

Revised Bankruptcy Rule 2019 Effective

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Highly anticipated changes to Rule 2019 of the Federal Rules of Bankruptcy Procedure became effective on December 1, 2011. Rule 2019 mandates certain disclosures concerning the economic interests of creditors and interest holders in bankruptcy cases. Whether these disclosure requirements apply to ad hoc, or informal, creditor groups has been the subject of vigorous dispute in the bankruptcy courts during the last four years, with courts lining up on both sides of the divide in roughly equal numbers. These disputes prompted the Advisory Committee on Bankruptcy Rules to conduct a review of proposed revisions to the Rule (including extensive public commentary).

The Rules Committee ultimately recommended a substantially amended Rule 2019 on May 27, 2010, designed to accommodate the evolving constituencies and controversies in modern bankruptcy cases by, among other things, expanding the scope of the disclosure requirements to encompass more parties and types of information. The Advisory Committee's recommendations were approved by the Standing Committee on Rules of Practice and Procedure and the Judicial Conference later in 2010. The U.S. Supreme Court approved amended Rule 2019 on April 26, 2011. In the absence of congressional action, revised Rule 2019 became effective on December 1, 2011.

Amended Rule 2019 provides that:

[i]n a chapter 9 or 11 case, a verified statement setting forth the information specified in subdivision (c) of this rule shall be filed by every group or committee that consists of or represents, and every entity that represents, multiple creditors or equity security holders that are (A) acting in concert to advance their common interests, and (B) not composed entirely of affiliates or insiders of one another.

Among other things, subdivision (c) of Rule 2019 requires that name and address information must be provided with respect to each “entity” and “each member of a group or committee,” along with “the nature and amount of each disclosable economic interest held in relation to the debtor as of the date the entity was employed or the group or committee was formed.” Amended Rule 2019 defines “disclosable economic interest” as “any claim, interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting the holder an economic interest that is affected by the value, acquisition, or disposition of a claim or interest.”