From: David Yen [mailto:dyen@lafchicago.org]
Sent: Tuesday, February 16, 2010 8:22 PM
To:
Subject: Comment on proposed bankruptcy rules changes

February 16, 2010, approximately 7:30 pm central time

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Dear Members of the Rules Committee:

I am an attorney with the Legal Assistance Foundation of Chicago, which provides free legal services to low income clients in civil matters. I have represented low income clients in consumer and bankruptcy cases for over 30 years.

I support the proposed change in Rule 3001(c)(1) to require that a copy of the last account statement sent to the debtor be attached *in addition to* the written document that is the basis for the claim. I have had numerous cases where I am representing a debtor and my client cannot tell who the original creditor was from the proof of claim that was filed. In many cases even after engaging in informal discovery, I was still unable to determine whether the there was a valid claim in the first place or whether my client had a valid defense to the claim. In such cases if I did file an objection to the claim it was only after I filed the objection that we obtained documents that proved that there was a defense to the claim. In several cases the debtor had never signed the contract, the creditor had filed a claim because the debtor's late or former spouse had signed the contract. Other defenses included the statute of limitations (some claims were well over 10 years old) and violation of Article Nine of the Uniform Commercial Code and Illinois law in connection with repossessed vehicles where my client had co-signed for a relative.

There is a need for these proposed changes. I note that in her testimony on February 5, Ms. Tran, who is Associate General Counsel for B-Line, argued that there is not a need. She stated:

> And moreover, the validity of the account is further corroborated by the fact that about 99 percent of these accounts that are purchased and we file claims on we never received an objection to claim,

Transcript of February 5, 2010 hearing, page 68, lines 20 to 23.

There are at least two reasons that this statement is fallacious.

One was broached by Judge Wedoff in his later questioning of Ms. Moore. Judge Wedoff asked whether the failure to object might be due to the lack of any financial incentive by the debtor. As a debtor's attorney I can answer that question affirmatively – there are many occasions where my client has substantial doubts whether the amount stated on a proof of claim is the amount he or she actually owes, but we decide not to file an objection because even a completely successful objection will have no effect on how much my client has to pay to complete his or her Chapter 13 plan. In a few cases a client has authorized me to file an objection solely out of a concern for the integrity of the system, but this is a very rare occurrence, and to the best of my recollection, I have only done this when my client denies any liability at all on the debt. In cases where my client admits some liability but believes that the amount of the debt is inflated beyond what he or she owes, my clients are not as outraged and they don't want me to file objections just to preserve the integrity of the system. They aren't filing Chapter 13 to take on these fights, they are trying to save their property, and also to get relief from crushing debts so that they can devote their attention to their other problems. So even though my clients wouldn't have to pay any more in attorney's fees to have me object to these claims, they decide not to because there is no incentive for them to object. For debtors who are paying private attorneys there is even less incentive to object to claims where there is no monetary benefit to the debtor.

Second, the lack of detail in the proof of claim is sometimes the reason that no objection is filed. Most courts have held that the creditor's failure to attach documents as called for by Rule 3001 is not sufficient to support an objection to a claim. In order to prevail on an objection to a poorly documented claim, I need to have an affidavit from the debtor stating why the claim is invalid. Often my client is unwilling to sign an affidavit that he or she does not owe a debt precisely because there is so little information in the proof of claim that he or she cannot state with certainty that the debt is not owed.

Finally, I think that the rule should go farther, and require that where a signature or written application is required for there to be a legally enforceable contract, that the proof of claim attach a copy of the document which contains the signature. If the signature was an electronic signature, as opposed to a holographic signature, the proof of claim should describe the date of the electronic signature and enough additional information to make a prima facie case that there was a valid electronic signature.

Thank you for considering my comments,

.Very truly yours,

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