

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII**

**NOTICE OF PRIVACY-RELATED CHANGES TO RULES AND FORMS
EFFECTIVE DECEMBER 1, 2003**

Amendments to the Federal Rules of Bankruptcy Procedure have been approved by the Judicial Conference and transmitted by the Supreme Court to Congress. Barring action by Congress, these changes will take effect on December 1, 2003.

The principal changes involve forms and procedures related to privacy. 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 (9-digit) Social Security number but display only the last four digits.

Please consult the text of the rules and committee notes for actual provisions and their interpretation. There are links below to both redline and "clean" versions of the amendments.

"Strike-Out" Version of the Amendments and Committee Notes:

<http://www.uscourts.gov/rules/congress0303/BK-Redline.pdf>

"Clean" Version of the Amendments with Transmittal Letters:

<http://www.uscourts.gov/rules/congress0303/BK-Letters.pdf>

The purpose of this notice is to provide a summary of the privacy-related changes to the official bankruptcy forms and procedures for practice in United States Bankruptcy Court for the District of Hawaii, including the Case Management / Electronic Case Files ("CM/ECF") system.

I. Summary of Privacy-Related Local Procedures

Forms Compliance by Filers

Attorneys and parties should use the current versions of the Official Bankruptcy Forms - including the Voluntary Petition, Involuntary Petition, Schedules, Statement of Financial Affairs, and Proof of Claim - through November 30, 2003, and the revised forms on and after December 1, 2003, as required by the Bankruptcy Rules. ***All attorneys and parties filing documents in this court should begin now to review the changes to ensure that their offices have the correct forms available as of December 1. All of the recently amended forms will available by mid-November at the clerk's office and the court's website: www.hib.uscourts.gov.***

Debtor's Statement of Social Security Number

New subdivision (f) of Bankruptcy Rule 1007 requires an individual debtor to "submit" to the court a statement (Form B 21) under penalty of perjury setting out the debtor's full (9-digit) Social Security number, or state that the debtor does not have a Social Security number. The rule requires that the debtor submit this statement ***with the petition.***

Because the new statement will be "submitted" rather than "filed," it will not be part of the case record available to the parties, bar and public. However, amended Rule 2002(a)(1) requires that the full Social Security

number be included on the 341 notice sent to the trustee and all creditors. Submission of the full Social Security number at the time the petition is filed is critical in enabling the clerk's office to prepare and transmit a timely 341 notice. Therefore, *the clerk's office will not open the case and assign a case number until the debtor provides the full Social Security number.*

ECF Submission of Debtor's Social Security Number

A proposed amendment to the court's CM/ECF procedures will provide that submission of the debtor's full (9-digit) Social Security number through data entry of the number in the ECF system will satisfy the requirement to submit a statement under Rule 1007. This submission may be accomplished by manually typing in the number in Open BK Case, or by using the automated "case upload" feature available in certain software applications. The ECF user should **NOT** include a PDF version of the Statement of Social Security Number (Form B21) with the petition and other documents being filed.

The Declaration re: Electronic Filing has been amended to include the statement: "I declare under penalty of perjury that the Social Security Number transmitted with my petition is true and correct." This declaration must be filed in paper form within 5 business days after the filing of the petition. The revised declaration may be used immediately, i.e. prior to December 1, 2003, and is posted at the court's website.

In the event that a debtor has no Social Security Number, the debtor must submit the Statement of Social Security Number (Form B21) in paper form.

The court is in the process of upgrading the CM/ECF application so that the full (9-digit) Social Security Number of a debtor will not display. The system will show to attorneys and the public only the last four digits, as in "xxx-xx-6789."

Privacy Awareness and Filer's Responsibility for Redaction

The Office of the Clerk is now accepting electronically filed documents and pleadings and making the content of these pleadings available on the court's Internet website via WebPACER. Documents and pleadings filed on paper will be imaged, posted to WebPACER, and will be similarly available. Any subscriber to WebPACER will be able to read, download, store and print the full content of electronically filed documents. The clerk's office will not make electronically available documents that have been sealed or otherwise restricted by court order.

You should not include sensitive information in any document filed with the court unless such inclusion is required by the Federal Rules of Bankruptcy Procedure or Official Bankruptcy Forms or the inclusion is otherwise necessary and relevant to the case. You must remember that any personal information not otherwise protected will be made available over the Internet via WebPACER. If sensitive information must be included, the following personal data identifiers must be partially redacted from the pleading, unless specifically required by statute, Federal Rule of Bankruptcy Procedure or Official Bankruptcy Form, whether it is filed traditionally or electronically: Social Security numbers, financial account numbers, dates of birth and the names of minor children.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers specified above may file an unredacted document under seal. The court will consider a request to file an unredacted document under seal by ex parte motion, although the court may require the filing party to give notice and an opportunity to request a hearing, or may set the matter for hearing. The unredacted document shall be retained by the court as part of the record. The party shall file a redacted copy for the public file.

In addition, exercise caution when filing documents that contain the following:

- 1) any personal identifying number, such as driver's license number;
- 2) medical records, treatment and diagnosis;
- 3) employment history;
- 4) individual financial information; and
- 5) proprietary or trade secret information.

Counsel is strongly urged to share this notice with all clients so that an informed decision about the inclusion of certain materials may be made. If a redacted document is filed, it is the sole responsibility of counsel and the parties to be sure that all documents and pleadings comply with the rules of this court requiring redaction of personal data identifiers. The clerk will not review each pleading for redaction.

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 filed with the court. The court is not responsible for redacting the Social Security number or other personal data from documents filed with the court, whether in paper or electronic form, and including exhibits and other attachments.

Proposed Amendment to Local Rule

Pending the next amendment of the Local Rules of Practice for the United States District Court for the District of Hawaii, including the local bankruptcy rules, the court intends to adopt the following provisions by way of general or administrative order, to be effective December 1, 2003.

“PUBLIC ACCESS TO CASE FILES

(a) In compliance with the policy of the Judicial Conference of the United States, and the E-government Act of 2002, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all documents and pleadings filed with the court, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the court or required by statute, the Federal Rules of Bankruptcy Procedure or the Official Bankruptcy Forms.

(1) **Social Security numbers.** If an individual's social security number must be included in a pleading, only the last four digits of that number should be used.

(2) **Names of minor children.** If the involvement of a minor child must be mentioned, only the initials of that child should be used. On Schedule I of Official Bankruptcy Form 6, list relationship and age of the debtor's dependents (i.e., son, age 6).

(3) **Dates of birth.** If an individual's date of birth must be included in a pleading, only the year should be used. On Schedule I of Official Bankruptcy Form 6, list the age of each of the debtor's dependents.

(4) **Financial account numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used. On Schedules D, E, and F of Official Bankruptcy Form 6, debtors, if they so choose, may include their full account numbers to assist the trustee and creditors.

(b) In compliance with the E-Government Act of 2002, a party wishing to file a document containing the

personal data identifiers listed above may file an unredacted document under seal. The court will consider a request to file an unredacted document under seal by ex parte motion, although the court may require the filing party to give notice and an opportunity to request a hearing, or may set the matter for hearing. The unredacted document shall be retained by the court as part of the record. The party shall file a redacted copy for the public file.

(c) The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The clerk will not review each document for compliance with this rule.”

II. Summary of Privacy-Related Changes to Official Forms

- % **NEW! Statement of Social Security Number(s) (Form B 21)** will be required at the time the petition is filed, pursuant to amended Rule 1007 of the Federal Rules of Bankruptcy Procedure. The debtor must report the full (9-digit) Social Security number in this document to be *submitted - not filed* - with the court. This statement will not be part of the public record.
- % **Voluntary Petition (Form B 1)** will contain only the last four digits of an individual debtor’s Social Security number. (NOTE: Pursuant to 11 U.S.C. § 110(c), the certification by a non-attorney bankruptcy petition preparer continues to require the full (9-digit) Social Security number of the individual who actually prepares the document).
- % **Application to Pay Filing Fee in Installments (Form B 3)** will note that the certification by a non-attorney bankruptcy petition preparer continues to require the full (9-digit) Social Security number of the individual who actually prepares the document, pursuant to 11 U.S.C. § 110(c). (NOTE: Effective November 1, 2003, the court requires a minimum first installment of \$15.)
- % **Involuntary Petition (Form B 5)** will require the petitioner to disclose only the last four digits of the debtor’s Social Security or other Taxpayer Identification number. The form also has been amended to delete the request for information concerning the “Type of Business,” as this data no longer is collected for statistical purposes. Check boxes have been added for a petitioner to indicate whether the filing fee is attached or the petitioner is a child support creditor or representative of a child support creditor from whom no filing fee is due.
- % **Schedules D, E, F (Forms B 6D, B 6E, B 6F)** will require disclosure of only the last four digits of financial account numbers. This is intended to provide creditors with sufficient information to identify the debtor accurately while affording greater privacy to the debtor.
- % **Schedule I (Form B 6I)** will provide greater privacy to minors and other dependents of the debtor by deleting the requirement to disclose names. The form will require only the relationship and age of any dependents.
- % **Statement of Financial Affairs (Form B 7)** will require only the last four digits of the Taxpayer Identification number and financial account numbers in various sections.
- % **Chapter 7 Individual Debtor’s Statement of Intention (Form B 8)** will note that certification by a non-attorney bankruptcy petition preparer continues to require the full (9-digit) Social Security number of the individual who actually prepares the document.

- % **Notice of Bankruptcy Case, Meeting of Creditors, & Deadlines (Form B 9)** will provide for reporting the full (9-digit) Social Security number of the debtor to creditors, pursuant to amended Rule 2002 of the Federal Rules of Bankruptcy Procedure. A “masked” version of this “341” notice will be on file with the court, showing only the last four digits of the Social Security number.
- % **Proof of Claim (Form B 10)** will require a wage creditor to disclose only the last four digits of the creditor’s Social Security number. A trustee can request the full information necessary for tax withholding and reporting at the time the trustee makes a distribution to creditors.
- % **Full Caption (Form B 16A)** will require only the last four digits of the debtor’s Social Security number. Accordingly, subsequent notices (after the 341 notice) will either include the last four digits or none, if the Short Title Caption (Form 16B) is used.
- % **Caption of Complaint in Adversary Proceeding Filed by Debtor (Form 16C)** will note that the debtor’s full (9-digit) Social Security number is required. Section 342 (c) of the Bankruptcy Code continues to require the debtor to provide a creditor with the debtor’s name, address, and taxpayer identification number on any notice the debtor is required to give to the creditor. An individual debtor can fulfill this requirement by including the debtor’s Social Security number on only the creditor’s copy of any notice or summons the debtor may serve on the creditor.
- % **Certification and Signature of Non-Attorney Bankruptcy Petition Preparer (Form B 19)** will note that 11 U.S.C. § 110(c) continues to require the full (9-digit) Social Security number of the bankruptcy petition preparer.

