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April 14, 2005

The Honorable Wallace B. Jefferson
Chief Justice, Supreme Court
Supreme Court Building
P.O. Box 12248
Capitol Station
Austin, Texas 78711

Re: Proposed Changes to Rule 8.1(e), Rules of Appellate Procedure

Dear Justice Jefferson:

Enclosed are proposed changes to Rule 8.1(e) Appellate Rules which have been approved for submission to the Supreme Court by the Court Rules Committee.

By copy of this letter, I am forwarding copies of this proposed rule change to Justice Hecht, to Charles Babcock, Chairman of the Supreme Court Advisory Committee, and also to Prof. William Dorsaneo. The Court Rules Committee would appreciate the Supreme Court giving consideration to these proposed rule changes.

Sincerely,

Carl

O. C. Hamilton, Jr., Chair
Court Rules Committee

OCH/ea

Enclosures

xc w/Enclosures:

The Honorable Nathan Hecht
Justice, Supreme Court of Texas
Supreme Court Building
P.O. Box 12248, Capitol Station
Austin, Texas 78711

Prof. William V. Dorsaneo
Southern Methodist University School of Law
3315 Daniels Street
Dallas, Texas 75275

Charles Babcock
901 Main Street
Dallas, Texas 75202-3748

STATE BAR OF TEXAS

COMMITTEE ON COURT RULES

REQUEST FOR NEW RULE OR CHANGE OF EXISTING RULE

TEXAS RULES OF APPELLATE PROCEDURE

I. Exact wording of existing Rule:

8.1. Notice of Bankruptcy

Any party may file a notice that a party is in bankruptcy. The notice must contain:

(a) the bankrupt party's name;

(b) the court in which the bankruptcy proceeding is pending;

(c) the bankruptcy proceeding's style and case number;

(d) the date when the bankruptcy petition was filed; and

(e) an authenticated copy of the page or pages of the bankruptcy petition that show when the petition was filed.

II. Proposed New Rule:

8.1. Notice of Bankruptcy

Any party may file a notice that a party is in bankruptcy. The notice must contain:

(a) the bankrupt party's name;

(b) the court in which the bankruptcy proceeding is pending;

(c) the bankruptcy proceeding's style and case number;

(d) the date when the bankruptcy petition was filed; and

(e) ~~an authenticated~~ a copy of the page or pages of the bankruptcy petition or a document prepared by the bankruptcy court ~~that show~~ showing when the petition was filed.

III. Reason for Proposed New Rule:

Texas Rule of Appellate Procedure 8 governs notice to a Texas Appellate Court of the bankruptcy filing by a party. Rule 8.1(e) currently requires that such notice contain "an authenticated copy of the page or pages of the bankruptcy petition that show when the petition was filed." 8.1(e). P. 8.1(e). TEX. R. APP. P. 8.1(e).

All U.S. Bankruptcy Courts in Texas now allow electronic filing. Some districts, such as the Southern District of Texas, now require electronic filing except in exceptional circumstances. Administrative Procedures for Electronic Filing § a, in TEXAS RULES OF COURT (FEDERAL) (West 2004). Thus, in many cases there is no paper filed and no "file stamp" as such. A bankruptcy petition filed electronically in the Southern District of Texas can be obtained via the official government web site; alternately, and with long explanations to the U.S. District Clerk's office as to why you now want such a thing, you can even get a certified copy of the petition from the clerk's office. However, such petition will not contain a file stamp or other evidence of date filed. Thus it is impossible to comply literally with Rule 8.1(e) as it is currently written. Some courts of appeals have refused to file the notice without the authenticated copy.

Electronically filed petitions do cause the federal court electronic filing system to generate a separate document, called a Notice of Bankruptcy Case Filing (example attached), which does show the date of filing. The notice is available on PACER. That document, or a copy of the docket sheet, should suffice to show date of filing.

MEMORANDUM

SD Jet
Email ok 2005-03

To: Carl Hamilton
From: Lisa Powell
Re: Suggested change to TRAP 8.1
Date: February 17, 2005

Texas Rule of Appellate Procedure 8 governs notice to a Texas appellate court of the bankruptcy filing by a party. Rule 8.1(e) currently requires that such notice contain "an authenticated copy of the page or pages of the bankruptcy petition that show when the petition was filed." TEX. R. APP. P. 8.1(e).

All U.S. Bankruptcy Courts in Texas now allow electronic filing. ~~*See generally* Administrative Procedures for the Filing, Signing, and Verifying of Documents by Electronic Means in Texas Bankruptcy Courts. § 1.A (eff. Dec. 1, 2004)~~. Some districts, such as the Southern District of Texas, now <u>require</u> electronic filing except in exceptional circumstances. Administrative Procedures for Electronic Filing § a, in TEXAS RULES OF COURT (FEDERAL) (West 2004). Thus, in many cases there is no paper filed and no "file stamp" as such. A bankruptcy petition filed electronically in the Southern District of Texas can be obtained via the official government web site; alternately, and with long explanations to the U.S. District Clerk's office as to why you now want such a thing, you can even get a certified copy of the petition from the clerk's office. However, such petition will not contain a file stamp or other evidence of date filed. Thus it is impossible to comply literally with Rule 8.1(e) as it is currently written.

Electronically filed petitions do cause the federal court electronic filing system to generate a separate document, called a Notice of Bankruptcy Case Filing (example attached), which does show the date of filing. The notice is available on PACER. That document, or a copy of the docket sheet, should suffice to show date of filing. ~~I therefore would suggest that Rule 8.1(e) be revised to allow other evidence of filing. Some alternate proposals are:~~

> (e) [~~an authenticated~~] <u>~~a certified or verified~~</u> copy of the page or pages of the bankruptcy petition<u>~~, Notice of Bankruptcy Case Filing, or other document filed with or generated by the bankruptcy court~~</u> showing when the petition was filed.
>
> (e) <u>evidence of the date of filing</u>.

(Both proposals eliminate the term "authenticated"; I'm not sure what that means).

United States Bankruptcy Court
Southern District of Texas

Notice of Bankruptcy Case Filing

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 7 of the United States Bankruptcy Code, entered on 02/09/2005 at 4:21 PM and filed on 02/09/2005.

Gustavo Alex Flores
P.O. Box 823
Rio Hondo, TX 78583
SSN: xxx-xx-6162
aka
Gustavo A. Flores
aka
Alex Flores

Pamela C. Flores
P.O. Box 823
Rio Hondo, TX 78583
SSN: xxx-xx-7078
aka
Pamela Flores

The case was filed by the debtor's attorney:

Abelardo Limon, Jr
Limon Law Office PC
890 W Price Rd
Brownsville, TX 78520
956-544-7770

The bankruptcy trustee is:

Michael B Schmidt
555 N. Carancahua Ste. 1550

Corpus Christi, TX 78478
361-884-9949

The case was assigned case number 05-10164 to Judge Richard S. Schmidt.

The filing of a bankruptcy case automatically stays certain actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page http://www.txs.uscourts.gov/ or at the Clerk's Office, United States Bankruptcy Court, 1133 North Shoreline Blvd #208, Corpus Christi, TX 78401.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

Michael N. Milby