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memorandum

DATE: September 20, 1996

TO: Members and Reporter to the Advisory Committee on Bankruptcy Rules

FROM: Beth Wiggins and Naomi Medvin

SUBJECT: Rule 2004 examinations – survey results

At its March meeting, the Committee asked the Federal Judicial Center to obtain an estimate of the number of motions or other requests for Rule 2004 examinations, as well as information about bankruptcy judges' current practices related to these examinations. To obtain an estimate of the number of requests for Rule 2004 examinations that are made, we surveyed bankruptcy clerks of court using the questionnaire attached as Appendix A. We received a response from 80 districts. To obtain information about current practices, we surveyed bankruptcy judges using the questionnaire attached as Appendix B. 225 of 319 active judges (71%) and 5 of 20 (25%) recalled / retired judges responded to the survey, for a total of 230 responses. At least one judge responded from 89 districts. The results of these surveys are presented below, organized around the following issues: Noticing Practices; Disposition of Requests for Rule 2004 Examinations; Adopting a Procedure Like That in Fed. R. Civ. P. 30(a) and 45; Satisfaction and Perceived Problems with Rule 2004; and Estimating the Number of Requests for Rule 2004 Examinations.

Noticing Practices

Notice to the entity to be examined. As seen in Table 1 on the next page, judges differ as to whether they require notice to *the entity to be examined* before they consider a request for a Rule 2004 examination.[1] A little more than half either never require such notice or only occasionally require it. In contrast, a little less than half of the judges either usually or always require such notice. The remainder of the judges (3.1%) require notice about half the time.

[1] As used in this memorandum, the phrase "request for a Rule 2004 examination" means any motion or other procedure by which a party requests an order for a Rule 2004 examination.

Table 1

Please mark the statement below that best describes the frequency with which you require notice to *the entity to be examined* before considering a request for a Rule 2004 examination.

	Number of Judges	Percentage of Judges
I never require notice to the entity to be examined.	68	30.1%
I occasionally require notice to the entity to be examined.	50	22.1%
I require notice to the entity to be examined about half the time.	7	3.1%
I usually require notice to the entity to be examined.	20	8.8%
I always require notice to the entity to be examined.	81	35.8%
Ambiguous or missing response	4	—
Total	230	100%

Judges were also given an opportunity to describe the circumstances under which they require notice to the entity to be examined. Their verbatim responses are in Appendix C and are summarized below.

Judges who reported that they require notice only "occasionally" or about "half the time" reported that they require notice when:

- the time between the request and the examination is short (e.g., less than 7 or 10 days or too short for the entity to file a motion for a protective order) or the site of the examination appears unduly inconvenient;
- where the motion fails to state a mutually agreed date and time for the examination;
- the judge is concerned about the scope of the examination or the breadth of the request for documents (e.g., the connection to the case or the need for the information is unclear);
- an adversary proceeding or non-bankruptcy lawsuit is pending and it appears that the Rule 2004 examination is being used to avoid Fed.R.Civ.P. discovery procedures;
- the judge has reason to believe the request will be opposed (e.g., parties are litigious or involved in an ongoing controversy) and wants to avoid forcing the examinee to file a motion to vacate or quash or for a protective order;
- the examinee is the debtor, creditor, or other party in interest;

- alternatively, the examinee is not the debtor or a party in interest;
- the examinee is an attorney or other person whose information may be privileged or otherwise confidential;
- where the movant is not the trustee or a creditors' committee[2];
- where repeated motions to examine an entity have been filed.

Judges who reported that they "usually" require notice said that notice may be forgone for good cause shown (e.g., secreted assets or documents that may be moved if notice is given, ongoing misuse of assets, past record of evasion, or possibility of flight from the jurisdiction). In addition, formal notice may not be required where the motion certifies that the entity to be examined has been notified and has no objection to the examination or its time and place.

Those judges who "usually" or "always" require notice gave the following explanations, often citing their local rules:

- Due process requires notice of the motion for a Rule 2004 examination.
- Notice gives the examined party the opportunity to object to the scope of the examination or document production, reducing objections to the order authorizing the examination and allowing all interested parties to participate.
- By local rule or custom, counsel must attempt to agree with opposing counsel about the timing (and sometime the scope) of the Rule 2004 examination before coming to court for an order, thus there has always been notice.

Judges who "never" require notice frequently explained that such notice was not required because objections were rarely made and that a motion to quash or vacate or a motion for protective order adequately protects the examinee.

Both the judges who always require notice and those who never require it noted a number of local rules and practices that were thought to supplement the procedures set out in Rule 2004; these are reviewed below in the section "General Satisfaction and Perceived Problems with Rule 2004."

[2] Sometimes the required notice depends on the identity of both the movant and the entity to be examined. For example, according to Local Bankruptcy Rule 2004(a)(1)-(2) for the Western District of Tennessee, if a creditor or other party in interest seeks an examination of the debtor, no notice is required. In all other instances (e.g., a creditor seeking an examination of another creditor, a debtor seeking an examination of a party in interest, etc.) a notice and opportunity for a hearing is afforded.

Notice to the trustee or debtor in possession. Judges also differ as to whether they require notice to *the trustee or debtor-in-possession* before they consider a request for a Rule 2004 examination, although the tendency to dispense with notice is more pronounced here. Approximately 59% of the judges either never require notice or occasionally require notice whereas approximately 39% either usually or always require notice.

Table 2

Please mark the statement below that best describes the frequency with which you require notice *to the trustee or debtor-in-possession* before considering a request for a Rule 2004 examination.

	Number of Judges	Percentage of Judges
I never require notice to the trustee or debtor-in-possession.	94	42.5%
I occasionally require notice to the trustee or debtor-in-possession.	37	16.7%
I require notice to the trustee or debtor-in-possession about half the time.	3	1.4%
I usually require notice to the trustee or debtor-in-possession.	19	8.6%
I always require notice to the trustee or debtor-in-possession.	68	30.8%
Ambiguous or missing response	9	—
Total	230	100%

Again, judges were given an opportunity to describe the circumstances under which they require notice to the trustee or debtor in possession. Many comments were the same as those summarized above. Comments uniquely relevant to noticing trustees or DIPs are described below. The judges' verbatim responses are in Appendix D.

Judges who reported that they do not always require notice to the trustee or DIP reported that they do so when:

- on the facts it may be important / helpful that the trustee or DIP participate;
- it is clear that the interest of the trustee or DIP is implicated;
- the presence of the trustee or DIP is necessary for them to fulfill their fiduciary duties;
- the trustee or DIP is the subject of the examination (and no other time–unless the trustee or DIP is the examinee, service of the order setting the Rule 2004 examination suffices);

- the judge has questions about the reasons for or the timing of the examination; and
- when the volume of materials to be produced will interfere with the debtor's daily business operations;

Disposition of Requests for Rule 2004 Examinations

Requests decided after notice has been served on some entity. We asked the judges for information regarding the disposition of requests for Rule 2004 examinations that are granted, denied, or otherwise resolved after notice has been served on some entity. Only the responses of the 131 judges who require notice at least some of the time were included in these analyses. As seen in Tables 3, 4, 5 and 6 on the next two pages:

- About 81% of these judges reported than the noticed entity only "occasionally" files an objection to the request for a Rule 2004 examination (see Table 3);
- More than 80% of the judges reported that when an objection has been filed, the request for Rule 2004 examinations is either "often" or "almost always" granted (see Table 4);
- More than 90% of the judges reported that when a request for a Rule 2004 examination is granted after notice to some entity, the noticed entity "never" or only "occasionally" files a motion to vacate, a motion to quash, or a motion for protective order (see Table 5); and
- About 80% or the judges reported the motion to vacate, motion to quash, or motion for protective order is "almost never" or only "occasionally" granted (see Table 6).

Table 3

Check the statement that best describes how often the noticed entity files an objection to the motion.

	Number of Judges	Percentage of Judges
The noticed entity never files an objection to the request.	6	4.8%
The noticed entity occasionally files an objection to the request.	101	80.8%
The noticed entity files an objection to the request about half the time.	7	5.6%
The noticed entity often files an objection to the request.	5	4.0%
The noticed entity almost always files an objection to the request.	2	1.6%
I have insufficient experience to answer or otherwise can't say.	4	3.2%
Ambiguous or missing response	6	—
Total	131	100.0%

Table 4

Check the statement that best describes how often requests for Rule 2004 examinations are granted *when an objection has been filed*.

	Number of Judges	Percentage of Judges
The request is almost never granted.	2	1.6%
The request is occasionally granted.	3	2.4%
The request is granted about half the time.	9	7.3%
The request is often granted.	52	42.3%
The request is almost always granted.	52	42.3%
I have insufficient experience to answer or otherwise can't say.	5	4.1%
Ambiguous or missing response	8	—
Total	131	100%

Table 5

For all requests for Rule 2004 examinations that are granted after notice to some entity, check the statement that best describes how often the noticed entity files a motion to vacate the order for the examination, a motion to quash the resulting subpoena, or a motion for a protective order.

	Number of Judges	Percentage of Judges
The noticed entity never files a motion to vacate, a motion to quash, or a motion for protective order.	15	12.0%
The noticed entity occasionally files a motion to vacate, a motion to quash, or a motion for protective order.	101	80.8%
The noticed entity files a motion to vacate, a motion to quash, or a motion for protective order about half the time.	1	0.8%
The noticed entity often files a motion to vacate, a motion to quash, or a motion for protective order.	2	1.6%
The noticed entity almost always files a motion to vacate, a motion to quash, or a motion for protective order.	2	1.6%
I have insufficient experience to answer or otherwise can't say.	4	3.2%
Ambiguous or missing response	6	—
Total	131	

Table 6

Check the statement that best describes how often the motion to vacate, motion to quash, or motion for protective order is granted.

	Number of Judges	Percentage of Judges
The motion is almost never granted.	30	24.8%
The motion is occasionally granted.	67	55.4%
The motion is granted about half the time.	7	5.8%
The motion is often granted.	3	2.5%
The motion is almost always granted.	2	1.7%
I have insufficient experience to answer or otherwise can't say.	12	9.9%
Ambiguous or missing response	10	—

Total	131

Requests decided ex parte. We also asked the judges for information regarding the outcome of requests for Rule 2004 examinations that are initially granted, denied, or otherwise resolved without notice being served on some entity (i.e., decided ex parte). Only the responses of the 139 judges who reported that they decide requests for Rule 2004 examinations ex parte at least some of the time were included in these analyses. The vast majority of these judges reported that if ex parte requests for Rule 2004 exams are considered:

- they are "often" or "almost always" granted (see Table 7);
- the noticed entity "never" or "only occasionally" files a motion to vacate, a motion to quash, or a motion for protective order (see Table 8); and
- the motion to vacate, motion to quash, or motion for protective order is "almost never" or "only occasionally" granted (see Table 9).

Table 7

Check the statement that best describes how often ex parte requests for Rule 2004 examinations are granted.

	Number of Judges	Percentage of Judges
The request is almost never granted.	9	7.6%
The request is occasionally granted.	6	5.0%
The request is granted about half the time.	5	4.2%
The request is often granted.	10	8.4%
The request is almost always granted.	87	73.1%
I have insufficient experience to answer or otherwise can't say.	2	1.7%
Ambiguous or missing response	20	—
Total	139	100%

Table 8

For all requests for Rule 2004 examinations that are granted ex parte, check the statement that best describes how often a motion to vacate the order for the examination, a motion to quash the resulting subpoena, or a motion for protective order is filed.

	Number of Judges	Percentage of Judges
The noticed entity never files a motion to vacate, a motion to quash, or a motion for protective order.	9	7.4%
The noticed entity occasionally files a motion to vacate, a motion to quash, or a motion for protective order.	106	87.6%
The noticed entity files a motion to vacate, a motion to quash, or a motion for protective order about half the time.	1	0.8%
The noticed entity often files a motion to vacate, a motion to quash, or a motion for protective order.	1	0.8%
The noticed entity almost always files a motion to vacate, a motion to quash, or a motion for protective order.	1	0.8%
I have insufficient experience to answer or otherwise can't say.	3	2.5%
Ambiguous or missing response	18	—
Total	139	100%

Table 9

Check the statement that best describes how often the motion to vacate, the motion to quash, or motion for protective order is granted.

	Number of Judges	Percentage of Judges
The motion is almost never granted.	21	17.6%
The motion is occasionally granted.	76	63.9%
The motion is granted about half the time.	8	6.7%
The motion is often granted.	6	5.0%
The motion is almost always granted.	1	0.8%
I have insufficient experience to answer or otherwise can't say.	7	5.9%
Ambiguous or missing response	20	—

Total	139	100%

Adopting a Procedure Like that in FED.R.CIV.P. 30(a) AND 45.

Those surveyed were told of the suggestion that a party should be able to take a Rule 2004 examination without the need for any motion or court order. Under this approach, Rule 2004 examinations would be treated the same way that depositions are treated under the Federal Rules of Civil Procedure. Fed.R.Civ.P. 30(a) permits a party to depose a witness without leave of court, and Rule 45 permits an attorney to issue the subpoena on behalf of the court to compel attendance at the deposition.

Tables 10 and 11 show the judges' level of support for this procedure where the witness *is* and *is not* the debtor, respectively. About two out of three judges expressed support for the procedures where the witness *is* the debtor – that is, two out of three judges either said they were "more likely to support than oppose the change" or would "definitely support the change." A similar pattern was found where the witness *is not* the debtor, although the level of support here was somewhat less (46.5% of the judges said they would "definitely support" the change where the witness is the debtor whereas only 39.0% said they would "definitely support" the change where the witness is not the debtor).

Judges gave the following reasons for supporting the change:

- The deposition procedure is already used pursuant to local rule; it works well, and disputes and the need for a court order are rare. Making the text of Rule 2004 mirror that of Federal Rules of Civil Procedure 30(a) and 45 would reconcile the technical form of Rule 2004 with the application of the rule under current "real world" practice.
- The procedure used is already much like that under Fed.R.Civ.P. 30(a) and 45, except the court signs (or the clerk signature stamps) a standard order.
- A motion to quash or for other form of relief (e.g., protective order) can bring the issue promptly before the court.
- Rule 2004 is rarely abused. Because nearly all requests do not require the intervention of a judge, the current procedure is a waste of time and money. As long as the witness is able to seek a motion to quash or other protection, the process should be made easier and more cost-effective. Judges can then devote more time to actual disputes.
- A subpoena pursuant to Fed.R.Civ.P. 45 informs the subpoenaed party of the right to file a motion to quash or a motion for protective order.

Judges supporting the change expressed some caveats:

- The court's authority to order, for cause shown, the debtor's examination at any time or place (Rule 2004(d)) and the related mileage provisions in Rule 2004(e), should be retained.
- The rule should impose a reasonable limitation on how far the examinee must travel to the examination.
- The change should specify the length of the notice period and who is to receive notice.
- Who receives notice of the subpoena needs to be clarified (e.g., the debtor and trustee always receive notice). In an adversary proceeding or other civil litigation, the solution is fairly simple; this is not so in bankruptcy cases.
- The court should have the discretion to direct, sua sponte or on motion of a party in interest, that all further Rule 2004 examinations in the case be by motion.
- Parties, particularly debtors, should be protected against repetitive examinations. This could be done with proper notice and enhanced control by the court when it appears necessary (see above).
- Attorneys misunderstand the use and purpose of Rule 2004. Many want to use it for depositions in adversary proceedings or contested matters, or to inquire of matters other than those stated in Rule 2004. Any change would need specific language to prevent misuse of the examination.
- The identity of the movant is more important than the identity of the witness. A trustee should be able to notice a Rule 2004 examination without court intervention, but the process should not be so easy when the movant is not the trustee or an official committee.

Judges expressed the following concerns about changing the Rule 2004 examination procedures to mirror the deposition procedures:

- The current rule works well.
- It is critical for the court to be involved due to the broad scope of the Rule 2004 examinations.
- Obligation to show need to the court adds a step of “thoughtfulness” to the process that reduces the inappropriate use of Rule 2004 and makes objections by the party to be examined less likely. Threshold court involvement is needed to coordinate multiple examinations of the

same entity and to curb improper use of the rule. Identified abuses include:

(1) A creditor may attempt to obtain information about another creditor where a state court action is pending between the two creditors.

(2) Rule 2004 requests of debtors may be used to circumvent the rule requiring prompt filing of non-dischargeability litigation (Fed.R.Bank.P. 4001). Creditors may schedule Rule 2004 examinations for a date after the Fed.R.Bank.P. deadline (not having done any pre-deadline investigation of the debtor's conduct) and then use the post-deadline date as a pretext for needing an extension under Fed.R.Bank.P. 4007(c).

(3) Against pro se debtors and third parties (often relatives of the debtor) who lack access to legal counsel or cannot afford it, Rule 2004 examinations are used for improper purposes (e.g., to coerce reaffirmation agreements) or recklessly employed (e.g., the examination is set many miles from the debtor's home or work so the debtor loses at least 1/2 day of work).

Some judges supported the change in procedure for debtors but not for non-debtors, explaining that debtors are expected to cooperate in supplying information to creditors and trustees as a condition of receiving a discharge or confirming a plan. Thus, as long as the scope of examination is limited to the financial affairs of the debtor, a Rule 2004 examination is appropriate. In contrast, an examination of a non-debtor should be allowed only for cause shown after a hearing because (1) non-debtors have not agreed to disclose, (2) the scope of the inquisition is potentially wide-open, and (3) those examined under Rule 2004 do not enjoy the same protections as a deponent.

Other judges supported the change for non-debtors but not for debtors, explaining that where the witness is the debtor, court imprimatur is important to prevent the procedure from being misused, for harassment or to coerce action favoring a creditor (e.g., a reaffirmation). In addition, several creditors and the trustee may be examining the debtor for the same purpose (e.g., objection to discharge), or the time and place of the examination may unduly disadvantage the debtor. If motions are required, the court knows what's going on and can coordinate such examinations. They also noted that many debtors have no counsel and they need as much notice as possible of an examination to find counsel or otherwise protect themselves. In addition, pro se debtors often do not file objections so judges must monitor the situation themselves.

Some judges drew a distinction between business and non-business cases noting on the one hand, that multiple duplicative examinations of the

debtor are of particular concern in business cases, and on the other, that the potential for misuse is more likely in consumer cases.

See Appendix E for judges' verbatim comments about this issue.

Table 10

Would you support such a change in procedure for Rule 2004 examinations *where the witness is the debtor?*

	Number of Judges	Percentage of Judges
Definitely would support the change	106	46.5%
More likely to support than oppose the change	46	20.2%
More likely to oppose than support the change	35	15.3%
Definitely would not support the change	34	14.9%
Have no opinion at this time	7	3.1%
Ambiguous or missing response	2	—
Total	230	100%

Table 11

Would you support such a change in procedure for Rule 2004 examinations *where the witness is not the debtor?*

	Number of Judges	Percentage of Judges
Definitely would support the change	89	39.0%
More likely to support than oppose the change	59	25.9%
More likely to oppose than support the change	38	16.7%
Definitely would not support the change	33	14.5%
Have no opinion at this time	9	3.9%
Ambiguous or missing response	2	—
Total	230	100%

Satisfaction and Perceived Problems with Rule 2004

As seen in Table 12, an overwhelming majority of judges expressed satisfaction with the procedures in the existing Rule 2004 and their implementation (45.7% were very satisfied and 35.4% were somewhat satisfied). Judges may be satisfied because they have been able to implement Rule 2004 in different ways to meet local and case-specific needs and concerns. Only about 15% of the judges said they were either somewhat dissatisfied or very dissatisfied.

Table 12

Overall, how satisfied are you with the procedures set forth in the existing Rule 2004 and their implementation?

	Number of Judges	Percentage of Judges
Very satisfied	102	45.7%
Somewhat satisfied	79	35.4%
Somewhat dissatisfied	23	10.3%
Very dissatisfied	11	4.9%
Have no opinion at this time	8	3.6%
Ambiguous or missing response	7	—
Total	230	100%

Nevertheless, a number of judges did identify problems with Rule 2004 and described ways it could be improved. See Appendix F for the judges' comments, many of which of summarized below.

- Adopt a procedure similar to that in Fed.R.Civ.P. 30(a) and 45.
- Permit non-debtors to be examined without motion or court order; or possibly with notice to the debtor, trustee, and debtor's counsel; require motions for debtors to avoid abuse and harassment. Alternatively, simplify the process for examining debtors.
- In Chapter 7 cases, require a general statement of purpose for the examination in a motion by a creditor; provide that the trustee always gets notice of the requested examination of the debtor; and restrict the examination only to matters relevant to the debtor's discharge.
- The scope and proper use of Rule 2004 should be more clearly defined and notice and hearing requirements should be resolved in the Rule.

For example, clarify the Advisory Committee note to provide "on motion of any party in interest, with or without a hearing, may order the examination of the entity."

- The rule should "codify" the prohibition against use of Rule 2004 for discovery in pending litigation.
- Require attorneys to seek accommodation before applying for a Rule 2004 order.
- More notice should be required, perhaps without court order. The rule should have a minimum notice period (for the witness), absent court approval of a shorter period.
- Restrict the distance individual debtors/creditors, etc., can be compelled (e.g., to 25 miles or county of residence/business), at least in chapter 7, 12, and 13 cases.
- Mention the availability of protective orders in the rule.
- Because 2004 exams are used for similar purposes as are depositions, the same rules regarding objections, privileges and other evidentiary matters should apply as to. (The Advisory Committee Note suggests this is not the case.)
- Since Rule 2004 incorporates Fed.R.Civ.P. 45 but not any of the other rules that govern depositions, some of those rules should be made applicable. For example, can the examination be done telephonically? What should the parties and court do when parties engage in misconduct at the hearing?

Estimating the Number of Requests for Rule 2004 Examinations

The clerks were asked to provide the number of requests for Rule 2004 examinations in cases filed in their district during FY 95 (October 1, 1994 through September 30, 1995) by chapter, and the disposition of those requests. It was explained that by "request for a Rule 2004 examination," we meant any motion or other procedure by which a party requests an order for a Rule 2004 examination. To obtain this information, the clerks were to conduct searches of their electronic data bases. We provided a script that could be used by those courts on BANCAP.

The responses of the clerks are set forth in the charts in Appendix G. Chart 1 shows for each district the number of bankruptcy filings, the number of requests for a Rule 2004 examination, and the disposition of such requests. It also describes qualifications to the information provided to assist in interpreting it (e.g., the numbers for some courts are underestimates because closed cases had recently been removed from the database). Chart 2 shows for each district the number of requests for Rule 2004 made in chapter 7, 11, and 13 cases.

As seen in the charts, it appears that the amount of Rule 2004 activity varies somewhat across the district, even after taking into account the caseload; that the majority of requests were granted; and that Rule 2004 was used with some regularly in chapter 7, 11, and 13, but less so in chapter 13.

The charts provide an estimate of the range of Rule 2004 activity, but you should keep several limitations in mind.

- The charts indicate that some courts had removed a number of FY95 closed cases from their electronic databases so the reported number of requests for Rule 2004 applications is low. It is possible that other courts had also archived their data bases but failed to tell us.
- The charts also indicate that, because some districts had archived FY95 cases, they provided information for a more recent time period.
- Some clerks said local rules eliminated the need for a court order for Rule 2004 examinations. At least one court failed to provide information about Rule 2004 examinations for this reason. Other courts appeared to provide the number of subpoenas that had been issued.
- The number of FY95 case filings is provided as a baseline for interpreting the information about Rule 2004 examinations. Because multiple requests for Rule 2004 examinations may have been made in one case, dividing the number of requests for Rule 2004 examinations by the number of cases filings will not result in the number of cases that involves such activity.
- Some districts provided separate numbers for requests made in adversary proceedings, some included such requests under the chapter of the case in which the adversary arose, and some did not report requests made in adversary proceedings at all. When we knew which approach the court took, we indicated that.

APPENDIX C

Set out below are comments in response to the request: "Please describe generally the circumstances under which you require notice to the entity to be examined." The comments are organized according to the response given to the question "Please mark the statement below that best describes the frequency with which you require notice to the entity to be examined before considering a request for a Rule 2004 examination."

Judges who never require notice

Our local rules permit an attorney to simply issue a subpoena pursuant to R. 2004. I don't see an order or sign anything unless there is a motion to quash or compel enforcement.

The court believes such prior notice to be unnecessary. The rights of the examined entity are protected adequately by affording an opportunity to file a Motion for Protective Order after the ex parte order has been granted.

The local rules provide no order is necessary if 7 days notice is given if the deponent is the debtor.

Although I do not require notice to be given, as a matter of courtesy, many applicants serve their requests on counsel for the entity to be examined. As a result, we occasionally get objections so I will answer question 3.

For a number of years I required the requesting party to attempt to set a mutually agreeable date and place before I signed the order. I abandoned that practice because it appeared to burden the requesting party beyond the requirements of Rule 2004 and because my colleagues in this district did not have a similar requirement.

I leave it to the lawyer to object, once he/she gets a copy of the court order.

I require service of the motion for examination under Rule 2004 on the entity to be examined and will not sign an order directing the examination without a certificate of service. However, I routinely enter orders directing Rule 2004 examinations contemporaneously with the filing of the motion.

Local rule requires notice to be served by moving party on all motions. We give no further notice but are always willing to hear a party on motion for reconsideration.

Our local rule allows 2004 exams without an order.

See D.N.J. Bankr. Ct. R. 16, enclosed herewith. The Rule is working very well.

No action on my part is required under local rules to take a 2004. It's handled as with any deposition. I only get involved if there is an objection by the deponent.

In my jurisdiction the respondent may move for a protective order if aggrieved by the rule 2004 exam order. The majority are consented to and very few are contested. The above request is noticed but the motion is allowed at any rate.

I do not require prior notice. However motion and order must be served upon debtor or adverse party and trustee.

None of the options really apply because 99% of the requests I review are noticed to the entity to be examined so as to commence the 21-day notice period (re date of the examination. Thus, Q. 4 makes no sense to me. I will therefore answer Q. 3.

Judges who occasionally require notice.

If less than 10 days until examination.

Reasonable notice or an agreement on the date and time of the examination is generally required.

Where scope of exam or document-production demand seem too broad and appear to be irrelevant to the issue(s) raised in the supporting affidavit. Also, where it appears movant is using B.R. 2004 exam as a disguised attempt to conduct a "fishing expedition" in an adversary proceeding otherwise controlled by the FRCP discovery devices.

If the entity to be examined is the debtor or a creditor or party in interest in the bankruptcy, I require notice.

If the entity is an attorney or other person with confidentiality privilege.

Only when I know the parties are currently involved in adversary proceeding litigation – and sometimes not ever then.

Motions to examine debtors are routinely granted without notice or hearing. Motions to examine non-debtor entities are nearly always scheduled for a hearing after notice to that entity. Occasionally, for example where there have been repeated or several motions, or where I am aware of a pending adversary proceeding, I will also require notice and a hearing to examine a debtor.

If request is unusual or the connection to case is unclear.

Notice appears appropriate when
(a) there is even a hint of criminal activity
(b) the witness is not the debtor, a relative of the debtor or a business associate of the debtor
(c) the witness will incur a disproportionate expense
(d) the parties appear litigious

Usually, it is when a party desires to take the 2004 exam of an attorney, representing some party in the case.

If the request for documents (the proposed subpoena) appears burdensome or if I am aware that the movant and the proposed witness are involved in an ongoing controversy and both have counsel.

Local Bankruptcy Rule 2004(a)(1)-(2) for Tennessee (Western) addresses the notice issue. If a creditor or other party in interest seeks an examination of the debtor, no notice is required. Compare Fed. R. Bankr. P. 4002(1). In all other instances (e.g., a creditor seeking an examination of another creditor, a debtor seeking an examination of a party in interest, etc.) a notice and opportunity for a hearing is afforded. For convenience, a copy of the local rule is affixed to the reverse side of the front cover page.

When the movant is not the trustee or an official committee, or the target's connection to the case isn't very well explained, I will sometimes hold the motion for 10 days or so to see if a contest is present. I will admit that the procedure is not consistent and I don't believe notice is required. Forcing the target to file a motion to quash is the usual route I take.

Where pursuant to our local rules (which eliminated the need to obtain a court order), the respondent is not cooperating even after requests to appear for a 2004 exam have been reasonably made.

If the examination is scheduled within 10 days or if I have concerns about the breadth of the request for documents.

I have reason to believe that the request will be opposed, based on either prior court hearings or the substance or timing of the request.

If a party (to be examined) has actively participated in the bankruptcy case and I anticipate an objection, I will require notice and hold a hearing on the objection. Requiring a motion to quash the subpoena usually occurs in emergency situations which I try to avoid by hearing the objection at the outset.

Short time duration before examination.
Site of the examination appears onerous for examinee or other parties in interest.

When third party non-debtor is target and document request borders on abusive.

I require notice where the entity is not a party in interest. Our local rule limits notice.

Notice is given when the entity is not directly related to the debtor, such as an officer, director or insider; or when it appears from the application that the entity to be examined will contest the examination; or when previous proceedings in the case have suggested that the reason for the examination may be something other than the reason that has been described in the motion or request. For example, the requesting party may be attempting to obtain materials or information in a pending non-bankruptcy lawsuit that might not otherwise be readily available in the non-bankruptcy proceeding.

Size and complexity of case.

If a dispute is known to exist or the request is not in proper form.

Our Local Rule 2004(a)(1)-(2) for the Western Division of Tennessee deals with notice. If debtor is to examined by a creditor or other interested party, no notice is required. Otherwise notice and an opportunity for a hearing is afforded.

Only when I know in advance of the extreme animosity of the particular parties who claim to be in litigation with third parties, not in bankruptcy.

Our local rules provide for entry of a 2004 order ex parte subject to stay at the request of the entity to be examined. I require notice only when it is not apparent from the request that the examination falls within the scope of 2004.

Debtor – no notice
Other than Debtor – notice

If the motion fails to state the date and time all agreed or the time period is less than 7 days.

I require notice when the request is made by motion.

If there is insufficient time for the entity to file for a protective order.

I do not require notice on the debtor or debtor's representative. I do require notice and a hearing on a 2004 exam of any third party.

I require notice when less then 10 days notice has been given.

Most motions by parties in interest seeking orders for 2004 exams are filed with a certificate of service to the Trustee, Debtor's counsel, Debtor(s) or the party to be examined as a matter of professional courtesy. I review the motions for proper service even though our local rules (see copy attached of Local Rule 204) provide that an order allowing a 2004 exam may be entered on an ex parte motion. In an order granting an ex parte motion, I require that the moving party serve the party to be examined by a date certain and require that the exam or production of documents shall not be less than ten (10) days after service of the order to allow the party to be examined time to respond.
I further require in orders that non-debtors, absent consent, must be served by mail with a copy of the order, the motion and a subpoena pursuant to Fed.R.Bankr.P. 9017 which incorporates Rule 45 requiring personal service.

Done on ad hoc basis. May be situations where I believe should be depositions under FRCP or non-debtor is being improperly examined.

I usually require notice if the party is NOT the debtor and is being asked for anything more than readily available information. E.g., a 2004 of a bank just to get a statement of account activity does NOT require notice, but, a 2004 of a former business partner re: all transactions DOES require notice.

If the order requires the examination within a short period of time.

If the notice is on shortened time.

I require notice if I think based on my knowledge of the case, that a party in interest may object. Sometimes I hold the application for a few days to see if opposition materializes.

If the exam is to be held on less than 10 days notice.

Judges who require notice about half the time.

If the entity to be examined is not the debtor, I will dispense with notice. If the debtor is to be examined, I require notice. (I wait until the expiration of the response time under our local rules.) I do so because the order will fix the debtor's obligation to produce documents and this is the debtor's opportunity to show that the records do not exist or that other reasons bar entry of the requested order.

(1) Where an extensive document demand is made
(2) Where I know the parties to be involved in pending litigation
(3) Where I am not certain of the need for the requested examination

If represented in the case. I require the movant to first seek an agreed time and date.

(1) When the entity is not the debtor
(2) when I suspect the request is associated with other litigation

Depends on obviousness of need to examine, the timing in relation to other things going on in the case, and sometimes the need not to delay.

Judges who usually provide notice

I require notice to the entity to be examined unless in that circumstance the Debtor and/or the other entity are believed to secrete assets or documents that may be moved if notice given.

I require notice to get the parties before me as a vehicle to learn where the case is going – not so much as a matter of due process or other similar concept.

We require notice when the debtor is to be examined, otherwise not.

The date and time of the examination should be agreed upon by counsel, if possible, rather than a unilateral setting by the examining party.

Our local rules require notice.

By local rule: If the order specifies a time and place for the examination, the party moving for the order certifies that he/she has coordinated the time and place with the person to be examined or specify why it was impossible to do so. As a result of this rule, most 2004 orders are entered only after notice to the party to be examined.

Application must be served on person to be examined. Clerk enters order without hearing or involvement of judge unless examination is to be held less than 14 days in future or more than 75 miles away.

Most circumstances, because (1) the parties can more easily and quickly make mutually satisfactory arrangements and (2) fundamental notions of due process require it, in most situations, and (3) it's easier.

If an application is filed indicating no notice has been given, I have my law clerk call the attorney seeking the 2004 and ask him or her to discuss timing of the exam with other counsel.

If a request is made, notice is sent.

Always unless good cause is shown why notice is not practicable.

I require notice under all circumstances, absent a showing of good cause for a waiving of notice.

Unless they might flee.

I generally require the motion or request be served and that any proposed order granting the motion provide 10 days notice before the date of the examination.

Usually, the parties have agreed to time, date and place for the Rule 2004 exam. If the parties are not in agreement or if there are particular circumstances set forth in the motion to take a Rule 2004 examination, notice may not be required.

Judges who always require notice

Applicant sends copy of R.2004 Request to entity (usually debtor) and its attorney when sent to the Court.

Our local rules require notice on lodging an order for 2004 examination. I often sign the order without holding it, but this gives at least 5 days notice before the order is entered. Copy of local rule attached.

I believe due process requires that the entity to be examined receive notice of the motion.

I require moving party to serve the entity to be examined with a subpoena or a subpoena duces tecum.

Clerk requires movant to file certificate of service showing service on entity.

I use the "Golden Rule." Counsel must attempt to agree with opposing counsel about the §2004 before coming to Court for an order. Thus there has always been notice.

Our local rules require notice of the filing of a motion for a 2004 examination.

Movant must serve the entity to be examined with the motion pursuant to the Federal Rules of Bankruptcy Procedure and the local rules of this court.

Under local rules governing objections to motions, such objections must be filed within 10 days. If no objection is filed within that time, the order for Rule 2004 examination is routinely entered. I do not require notice of a hearing, only "notice" in the form of being mailed or otherwise served with a copy of the motion.

Our local rules require party requesting Rule 2004 examination to declare that he has made "reasonable efforts to arrange a mutually satisfactory date, time and place for the examination and that the entity to be examined has agreed to the schedule or has refused to cooperate in establishing a schedule." Failure to comply with the local rule results in a denial of the request for examination.

Local rule requires certificate of conference. If no agreement, motion set for hearing with notice.

Motion must have certificate of service stamp.

Our local rules presently require advance notice to the examinee only if he/she is the debtor in the case.

Notice is accomplished by service of a subpoena (see order for exam which is enclosed). All requests for examination are treated the same; i.e., by issuing an order requiring compliance with FRBP 9016 which incorporates FRCivP 45.

A request for a Rule 2004 exam is not required to be filed in this court. If a request is filed, a certificate is required to be attached stating that all parties in interest have been notified.

All motions are required to be served on filing date. I may consider the request before there is an opportunity to respond.

A request for a 2004 examination must be by motion, which of course requires notice, unless it is certified in an application that the entity to be examined has been notified, and has no objection to the examination or to the time and place proposed. In the latter event, the examination may be ordered without going through the motion process.

Motion has to be served on the entity.

Entity to be examined must be served with the Motion.

Required by our local rules.

Always – required by local rule

.

I would only authorize examination on ex parte application if there were a showing that notice would compromise the integrity of the examination.

All circumstances.

Always.

First is my opinion that Rule 2004 should be abrogated. Rule 6009 and the Code sections along with the U.S. Trustee's office provides fully the needs of the trustee or DIP. R. 2004 is many times used for harassment of parties in these cases.

Our local rules require a certificate of conference on all 2004 motions.

Isn't there a little thing out there called due process? After all, it is a court order.

By notice, I mean service by mail of the motion for a Rule 2004 examination.

Local rule requires notice. If no objection an order is entered.

It's always required so that the examination can be scheduled at a mutually agreeable time, thereby reducing the number of requests to vacate orders authorizing the taking of the examination. Notice also gives the examined party the opportunity to object to the scope of the examination and object to the document request. Notice seems to cut down on the objections to examination authorization requests and all interested parties can participate.

An exception may be made in case of emergency (e.g. ongoing misuse of assets).

Always notice, and not only that but I also require a representation regarding pre-filing contact regarding time, place, and documents to be produced, and whether all are agreeable. Caveat: There is a local rule exception, say if the to be examined party is about to flee the jurisdiction and has evaded communication and/or service in the past.

Local Bankruptcy Rule 2.9 requires that movant must state that reasonable efforts have been made to arrange a mutually satisfactory schedule and that entity has agreed or refused to do so.

Per local rule the attorney who represents the party must first contact the entity's attorney to be examined. A mutually agreeable time must be discussed. If no agreement, the § 2004 applicant must certify that discussions had taken place.

A copy of the request is always served on the entity by the party requesting the 2004 exam.

The 2004 motion must have a certificate of service, however, the motions are usually summarily granted. The "notice" period is usually quite short.

See Local Rule 15 attached to this sheet. My routine is "or will schedule a hearing upon such further notice as the court may deem appropriate."

Under our Local Rules, discovery disputes may be presented only after the parties confer and are at impasse. That Rule applies to Rule 2004 discovery as well. So requests to start Rule 2004 discovery must show compliance [with] the consultation requirement and therefore shall be sent to the party to be examined. This procedure has almost always resulted in agreement. Under our rules, Rule 2004 discovery may be taken by applicant without order of the court.

In the District of New Jersey, our Local Rule 16, a copy of which is enclosed, requires a party who seeks 2004 examination to obtain the consent of the party from whom such an examination is requested. If a consensual examination is not possible, a subpoena is served upon the party to be examined. If the subpoena is not effective, the party seeking examination may move for an order directing examination, with sanctions to be imposed against the party failing to provide the information or the access.

We require that a Motion be filed with the following language included: "If you object to the Motion, you should file a written response with this Court within 15 days of the service of the Motion or the Court may grant the relief requested without a hearing."

In all cases.

Notice via a copy of the Request for 2004 exam is served upon the examinee.

Our Local Rule 2004 (copy and 9013.3 referenced herein attached) requires short (5-day) prior notice.

Any party filing a 2004 motion is required to comply with regular motion practice procedure, allowing 18 days for the filing of objections.

In an effort to streamline the process by avoiding sometimes protracted and frequently contentious litigation regarding the scope of a proposed examination, I require those seeking to conduct a Rule 2004 examination to give notice to the party to be examined.

A motion is necessary to obtain an order authorizing the examination. The entity to be examined must be served with a copy of the motion.

Local Bankruptcy Rules require.

Upon any reasonable request.

Our local rules (N.D. Texas) require a certificate of conference on the motion.

Our local rules of procedure require the entity seeking an exam to first contact the opposing party to secure voluntary cooperation: If this fails a motion on notice is necessary.

Such notice is required by our local rules. (C.D. Cal.)

To expedite these matters I require the respective attorneys to first discuss mutually agreeable times for examination when it is clear that one is allowable and submit an ex parte order. If can't agree or dispute allowability I require notice of motion.

The motion must be served upon the entity to be examined; but not for the purpose of giving it an opportunity to object to or otherwise oppose the motion.

We require "movant" to contact the entity's attorney or the entity to resolve a request for an exam before a motion is filed, and to serve a motion requesting an exam with notice to the entity or counsel.

By local rule, 2004 exam is deemed "ordered" – by notice to examined party. That party may move to quash. If no motion to quash, I never see it or know about it!

Judges who did not respond to the question

It is the practice in our community for 2004 examinations to be conducted at a time which is mutually convenient to the parties. That is, I expect creditor and debtor to have been in contact before an order is presented.

I don't even know what this means – in context of Rule 2004. By local rule – 10 days.

APPENDIX D

Set out below are comments in response to the request "Please describe generally the circumstances under which you require notice to the trustee or debtor-in-possession." The comments are organized according to the response given to the question "Please mark the statement below that best describes the frequency with which you require notice to the trustee or debtor-in-possession before considering a request for a Rule 2004 examination."

Judges who never provide notice

In this district, Hawaii, notice is routinely given to the trustee or debtor in possession as a matter of professional courtesy.

[This assumes that the DIP is not the entity being examined . . .]

Local rules require notice to all parties affected by a motion.

See above. [The court believes such prior notice to be unnecessary. The rights of the examined entity are protected adequately by affording an opportunity to file a Motion for Protective Order after the ex parte order has been granted.]

See comment above. [For a number of years I required the requesting party to attempt to set a mutually agreeable date and place before I signed the order. I abandoned that practice because it appeared to burden the requesting party beyond the requirements of Rule 2004 and because my colleagues in this district did not have a similar requirement.]

See Local Rule 2004(a).

Usually in this district the trustee or DIP is the movant. But movants here routinely provide notice to the target party and my issue is only whether entry of the order needs to await the passage of a response time. The order, however, is always sent by the clerk to the target party and would go to a trustee or DIP if that party were the movant or were not the movant.

If the trustee, or DIP is not involved directly in the proceeding, I do not require notice to them. It is the practice here, however, that the examining party will list the trustee or DIP as one to receive notice or a copy of the order.

Same as above. [See D.N.J. Bankr. Ct. R. 16, enclosed herewith. The Rule is working very well.]

See above. [No action on my part is required under local rules to take a 2004. It's handled as with any deposition. I only get involved if there is an objection by the deponent.]

Same as above. [In my jurisdiction the respondent may move for a protective order if aggrieved by the rule 2004 exam order. The majority are consented to and very few are contested. The above request is noticed but the motion is allowed at any rate.]

Note: The question is notice "before" considering the request. I often require notice AFTER the request is granted, so that others may participate in the 2004 exam.

Same as above. [I do not require prior notice. However motion and order must be served upon debtor or adverse party and trustee.]

See notes to Q. 1. [None of the options really apply because 99% of the requests I review are noticed to the entity to be examined so as to commence the 21-day notice period (re date of the examination. Thus, Q. 4 makes no sense to me. I will therefore answer Q. 3.]

Only if trustee and DIP are to be deposed.

Judges who occasionally require notice.

See Question 1 above. [If less than 10 days until examination.]

Where it appears to me that there may be severe inequity in not having the trustee or debtor-in-possession in attendance.

(Same as above.) [Where scope of exam or document-production demand seem too broad and appear to be irrelevant to the issue(s) raised in the supporting affidavit. Also, where it appears movant is using B.R. 2004 exam as a disguised attempt to conduct a "fishing expedition" in an adversary proceeding otherwise controlled by the FRCP discovery devices.]

Most Rule 2004 requests are by (1) trustees or DIPs, (2) creditors in chapter 7 cases (usually in dischargeability investigations), and (3) creditors in chapter 11.
I would generally not require notice to the trustee or DIP when the matter of investigation involves dischargeability.
I might want the trustee or DIP notified of the Rule 2004 request if it touches on the subject the trustee may want to pursue but I rarely wait for a response by the trustee. If the person to be examined is a doctor or lawyer I might wait for a response by the trustee or DIP and more importantly by the debtor if the debtor's an individual.

This a very fact-specific sort of situation – depends on whether I think it may be important/helpful that trustee or DIP possibly participate.

Only where it is clear that the interest of the trustee or DIP is implicated.

The trustee is notified when there is a need for an expert intermediary.

Usually when the trustee or DIP has an interest in the subject matter of the proposed exam.

Same as Q. 1. [If the examination is scheduled within 10 days or if I have concerns about the breadth of the request for documents.]

See above. [Short time duration before examination.
Site of the examination appears onerous for examinee or other parties in interest.]

When I have questions about the reasons for or the timing of the exam.

I require notice where the entity is not a party in interest. Our local rule limits notice.

Generally, the same as Q. 1 [Notice is given when the entity is not directly related to the debtor, such as an officer, director or insider; or when it appears from the application that the entity to be examined will contest the examination; or when previous proceedings in the case have suggested that the reason for the examination may be something other than the

reason that has been described in the motion or request. For example, the requesting party may be attempting to obtain materials or information in a pending non-bankruptcy lawsuit that might not otherwise be readily available in the non-bankruptcy proceeding.], plus if the volume of materials to be produced will interfere with the debtor's daily business operations, notice should be given.

Size and complexity of case.

See above. [If a dispute is known to exist or the request is not in proper form.]

It is not often the request comes from anyone other than the DIP or trustee. If question means that situation I would normally require notice but again depends on timing and obvious nature of request and need in circumstances of the case.

Only if they are the subject of the exam.

Where the examination is of the DIP upon short notice or with a volume of documents to be produced.

If the issues appear to involve estate assets of or bidder from the estate.

If it is clear that the matter would be in interest to the trustee. Notice arguably is required by L.B.R. 2004.1(b) and L.B.R. 9013.3(d)(2)(b), (d).

See answer to Q. 1. [If there is insufficient time for the entity to file for a protective order.]

I would not require notice to the DIP but would require notice to the trustee. (I have only had one attempted 2004 of a case trustee in 9 years.)

See response to Q. 1. [Most motions by parties in interest seeking orders for 2004 exams are filed with a certificate of service to the Trustee, Debtor's counsel, Debtor(s) or the party to be examined as a matter of professional courtesy. I review the motions for proper service even though our local rules (see copy attached of Local Rule 204) provide that an order allowing a 2004 exam may be entered on an ex parte motion. In an order granting an ex parte motion, I require that the moving party serve the party to be examined by a date certain and require that the exam or production of documents shall not be less than ten (10) days after service of the order to allow the party to be examined time to respond.

I further require in orders that non-debtors, absent consent, must be served by mail with a copy of the order, the motion and a subpoena pursuant to Fed.R.Bankr.P. 9017 which incorporates Rule 45 requiring personal service.]

Also, when the request is accompanied with a request for production which appear to be very extensive or perhaps burdensome, I require notice.

May be situation where party moving for exam is trying to circumvent FRCP discovery rules as to contested matter or adversary proceeding pending with debtor.

When the request indicates that the trustee or debtor-in-possession would be interested or otherwise want to be kept informed to fulfill their fiduciary duties.

If the issue is relevant to either party.

Only if on shortened time and if filed in the main case, as opposed to an adversary proceeding (assuming the trustee or DIP is not the subject of the 2004.)

Generally, creditors or other parties serve the trustee or DIP. I make sure the trustee or DIP knows what is going on in a Ch. 11 case. In a case under Ch. 7 or 13, it depends on the number of applications – notice may aid in coordination and save time and money.

Judges who require notice about half the time.

Required only when the trustee or DIP are being examined. Otherwise, we require service of the Order setting the 2004 exam be served on these parties, assuming they will object to the exam if they oppose this relief.

J**udges who usually require notice.**

Most R.2004 exams in consumer cases are "Sears"-type entities looking for their security or a reaffirmation. In all other cases, trustee must be noticed.

I always require notice to the Trustee; also to the debtor in possession unless the circumstances are as in No. 1 above.

This answer assumes that the examination may directly or indirectly impact the estate – if it does not or is not worth it – counsel for the estate is better able to decide.

Our local rules require notice.

As a practical matter, this only comes up in chapter 7 cases where a creditor is prepared to do the investigation the trustee ordinarily conducts. I therefore encourage the creditor and trustee to cooperate. The creditor usually welcomes the trustee's cooperation since it further "legitimizes" the creditor's efforts.

See above – Q. 1 [If a request is made, notice is sent.]

See above. [Per local rule the attorney who represents the party must first contact the entity's attorney to be examined. A mutually agreeable time must be discussed. If no agreement, the § 2004 applicant must certify that discussions had taken place.]

I usually require notice to the trustee or debtor in possession, except in those rare instances where the trustee or debtor in possession might not have an interest in the proposed subject of inquiry.

Same as answer to Q. 1. [We require that a Motion be filed with the following language included: "If you object to the Motion, you should file a written response with this Court within 15 days of the service of the Motion or the Court may grant the relief requested without a hearing."]

Judges who always require notice

I require service of motion requesting leave to conduct 2004 exam to be served on debtor-in possession or trustee.

Local Rule 90B.1(b) requires service on trustee.

Same as above for No. 1. [Movant must serve the entity to be examined with the motion pursuant to the Federal Rules of Bankruptcy Procedure and the local rules of this court.]

Same as above. [Under local rules governing objections to motions, such objections must be filed within 10 days. If no objection is filed within that time, the order for Rule 2004 examination is routinely entered. I do not require notice of a hearing, only "notice" in the form of being mailed or otherwise served with a copy of the motion.]

See above. [Local rule requires certificate of conference. If no agreement, motion set for hearing with notice.]

Same as above. [A request for a Rule 2004 exam is not required to be filed in this court. If a request is filed, a certificate is required to be attached stating that all parties in interest have been notified.]

Save as above [All motions are required to be served on filing date. I may consider the request before there is an opportunity to respond.]; will consider ex parte depending on stated circumstances on an expedited basis.

Same as above. [Motion has to be served on the entity.]

If the Motion is filed by a creditor, notice to trustee, debtor and debtor's counsel is required.

Required by local rules.

Same comment as for Q. 1. [I would only authorize examination on ex parte application if there were a showing that notice would compromise the integrity of the examination.]

Whenever a movant requests a court order.

Always

Rule 7001 and 9014 provide amply with invocation of rules of discovery which protect the parties where R. 2004 does not.

See above. [Our local rules require a certificate of conference on all 2004 motions.]

My clerk always inquires whether the party to be examined has agreed to the date and the exam. If not, we require the movant to try to set it consenually.

See comments to Q. 1. [It's always required so that the examination can be scheduled at a mutually agreeable time, thereby reducing the number of requests to vacate orders authorizing the taking of the examination. Notice also gives the examined party the opportunity to object to the scope of the examination and object to the document request. Notice seems to cut down on the objections to examination authorization requests and all interested parties can participate.]

I give the same caveat in Q. 1 would apply here. [Caveat: There is a local rule exception, say if the to be examined party is about to flee the jurisdiction and has evaded communication and/or service in the past.]

See above re Local B.R. 2.9. [Local Bankruptcy Rule 2.9 requires that movant must state that reasonable efforts have been made to arrange a mutually satisfactory schedule and that entity has agreed or refused to do so.]

A copy of the request is always served on the trustee or DIP, by the party requesting the 2004 exam.

Our Local Rule, as described above, does not specifically provide for notice to the trustee or DIP. However, I believe that such notice should always be required at every step, including initial requests for examination, issuance of a subpoena, and motion, as required.

Always.

Pursuant to motion practice procedure, parties are required to notify the trustee or debtor-in-possession.

See answer to Q. 1. [In an effort to streamline the process by avoiding sometimes protracted and frequently contentious litigation regarding the scope of a proposed examination, I require those seeking to conduct a Rule 2004 examination to give notice to the party to be examined.]

The motion must also be served on the debtor or trustee.

Local Bankruptcy Rules require.

With filing of any motion.

Such notice is required by our local rules (C.D. Cal.)

As with Q. 1. [The motion must be served upon the entity to be examined; but not for the purpose of giving it an opportunity to object to or otherwise oppose the motion.]

Same. [We require "movant" to contact the entity's attorney or the entity to resolve a request for an exam before a motion is filed, and to serve a motion requesting an exam with notice to the entity or counsel.]

See above. [By local rule, 2004 exam is deemed "ordered" – by notice to examined party. That party may move to quash. If no motion to quash, I never see it or know about it!]

Judges who did not answer question or who provided an ambiguous answer

I can't really answer this. In chapter 11, the trustee or DIP always get notice per local rules. In chapter 7 notice is probably required, but I don't enforce it.

DIP always require notice; trustee never requires notice.

I usually like to see such notice where the issue would likely affect debtor assets.

See Q. 1. [I don't even know what this means – in context of Rule 2004. By local rule – 10 days.]

Notice required only when the trustee or DIP is being examined.

Since I have only been on the bench six months, I have not had enough situations as set forth in Q. 2 to make any meaningful response.

APPENDIX E

Set out below are the responses to the request "Please use the space below to explain your answers to Questions 5a and 5b," and also to Questions 5a and 5b. Questions 5a and 5b concerned whether the judges would support changing the procedure for Rule 2004 examinations to one similar to that used with depositions under Fed.R.Civ.P. 30(a). Question 5a read: Would you support such a change in procedure for Rule 2004 examinations *where the witness is not the debtor?* Question 5b read: Would you support such a change in procedure for Rule 2004 examinations *where the witness is the debtor?* The response categories for both questions were (1) Definitely would support the change; (2) More likely to support than oppose the change; (3) More likely to oppose than support the change; (4) Definitely would not support the change; and (5) Have no opinion at this time. The comments are organized according to the judges' responses to Questions 5a and 5b.

Q5a Q5b

1 1
My procedure is already basically like Rule 30 except I sign a standard order. That order states that the requested examination facially complies with Rule 2004 and informs the examinee that it can seek a protective order if circumstances warrant.

1 1
Since Rule 2004 does not state that notice and a hearing are required for entry of an order for examination, I will sign the order submitted with the motion without considering whether it has been noticed. Since counsel are familiar with motions for protective orders under federal practice, they will sometimes seek such orders. This practice seems to work well, so why not make it official?

1 1
This is the procedure we use pursuant to our local rules and it seems to work very smoothly. We sign many fewer orders and have more time to devote to actual discovery contests.

1 1
I have not found an abuse of 2004 exams and think it's more convenient for all involved to handle them as we do depositions pursuant to FRCP 30(a). It would free judge to have more time to write opinion.

1 1
My answer assumes that the witness could still move the court for a protective order under appropriate circumstances.

1 1
By making the text of Rule 2004 mirror that of Federal Rules of Civil Procedure 30(a) and 45, such an amendment would reconcile the technical form of Rule 2004 with what the court understands to be the uniform application of the Rule under current "real world" practice.

1 1
The advantage of requiring a subpoena pursuant to FRCivP 45 is that the Rule is set forth on the subpoena so that the party to be deposed has notice that a motion to quash or motion for protective order can be filed for their protection.

1 1
I feel that the lawyer who objects to the examination should raise it with the court.

1 1
Nearly all requests for 2004 exam do not require the intervention of a judge. These requests therefore are just a waste of time and expense for the parties.

1 1
Most R. 2004 motions are unopposed. This would save expense of motion, but allow witness to move to quash.

1 1
Since orders are routinely granted (in our court by the clerk) there is no need to require them at all. As long as a witness is able to seek a protective order, there is no reason not to make the process easier and more cost-effective for the parties.

1 1
The court's authority, for cause shown, to order the debtor's examination at any time or place (Rule 2004(d)) and the related mileage provisions in Rule 2004(e), should be retained. Otherwise Rule 2004 examinations should be treated (procedurally) like depositions under Fed. R. Civ. P. 30. In addition, the broad scope of the examination (see 2004(b)) should be retained.

1 1
We use this procedure without difficulty.

1 1
Since notice is required, I am not so concerned about the application for authority to take this examination process.

1 1
Because of our local rule, applications are rare and I see no reason not to put the burden upon the prospective deponent.

1 1
I see no reason for court supervision of routine discovery in bankruptcy cases when it is not required in other civil cases. If there is a discovery dispute, then the court is involved.

1 1
See our Rule 16 and Rules Committee comment (i.e. our local rules committee).

1 1
We use this procedure now under local rule and rarely do we have either disputes or need to enter orders for R. 2004 discovery. Our procedure works fine.

1 1
In effect, in the District of New Jersey, by adoption of our Local Rule, we have dispensed with the need for any motion or court order in the vast majority of circumstances relating to the taking of a 2004 examination. A clarification in the national rules to that effect would be helpful.

1 1
The clerk's office and I have to process a whole lot of motions and orders for no real purpose. Rule 30 seems to work OK for the rest of the world.

1 1
The reason I require notice for all 2004 examination requests is that the overwhelming majority of such requests are, in fact, counsel using the 2004 exam as a deposition. In reality, it is not and the rules of civil procedure and evidence have limited application. Thus, any such change needs to incorporate fully the use of the F.R.Civ. and F.R. Evid.

1 1
It works.

1 1
A motion to quash or other form of relief (e.g. protective order) can bring the issue before the court promptly if the proposed deponent objects.

1 1
I believe the proper way to handle an objection to a Rule 2004 exam is by way of a motion for protective order and that no purpose is served by a motion for a Rule 2004 exam.

1 1
The deponent has adequate protection by filing a motion with the court to limit or quash the Notice to depose. There are problems associated with the change - such as: use of subpoena duces tecum, the need for an officer to administer the oath, who gets notified of the deposition - in an adversary it is quite simple - not so otherwise. There truly is no need to change the present Rule 2004 - however, we need to clarify whether the Motion and Order may be granted ex parte.

1 1
The present requirement of prior court approval merely generates paper work and accomplishes no useful purpose. Any disputes are resolved by objections or motions for protective much like deposition disputes. That really is the point at which the court needs to be involved. A rule change with an appropriate limitation as to evidentiary admissibility would be much more efficient. However, the provision in Rule 2004(d) should be retained as to the debtor.

1 1
Already a local rule allows 2004 exam without court order, subject only to objection.

1 2
I would not support the change unless there would be a reasonable limit on how far the debtor must go to attend the examination (e.g. 25 miles).

1 3
Goal of bankruptcy process is to protect debtors from creditor pressure. Multiple 2004 notices without prior court approval could interfere with this goal.

1 3
I'm a little nervous about giving unlimited latitude to those who'd depose a debtor - there's a very coercive or intimidating aspect to a R. 2004 examination that could be manipulated to

extort reaffirmations, obtain admissions, etc. Judicial review and appropriate intervention is much more advisable there than in the case of non-debtor examinees.

1 3
With non-debtor witnesses, the motion procedure re Rule 2004 exams serves no purpose. The motions are generally granted ex parte, and the "deponent" can always move to quash, or where appropriate, simply object.
With debtors, however, there is a danger of greater abuse. The filing is often designed to slow down litigation, and creditors can continue to harass a debtor with Rule 2004 exams. In addition, several creditors (and the trustee) may be examining the debtor for the same purpose (e.g., objection to discharges). If motions are required, the court knows what's going on and can coordinate such examinations.

1 3
I could see this being used as a coercive tactic by creditors wanting debtors to reaffirm.

1 3
I have some concern about the possibility of not giving sufficient "reasonable" notice or service on debtor's attorney resulting in greater court involvement.

1 4
The whole purpose of the stay is to give the Debtor breathing room from litigation - discovery or Rule 2004 is the most onerous part of litigation. The debtor should be reasonably protected from 2004 exams.

1 4
Debtors are subjected to (or at least exposed to) various types of harassment [including misuse of Rule 2004] (notwithstanding the protective provisions of the Code), and often counsel for the debtors do not adequately see them through the case after the creditors meeting (despite judges admonitions and local rule requisites). Many debtors have no counsel. They need as much notice as possible of an examination to find counsel or to otherwise protect themselves.

1 4
Should be insuring that used properly in conjunction with the Section 341 meeting or other informal requests for information.

2 1
The current process for invoking Rule 2004 involves needless paperwork which clutters the files and often increases the costs of administration. If deemed necessary, the court's protection is available through the filing of appropriate motions.
Debtors should expect scrutiny and especially for them, the process should be simplified.

2 1
A debtor should be required to respond to such exam.
The Code also provides jurisdiction for subpoena of non debtors where appropriate. This would eliminate unnecessary administration by the court, and permit court input only when motion to quash or for protective order is raised.

2 1
Motions for protective orders or to quash should protect those being examined.

2 1
Definitely would support the change if : debtor should still have opportunity (same as with Rule 30) to request protective order.

2 1
Since creditors are limited in their inquiry as 341a meeting, the debtor should be subject to examination regarding the claims or creditors.

2 1
FRBP 2004 exam of debtor always proper. No real need for court order. If debtor believes exam improper can always move for protective order. As to non-debtor it may be that some court supervision should be retained to prevent abuses of use of FRBP 2004.

2 1
Every now and then, a party uses Rule 2004 to harass others. Usually I can spot them up front. All in all, however, I would guess that over 95% of orders authorizing 2004 examinations are never challenged, and of the ones challenged, I probably permit the examination 80% of the time. This suggests making the deposed party seek a protective order is the most efficient procedure.

2 2
The change should specify minimum notice to be given as to time and interested parties - trustee, debtor, U.S. Trustee, Committees.

2 2
I see no reason why a party should not be able to interrogate a debtor. Obviously, his counsel knows about the event and can object, move for protective order or attend and represent the debtor.

2 2
I do not grant R. 2004 examinations in pending adversaries or contested motions. Have some concern such examination would be so used without court review.

2 2
I would support the changes if (1) notice of the subpoena has to be sent to the trustee and to the debtor, (2) the court can direct in its discretion on motion of a party in interest or on its own sua sponte that all further Rule 2004 examinations in the case shall be by motion, and (3) the moving party has the option, in the case of the debtor, of proceeding by motion instead.

2 2
Responses to Q. 5a. and 5b. were "2" and are explained further by "provided notice to all parties in interest is required - parties shouldn't be subject to repetitive examinations."

2 2
I think the identity of the movant is more important than the identity of the witness. A trustee should be able to notice a 2004 exam without court intervention and our new proposed local rules may provide for that (the committee has recommended that, but the judges have not yet considered that request). I am more reluctant to make the process too easy when the movant is not a trustee or official committee and the witness is the debtor. Motions to quash cost money (more than a response) and a debtor in bankruptcy has limited resources to engage additional attorney services.

2 2
Because the applications/motions are normally granted, the change will eliminate a step (court application) that doesn't really accomplish much. Indeed, our clerk is authorized to "rubber stamp" our names to the orders, and the issues only arise thereafter, just as they would if the change is made.

2 2
If the basis for a Rule 2004 exam is to determine extent of the estate then such a procedure seems reasonable but we should make certain that debtors are not harassed or coerced.

2 2
Request must be fair and reasonable with debtor not being harassed.

2 3
Without some type of court supervision, there could be numerous and duplicative examinations of the debtor in a particular case. The court can require a movant for a Rule 2004 examination to notify other interested parties that the examination is going to take place so that other creditors can participate.

2 3
2004 examinations of the debtor should not be routinely granted unless the 341 examinations are an unsatisfactory vehicle for debtor examination. Allowing creditors the freedom to examine under § 341 and FRBP 2004 without the need to demonstrate cause opens the door to potential abuse.

2 3
I would like to stay out of the matter as between nondebtors if debtor/trustee gets notice. With debtors, I believe the exams deserve more scrutiny.

2 4
Where the witness is the debtor, court imprimatur is important to prevent the procedure being misused, for harassment or to coerce action favoring a creditor. Where the witness is not the debtor, such concerns do not appear to be present.

2 4
The court should be aware of and in a position to monitor the number of times a debtor is subjected to 2004 examination as well as the place and time at which one 2004 examination is conducted in order to make sure that the debtor's fresh start is not impeded, particularly since a debtor in a consumer case already is at a severe economic disadvantage.

2 4
I find many such requests are fishing expeditions used mainly to attempt to force a reaffirmation.

3 1
There is misunderstanding among attorneys as to the use and purpose of Rule 2004. Many want to use as a deposition for an adversary proceeding, or to inquire of other matters than stated in Rule 2004. I would restrict the use of subpoena under Rule 30 and 45 by specific language of some sort.

3 1
Debtors are expected to cooperate in supplying information to creditors, trustees, etc. as a condition of receiving a discharge or confirming a plan. As long as the scope of examination is limited in the Rule (i.e. financial affairs of the debtor) a Rule 2004 examine

is appropriate. Creditors' meetings are not a viable substitute. Non-debtors have not agreed to disclose, and so an exam should be allowed only for cause shown after a hearing.

3 1
Non Debtor 2004 should require court scrutiny.

3 1
Definitely would support the change if : debtor should still have opportunity (same as with Rule 30) to request protective order.

3 2
My reservations arise from a concern that the broader scope of Bankr. R. 2004 examinations increases the potential for abuse that is greater than in pending litigation of more discrete issues. For third party witnesses, there should be a first level of screening from burdensome requests for little apparent reason. As to the debtor, I would support the change in business cases and motions by a trustee. However, I think some creditors would abuse the process to compel consumer debtors to agree to reaffirmations and nondischargeability orders, based on my experience.

3 2
Generally, a Rule 2004 examination tends to be more "wide open" than a deposition. It is generally believed that a non-debtor entity being examined under Rule 2004 does not enjoy the same "protections" that are available to a deponent. If the debtor is the entity being examined, there is a general belief that he or she has accepted the possibility of such a wide ranging inquiry by having filed a voluntary bankruptcy petition. The 2004 examination of a debtor is not unlike an extension of the 341 meeting.

3 2
In some ways use of 2004 is broader than use of depositions under Fed. R. Civ. P. 30(a). A 2004 may allow examination of a variety of persons and entities other than the debtor who may not even be aware of the bankruptcy, much less voluntary participants. I am reluctant to give counsel authority to corral such a potentially large group of persons without court supervision. On the other hand, the subject of the 2004 examination is more limited than the scope of discovery under Fed. R. Civ. P. 26. A debtor should expect and be required to supply such information as part of the trade off for bankruptcy protection. I am concerned however, that a debtor's and the debtor's counsel's time be conserved. Therefore some court oversight might be required to avoid numerous or repetitious examinations.

3 2
The scope of Rule 2004 is more broad than the discovery rules applicable to adversary proceedings and contested matters, so leave of the court is a necessary protection if the witness is not the debtor. But where the witness is the debtor, and an order for relief has entered, the debtor is immersed in the bankruptcy process and may seek protective orders if necessary.

3 2
This court would support such a procedural change where the witness is the debtor because in the vast majority of cases (except for rare involuntaries) the debtor is in bankruptcy voluntarily and in exchange for receiving a fresh start must bear certain burdens, such as submitting to Rule 2004 examinations. However, where a non-debtor is the witness, the court believes one who has not voluntarily submitted to the jurisdiction of the bankruptcy court should receive prior notice of a proceeding such as a Rule 2004 examination.

3 2
Where the witness is not a debtor, I feel that the courts should have a supervisory role with respect to the issuance of subpoenas. Where a debtor has usually voluntarily submitted to a bankruptcy court's jurisdiction, I feel that a 2004 exam could be treated the same way that depositions are treated under the FRCP. Of course, there are always exceptions, but overall, I am in favor of the change where the debtor is a witness.

3 3
The present procedure works well. / Almost always allow a month to examine the debtor; sometimes I will limit the scope of the inquiry or resolve a dispute on when/where the exam should take place. Some creditors misuse R. 2004 to attempt to obtain information about another creditor, especially where there is a state court action between the two creditors.

3 3
Bankruptcy proceedings involve high emotions. R. 2004 motions have great potential as tools of oppression by the disappointed. The requirement for court approval adds a step of "thoughtfulness" on the part of the litigation that reduces the number of 2004's taken, which is appropriate.

3 3
Court's involvement may be necessary to avoid chaos - with examinations noticed willy-nilly by various parties. The result would be more motions to vacate, to quash, etc. Better to supervise/manage/coordinate at the threshold.

3 3
If the rules committee in its wisdom proposes a change, I would be interested in it, but I do not see what is broken.

3 3
I see no reason to treat debtors and other entities differently under Rule 2004. 2004 should not become a tool of harassment toward debtors.

3 3
Taking the court totally out of Rule 2004 examinations might lead to abuses by creditors or well-funded parties and become onerous. I think a judge should have the opportunity to review the request for an examination although he or she may seldom deny the application. For example, I won't sign orders unless that 14 days advance notice of the exam is given, absent extraordinary circumstances.

3 3
Parties should get notice before such exams are allowed.

3 3
Most of the time our folks do depositions by agreement, so we do not see motions. Motions help when there is a disagreement. The local rule requiring a certificate of conference gets them to talking.

3 4
Rule 2004 requests of debtors are routinely used in this district to circumvent the rules requiring prompt filing of non-dischargeability litigation (FRBP 4001). Creditors frequently schedule them for a date after the FRBP 4007 deadline (not having done any pre-deadline investigation of the debtor's conduct) and then use the post-deadline date as a pretext for needing an extension under FRBP 4007(c). Since we are alert to this abuse, we have been requiring creditors to make a strong showing for the Rule 4007(c) extension.

4 1
As to 5a, this is not the common situation, and involvement of the court is a desirable precaution.
5b is the common situation here and certainly in consumer cases the order is always and routinely granted. It does not seem to me that elimination of the need for an order will lead to any abuse.

4 1
In my view, by seeking relief under Title 11, a debtor submits itself to a full inquiry of its affairs. Thus, parties in interest should be entitled to a full examination without the burden of a formal application to the court. On the other hand, non-debtors have not, by any act, consented to an examination. They should, therefore, have an opportunity to object prior to any directive to appear for a Rule 2004 examination.

4 3
In my limited (1 1/2 years) experience, R. 2004 applicants make an effort to demonstrate why they need the examination; if they don't demonstrate some need, I will grant the motion. The obligation to show some need does two things: (1) it acts as a restraint on the movant, and (2) it makes objection by the party to be examined less likely. Both tend to reduce abuse of the system and motion practice.

4 3
Rule 2004 provides a much broader discovery than FRCP 30 - Additionally the party examined is not a party to our adversary proceeding at the time the exam is held - lack of court oversight before the Rule 2004 exam is permitted could lead to very abusive practices. Many times directed at parties not represented by counsel.

4 3
Due to the very broad scope of a Rule 2004 examination, it is critical to keep the court involved to prevent potential abuse.

4 3
Given the breadth of matters subject to examination and its lack of connection to pending litigation, there should be some explanation of the basis for seeking the examination.

4 4
Our district is large and busy. Trustees do not allow creditors to examine much at §341(a) hearing. Creditors must use attorney and set R.2004 close by if judge must approve, so harassment cases are reduced.

4 4
Because the scope of a 2004 exam is so broad it can be abused or recklessly employed, especially against pro se debtors and third parties (often relatives of the debtor) who lack access to legal counsel or cannot afford it.

4 4
A 2004 exam is much broader than most discovery in an adversary proceeding and is much more likely to be abused. In our district probably 90% of all 2004 exams are sought by Sears or other consumer creditors. These appear to be to scare debtors into signing reaffirmation agreements (which we never see, even though debtor does not have an attorney). The stated reason for the 2004 exam is to see if a §523 action should be filed - practically none are. [It would be interesting to see what % of cases where Sears, etc. seek 2004 exams have a filed §523 action on reaffirmation agreement. They must be getting

some reward because they keep asking for 2004 exams. Some of us allow all exams, some allow some exams, some allow no exams under these circumstances.]
Also, creditor's counsel often sets the exam many miles from debtor's home/work. The debtor loses at least 1/2 day of work. We never get objections to these, so the court must monitor them ourselves.
It is a delicate balance to allow pre-litigation discovery so as to prevent bankruptcy fraud and abuse and yet to protect the debtor from strong arm tactics. I wish I knew an answer, but I don't.

4 4
Without court involvement in the BR 2004 process, creditor misuse of the exam to retaliate and harass the debtor would abound.

4 4
My major concern would be to avoid a multiplicity of possibly duplicative examinations (particularly of the debtor). While not a problem in consumer cases, there are business cases in which several different creditors may each seek to conduct his/her/its own 2004 examination of the debtor. I would support a change that allowed a trustee (but not a debtor-in-possession) or the U.S. Trustee to simply notice a Rule 2004 examination without having to obtain an order.

4 4
With our local rule, parties consult and if no agreement, court resolves after notice and hearing - In many respects, this works better than the Civ. P. rule -

4 4
An examination under Rule 2004 is a unique device. It plays a very important role for the discovery and investigation of information related to a bankruptcy case. A discovery procedure is created under Rule 2004 without the necessity of the existence of an underlying Part VII adversary proceeding or contested matter under Fed. R. Bankr. P. 9014.
If the court had no initial role, I'd be concerned about mischief, misuse, etc. The role of the court, however small it may be, discourages potential mischief, misuse, etc. and gives the appearance that the court is aware, etc. and in control.

4 4
Proceedings in this court as in all other courts should be orderly. Star Chamber Actions brings disrepute upon all courts and R. 2004 aids this.

4 4
2004 exams are different than depositions as there is no particular litigation involved, and often involve non debtor entities.
I am concerned with the use of the 2004 exam in connection with litigation outside the bankruptcy process.

4 4
Scope of 2004 is likened to ocean fishing. Also, though rights are protected by means of the request to vacate for protective order, etc., this takes legal time and costs money. The mover is less likely to use 2004 requests for other than legitimate purposes and is less likely to stray from the acceptable scope (even for a 2004 there is a defined scope), if the request has to be presented to the court first.

4 4
Rule 2004 is not like depositions/discovery in normal civil litigation. It can easily be abused. I have a case now where a bankruptcy Ch. 7 debtor was hit immediately after filing with a barrage of FRCP discovery re "bad faith" for not trying to pay the creditor's debt. I ruled that even though Rule 9014 would permit that I will "provide otherwise" under the Rule so that any such discovery be controlled by court under a Rule 2004 motion to avoid harassment and intimidation discouraging any bankruptcy relief.

4 4
I routinely grant 2004 motions filed by trustees. I almost never grant 2004 motions filed by others because the requested examination is available as a deposition in a contested matter or adversary proceeding. If no contested matter or adversary proceeding has been initiated, it is unfair to subject a party to an examination without limits or parameters.

4 4
Rule 2004 is unique in its nature. No adversary proceeding or contested matter need be at issue for it to be used.

4 4
Would lead to abuse - entity would be noticed to appear at unreasonable times and plans.

4 4
Re Q. 5b: Many creditors use consumer 2004 requests to try to coerce reaffirmations that are unjustified under 524 standards.
Re Q. 5a: Unlike R. 26 discovery framed by issues in complaint/answer, 2004 has no natural limits to discoverability. An almost infinite universe of non-parties could be harassed by litigious creditors/debtors. 2004 often used as an abusive discovery tactic.

4 4
The Order should be required in order to prevent harassment of the debtor, co-debtor, family member, etc., and to prevent embarrassment, etc. if an employer (for example) is sought to be examined.

4 4
Again, we have too many pro se debtors - I believe they would be abused. And, even where they have counsel, most debtor's attorneys will not assist them with a 2004(a) examination.

4 4
Since a 2004 examination is broader than a deposition notice should provided. A hearing then permits a judge to resolve legitimate issues concerning the type of the examination as well as issues involving location, timing, and who may be present. This hearing prevents later motions to quash or for protective orders.

5 3
The debtor needs to remain under the supervision of the court to prevent possible stay violations.

5 4
There are times in chapter 11 cases where the debtor needs to devote itself to things in an orderly fashion. Third parties should not be free to tie up the debtor in wide-ranging examinations at any time they wish.

APPENDIX F

Set out below are comments in response to the request "Please identify any problems you see with Rule 2004 and its implementation and if possible, describe a proposed solution." The comments are organized according to the response given to the question "Overall, how satisfied are you with the procedures set forth in the existing Rule 2004 and their implementation."

Judges who said they were very satisfied with the procedures set forth in Rule 2004 and their implementation

The rule is working fine for me. It is also very necessary.

The problem is not the way a Rule 2004 exam is initiated. Rather, it is deciding the difficult discovery issues that come up when the party to be examined files a motion for protective order. But that's why we get the big bucks, isn't it?

See answer to no. 5.

Sometimes, parties to a R. 2004 exam are also parties to an adversary proceeding. A revised rule should attempt to provide guidance as to when parties should use the discovery rules in place of R. 2004.

Make all attorneys seek accommodation before applying for a Rule 2004 order.

Why is this being studied?

I find Rule 2004 well-drafted and effective. It gives each district the latitude it needs to implement its provisions appropriately by means of local rules, yet is sufficiently specific to provide all parties the latitude and protections consistent with the purposes of the Code. I suggest that the only change appropriate is to permit non-debtors to be examined without court order but with NOTICE to the debtor, the trustee and debtor's counsel.

I have not experienced any great problems.

See our enclosed local rule which we believe adequately balances the interests of parties wanting to set the exams, those opposing the exams and those agreeable to the exams but requiring adequate notice.

Although Rule 2004(a) does not require notice and the accompanying committee note provides that "[t]he motion may be heard ex parte or it may be heard on notice," nonetheless a debtor will occasionally raise a notice issue. Perhaps, if at all, the aforesaid statement of the Advisory Committee might be considered to be inserted as a second sentence to existing Rule 2004(a) or the Rule might provide: "on motion of any party in interest, the court, with or without a hearing, may order the examination of the entity."

None. I don't think it is broken, so I say, don't fix it.

Don't really understand most of these questions. In this district, issuance of 2004 exam order is ministerial function of clerk's office.

See my answer to Q. 5b. [With non-debtor witnesses, the motion procedure regarding Rule 2004 exams serves no purpose. The motions are generally granted ex parte, and the

"deponent" can always move to quash, or where appropriate, simply object. With debtors, however, there is a danger of greater abuse. The filing is often designed to slow down litigation, and creditors can continue to harass a debtor with Rule 2004 exams. In addition, several creditors (and the trustee) may be examining the debtor for the same purpose (e.g., objection to discharges). If motions are required, the court knows what's going on and can coordinate such examinations.]

There are no serious problems with Rule 2004. In my experience, if notice to the to-be-examined party is required before the order is entered, there is always an objection. This is tantamount to requiring notice and a hearing before a subpoena can be issued. Such a procedure simply invites conflict and is foolish. Let the examined party object post-order, treat it like a normal discovery matter (staying the exam until there can be a hearing) and then have a hearing.

Problem: Abusive and burdensome requests, without a legitimate purpose that is apparent, i.e. a creditor's B. Rule 2004 motion seeking all documents one would request for a 523(a)(2) nondischargeability complaint against a consumer, but filed after the deadline for filing complaints.
Solution: Require a general statement of purpose for the examination in the motion by a creditor in Chapter 7 cases.

I have very few problems with current structure of Rule 2004.

It ain't broke.

If there is a problem it is with the applicability of Rule 2004 with a particular proceeding, say an adversary, or more problematically, an involuntary proceeding prior to the trial for the requested order. I take the position that Rule 2004 is inapplicable, but that regular proceeding type discovery devices are required. There's a problem with the commentary (as is often the case) and with the applicable rules.

See In Re Szadkowski – enclosed.

It should be clarified nationally as to whether notice and a court order other than the subpoena itself are necessary. I recommend our procedure.

The rule should mention the availability of protective orders.

Provide for court to grant a request for 2004(a) examination with or without a hearing to eliminate the notice issue being raised by debtor.

Rule 2004 is not absolutely clear as to when a subpoena for production of documents is required – just for entities other than the debtor or for the debtor as well. The rule is also unclear with regard to examinations of corporations, trusts and other legal "persons." I use the pattern of the federal rules of civil procedure in allowing such entities to designate a representative to speak on the entity's behalf.

We have found our Local Rule to be very effective in saving resources, both for litigants and the court. We have encountered no significant problems from any source.

I read 2004(c) to require a subpoena to compel the production of documents but not the attendance of an entity, because 2004(a) provides for a court ordered examination. If the court orders the examination of an entity, a subpoena to compel the same result is redundant.

Works well in our district. Lawyers do not abuse it.

The problem comes when an ex parte order is entered and the party does not have sufficient time to file a motion to vacate. If enough time is given (e.g. 1 week) there should be no problem with the ex parte order. The success of the 2004 procedure may depend upon how well the lawyers cooperate with each other and this may vary greatly from district to district.

Lack of uniformity in dealing with the initial motion. There is no logical reason to require a hearing on the Motion to conduct the exam. The person to be examined has standing to challenge the exam but that can be done once the Order is entered. No one else has any standing.

I have made my comments throughout. Our system seems to be operating very well and I would not like to see any change in the national rules, except as they would comply with our local rules.

There really is no problem. However, the prior court approval requirement is unnecessary and inefficient.

Really don't have many problems. The clerk's office is authorized to signature stamp most pleadings, unless they are on shortened notice, when they are forwarded to the judge. Occasionally there is a problem over location or length.

Judges who said they were somewhat satisfied with the procedures set forth in existing Rule 2004 and their implementation

Seems to work "OK" now.

(1) There needs to be clarification as to whether or not a party (including non-litigants can be ordered to produce documents outside of the exam (i.e., something akin to Rule 34) or can documents be required only as part of the 2004 exam.
(2) Is 2004 unavailable if the need to examine is in connection with an adversary proceeding or pending contested matter? In such cases do only the narrower discovery rules (Rule 30 et. seq.) apply?

Our local rules treat them like depositions – hearing and order only if objection or failure to cooperate.

Other issues: Discoverability of tax returns, third party bank records.

Attorneys often fail to distinguish between the purpose of a 2004 exam and the purpose of a deposition. Education is the only solution.

Rule generally works fine.

Rule 2004 incorporates F. R. Civ. P. 45 but does not incorporate any of the rules that govern depositions. Some of those rules should be made applicable. For example: (1) Can the examination be done telephonically? See F. R. Civ. P. 30(b)(7). (2) What should the parties and the court do when the party taking the examination or the party being examined engages in misconduct at the examination? See F. R. Civ. P. 30(d).

See answer to Q. 5 and enclosed order. [The advantage of requiring a subpoena pursuant to

FRCivP 45 is that the Rule is set forth on the subpoena so that the party to be deposed has notice that a motion to quash or motion for protective order can be filed for their protection.]

The rule works as is since the court can insist on notice. In a chapter 7 case, it would be helpful for the rule to provide that the trustee always gets notice of the requested examination of the debtor. This practice avoids multiple unnecessary examinations, since the trustee can participate in the third party's examination.

The Rule should clarify that examination under the Rule is not a substitute for discovery conducted in a contested matter or in an adversary proceeding. Most importantly, it is improper to use the Rule by a creditor to find out whether or not they may have a viable claim of nondischargeability under §523(a)(2), (4), (6) or under any of the exceptions. Clearly the examination is only proper concerning matters which are relevant to the debtor's discharge.

In our district the attorneys generally notify the other party or the witness of their desire for a 2004 examination and most of the time the examination filed after agreement has been reached regarding the time, place, etc. for the examination. Perhaps this occurs because attorneys are aware that if they obtain an order for a 2004 examination without notice to the other side, the court most likely will grant a request for a new date for the examination if the other attorney or the witness has a legitimate scheduling problem. Most of the problems which are not resolved by the attorneys involve disputes regarding the documents requested or the subjects which may be covered at the 2004 examination.

It should be very easy for a trustee or an official committee or a debtor or DIP to obtain a 2004 exam. The potential for abuse, however, is much greater if a creditor can simply choose not to attend a §341 meeting to ask questions and, instead, notice a Rule 2004 exam without oversight by the court. The financial resources are too unevenly distributed in that equation and our rules ought not to encourage it. Instead we should require a creditor who wants to examine a debtor, probably as an investigative tool for a dischargeability action, to establish cause for the examination on notice.

Since 2004 exams are used for similar purposes as are depositions, the same rules should apply as to objections, privileges and other evidentiary matters. At present, the Advisory Committee note suggests this is not the case.

I rarely see R. 2004 motions. The parties usually agree and handle examination by consent.

I have had very few problems with Rule 2004. Simple notice procedure for debtors and notice and subpoena for non-debtors similar to that required under Fed. R. Civ. P. 30 would probably suffice.

(See answers and comments to Question 5.) [The current process for invoking Rule 2004 involves needless paperwork which clutters the files and often increases the costs of administration. If deemed necessary, the court's protection is available through the filing of appropriate motions. Debtors should expect scrutiny and especially for them, the process should be simplified.]

The procedures for sanctioning a failure to comply are cumbersome. Also the limitations on use of testimony at such exams don't make a lot of sense. I believe the sanction procedures and use of testimony should track normal discovery/deposition rules.

Court role and routine intervention seems unnecessary and cumbersome.

My concern is the distinction between Fed. R. Civ. P. 30 et seq. and 2004. It would be helpful if the rule made a distinction between adversary proceedings and cases. I would also like to see some limitation on the scope of the examination as to substance and as to who may be examined.

I do not grant a Rule 2004 request if the movant and the entity to be examined are parties to an adversary proceeding. I refer the parties to the rules for depositions, interrogatories and other pretrial discovery procedures. Rule 2004 should be amended to permit a wide ranging examination without the need of a motion or court order, BUT ONLY IF THE PROTECTIONS OF THE PRETRIAL DISCOVERY PROCESS ARE AVAILABLE. IF THESE ARE NOT AVAILABLE, RULE 2004 SHOULD BE AMENDED TO REQUIRE A NOTICE TO THE ENTITY TO BE EXAMINED (AND A STATEMENT OF CONSENT IF POSSIBLE) BEFORE THE REQUEST IS PRESENTED TO THE COURT. IF THESE AMENDMENTS CREATE MORE PROBLEMS THAN THEY SOLVE, NO CHANGE SHOULD BE MADE BECAUSE THE SYSTEM GENERALLY IS WORKING.

The code requires an application to be made. The code could be changed to permit subpoenas to be issued and 2004 exams held without an application. Most often, there is no opposition. The court would only be involved in hearing and determining disputes.

Disputes with the debtor that must be discovered into under Rule 2004 shall proceed by the same procedure for discovery as followed in the bankruptcy rule 7000 series, by the same notices etc. I apply these procedures by order. Rule 2004 shall do so with Rule 2004(d).

Occasionally, creditors appear to use the 2004 exam as an extension of the § 341 meeting to pressure concessions from the debtor. This is of greater concern where the examining creditor never attended the § 341 meeting.

I think notice is necessary because some parties are unreasonable in at least the scope of their requests.

I definitely feel that the party to be examined should be notified in advance in an effort to coordinate the time and place of the examination. We require this by Local Rule 2004-1. I have enclosed a copy.

On reflection, I believe that the debtor should definitely be notified of the time and place of an examination of any third party, although I don't find that requirement in any of the Rules. I am confident that is the practice in this district, because I have not received a complaint in 15 years on the bench.

Our local rule (attached) works well.

I don't know if it is possible to do so, but it would be helpful to set out when a FRBP 2004 exam is appropriate and when the parties must use the discovery provisions of the FRCP, i.e. when an adversary proceeding or contested matter is pending between the parties.

I always modify proposed 2004 orders to allow for reasonable notice to the party to be examined; I do not accept a proposed date certain for an examination.

I've not had any serious problems with the rule.

The system seems to be working ok – as supplemented by our local rule.

The clerk is allowed to sign orders for most of the judges. Three problems occur frequently. (1) Too little time for document production. (2) Orders that demand documents be produced before the examination – with no qualifying language – that they need only be produced for inspection and copying. (3) 2004 exams are often set too far from the debtor's (witnesses') residence to be reasonable.

Judges who said they were somewhat dissatisfied with the procedures set forth in existing Rule 2004 and their implementation

I see no reason not to treat examinations exactly like depositions.

I believe that the requirement that Rule 2004 examinations be brought by motion (albeit ex parte) is a complete waste of judicial resources.

This problem of in what situations notice and hearing are required should be resolved in the Rule.

Individual debtors/ creditors etc., should not be compelled to travel more than, say, 25 miles (or county of residence/business), at least in chapter 7, 12 & 13 cases. Rule 2004(c) should be revised to make subpoena under Rule 9016 the exclusive method of compelling attendance or production – parties shouldn't be ordered by the court to appear/produce until they've failed to respond to a subpoena.

I have been concerned about its misuse by creditors to extent reaffirmation agreements, or simply to harass some debtors who cannot afford to pay an attorney to protect them. At the same time, there is some urgency to the examination and §341 meetings are woefully inadequate to provide factual bases for §§523, 727 challenges, or even objections to claims of exemption.

(1) Third parties are used to getting notices of depositions – should be treated like noticing a deposition.
(2) Feel differently about debtor – there is potential for abuse (i.e., forced reaffirmations no understanding of issue) and there is other opportunity.
(3) The problem with the Rule is that it fails to differentiate between the two and is extremely ambiguous.
See attached local rule. Some local judges set all in for hearing. I do not. I set those that look potentially abusive and I warn counsel in the order granting request of debtor that it's an ethical violation to get an order for one purpose and use it for another.

A party should be able to take a Rule 2004 examination without a prior court order, except where the debtor must travel an unreasonable distance. Very few motions for protective orders are filed objecting to a Rule 2004 exam. Rule 2004 exams should be treated like depositions, although more notice should be required so that an objection can be more easily filed (given the scope of a 2004 exam).

The rule should have a minimum notice period (for the witness), absent court approval of a shorter period. The rule should "codify" the prohibition imposed by many courts against use of Rule 2004 for discovery in pending litigation.

Credit card companies are now using 2004 exams routinely in pro per consumer cases to force settlements on dischargeability issues. I am concerned the practice may be abusive. I also wish there were clearer rules regarding what should be required prior to obtaining a Rule 2004 order.

The scope, and proper use, of Rule 2004 should be more clearly defined, especially when a contested matter is pending or is likely to be commenced in the immediate future.

I highly recommend blanket approval or no need to seek an order.

Notice of a specified time frame should be required, except in special instances, in which the court can set individual, complementary standards.

Rule should require notice in same manner, and to same extent as discovery rules.

The major problem I see is that a lot of lawyers don't understand there is a difference between a Rule 2004 exam and a deposition pursuant to FRCP 30. They will have an adversary filed and want to take a disposition. Rather than noticing a deposition they will file for a 2004 exam.

Rather than permit Rule 2004 exams need a procedure similar to FRCP 30 – The procedure should be permitted only after notice and hearing – one possible exception would be where the party sought to be examined is the debtor.

I strongly support a notice procedure, without court order. In this district, local rule encourages, but does not require, use of a notice procedure without court order.

I would lean toward letting parties notice 2004 exams like depositions in civil litigation but I would require the motions to be filed and would require the notice to state the procedure for objecting to it. There might be a need for judicial approval, for example, if the deposition was to be taken on less than 10 days' notice.

Judges who said they were very dissatisfied with the procedures set forth in existing Rule 2004 and their implementation

Thanks for your help. We or should I say, this judge, appreciates it.

It creates unnecessary paperwork. Use a simple subpoena procedure.

Many years ago when we were hopelessly understaffed with judges and dealing with almost 6,000 cases per judge, per year, it came to my attention that a large amount of staff power and judges' time was being wasted in connection with Rule 2004. In over approximately 97 percent of the Rule 2004 applications, the application was filed ex-parte and the order authorizing the 2004 exam was entered ex-parte and the court was burdened with two docketing events for its docketing clerks and only rarely were objections, motions for protection or other problems encountered.

Accordingly, I entered a General Order on December 19, 1991, copy attached, which solved our problem without negative impact on anyone. Thereafter, my colleagues all agreed with the concept and my General Order was replaced by our Local Rule 204, copy attached, and the "Notice of Rule 2004 Examination" prescribed by the Local Rule, copy attached. The Rule 2004 Procedures that require a motion and an order authorizing the taking of the 2004 Procedures that require a motion and an order authorizing the taking of the 2004 examination are dinosaurs that should become extinct as soon as possible.

A distinction should be made between an individual debtor and a business entity. The individual debtor needs the protection of review by the court of a FRBP 2004 request. I would suggest no review for business entities.

– Notice should be required.
– Parameters should not be open-ended.
– Harm: 2004 is used as a creditor's weapon to extract a reaffirmation agreement .

Seems to involve a lot of court involvement that is unnecessary. Also, ex parte orders are often sought and used for improper purposes.

See note following Q. 5b. [The reason I require notice for all 2004 examination requests is that the overwhelming majority of such requests are, in fact, counsel using the 2004 exam as a deposition. In reality, it is not and the rules of civil procedure and evidence have limited application. Thus, any such change needs to incorporate fully the use of the F.R.Civ. and F.R. Evid.]

The Rule 30(a) and 45 approach is better.

Years ago, we concluded that the national rule is cumbersome and unworkable. It could take 60 days to get such an examination – and the actual scheduling is contingent on whether objections are filed, when the motion is heard, etc. That's why we changed our practice. I've attached a copy of our local rules for your review.

Judges who said they had no opinion at this time about the procedures set forth in existing Rule 2004 and their implementation

Few problems. Our local rule works well.

Since I have only been on the bench a short time, I do not have an opinion at this time.

Judges who did not respond to the question regarding satisfaction with Rule 2004 procedures.

As a recalled bankruptcy judge for several years, I have not handled any request for Rule 2004 examination.

We skipped them because waste of time filing motion, getting order, docketing all this stuff.

Do as Q. 5 suggests.

Rule 2004(a) appears to require a party to file a motion and get a court order prior to proceeding with the discovery matters covered by the Rule. About 9 years ago, following the lead of other bankruptcy judges, the Western District of Pennsylvania adopted L.R. 2004.1, a copy of which is attached. Our local rule allows a party to proceed under Rule 2004 without a court order and leaves it up to a deponent, if he thinks the discovery is improper, to bring the matter to the court's attention by a motion for a protective order. In my view, the Fed.R.Bankr.P. 2004 should be revised to freely allow examination, unless restricted or prohibited by the court.

Always depends on local implementation to be efficient and effective – good practical approach.

Chart 1
Number of Requests for Rule 2004 Examinations By District

Circuit	District	Total FY 95 Bankruptcy Filings	Number of requests for Rule 2004 examinations	Granted	Denied	Pending	Other Disp.	Other comments
D.C.	D. D.C.	1,476	9	8	1	0	0	
First	D. Me.	2,016	40	40	0	0	0	
	D. Mass.	14,431	281	220	8	11	42	
	D. N.H.	3,099	16	12	2	1	1	
	D. R.I.	3,174	48	48				Procedure for Chapter 11: wait 23 day objection period, then submit to judge; procedure for Chapters 7 and 13: granted upon receipt by case administrator.
	D. P.R.	7,686						
Second	D. Conn.	8,739	267	258	2		7	
	N.D. N.Y.	9,273	85	63	0	20	2	
	E.D. N.Y.	22,234	382	367	5	4	6	
	S.D. N.Y.	10,913	250	218	4	0	28	It is unclear whether 28 motions are still pending or were disposed of in some other way; counted as "other disposition."
	W.D. N.Y.	7,354	74	34	1	2	37	
	D. Vt.	978	18	9	3	2	4	
Third	D. Del.	1,544						Delaware is a NIBS court-requested information is not accessible.
	D. N.J.	26,428	13	5	1	3	4	
	E.D. Pa.	12,467	60	44	1	9	6	Closed cases through Sept. 30, 1995 have been archived. Therefore, not all 2004 examinations for FY 95 are reflected in this report.
	M.D. Pa.	4,603	45	45	0	0	0	
	W.D. Pa.	6,141						Can't answer accurately due to our local rule. 2004.1 that reduces, if not eliminates, the filing of motions and court orders for 2004 examinations.
	D. V.I.	62						
Fourth	D. MD.	16,919						
	E.D. N.C.	6,046	15	15				
	M.D. N.C.	4,753	87	82	5	0	0	
	W.D. N.C.	3,814						
	D. S.C.	7,152	91	90	0	1	0	These figures do not include 676 Chapter 7 cases and 63 Chapter 13 cases that were archived prior to running this report.

Chart 1
Number of Requests for Rule 2004 Examinations By District

	E.D. Va.	20,006	190	130	2		58	
	W.D. Va.	6,700	21	16	1		4	
	N.D. W.Va.	1,442	7	5	0		2	
	S.D. W.Va.	2,438	16	10	0	1	5	Per program used, surmised that one motion was pending when case was closed, so in effect it is moot.
Fifth	W.D. La.	7,483	60	60				
	N.D. Miss.	3,794	32	29	0		3	
	S.D. Miss.	7,218	54	48	0		6	
	E.D. La.	4,806	58	54	1	0	3	
	M.D. La.	1,588	12	11	1	0	0	
	E.D. Tex.	5,779	64	61	2		1	
	N.D. Tex.	15,771	67	48	5	2	12	Three motions filed in Adversary Proceedings are included in the count for Chapter 7 cases.
	S.D. Tex.	13,174	12	6	0	4	2	
	W.D. Tex.	11,109	2				2	See L.R. 2004 essentially eliminating the need to seek formal court order to conduct exam.
	E.D. Ky.	6,022						
Sixth	W.D. Ky.	7,512	147	135	0	0	12	
	E.D. Mich.	16,545	262	255	1	6	0	
	W.D. Mich.	6,954	49	38	0		11	Results do not include information from an unknown number of archived cases.
	N.D. Ohio	15,826						Court had too recently archived its database for information to be useful.
	S.D. Ohio	17,024	207	194	2	6	5	
	E.D. Tenn.	10,467	33	27	3	1	2	
	M.D. Tenn.	9,181	51	51	0	0	0	Issued on request. See attached local rule.
	W.D. Tenn.	17,071	126	125	1	0	0	
	N.D. Ill.	29,474	10	10	0	0	0	Figures are low; no NIBS dictionary code. Figures represent subpoenas issued for 2004 exam.
Seventh	C.D. Ill.	7,136						
	S.D. Ill.	4,048	33	33				
	N.D. Ind.	8,436	112	105	5	0	2	Motions in "other category" were withdrawn.
	S.D. Ind.	14,331	49	47	2	0	0	
	E.D. Wis.	8,023	13	12	0	0	1	The disposition of the motion in the chapter 13 case is being disputed.
	W.D. Wis.	4,084	31	29	0	1	1	

Chart 1
Number of Requests for Rule 2004 Examinations By District

	E.D.&W.D. Ark.	8,604	24	21	2		1	
Eighth	N.D. Iowa	2,446	13	12	1	0	0	
	S.D. Iowa	3,769	40	40	0	0	0	
	D. Minn.	14,400	48	45	2	0	1	
	E.D. Mo.	8,747	52	49	1		2	
	W.D. Mo.	6,849	32	15	1	0	16	L.R. 2004 allows for 2004 exams to be scheduled without motion or order.
	D. Neb.	3,610	26	23	1		2	
	D. N.D.	1,249						
	D. S.D.	1,358	13	13	0	0	0	
	D. Alaska	929	8	6	0		2	Possible that motions for 2004 examination may at times have been docketed as a motion for miscellaneous relief. If so, the figures may be skewed.
	D. Ariz.	15,196	0	0	0	0	0	0
	N.D. Cal.	25,227	503	503	0	0	0	
Ninth	E.D. Cal.	22,864	356	327	7		22	Other category includes pending as well as motions terminated due to age and motions terminated by the closing of the case.
	C.D. Cal.	80,273	907	877	24	0	6	(1) CAC has 5 divisional offices. 3 use Bancap and 2 use Nibs. (2) Overall, the figures represent the period 10/1/94 through 9/30/95 (FY95). However, some divisions reported a different twelve month period (4/1/95-3/31/96).
	S.D. Cal.	13,773	189	162	1	5	21	
	D. Haw.	1,846	19	19	0	0	0	
	D. Idaho	3,891						
	D. Mont.	2,185	40	37	1	0	2	Other category includes cases dismissed before order entered or withdrawn.
	D. Nev.	7,612						
	D. Or.	13,567	122	122				Information is only for active FY 95 cases on the system as of 8/14/96. This court archives all closed cases approximately once a year and only retains closed cases within 6 months of the archived date.
	E.D. Wash.	3,924	45	45				

Chart 1
Number of Requests for Rule 2004 Examinations By District

	W.D. Wash.	15,799	328	326	2	0	0	
	D. Guam	27	5	4	0	0	1	Motion is other category was withdrawn.
	D. Am. Sam.	12						
	D. Colo.	13,240						
	D. Kan.	8,754	157	130	0	26	1	
	D. N.M.	3,931	33	30	0	3	0	
Tenth	N.D. Okla.	4,009	14	13	0		1	
	E.D. Okla.	1,807	34	28	0	0	6	Four motions in other category were stricken and two were mooted.
	W.D. Okla.	7,634	59	50	0	6	3	
	D. Utah	6,987	241	241	0	0	0	Motions are never denied but occasionally may not be entered by the clerk because the movant has not allowed 10 days lead time, as required by local rule.
	D. Wyo.	1,177	10	10	0	0	0	
	N.D. Ala.	16,867	58	52	1	0	5	
	M.D. Ala.	4,959	36	36	0	0	0	
	S.D. Ala.	3,372	38	34	1	2	1	
Eleventh	N.D. Fla.	2,444	6	5	1			
	M.D. Fla.	26,272	333	312	17		4	
	S.D. Fla.	15,543	754	751	1	2	0	In this district most examinations are scheduled without the need for a court order, as provided by local rule. These were counted as "granted." Overall count may be high by 39 cases.
	N.D. Ga.	25,878						
	M.D. Ga.	9,787	15	7	0	6	2	Due to the volume of cases filed and the size of our Bancap database, we archive cases closed for six months frequently. Therefore, this information is provided for cases filed from 3/30/96 to 8/19/96.
	S.D. Ga.	7,875	37	36	1	0	0	

Chart 1
Number of Requests for Rule 2004 Examinations By District

Chart 2
Requests for Rule 2004 Examinations in Chapter 7, 11, and 13 Cases

Circuit	District	Chapter 7 FY95 Filings	Chapter 7 Requests for Rule 2004 examinations	Chapter 11 FY95 Filings	Chapter 11 Requests for Rule 2004 examinations	Chapter 13 FY95 Filings	Chapter 13 Requests for Rule 2004 examinations
D.C.	D. D.C.	935	6	67	2	474	1
First	D. Me.	1,737	28	27	10	252	2
	D. Mass.	11,431	179	520	79	2,477	13
	D. N.H.	2,839	10	37	1	222	4
	D. R.I.	2,973	43	32	4	169	1
	D. P.R.	1,706		120		5,860	
Sccond	D. Conn.	7,387	204	168	52	1,180	11
	N.D. N.Y.	7,589	62	91	8	1,568	6
	E.D. N.Y.	16,086	315	493	46	5,653	14
	S.D. N.Y.	8,722	165	711	77	1,465	7
	W.D. N.Y.	5,424	48	88	23	1,835	3
	D. Vt.	860	9	26	6	88	3
Third	D. Del.	990		154		400	
	D. N.J.	18,137	5	650	5	7,636	1
	E.D. Pa. #	6,951	33	338	19	5,174	8
	M.D. Pa.	3,736	28	107	12	748	5
	W.D. Pa. ##	5,090		153		886	
	D. V.I.	34		10		18	
Fourth	D. MD.	12,109		384		4,421	
	E.D. N.C.	2,449	68	57	12	3,530	5
	M.D. N.C.	1,190	10	37	4	3,525	1
	W.D. N.C.	1,501		42		2,270	
	D. S.C. #	3,594	68	150	18	3,402	2
	E.D. Va.	14,825	126	317	56	4,857	8
	W.D. Va.	5,598	16	50	1	1,047	4
	N.D. W.Va.	1,308	5	28	2	105	0
	S.D. W.Va.	2,140	11	32	3	265	2
Fifth	W.D. La.	3,378	41	53	11	4,025	6
	N.D. Miss.	2,285	25	23	4	1,481	2
	S.D. Miss.	4,256	46	60	1	2,900	6
	N.D. Tex.	8,125	37	268	15	7,351	13
	E.D. La.	2,873	28	65	19	1,867	6
	M.D. La.	1,072	11	21	0	495	1
	E.D. Tex.	2,486	24	83	15	3,191	17
	S.D. Tex.	6,413	7	323	3	6,427	1
	W.D. Tex. ##	5,357	2	178	0	5,565	0
Sixth	E.D. Ky.	5,112		35		868	
	W.D. Ky.	5,680	122	53	7	1,769	9
	E.D. Mich.	12,143	214	243	24	4,142	18
	W.D. Mich. #	5,126	44	75	0	1,730	4
	N.D. Ohio	12,392		99		3,326	

Chart 2
Requests for Rule 2004 Examinations in Chapter 7, 11, and 13 Cases

	S.D. Ohio	12,232	159	95	18	4,687	30
	E.D. Tenn.	4,680	21	29	2	5,751	10
	M.D. Tenn.	4,147	34	116	5	4,913	12
	W.D. Tenn.	3,453	87	86	5	13,530	34
Seventh	N.D. Ill.###	22,442	6	289	4	6,740	0
	C.D. Ill.	6,182		35		892	
	S.D. Ill.	2,834	27	21	4	1,185	2
	N.D. Ind.	7,173	105	64	5	1,192	1
	S.D. Ind.	11,778	41	128	6	2,412	2
	E.D. Wis.	6,489	10	32	1	1,496	2
	W.D. Wis.	3,527	21	46	3	471	1
Eighth	E.D. Ark.	2,346	17	28	1	3,109	5
	W.D. Ark.	1,997		23		1,076	
	N.D. Iowa	2,331	13	15	0	91	0
	S.D. Iowa	3,237	38	23	0	504	0
	D. Minn.	10,104	38	94	4	4,180	3
	E.D. Mo.##	5,079	35	43	13	3,622	2
	W.D. Mo.	5,635	25	78	7	1,111	0
	D. Neb.	2,912	15	17	2	627	3
	D. N.D.	1,183		2		44	
	D. S.D.	1,226	7	7	2	90	1
Ninth	D. Alaska###	793	6	35	0	101	2
	D. Ariz.	11,431		381		3,380	
	N.D. Cal.	18,030	395	422	79	6,765	28
	E.D. Cal.	17,833	235	229	60	4,770	32
	C.D. Cal.####	64,165	806	1,439	90	14,659	10
	S.D. Cal.	10,011	153	173	24	3,585	
	D. Haw.	1,683	14	44	5	118	0
	D. Idaho	2,662		30		1,173	
	D. Mont.	1,788	12	20	17	353	7
	D. Nev.	5,575		160		1,875	
	D. Or. #	9,511		62		3,989	
	E.D. Wash.	3,199	21	67	17	638	7
	W.D. Wash.	11,959	229	242	73	3,595	25
	D. Guam	25	5	1	0	21	0
	D. Am. Sam.	10		2		0	
Tenth	D. Colo.	10,500		107		2,619	
	D. Kan.	6,766	82	92	25	1,868	24
	D. N.M.	2,907	18	39	7	984	8
	N.D. Okla.	3,247	6	53	1	707	7
	E.D. Okla.	1,603	32	10	0	186	2
	W.D. Okla.	6,226	43	38	4	1,349	6
	D. Utah	4,371	147	60	61	2,555	33
	D. Wyo.	1,063	8	16	1	93	0
Eleventh	N.D. Ala.	5,360	28	90	4	11,410	26
	M.D. Ala.	1,651	31	12	1	3,293	3

Chart 2
Requests for Rule 2004 Examinations in Chapter 7, 11, and 13 Cases

	S.D. Ala.	1,430	25	24	5	1,918	6
	N.D. Fla.	2,126	3	34	0	281	3
	M.D. Fla.	21,167	302	439	10	4,654	20
	S.D. Fla.	12,318	519	294	158	2,925	38
	N.D. Ga.	8,797		219		16,860	
	M.D. Ga.####	3,222	2	29	8	6,505	5
	S.D. Ga.	1,795	21	37	1	6,034	14
# Numbers are skewed due to archiving of database.							
## Numbers are underestimates because local rule has eliminated the need for a court order.							
### Numbers underestimate the amount of Rule 2004 activity for another reason.							
#### Numbers represent the amount of Rule 2004 activity in a time period other than FY95.							