Bankruptcy Local Rule 2002-2

NOTICE AND HEARING

(a) **Applicability.**

All contested matters under Fed. R. Bankr. P. 9014, all motions under Fed. R. Bankr. P. 9013, and all other matters requiring or with provision for a hearing under the Bankruptcy Code or Federal Rules of Bankruptcy Procedure, shall be subject to the following requirements and conditions, in addition to other and further requirements as may be imposed by rule or applicable law.

(b) **Notice.**

(1) By whom given. Except for notices specified in Fed. R. Bankr. P. 2002(a)(1), (a)(7), (a)(9), (b)(3), (e) and (f), all notices shall be given by the party requesting an order or other relief.

(2) To whom given.

(A) "Notice," as used in this rule shall mean notice by mail or electronic means to all creditors, equity security holders, trustees and indenture trustees, the debtor, the chairman of any committee appointed in the case, U.S. Trustee and any other parties in interest. A different method or less inclusive notice may be given only if allowed by the Bankruptcy Code or Federal Rules of Bankruptcy Procedure, or if authorized by a judge.

(B) The addresses of notices shall be in accordance with Fed. R. Bankr. P. 2002(g) and 11 U.S.C. § 342.

(i) A Master Mailing List of names and addresses, as filed with the court, and updated in accordance with Rule 2002(g), and 11 U.S.C. § 342 may be downloaded from PACER which can be accessed from the court's website at www.id.uscourts.gov.

(ii) Required notice to all creditors is presumed to be appropriate if sent to all entries on the Master Mailing List, which has been provided by the clerk.

(iii) Notices sent by the clerk, BNC, or some other person or entity as the court may direct, pursuant to 11 U.S.C. §§ 341(a), 342(a) and (b), and Fed. R. Bankr. P. 2002, that are determined undeliverable will be forwarded to the debtor's attorney (or debtor if *pro se*). Any notice, other than a § 341(a) meeting of creditors, or a copy of the final order of discharge, which is returned to the court, shall be destroyed after processing.

(3) Proof of Service. After giving notice, the moving party shall file within five (5) days of the notice, a certificate of mailing with a list of the persons and their addresses to whom the notice was sent. If notice to all creditors is required, the certificate of service must certify mailing (or other services) on all parties included on the Master Mailing List described in subdivision (b)(2)(B) of this rule.

(c) **Objection.**

If the notice provides for the filing of an objection, a party objecting to an act or the entry of an order shall file with the clerk and serve on the moving party, a written objection within the time set forth in the notice. The objection shall state, with specificity, the grounds therefor.

(d) **When hearing is not required.**

A request for an order under Fed. R. Bankr. P. 9013, where only notice and an opportunity for a hearing are required, may proceed with the service of a motion/application complying with this Local Bankruptcy Rule.

(1) Form of Disclosure. The following language must be placed immediately below the caption of the motion/application:

> Notice of Motion for [name of motion or application] and Opportunity to Object and for a Hearing
>
> No Objection. The Court may consider this request for an order without further notice or hearing unless a party in interest files an objection within [___] days of the date of service of this notice.
>
> If an objection is not filed within the time permitted, the Court may consider that there is no opposition to the granting of the requested relief and may grant the relief without further notice or hearing.
>
> Objection. Any objection shall set out the legal and/or factual basis for the objection. A copy of the objection shall be served on the movant.
>
> Hearing on Objection. The objecting party shall also contact the Court's calendar clerk to schedule a hearing on the objection and file a separate notice of hearing.

(2) Time of Negative Noticing. The minimum number of days under this Local Rule will be 14 days unless another notice period is applicable under the Federal Rules of Bankruptcy Procedure or the Local Bankruptcy Rules.

(3) Statement of No Objection. To obtain the requested order if no objection is filed within the applicable notice period, the movant shall file *a Statement of No Objection* and a proposed Order. The statement shall contain the Bankruptcy Court docket number for the initial motion/application sent under subsection (d) of this Rule, any related certificate of service, and a certification that no objection has been received to the requested relief.

(4) Hearing on Objection. If the objecting party does not schedule a hearing as provided in the notice, the moving party may set the matter for a hearing.

(e) **Hearing.**

(1) By moving party. Counsel for the party who desires or is required to set a matter for hearing shall be responsible for contacting the calendar clerk and obtaining a date for such hearing. Unless the moving party obtains a hearing date and properly files and serves the notice the matter will not be heard. Counsel obtaining a hearing date shall be responsible for providing notice to all parties as provided by this rule. Such notice shall include the date, time, and time zone (MT or PT) for the hearing. If the hearing is held in person, the notice shall include the courthouse address. If the court has approved the hearing to be held remotely, the notice shall include any information necessary to attend.

(2) By objecting party. If a party objects to an act or the entry of an order and the matter is not previously set for hearing, counsel for the objecting party shall be responsible for contacting the calendar clerk, obtaining a hearing date, and serving notice of hearing, as provided in subdivision (e)(1) of this rule.

(3) Any party requesting a hearing date from the calendar clerk (or in open court) shall file and serve the notice of hearing and related pleadings at least seven (7) days prior to the scheduled hearing date. Failure to do so may result in the hearing being removed from the calendar.

(4) Provided that no other rule to the contrary is applicable, the following language must be placed immediately below the caption of all notices of hearing wherein the hearing has been set at least twenty-eight (28) days from the date the applicable motion was filed:

Notice of Motion for [name of motion or application] and Opportunity to Object

No Objection. The Court may consider granting an order without further notice, at the hearing, unless a party in interest files and serves an objection at least fourteen (14) days prior to the date of the hearing, set forth in this notice. If an objection is not timely filed and served, the Court may consider the objection waived and the motion may be granted at the hearing.

Objection. Any objection shall set out the legal and/or factual basis for the objection. A copy of the objection shall be served on the movant.

(f) **Vacation or continuance of hearing.**

A hearing may be vacated or continued for good cause and by approval of the Court:

(1) Upon submission, prior to hearing, of an agreed order resolving the matter endorsed by the parties or their counsel of record;

(2) Upon agreement of the parties, set forth in writing and filed no later than the day before the scheduled hearing, and for good cause shown, or, if settled later than the day before the hearing, upon an agreement provided to the court at the time of the hearing by counsel for one of the parties; or

(3) On the request of a party after notice to all opposing parties filed and served at least three (3) days prior to the scheduled hearing, accompanied by an affidavit stating the grounds for such request, unless a judge for cause shown waives the requirements of this rule.

RELATED AUTHORITY

11 U.S.C. § 102(1), 704, 1112, 1324, 1514
Fed. R. Bankr. P. 2002, 5008, 9006, 9007, 9008, 9013, 9014, 9036
LBR 9004-1

Advisory Committee Notes:

Note that subdivision (b)(1) requires a party to serve notice in certain circumstances where previously the clerk provided notice.

Subdivision (e) reflects current practice and emphasizes the necessity of setting matters through the calendar clerk. Subdivision (e)(3) requires the filing of supporting pleadings. Upon request of a party, a hearing may be heard remotely. Parties must request and obtain approval for a remote hearing by contacting the Judge's courtroom deputy.

Subdivision (f) is designed to cure problems presently encountered by the court where counsel vacates a hearing without advising the court and/or opposing counsel.

2008 Advisory Committee Notes: It is the intent of the Committee that the text box containing the required notice under 2002-2(d)(1) be placed **in** the motion/application immediately below the caption and immediately before the substantive allegations of that motion/application.

The time permitted for filing an objection under the negative notice procedure is the time period required for notice by the applicable rules or local rules relating to the motion or application. If no specific time is otherwise provided in the rules or local rules, a minimum of 14 days' notice must be given.

The procedures for the following motions/applications are specifically governed by other local rules and 2002-2(d) does not apply:

- Relief from the Automatic Stay. [LBR 4001-2]
- Confirmation of Chapter 13 Plans. [LBR 2002-3]
- Objection to Claims. [LBR 3007-1]

The following matters are addressed by other local rules as to substantive requirements, who is to receive service, and/or the time in which to respond or object. However, if the movant/applicant wants an order without a hearing, these motions/applications are also subject to LBR 2002-2(d)'s requirement of disclosure and statement of no objection.

- Examinations [LBR 2004-1]
- Employment of Professionals. [LBR 2014-1]
- Objections to Exemptions. [LBR 4003-1]
- Motions to Avoid Liens. [LBR 4003-2]
- Sale of Property of the Estate. [LBR 2002-1]