

**SABINO & SABINO, P.C.**

ATTORNEYS AT LAW

92 Willis Avenue, 2nd Floor

Mineola, New York 11501

516-294-3199

Fax: 516-747-9405

E-mail: legal-lion@earthlink.net

www.sabinolaw.com

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ANTHONY MICHAEL SABINO  
MARY JANE C. SABINO

ADMITTED IN NEW YORK  
PENNSYLVANIA  
AND THE UNITED STATES  
SUPREME COURT

6 January 2006

Hon. Peter G. McCabe, Secretary  
Committee on Rules of Practice and Procedure  
of the Judicial Conference of the United States  
Thurgood Marshall Federal Judiciary Building  
Washington, D.C. 20544

Re: Preliminary Draft of Proposed Amendment to Federal Rules (August, 2005)

Dear Mr. McCabe:

I write to provide comments and suggestions regarding the above. By way of information, in addition to my many years of practice before the federal courts, I am a professor of law, the author of numerous law review articles on various topics of federal law, and have been honored by several federal judges citing same in their legal opinions. That having been said, permit me to turn to my brief, specific comments, which are limited to certain of the proposed changes to the Federal Rules of Bankruptcy Procedure.

Rule 3001(c) and (d)---Proof of Claim

I must respectfully disagree with the proposed amendment of this Rule, albeit in part. The proposal of an absolute restriction on supporting document to a Proof of Claim, not to exceed 25 pages (5 pages for the perfection of a security interest) is, in my opinion, unnecessary, unduly restrictive, and has more potential for harm than good.

The proposed Committee Note states the proposal is rooted in the difficulties inherent in the electronic filing of documents. That much is certain; notwithstanding the benefits of the modern age of electronic court filings, lengthy or complex documents pose new problems with readability, transmission errors, loss of data, and so on. The Committee is correct in seeking to alleviate such problems, but its approach is wrong.

First, the problem is overstated. To be sure, I have no quantitative evidence, but I must respectfully express my sincere doubt that the Committee does either. My experience informs me that the overwhelming majority of claims consist of merely the standard B-10 Proof of Claim itself and, at most, two or three pages of supporting documentation. Given the rarity of a Proof of Claim and supporting documents totaling more than 25 pages, a specific page limit in the Rule is simply unnecessary.

The proposed Rule can do more harm than good. If supporting documentation is only 26 pages, what is the sense in compelling creditors to craft yet another document? What if a summary is simply inadequate to the task? What if the summary engenders more confusion and controversy than if the full documentation was attached? This makes the 25 page limit problematic at best, and advances the argument for a Rule without such an arbitrary limit. To be clear, all the above applies to the proposed 5 page limit to documenting the perfection of a security interest.

Here is a counterproposal; revise Rule 3001 to state a claimant *may* file a summary of its supporting documentation in lieu of complete copies. A permissive approach is vastly superior to an inflexible rule. This leaves the decision in the hands of the party most familiar with the claim---the creditor itself.

#### Rule 3007(c), (d), (e), and (f)---Objections to Claims

Overall, the Rule 3007 amendment is an excellent step. It codifies what has become a prevailing practice, particularly in large cases, to smoothly and efficiently deal with claims with a nearly identical basis for objection, i.e., duplicate or late claims. In plain terms, this is already being done in courts; why not recognize and regularize the practice with an actual Rule? Moreover, the proposal discreetly limits when such omnibus objections may be used, by clarifying when an omnibus objection is permitted. This prevents abuse by confining omnibus objections to specific circumstances.

One suggestion---the Committee might wish to add a subsection (g), roughly along the lines that:

(g) The court, on the timely motion of a party in interest or on its own motion, and after a hearing on notice, may further limit or condition the making of an omnibus objection pursuant to this Rule, when the interests of justice so require.

My purpose is based upon some concern that a court should be specifically authorized to modify the application of the Rule if the interests of justice so require. Such an additional proviso gives the court that right and that flexibility.

#### Other Proposals to Amend the Bankruptcy Rules

I wish to note my support for other proposals to amend the Bankruptcy Rules, and briefly state as follows.

The proposed changes for Rule 4004 are an excellent idea. Motions to use cash collateral, obtain credit, *et cetera*, are typically controversial and come at a time when the case is very new and more confusion than clarity abounds. Compelling parties to provide a cogent summary of terms, a proposed order, a complete copy of the underlying agreement, and specifying service to the most crucial committees and parties will lift the fog of a case's first days.

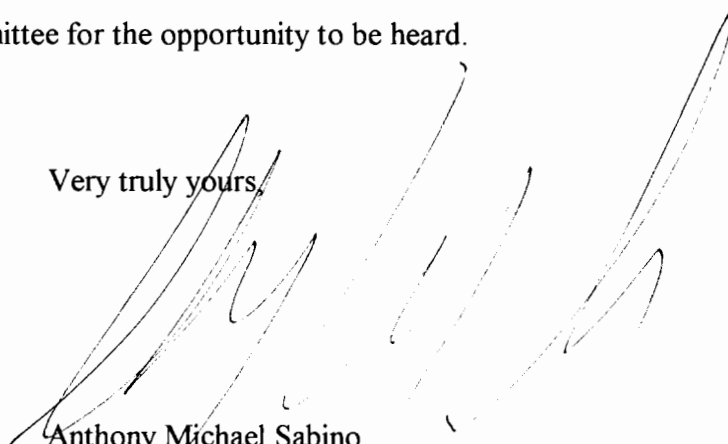
I support the proposed changes to Rule 6006, largely for the same positive attributes that I discussed above regarding the proposed changes to Rule 3007. The key benefits to be derived from this amendment are: a) greater efficiency; b) conspicuous disclosure in the motion; c) greater ease and assurance of affected parties to find if in fact they are an affected party; d) greater ease in ascertaining the terms of the proposed action, i.e., curing default amounts; and e) a 100 contract/lease limit (here, this limit makes sense).

As I did with Rule 3007, I would only add that I would like to see that addition of a final proviso assuring judicial flexibility and control in the interests of justice.

The amendment to Rule 1014 is as welcome as it is overdue. It is beyond peradventure that courts have the ability to dismiss or transfer cases on their own motion. The proposal simply codifies what is already a maxim.

I thank you and the Committee for the opportunity to be heard.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Anthony Michael Sabino', written over a light blue grid background.

Anthony Michael Sabino  
Professor of Law  
Peter J. Tobin College of Business  
St. John's University, New York and  
Partner, Sabino & Sabino, P.C.

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