

Comments on Proposed Rule Changes to Rule 3001 and Rule 3002.1
Nancy Clark

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Dear Committee:

My name is Nancy B. Clark and I am a consumer bankruptcy attorney who practices in the Central District of California. I have been a bankruptcy attorney for eight years and have seen the effects of the current Federal Bankruptcy Rules.

Rule 3001: As stated by others, unsecured creditors will file proofs of claims with little to no documentation attached. In many instances, it is difficult to decipher from the proof of claim who the original creditor was and the last time a payment was received. In many instances, debtors and their attorneys cannot be sure if the debt is a legitimate debt or a claim that is stale (by the statute of limitation) or duplicate due to the selling of the account. The cost to the debtor and the benefit to the estate sometimes make it difficult for attorneys and their clients to file an objection to a claim. The claims may be if little amount and the confirmed plan may not offer to pay the unsecured creditors, and chapter 13 trustee's and courts may deny a supplemental fee application for filing an objection due to the fact that the plan is not projected to pay the creditor. However, as we all know, the plan may be modified during its term in which case the debtor and the estate will have an interest in objecting to the claim. In some jurisdictions, debtors lose their right to object to the claim once the case has been confirmed. Therefore, the manner in which the system is set up benefits creditors as opposed to debtors.

Rule 3002.1: I believe that it has been well documented by other organizations that mortgage servicers do not credit payments correctly prior to bankruptcy and, especially, during bankruptcy. I have had clients call after a successful chapter 13 to inform me that the mortgage company has scheduled a sale of their home. This is caused mostly by the mortgage servicers accounting systems. Chapter 13 bankruptcy has been around for a long enough period for servicers to set up systems that will account for payments correctly but they have not changed those systems because it is more profitable for them to collect unwarranted fees after a bankruptcy than it is to play by the rules. The reason for this is due mostly to their negligence and also to the fact that there is no notice given to the debtors or their counsel of any changes in the payments or fees charged to the account. Again, the current system benefits the servicer as opposed to the debtor.

Frankly, I do not believe these rule changes go far enough. There should be included requirements that creditors reimburse debtors if debtors are able to successfully object to a claim.

Sincerely,

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