

**United States Bankruptcy Court**  
**Office Of The Clerk**  
**Eastern District Of New York**

**02-BK-A**

**Joseph P. Hurley**  
Clerk of Court

75 Clinton Street  
Brooklyn, New York 11201

(718) 330-2899

February 1, 2002

Mr. Peter G. McCabe  
Secretary of the Committee on Rules  
of Practice and Procedure  
Administrative Office of the U.S. Courts  
One Columbus Circle, N.E.  
Washington, DC 20544

Dear Peter:

The judiciary's Bankruptcy Noticing Working Group provides advice to the Administrative Office in the development of noticing policy recommendations and guidelines, as well as in the implementation of automated noticing and related systems in the bankruptcy courts. I am writing on behalf of the working group to express the group's strong support for modification of Federal Rule of Bankruptcy Procedure 9036 (Notice by Electronic Transmission). Rule 9036 includes a receipt requirement that requires a higher standard than is required by Federal Rule of Civil Procedure 5(c) and is adversely affecting the efficiency of the Bankruptcy Noticing Program. Consequently, the Group recommends removing the receipt requirement from the rule.

The receipt requirement in Rule 9036 states as follows, in pertinent part:

Notice by electronic transmission is complete, and the sender shall have fully complied with the requirement to send notice, when the sender obtains electronic confirmation that the transmission has been received

The receipt requirement has prevented potential subscribers of Electronic Bankruptcy Noticing (EBN) from taking advantage of faster noticing and has not permitted the judiciary to maximize potential cost avoidances to the noticing program because notices transmitted electronically avoid postage costs. The current receipt requirement hinders efforts to develop and expand electronic noticing because many Internet Service Providers (ISP) do not provide the capability for the sender to receive electronic confirmation that the transmission has been received as required by Rule 9036. In a marketing survey report conducted by the judiciary's Bankruptcy Noticing

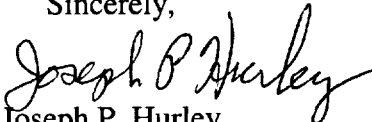
Center contractor, some prospective users acknowledged that the receipt requirement would prevent them from using the electronic notice service.

Rule 5 of the Federal Rules of Civil Procedure was recently amended to permit service by electronic means to be complete upon transmission, without any corresponding receipt requirement. The civil rule sets a much lower standard than the bankruptcy rule cited above, which requires confirmation that the notice was received before it is deemed complete. As well as recommending that Rule 9036 be amended to remove the receipt requirement, the Group also recommends that the rule be modified to reflect that notice by electronic means is complete on transmission, as set forth in Rule 5 of the Federal Rules of Civil Procedure.

The notice requirements in Federal Rule of Bankruptcy Procedure 2002 do not contemplate a similar receipt requirement for regular mail. I understand that the contractor for the Bankruptcy Noticing Center is currently performing a study to test the reliability of several of the nation's top ISPs. I believe that the Advisory Committee on Bankruptcy Rules can be assured that the initial results of that study show that in the absence of an electronic acknowledgment, the Bankruptcy Noticing Center program will continue to provide reliable electronic and paper noticing services.

Should you have any questions or require additional information, please do not hesitate to contact me at (718) 330-2899, or you may contact Gary McCaffrey, Electronic Bankruptcy Noticing Project Manager, at the Administrative Office's Bankruptcy Court Administration Division at (202) 502-1540.

Sincerely,

  
Joseph P. Hurley

**United States Bankruptcy Court**  
**Office Of The Clerk**  
**Eastern District Of New York**

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Clerk of Court

75 Clinton Street  
Brooklyn, New York 11201

(718) 330-2899

February 4, 2002

Mr. Peter G. McCabe  
Secretary of the Committee on Rules  
of Practice and Procedure  
Administrative Office of the U.S. Courts  
One Columbus Circle, N.E.  
Washington, DC 20544

Dear Peter:

The Judiciary's Bankruptcy Noticing Working Group provides advice to the Director of the Administrative Office in the development of noticing policy recommendations and guidelines, as well as in the implementation of automated noticing and related systems in the Bankruptcy Courts. I am writing on behalf of the Working Group to request that the committee consider amending the Bankruptcy Rules to permit an entity that is entitled to a bankruptcy notice to register at one place the address or addresses they wish to be used for all cases and in any district throughout the bankruptcy system. We believe that this will result in both more accurate delivery of bankruptcy notices and much more timely delivery of these notices. Also, such a process will reduce significant administrative burdens and costs in many clerks' offices which must process returned mail when an inaccurate address is used.

Adoption of the recommended change would require an amendment to Federal Rule of Bankruptcy Procedure 2002 (g), and other related rules deemed applicable, which currently requires that notices "to a creditor, indenture trustee, or equity security holder shall be addressed as such entity or an authorized agent has directed in its last request filed in the particular case." This requirement limits the creditor because it must file an address in each case in which it is a party. We recommend that the language be modified to allow an entity to file a notice with any court stating its address for the purpose of receiving notices in all cases filed in any or all of the bankruptcy courts.

The Working Group has found that the creditor industry has changed its business processes in a very significant way over the past four or five years. This has been driven by technology but also by the desire to become more efficient in billing and collection processes. Many creditors

involved in bankruptcies are large companies with a national presence. This change would improve the noticing process by permitting these entities to establish a single address, or multiple addresses (for those entities that maintain regional offices), and ensure that notices are received at the proper location. Many debtors provide the courts with incomplete or inaccurate addresses that result in inefficient noticing practices. For instance, a debtor might list a local retail outlet where he purchased merchandise using a credit card branded with the store's name, but the proper owner of the debt is a completely different entity, such as a bank.

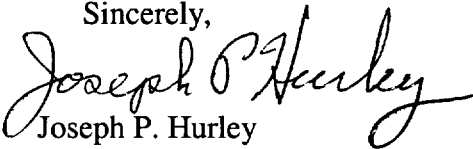
Through the judiciary's Bankruptcy Noticing Center (BNC) program, this modification to the bankruptcy rules could be accommodated through the technology developed for the program's Electronic Bankruptcy Noticing component. The software has been used successfully by the BNC contractor for several years. The software evaluates the incoming address stream for each court notice, and matches name spelling variations with a set of approved addresses, as identified by the requestor. When a "match" is made for a notice recipient, the notice is pulled from the print stream and diverted to the recipient's electronic mailbox. Under the proposed modification to the bankruptcy rules, the software would be modified to provide the capability to print and mail notices to a specified address for non-electronic requestors.

The modification is expected to provide the following benefits:

- 1) Addresses listed in the debtor's matrix that do not meet United States Postal Service addressing requirements would be identified and redirected to the address identified by the intended recipient.
- 2) Improved efficiencies would be realized by large entities by eliminating internal routing of mail.
- 3) Entities would only need to make a single request for any or all bankruptcy courts to register a change of address or to request that all bankruptcy notices be redirected to a national or regional office.
- 4) Multiple pieces addressed to a single recipient would be batched in a single package, resulting in substantially lower postage costs and simplifying the recipient's mail handling procedures.
- 5) Participation in the judiciary's Electronic Bankruptcy Noticing program would increase significantly. This free service provides notice recipients many benefits, such as same-day service of court notices, efficient routing of all an entity's notices to a single electronic mailbox, and, for large creditors, an opportunity to adopt computer-to-computer processing. This results in savings of approximately 27 cents for each notice sent electronically. If 10% of the annual volume of notices were sent electronically, the judiciary would realize savings of approximately \$2.3M in postage.

Should you have any questions or require additional information, please do not hesitate to contact me at (718) 330-2899, or you may contact Gary McCaffrey, Electronic Bankruptcy Noticing Project Manager, at the Administrative Office's Bankruptcy Court Administration Division at (202) 502-1540.

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Joseph P. Hurley