

Chambers of Robert H. Jacobvitz

**SERVICE OF MOTIONS AND NOTICES OF OBJECTION
DEADLINES IN CONTESTED MATTERS**

Rule 9014 of the Federal Rules of Bankruptcy Procedure provides that Fed. R. Bankr. P. 7004 applies in contested matters. Generally, contested matters involve litigation to resolve a dispute in a bankruptcy case that is not required to be resolved by and is not asserted in an adversary proceeding. Contested matters generally involve the filing of a motion or application in the bankruptcy case. Contested matters include matters involving relief from the stay, avoidance of a lien under 11 U.S.C. § 522(f), objections to a creditor's claim, and valuation of security.

Where relief is sought that is particularized to an entity (such as an individual, corporation, or governmental unit) service of the motion and notice generally should be made on the entity in accordance with Bankruptcy Rules 7004 and 9014. With a few exceptions, service may be made by first class United States mail.

The following are examples of how service should be made on an entity in accordance with Bankruptcy Rules 7004 and 9014:

Example 1. Motion for Relief From Stay in a Chapter 7 Case (No Co-Debtor).

Unless counsel for the debtor (or a self-represented debtor) and the chapter 7 trustee stipulate to an order, the motion and notice should be served on the debtor,¹ counsel of record for the debtor (if any),² and the chapter 7 trustee.

Example 2. Motion for Relief From Stay in a Chapter 7 Case as to Both a Debtor and Co-Debtor.

Unless counsel for the debtor (or a self-represented debtor), counsel for the co-debtor (or a self-represented co-debtor), and the chapter 7 trustee stipulate to an order, the motion and notice should be served on the debtor, counsel of record for the debtor (if any), the co-debtor, counsel of record for the co-debtor (if any), and the chapter 7 trustee.

¹ Fed. R. Bankr. P. Rule 7004(b)(9) provides that service may be made “on the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing.”

² Fed. R. Bankr. P. Rule 7004(g) requires that if the debtor is represented by an attorney, whenever service is made upon the debtor under this Rule, service shall also be made upon the debtor’s attorney by any means authorized under Fed. R. Civ. P. 5(b).

Example 3. Motion to Avoid Lien under 11 U.S.C. § 522(f)³ Held by a Corporation.⁴

Unless counsel for the debtor (or a self-represented debtor) and counsel for the lien holder stipulate to an order, the motion and notice should be served on a lien holder that is a corporation in accordance with Rule 7004(b)(3)⁵ and on the case trustee. To comply with Rule 7004(b), service must be made to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the lien holder.

Typically, to comply with this requirement, service is made by first class United States mail. The envelope could be addressed:

XYZ Corporation
Attention: Officer, Managing Agent or General Agent
[address]

or

XYZ Corporation
Attention: [insert name of Officer, Managing Agent or General Agent]
[address]

There is a split of authority on whether addressing the envelope “Attention: Officer, Managing Agent or General Agent” without naming a specific individual who is an officer, managing agent or general agent, is adequate service.⁶ This Judge regards service in either manner, pursuant to Rule 7004(b)(3), to be sufficient.⁷

³ Liens that may be avoided under 11 U.S.C. §522(f) include certain liens that impair a debtor’s exemption; and nonpossessory, nonpurchase-money security interests in, among other things, household furnishings and household goods held primarily for the personal or household use of the debtor or a dependant of the debtor.

⁴ If the lien holder is the United States or any agency of the United States, a state or municipal corporation or other governmental organization, or an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act), then other rules apply.

⁵ 7004(b)(3) provides: “[S]ervice may be made within the United States by first class mail postage prepaid] [u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.”

⁶ Compare *Fleet Credit Card Servs., L.P. v. Tudor* (*In re Tudor*), 282 B.R. 546, 549-50 (Bankr.S.D.Ga.2002) (service of objection to proof of claim on “Managing Agent” is sufficient); *Schwab v. Associates Commercial Corp.* (*In re C.V.H. Transport, Inc.*), 254 B.R. 331, 332 (Bankr.M.D.Pa.2000) (notice addressed to “Manager” was sufficient; relying in part on Advisory Committee on Bankruptcy Rules, Minutes of 9/28/99, 1999 WL 1845725, *14 (J.C.U.S.); with *In re Faulknor*, 2005 WL 102970, at *1-*2 (Bankr. NN.D. Ga 2005) (service on a bank pursuant to Rule 7004(h) to the attention of President is inadequate, relying on cases applying Rule 7004(d)(3); *Addison v. Gibson Equipment Co., Inc.* (*In re Pittman Mechanical Contractors, Inc.*), 180 B.R. 453, 454, 456-57

Example 4. Motion to Value Security Held by an FDIC Insured Depository Institution.

Service in accordance with Bankruptcy Rule 7004 on an FDIC insured depository institution,⁸ such an FDIC insured bank, must be made by certified mail addressed to an officer of the institution unless one of the exceptions to this requirement set forth in Rule 7004(h) applies. One of those exceptions is that if the institution has appeared by its attorney, the attorney shall be served by first class mail. *See* Rule 7004(h)(1).

Typically, to comply with this requirement, service is made addressed as follows:

Certified Mail
XYZ Corporation
Attention: Officer
[address]

or

Certified Mail
XYZ Corporation
Attention: [insert name of Officer]
[address]

Please see the discussion in Example 3.

CAVEAT REGARDING SERVICE IN ACCORDANCE WITH BANKRUPTCY RULE 7004 VERSUS USE OF A GENERAL NOTICE PROCEUDRE. A motion seeking relief particular to an entity may require service on that entity in accordance with Bankruptcy Rules 7004 and 9014, while service of notice of the motion on parties in interest generally may be sufficient without compliance with those rules. For example, it may be necessary to serve a motion to reject a contract and notice thereof on the other party to the contract in accordance with Bankruptcy Rules 7004 and 9014 but sufficient to serve other general parties in interest only with notice an objection deadline without compliance with Bankruptcy Rule 7004. This guide is not intended to cover when compliance with a less exacting general notice procedure is adequate.

(Bankr.E.D.Va.1995) (notice addressed to “President or Corporate Officer” does not meet requirements of Rule 7004(b)(3) because no individual was named); *In re Schoon*, 153 B.R. 48, 49 (Bankr.N.D.Cal.1993) (service by addressing an envelope “Attn: President” was found to be inadequate).

⁷ The Court does not review the adequacy of the address used to serve a motion commencing a contested matter prior to entry of a default order when no objection is timely filed.

⁸ A directory of FDIC insured institutions may be found at <http://www3.fdic.gov/idasp/main.asp>.

This Court typically will not enter a default order granting a motion seeking relief particular to an entity unless service was made on that entity in accordance with Bankruptcy Rule 7004.

CAVEAT REGARDING 11 U.S.C. §342: Compliance with the notice requirements set forth in 11 U.S.C. §342 applicable in chapter 7 and chapter 13 cases is outside the scope of this guide. Note, however, that if an entity pursuant to 11 U.S.C. §342(f)(1) files a notice of address to be used in bankruptcy cases that includes bankruptcy cases in New Mexico, the creditor mailing matrix in the three column format generated by CM/ECF will automatically substitute the preferred mailing address for the entity for the one used by the Debtor, if different. Such substitutions are summarized at the end of the CM/ECF generated 3-column mailing matrix. That mailing matrix may be found in CM/ECF at Query/Creditor Mailing List or Reports/Creditor List (but not at Query/Creditor, which will produce a mailing list in a one column format).