

Rule 2004-1

EXAMINATION OF DEBTOR AND OTHERS

(a) ***This Rule Does Not Apply in Adversary Proceedings and Contested Matters.***

This rule applies only to examinations conducted pursuant to Fed. R. Bankr. P. 2004. The rules governing discovery in adversary proceedings and contested matters are set forth in Part VII of the Federal Rules of Bankruptcy Procedure and Local Rules 7026-1, 7026-2, 7030-1, 7033-1 and 7037-1.

(b) ***Manner of Setting Examination.*** A Court order is not necessary to authorize an examination pursuant to Fed. R. Bankr. P. 2004 or to require production of documents or electronically stored information at the examination. Examinations shall be scheduled upon notice filed with the Court and served on the trustee, the debtor, the debtor's attorney, and the party to be examined.

(c) ***Reasonable Notice.*** The attendance of the examinee and the production of documents or electronically stored information may not be required less than 21 days after service of the notice, except by agreement of the parties or order of the Court. To the extent that a request for production of documents or electronically stored information under this rule may be construed as a request under Fed. R. Bankr. P. 7034, the time to respond is shortened to 21 days. The notice of examination may provide for the production of documents or electronically stored information in advance of the examination, but in no event shall the production of documents or electronically stored information be required less than 21 days from service of the notice of examination, unless otherwise agreed to by the parties or ordered by the Court.

(d) ***Who May Attend.*** Any party in interest who wishes to attend an examination scheduled under this rule may do so by filing and serving a cross-notice of examination at least 14 days in advance of the scheduled examination.

(e) ***Motion for Protective Order.*** An interested party may file, prior to the date of the proposed examination or production of documents or electronically stored information, a motion for protective order stating the reasons for prohibiting, limiting, or rescheduling the examination or production of documents or electronically stored information. A motion for protective order shall be filed as an emergency motion under Local Rule 9013-1(d). The examination and/or production of documents or electronically stored information shall be stayed until the Court rules on the motion. If the Court schedules a hearing on a motion for protective order, the parties shall meet and confer prior to the hearing in an effort to resolve the issues presented in the motion.

(f) ***Subpoena.*** No subpoena is necessary to compel the attendance of, or the production of documents or electronically stored information by, the debtor at an examination of the debtor. A subpoena is necessary to compel the attendance of, or production of documents or electronically stored information by, a witness other than the debtor. The provisions of Fed. R. Civ. P. 45 apply to subpoenas issued under this rule.

(g) ***Videotaped Examinations.*** Examinations may be videotaped if the notice of examination or subpoena states that the examination will be videotaped and whether it will also be recorded stenographically.

(h) ***Motion to Compel; Payment of Expenses.*** If an interested party files a motion to compel compliance with a properly issued notice of examination under this rule, Fed. R. Civ. P. 37(a)(5) applies.

Notes of Advisory Committee

2022 Amendment

This amendment adds a new section (h) that provides that the prevailing party may be awarded expenses incurred in making or opposing motions to compel pursuant to Fed. R. Civ. P. 37(a)(5). This amendment to the rule is effective July 1, 2022.

2021 Amendment

This amendment revises the rule to conform to Fed. R. Bankr. P. 2004(c) (effective December 1, 2020) to add the term “electronically stored information” to the description of items produced during discovery. This amendment to the rule is effective August 1, 2021.

2017 Amendment

The rule is revised to include a requirement that the parties meet and confer prior to any scheduled hearing on a motion for protective order that relates to an examination under Fed. R. Bankr. P. 2004. This amendment to the rule is effective July 1, 2017.

2016 Amendment

This amendment clarifies that parties shall schedule examinations under Fed. R. Bankr. P. 2004 by notice rather than by motion. This amendment to the rule is effective July 1, 2016.

2014

This new rule is effective July 1, 2014.