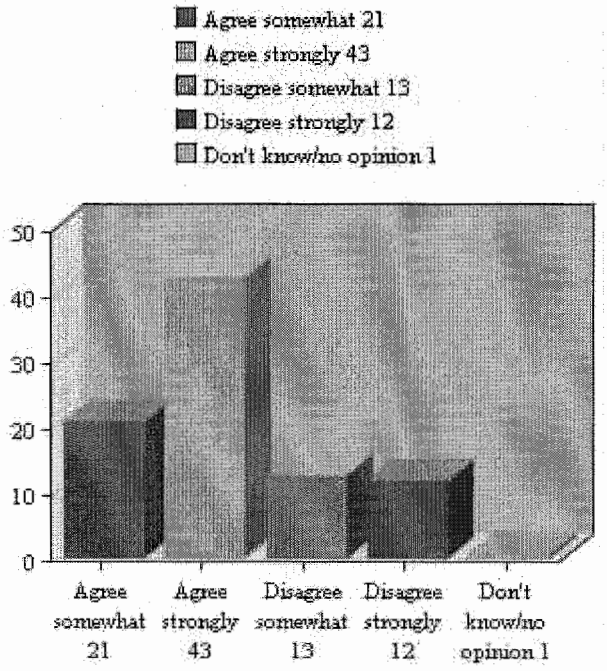
3. On point 1 -- if by saying the rule shouldn't apply, you mean that the debtor must still use an address provided by the creditor, even if not filed with the court, then I do strongly agree with that. (I think that's the same question then being asked in question (c). The notice provisions with the court are meant to be a convenience to the debtor, not a trap for creditors that have given the debtor fully adequate notice of where to communicate with it.

4. It is logical to contain costs until the foreign proceeding is recognized.

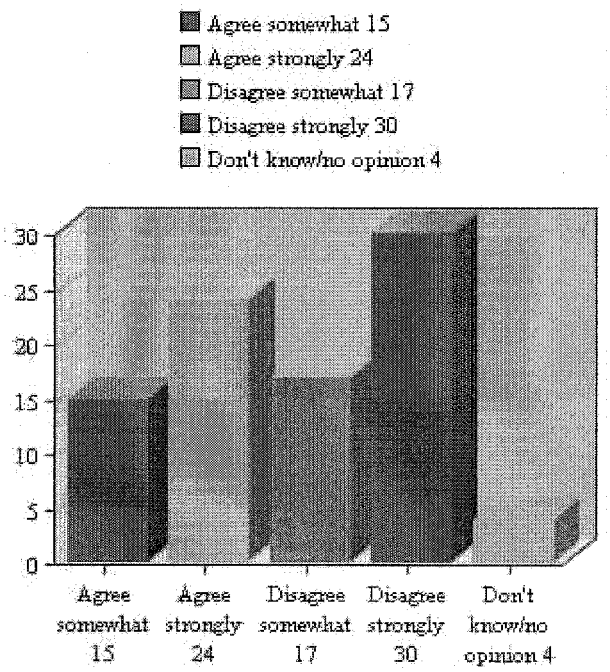
5. The notification of the filing should mirror the notification to creditors required in an involuntary case and should not be any greater burden or effect.

Rule 4003: Exemptions.

(a) Sixty (60) days is a reasonable amount of time for a creditor or a trustee to investigate and determine the validity of the debtor's claimed exemptions, including whether the debtor's claimed exemptions are based on the law of the appropriate jurisdiction.

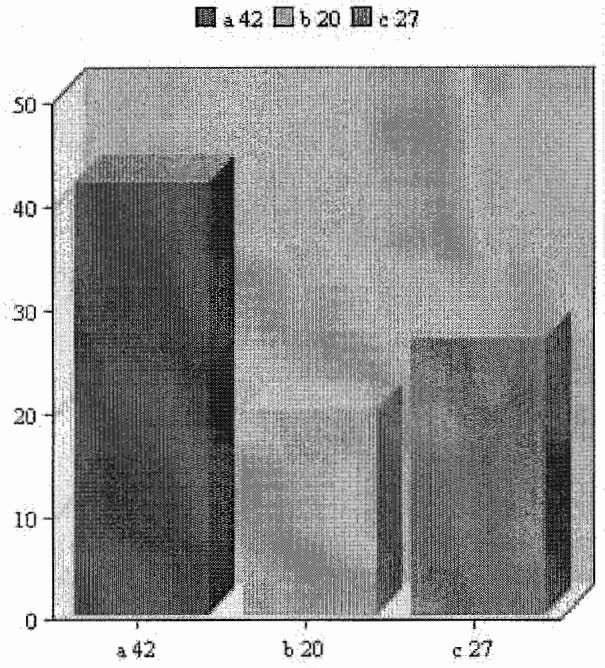


(b) Because § 522 does not set a deadline for objecting to exemptions, the deadline, if any, imposed on creditors should be set by the court.



(C) Choose which of the following with which you most agree:

(A) (1) year after the close of a case is a reasonable amount of time for a trustee to investigate and determine whether the debtor fraudulently claimed an exemption during the course of the case.
(B) Because there is no direct statutory authority under § 522 for the deadline established in the Rule, the deadline imposed on the trustee should be left to the discretion of the court.
(C) A trustee should have the ability to object to a fraudulently claimed exemption through the close of the case.



Comments:

1. Question (a) is not well worded -- I personally believe that 60 days in more than reasonable, and that the deadline should be 30 days, so that the debtor knows where he stands.

2. There should be limits on objections to exemptions for fraud similar to those on revocation of a discharge for fraud under section 727(d) of the Bankruptcy Code.

3. There should be added a time limit on the Trustee's ability to keep a case open. This is much abised so ALL of the deadlines that are based on the closing date are meaningless

4. A trustee should have the ability to object only until the case is closed. If Te seeks to object after case closure, Te should be required to obtain court approval.

5. Extending the time for objection to claim of exemptions in most cases will unduly extend the administration of the case. Allowing the estate's representative the only

extended time, when the exemption is fraudulently claimed, forces the creditors to work with the trustee, rather than forcing objections as a negotiating tactic.

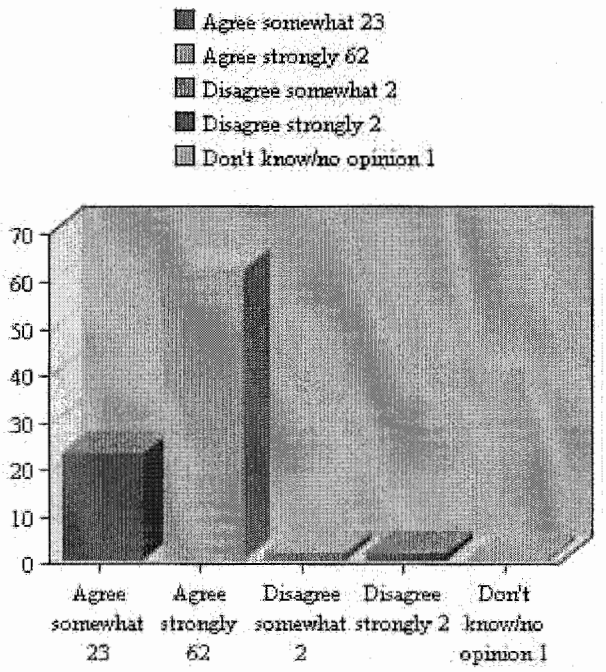
6. Perhaps the best result for this is to set a somewhat shorter deadline but to run it from the date on which the trustee knew or reasonably should have known of the fraud. By its very nature, fraud is meant to conceal itself and should not be protected by an arbitrary deadline for being found.

7. Above answers presume that trustee or creditor may seek an extension of time to object to exemption in appropriate cases.

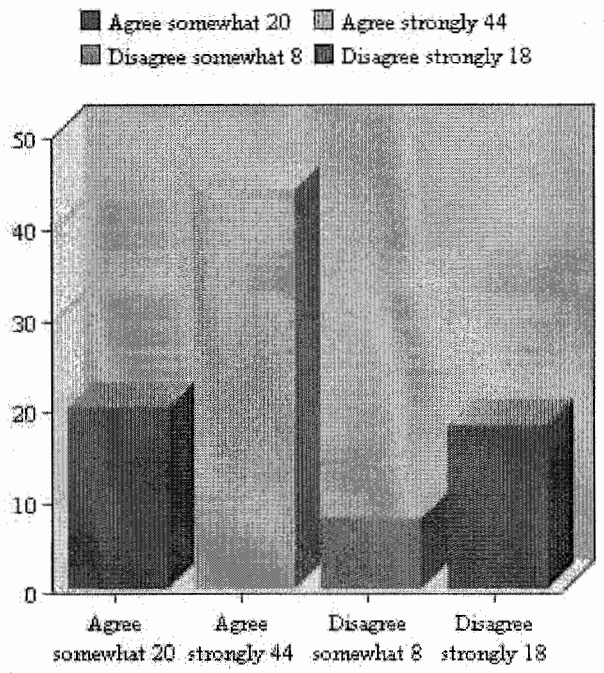
8. When the case is over, the ability to object should be over.

Rule 4007: Dischargeability Determination.

(a) Proposed Rule 4007 should specify the deadline for filing a complaint under § 1328(a)(4).



(b) If a case is converted after the time stated in Rule 4007 for filing a complaint under § 523(c) has lapsed, a new time period should apply in the converted case.



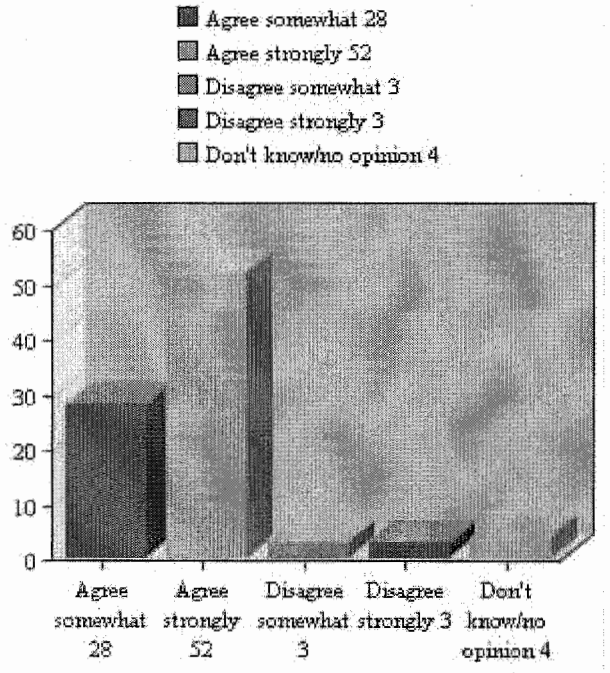
Comments:

1. Daters should be set based on the conversion date ONLY if there is a benefit to debtor to the detriment of creditors upon conversion. "Drop dead dates" should be set based on either filing date or conversion date based on first sentence herein.

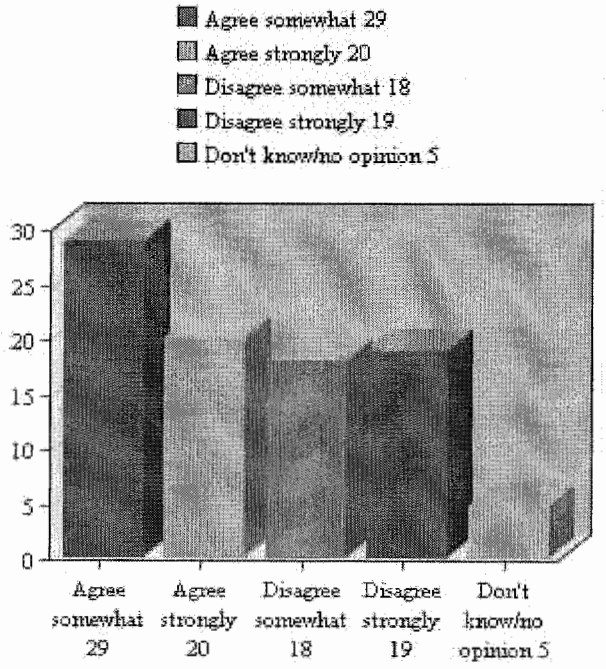
2. The deadline should be 60 days from the date of filing either C7 or C13 petition. This deadline should not be extended if there is a case conversion, but should stay from the date of filing of earliest case.

Rule 4008: Filing a Reaffirmation Agreement; Statement in Support.

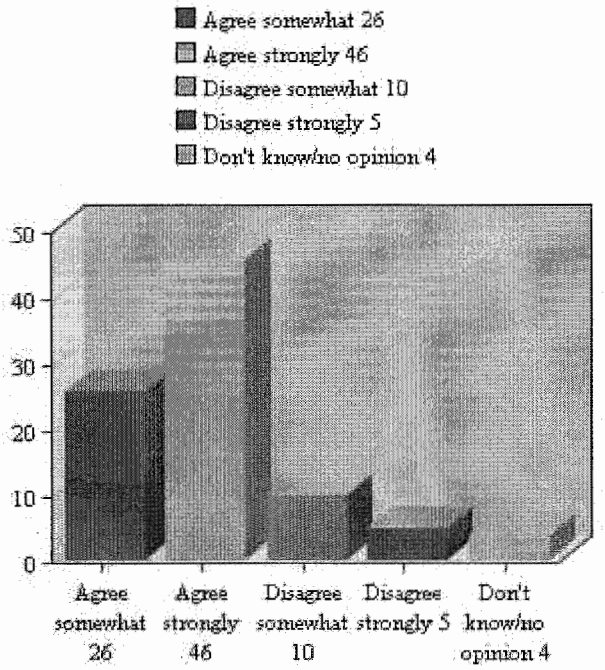
(a) An Official Form that sets forth a standard debtors' Statement in Support of a reaffirmation agreement should be created.



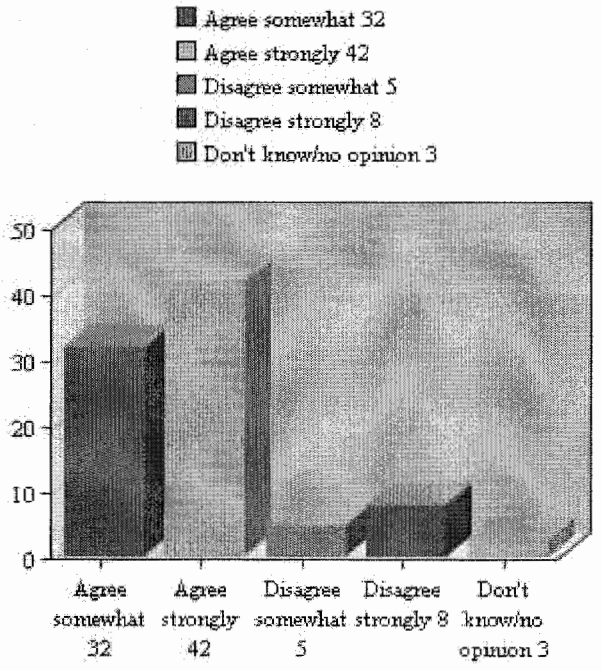
(b) Unless otherwise ordered by the court, the deadline for filing a reaffirmation agreement should be the same as the date for the filing of an objection to discharge.



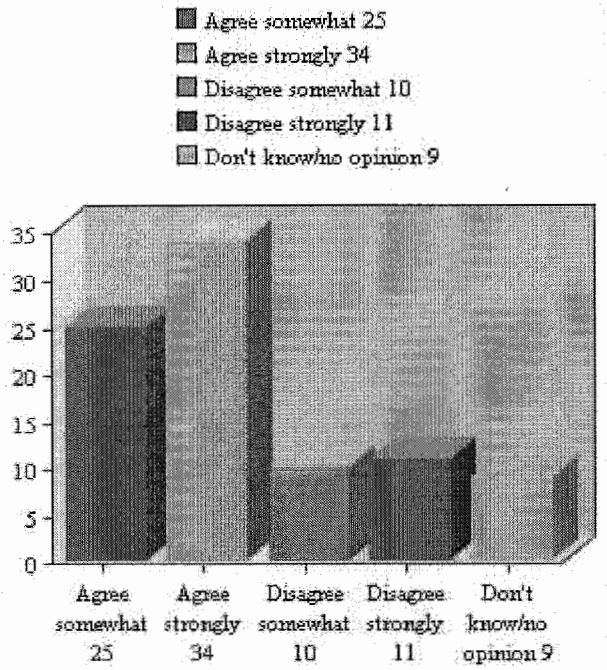
(c) The Statement in Support should explain the reason(s) for any differences between the financial information contained in the Statement in Support and that provided in Schedules I and J.



(d) The Rule should specify the parties entitled to notice of the filing of a reaffirmation agreement.



(e) The Rule should state that the 60-day requirement for filing a reaffirmation agreement does not extend the 30-day requirement for entering into reaffirmation agreements for personal property specified in § 362 (h)(1).



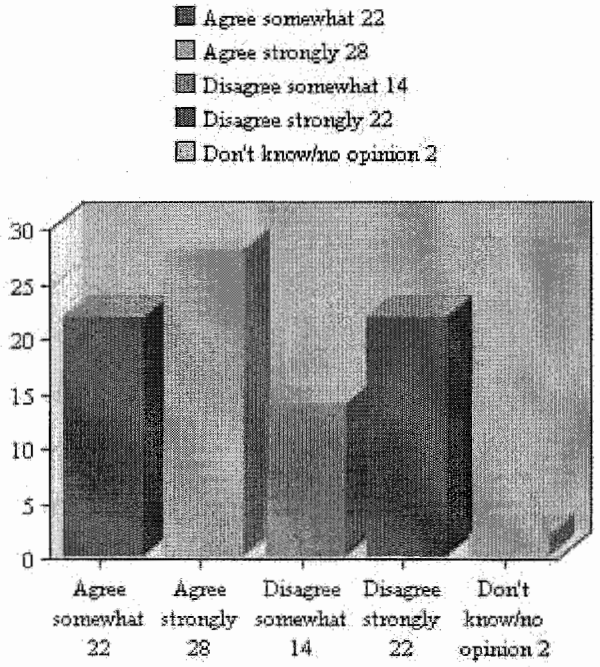
Comments :

1. Question (c): The form should provide an opportunity to explain the differences, but should not require an explanation unless the court so orders.
2. Whenever possible, more time is better than less on reaffirmation agreements. It is very difficult to get the process completed in 60 days as it is; 30 days simply is insufficient.
3. The Court should have discretion as to whether a "hardship hearing" is required. Also debtor's counsel should NOT be responsible for any more than attesting that counsel has explained and discussed all options with debtor. Now, attorneys won't sign reaffs
4. Reaffirmations are now so cumbersome that any effort to simplify the process would help!
5. The decision of the debtor to reaffirm an obligation should not be unduly constrained, or complicated.
6. Debtors should be able to unilaterally reaffirm a debt that is not in default on the petition date by filing a reaffirmation statement with the petition.
7. No additional form should need to be filed with the court.
8. The reaffirmation process should be simplified, not more difficult.
9. Perhaps there should be no deadlines for entering or filing. The lenders have exhibited dilatory conduct in preparation of the reaffirmation agreements, exposing debtors to the lifting of the stay, through no fault of their own, and exposing debtor's counsel to possible malpractice actions if the agreements are

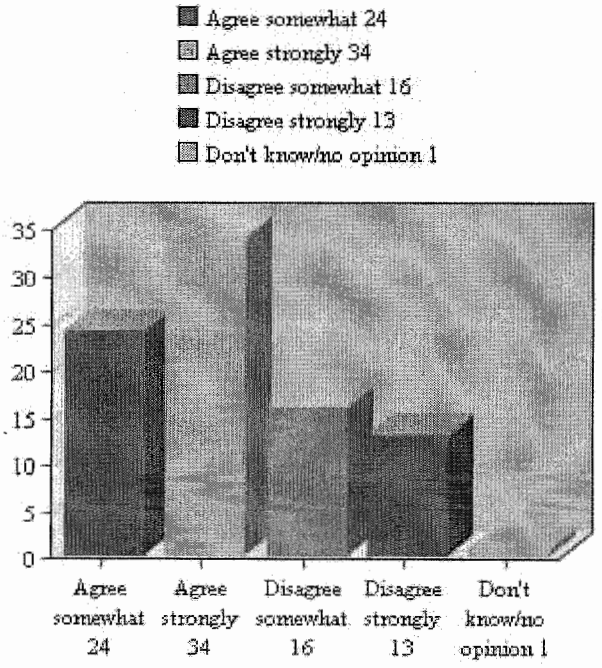
neither signed nor filed on time. Furthermore, this extra work is generally non-compensable to debtor's counsel. By eliminating deadlines, or providing that the stay is not lifted until 60 days after the creditor provides the reaffirmation agreement, the burden on debtor's counsel would be eliminated.

Rule 5008: Presumption of Abuse Notice.

(a) The clerk should notify creditors when the debtor has failed to file the statement required under §707(b).



(b) The clerk should be required to send a follow-up notice to the creditors in all chapter 7 cases of individual debtors in which it is later determined that the presumption did not arise or in which the presumption has been adequately rebutted.



Comments :

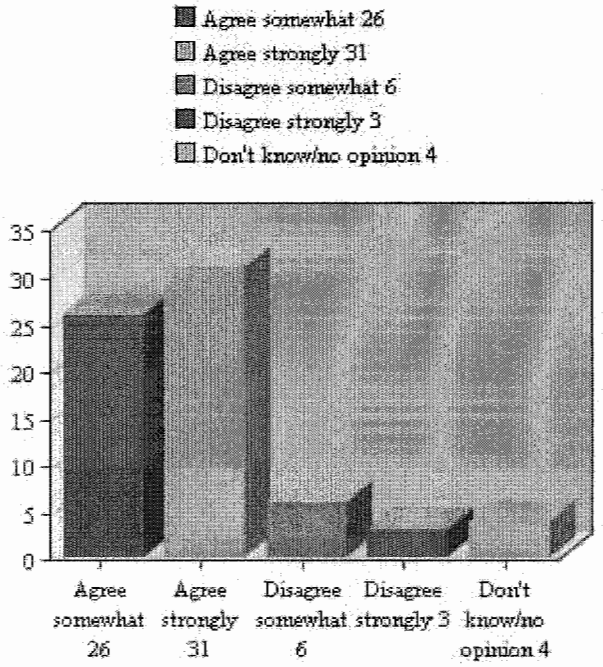
1. The entire concept of notice to creditors of PRESUMED abuse is akin to "guilty until proven innocent"

2. A creditor should only be given notice after the Trustee has completed their investigation and found a 707 presumption of abuse exists.

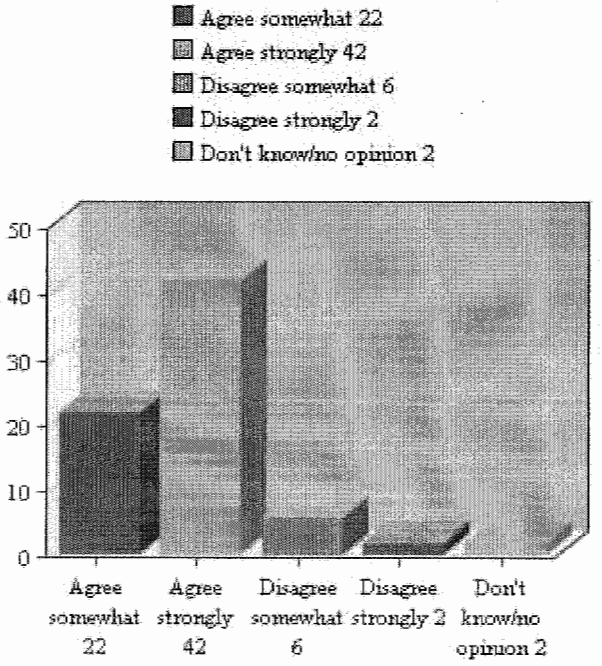
CHAPTER 11 RULES

Rule 1020: Small Business Election.

(a) Rule 1020 should set forth grounds for, deadlines and/or other standards for the debtor to amend its designation as a small business.

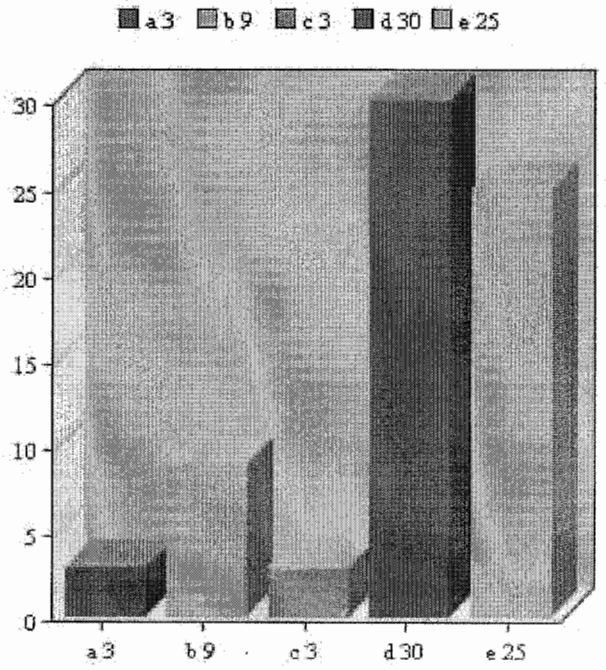


(b) Absent a redesignation by the debtor, the U.S. Trustee and parties in interest should be required to file any objections to the debtor's designation as to whether it is a small business within 30 days after the conclusion of the section 341 meeting.



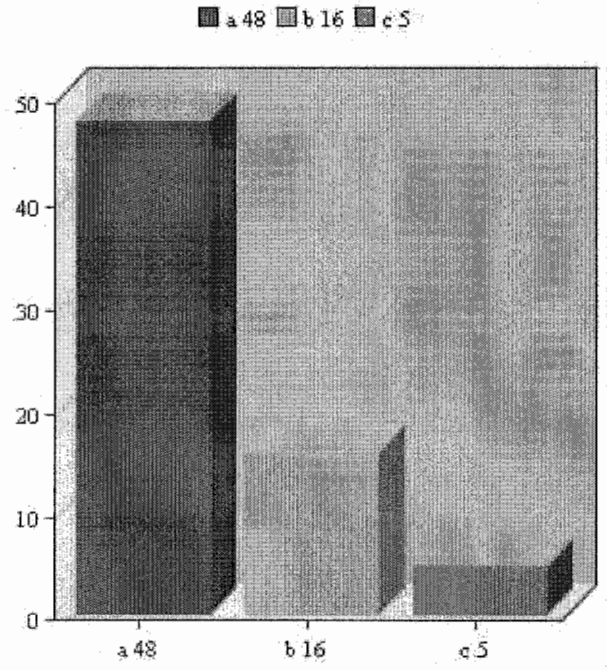
(c) Choose the statement as to which you most agree:

(A) the debtor should not be able to amend its designation as a small business.
(B) The debtor should be able to amend its designation as a small business at any time.
(C) The debtor should be allowed to amend its designation as a small business only within a specified time period.
(d) The debtor should be allowed to amend its designation as a small business as of right within a specified time period but thereafter only upon court order after notice and a hearing.
(e) The debtor should be allowed to amend its designation as a small business only upon court order after notice and a hearing.

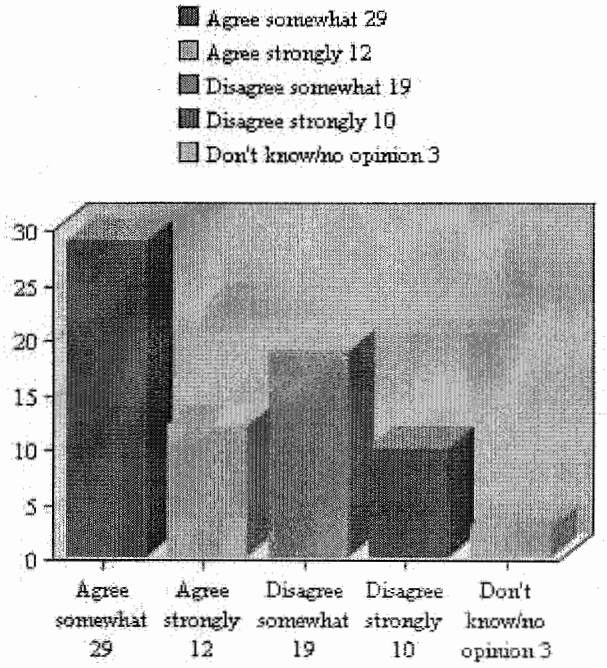


(d) Choose the statement as to which you most agree:

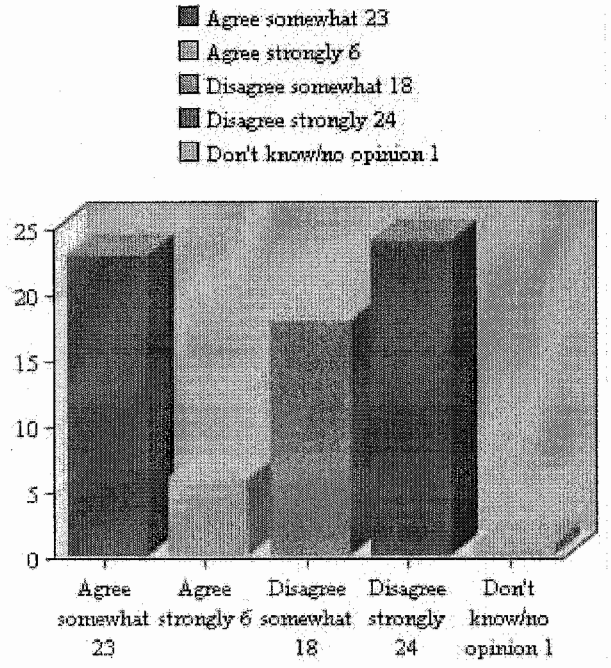
(A) the debtor should be required to serve its amendment of designation as a small business on the U.S. Trustee and all creditors.
(B) The debtor should be required to serve its amendment of designation as a small business only on larger creditors or those requesting notices.
(C) The debtor should not be required to serve its amendment of designation as a small business.



(e) The time for the U.S. Trustee and parties in interest to seek a determination whether a committee is sufficiently active and representative should be "within a reasonable time after the failure of the committee to be sufficiently active and representative."



(f) The phrase "within a reasonable time after the failure of the committee to be sufficiently active and representative" provides a workable standard for when a U.S. Trustee or party in interest may seek a determination as to whether the committee is sufficiently active and representative.



Comments :

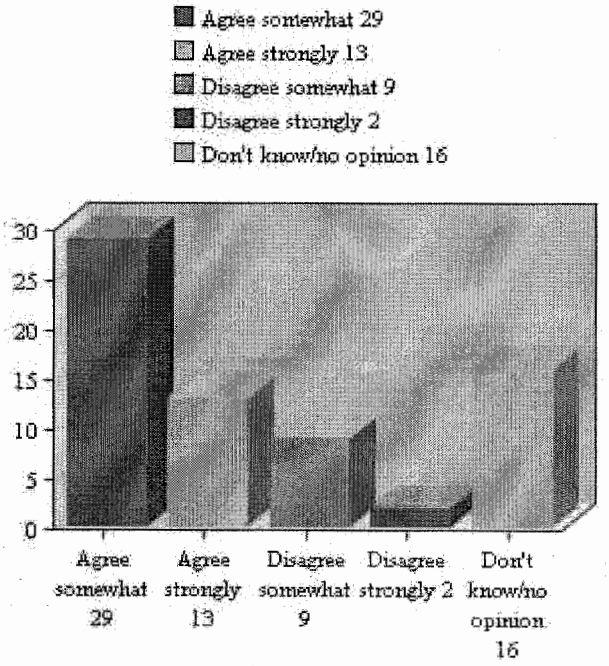
1. A party should be allowed to seek a determination at any time upon a showing of cause.

2. Debtors should be able to amend their small business designations because things can change in a case. Creditors can become active or inactive and the nature of a debtor's business can change. It is appropriate to limit the parties receiving notice of an amendment of the designation of a small business both because of the costs involved in noticing an entire matrix and because most creditors that have interest in the subject will either request notices or have counsel enter appearances. "A reasonable time" is too vague because it does not account for the unique vagaries of each case.

3. need more specific and creditors need time to determine small business designation

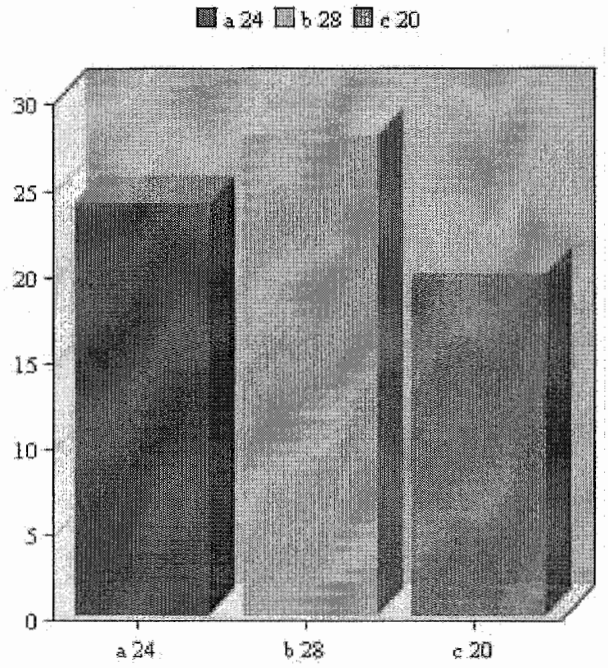
Rule 2015.3: Reports of Profitability/Controlling Interest.

Rule 2015.3 and Official Form 26 adequately address the Congressional directive contained in Section 419 of BAPCPA.



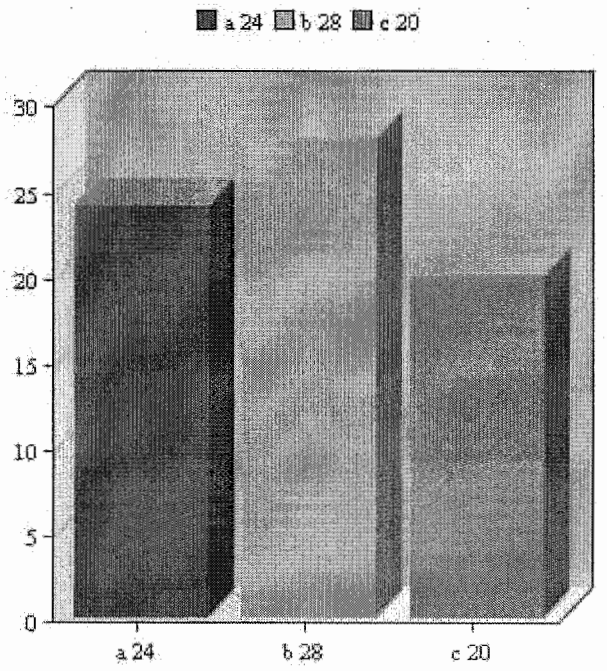
Choose the statement as to which you most agree:

(A) Reports under Rule 2015.3 should be submitted at the beginning of the case and then no less than once every three months.
(B) Reports under Rule 2015.3 should be submitted at the beginning of the case and then no less than once every six months.
(C) Reports under Rule 2015.3 should be submitted at the beginning of the case and then no less than once every twelve months.



Choose the statement as to which you most agree:

(A) The non-debtor entity and its equity holders should be allowed to seek a protective order against disclosure of any information under Rule 2015.3 that tends to harm the business of the non-debtor entity.
(B) The non-debtor entity and its equity holders should be allowed to seek a protective order against disclosure under Rule 2015.3 only of information with respect to a trade secret or confidential research, development or commercial information, or information that is scandalous or defamatory.
(C) The non-debtor entity and its equity holders should not have a right to seek a protective order with regard to information disclosed under Rule 2105.3.

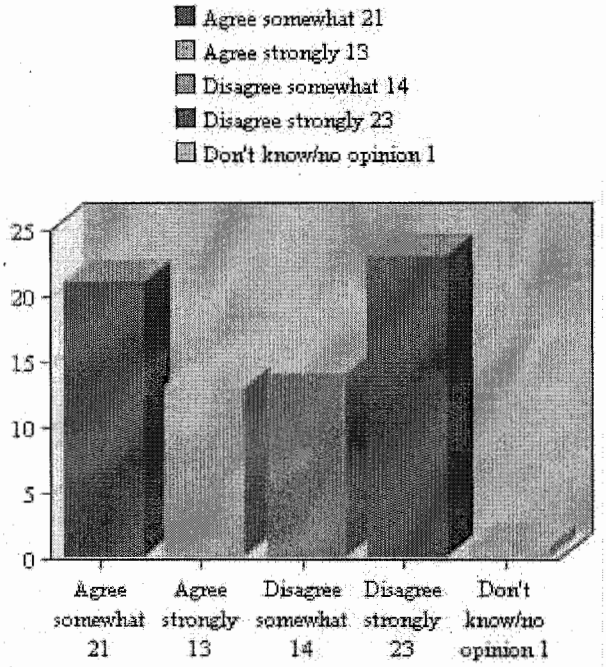


Comments :

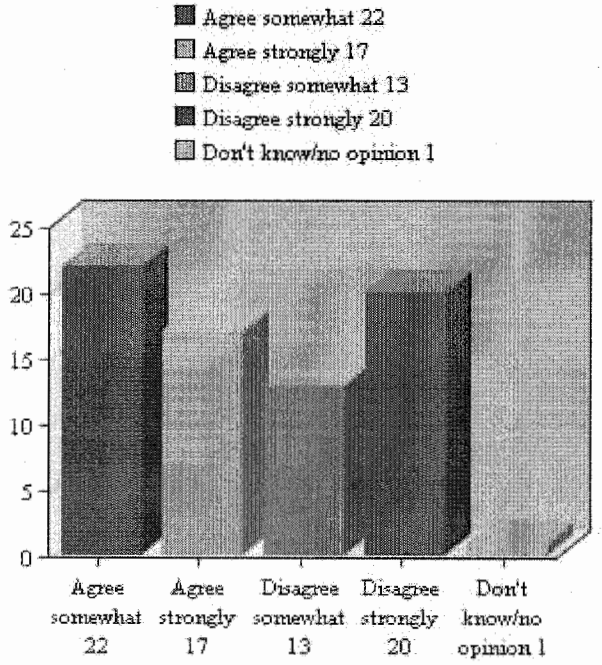
. The Committee needs to be conscious of the privacy concerns of the entities owned by debtors. I would recommend having the documents given to the United States Trustee but not having them be filed and publicly available. Moreover, it appears inappropriate to me to require the debtor, the debtor's representative, or the trustee to certify the accuracy of the reports. In many cases the debtor will not control the entity in question and/or may not be the person responsible for the preparation of financial reports. Requiring certification places a substantial burden on a person that lacks sufficient knowledge or, often, sufficient funds to become comfortable with the necessary information.

Rule 3016: Small Business Plan and Disclosure Statement.

a) It should be a requirement that disclosure statements for small business debtors substantially comply with the Official Form.



b) It should be a requirement that chapter 11 plans for small business debtors substantially comply with the Official Form.



Comments :

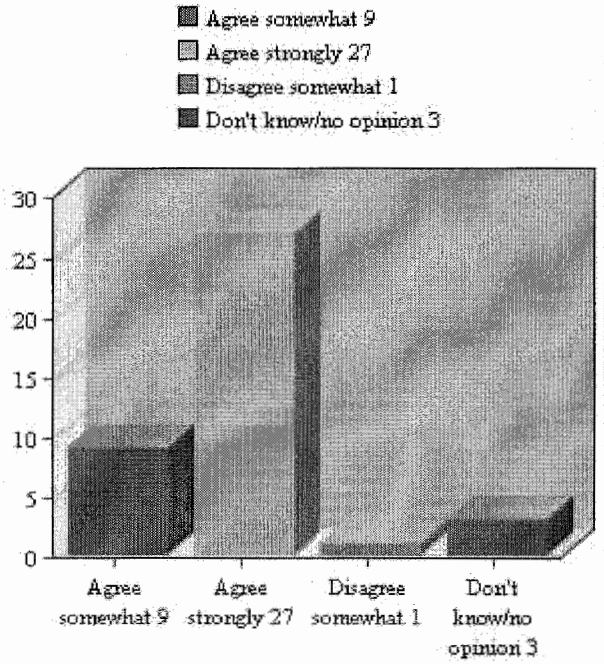
1. Disclosure statements should continue to adhere to the statutory requirement of providing sufficient information for a hypothetical reasonable investor (creditor) in the particular case to determine how to vote on the plan. "Sufficient information" should continue to vary according to the particular case. In other words, a "Chevrolet" case should have a Chevrolet disclosure statement, while a "Cadillac" case should have a Cadillac disclosure statement.

2. need more specific and creditors need time to determine small business designation

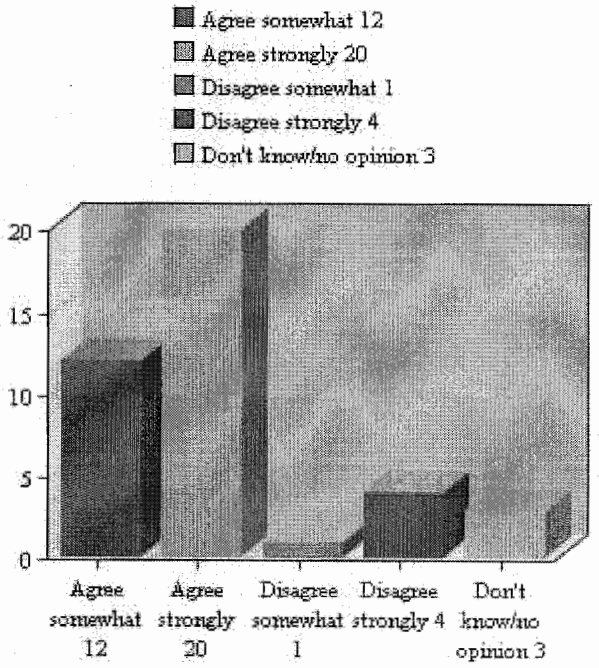
HEALTH CARE RULES

Rule 1021: Health Care Business Case.

(a) The Rule should contain deadlines for a party to file a motion to have the debtor designated as a "health care business."

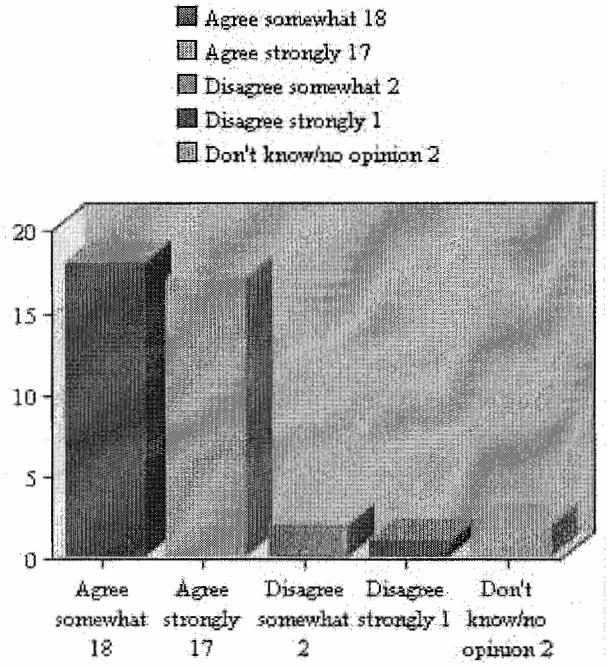


(b) The Rule should contain deadlines for the bankruptcy court to rule on a motion to have the debtor designated as a "health care business."



Rule 2015.1: Patient Care Ombudsman.

The Rule should contain guidelines for the content of the ombudsman's report.



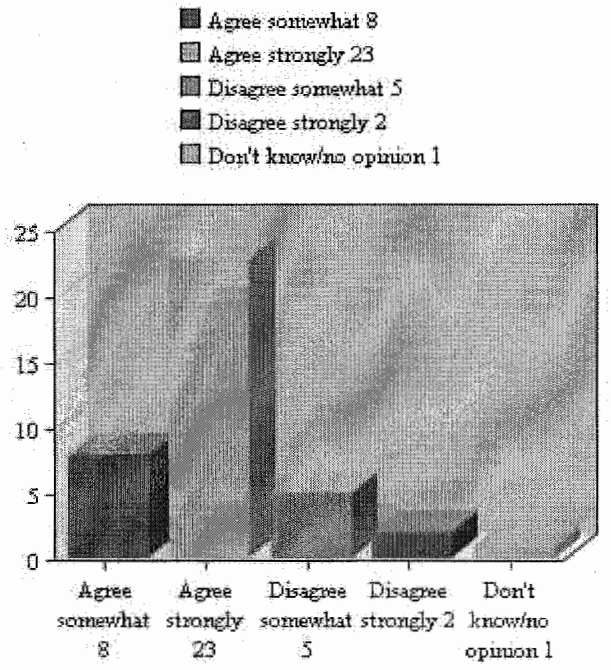
Comments :

. The Rule should at least address criteria to be included in the report.

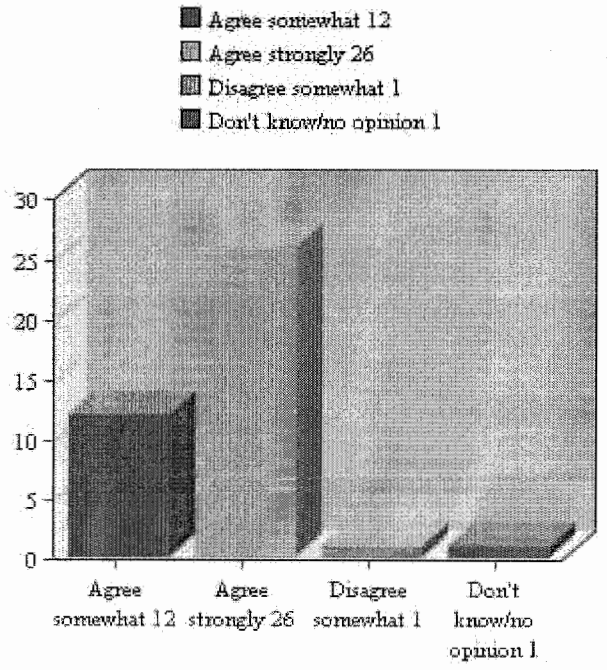
. The rule would provide guidance of what an ombudsman should do. The applicability of an ombudsman should be clarified in small cases, sole proprietor cases. I think congress drafted the rule with a concern about facilities. The ombudsman may be too expensive and little value in smaller cases.

Rule 6011: Disposal of Patient Records in Health Care Business Case.

(a) The rule should require the debtor to notify all applicable state attorneys general of the intent to destroy patient medical records.



(b) Proposed Rule 6011 should set forth a mechanism by which parties may object to the destruction of records.



Comments:

1. Question (a): The notification requirement should include a trustee, if any, in addition to the Debtor.

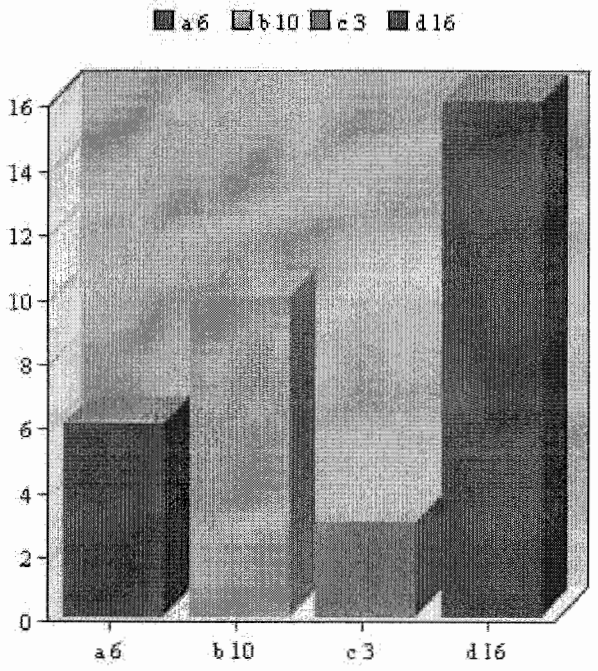
2. There should be a time limit for objections to the destruction of medical records, as well as an indemnification of the debtor in possession or the trustee for that destruction.

CROSS-BORDER CASES RULES

Rule 5012: Communications and Cooperation with Foreign Representatives.

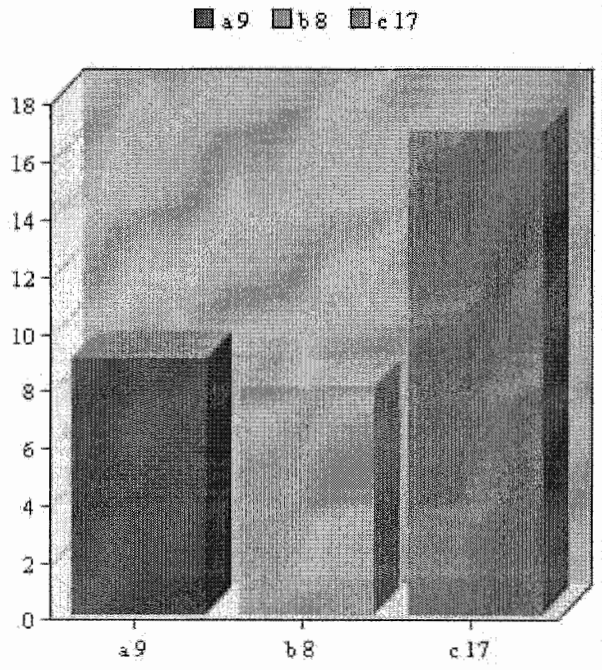
Choose the statement with which you most agree:

(A) A bankruptcy court should always give affected parties at least 10 days notice of its intent to communicate with a foreign court or representative.
(B) A bankruptcy court should always give affected parties at least 20 days notice of its intent to communicate with a foreign court or representative.
(C) A bankruptcy court should always give affected parties at least 30 days notice of its intent to communicate with a foreign court or representative.
(D) A bankruptcy court should have discretion to determine the amount of notice that is reasonable of its intent to communicate with a foreign court or representative, as the situation dictates.

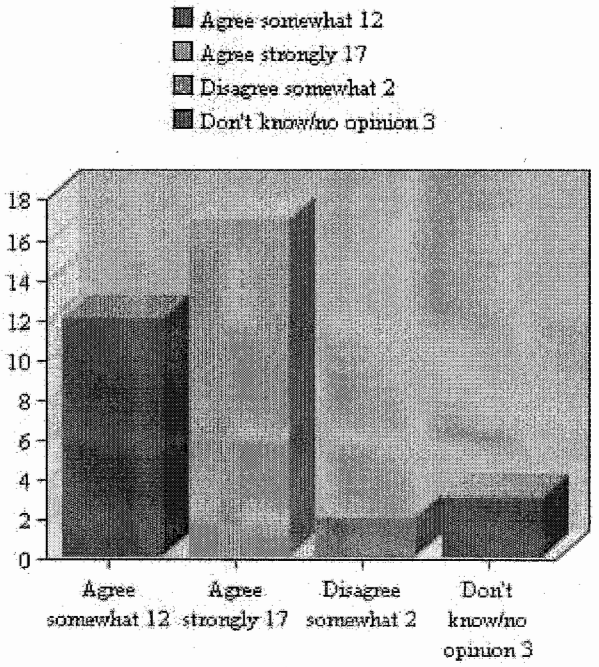


Choose the statement with which you most agree:

(A) Rule 5012 should set forth with particularity the manner in which parties in interest are entitled to participate in communications between the bankruptcy court and a foreign court or representative.
(B) Rule 5012 should set forth by way of example the manner in which a bankruptcy court may participate with a foreign court or representative.
(C) A list of ways in which parties in interest may participate is unnecessary. The bankruptcy court should have discretion to determine the appropriate means of participation by parties in interest in communications between the bankruptcy court and a foreign court or representative, consistent with the nature and purpose of the communication.



(c) In the notice of intent to communicate with a foreign court or representative, the bankruptcy court should specify the appropriate manner of participation by parties in interest.



Comments:

1. As to the first two questions, these should always be subject to the right of the court to modify the time and manner of communications on motion by the affected party.

2. The rules on methods of communication should remain somewhat flexible in light of the rapid advance of technology and the ease of electronic communication in today's world.