



COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES

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June 29, 2018

Ms. Rebecca Womeldorf
Rules Committee Chief Counsel
Office of General Counsel - Rules
Committee Staff
One Columbus Circle, N.E.
Washington, DC 20544

Dear Ms. Womeldorf,

Earlier this year, our Committee formed a new subcommittee to study proposals aimed at reducing bankruptcy noticing costs. The subcommittee is chaired by our Committee's bankruptcy judge representative, Judge Marvin Isgur (S.D. Tex.), and includes, in addition to members from our Committee, liaisons from the Advisory Committee on Bankruptcy Rules (Judge Stuart Bernstein (Bankr. S.D.N.Y.) and the Committee on the Administration of the Bankruptcy System (Judge Brendan Shannon (D. Del.)). While the judiciary has done an admirable job of keeping noticing costs low through the Bankruptcy Noticing Center (BNC) and electronic bankruptcy noticing, the judiciary's FY 2019 budget includes \$14 million for bankruptcy noticing. The subcommittee has developed a variety of proposals aimed at reducing this significant expense.

At its June 2018 meeting, our Committee received a report from its BNC cost-containment subcommittee on these various proposals. The Committee agreed with the subcommittee that the best way to reduce bankruptcy noticing costs is through electronic noticing, which is currently used by about 43 percent of all notice recipients, rather than paper noticing. Therefore, as a first step, the Committee endorsed asking the Advisory Committee on Bankruptcy Rules to consider amending Federal Rule of Bankruptcy Procedure 9036 to more strongly encourage electronic bankruptcy noticing for creditors and other parties in interest that receive a significant number of notices in a given month.

The Committee's request builds upon an earlier proposal to the Rules Committee from the Administrative Office's Bankruptcy Judges Advisory Group (BJAG), Bankruptcy Clerks Advisory Group (BCAG), and Bankruptcy Noticing Working Group (BNWG). See [Rules Suggestion 15-BK-H](#) (2015 Proposal). That proposal would have amended Federal Rule of Bankruptcy Procedure 9036 to require large-volume bankruptcy notice recipients (i.e., any party receiving 100 or more notices within a given month) to begin receiving notices electronically rather than by U.S. mail.

I understand that the Advisory Committee's Subcommittee on Business Issues expressed concerns that the proposed amendment could have violated 11 U.S.C. § 342, which permits entities to require that all bankruptcy courts provide notice in all Chapter 7 and Chapter 13 bankruptcy cases to a specified address. Because it is possible that a creditor-designated address might be a physical address, the Advisory Committee's Subcommittee did not believe it could draft a broad federal rule requiring all creditors to accept electronic service. Based on that concern, our Committee has developed a revised version of a proposed amended version of Bankruptcy Rule 9036 that expressly makes the mandatory electronic noticing provision "[s]ubject to the right to file a notice of address pursuant to § 342(e) or (f) of the Code..." We believe this revision should address the concerns raised by the Subcommittee on Business Issues, and are hopeful that the revised proposal can move forward.

Our Committee also considered the Business Issues Subcommittee's concern that mandating electronic notice could prove very disruptive to parties' established practices and procedures. As noted at the time of the original suggestion in the 2015 Proposal, the Administrative Office reached out to entities that would be affected by the amendment, and none expressed opposition. More recently, Judge Isgur spoke with various stakeholders, including representatives from national banks and law firms that represent major creditors in bankruptcy cases but that still receive some or all of their bankruptcy notices by U.S. Mail. Based on these conversations, we believe that these entities could readily adapt to receiving electronic notices.

Finally, the revised proposed amendment differs from the 2015 Proposal in one other significant respect. The 2015 Proposal mandated electronic noticing after the first time an entity is sent 100 or more court-generated notices by mail from one or more courts within a calendar month. The revised proposed amendment replaces that threshold with a "Minimum Threshold Amount" of notices. Although the Minimum Threshold Amount would initially be set at 100 notices, it would also require the Director of the Administrative Office, who manages the bankruptcy noticing program centrally for all bankruptcy courts, to review that threshold on an annual basis, and authorize the Director to alter the threshold in his discretion. Given the rapid changes in technology, and the fact that the ability of entities to receive and process electronic notices continues to increase, we believe the rule should provide flexibility to adjust the electronic notice threshold by providing adequate notice, but without formally amending the rule.

Given the substantial amount of money at stake for the judiciary, our Committee endorsed submitting the revised proposed amendment to your Committee, and we strongly urge favorable action on this amendment as soon as practicable. I believe it makes a good deal of sense for Judge Isgur to discuss the proposed amendment at any meetings of the Committee, the

Advisory Committee, or the Subcommittee. I also believe that Judge Isgur would be available to participate at the next meeting of the Advisory Committee on September 17.

Sincerely,

A handwritten signature in blue ink that reads "Wm. Terrell Hodges". The signature is written in a cursive style.

Wm. Terrell Hodges

cc: Hon. David G. Campbell
Hon. Sandra Segal Ikuta
Hon. Marvin P. Isgur
Bridget M. Healy
Robert Lowney
Jane MacCracken
Mark Miskovsky
Scott Myers

Attachment: Proposed Revisions to Federal Rule of Bankruptcy Procedure 9036

Federal Rule of Bankruptcy Procedure 9036
Revisions to Mandate Electronic Noticing for High Volume Notice Recipients
Proposed by the Committee on Court Administration and Case Management
(June 2018)

A. Version of Rule 9036 approved by the Advisory Committee on Bankruptcy Rules in April 2018 (with several subsequent edits to address comments from the Committee’s style consultants).

Rule 9036. Notice and Service Generally.

Whenever these rules require or permit sending a notice or serving a paper by mail, the clerk or a person designated by the court may send the notice to—or serve the paper on—a registered user by filing it with the court’s electronic-filing system. Or it may be sent to any person by other electronic means that the person consented to in writing. In either of these events, service or notice is complete upon filing or sending but is not effective if the filer or sender receives notice that it did not reach the person to be served. This rule does not apply to any pleading or other paper required to be served in accordance with Rule 7004.

B. Revisions to the version of Rule 9036 set out in (A) above proposed by the Court Administration and Case Management Committee.

Rule 9036. Notice and Service Generally

(a) Electronic Noticing. Whenever these rules require or permit sending a notice or serving a paper by mail, the clerk or a person designated by the court may send the notice to—or serve the paper on—a registered user by filing it with the court’s electronic-filing system. Or it may be sent to any person by other electronic means that the person consented to in writing. ~~In either of these events, service or notice is complete upon filing or sending but is not effective if the filer or sender receives notice that it did not reach the person to be served. This rule does not apply to any pleading or other paper required to be served in accordance with Rule 7004.~~

(b) Mandatory Electronic Noticing for High Volume Notice Recipients. Subject to the right to file a notice of address pursuant to § 342(e) or (f) of the Code, and notwithstanding Rule (5)(b) F.R.Civ.P., and Rules 2002(g), and 9022(a), the first time an entity is sent court-generated notices by mail, in a number that exceeds the Minimum Threshold Amount, and is so notified, the entity will be required to enroll in Electronic Bankruptcy Noticing and thereafter accept delivery of all court-generated notices by electronic transmission, as provided in subparagraphs (b)(1)-(4) of this rule.

(1) Minimum Threshold Amount. The Minimum Threshold Amount will initially be set at 100 court-generated notices by mail from one or more courts within a calendar month. At least once a year, the Director of the Administrative Office of the U.S. Courts shall review the Minimum Threshold Amount and may adjust the Minimum Threshold Amount, in the Director’s discretion.

(2) Threshold Notice. The Director of the Administrative Office of the U.S. Courts or the Director's noticing agent will notify an entity that it has been sent by mail the Minimum Threshold Amount of court-generated notices and that the entity must comply with the requirements in subparagraphs (b)(3)-(4) of this rule.

(3) Enrollment for Electronic Noticing. Within 45 days of the date of threshold notice, an entity must enroll in Electronic Bankruptcy Noticing with the U.S. Courts' Bankruptcy Noticing Center. This requirement also applies to entities currently enrolled in Electronic Bankruptcy Noticing for delivery of some, but not all, court-generated notices.

(4) Commencement of Electronic Noticing.

(A) Enrolled Entities. Entities that timely enroll in Electronic Bankruptcy Noticing must be prepared to accept all court-generated notices by electronic transmission within 135 days of the date of the threshold notice. Extensions may be granted under guidelines for Electronic Bankruptcy Noticing established by the Director of the Administrative Office of U.S. Courts.

(B) Unenrolled Entities. For entities that do not timely enroll in Electronic Bankruptcy Noticing, the Director of the Administrative Office of U.S. Courts or the Director's noticing agent may give notice to the entity that: (1) timely enrollment in Electronic Bankruptcy Noticing has not occurred; (2) beginning 30 days from the date of the notice, court-generated notices will be sent to an electronic account created by the U.S. Courts' Bankruptcy Noticing Center; (3) the entity may access that electronic account by following instructions contained in the notice; and (4) failure to timely enroll in Electronic Bankruptcy Noticing constitutes a waiver of the right to receive court-generated notices by mail with the exception of the notice required under Rule 2002(a)(1) and notices in cases commenced under Rule 3 F.R.Civ.P.

(c) Service or notice under this rule is complete upon filing or sending but is not effective if the filer or sender receives notice that it did not reach the person to be served. This rule does not apply to any pleading or other paper required to be served in accordance with Rule 7004.