

Summary of Testimony of David Shaev on Behalf of
the National Association of Consumer Bankruptcy Attorneys
Regarding Proposed Bankruptcy Rule Amendments

The National Association of Consumer Bankruptcy Attorneys (NACBA) strongly supports the proposed amendment to Rules 3001 and proposed Rule 3002.1 as necessary to end the systematic abuse of the bankruptcy courts by large institutional creditors who seem to believe that they are not bound by the rules that apply to all other parties filing papers in the courts. Indeed, NACBA believes that the proposals should be strengthened to deal with particular prevalent abuses. NACBA also supports the proposed amendment to Rule 2003.

The proposed amendment to Rule 3001 is necessary to protect the integrity of the bankruptcy court system and prevent it from becoming a part of a debt collection apparatus that values cost-cutting more than accuracy and that has repeatedly abused debtors' rights. There is no reason to permit disregard of longstanding principles of proof and documentation simply to accommodate a business model designed to make greater profits for debt collectors and creditors. The amendment will also help to combat rampant abuses by mortgage servicers who fail to adequately disclose and itemize charges, often unjustified, that have been added to the principal and interest due on debtors' mortgages, as well as the filing or proofs of claim by purported mortgage holders who cannot document their interests.

In light of persistent past abuses, the proposed amendment should be strengthened to require that the entity filing the proof of claim provide proof that it is the owner of the claim and disclose whether the statute of limitations has run. It should also require all attachment of all contracts on which the claim is based. In addition, with respect to unsecured claims, a proof of claim that does not substantially comply with the rule should be disallowed. While Code section 502(a) provides that a claim, proof of which is filed, must be allowed absent an objection, it is well within the purview of the Supreme Court's rulemaking power to define what constitutes a proof of claim.

Proposed Rule 3002.1 is absolutely necessary to prevent chapter 13 mortgage cures from becoming totally ineffectual due to abusive mortgage servicing practices. Numerous courts have had to try to untangle and vitiate the confusion that currently results from the addition of undisclosed charges during chapter 13 cases. Because the mortgage servicing industry has never bothered to computerize the accounting for chapter 13 mortgage cures, erroneous charges are added in almost every case and very frequently result in debtors receiving foreclosure notices stating they owe thousands of dollars immediately after complying with all the terms of chapter 13 plans designed to cure all mortgage defaults. The new rule establishes a simple and sensible procedure that will restore chapter 13's effectiveness in saving homes through mortgage cures.

NACBA also supports the proposed amendment to Rule 2003, which will prevent chapter 7 trustees from holding creditors' meetings open indefinitely to avoid the deadline for filing objections to exemptions. It will also avoid some of the problems that have resulted under both section 1308 and Rule 4003 when it is not clear whether the creditors meeting has been concluded.