

**BANKRUPTCY SERVICE AND NOTICING
IN THE DISTRICT OF OREGON¹**

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1. Table: Service Under Federal Rule of Civil Procedure 7004

The following table summarizes the discussion in section 3 beginning on page 7 of the manner in which Federal Rule of Bankruptcy Procedure 7004 permits mail service of a complaint initiating an adversary proceeding or a document initiating a contested matter on the types of parties listed in the table.

Other types of document transmission in bankruptcy cases—including noticing and service other than under Rule 7004—are discussed in this paper but not in the following table.

1. Table: Service Under Federal Rule of Civil Procedure 7004

Party Served	Rule	Method	Reference	Example Address
Individual (other than infant or incompetent person)	Rule 7004(b)(1)	First-class mail to individual's dwelling house or usual place of abode or place where individual regularly conducts business or profession	Section 3.4(b)(1) on page 17	John Doe 123 Main Street Anytown, OR 97123
Corporation, partnership, or unincorporated association (including LLC, but excluding insured depository institution, e.g., bank)	Rule 7004(b)(3)	First-class mail addressed to attention of named officer, managing or general agent, or registered agent; if agent is authorized by statute to receive service and statute so requires (Oregon's does not), also mail copy to defendant	Section 3.4(b)(4) on page 18	Portland General Electric Company c/o Stephen A. Redshaw, Registered Agent 121 S.W. Salmon Street Portland, OR 97204
United States	Rule 7004(b)(4)	First-class mail to civil process clerk at office of the U.S. attorney for the district in which action is brought and to Attorney General at Washington, D.C.; in any action attacking validity or order of federal officer or agency, United States must also be served by mailing to officer or agency; other Rules for service in action attacking validity of order of federal officer or agency	Section 3.4(b)(5) on page 20	Civil Process Clerk Office of S. Amanda Marshall, United States Attorney for the District of Oregon 1000 S.W. Third Avenue, Suite 600 Portland, OR 97204 —and— Eric H. Holder, Jr. Attorney General of the United States U.S. Department of Justice 950 Pennsylvania Avenue, N.W. Washington, DC 2053-0001

1. Table: Service Under Federal Rule of Civil Procedure 7004

Party Served	Rule	Method	Reference	Example Address
Officer or agency of United States	Rule 7004(b)(5)	First-class mail as required by Rule 7004(b)(4) and to officer or agency; if agency is corporation, also mail under Rule 7004(b)(3)	Section 3.4(b)(5) on page 20	<p>Civil Process Clerk Office of S. Amanda Marshall, United States Attorney for the District of Oregon 1000 S.W. Third Avenue, Suite 600 Portland, OR 97204</p> <p>—and—</p> <p>Eric H. Holder, Jr. Attorney General of the United States U.S. Department of Justice 950 Pennsylvania Avenue, N.W. Washington, DC 2053-0001</p> <p>—and—</p> <p>[Federal agency address]</p>
State or municipal corporation or other governmental organization	Rule 7004(b)(6)	First-class mail to person or office upon whom process must be served under law of state in which service is made when action is brought against defendant in courts of general jurisdiction of that state or, in the absence of designation of such a person or office by state law, then to chief executive	Section 3.4(b)(5) on page 20	<p>Ellen F. Rosenblum Attorney General Oregon Department of Justice 1162 Court Street, N.E. Salem, OR 97301-4096</p>

1. Table: Service Under Federal Rule of Civil Procedure 7004

Party Served	Rule	Method	Reference	Example Address
		officer		
Debtor	Rule 7004(b)(9)	First-class mail to debtor at address shown in petition or to any other address that debtor designates in a filed writing	Section 3.4(b)(8) on page 23	John Doe 123 Main Street Anytown, OR 97123 —and— Mary Smith 456 Main Street Anytown, OR 97123 (Attorney for Debtor)
Insured depository institution (e.g., bank)	Rule 7004(h)	Certified mail to officer of institution	Section 3.4(c)(4) on page 26	KeyBank National Association Attn: Brian Rice, President of Oregon & SW Washington 1211 S.W. Fifth Avenue, Suite 300 Portland, OR 97204

The table does not include all material information in this paper about Rule 7004 service on the entities listed in the table. The reader should review this paper in its entirety, and in particular all the sections of this paper that are referenced in the preceding table. Examples in the table may not be current, and the reader should independently determine current service names and addresses.

2. Introduction

Most of the 248 Federal Rules of Bankruptcy Procedure (“Rules”) address events that can occur only in a bankruptcy case. Rules specify to whom and how motions and notices addressing several classes or single types of bankruptcy events (as well as complaints) must be transmitted. The large number of different ways that documents in a bankruptcy case must be transmitted distinguishes bankruptcy practice from other types of litigation practice. Obtaining relief without making required service or giving required notice can invalidate any relief that the court grants.

This paper describes to whom and how most documents that are filed in an Oregon bankruptcy case must be transmitted to others—by serving or by giving notice of the document—in order to comply with the Rules and obtain valid relief.

2.1 Terminology

An adversary proceeding complaint and a motion or other document that requests relief and thus constitutes a contested matter (referred to hereinafter as a motion) must, with limited exceptions,² be **served as required by Rule 7004**. A document that is transmitted after the complaint or motion is filed must be **served as required by Rule 7005** (for an adversary proceeding) **or 5(b)** (for a contested matter). A subpoena must be **personally served** in the manner required by Federal Rule of Civil Procedure 45(b). A notice must be transmitted, or **noticed**, but need not be served under Rule 7004. Other documents must be **delivered** or **transmitted**.

2.1(a) *Distinguishing service under Rule 7004 from noticing*

“Notice in bankruptcy cases is different from service of process. Confusion between the two is compounded because both can sometimes be accomplished in the same manner. Bankruptcy proceedings often differ significantly from non-bankruptcy civil litigation. Many actions may occur in a bankruptcy case that may affect all creditors generally, but none specifically. . . .

“. . . The notice requirements in bankruptcy are designed to satisfy the due process requirement of adequate notice to parties whose interests may be affected in such proceedings. . . .

“In contrast, when a bankruptcy proceeding, such as an objection to a proof of claim or the sale or use of property free and clear of a creditor's liens, directly affects the individual rights of a specific party, the initiating motion or objection must be served on the affected party in the same manner as a summons and complaint are served pursuant to Rule 7004.”³

² Fed. R. Bankr. P. 9013.

³ *In re Association of Volleyball Professionals*, 256 B.R. 313, 319-20 (Bankr. C.D. Cal. 2000) (citations omitted). Citations in this paper that are underlined and in blue font are hyperlinks to authorities.

2.1(b) *Three different meanings of “serve”*

“Serve” has three distinct meanings:

- to serve, as required by Rule 7004, a document in an adversary proceeding that must be served with a summons, including to serve the complaint on the defendant and a third-party complaint on the third-party defendant, or a motion or application initiating a contested matter on the parties against whom relief is requested or who are otherwise entitled to receive the document;
- to serve, as required by Federal Rule of Civil Procedure 5 (through Rule 7005) or 5(b) (through Rule 9014(b)), a document in an adversary proceeding or contested matter after the adversary proceeding or contested matter has begun; and
- to transmit, but not serve under Rule 7004, a document that neither initiates nor is filed in an adversary proceeding or a contested matter, including by mailing a notice governed by Rule 2002.

Because “serve” is used in both the Rules and the LBRs more broadly than to refer only to service required by Rule 7004 or Federal Rule of Civil Procedure 5 or 5(b), any particular requirement to serve a document can be understood only by determining whether the document in fact initiates a contested matter. Is the document a request for an order granting relief against one or more entities? Or is it governed by a specific Rule or LBR that expressly requires service under Rule 7004 or that states that the proceeding initiated by the document is governed by Rule 9013 or 9014? If neither of those statements is true, service under Rule 7004 is not required.

2.2 Primary questions

Before transmitting (serving or noticing) a document in an Oregon bankruptcy case, ask these primary questions:

- Is the document a **complaint** initiating an adversary proceeding? Or does it **initiate a contested matter**? (See section 3 on page 7.) In either case, **serve it under Rule 7004**, as explained in sections 3.4 and 3.4(f) on pages 15 and 30.
- Does the document have **dual purposes**, i.e., does it initiate a contested matter as to fewer than all the entities entitled to receive it and a notice as to the others? If so, **serve and give notice of it** as explained in section 3.2 on page 11.
- Must the document be transmitted **in a pending adversary proceeding or contested matter**? (See section 5 on page 38.) If so, **serve it under Federal Rule of Civil Procedure 5** (for an adversary proceeding) or **5(b)** (for a contested matter), as explained in section 5.2 on page 39.

3. Service of Adversary-Proceeding Complaint or Document Initiating Contested Matter

- Is the document a **trustee’s request to a taxing authority to determine an estate tax liability?** (See section 7.4 on page 47.) If so, **serve it on the authority under § 505(b)(2) and Rule 5003(e)**, as explained in section 4.3(c) on page 38 and section 7.3(a) on page 46.
- Is the document a **subpoena?** If so, **serve it in person with the required fee**, as explained in section 6 on page 41.
- Is the document a **notice required by a Rule?** (See section 7 on page 41.) If so, **mail** or otherwise transmit it as explained in sections 7.2 through 7.5 on pages 42 through 47.

2.3 Common service and noticing errors

Errors in the following types of Rule 2004 service are common, and the governing Rules and LBRs merit particular attention:

- Service of a chapter 13 plan (See sections 3.1(b) and 3.5 on pages 10 and 35.)
- Service of a claim objection (See sections 3.1(b) and 3.4(f)(2) on pages 10 and 30.)
- Service on a corporation, partnership, or unincorporated association (such as a limited liability company) (See section 3.4(b)(4) on page 18.)
- Service on an insured depository institution (e.g., a bank) (See section 3.4(c) on page 24.)
- Service on the creditors on the list required by Rule 1007(d) (20 largest unsecured creditors), such as service of a stay-relief motion (See section 3.4(g) on page 33.)

3. Service of Adversary-Proceeding Complaint or Document Initiating Contested Matter

A document that initiates or is transmitted later in an adversary proceeding or contested matter must be served under Rule 7004.⁴ Rules governing service of the complaint or document initiating a contested matter differ from those governing service of the subsequent documents, such as an answer in an adversary proceeding or an objection to a document initiating a contested matter.

3.1 Identifying contested matters

No Rule expressly defines “contested matter.” An Advisory Committee Note to Rule 9014 defines “contested matter” as “the litigation to resolve . . . an actual dispute, other

⁴ Fed. R. Bankr. P. 9014(b).

than an adversary proceeding, before the bankruptcy court.”⁵ Some contested matters are initiated by a proceeding or motion (other than a motion in a pending adversary proceeding or contested matter), and others are initiated by an objection to a notice.

As a rule of thumb, a contested matter, which must be initiated by service under Rule 7004, puts at issue the rights of one or more particular entities.⁶ By contrast, a notice of a proposed action, which usually must be mailed under Rule 2002, puts at issue only the rights of the estate’s stakeholders as a group. For example, a creditor’s stay-relief motion puts at issue the rights of the moving creditor and is expressly governed by Rule 9014.⁷ The motion thus initiates a contested matter and must be served under Rule 7004, but only on the entities specified in the rule. Conversely, a trustee’s proposal to use, sell, or lease property out of the ordinary course of business puts at issue only the rights of the estate’s stakeholders as a group and must be noticed by mail to—not served on—the debtor and all creditors and indenture trustees.⁸

3.1(a) *Contested matters initiated by proceeding or motion*

The following documents are governed by Rules expressly requiring service of the document under Rule 7004 or stating that the document or the proceeding that the document initiates is governed by Rules 9013 or 9014. Thus, by implication, the document seeking relief initiates the contested matter and must be served in accordance with Rule 7004 (as discussed in section 3.4 on page 15):

- involuntary petition summons⁹
- proceeding to dismiss or suspend a case or convert it to another chapter, except under 11 U.S.C. § 706(a), 1112(a), 1208(b), or 1307(a) or (b)¹⁰ (Unless the context indicates otherwise, subsequent references in this paper to “§ ” are to sections of the Bankruptcy Code (“Code”), title 11, United States Code.)
- conversion of dismissal under § 706(a), 1112(a), 1208(b), or 1307(b)¹¹
- request for determination that a case should proceed as a small-business case despite the appointment of chapter 11 committee¹²
- motion to determine whether a debtor is a health-care business¹³

⁵ Fed. R. Bankr. P. 9014, 1983 Advisory Committee Note.

⁶ See *In re Frates*, 507 B.R. 298, 302 (9th Cir. B.A.P. 2014) (Rule 7004 service required “when a particular creditor’s rights are at issue such as in lien avoidance proceedings”); *In re Gordon*, No. BK-S-11-22221-LBR at 6, 2013 WL 1163773, at *4 (Bankr. D. Nev. Mar. 20, 2013).

⁷ Fed. R. Bankr. P. 4001(a)(1).

⁸ Fed. R. Bankr. P. 2002(a)(2).

⁹ Fed. R. Bankr. P. 1010(a).

¹⁰ Fed. R. Bankr. P. 1017(f)(1).

¹¹ Fed. R. Bankr. P. 1017(f)(2).

¹² Fed. R. Bankr. P. 1020(d).

¹³ Fed. R. Bankr. P. 1021(b).

3. Service of Adversary-Proceeding Complaint or Document Initiating Contested Matter

- motion for appointment of a trustee or examiner in a chapter 11 case¹⁴
- motion to determine that the appointment of a patient-care ombudsman is not necessary or to terminate the appointment of an ombudsman¹⁵
- motion by a patient-care ombudsman under § 333(c) to review confidential patient records¹⁶
- proceeding to contest any act or failure to act by the U.S. trustee (the “UST”)¹⁷
- request by an individual chapter 11 debtor to modify a confirmed plan¹⁸
- motion for automatic-stay relief¹⁹
- chapter 13 plan (but only with respect to certain entities as to which the plan constitutes a motion; see section 4 on page 35)
- motion for authority to use cash collateral²⁰
- motion for authority to obtain credit²¹
- proceeding to avoid a lien or other transfer of property exempt under § 522(f)²²
- motion for abstention under 28 U.S.C. § 1334(c)²³
- motion for authority to sell property free and clear of liens or other interests²⁴
- motion for authority to sell or lease personally identifiable information²⁵
- proceeding to assume, reject, or assign an executory contract or unexpired lease, other than as part of a plan²⁶

¹⁴ Fed. R. Bankr. P. 2007.1(a).

¹⁵ Fed. R. Bankr. P. 2007.2(e).

¹⁶ Fed. R. Bankr. P. 2015.1(b).

¹⁷ Fed. R. Bankr. P. 2020.

¹⁸ Fed. R. Bankr. P. 3019(b).

¹⁹ Fed. R. Bankr. P. 4001(a)(1).

²⁰ Fed. R. Bankr. P. 4001(b)(1)(A).

²¹ Fed. R. Bankr. P. 4001(c)(1)(A).

²² Fed. R. Bankr. P. 4003(d).

²³ Fed. R. Bankr. P. 5001(b).

²⁴ Fed. R. Bankr. P. 6004(c).

²⁵ Fed. R. Bankr. P. 6004(g)(1).

²⁶ Fed. R. Bankr. P. 6006(a).

3. Service of Adversary-Proceeding Complaint or Document Initiating Contested Matter

- proceeding by a party to an executory contract or unexpired lease in a chapter 9, 11, 12, or 13 case to require the trustee, debtor in possession, or debtor to determine whether to assume or reject the contract or lease²⁷
- proceeding in which the debtor exercises a right of redemption under § 722²⁸
- motion for sanctions under Rule 9011²⁹
- motion for a contempt order³⁰
- motion to remand a removed claim or cause of action³¹

The preceding list is not an exhaustive list of proceedings or motions that initiate contested matters.

Also, two other particular documents are expressly required by LBRs to be served under Rule 7004: a motion for expedited hearing of a motion in an adversary proceeding³² and an amended document.³³

An event may be a contested matter even if there exists no Rule or LBR addressing the event, much less one that expressly refers to Rule 7004, 9013, or 9014. For example, Rule 1004 requires that, after filing an involuntary petition against a partnership (which initiates a contested matter), the petitioning partners or other petitioners send to or serve a copy of the petition on each general partner who is not a petitioner, Rule 1017(c) requires that notice of a hearing on the UST's motion to dismiss (which also initiates a contested matter) be served by the UST on the debtor, the trustee, and other parties as the court directs.

3.1(b) *Contested matters initiated by objection*

An objection to a notice, statement, claim, or other document, other than a motion, initiates a contested matter, and the objection must be served under Rule 7004. The following objections are among those expressly governed by Rule 9014, and thus by implication an objection—but not the document to which the objection responds—initiates the contested matter:

- objection to the debtor's statement in the petition that the debtor is or is not a small-business debtor³⁴

²⁷ Fed. R. Bankr. P. 6006(b).

²⁸ Fed. R. Bankr. P. 6008, 1983 Advisory Committee Note.

²⁹ Fed. R. Bankr. P. 9011(a).

³⁰ Fed. R. Bankr. P. 9020.

³¹ Fed. R. Bankr. P. 9027(d).

³² LBR 7007-1(c)(2).

³³ LBR 9004-1(d)(1)(D).

³⁴ Fed. R. Bankr. P. 1020(d).

3. Service of Adversary-Proceeding Complaint or Document Initiating Contested Matter

- objection to a claim, unless the objection is joined with a demand under Rule 7001 (i.e., one that must be brought by adversary proceeding), in which case the objection must be by adversary proceeding³⁵
- objection to confirmation of a chapter 9, 11, 12, or 13 plan³⁶ (but a chapter 12 or 13 plan itself initiates a contested matter as to the plan's treatment of certain entities; see section 3.5 on page 35)
- objection to discharge under § 727(a)(8), (a)(9), or 1328(f)³⁷
- objection to the proposed use, sale, or lease of property³⁸
- objection to a proposed compromise or settlement under Rule 9019(a)³⁹

An objection can initiate a contested matter even if no Rule or LBR expressly so states. For example, an objection to a claim of exemption under Rule 4003 initiates a contested matter.⁴⁰

3.1(c) *Dual-purpose documents*

Some documents have dual purposes, i.e., they initiate a contested matter as to some entities but require only notice as to others. For example, in most circumstances, a trustee's motion to dismiss a case is governed by Rule 9014.⁴¹ Although no Rule states who must receive service of the motion to dismiss the case, the debtor is the particular party whose rights the motion puts at issue, and thus the debtor must be served under Rule 7004. In most instances, Rule 2002(a)(4) requires notice of the hearing on the dismissal of a chapter 7, 11, or 12 case be given by mail to—not served under Rule 7004 on—the debtor, the trustee, all creditors, and indenture trustees. Thus, the motion has dual purposes and must be served on the debtor and noticed to others. The most common dual-purpose document is a plan. See section 4 on page 35.

3.2 Entities that must be served with documents initiating contested matters

In a contested matter that is not governed by a Rule other than Rule 9014, relief must be requested by motion, and reasonable notice and opportunity for hearing must be afforded the party against whom relief is sought.⁴²

³⁵ Fed. R. Bankr. P. 3007, 1983 Advisory Committee Note. See *In re Monk*, No. 04-60712-fra13 slip op. at 6 (Bankr. D. Or. Aug. 9, 2013), discussed in section 3.4(f)(2) on page 25.

³⁶ Fed. R. Bankr. P. 3020(b)(1), 3015(f).

³⁷ Fed. R. Bankr. P. 4004(d).

³⁸ Fed. R. Bankr. P. 6004(b), (d).

³⁹ 10 *Collier on Bankruptcy* ¶ 9014.01, at 9014-3 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2012).

⁴⁰ *In re Neff*, No. CC-12-1664-KiTaD, 2014 WL 448885, at *11 (9th Cir. B.A.P. Feb. 4, 2014).

⁴¹ Fed. R. Bankr. P. 1017(f)(1).

⁴² Fed. R. Bankr. P. 9014(a).

3. Service of Adversary-Proceeding Complaint or Document Initiating Contested Matter

Each motion, other than one that may be considered *ex parte*, must be served by the movant on the trustee or debtor in possession and on those entities specified by the Rules or, if service is not required or the entities to be served are not specified by the Rules, the moving party must serve any entities whom the court directs.⁴³

Some, but not all, Rules that apply Rule 9014 to a document specify the entities to be served. For example, under Rule 1020(d), an objection to the debtor's statement whether it is a small-business debtor is governed by Rule 9014 and must be served on a list of specified entities. By contrast, Rule 1017(f)(1) is silent about who must be served with a motion to dismiss or suspend a case or to convert it to another chapter.

Practice tip. If no Rule or order specifies on whom a document initiating a contested matter must be served and the court does not direct otherwise, serve all entities that could be affected negatively other than in their capacities as general estate stakeholders (i.e., other than as general creditors or equity-interest holders). (This practice tip and some others in this paper recommend cautious positions, which may exceed legal requirements.)

3.3 LBRs requiring service of documents initiating contested matters

Several LBRs require that specific documents initiating contested matters be served, and in some cases those LBRs require service on entities on which service is not specifically required by a Rule. The service requirements imposed by those LBRs include the following:

- An attorney in fact filing a petition for a debtor must serve an order to show cause why the case should not be dismissed on the debtor, the trustee, the UST, and all creditors.⁴⁴
- A next friend or guardian ad litem must serve a motion to approve the appointment and a supporting declaration on the debtor, the trustee, all creditors, the UST, any governmental entity from which the debtor receives funds, the debtor's closest relative, and all persons to whom notice must be given under ORS 125.060.⁴⁵
- A motion to convert a case, unless filed by a debtor with a statutory right to convert, must be served on the debtor and any creditors' committee.⁴⁶
- A motion to dismiss, unless filed by a debtor with a statutory right to dismiss, must be served on the debtor and any creditors' committee.⁴⁷

⁴³ Fed. R. Bankr. P. 9013.

⁴⁴ LBR 1002-1(a)(3)(B)(ii).

⁴⁵ LBR 1004.1-1(b)(3).

⁴⁶ LBR 1017-1.

⁴⁷ LBR 1017-2(a).

3. Service of Adversary-Proceeding Complaint or Document Initiating Contested Matter

- A motion under § 1102(a)(3) to dispense with a creditors' committee must be served on the debtor and each creditor on the list of the 20 largest unsecured creditors.⁴⁸
- The notice-of-intent template requires that an objector serve the objection on the party proposing the action.⁴⁹
- The party required to serve notice of a motion or application must serve the notice with the motion or application on the debtor and any committee.⁵⁰
- An applicant for interim compensation may, contemporaneously with filing the application, file a motion, including a certificate of service on the trustee, and a proposed order requiring that an interim report on LBF #753 or #1153 be filed within 30 days.⁵¹
- The trustee must audit and serve any appropriate objection to only those claims with sufficient priority to have a reasonable possibility of receiving a dividend.⁵²
- Except as set forth in LBR 3015-3(c)(4), a chapter 13 plan-confirmation objection must be filed and served on the debtor within 14 days after the meeting of creditors concludes.⁵³
- A claimant requesting temporary allowance of a claim subject to a pending objection must file and serve a motion for temporary allowance.⁵⁴
- A debtor moving for a hardship discharge must file and serve a notice of motion.⁵⁵
- In a chapter 7, 9, or 11 case, a party moving to assume, reject, or assign an executory contract or unexpired lease or to compel the debtor or trustee do so, other than a chapter 7 trustee (who must use LBF) or chapter 11 plan proponent so moving in plan, must serve a motion on all parties to the contract or lease, the debtor, the trustee, and any creditors' committee.⁵⁶ (See part 4.3(b) below.)

⁴⁸ LBR 1020-1.

⁴⁹ LBR 2002-1(b)(1).

⁵⁰ LBR 2002-1(d)(1).

⁵¹ LBR 2016-1(c)(1)(A).

⁵² LBR 3007-1(a)(1).

⁵³ LBR 3015-3(c)(1).

⁵⁴ LBR 3018-1(c).

⁵⁵ LBR 4004-1(a).

⁵⁶ LBR 6006-1(a).

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- A party requesting abandonment must serve documents evidencing the interest of that party and any perfection of a security interest, with a motion for abandonment, on the trustee and any creditors' committee.⁵⁷
- In a chapter 7 case, any objection to abandonment of the debtor's real-property residence must be served on the debtor's attorney, if not an ECF participant, or, if the debtor is unrepresented, on the debtor.⁵⁸
- LBR 9001-1(h) specifies the manner in which a document must be served on a creditors' committee.
- LBR 9010-1(b)(1) defines "attorney of record" by reference to service on the attorney.
- An attorney suspended or barred from law practice may be served with an order to show cause why the attorney should not be suspended or barred from practice before the court.⁵⁹

The requirements to serve "all creditors" in both LBR 1002-1(a)(3)(B)(ii) (attorney-in-fact's show-cause order) and LBR 1004.1-1(b)(3) (motion to appoint next friend or guardian ad litem) became effective on December 1, 2013. Because the show-cause order and motion initiate contested matters, the requirement to serve them requires service under Rule 7004. That requirement is extraordinary; no Rule and no other LBR requires Rule 7004 service of any document on all creditors. It is a time-consuming and nontrivial task to determine Rule 7004 service addresses even when dealing with a small subset of the body of creditors in a case (such as the 20-largest unsecured creditors, who must receive Rule 7004 service of certain matters under Rule 4001). But investigating and determining Rule 7004 service addresses for the entire master mailing list would be a daunting undertaking that does not appear to be required by other LBR or any Rule.

The LBRs include two references to Rule 7004, and both can be read to purport to require Rule 7004 service in circumstances in which the Rules would not:

- Service under both Rule 7004 and Rule 7005 of a motion for expedited hearing of a motion in an adversary proceeding or, under LBR 9013-1(a)(3), in a contested matter.⁶⁰
- An amended document must be served under Rule 7004. In the Rules, any pleading after the original complaint or motion initiating the contested matter, such as a motion for expedited hearing or amended complaint or motion, is

⁵⁷ LBR 6007-1(a).

⁵⁸ LBR 6007-1(b).

⁵⁹ LBR 9011-3(c).

⁶⁰ LBR 7007-1(c)(2).

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governed by Rule 7005,⁶¹ not Rule 7004. By requiring Rule 7004 service in circumstances not required by the Rules, Oregon bankruptcy court practice diverges from district court practice (governed by Federal rule of Civil Procedure 5, incorporated through Rule 7005).⁶²

Practice tip. It is not clear from the context of LBRs 7007-1(c)(2) and 9013-1(a)(3) that the court intended to require Rule 7004 service in circumstances where the Rules do not require it. But, absent clarification or amendment of those LBRs, the cautions approach is literal compliance.

3.4 Manner of service of complaint or document initiating contested matter

Both a complaint and a document initiating a contested matter must be served in the manner required by Rule 7004, which incorporates portions of Federal Rule of Civil Procedure 4.⁶³ References in Rule 7004 and Federal Rule of Civil Procedure 4 to “plaintiff” also mean the entity commencing a contested matter; “defendant” also means the entity against which a contested matter requests relief; “complaint” also means the document initiating a contested matter; and “action” also means a contested matter.

3.4(a) Portions of Federal Rule of Civil Procedure 4 applicable to service of complaint or document initiating contested matter

Federal Rule of Civil Procedure 4(a), (b), (c)(1), (d)(1), (e) through (j), (l), and (m) applies in adversary proceedings and contested matters.⁶⁴ Those portions of that Rule specify the contents and manner of amending⁶⁵ and issuing⁶⁶ a summons in an adversary proceeding, the requirement that the summons be served with a copy of the complaint,⁶⁷ the manner in which service may be made on an individual in the United States,⁶⁸ an individual outside the United States,⁶⁹ a minor or incompetent person,⁷⁰ a corporation, partnership, or association,⁷¹ the United States and its agencies, corporations, officers, or employees,⁷² and a foreign, state, or local government,⁷³ and the manner in which service must be proved.⁷⁴

⁶¹ See Fed. R. Civ. P. 5(a)(1)(B) (applies to pleading filed after original complaint).

⁶² LBR 9004-1(d)(1)(D).

⁶³ Fed. R. Bankr. P. 7004, 9014(a).

⁶⁴ Fed. R. Bankr. P. 7004(a)(1), 9014(a).

⁶⁵ Fed. R. Civ. P. 4(a).

⁶⁶ Fed. R. Civ. P. 4(b).

⁶⁷ Fed. R. Civ. P. 4(c)(1).

⁶⁸ Fed. R. Civ. P. 4(e).

⁶⁹ Fed. R. Civ. P. 4(f).

⁷⁰ Fed. R. Civ. P. 4(g).

⁷¹ Fed. R. Civ. P. 4(h).

⁷² Fed. R. Civ. P. 4(i).

⁷³ Fed. R. Civ. P. 4(j).

⁷⁴ Fed. R. Civ. P. 4(l).

3.4(b) Service by first-class mail or under Federal Rule of Civil Procedure 4

The most common method of service in bankruptcy is by first-class mail, which Rule 7004(b) permits for service on a party other than an insured depository institution. Alternatively, Rule 7004(a) permits service under Federal Rule of Civil Procedure 7004(e) through (j).

Mailing by certified mail might not satisfy the requirement to mail by first-class mail, and it probably does not satisfy that requirement if the serving party does not receive a receipt signed by the served party. Certified mail is a U.S. Postal Service extra service for an item mailed by first-class mail. Because the Postal Service does not deliver certified mail without the recipient's signature, it might not be delivered at all, and it might be delivered later than first-class mail would be delivered. Courts have differed over whether mailing by certified mail satisfies the requirement to mail by first-class mail. In 1994, the Eastern District of New York bankruptcy court held in *Ted A. Petras Furs, Inc.*,⁷⁵ that certified mailing for which the plaintiff obtains a receipt signed by the defendant satisfies the first-class mail requirement. Conversely, in 2000, the Utah district court held in *In re Eleva*,⁷⁶ that certified mailing that is returned to the plaintiff unclaimed does not satisfy the first-class mailing requirement. In 2008, the Eastern District of Virginia Bankruptcy Court followed *Eleva*.⁷⁷

Practice tip. When serving under Rule 7004(b) (but not Rule 7004(h)), always serve by first-class mail. It is also prudent to mail—separately—by certified mail, for if the recipient signs for the certified mail, it will be easier for the court to accept the server's certification of parallel service by first-class mail if the recipient challenges service.

The address of an entity (other than an individual) in the debtor's schedules will rarely, if ever, be an address to which mail service is permitted by Rule 7004.

Rule 7004(a)(1) permits service under Federal Rule of Civil Procedure 4(e) through (j), which permit service on:

- an individual (other than a minor or incompetent person) or on a corporation, partnership, or association by following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made;⁷⁸

⁷⁵ 172 B.R. 170, 177 (Bankr. E.D.N.Y. 1994), *appeal dismissed*, 100 F.3d 943 (2d Cir. 1996) (certified mail satisfies first-class mailing requirement unless returned unclaimed).

⁷⁶ 2000 WL 33710904, at *4 (D. Utah).

⁷⁷ in *In re Frazier*, 394 B.R. 399, 400-02 (Bankr. E.D. Va. 2008).

⁷⁸ Fed. R. Civ. P. 4(e)(1), (h)(10)(A).

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- a minor or an incompetent person by following state law for serving a summons or like process in an action brought in the courts of general jurisdiction of the state where service is made⁷⁹ and
- a state, municipal corporation, or any other state-created governmental organization by serving in the manner prescribed in the state's law for serving on the defendant.⁸⁰

When service under Oregon law is permitted, the applicable Oregon law is ORCP 7 D.

(1) *Service on individual other than infant or incompetent person*

An individual (other than an infant or incompetent person or an individual debtor) may be served in the United States by mailing to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession⁸¹ or by one of four other methods: (1) by following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made,⁸² (2) by delivering a copy of the summons and of the complaint to the individual personally,⁸³ (3) by leaving a copy of each at the individual's dwelling house or usual place of abode with someone of usual age and discretion who resides there,⁸⁴ or (4) by delivering a copy of each to an agent authorized by appointment or by law to receive service of process.⁸⁵ For service on an individual debtor, see section 3.4(b)(8) on page 23.

(2) *Service on individual in foreign country*

No provision in Rule 7004(b) permits mail service on an individual—or any other class of defendant—in a foreign country. Federal Rule of Civil Procedure 4(f) specifies the manner in which an individual in a foreign country may be served.

(3) *Service on infant or incompetent person*

An infant or incompetent person may be served in the United States by mailing to the person upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against the defendant in the courts of general jurisdiction of that state. The mailing must be addressed to the person required to be served at that person's dwelling house or usual place of abode or at the place where the person regularly conducts a business or profession.⁸⁶

⁷⁹ Fed. R. Civ. P. 4(g).

⁸⁰ Fed. R. Civ. P. 4(j)(2)(B).

⁸¹ Fed. R. Bankr. P. 7004(b)(1).

⁸² Fed. R. Civ. P. 4(e)(1); Fed. R. Bankr. P. 7004(a)(1).

⁸³ Fed. R. Civ. P. 4(e)(2)(A); Fed. R. Bankr. P. 7004(a)(1).

⁸⁴ Fed. R. Civ. P. 4(e)(2)(B); Fed. R. Bankr. P. 7004(a)(1).

⁸⁵ Fed. R. Civ. P. 4(e)(2)(C); Fed. R. Bankr. P. 7004(a)(1).

⁸⁶ Fed. R. Bankr. P. 7004(b)(2).

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An infant or incompetent person may also be served in the United States by following state law for serving a summons or like process on such a defendant in an action brought in the courts of general jurisdiction of the state where service is made.⁸⁷ A minor or incompetent person in a foreign country must be served under Federal Rule of Civil Procedure 4(f)(2)(A), (f)(2)(B), or (f)(3).

(4) Service on corporation, partnership, or unincorporated association (including limited liability company)

Both Rule 7004(b)(3) and Federal Rule of Civil Procedure 4(h) permit service on a corporation or similar entity. Under Rule 7004(b)(3), a domestic or foreign corporation or partnership or other unincorporated association in the United States may be served by mailing to the attention of an officer, a managing or general agent, or 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 state so requires, by mailing to the defendant. Bankruptcy courts have treated limited liability companies as corporations or unincorporated associations that must be served under Rule 7004(b)(3).⁸⁸

Under Federal Rule of Civil Procedure 4(h), a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served in the United States in the manner prescribed by Federal Rule of Civil Procedure 4(e)(1) for serving an individual or by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant. Such a party must be served in a foreign country in any manner prescribed by Federal Rule of Civil Procedure 4(f) for serving an individual, except personal delivery under Federal Rule of Civil Procedure 4(g)(2)(C)(i).

The registered agent of an Oregon corporation is an agent upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.⁸⁹ The Oregon Secretary of State is an agent upon whom any process, notice, or demand may be served if the corporation fails to appoint or maintain a registered agent or when the agent cannot with reasonable diligence be found at the registered office.⁹⁰ Under Oregon law, service on the Secretary may be effected by delivery or mailing to the Secretary by certified or registered mail and requires mailing by certified or registered mail to the corporation's last registered office and the address the use of which the serving party knows or has reason to believe is most likely to result in actual notice and filing with the court the return receipt of mailing and an affidavit of the serving party stating that the person has complied with ORS 60.121.⁹¹

⁸⁷ Fed. R. Civ. P. 4(g); Fed. R. Bankr. P. 7005(a)(1).

⁸⁸ *E.g., In re Bavelis*, 453 B.R. 832, 862-63 (Bankr. S.D. Ohio 2011).

⁸⁹ ORS 60.121(1).

⁹⁰ ORS 60.121(2).

⁹¹ ORS 60.121(3).

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Other artificial entities formed under or subject to Oregon law are a foreign corporation, including one transacting business in Oregon without being authorized to do so,⁹² a cooperative,⁹³ an LLC,⁹⁴ a nonprofit corporation,⁹⁵ a limited partnership,⁹⁶ a licensed mortgage banker or mortgage broker,⁹⁷ a business trust,⁹⁸ a special district,⁹⁹ a corporation for irrigation, drainage, water supply, or flood control,¹⁰⁰ a stock savings bank,¹⁰¹ an out-of-state bank or extranational institution,¹⁰² a savings bank,¹⁰³ and a legal expense organization.¹⁰⁴ For service on an insured depository institution, see section 3.4(c) on page 24.

Courts are divided about whether a particular individual who is an officer or agent must be named in a mailing that must be made to an officer or agent.¹⁰⁵ The Ninth Circuit B.A.P. has observed but not resolved that split.¹⁰⁶ The Oregon court's service guide states that "[a] title without a name is not acceptable; and, unless a person certifies that 'x' (name without a title) is an authorized agent of the corporation for the acceptance of service, a name without a title is not acceptable."¹⁰⁷

Practice tip. Include in the mailing to the corporation the name of the natural person who is the officer or agent.

The names and addresses of corporations and other entities formed under Oregon law¹⁰⁸ (other than banks, trust companies, and credit unions) and their registered agents are available at the Secretary of State's website. For a discussion of service on banks and credit unions, see section 3.4(c) on page 24.

The Oregon Secretary of State's registered-agent records do not include information, including the name of a registered agent, for a general partnership (for which no registration is required) or for a corporation or other entity that has been formed under the laws of another state without registering as a foreign business entity doing business in Oregon.

⁹² ORS 60.731.

⁹³ ORS 62.155(5).

⁹⁴ ORS 63.121.

⁹⁵ ORS 65.121.

⁹⁶ ORS 70.035, .040.

⁹⁷ ORS 86A.166.

⁹⁸ ORS 128.580.

⁹⁹ ORS 198.340.

¹⁰⁰ ORS 554.088(1).

¹⁰¹ ORS 707.188.

¹⁰² ORS 713.190.

¹⁰³ ORS 716.195.

¹⁰⁴ ORS 750.635.

¹⁰⁵ See *In re Faulknor*, No. R04-43921-PWB, 2005 WL 102970, at *2 (Bankr. N.D. Ga. Jan. 18, 2005) (officer must be named); *In re Pittman Mech. Contractors, Inc.*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) (same); *In re Schoon*, 153 B.R. 48, 49 (Bankr. N.D. Cal. 1993) ("[a]llowing service [by addressing envelope Attn: President] makes a joke of the requirement that an officer be served"). *Contra In re C.V.H. Transp., Inc.*, 254 B.R. 331, 334 (Bankr. M.D. Pa. 2000).

¹⁰⁶ *In re Villar*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004).

¹⁰⁷ See http://www.orb.uscourts.gov/Filing/court_faq_ipad.cfm#tabs-5, item 31, part IV.A.3.

¹⁰⁸ http://egov.sos.state.or.us/br/pkg_web_name_srch_inq.login.

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Practice tip. Most states' registered-agent information is available online. If a business with an out-of-state address does not appear in the Oregon Secretary of State's registered-agent records, search for the online registered-agent records of the state where the business appears to be located.

(5) *Service on governmental units*

The United States may be served by mailing to the civil process clerk at the office of the U.S. attorney for the district in which the action is brought and mailing to the Attorney General at Washington, D.C. In any action attacking the validity of an order of a federal officer or agency, the United States must also be served by mailing to that officer or agency.¹⁰⁹

A register kept by the clerk lists the mailing address that the United States has designated as its mailing address. See section 7.3(a) on page 46.

The United States may also be served in one of four other ways: (1) by delivering a copy of the summons and of the complaint to the United States attorney for the district where the action is brought or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk,¹¹⁰ (2) by sending a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office,¹¹¹ (3) by sending a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.,¹¹² or (4) if the action challenges an order of a nonparty agency or officer of the United States, by sending a copy of each by registered or certified mail to the agency or officer.¹¹³

The U.S. Department of Justice's website contains the name of Oregon's U.S. attorney,¹¹⁴ the address of the U.S. attorney's district office,¹¹⁵ the attorney general's name,¹¹⁶ and the attorney general's Washington, D.C., address.¹¹⁷

Practice tip. A mailing to the U.S. attorney, but not to the civil process clerk, is insufficient.

Any officer or agency of the United States may be served by mailing as required by Rule 7004(b)(4) and by mailing to the officer or agency.¹¹⁸ If the agency is a corporation, mailing is also required by Rule 7004(b)(3). For service on the UST as case trustee (it usually is not), see section 3.4(b)(9) on page 24.

¹⁰⁹ Fed. R. Bankr. P. 7004(b)(4).

¹¹⁰ Fed. R. Civ. P. 4(i)(1)(A)(i); Fed. R. Bankr. P. 7004(a)(1).

¹¹¹ Fed. R. Civ. P. 4(i)(1)(A)(ii); Fed. R. Bankr. P. 7004(a)(1).

¹¹² Fed. R. Civ. P. 4(i)(1)(B); Fed. R. Bankr. P. 7004(a)(1).

¹¹³ Fed. R. Civ. P. 4(i)(1)(C); Fed. R. Bankr. P. 7004(a)(1).

¹¹⁴ <http://www.justice.gov/usao/or/meetattorney.html>.

¹¹⁵ <http://www.justice.gov/usao/or/contact.html>.

¹¹⁶ <http://www.justice.gov/ag/>.

¹¹⁷ <http://www.justice.gov/contact-us.html>.

¹¹⁸ Fed. R. Bankr. P. 7004(b)(5).

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An agency or corporation of the United States or an officer or employee of the United States sued only in an official capacity may also be served by serving the United States and also sending a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.¹¹⁹ The Oregon court's service guide includes an address for service on the IRS.¹²⁰ In an action in which an officer or employee of the United States sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf (whether or not the officer or employee is also sued in an official capacity), the United States and the officer or employee must be served under Federal Rule of Civil Procedure 4(e), (f), or (g).¹²¹

A state or municipal corporation or other governmental organization may be served by mailing to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against the defendant in the courts of general jurisdiction of that state or, in the absence of the designation of such a person or office by state law, then to the chief executive officer.¹²²

A state, a municipal corporation, or any other state-created governmental organization that is subject to suit may also be served by (1) delivering a copy of the summons and of the complaint to its chief executive officer¹²³ or (2) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on that defendant.¹²⁴

In Oregon, service on the state (including the Department of Revenue) may be made by service on the attorney general or a deputy, assistant, or clerk at the attorney general's office,¹²⁵ and service on certain other public bodies may be made on an officer, director, managing agent, or attorney of the public body.¹²⁶ The Oregon Department of Justice's website contains the attorney general's name and the mailing address of the Department of Justice.¹²⁷

A foreign state or its political subdivision, agency, or instrumentality must be served under 28 U.S.C. § 1608.¹²⁸

(6) *Service under nonbankruptcy law*

A defendant of any class described in Rule 7004(b)(1) (individual other than infant or incompetent person) or (3) (corporation, partnership, or unincorporated association) may be served by mailing to the entity upon which service is prescribed to be served by any statute of the

¹¹⁹ Fed. R. Civ. P. 4(i)(2); Fed. R. Bankr. P. 7004(a)(1).

¹²⁰ See note 107, item 31, part IV.A.4.

¹²¹ Fed. R. Civ. P. 4(i)(3); Fed. R. Bankr. P. 7004(a)(1).

¹²² Rule 7004(b)(6).

¹²³ Fed. R. Civ. P. 4(j)(2)(A), Fed. R. Bankr. P. 7004(a)(1).

¹²⁴ Fed. R. Civ. P. 4(j)(2)(B), Fed. R. Bankr. P. 7004(a)(1).

¹²⁵ ORCP 7 D(3)(g).

¹²⁶ ORCP 7 D(3)(h).

¹²⁷ <http://www.doj.state.or.us/pages/contact.aspx>.

¹²⁸ Fed. R. Civ. P. 4(j); Fed. R. Bankr. P. 7004(a)(1).

United States or by the law of the state in which service is made when an action is brought against the defendant in a court of general jurisdiction of that state.¹²⁹

(7) *Service to defendant's agent; lawyer as agent*

Any defendant may be served by mailing to an agent of the defendant authorized by appointment or by law to receive service of process at the agent's dwelling house or usual place of abode or where the agent regularly carries on a business or profession and, if the authorization so requires, by mailing to the defendant.¹³⁰

A principal may authorize a lawyer or other agent to accept service of process for the principal either expressly or implicitly. Implicit authority for a lawyer to accept service must be implied from all the circumstances accompanying the lawyer's appointment that indicate the extent of the authority that the client intended to confer. The Ninth Circuit Court of Appeals held in 2004 that a lawyer was an implicit agent for service because (1) the lawyer was extensively involved in the main case and on several occasions participated on the client's behalf; (2) the client had previously been served with papers in the main case in care of the lawyer, and the client did not object; and (3) the client signed a declaration in related litigation affirming the lawyer's representation of the client in the bankruptcy case.¹³¹ The Ninth Circuit B.A.P. came to the opposite conclusion when the lawyer appeared for the client in the main case, but the other factors on which the court of appeals relied were absent.¹³²

In a May 2014 Oregon district court case, *Pacific Cargo Services, LLC*,¹³³ the court affirmed the bankruptcy court's determination that a creditor's attorney of record was an agent for service on the creditor of a motion to sell the creditor's collateral under § 363(f), even though the client's primary attorney had withheld authorization for the attorney of record to review certain notices.

Practice tip. The important lesson from *Pacific Cargo* is that the movant also properly served the motion under Rule 7004(b)(3) by mailing to the creditor's Oregon registered agent, which sufficed even if service on the attorney of record had not been effective.

Rule 9010(b) requires a lawyer "appearing" for a party to "file a notice of appearance" with contact information, unless the lawyer's appearance "is otherwise noted in the record." A lawyer may appear by filing a pleading, in which case no separate notice of appearance is required. A lawyer may also appear for a party at a hearing, in which case the lawyer must file a notice of appearance unless the appearance is otherwise noted in the hearing record.¹³⁴

¹²⁹ Fed. R. Bankr. P. 7004(b)(7).

¹³⁰ Fed. R. Bankr. P. 7004(b)(8).

¹³¹ *In re Focus Media Inc.*, 387 F.3d 1077, 1083-84 (9th Cir. 2004).

¹³² *In re Labankoff*, Nos. NC-09-1294-PaJuKw, 09-10970, 2010 WL 2384543 (B.A.P. 9th Cir. June 14, 2010).

¹³³ *In re Pacific Cargo Services, LLC*, No. 6:13-mc-00369-AA, 2014 WL 2041821, at *8 (D. Or. May 9, 2014).

¹³⁴ *In re Mowers*, 160 B.R. 720, 723 (Bankr. N.D.N.Y. 1993).

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A lawyer who receives ECF notices in an Oregon bankruptcy case has not necessarily “appeared” in the case. Two text-only ECF events permit lawyers to receive notices of electronic filing before filing a pleading. Only if the lawyer represents a party who has already appeared pro se may the lawyer use the text-only ECF event “Notice of Appearance.”¹³⁵ Otherwise, the lawyer must use the text-only ECF event “Special Notice Request.”¹³⁶

LBR 9010-1(b)(1) states that an “attorney of record” is the “attorney upon whom service is to be made.” The reference to “service” in that rule should be interpreted to mean service of papers that follow initiation of an adversary proceeding or contested matter (see section 5 on page 38), rather than documents initiating an adversary proceeding or contested matter.

The Oregon court’s service guide states that service on an attorney, other than one who is a party’s registered agent, suffices only “[i]f the attorney has formally appeared in the matter.”¹³⁷

At least one court has held that service on a lawyer who has appeared for the entity to be served is not only optional but mandatory, citing Rule 9010 and referring to it as “the creditor’s counterpart to the debtor’s Rule 7004(b)(9) right.”¹³⁸

Practice tip. Do not assume that a lawyer who represented a creditor in prebankruptcy litigation, or even one who files a special-notice request or notice of appearance in the bankruptcy case, is an authorized agent for service in the bankruptcy case of a summons and complaint in an adversary proceeding or a document initiating a contested matter. But, out of caution and as a matter of professional courtesy, serve the lawyer as though the lawyer were an authorized agent for service—in addition to serving the creditor as though the creditor were not represented.

LBR 7005-1(a)(1) appears to require that all served documents also be served on “the attorney of record” for the served entity, but the purpose and meaning of that LBR is not clear.¹³⁹

A lawyer may serve a document on an entity represented by another lawyer without violating the ethical prohibition on communicating with a represented party.¹⁴⁰

(8) *Service on debtor*

After a petition has been filed by or served on the debtor and until the case is dismissed or closed, the debtor may be served by mailing to the debtor at the address shown in the petition or to any other address that the debtor designates in a filed writing.¹⁴¹

¹³⁵ http://www.orb.uscourts.gov/Ecf/file_attachment/Notice%20of%20Appearance_020808_155942.pdf.

¹³⁶ http://www.orb.uscourts.gov/Ecf/file_attachment/Special%20Notice%20Request_020808_161353.pdf.

¹³⁷ See note 107, part IV.C.2.

¹³⁸ *In re Lomas Fin. Corp.*, 212 B.R. 46, 54 (Bankr. D. Del. 1997).

¹³⁹ See section 3.4(i) on page 33.

¹⁴⁰ Or. RPC 4.2(b).

¹⁴¹ Fed. R. Bankr. P. 7004(b)(9).

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If the debtor is an individual, service may also be made under Federal Rule of Civil Procedure 4. See section 3.4(b) on page 16 through section 3.4(b)(3) on page 17.

If the debtor is represented by a lawyer, whenever service is made on the debtor, service must also be made on the lawyer by any means authorized under Federal Rule of Civil Procedure 5(b).¹⁴² See section 5 on page 38.

Practice tip. If the debtor moves and does not notify the clerk but the serving party knows of a new address for the debtor, serve the debtor at both the old address and the new address, even though service on the new address is not expressly required by rule, in order to avoid the debtor's argument that mailing to a known address is necessary to satisfy the constitutional requirement to give notice reasonably calculated to reach the debtor.

Practice tip. In a joint case, there are two debtors and, unless the court substantively consolidates them, two separate estates. Each debtor is entitled to separate service, so service by mail to the debtors should be in separate envelopes, even if the debtors reside at the same address. The presumption that properly addressed mail is received by the addressee would probably apply only to the first of two addressees listed on one envelope.

(9) *Service on UST (when the UST is the case trustee)*

When the UST is the case trustee (a rarity), the UST may be served in that capacity by mailing to an office of the UST or another place designated by the UST in the district where the case is pending.¹⁴³

3.4(c) *Certified-mail service on insured depository institution*

(1) *Apparent exclusive method of service on insured depository institution*

Under Rule 7004(h), service on an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (the "FDIA"), must be made by certified mail addressed to an officer of the institution, unless a stated exception applies.

The requirement for service on an insured depository institution differs from the requirements for service on other entities in two ways. First, unless an exception listed in Rule 7004(h) applies, that Rule requires that bankruptcy service (it expressly mentions both contested matters and adversary proceedings) be made by certified mail addressed to an officer of the institution.

Second, read in the context of all of Rule 7004, Rule 7004(h) appears to provide the exclusive method of service on an insured depository institution. By contrast, Rule 7004(b), which applies to other entities, is permissive and thus allows service under Federal Rule of Civil

¹⁴² Fed. R. Bankr. P. 7004(g).

¹⁴³ Fed. R. Bankr. P. 7004(b)(10).

Procedure 4(e) through (j) and Rule 7004(a)(1)—methods that are apparently not available for bankruptcy service on an insured depository institution.

It is not certain whether a federal credit union is an insured depository institution under Rule 7004(h). See section 3.4(c)(6) below.

(2) *Exceptions to certified-mail requirement*

The certified-mail requirement does not apply if:

- the institution has appeared by its lawyer, in which case the lawyer must be served by first-class mail;¹⁴⁴
- the court orders otherwise after service on the institution by certified mail of notice of an application to permit service on the institution by first-class mail sent to an officer of the institution designated by the institution;¹⁴⁵ or
- the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.¹⁴⁶

One court has held that an appearance by a lawyer—the most common exception to the certified-mail requirement—gives rise to the exception even if the appearance is in the main case and not in the particular adversary proceeding or contested matter in which service on the client is at issue.¹⁴⁷

(3) *Identifying insured depository institutions*

Some credit-card issuers who issue cash-secured credit cards are formed as banks with FDIC insurance for the security deposits; they are thus institutions that must be served under Rule 7004(h). The Office of the Comptroller of the Currency maintains a list of national credit-card banks (as well as other banks, trust banks, and savings associations)¹⁴⁸ on its website. One clue to an entity's status as a national banking association is the inclusion in its name of the words "National Association" or the abbreviation "N.A." For example, FIA Card Services, N.A., has been held to be a national banking association and thus an insured depository institution.¹⁴⁹ Not all insured depository institutions are banks or even national banks. See section 41 on page 41.

¹⁴⁴ Fed. R. Bankr. P. 7004(h)(1).

¹⁴⁵ Fed. R. Bankr. P. 7004(h)(2).

¹⁴⁶ Fed. R. Bankr. P. 7004(h)(3).

¹⁴⁷ *In re Baron*, No. CV 09-6883 AHM, 2010 WL 2354341, at *4 (C.D. Cal. June 8, 2010).

¹⁴⁸ <http://www.occ.treas.gov/topics/licensing/national-bank-lists/index-active-bank-lists.html>.

¹⁴⁹ *In re Perry*, No. 07-00429, slip op. at 1-2 (Bankr. D.D.C. Jan. 3, 2008).

(4) Determining name and address of officer of insured depository institution

By contrast to the official public records of registered agents of corporations and other registered organizations, there appear to be no official records of the names and addresses of officers of national banks—information required to serve them under Rule 7004(h).

The names and headquarters addresses—but not the names of officers—of national banks and federally insured state banks are listed on two federal Web sites. The FDIC maintains its BankFind website with the names and addresses of the headquarters and branches of each FDIC-insured institution (including state-chartered banks).¹⁵⁰ The Federal Reserve System maintains its National Information Center website with the names and addresses of the headquarters and branches of federal and state banks and credit unions.¹⁵¹

The BankFind website includes a link that purports to be to the bank’s website. But if the site includes a link labeled “investor relations” or the like, it is likely a link to the website not for the bank, but instead for the (usually publicly held) holding company that, directly or indirectly, owns the bank. The names of the bank and its holding company might be nearly identical, but the bank and its holding company are nonetheless distinct entities, and the officers of the holding company are not necessarily also bank officers. It is common for there to be no information on the bank’s website identifying its officers and for the information on the holding company’s website to include information on officers only of the holding company or information that is ambiguous about whether an officer is an officer only of the holding company or also of the bank itself. And even if the bank’s site or the holding company’s site lists officers of the bank itself, the site might not also list their addresses, and certified mailing to a bank officer at a bank location other than the one at which the officer works arguably would not comply with Rule 7004(h).

The Oregon Department of Consumer and Business Services, Division of Finance and Corporate Securities, maintains its Banks and Trusts Doing Business in Oregon¹⁵² website. That site lists all Oregon-chartered banks and federally chartered institutions that elect to register with DCBS. The fields in the list include the name and address of the institution, its website, its organizational status (federal or state and type of institution), its registered agent, and the name of an officer. Because information in that list about federally chartered institutions is provided voluntarily and updated only as often as the institution elects to do so, use that information with caution. On May 22, 2014, in addition to state-chartered institutions, the site listed the following institutions that it described as federally chartered banks, mutual savings associations, or trust companies: Baker-Boyer National Bank, Bank of America Oregon, National Association (but not also the separate Bank of America, National Association), Davidson Trust Co., Evergreen Federal Savings and Loans Associations, First Federal Savings and Loan, KeyBank National Association, Morgan Stanley Private Bank, N.A., PNC Bank, National Association, Panhandle State Bank, Pioneer Trust Bank, National Association, Scott Valley Bank, U.S. Bank National

¹⁵⁰ <http://research.fdic.gov/bankfind/>.

¹⁵¹ <http://www.ffiec.gov/nicpubweb/nicweb/SearchForm.aspx>.

¹⁵² http://www.cbs.state.or.us/dfcs/banks_trusts.html, “Banks and trust companies doing business in Oregon.”

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Association, Union Bank of California, National Association, and Wells Fargo Bank, National Association.

Practice tip. Most financial institution branches are staffed with at least one institution officer. If an institution that a lawyer must serve has a branch convenient to the lawyer or the client, one option for determining the name and address of an officer is for the lawyer or the client to walk into the branch and ask for the business card of an institution officer. When searching websites for the names of the institution's officers, do not confuse officers of the corporate parent of the financial institution with officers of the institution itself.

(5) Certified-mail procedure

The U.S. Postal Service will not deliver certified mail without obtaining the signature of the recipient. On May 22, 2014, the certified-mail fee was \$3.30. That fee is in addition to the base-postage (First-Class Mail, First-Class Package Service, or Priority Mail) fee for the item. In addition to the base-postage and certified-mail fees, the Postal Service charges extra fees to return to the sender a receipt signed by the recipient (\$2.70 for a mailed receipt and \$1.35 for an e-mailed receipt) and to restrict delivery to a named person (\$5.05). Payment of the certified-mail fee alone does not entitle the sender to receive any proof of delivery or to ensure that the item is delivered to a particular individual addressee.

Rule 7004(h) requires certified mailing to an institution officer, but it does not expressly require actual receipt by the officer.

Practice tip. Mail a duplicate copy of the document by first-class mail; if the Postal Service returns the certified mailing because the recipient refused delivery, but it does not return the first-class mailing as undeliverable, it will be easier for the court to accept the server's certification that the certified mailing occurred and that the address is a good address for the recipient.

(6) Uncertain applicability of Rule 7004(h) to credit unions

The argument in favor of applying Rule 7004(h) to credit unions is that § 101(35)(B) defines "insured depository institution" to include "an insured credit union."¹⁵³ The definitions of words and phrases in § 101 "govern their use in" the Rules.¹⁵⁴

The contrary argument is that the § 101(35)(B) definition does not match the operative phrase in Rule 7004(h), "insured depository institution (as defined in section 3 of the [FDIA])." Applying § 101(35)(B) to interpret Rule 7004(h) to apply to credit unions would render meaningless the reference in Rule 7004(h) to the FDIA. The FDIA provides deposit insurance

¹⁵³ *In re Fisher*, No. 08-80111-JAC-13, 2008 WL 4280388 (Bankr. N.D. Ala. Sept. 12, 2008).

¹⁵⁴ Fed. R. Bankr. P. 9001.

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only for banks and savings associations.¹⁵⁵ Credit union member share insurance is provided under title II of the National Credit Union Act.¹⁵⁶

If Rule 7004(h) does not apply to service on credit unions, then service by certified mail is not required, but the option to serve the institution's lawyer by first-class mail when the institution has appeared by its lawyer is also not available. The name and address of the registered agent of each Oregon state-chartered (but not federally chartered) credit union¹⁵⁷ appear on the DCBS's Credit Union Registered Agents website. If Rule 7004(h) does apply to credit unions, then service on a registered agent who is not also a credit union officer would not suffice, but the name and address of credit unions with federal share insurance and the "Manager/CEO" of each¹⁵⁸ can be obtained from the website of the National Credit Union Administration.

Practice tip. Pending further case law development, the cautious approach is to serve a credit union by certified mail addressed to an officer, without treating either of the Rule 7004(h) exceptions as applying to service on a credit union.

3.4(d) Service by publication of complaint in adversary proceeding to determine or protect rights in property

If a party to an adversary proceeding to determine or protect rights in property in the court's custody cannot be served under Federal Rule of Civil Procedure 4(e) through (j) or Rule 7004(b), the court may order service by mailing to the party's last-known address and by at least one publication in the manner and form that the court directs.¹⁵⁹

3.4(e) Uncertainty about ECF service of complaint or document initiating contested matter

It is uncertain whether transmission of the notice of electronic filing of a complaint or document initiating a contested matter to an ECF participant lawyer for the entity to be served with the document constitutes service under Rule 7004. The following argument could be asserted in support of the position that ECF transmission does satisfy Rule 7004:

In Oregon, almost all lawyers and some creditors are mandatory participants in the Electronic Case Filing system. Under LBR 5005-4(d), by becoming an ECF participant, one waives the right to receive notice or other documents, including notice of the entry of an order or judgment under Rule 9022, by any manner other than electronically, and agrees to accept all service electronically.

And the following argument could be asserted in support of the following position:

¹⁵⁵ FDIA § 3(c)(1), (2), 12 U.S.C. § 1813(c)(1), (2).

¹⁵⁶ 12 U.S.C. §§ 1781-1790d.

¹⁵⁷ <http://www.cbs.state.or.us/external/dfcs/cu/agents.html>.

¹⁵⁸ <http://researchcu.ncu.gov/Views/FindCreditUnions.aspx>.

¹⁵⁹ Fed. R. Bankr. P. 7004(c).

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By its terms, the LBR 5005-4(d) waiver and agreement do not apply to service of a document that is required by any Rule to be served other than electronically on a party (i.e., as opposed to an ECF participant attorney for that party), such as a summons, as complaint, and a document initiating a contested matter.

Even if an LBR permitted ECF service of documents initiating adversary proceedings or contested matters, service would be effective only if an ECF participant is a party to be served or an agent authorized by appointment or by law to receive service of process under Rule 7004(b)(8) on behalf of a party to be served. Few, if any, ECF participants are parties to be served. Most are lawyers, but even a lawyer's representation of a client does not always, or even usually, make the lawyer an agent for service of all process on the client under Rule 7004(b)(8). See section 3.4(b)(7) on page 22.

And even if the court wanted to authorize electronic service in the few instances when an ECF participant is a party to be served or an agent authorized by appointment or by law to receive service on behalf of a party to be served, there does not appear to be any legal basis to do so.¹⁶⁰ Rule 9036 permits electronic noticing, as opposed to service. Federal Rule of Civil Procedure 5(b)(2)(E), which applies to adversary proceedings under Rule 7005 and to contested matters under Rule 9014(b), permits electronic service of documents in an adversary proceeding after the complaint and in a contested matter after the motion or other document initiating the contested matter if the person to be served "consented in writing." Although ECF participation is mandatory in Oregon and most other bankruptcy courts for most lawyers and some nonlawyers, the "agreement" in LBR 5005-4 arguably constitutes the written consent required by Federal Rule of Civil Procedure 5(b)(2)(E) to receive service of subsequent documents in adversary proceedings and contested matters. But no Rule permits electronic service of a complaint or a document initiating a contested matter.

Nonetheless, no Oregon LBR or decision expressly supports the foregoing argument (or its opposite).

Practice tip. The cautious approach is to serve a complaint with summons or a document initiating a contested matter in accordance with Rule 7004 and not to assume that ECF notice constitutes service required by Rule 7004.

¹⁶⁰ See *Rio Props., Inc. v. Rio Int'l. Interlink*, 284 F.3d 1007, 1018 (9th Cir. 2002) (dictum; e-mail service is not available under the Federal Rules of Civil Procedure without a court decree under Federal Rule of Civil Procedure 4(f)(3), which applies to service in a foreign country).

3.4(f) Service of documents initiating particular contested matters

(1) *Service of involuntary petition*

An involuntary petition and the associated summons must be served on the debtor.¹⁶¹ See requirements for mail service on the debtor in section 3.4(b)(8) on page 23.

(2) *Service of claim objection*

In an August 9, 2013, decision, *In re Monk*, Oregon Bankruptcy Judge Frank R. Alley held that the common Oregon practice of serving a proof-of-claim objection on the creditor only at the creditor's proof-of-claim notice address does not comply with several Rules that, together, require service in accordance with Rule 7004. In a footnote, Judge Alley observed that the trustee had served the objection in accordance with LBR 3007-1 and LBF #763, but no local rule or form may contravene a national rule. The court also held that the manner in which the claim objection was served deprived the creditor of its constitutional due-process right "because there is no evidence, either actual or presumptive, that a party charged with responding to service received actual notice prior to entry of the order denying the claim."¹⁶² As authority for separately considering the constitutional adequacy of service that is insufficient under Rule 7004, Judge Alley cited the 2004 Ninth Circuit B.A.P. decision *In re Villar*, in which the B.A.P. found that service was insufficient under Rule 7004(b)(3) but then stated that "[t]he standards for service on individuals and corporations are to be liberally construed to further the purpose of finding personal jurisdiction in case where the party has received *actual notice*."¹⁶³

The *Monk* court's consideration of whether the creditor received constitutionally adequate notice implies that the court might have let the claim-disallowance order stand had notice been constitutionally adequate, even if it had not complied with Rule 7004.

Practice tip. If a creditor seeks to set aside a claim-disallowance order for inadequate service, the objector should consider taking discovery and other steps to determine whether the creditor received constitutionally adequate notice of the objection, which would entitle the court to leave the disallowance order intact.

On October 15, 2013, the Oregon bankruptcy court revised LBF #763.2, the form Objection to Claim. In the revised form, paragraph 1 requires the objector to enter both the "proof of claim notice address" and the "FRBP 7004 service address(es)" of the claimant. An October 16, 2013, e-mail by Judge Thomas M. Renn stated:

"A. Mailed service on claimant only at the address in the proof of claim might not be sufficient service under FRBP 7004. See *In re Monk*.

"B. Objecting party must determine the proper service address and method and make sure the objection has been properly served or noticed.

¹⁶¹ Fed. R. Bankr. P. 1010(a).

¹⁶² *In re Monk*, No. 04-60712-fra13, 2013 WL 4051864, at *4 (Bankr. D. Or. Aug. 9, 2013).

¹⁶³ *In re Villar*, 317 B.R. at 94.

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“C. Court is no longer verifying or limiting the name and address listed in the claim objection to the exact version of the name and address listed in the claim.

“D. If appropriate, the address as listed in the proof of claim can be modified in the claim objection to comply with FRBP 7004 address service requirements.

“E. Form is not limited to only one address for claimant.

“F. Court will not send certified mail. If certified mail is required for effective service, the objecting party must send signed order by certified mail and file a separate certificate of service.”

A January 2, 2014, informational e-mail by the Oregon bankruptcy court stated:

The court will transmit any approved claim objection to the Bankruptcy Noticing Center with the claimant address information listed in paragraph 1 of LBF #763.2. However, the Bankruptcy Noticing Center does not serve notice via certified mail, and it serves creditors at the preferred addresses they have registered or via the method (email, fax, EDI, etc.) they have specified. Therefore, if you file a claim objection and have any doubt about whether the creditor will receive proper service under FRBP 7004, you are advised to serve the claim objection rather than relying on the Bankruptcy Noticing Center, and file a certificate of service with the court.

Because *Monk* does not validate the use of the claim-notice address for service of an objection, one might ask why the court added that requirement to the revised forms, in addition to requiring service under Rule 7004. Among the possible reasons for requiring service to the notice address are that doing so will (1) be fairer to the claimant, whether or not required by Rule 7004, because service is more likely to reach the claimant’s representative handling the claim, (2) increase the possibility that the objector could defend service as constitutionally adequate, even if the purported Rule 7004 service turns out to be defective, and (3) protect the objector should a controlling appellate court overrule *Monk* and instead require service to the notice address. For each of those reasons, a cautious objector should serve the objection at the notice address, in addition to the Rule 7004 address, even if the court had not required doing so.

Practice tip. Pending further development of case law in Oregon and the Ninth Circuit, the cautious approach is to treat *Monk* as controlling law and ensure that claim objections are prepared in accordance with revised LBF #763 or 763.2 and served in accordance with Rule 7004.

For compliance with Rule 7004(b) or (h), only mailing suffices. The effort that an objector would have to expend to determine whether a claimant has requested nonmail communications from the Bankruptcy Noticing Center will usually exceed the effort that the objector would have to expend to do the mailing.

Practice tip. A cautious objector will do all objection mailings, rather than relying on mailing (or other transmission) by BNC.

Courts outside Oregon are divided about whether a claim objection may be served at the notice address in a proof of claim filed by the creditor or must be served at the address or addresses required by Rule 7004(b). Decisions in the Ninth Circuit permitting service of a claim objection at the proof-of-claim notice address include *In re State Line Hotel, Inc.*, a 2005 B.A.P. decision that the court of appeals later vacated as moot,¹⁶⁴ and a 2004 decision of a bankruptcy court in the Eastern District of California.¹⁶⁵ Decisions in the Ninth Circuit holding that Rule 7004 service is required include *In re Levoy*, a 1995 B.A.P. decision,¹⁶⁶ and later decisions of bankruptcy courts in the Central District of California,¹⁶⁷ Idaho,¹⁶⁸ and Nevada.¹⁶⁹ In *Monk*, Judge Alley disagreed with *State Line* and stated that the “better reasoning” is found in *Levoy*, which he found “to be the controlling opinion in this Circuit.”¹⁷⁰

Most of those decisions not requiring service of a claim objection under Rule 7004 are based on the following reasoning: (i) Rule 9014(a) states that relief must be requested by motion in a contested matter “not otherwise governed by these rules”; (ii) the requirement to serve under Rule 7004 appears in Rule 9014(b) and applies to “the motion,” referring to the motion defined by Rule 9014(a), which excludes a contested matter “otherwise governed by the rules”; (iii) Rule 3007(a) requires that a claim objection be transmitted “by mail or otherwise delivered to the claimant, the debtor or debtor in possession, and the trustee”; and (iv) claim objections are contested matters “otherwise governed” by Rule 3007 and need not be served under Rules 9014(b) and 7004.¹⁷¹

A Delaware bankruptcy court has held that the failure to serve a claim objection on the creditor’s lawyer who had filed a notice of appearance denied the creditor due process.¹⁷² An Idaho bankruptcy court has rejected a requirement to serve the creditor’s lawyer with every claim objection, but the court stated that “in a proper case” it would consider the failure to serve the creditor’s lawyer as a relevant factor in determining whether cause exists to vacate an order disallowing a claim under Federal Rule of Civil Procedure 60(b)(6) (applicable through Rule 9024) for “any other reason justifying relief from the [operation of the] judgment.”¹⁷³

¹⁶⁴ 323 B.R. 703, 712 (B.A.P. 9th Cir. 2005), *vacated as moot and remanded by* 242 F. App’x 460 (9th Cir. 2007). *See also In re Vill. of Craftsman, Inc.*, 160 B.R. 740, 745 (Bankr. D.N.J. 1993) (denying motion to vacate order obtained by service at proof-of-claim notice address).

¹⁶⁵ *In re Barker*, 306 B.R. 339 (Bankr. E.D. Cal. 2004).

¹⁶⁶ *In re Levoy*, 182 B.R. 827, 834 (B.A.P. 9th Cir. 1995).

¹⁶⁷ *In re Ass’n of Volleyball Professionals*, 256 B.R. 313, 320 (Bankr. C.D. Cal. 2000).

¹⁶⁸ *In re Egan*, No. 00-41030, 2002 WL 33939672, at *3 (Bankr. D. Idaho Nov. 8, 2002).

¹⁶⁹ *See In re Gordon*, No. BK-S-11-22221-LBR at 6, 2013 WL 1163773 (Bankr. D. Nev. Mar. 20, 2013).

¹⁷⁰ *In re Monk*, at *5.

¹⁷¹ *See, e.g., In re Tudor*, 282 B.R. 546 (Bankr. S.D. Ga. 2002).

¹⁷² *In re Lomas Fin. Corp.*, 212 B.R. at 55.

¹⁷³ *In re Egan*, 2002 WL 33939672, at *4.

(3) Service of stay-relief or other Rule 4001 motion

Rule 4001 specifies the manner for service of motions for relief from the automatic stay, to prohibit or condition the use, sale, or lease of property, for authority to use cash collateral, and for authority to obtain credit. Those motions must be served on any elected or appointed committee or its authorized agent or, if the case is a chapter 9 case or a chapter 11 case in which no committee has been appointed; the Rule 1007(d)-list (20 largest unsecured) creditors; and any other entity that the court directs.¹⁷⁴ A motion for use of cash collateral must also be served on any entity with an interest in the cash collateral.¹⁷⁵ All motions, including those under Rule 4001, must be served on the trustee or debtor in possession.¹⁷⁶ Also, because the movant in each contested matter must afford reasonable notice and opportunity for hearing to “the party against whom relief is sought,”¹⁷⁷ a motion to obtain secured credit must also be served on the holders of interests in the proposed collateral.

(4) Service of trustee’s request for determination of unpaid administrative tax liability

Under § 505(b)(2), a trustee may request that a taxing authority determine the amount of any unpaid liability of the estate for any tax incurred during the administration of the case by submitting a tax return for the tax and a request for a determination to the governmental unit charged with responsibility for collection or determination of the tax. The clerk must maintain a list under which all governmental units responsible for the collection of taxes in the district may designate an address for service of requests under § 505(b) and describe where further information concerning additional requirements for filing the requests may be found.¹⁷⁸ In section 7.4 on page 47, this paper discusses the Rule applicable to that requirement and includes a reference to the location of the Oregon clerk’s list in compliance with that Rule.

3.4(g) Do not rely on schedules for non-individual’s service address

The address that a debtor uses in its schedules for a non-individual creditor or security-interest holder will only accidentally suffice for mail service under Rule 7004. One serving a document must independently determine the mailing address that will suffice under that Rule. For example, in a chapter 11 case without a committee, service by mail to a corporate creditor on the Rule 1007(d) (20-largest unsecured creditors) list must comply with Rule 7004(b)(3), (7), or (8). Usually, the easiest mode of service on a corporation is to mail to its registered agent. It is unlikely that the address on the Rule 1007(d) list will include the name and address of a corporate creditor’s registered agent or otherwise constitute a service address that complies with Rule 7004.

¹⁷⁴ Fed. R. Bankr. P. 4001(a)(1), (b)(1)(C), (c)(1)(C).

¹⁷⁵ Fed. R. Bankr. P. 4001(b)(1)(C).

¹⁷⁶ Fed. R. Bankr. P. 9013.

¹⁷⁷ Fed. R. Bankr. P. 9014(a).

¹⁷⁸ § 505(b)(1)(A).

3.4(h) *Pro se party may not be entitled to serve*

Rule 7004(a) applies Federal Rule of Civil Procedure 4(c)(1) to bankruptcy service. The latter rule requires the plaintiff to “furnish the necessary copies [of the complaint or document being served] to the person who makes service.” One bankruptcy court has held that Federal Rule of Civil Procedure 4(c)(1) implies that the plaintiff is not a party entitled to serve, even though Rule 7004(a) does not apply Federal Rule of Civil Procedure 4(c)(2), which expressly forbids service by a party, to bankruptcy service.¹⁷⁹ A pro se party may avoid any question of complying with Federal Rule of Civil Procedure 4(c)(1) by arranging for a nonparty, more than 18 years of age, to serve.

3.4(i) *Service on lawyer for entity to be served*

In Oregon, LBR 7005-1(a)(1) requires that a document served on an entity also be served on the attorney of record for the entity.

LBR 7005-1 corresponds to Rule 7005, which applies only to service of subsequent documents in an adversary proceeding. Also, LBR 7005-1 is incorporated by reference in LBR 9013-1(a)(2) and thus applies to contested matters. Nonetheless, the language of LBR 7005-1 is not limited to adversary proceedings and contested matters and thus might also apply to notices and other documents.

3.4(j) *Timing of service*

In Oregon, when service of a document prepared and filed by an entity is required, the service must be made contemporaneously with the act of filing.¹⁸⁰

3.4(k) *Proof of service of complaint or document initiating contested matter*

Service of a summons and complaint or a document initiating a contested matter must be proved to the court. Unless the server is a United States marshal or deputy marshal, proof of service in the United States must be by the server’s affidavit or declaration under penalty of perjury complying with 28 U.S.C. § 1746. Service outside the United States must be proved under Federal Rule of Civil Procedure 4(l)(2).¹⁸¹

A certificate of service must be incorporated in, be attached to, or accompany each filed document or group of documents when service using paper is required (i.e., when ECF service alone does not suffice).¹⁸² Service of a subsequent document on an entity that is not an ECF participant must be done using paper. See section 3.4(e) on page 28. Unless the document is an LBF or official form which includes a certificate, a certificate of service for a document served using paper must include a clearly identified list of the names, addresses, and methods for service on all parties served using paper. Any certificate of service on an LBF or official form

¹⁷⁹ *In re Flaherty*, 432 B.R. 742, 749-50 (Bankr. N.D. Ill. 2010).

¹⁸⁰ LBR 7005-1(a)(2).

¹⁸¹ Fed. R. Bankr. P. 7004(a)(1); Fed. R. Civ. P. 4(l)(2).

¹⁸² LBRs 7005-1(b), 9013-1(a)(2).

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must be fully completed.¹⁸³ The certificate of service that is part of the Oregon chapter 12 and 13 plan forms must list the parties entitled to service (not only noticing) of the plan. See section 3.5 on page 35.

Failure to prove service does not affect its validity, and the court may permit service proof to be amended.¹⁸⁴

3.5 Application of due-process clause to service

In *Monk*, after determining that service of the objection must be made to an address authorized by Rule 7004(b)(3), Judge Alley separately determined that service was constitutionally inadequate “[b]ecause there is no evidence, either actual or presumptive, that a party charged with responding to service received actual notice prior to entry of the order denying the claim.”¹⁸⁵ As authority for separately considering the constitutional adequacy of service that is insufficient under Rule 7004, he cited the 2004 Ninth Circuit B.A.P. decision *In re Villar*, in which the B.A.P. found that service was insufficient under Rule 7004(b)(3) but then stated that “[t]he standards for service on individuals and corporations are to be liberally construed to further the purpose of finding personal jurisdiction in cases in which the party has received *actual notice*.”¹⁸⁶ The *Monk* court’s consideration of whether the creditor received constitutionally adequate notice implies that the court might have let the claim-disallowance order stand had notice been constitutionally adequate, even if it had not complied with Rule 7004.

Practice tip. If a creditor seeks to set aside a claim-disallowance order for inadequate service, the objector should consider taking discovery and other steps to determine whether the creditor received constitutionally adequate notice of the objection, which would entitle the court to leave the disallowance order intact.

Mailing by first-class mail is generally accepted as constitutionally sufficient, but at least one author argues that it is not.¹⁸⁷

4. Noticing and Serving Plans

Plans are hybrid documents, requiring noticing under Rule 2002¹⁸⁸ as to all creditors but additional service under Rule 7004 as to certain lienholders and executory-contract or unexpired-lease counterparties.

¹⁸³ LBR 7005-1(b)(2).

¹⁸⁴ Fed. R. Bankr. P. 7004(a)(1); Fed. R. Civ. P. 4(l)(3).

¹⁸⁵ 2013 WL 4051864, at *4.

¹⁸⁶ *In re Villar*, 317 B.R. 88, 94 (9th Cir. B.A.P. 2004), quoted in *Monk*, 2013 WL 4051864, at *3 (internal quotation marks and citation to *Villar* omitted) (emphasis added by *Villar*).

¹⁸⁷ Jonathon S. Byington, *Serving a Summons by First Class Mail: Why Bankruptcy Rule 7004(b)(1) Violates Due Process*, 90 N.C. L. Rev. 1 (2011).

¹⁸⁸ See section 7 on page 40.

4.1 Rules addressing plan transmission

Under Rules 2002(b) and 3015(d), a chapter 12 or 13 plan or plan summary and notice of the hearing on confirmation of the plan must be mailed to—and need not be served under Rule 7004 on—all creditors. Under Rules 2002(b) and 3017(d), a chapter 11 plan or a court-approved plan summary, the approved disclosure statement, and notice of the deadline for filing objections and ballots and the hearing to consider confirmation of the plan must be mailed to—and need not be served on—all creditors.

Under Rule 3015(f), an objection to confirmation of a plan initiates a contested matter and thus must be served under Rule 7004.

4.2 LBRs addressing plan transmission

LBR 3015-2(b) requires that a chapter 12 or 13 debtor serve proposed plan amendments. Similarly, LBR 3017.1-1(a) requires that, in a chapter 11 small-business case, the debtor serve a copy of the plan and disclosure statement on the UST, any creditors' committee, any involved taxing authority, secured creditors, and any entity requesting all notices.

In view of Rule 3015(d)'s requirement to mail a chapter 12 or 13 plan, the filing and transmission of a plan do not generally initiate a contested matter, and the same should be the case for plan amendments. And, in view of Rule 3017(d)'s requirement to mail a chapter 11 plan, the filing and transmission of a chapter 11 plan also do not generally initiate a contested matter, and the same should be the case in a small-business case. So, chapter 12 and 13 plan amendments and chapter 11 small-business plans do not generally require Rule 7004 service. Part 4.3 below discusses the exceptions to the general rule, circumstances in which plans are hybrid documents, requiring Rule 7004 service on certain entities but mailing to all creditors.

The Oregon court's service guide includes specific instructions for serving chapter 12 and 13 plans, including addresses for serving the IRS if it is listed in plan paragraph 2(b)(1) or (2).¹⁸⁹

4.3 Plan provisions requiring Rule 7004 service

4.3(a) Collateral valuation and exemption-impairing lien avoidance in plans

The Oregon chapter 12 and 13 plan forms include the option for the debtor to move for valuation of collateral in both paragraphs 2(b)(1) and (2).¹⁹⁰ The chapter 13 form (but not the chapter 12 form) also permits the debtor to seek avoidance of exemption-impairing liens in paragraph 6(a) and (b). Collateral valuation (such as in connection with lien-stripping) and avoidance of exemption-impairing liens must be done by motion, hence the plan references in paragraphs 2(b)(1) and (2) and 6 to motions.¹⁹¹

¹⁸⁹ See note 107, parts II-III.

¹⁹⁰ LBFs #1200.05, 1300.14.

¹⁹¹ Fed. R. Bankr. P. 3012, 4003(d).

4. Noticing and Serving Plans

Because motions are governed by Rule 9014(a) and require service under Rule 7004, notwithstanding Rule 3015(d), a creditor whose lien a plan seeks to value or avoid as exemption-impairing must be served under Rule 7004 with—not just receive notice of—the plan and confirmation-hearing notice.¹⁹² But other secured and unsecured creditors and parties in interest affected by a plan need only receive notice, not be served.

As with chapter 12 and 13 plans (for the reasons set forth above), if a chapter 11 plan provides for collateral valuation or avoidance of exemption-impairing liens, the plan must also be served on—not just mailed to—each creditor or counterparty directly affected by those provisions. And other secured and unsecured creditors and parties in interest affected by a plan need only be noticed, not served under Rule 7004.

4.3(b) *Treatment of executory contracts and unexpired leases in chapter 12 and 13 plans*

Under Rule 6006(a), a proceeding to assume, reject, or assign an executory contract or unexpired lease (a “365 motion”) is governed by Rule 9014—unless it is done as part of a plan. Thus, under Rule 6006(a), the inclusion of a 365 motion in a chapter 12 or 13 plan does not convert the plan to a proceeding governed by Rule 9014, requiring Rule 7004 service.

LBR 6006-1(a) requires that a chapter 12 or 13 plan containing a 365 motion be “served on all parties to the contract or lease.” Although that LBR does not specify the manner in which service is required, the certificate of services to the chapter 13 plan requires that the individual transmitting the plan certify that the plan and notice of the confirmation hearing were served under Rule 7004 on creditors and parties treated in paragraph 3, which lists executory contracts and unexpired leases to be assumed. In a parenthetical, the certificate instructions cite LBR 6006-1(b). No such provision appears in the certificate of service to the Oregon chapter 12 plan form, and no LBR requires service of a chapter 11 plan on creditors affected by a 365 motion contained in the chapter 11 plan.

Rule 9013 permits the court to direct that service of a document initiating a contested matter be made on any entity in addition to those on which service is required by Rule 9013 or any other Rule. That rule applies only to documents that otherwise initiate contested matters, and it does not appear to authorize the court to require contested-matter service of a document that does not initiate a contested matter. But Rule 9029(a)(1) permits the court to adopt local rules that are consistent with acts of Congress and the Rules. Even though the Rules do not appear to expressly authorize the court to require Rule 7004 service where the Rules do not otherwise require or permit the court to require it, requiring that service by adoption of a local rule appears to be consistent acts of Congress and the Rules and thus permitted by Rule 9029(a)(1). A policy argument in favor of requiring Rule 7004 service of a chapter 12 or 13 plan on counterparties to executory contracts or unexpired leases to be assumed is that Rule 7004 service would reduce the likelihood of post-confirmation disputes over whether the counterparties received constitutionally sufficient notice of and opportunity to object to the plan.

¹⁹² *In re Stassi*, No. 09-71563 (Bankr. C.D. Ill. Nov. 12, 2009); *In re Millspaugh*, 302 B.R. 90, 101-04 (Bankr. D. Idaho 2003) (Rule 3012 valuation).

4.3(c) *Service of trustee’s request for determination of unpaid administrative tax liability*

Under § 505(b)(2), a trustee may request that a taxing authority determine the amount of any unpaid liability of the estate for any tax incurred during the administration of the case by submitting a tax return for the tax and a request for a determination to the governmental unit charged with responsibility for collection or determination of the tax. The clerk must maintain a list under which all governmental units responsible for the collection of taxes in the district may designate an address for service of requests under § 505(b) and describe where further information concerning additional requirements for filing the requests may be found.¹⁹³ In section 7.4 on page 47, this paper discusses the Rule applicable to that requirement and includes a reference to the location of the Oregon clerk’s list in compliance with that Rule.

5. Service of Subsequent Documents (Those Served After Complaint or Document Initiating Contested Matter)

A subsequent document in an adversary proceeding or contested matter, i.e., one other than the complaint or document initiating a contested matter, must be served in the following manner:¹⁹⁴

5.1 Subsequent documents that must be served

In an adversary proceeding, Federal Rule of Civil Procedure 5(a)(1), applicable through Rule 7005, requires that the following subsequent documents be served on every party: (i) an order stating that service is required, (ii) a pleading filed after the original complaint or document initiating a contested matter, unless the court orders otherwise under Federal Rule of Civil Procedure 5(c) because there are numerous defendants, (iii) a discovery document required to be served on a party, unless the court orders otherwise, (iv) a written motion, except one that may be heard ex parte, and (v) a written notice, appearance, demand, or offer of judgment or any similar document.

Some other Rules and some LBRs require service of specific subsequent documents. Subsequent documents as to which Rules require service include defenses and objections to an involuntary petition¹⁹⁵ and notice of entry of a judgment under Federal Rule of Civil Procedure 5(b).¹⁹⁶ Subsequent documents as to which LBRs require service include:

- Notice of date, time, and location of a continued evidentiary hearing.¹⁹⁷
- An expert’s written report.¹⁹⁸

¹⁹³ § 505(b)(1)(A).

¹⁹⁴ Fed. R. Bankr. P. 7005, 9014(b).

¹⁹⁵ Fed. R. Bankr. P. 1011(b).

¹⁹⁶ Fed. R. Bankr. P. 9022(a).

¹⁹⁷ LBR 9011-1(b)(2)(B).

¹⁹⁸ LBR 9013-1(d)(1).

5. Service of Subsequent Documents (Those Served After Complaint or Document Initiating Contested Matter)

- List of four acceptable mediators.¹⁹⁹
- Order or judgment.²⁰⁰
- Objection to cost bill.²⁰¹

5.2 Manner of service of subsequent document

5.2(a) *Service of subsequent documents in action begun by seizing property*

For service of subsequent documents in an action begun by seizing property, see Federal Rule of Civil Procedure 5(a)(3).

5.2(b) *Service of subsequent documents on party who is not—and who is not represented by a lawyer who is—an ECF participant*

If the party to be served is not—and is not represented by a lawyer who is—an ECF participant, then service of subsequent documents must be made in one of the following methods:

- handing it to the person²⁰²
- leaving it at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office, or, if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there²⁰³
- mailing it to the person's last-known address, in which case service is complete upon mailing²⁰⁴
- leaving it with the court clerk if the person has no known address²⁰⁵
- sending it by electronic means (such as e-mail) if the person consented in writing—in which case service is complete upon transmission, but service by electronic means is not effective if the serving party learns that it did not reach the person to be served²⁰⁶

¹⁹⁹ LBR 9019-1(b)(1).

²⁰⁰ LBR 9021-1(a)(4).

²⁰¹ LBR 9021-1(c)(3).

²⁰² Fed. R. Civ. P. 5(b)(2)(A).

²⁰³ Fed. R. Civ. P. 5(b)(2)(B). *See In re Marciano*, 708 F.3d 1123, 1125 (9th Cir. 2012) (address that individual defendant listed as place where he could be served as registered agent for four businesses was evidence that he lived or regularly conducted business there).

²⁰⁴ Fed. R. Civ. P. 5(b)(2)(C).

²⁰⁵ Fed. R. Civ. P. 5(b)(2)(D).

²⁰⁶ Fed. R. Civ. P. 5(b)(2)(E).

5.2(c) ECF service of subsequent document

Under Federal Rule of Civil Procedure 5(b)(3), if a local rule so authorizes, a party may use the court's transmission facilities to serve subsequent documents under Federal Rule of Civil Procedure 5(b)(2)(E), which permits sending a document by electronic means if the recipient consented in writing.

Although one could argue that the waiver compelled by LBR 5005-4(d) (see section 3.4(e) on page 28) does not constitute written consent to receive a subsequent document by electronic means under Rule 5(b)(2)(E), the Oregon bankruptcy court probably intended that the waiver constitute that consent. If so, the electronic notice that each ECF participant receives of each filed document constitutes permissible service of subsequent documents under Federal Rule of Civil Procedure 5(b)(2)(E) and (b)(3), i.e., no paper service of a subsequent document is required if the party to be served is represented by a lawyer who is an ECF participant in the case.

5.2(d) Service of subsequent documents on represented party

If a party is represented by a lawyer, subsequent documents must be served on the lawyer unless the court orders service on the party.²⁰⁷

5.2(e) Service of subsequent documents on unusually large number of defendants

For service of subsequent documents in an adversary proceeding or contested matter that involves an unusually large number of defendants, see Federal Rule of Civil Procedure 5(c).

5.3 No service on party in default for failure to appear

No service is required on a party in default for failing to appear. A party is in default for failure to appear if it has not timely appeared, even if the party's default has not yet been entered.²⁰⁸ But a pleading that asserts a new claim for relief against a party in default must be served on that party under Federal Rule of Civil Procedure 4.²⁰⁹

5.4 Service of notice of entry of judgment or order

Immediately on the entry of a judgment or order, the clerk must serve a notice of entry in the manner provided in Federal Rule of Civil Procedure 5(b) on the contesting parties and on other entities as the court directs. Unless the case is a chapter 9 case, the clerk must transmit to the UST a copy of the judgment or order. The clerk must list the notice in the docket. Lack of

²⁰⁷ Fed. R. Civ. P. 5(b)(1).

²⁰⁸ *Varnes v. Local 91, Glass Bottle Blowers Association of the United States and Canada*, 674 F.2d 1365 n.3 (11th Cir. 1982).

²⁰⁹ Fed. R. Civ. P. 5(a)(2).

6. Service of Subpoena

notice of the entry does not affect the time to appeal, nor does it relieve, or authorize the court to relieve, a party for failure to appeal within the time allowed, except as permitted in Rule 8002.²¹⁰

Notice of a judgment or order entered by a district judge is governed by Federal Rule of Civil Procedure 77(d). Unless the case is a chapter 9 municipality case, the clerk must transmit to the UST a copy of a judgment or order entered by a district judge.²¹¹

In Oregon, the court may delegate to the party lodging a proposed order or judgment or to another party the clerk's obligation to serve an order or judgment to the contesting parties.²¹²

Practice tip. In Oregon, the clerk issues notices requiring parties to serve orders in chapter 11 cases.

6. Service of Subpoena

A subpoena must be served as required by Federal Rule of Civil Procedure 45(b), which requires, among other things, delivery of the subpoena to the named person and, unless the subpoenaing party is the United States or any of its officers or agencies, tendering the fees for one day's attendance and the mileage allowed by law.²¹³ The procedures for serving a subpoena appear in Federal Rule of Civil Procedure 45(b)(2) and (3).

7. Noticing, Transmission, and "Service" of Other Documents Outside Adversary Proceeding or Contested Matter

Several Rules and LBRs address to whom and the manner in which notices must be transmitted. In addition, several Rules and LBRs require "service" of a document that neither initiates nor is filed in an adversary proceeding or contested matter. In neither case need the document be served under Rule 7004.

7.1 Notices required by Rule 2002

7.1(a) Required 21 days' notice by mail to the debtor, the trustee, and all creditors and indenture trustees

The debtor, the trustee, and all creditors and indenture trustees must receive at least 21 days' notice by mail of the matters listed in Rule 2002(a).

7.1(b) Required 28 days' notice by mail to the debtor, the trustee, and all creditors and indenture trustees re chapter 11 disclosure statement

In a chapter 11 case, unless the court orders publication, the debtor, the trustee, and all creditors and indenture trustees must receive at least 28 days' notice by mail of the deadlines for

²¹⁰ Fed. R. Bankr. P. 9022(a).

²¹¹ Fed. R. Bankr. P. 9022(b).

²¹² LBR 9021-1(a)(4).

²¹³ Fed. R. Bankr. P. 9016.

filing objections and the hearing to consider approval of a chapter 11 disclosure statement or the adequacy of disclosures in a chapter 11 plan.²¹⁴

7.1(c) Notice to equity security holders in chapter 11 cases

In a chapter 11 case, notice must be given to all equity security holders of the matters listed in Rule 2002(d).

7.2 Addressing mailed Rule 2002 notices

7.2(a) Address directed by entity to be noticed

Under § 342(c)(2)(A), if, within the 90 days before the commencement of a voluntary case, a creditor supplies the debtor in at least two communications with the current account number of the debtor and the address at which the creditor requests to receive correspondence, then any notice required by the Code to be sent by the debtor to the creditor must be sent to that address and include that account number.

Query whether § 342(c)(2)(A) applies only to notices required by the Code or also those required by a Rule or LBR.

Practice tip. Addresses to which a debtor is required to send notices should be included, with account numbers, in its schedules of debts.

Practice tip. By contrast to § 342(c)(2)(A), which requires that a debtor’s notices mailed to certain creditors include the creditor’s account number for the debtor, Rule 9037(a)(4) requires that a filing with the court that includes an individual’s financial-account number include only the last four digits of that number. Rule 9037(a) also limits the numbers of digits of an individual’s Social Security number, tax-identification number, or year of birth of an individual that may appear in a filing, and it requires that a minor be identified in a filing only by the minor’s initials.

In a chapter 7 or 13 case of an individual debtor, a creditor may file and serve on the debtor a notice of address to be used to provide notice in the case to the creditor.²¹⁵ Any notice that must be provided to the creditor by the debtor or the court after seven days after the court and the debtor receive the creditor’s address notice must be provided to that address.²¹⁶ A creditor may also file with any bankruptcy court a notice of address to be used by all the bankruptcy courts or by particular bankruptcy courts to provide notice to the creditor in all chapter 7 or 13 cases in the courts with respect to which the notice is filed.²¹⁷ In Oregon cases, that notice must not be filed with the bankruptcy court, but instead must be made to the National

²¹⁴ Fed. R. Bankr. P. 2002(b).

²¹⁵ § 342(e)(1); LBR 2002-1(i).

²¹⁶ § 342(e)(2).

²¹⁷ § 342(f)(1); LBR 2002-1(i)(2).

Creditor Registration Service,²¹⁸ which can be reached by telephone at (877) 837-3424. A creditor may make a written request to override its preferred address in a particular case.²¹⁹ The list of names and addresses for a case that may be obtained from ECF or PACER (which BNC uses for notices that it mails) reflects creditors’ nationally preferred addresses and particular-case override requests.

Practice tip. To download name and address information to make address labels for mailing a notice, in ECF, select Utilities | Mailing | Mailing Matrix by Case. That list notes undeliverable and duplicate addresses, and no PACER charges are incurred. If the user selects the default All selection (rather than Mailing Matrix by Case), all parties, creditors, and attorneys are included.

Notices required by Rule 2002 (not all notices) must be addressed as the entity or authorized agent has directed in its last request filed in the particular case. A proof of claim filed by a creditor, indenture trustee, or equity security holder that designates a mailing address constitutes a filed request to mail notices to that address.²²⁰

A creditor may treat a notice as not having been brought to the creditor’s attention only if, before issuance of notice, the creditor has filed a statement that designates the name and address of a person or organizational subdivision of the creditor that is responsible for receiving notices under the Code and that describes procedures established by the creditor to cause notices to be delivered to the designated person or subdivision.²²¹

7.2(b) *Scheduled address*

Except as provided in § 342(f), if a creditor or indenture trustee has not filed a request designating mailing address under Rule 2002(g)(1) or 5003(e), a notice must be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request designating a mailing address, a notice must be mailed to the address shown on the list of equity security holders.²²²

The ability to rely on the schedules to determine to whom and where a notice must be mailed contrasts with the inability to rely on them to determine the address to which a document must be mailed if it must be served. See section 3.4(g) on page 33.

If a creditor files a change of its address or a proof of claim with a notice address that differs from that on the debtor’s schedule, the clerk will change the address for that creditor, and name and address information later obtained from ECF or PACER will reflect the change.

²¹⁸ LBR 2002-1(i)(2); <https://ncrs.uscourts.gov/>.

²¹⁹ LBR 2002-1(i)(1).

²²⁰ Fed. R. Bankr. P. 2002(g)(1).

²²¹ § 342(g)(1); Fed. R. Bankr. P. 2002(g)(5).

²²² Fed. R. Bankr. P. 2002(g)(2).

7.2(c) *Addressing notice to infant or incompetent person*

If the list or schedule filed under Rule 1007 includes the name and address of a legal representative of an infant or incompetent person, and a person other than that representative files a request or proof of claim designating a different name and mailing address, unless the court orders otherwise, Rule 2002 notices must be mailed to both persons.²²³

If a person other than a representative files a request or proof of claim designating a different name and mailing address, the clerk will add the new name and address to the case record, and name and address information later obtained from ECF or PACER will reflect the addition.

7.2(d) *Address given to notice provider*

Notwithstanding Rule 2002(g)(1) through (3), an entity and a notice provider may agree that when the court directs the notice provider to give notice, the provider must give notice to the entity in the manner agreed to and at the address or addresses that the entity supplies to the provider.²²⁴

7.2(e) *Addressing notice to committees and special-notice list*

Notices required by Rule 2002 to be mailed must be mailed to a chapter 7 or 11 creditors’ committee or to its authorized agent. The court may order that notices required by Rule 2002(a)(2), (3), and (6) be transmitted to the UST and mailed only to a committee and its authorized agent and to creditors and equity security holders who serve on the trustee or debtor in possession and file a request that all notices be mailed to them. A chapter 11 committee must receive copies of all notices required by Rule 2002(a)(1), (a)(5), (b), (f)(2), and (f)(7) and other notices as the court directs.²²⁵

If the UST appoints a committee, the clerk will add the names and addresses of the committee members to the case record, and name and address information later obtained from ECF or PACER will reflect the addition of the committee members’ names.

Lawyers and some creditors (e.g., Atlas Acquisitions LLP and Recovery Management Systems Corporation) often file and serve requests to receive all notices in a case, and courts sometimes—particularly in larger cases—formalize the establishment of a “special-notice” list. The Oregon ECF system accepts the text-only event “Special Notice Request,” by which an ECF participant may request notices on behalf of a client. It does not appear that the Oregon ECF system will generate a list of special-notice requestors, but the names will appear on the case docket.

Although the second sentence of Rule 2002(i) refers to creditors who serve and file “a request that all notices be mailed to them,” that rule requires only that special-notice list creditors

²²³ Fed. R. Bankr. P. 2002(g)(3).

²²⁴ Fed. R. Bankr. P. 2002(g)(4).

²²⁵ Fed. R. Bankr. P. 2002(i).

receive notices required to be mailed by Rule 2002; it does not require that they also receive motions, even if referred to in Rule 2002, or notices not required by Rule 2002.

Despite the limited right conferred by Rule 2002(i), two LBRs confer additional rights on entities that have requested receipt of all notices. LBR 2002-1(j) requires that a notice given in a chapter 7, 12, or 13 case after the deadline for filing each type of claim be given to, among others, those who have filed requests to receive copies of all notices. In a chapter 11 small-business case, LBR 3017.1-1(a) requires that, no later than 14 days before the filing of the plan and, if applicable, the disclosure statement, the debtor must serve a copy of those documents on, among others, entities that have requested all notices.

Practice tip. The cautious approach is to mail all notices to all special-notice-requesting creditors who are not ECF participants.

7.2(f) *Addressing notice to creditor whose claim is filed*

In a chapter 7 case, after the proof-of-claim deadline, the court may direct that all notices required by Rule 2002(a) be mailed only to the debtor, the trustee, all indenture trustees, creditors that hold claims for which proofs of claim have been filed, and creditors, if any, that are still permitted to file claims by reason of an extension granted under Rule 3002(c)(1) or (2). If notice of insufficient assets to pay a dividend has been given to creditors under Rule 2002(e), after 90 days after the mailing of a notice of the time for filing claims under Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence.²²⁶

7.2(g) *Addressing notice to United States*

Notices required to be mailed to all creditors must be mailed to U.S. agencies or officers in the manner required by Rule 2002(j). That Rule requires mailing of certain notices to the Securities and Exchange Commission, the Commodity Futures Trading Commission at Washington, D.C., the Internal Revenue Service, the U.S. Attorney, the department, agency, or instrumentality of the United States through which the debtor became indebted to the United States, and the Secretary of the Treasury at Washington, D.C.

7.2(h) *Publication notice*

The court may order notice by publication if notice by mail is impracticable or it is desirable to supplement the notice.²²⁷

7.2(i) *Giving notice to foreign creditor or of foreign proceeding*

Notice to a creditor with a foreign address is governed by Rule 2002(p). Notice of a petition for recognition of a foreign proceeding is governed by Rule 2002(q).

²²⁶ Fed. R. Bankr. P. 2002(h).

²²⁷ Fed. R. Bankr. P. 2002(l).

7.2(j) Notice given after claim deadline (chapter 7, 12, or 13 case)

In a chapter 7, 12, or 13 case, unless otherwise required by a Rule or LBR, after the deadline for filing each type of claim, an entity that must serve notice need do so only on the debtor, creditors who have filed proofs of claim, and entities that have filed requests to receive copies of all notices.²²⁸

7.3 Certain notices to governmental units

7.3(a) Clerk-kept registers of certain governmental-unit addresses

Rule 5003(e) permits the United States or the state or territory in which the court is located to file a statement designating its mailing address. The clerk must keep a register of those addresses as LBF #104.5; the Oregon court maintains that list on its website²²⁹ (at Filing | Government Agency Addresses), as well as with the other LBFs. According to the Advisory Committee Note to the 2000 Amendments to Rule 5003, the register of mailing addresses of the United States or the state or territory may include a separate mailing address for each department, agency, or instrumentality of the United States or the state or territory, and the clerk may, but is not required to, include on that list addresses of municipalities or other local governmental units.

Rule 5003(e) also permits federal, state, or local taxing authorities to file a statement designating an address for service of requests under § 505(b), which this paper discusses in section 3.4(b)(5) on page 20. The clerk must keep a separate register of those addresses, but LBF #104.5 appears to be a combination of the two registers required by that Rule. The April 5, 2013, version of the Oregon register contains addresses for the Attorney General of the United States, California Franchise Tax Board, City of Beaverton, City of Portland, Commodity Futures Trading Commission, Deschutes County Tax Collector, Environmental Protection Agency, Internal Revenue Service, Michigan Department of Treasury, Tax Policy Division, Oregon Attorney General, Oregon Department of Consumer and Business Services, Oregon Department of Revenue, Oregon Employment Department, Rural Development, Rural Housing Svc & FmHA, Secretary of the Treasury, Securities and Exchange Commission, Small Business Administration, Texas Workforce Commission, United States Attorney for the District of Oregon, and the United States Trustee.

The Rule makes several references to the use of the register addresses for “notices.” According to the Advisory Committee Note to the 2000 Amendments to Rule 5003, the mailing address of the United States or the state or territory is “for notice purposes.” The only reference that the Rule makes to “service” is that the taxing-authorities-list addresses may be used to serve requests under § 505(b). Thus, the addresses are notice (and not service) addresses, except with respect to a trustee’s § 505(b) requests, in which case the addresses are also service addresses. Service of a § 505(b) request is discussed in section 7.4 on page 47.

²²⁸ LBR 2002-1(j).

²²⁹ <http://www.orb.uscourts.gov/>.

7.3(b) Notices to United States in certain cases

Copies of notices required to be mailed to all creditors under Rule 2002 must be mailed to U.S. government agencies as specified in Rule 2002(j). That Rule requires that all notices mailed to all creditors also be mailed to (1) the Securities and Exchange Commission in a chapter 11 reorganization case, (2) the Commodities Futures Trading Commission in a commodity-broker case, (3) the Internal Revenue Service in a chapter 11 case, (4) if the papers disclose a debt to the United States, to the U.S. Attorney and the department, agency, or instrumentality of the United States through which the debtor became indebted, and (5) if the filed papers disclose a stock interest of the United States, to the Secretary of the Treasury.

7.4 Service of Request to Taxing Authority to Determine Estate Tax Liability

Code § 505(b)(2) permits a trustee to request a determination of any unpaid liability of the estate for any tax incurred during case administration by submitting a tax return and a request for a determination to the responsible federal, state, or local taxing authority.²³⁰ The clerk must maintain a list under which the taxing authority may designate an address for service of those requests.²³¹ The Oregon court maintains that list as LBF #104.5 on its website²³² (select Filing | Governmental Agency Addresses). The authority addresses in that list are not necessarily proper addresses for service other than of a trustee’s § 505(b)(2) request. See section 7.3 on page 46.

7.5 ECF noticing

The Oregon ECF waiver (see section 3.4(e) on page 28) probably relieves a noticing party of the obligation to give nonelectronic notices to an entity represented by a lawyer who is an ECF participant in the case.

An Ohio bankruptcy court held that a lawyer’s filing of a notice of appearance and request for all notices after consenting to ECF service of all notices (by becoming an ECF participant) constituted consent by the client to ECF notice to the lawyer of all required notices, including notice of chapter 13 plan or plan amendment.²³³ That result is consistent with Rule 9036, which permits the court to direct the clerk or other person to send information required to be contained in a notice to an entity by electronic transmission in lieu of notice by mail.²³⁴

7.6 Documents that must be “served”—but that need not be served under Rule 7004 or noticed under Rule 2002

Some Rules and LBRs require “service” of a document that is not a complaint, does not initiate a contested matter, is not filed in an adversary proceeding or contested matter, and is not

²³⁰ § 505(b)(2).

²³¹ § 505(b)(1)(A)(i); Fed. R. Bankr. P. 5003(e).

²³² <http://www.orb.uscourts.gov/>.

²³³ *In re Menden*, No. 07-33707, 2011 WL 4433621, at *4 (Bankr. N.D. Ohio Sept. 21, 2011).

²³⁴ Fed. R. Bankr. P. 9036.

7. Noticing, Transmission, and “Service” of Other Documents Outside Adversary Proceeding or Contested Matter

a notice governed by Rule 2002. Documents that Rules require be served, but not under Rule 7004, include:

- Copy of § 521 statement (served on trustee and creditors named in statement).²³⁵
- Notice that report by health-care ombudsman will be filed (served on debtor, trustee, all patients, and creditors’ committee or 20-largest unsecured creditors).²³⁶
- Copies of periodic financial reports on entities in which the estate holds a substantial or controlling interest (served on UST, any committee, and any other party in interest that has filed request therefor).²³⁷

Documents that LBRs require be served, but not under Rule 7004, include:

- Copy of document providing details of expenses incurred under Family Violence Protection and Services Act.²³⁸
- Initial list of 20-largest unsecured creditors and labels.²³⁹
- OBF #B8 filed by individual chapter 7 debtor as statement of intent under § 521.²⁴⁰
- Notice otherwise required to be served by clerk.²⁴¹
- Notice by proponent of amended chapter 11 plan required by Rule 2002(b)(1) or (d)(5).²⁴²
- Foreign representative’s chapter 15 petition for recognition under Rule 2002(q)(1) and any notice required under Rule 2002(q)(2).²⁴³
- Notice of intent.²⁴⁴
- Template for notice of hearing when LBF does not exist or court will not deliver one to entity for service.²⁴⁵

²³⁵ Fed. R. Bankr. P. 1007(b)(2).

²³⁶ Fed. Rule 2015.1(a).

²³⁷ Fed. R. Bankr. P. 2015.3(b).

²³⁸ LBR 1007-1(c)(2)(B).

²³⁹ LBR 1007-2(b).

²⁴⁰ LBR 1007-3.

²⁴¹ LBR 2002-1(a)(1).

²⁴² LBR 2002-1(a)(3)(B).

²⁴³ LBR 2002-1(a)(6).

²⁴⁴ LBR 2002-1(b)(1).

²⁴⁵ LBR 2002-1(c).

7. Noticing, Transmission, and “Service” of Other Documents Outside Adversary Proceeding or Contested Matter

- Professional-compensation applicant who prepares and serves notice on behalf of other applicants must notify other applicants, who must not also serve notice, and cost of service must be borne by each applicant proportionately.²⁴⁶
- Notice by untimely professional-compensation application required by Rule 2008(a)(6).²⁴⁷
- Chapter 12 or 13 trustee’s notice of plan completion.²⁴⁸
- Notice by nonprofessional claimant under LBR 2001-(b) of intent to submit order allowing immediate payment of administrative expense.²⁴⁹
- Notice of chapter 12 compensation application.²⁵⁰
- Chapter 13 trustee’s directive to the debtor’s employer increasing or decreasing the payment deducted under a confirmed plan, changing the employer, or terminating the deduction.²⁵¹
- Amended OBF #B21.²⁵²

A document that does not initiate a contested matter and is not filed in an adversary proceeding or contested matter need not be served under Rule 7004 or Federal Rule of Civil Procedure 5 or 5(b). Indeed, for two reasons, Rule 7004 service will often not satisfy a requirement to mail a document under Rule 2002. First, a document governed by Rule 2002 must be mailed to an entity’s address determined under Rule 2002(g). The Rule 2002(g) address, which is most often the address the debtor provides in the schedules or lists it files, will often differ from the address to which a mailing under Rule 7004 must be made—especially in the case of a document that must be transmitted to a corporation. Second, under Rule 9001(8), a mailing required by Rule 2002 must be by first-class mail, but a mailing to an insured depository institution under Rule 7004(h) must be made by certified mail, which is probably not first-class mail.

7.7 Documents that must or may be delivered, e-mailed, or transmitted

To round out the set of communication verbs that the Rules and LBRs use, several Rules and LBRs require that documents—other than those that must be served under Rule 7004 or Federal Rule of Civil Procedure 5 or 5(b)—be “delivered,” “e-mailed,” or “transmitted.”

²⁴⁶ LBR 2002-1(c)(1)(D)(ii) (

²⁴⁷ LBR 2002-1(c)(2)(D).

²⁴⁸ LBR 2015-1(c).

²⁴⁹ LBR 2016-1(a)(1).

²⁵⁰ LBR 2016-1(d)(1).

²⁵¹ LBR 3015-1(b)(2)(B).

²⁵² LBR 9037-1(a)(2).

8. Mailed Document Returned to Sender

With some exceptions, tangible objects other than documents must be delivered, and documents conveyed from the clerk to the UST must be transmitted. For example, Rule 2001(d) requires that, after a trustee qualifies under § 702, the interim trustee, unless otherwise ordered, deliver to the trustee all records and other estate property; LBR 1007-1(c)(1) requires that a debtor deliver a copy of all required payment advices or other evidence of payment to the UST in a chapter 7 or 11 case and to the trustee in a chapter 12 or 13 case; and Rule 1002(b) requires the clerk to transmit a copy of the petition to the UST. Several Rules permit, but do not require, delivery of a document in lieu of mailing. E-mail is a permitted method of circulating a proposed order or judgment before lodging it for entry.²⁵³

8. Mailed Document Returned to Sender

Practice tip. If a mailed document is returned by the U.S. Postal Service as undeliverable, the mailing might nonetheless be effective, but attempt an additional method of transmission and file a supplemental certificate of service (or noticing) disclosing the returned mail.

²⁵³ LBR 9021-1(a)(2)(A).