

MEMORANDUM

TO: All attorneys with bankruptcy cases on my docket

FROM: Judge Pat E. Morgenstern-Clarren

DATE: October 4, 2010

SUBJECT: "The document speaks for itself." Or does it?

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Recently, the court has seen a resurgence in the use of the phrase "the document speaks for itself." Sometimes this is heard in the courtroom; at others, it is part of an answer or a response to discovery. Counsel are reminded that this is not an appropriate objection, in large measure because it does not have a basis in the Federal Rules of Evidence or the Federal Rules of Bankruptcy Procedure.

Some hypothetical examples may be helpful:

1. Assume that a complaint alleges that a document was signed on a certain date by a certain individual. The options for an answer under Federal Rule of Bankruptcy Procedure 7008 are generally "Admit" (if the date and individual are correctly identified), or "Deny" (if they are not), or "The party lacks knowledge or information sufficient to form a belief about the truth of the allegation" (if that is true). A response stating that "the document speaks for itself" is not part of this rule.
2. If there is a request to admit that a document contains quoted language, the alternatives contemplated by Federal Rule of Bankruptcy Procedure 7036 are to (a) do nothing within the required time frame (in which case the matter is admitted), (b) object to the request (stating legally sufficient grounds to support the objection), or (c) answer the request. If the responding party answers, the options are "Admit" (if the quotation is accurate), "Deny" (if the quotation is not accurate), give a qualified response (in good faith), or state that the party cannot truthfully admit or deny the request, giving detailed reasons in support. *See KeyBank Nat'l Assoc. v. Mann (In re Mann)*, 220 B.R. 351, 357 (Bankr. N.D.Ohio 1998). "The document speaks for itself" does not fall into any of these categories.
3. If counsel asks a witness to read a document out loud during a hearing, there is no objection in the Federal Rules of Evidence called "the document speaks for itself." A witness, with the court's permission, may always read from a document during an evidentiary hearing or trial.

There are a number of cases and articles that address this issue. Counsel may want to review them to avoid the temptation of writing or saying "the document speaks for itself."

As always, your cooperation in considering this issue is appreciated.