09-BK-111

Comment in favor or proposed rule changes

Bruce Kuehne to Rules_Comments 02/11/2010 06:35 PM

Dear Sir or Madame:

I am an attorney representing primarily consumer debtors in bankruptcy cases.

I am in favor of and encourage adoption of the proposed revisions to Bankruptcy Rules 3001 and proposed new Rule 3002.1. My reasons for this opinion arise from substantial experience.

In the case of open end credit card lenders (and especially their assignees), there is almost never any substantiation whatsoever for a filed proof of claim. This consistent practice, all by itself, imposes substantial burdens on the system. The staff in my office usually has no way to know whether the account is valid, who the original lender was, the manner in which the debt is calculated, when the last transaction on the account occurred, etc. We then have the option of incurring the substantial expense of filing an objection to claim and showing up in court to simply say that we do not understand the POC, or ignoring the deficit and permitting the court to allow the claim. Since the system does not ordinarily allow debtors' counsel to be fairly compensated for such objections, this is a genuine dilemma for both us and the client. A reasonable standard for POCs is really necessary for the efficient functioning of the entire system.

As to the proposed Rule 3002.1, it is unfortunately true that there is no way we can know (except by making a RESPA request in every case, which is a hardship on both us and the lender) whether a mortgage debt has been cured in a Chapter 13 case. We also have no efficient way to know whether the lender is adding on late charges each month during the plan. It is a huge shock to debtors when they complete their plan, assuming they are in good standing, only to learn that they still owe thousands of dollars in fees to the mortgage lender. Again, if there were a way to compensate debtors' attorneys to look into such issues, this would not be such a problem. However, the practical system as it actually exists simply does not permit compensation for such work AND there is no way we attorneys can afford to do it for free.

I am available for questions, if desired. My telephone number is 1-225-767-7186 and my email address is bkuehne@KFGMLaw.com.

Thank you very much for your consideration.

Sincerely,

G. Bruce Kuehne

Bruce Kuehne to Rules_Comments 03/11/2010 11:40 AM

History: This message has been replied to.

Dear Sir or Madame:

I realize that the time has passed to submit comments regarding the proposed revisions to Bankruptcy Rules 3001 and proposed new Rule 3002.1. I in fact did submit a comment in favor of the proposed amendments. However, I hope it is not too late to support that comment with an example.

A former client called me yesterday to report that her mortgage company has informed her that her home is in foreclosure. We filed the case on 11/08/2004. She successfully completed her Chapter 13 plan (providing for full payment of all arrearages) and received a discharge on 12/14/2009. I have correspondence in my file from attorneys for the lender confirming the alleged amount of the arrearage included in the plan. From the time of filing through the date of discharge, the loan was transferred twice. The current lender informs the client that the alleged arrearage relates to a time more than 3 years ago and that it is not required to account for transactions older than 3 years. In essence, the lender is saying that she did not make sufficient payments to a lender who owned the loan previously, but that the current lender cannot account for such alleged insufficiency. This position is obviously ridiculous, but this is the kind of headache that we face after people successfully complete their plans.

The name of the case is In Re Amy Mason, No. 04-13704, Ch 13, USBC, Middle District of Louisiana.

Thank you very much,

Sincerely,

Bruce Kuehne