

SERVICE OF MOTIONS AND NOTICES IN CONTESTED MATTERS

Federal Rule of Bankruptcy Procedure (herein, “Rule”) 9014 provides that Rule 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 adversary proceeding. Contested matters typically involve filing a motion in the bankruptcy case. Contested matters include stay relief motions, §522(f) lien avoidance motions, claim objections, and motions to value collateral.

1. Service by First Class Mail. With a few exceptions, service may be made by first class United States mail. Rule 7004(b).

2. Default Orders; Review of Notice Address. The Court does not review the adequacy of the address used to serve a motion and notice in a contested matter prior to entry of a default order, when no objection is timely filed. Counsel for the movant should exercise care to make sure that all addresses are proper and complete.

3. Service on a Particular Individual or Entity Affected. Where relief is sought affecting a particular individual or entity, service of the motion and notice generally should be made on the individual or entity. For example, in the case of a stay relief motion filed by a creditor, 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. If there is a co-debtor, the motion and notice should also be served on the co-debtor and the co-debtor’s counsel of record (if any). This Court typically will not enter a default or other order granting a motion seeking relief particular to an individual or entity unless service was made on that entity in accordance with Rule 7004.

4. Service on Corporations and Other Entities.³ Under Rule 7004(b), service on corporations, limited liability companies, and other artificial entities 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 entity. 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

¹ 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 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).

³ Service on FDIC-insured institutions is discussed in paragraph 5 below. Service on governmental agencies and organizations is not discussed; counsel should review and comply with Rule 7004(b)(4)-(6) for such service.

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

There is a split of authority 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.⁴ This Court regards such service to be adequate.

5. Service on Banks and Credit Unions. Service in accordance with Bankruptcy Rule 7004(h) on an insured depository institution, such as a bank or credit union,⁵ 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 Bank
Attention: Officer⁶
[address]

or

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

6. When a General Notice Procedure May be Used. While a motion seeking relief particular to an entity may require service on that entity in accordance with Rules 7004 and 9014, 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

⁴ 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. N.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 (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).

⁵ Under § 101(35)(B), the term “insured depository institution” includes FDIC-insured banks and insured credit unions unless certain limited exceptions apply. That definition applies in Rule 7004(h). *See* Rule 9001(a) (“The definitions of words and phrases in §§ 101, 902, 1101, and 1502 of the Code, and the rules of construction in §102, govern their use in” the Bankruptcy Rules.).

⁶ Please see the discussion in footnote 3 and accompanying text.

contract and notice thereof on the other party to the contract in accordance with Rules 7004 and 9014, but sufficient to serve other general parties in interest only with notice of an objection deadline without compliance with Rule 7004. This guide is not intended to cover when compliance with a less exacting general notice procedure is adequate.

7. Caveat Regarding 11 U.S.C. §342. 11 U.S.C. §342 contains certain notice requirements applicable to specific situations. The §342 notice requirements are outside the scope of this discussion. Note, however, that if, pursuant to 11 U.S.C. §342(f)(1), an entity files a preferred notice of address to be used in bankruptcy cases that includes bankruptcy cases in New Mexico, the creditor mailing matrix generated by CM/ECF will automatically substitute the preferred mailing address 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/EFC 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).