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Mr. Peter G. McCabe
Secretary of the Committee on Rules of Practice and Procedure
Administrative Office of the U.S. Courts
Washington, D.C. 20544

RE: Advisory Committee on Bankruptcy Rules Request

Dear Mr. McGabe and Members of the Committee:

I write to express my support for proposed FED. R. BANKR. P. 3001(c) and 3002.1.

I am a law professor who studies consumer bankruptcy. I am currently Visiting Associate Professor at Berkeley Law; my permanent appointment is Associate Professor of Law at the University of Iowa College of Law. I have authored more than a dozen articles on consumer bankruptcy in the last five years and have been an invited speaker at presentations to the Annual Meeting of the National Conference of Bankruptcy Judges, the Federal Judicial Center's Workshops for Bankruptcy Judges, and Conference on Empirical Legal Studies. I have also testified before Congress about mortgage claims and credit card regulation.

I am the author of *Misbehavior and Mistake in Bankruptcy Mortgage Claims*, 87 TEX. L. REV. 121 (2008). In that article, I report the results of my analysis of more than 1700 proofs of claims filed by mortgage creditors.[1] My major findings were:

- More than half (52.8%) of claims were not supported by the documentation required by current Rule 3001(c) or Rule 3001(d), or an itemization per Form 10's instructions.
- Debtors and creditors disagreed on the amount of mortgage debt for 95.6% of loans, reflected by discrepancies between debtors' schedules and creditors' proofs of claim.
- Itemizations were missing from 16.1% of the claim. Many of the attached "itemizations" did not contain any breakdown of principal, interest, fees, and other charges, and frequently put large sums in categories such as "other."

[1] All data come from the Mortgage Study, an empirical project that I conducted with co-investigator Tara Twomey.

Based on those findings, I concluded that the proof of claim process was not serving its purpose to assure the validity of claims and to determine the amounts that should be paid. In my article, I urged revision of the Federal Rules of Bankruptcy Procedure to clarify the requirements, and today I strongly support the enactment of the proposed rules as written.

I urge the Committee to reject any unsupported assertions that there is no "problem" with unsecured claims, and in particular with the claims of debt buyers. As I argue in my Article, given the amount at issue in mortgage claims and the relative detail of records kept by mortgage servicers, I believe the reasonable inference is that mortgage claims are *more* likely to be supported by documentation and itemizations and *more* likely to be in accord with debtors' records than unsecured claims. Mortgage servicers are nearly always in contact with the debtor in the few weeks preceding a bankruptcy filing. In contrast, unsecured claimants may be attempting to collect debts incurred years prior to the bankruptcy and the claim may be filed by an entity unknown to the debtor or with whom the debtor has never had contact. The need for the additional information provided for in the proposed Rule 3001(c) is acute for both unsecured and secured claims.

I also urge the Committee to reject arguments that the lack of objections to claims is any meaningful evidence of the accuracy of the claims being filed and paid under the current rule. As I note above, there were objections filed to only 4% of the mortgage claims that I examined, even though there were discrepancies in the amount of the debt in nearly all cases. The infrequency of objections under the current system may, in fact, be evidence of the problems with the current claims process. In many jurisdictions, a debtor must provide a specific basis for an objection to a claim. Yet, without some minimal documentation to identify the claimant and to understand the asserted basis of what is owed, the debtor is deprived by the creditor of the necessary knowledge to determine whether an objection is warranted. In effect, the creditor's noncompliance hamstrings trustees and debtors from reviewing claims and filing objections.

Debtors cannot determine if they truly question or do not owe claims without the additional information the proposed Rule would require. The balance struck in the claims process is thrown awry when creditors fail to comply with their burdens to describe the nature of the debt and to detail the amount owed. Their failure to provide information effectively deflects their obligations as parties seeking the aid of the bankruptcy court in being paid onto cash-strapped bankrupt families, who must choose between the costs of filing an objection or the risks of overpayment or wrongful payment. The rules for claims are not mere technicalities that serve no purpose. To the contrary, such rules go to the heart of the bankruptcy process: an accurate and just distribution of debtors' property to rightful creditors.

The Committee should not be persuaded by arguments that the proposed rules unduly burden debt buyers or other creditors. To the extent that such arguments are made, they reflect the desire of such creditors to evade their basic burdens of proof and evidence by seeking refuge in bankruptcy. I would remind the Committee that the bankruptcy claims process is an alternate mechanism to state law collection that kicks in when a debtor files bankruptcy. But for the bankruptcy filing, creditors would have to use state law remedies, such as filing a lawsuit, to collect. A complaint filed in state court is subject to Rule 11 or its state-law equivalent; thus the factual contentions in the complaint—including the validity of the asserted amount owed—should have evidentiary support, and the plaintiff's counsel should have conducted a reasonable inquiry in that regard. Indeed, in many jurisdictions, the plaintiff would be required to attach an affidavit or other verification that would require the creditor to have consulted the "specific account media" that the debt buyers assert is too burdensome to obtain and review in bankruptcy cases. The claims process should be efficient, but it should not function to allow creditors to collect above and beyond what could be validly pursued at state law.

My last comment concerns proposed Rule 3002.1. In the last four years, I have spoken with hundreds of consumer debtors' attorneys, creditors' attorneys, trustees, and judges about the administration of mortgage claims in chapter 13 cases. The frustration of *all* parties is manifest. I believe that creditors, just as much as debtors, would be well-served by the uniformity that proposed Rule 3002.1 would bring to case administration. In my opinion, the Committee Note persuasively explains why such rules are needed to facilitate the bankruptcy law that permits debtors to "cure and maintain" payments on their home mortgages.

Finally, I would like to express my support for the development of forms to accompany the proposed rules. I believe standardized forms would increase the efficiency of the claims process, reducing costs for creditors and facilitating the review of claims by courts, trustees, debtors, and all creditors.

I appreciate the Committee's consideration of my comments.

Yours truly,

Katherine Porter