
From: Michael Gieseke <MGieseke@carlsonch13mn.com>
Sent: Tuesday, January 31, 2023 6:41 PM
To: RulesCommittee Secretary
Subject: Suggested edit for Federal Rule of Bankruptcy Procedure 2002(a)(1)

Greetings Mr. Byron,

I'm emailing you to suggest a change to Federal Rule of Bankruptcy Procedure, which would limit the disclosure of full social security numbers to creditors in the notices sent by bankruptcy clerks at the outset of cases.

As an employee of a chapter 12 and 13 bankruptcy trustee, we are held to high standards of care as it relates to the release of personally identifiable information. For instance, a trustee must not ask the debtor to verbally recite on the meeting of creditors record a debtor's social security number. See U.S. Trustee Handbook for Chapter 13 Standing Trustees, ch. 3 at 3-10 (October 1, 2012). In addition, the trustee must not include a debtor's full social security number on notices sent to domestic support claim holders. If the trustee mistakenly divulges such information, the trustee is required to report the loss of personally identifiable information to the U.S. Trustee. See *id.* at 4-27. Among a host of additional requirements, the trustee must also notify the affected individuals if the loss involves full social security numbers. See *id.* at 4-28.

Arguably, the Code does not require the disclosure of the full social security number in the notice of an order for relief provided by the bankruptcy clerk. 11 U.S.C Section 342(a) states that "There shall be given such notice as is appropriate, including notice to any holder of a community claim, of an order for relief in a case under this title." To my knowledge, the Code only requires disclosure of a debtor's full security number in one limited circumstance – when adding a creditor to the schedules through an amendment (as social security numbers are a type of taxpayer identification number - <https://www.irs.gov/individuals/international-taxpayers/taxpayer-identification-numbers-tin#:~:text=An%20ITIN%2C%20or%20Individual%20Taxpayer,NNN%2DNN%2DNNNN>). 11 U.S.C. Section 342(c)(1) states that:

If notice is required to be given by the debtor to a creditor under this title, any rule, any applicable law, or any order of the court, such notice shall contain the name, address, and last 4 digits of the taxpayer identification number of the debtor. If the notice concerns an amendment that adds a creditor to the schedules of assets and liabilities, the debtor shall include the full taxpayer identification number in the notice sent to that creditor, but the debtor shall include only the last 4 digits of the taxpayer identification number in the copy of the notice filed with the court.

Both the Federal Rules of Civil Procedure (Rule 5.2) and Federal Rules of Bankruptcy Procedure (Rule 9037) specify the great care that must be taken to avoid the inclusion of personally identifiable information, including full social security numbers, in filings. Yet, the default requirement under FRBP 2002(a)(1) is the disclosure of a debtor's full social security number to each creditor listed by the debtors in their schedules:

Except as provided in subdivisions (h), (i), (l), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of: (1) the meeting of creditors under §341 or §1104(b) of the Code, which notice, unless the court orders otherwise, shall include

the debtor's employer identification number, social security number, and any other federal taxpayer identification number;

In practice, a debtor's list of creditors often includes individuals or entities that had no prior knowledge of the debtor's full social security number, including family members and creditors with personal disputes. While debtors do give up some degree of privacy to their private affairs when electing to file a bankruptcy case, the disclosure of full social security numbers to every creditor does not comport with modern day practices of protecting such information that is embodied in FRCP 5.2 and FRBP 9037. Accordingly, I would suggest a change to Fed. R. Bankr. P. 2002(a)(1) along the following lines:

Except as provided in subdivisions (h), (i), (l), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of: (1) the meeting of creditors under §341 or §1104(b) of the Code, which notice, unless the court orders otherwise, shall include the debtor's employer identification number, **the last four digits of the social security number, and the last four digits of any other federal taxpayer identification number, except that the notice given to the trustee must include the full social security number and any other federal taxpayer identification number;**

This change may ultimately lead to some inconvenience for creditors with a national presence. However, linking a debtor's bankruptcy filing to the debtor's account with such creditors should not be impossible, nor problematic, when the debtor's address and last four digits of the his/her social security number/taxpayer identification number are included with the initial notice provided by bankruptcy clerks. The social security number also has no bearing on a creditor receiving adequate notice of the bankruptcy filing or any filing within the case.

The full social security number must still be provided to the trustee, however, as the trustee verifies that the debtor's social security card/documentation matches the number filed with the bankruptcy court. See FRBP 4002(b)(1)(B) ("every individual debtor shall bring to the meeting of creditors under §341 evidence of social-security number(s), or a written statement that such documentation does not exist."). This information is used to review prior filings by debtors to determine eligibility for bankruptcy under Section 108(g) and to determine eligibility for discharge. See, e.g. 11 U.S.C Section 1328(f).

Thank you for considering the change and please let me know if you would like to discuss.

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