

UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO
U.S. CUSTOM HOUSE
721 NINETEENTH STREET, FIFTH FLOOR
DENVER, COLORADO 80202-2508

MICHAEL E. ROMERO
BANKRUPTCY JUDGE

January 28, 2010

Mr. Peter G. McCabe
Assistant Director, Office of Judges Programs
Secretary of the Committee on Rules of Practice and Procedure
Administrative Office of the U.S. Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, DC 20544

09-BK-023

Re: Advisory Committee on Bankruptcy Rules Request

Dear Mr. McCabe and Members of the Committee:

The Bankruptcy Judges Advisory Group (BJAG) would like to express support for proposed FED. R. BANKR. P. 3002.1 as written. Recognizing several courts around the nation presently allow for the filing of notices of payment changes on their dockets, BJAG nonetheless concurs with the proposed rule to require the notice to be filed as a supplement to the holder's proof of claim. There is a serious concern to allow the filing of such documents on court dockets may cause confusion, unnecessarily increase the number of docket entries in most consumer cases, and lastly, encourage assertion of the argument that the appearance of such a notice on the docket serves as a substitute to required notices in the underlying documents between the debtor and the lender. BJAG's conclusion is supported by the general belief that the majority of these notices will be filed by non-lawyers. In light of our experiences with the numerous amended proofs of claims filed in cases to correct administrative mistakes by a creditor, the courts could expect numerous amended notices of payment changes will also be filed in many, if not most, cases.

Additionally, such a procedure may border on the practice of law by non-lawyers and could lead to misuse and error by an industry which is in disarray. Because corporations must be represented by counsel, many jurisdictions give corporations limited access to electronic filing only to file proofs of claim and reaffirmation agreements. Further expansion of this limited access may well lead to other creditor organizations requesting and possibly obtaining from Congress the same privilege.

Finally, creditors complain about the difficulty of meeting the differing requirements of numerous jurisdictions and use it as an excuse for failing to provide current and accurate information. While it may appear a reasonable compromise to remove the direction to file such notices in the claims register and allow courts to implement their own procedures, differing jurisdictional requirements will undermine the procedural facilitation of creditor disclosure of current and accurate information.

Mr. Peter G. McCabe
January 28, 2010
Page Two

BJAG remains unconvinced of the need to allow the filing of these notices on the docket, particularly as the majority of them will be filed by non-lawyers. The notice of payment change is directly related to the claim the creditor has already filed on the claims docket, and there is logic to the notice being filed there as well. Although there may be some technical obstacles to implementation, the need for uniformity warrants overcoming such obstacles. Proposed FED. R. BANKR. P. 3001.2 provides a uniform mechanism to meet the informational needs of debtors and trustees without creating any further access by non-lawyers to the case docket. BJAG therefore supports FED. R. BANKR. P. 3001.2 as proposed.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Michael E. Romero", with a long, sweeping underline that extends to the right and then curves back down.

Michael E. Romero (CO), Chair
Bankruptcy Judges Advisory Group