

[Proposed Amended] 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, 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 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 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 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 in advance of the examination, but in no event shall the production of documents 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, a motion for protective order stating the reasons for prohibiting, limiting, or rescheduling the examination or production of documents. A motion for protective order shall be filed as an emergency motion under Local Rule 9004-~~21~~(e). The examination and/or production of documents 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 by, the debtor at an examination of the debtor. A subpoena is necessary to compel the attendance of, or production of documents 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.