

NOTICE AND SERVICE OF PLEADINGS
UNDER FEDERAL RULES OF BANKRUPTCY PROCEDURE

Rule 2002

Rule 2002 of the Federal Rules of Bankruptcy Procedure (“BR”) governs “notice” for bankruptcy-specific *matters that concern all parties* in the case, but no specific creditors.

Examples: Notice of filing a bankruptcy case; notice of deadlines for filing proofs of claim; notice of hearings on approval of disclosure statements; notice of proposed use, sale or lease of property; notice of approval of compromises or settlements; notice of deadline for filing objections to Chapter 11, 12 and 13 plans, and notice of hearings on plan confirmation.

Notice by Mail. Under BR 2002, notice of such matters must be provided “by mail” to creditors at the address designated by the creditor in a request filed with the court, or if no request has been filed, to the address shown on the list of creditors or as indicated in the debtor’s bankruptcy schedules, whichever is filed later. BR 2002(g).

Where Notices to be Mailed. In “asset” cases, the appropriate address is the one stated in the creditor’s proof of claim. See BR 2002(g)(1)(A). Similarly, a proof of interest filed by an equity security holder that designates a mailing address constitutes a filed request to mail notices to that address. BR 2002(g)(1)(B).

Timing of Notice. BR 2002 also provides specific deadlines for providing the affected parties with appropriate notice.

- a. 21-Day Notice. BR 2002(a) requires that the debtor, the trustee, all creditors, and any indenture trustee receive 21 days’ notice of the following: 1) meeting of creditors under § 341 or § 1104; 2) use, sale, or lease of property not in the regular course of business; 3) hearings on approval of compromises and settlements; 4) hearings on dismissal of Chapter 7, 11, or 12 proceedings; 5) deadlines to accept or reject proposed plan modifications; 6) hearings on requests for compensation in excess of \$1,000; 7) the deadline for filing proofs of claim; and 8) the deadline for objections to Chapter 12 and 13 plans.
- b. 28-Day Notice. BR 2002(b) provides that the debtor, the trustee, all creditors and any indenture trustee receive 28 days’ notice of the following matters: 1) deadline for objections to disclosure statements and hearings on same; 2) deadline for objections to confirmation of plans in proceedings under Chapters 9 and 11; and 3) hearings on confirmation of Chapter 13 plans.

- c. Notice to Creditors Committee and US Trustee. In Chapter 11 cases, copies of any notices required to be mailed under BR 2002 must also be mailed to the creditor's committee, if one has been appointed, and to the US Trustee. BR 2002(i), (j).

Rule 7004

BR 7004 governs “service” of bankruptcy-related *matters that directly affect the rights of a specific party*.

Examples: Objections to proofs of claim; certain contested matters; and adversary proceedings.

Where such rights are implicated, the initiating pleading must be served on the affected party in the same manner as a summons and complaint are served in adversary actions under Rule 7004. *Boykin v. Marriott Int’l, Inc. (In re Boykin)*, 246 B.R. 825, 828-29 (Bankr. E.D. Va. 2000).

A. Claim Objections

A claim objection initiates a “contested matter” that is governed by BR 9014. *United States v. Levoy (In re Levoy)*, 182 B.R. 827, 834 (9th Cir. BAP 1995); *In re Fairchild*, 969 F.2d 866, 868; *Bankr. L. Rep. (CCH) P 74723*, 23 Fed. R. Serv. 3d 142, 70 A.F.T.R.2d 92-5280 (10th Cir. 1992); *In re Hawthorne*, 326 B.R. 1, 3, 54; *Collier Bankr. Cas.*, 2d (MB) 412 (Bankr. D. D.C. 2005); *In re Trans World Airlines, Inc.*, 280 B.R. 806, 807, 48 *Collier Bankr. Cas.* 2d (MB) 835 (D. Del. 2002).

Under BR 9014, claim objections must be served according to the requirements of Bankruptcy Rule 7004 for serving a summons and complaint. *Boykin v. Marriott Int’l, Inc. (In re Boykin)*, 246 B.R. 825, 827 (Bankr. E.D. Va. 2000); *In re Century Elecs. Mfg., Inc.*, 284 B.R. 11, 17 (Bankr. D. Mass. 2002).

Service of Claim Objection

1. Bankruptcy Rule 3007

BR 3007 requires objections to proofs of claim to be: a) in writing; b) filed with the Bankruptcy Court; and c) with copy of the objection and notice of the hearing on the objection to be “served” at least 30 days prior to the hearing. BR 3007(a)(1).

Generally, the objection and notice of hearing must be served by **first-class mail** to the person designated to receive such notice in the proof of claim. BR 3007(a)(2). But there are **exceptions**:

- a. If the objection relates to a claim filed by the United States or any of its officers or agencies, service of the objection must be made in the manner provided by Rule 7004(b)(4) or (5) for service of a summons and complaint. *See* BR 3007(a)(2)(i); and
- b. If the objection is to a claim filed by “an insured depository institution,” the objection must be served in the manner provided by Bankruptcy Rule 7004(h). *See* BR 3007(a)(2)(ii). (More detail on this, below.)

Note: A party in interest may not include a demand for relief of the kind specified in Bankruptcy Rule 7001 (adversary proceedings) in an objection to a proof of claim. *See* BR 3007(b). However, a claim objection may be included in an adversary proceeding. *Id.*

2. Bankruptcy Rule 7004 and Fed. R. Civ. P. 4

Rule 7004 provides for service of process and other papers in bankruptcy cases.

BR 7004 incorporates the service requirements under Rule 4 of the Federal Rules of Civil Procedure (“FRCP”), but also provides separate rules for service in bankruptcy cases.

However, unlike FRCP 4, Bankruptcy Rule 7004 also permits service by first-class mail, *except where another method of service is required under BR 7004(h)*. *See* BR 7004(b).

a. Service under Bankruptcy Rule 7004(a)

Rule 7004(a) incorporates by reference Rules 4(a), (b), (c)(1), (d)(1), (e)-(j), (l), and (m) of the Federal Rules of Civil Procedure (“FRCP”).

Rule 4 of the Federal Rules of Civil Procedure. FRCP 4(c) requires the plaintiff to serve the summons and a copy of the complaint upon the defendant within the time provided under FRCP 4(m). Subparagraphs (e)-(j) of Fed. R. Civ. P. 4 set forth the options available for service upon a party who does not voluntarily appear and defend.

Individuals. Fed. R. Civ. P. 4(e)(1) sets for the following options for effecting service on an individual: a) as provided under the laws of the state where the district court is located or where service is made; b) by delivering a copy of the summons and complaint to the individual personally; c) by leaving a copy of the pleadings at the individual’s

dwelling or usual place of abode; or d) by delivering a copy of the initiating pleadings to any agent authorized by law to receive process on the individual's behalf.

Domestic Corporations. FRCP 4(h) offers options for service of process on a corporation, partnership or unincorporated association.

FRCP 4(h)(1) permits service of process on such entities in the same manner that service is accomplished on an individual under Fed. R. Civ. P. 4(e)(1)(A) (i.e., per the requirements of applicable state law).

FRCP 4(h)(1) also permits service on “an officer, a managing or general agent, or any other agent” authorized by law or by appointment to accept service for the defendant. In addition, where the agent is authorized by statute, and the statute so provides, a copy of the summons and complaint must also be mailed to each defendant.

Caution: Not every corporate agent will suffice. Rule 7004(b)(3) requires that the agent must be a managing agent or general agent or an agent specifically designated for such purposes by appointment or by law. *See Reisman v. First New York Bank for Bus. (In re Reisman)*, 139 B.R. 797, 800 (Bankr. S. D. N.Y. 1992).

Service on any other corporate employee is not sufficient. *Gottlieb v. Sandia Am. Corp.*, 452 F.2d 510, 513-514 (3d Cir. 1971).

Accordingly, service that is not directed to the attention of any specific person is defective service. *Gottlieb*, 452 F. 2d at 513-514.

Special Rules for Service on Insured Depository Institutions. BR Rule 7004(h) provides the exclusive method for service of process on an insured depository institution. BR 7004(h) provides:

(h) SERVICE OF PROCESS ON AN INSURED DEPOSITORY INSTITUTION. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless—

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

When BR 7004(h) Applies. Although placed in Part VII of the Bankruptcy Rules, which relate to “adversary proceedings,” the text of BR 7004(h) makes clear that it applies in both adversary proceedings and contested matters.

BR 7004(h) only applies when serving an “insured depository institution,” a term defined in § 3 of the Federal Deposit Insurance Act (the “Act”). The Act defines insured depository institutions as “any bank or savings association the deposits of which are insured by the Corporation pursuant to this Act.” Federal Deposit Insurance Act § 3(c)(2), 12 U.S.C. § 1813(c).

Although most depository institutions promote the fact that their deposits are insured by the Federal Deposit Insurance Corporation (“FDIC”), if there are any doubts, counsel should complete service on the institution pursuant to BR 7004.

Requirements for Service Under BR 7004(h). BR 7004(h) requires service on an insured depository institution by certified mail addressed to an officer of the institution, with three (3) exceptions.

1. If counsel representing the insured depository institution has filed an appearance in the adversary proceeding or contested matter, service can be accomplished by serving the institution’s attorney via first-class mail. BR 7004(h)(1).
2. The party attempting to effectuate service may file a motion in the Bankruptcy Court to permit service on the institution via first-class mail sent to an officer of the institution’s choosing. Notice of the motion must first be served on the institution via certified mail. If the Court grants the motion, the institution can be served by first-class mail as requested. BR 7004(h)(2).

3. Service may be made on an officer designated by the institution, if the institution has provided a written waiver of its entitlement to service via certified mail.

b. Service by Publication Under Bankruptcy Rule 7004(c)

Bankruptcy Rule 7004(c) has its own provision for service of process by publication.

Service by publication is permitted if (1) the proceeding is to determine or protect rights in property in custody of the court, and (2) the party cannot otherwise be served pursuant to FRCP Rules 4(e)-(j).

3. Burden of Proof of Proper Service

Plaintiff has the burden of showing that service of claim objection is appropriate for the status of the defendant. *See Gottlieb v. Sandia Am. Corp.*, 452 F.2d 510, 513-14 (3d Cir. 1971).

FRCP 4(l) generally requires the serving party to file an affidavit with the court to prove that service has been properly accomplished. Interestingly, BR 7004 is silent as to how service must be proved.