

I have been a consumer bankruptcy practitioner for approximately 20 years. I have reviewed the proposed changes to Fed. R. Bankr. P. 3001 and proposed form changes.

I was surprised to see the proposed Rule 3001 change. I had assumed that the rule change would require more diligence, more documentation and more care in the preparation of the proof of claim to assert an interest in the proceeds of a bankruptcy estate. Particularly given the sorry state of compliance with the existing rules and the problems this creates for the administration of estates -- as well as the glaring opportunity to file false or overstated claims. Indeed the U.S. Trustee program only recently settled a case with Capital One Bank with a multi-million dollar refund to consumers and estates, which would likely have been caught sooner had Rule 3001 been strengthened and enforced strictly.

But it appears the rules committee -- for reasons that are unstated -- elected to largely eliminate any vestige of utility in Rule 3001 for debtors or trustees insofar as credit cards and debt buyer claims are concerned.

The simple reality is that this rule change appears to be the product of special pleading and lobbying. Presumably the debt buyer industry will be well-served by revising the rule, of course. Although it seems obvious, it bears repeating that the court's rules ought not be changed simply to increase one party's profit margins though.

In a period when entire judicial processes are being brought to a stand-still -- particularly in foreclosures right now -- because courts are discovering that "take our sworn word for it" is no longer an option where large amounts of money and time-driven imperatives are in play, the federal courts should not be moving towards an even greater reliance on "take our word for it" procedures.

The Rule should be enhanced to match the term applied to the form itself -- *Proof of Claim*. The document should include sufficient documentation in its own right to not only assert but in fact meet a prima facie burden of proof.

The changes to Official Form 10 are very good and I hope those will be adopted.

I do agree with others who have suggested some enhancements.

The mortgage attachment requirement should apply to all residential mortgages my client may have.

It is crucial that it include a payment history, not simply a summary. That payment history should be relied upon in the preparation of the claim. The history reflects the mortgagee's management of the consumer's account. There should be no problem with truthful and honest mortgagees providing that document with its claims in order to avoid any unnecessary disputes. The Rules should not inadvertently provide a shield for the less than truth mortgagees.

I strongly second another commentator's recommendation that the Rule clearly state that local rules can require greater documentation, particularly in the event of more specific local laws which impact the viability of a claim.

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