



**United States Bankruptcy Court
District of New Mexico
Office of the Clerk
Norman H. Meyer, Jr., Clerk of Court**

October 23, 2003

Notice to Practitioners No. 2003-12

Changes in Procedures Due to Amendments to Federal Rules Effective December 1

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Information by Clerk's Office

(1) General Information

At its September 2002 session, the Judicial Conference approved amendments to the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms to implement the Conference policy on privacy and public access to electronic case files. Barring Congressional action, these amendments will take effect December 1, 2003.

The amendments are consistent with the Judicial Conference's September 2001 policy statement regarding documents in bankruptcy cases. That policy states that such documents generally should be available electronically with the proviso that the Bankruptcy Code and Rules should be amended as necessary to allow the court to collect a debtor's full social security number but give the public access to only the last four digits.

The Conference report states that "To a great extent, these recommendations¹ rely upon counsel and litigants to act to protect the interests of their clients and themselves. This may necessitate an effort by the courts to educate the bar and the public about the fact that documents filed in federal court cases may be available on the Internet." As general principles, the policy states

Notice of these nationwide policies should be given to all litigants in federal court so that they will be aware of the fact that materials which they submit in a federal court proceeding could become available on the Internet.

¹See <http://www.privacy.uscourts.gov/>

Members of the bar must be educated about the policies and the fact that they must protect their clients by carefully examining the documents that they file in federal court for sensitive, private information and by making the appropriate motions to protect documents from electronic access when necessary.

As additional guidance to the courts, the Administrative Office of the Courts reiterates that filers – not the clerk – are responsible for redacting social security numbers and other personal identifiers such as dates of birth, financial account numbers, and names of minor children in documents they file with the court.

The court's revised privacy policy will be posted on the court's website under Privacy Policy in the top menu bar. The policy is also included in the section 341 notice.

(2) **Synopsis of Amendments to the Federal Rules of Bankruptcy Procedure**

Rule 1005 is amended to require the debtor to list all names used in the six years preceding the filing of the petition, and to include on the caption appropriate numerical identifiers, but using only the last four digits of the social security number.

Rule 1007(f) is amended to require the debtor to submit a verified statement of his or her full social security number. The statement is to be submitted, but it will not be *filed* in the case. The full social security number will not become a part of the case record that would be available to the public through Internet access.

Rule 2002 is amended to require the Clerk to include the debtor's full social security number on the section 341 meeting notice to creditors. The full number will be included only on the notices sent to creditors and not on the copy of the notice that becomes part of the case record.

Practitioners should know that when documents submitted for filing with this court contain the full social security numbers of the debtors or other parties, the court will accept the filing as if it is otherwise acceptable. This means that a document containing social security number information or other personal identifiers will be available via ACE, the court's Internet-based electronic records system, when the document is viewed from the electronic docket.

(3) **Changes For Petitions Submitted in Paper Format**

Individual debtors filing petitions in paper will be required to submit form B21, Statement of Social

Security Number(s).² The Statement of Social Security Number(s) will not be *filed* with the court or maintained in any court case record, but will be maintained by the court for 30 days after the petition is filed, and then the Statement will be shredded. Practitioners should make a point of carefully examining the full social security number which appears on the section 341 notice and immediately report any discrepancy to the Clerk's Office. Only the last four digits will be accessible to the public via the ACE case caption report.

When the debtor's full social security number is included in the paper petition, the court will not make changes to the paper petition before scanning the paper for display in ACE or placing it in a court file. **Remember: it is the filer's responsibility to redact personal identifiers.** If you do not do this, those personal identifiers will be available for public viewing on the Internet.

(4) Changes For Petitions Submitted Electronically

The Statement of Social Security Number(s), Form B21, will be a virtual statement completed on-line by the attorney or other designated person when entering data in ACE to e-file the petition. The e-filer will be prompted by ACE to enter the social security numbers twice to ensure accuracy in data entry. Form 100, Declaration of Debtor for Electronic Filing of Petition, will be altered to include the following language:

Pursuant to Rule 1007(f) of the Federal Rules of Bankruptcy Procedure, I (we) declare under penalty of perjury that any social security numbers submitted with this electronic filing are the true and correct social security numbers of the petitioner(s).

It is the responsibility of the attorney or his staff when entering data in ACE to ensure the accuracy of the social security number information. Just as the Clerk's Office maintains the paper copy of the Statement of Social Security Number for petitions filed in paper format, the Clerk's Office will save a copy³ of the ACE bin screen containing the virtual Statement for 30 days after the petition is filed, and then the Statement will be deleted. Practitioners should make a point of carefully examining the full social security number which will appear on the section 341 notice and immediately report any discrepancy to the Clerk's Office. Although the full social security number will be entered into the court's case database by the Clerk's Office, only the last four digits will be accessible to the public via ACE in the case caption report.

When the debtor's full social security number is included in the pdf file of the petition or any other document submitted with the petition, the court will accept the filing as is if it is otherwise acceptable.

²The form is available in the Clerk's Office or may be downloaded from the court's website. See GENERAL INFORMATION, FORMS at www.nmcourt.fed.us/web/BCDOCS/bcindex.html.

³The bin view of the virtual statement will be saved in a temporary pdf file not accessible to the public. The pdf file will be deleted 30 days after the filing of the petition.

Remember: it is the filer's responsibility to redact personal identifiers. If you do not do this, those personal identifiers will be available for public viewing on the Internet.

(5) Changes to Local Rules Regarding Disclosure of Non-Filing Spouse Information

Local Rule 1002-1 will be amended to remove the requirement for a debtor to submit *to the court* the social security number of a non-filing spouse. Local Rule 1002-1 will be amended to read as follows:

RULE 1002-1 PETITION - DISCLOSURE OF NON-FILING SPOUSE

At the time of filing of a petition, an individual debtor shall file a separate statement containing the name and address of any non-filing spouse, or certifying that the debtor has no spouse. An individual debtor failing to file such a statement will be required to provide the notice of bankruptcy case, meeting of creditors and deadlines (the section 341 notice) to the non-filing spouse.

A new local rule, NM LBR 1007-5, will be adopted to require the debtor who has a non-filing spouse to give notice of non-filing spouse information (name, address, social security number) to all creditors within five days of filing a petition, filing a certificate of compliance within two days after giving the notice. That rule will read as follows:

RULE 1007-5 NOTICE OF NON-FILING SPOUSE INFORMATION, INCLUDING SOCIAL SECURITY NUMBER (PRIVACY)

Within five days of filing a petition (or an amendment adding a creditor), an individual debtor who has a non-filing spouse shall give the trustee, all creditors and indenture trustees (or the added creditor in case of an amendment) notice by mail of the name, address, and social security number of the non-filing spouse. The notice shall be verified by the debtor. Within two days thereafter, a certificate of compliance with this rule shall be filed with the clerk.

(6) Changes to Official and Local Forms and Commercial Software

Official Form 1 (petition) has been changed to require the listing of only the last four digits of the social security numbers of the debtor and joint debtor. The new petition forms are scheduled to be published by November 1, 2003. All forms will be available from the Clerk's Office and from the court's website.

The Official Form of the section 341 notice (upon which the New Mexico-customized versions are based) has been changed similarly – to list only the last four digits of the social security numbers of the

debtor and joint debtor. **New Mexico section 341 notices will no longer contain the name, address, and social security number of a non-filing spouse; such information will be provided to creditors directly by the individual debtor pursuant to new NM LBR 1007-5.**

Official Form 10 (proof of claim) has been changed so that claimants for wages, salaries, and compensation submit only the last four digits of their social security numbers.

Official Form 16 (full caption) has been changed to include only the last four digits of the social security number of the debtor and joint debtor.

New Mexico forms which call for a social security number will be updated to require listing of only the last four digits.

Please especially note changes to Form 32, Notice of Meeting of Creditors Given to Additional Parties. When an amendment adding a creditor is filed, the filer is responsible for providing the notice required by NM LBR 1007-5 in addition to providing those creditors with the section 341 notice via this form.⁴ The version of the initial section 341 notice which should be attached to Form 32 is the filer's copy – the one which displays the full social security number – not the copy available from the court, which will only display the last four digits of the social security number.

Bankruptcy software vendors should be up-to-date on forms changes. If you have not received updates to your bankruptcy software program by mid-November, please contact your vendor. Remember: amended forms become effective on December 1, 2003.

(7) Changes to WebPacer, VCIS, and Verbal Disclosure of Case Information

No social security number information will be available from WebPACER. You may access WebPacer from the court's website (see ELECTRONIC SERVICES) or at www.pacer.nmb.uscourts. Please note that dial-up PACER will no longer exist as of December 1, 2003.

Users of VCIS will be provided with only the last four digits of a social security number.

The Clerk's Office will provide only the last four digits of a social security number in response to any inquiry. (This change has been in effect since early September.)

If you have any questions or if you need additional information with regard to any of the matters discussed in this notice, please contact Margaret Grammer Gay, Chief Deputy Clerk, at 505-348-2438 or via e-mail: margaret_gay@nmcourt.fed.us.

NORMAN H. MEYER, JR.
Clerk of Court

⁴Rule 1009(a), Federal Rules of Bankruptcy Procedure, requires the debtor to give notice of the amendment to the trustee and to any affected entity. Use our local form 32 to comply with Rule 1009(a).