

# Notice & Service Requirements

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## I. In General

- a. When trying to provide notice or service of process to creditors, debtors' ability to do so properly becomes difficult in a world where creditors have a couple dozen similarly-named subsidiaries or shell companies in existence, and they have hundreds (if not thousands) of offices scattered throughout the country. Debtors' attorneys find themselves trapped in an absurdly comical game of hide-and-seek, trying to pin down elusive creditors that seem to deliberately hide behind complex and opaque corporate structures. The purpose of this presentation is to TRY to un-muddy the waters somewhat.
- b. Under ordinary due process requirements, creditors operating business with national or global branches, various departments or divisions, etc. receive adequate notice when one such branch or department receives notice, because these creditors bear responsibility to have adequate systems in place to funnel legal notices to the appropriate personnel within the business entity. *In re Frontzak*, 2009 Bankr. LEXIS 3817 (Bankr. N.D. Ill. Dec. 2, 2009).
- c. Federal Rules of Bankruptcy Procedure set a heightened floor for notice, and failure to meet these standards violates the creditor's due process rights. *In re Hanson*, 397 F.3d 482, 486 (7th Cir. Wis. 2005). This has been partially overruled in *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367 (U.S. 2010) which ruled that a violation of the Bankruptcy Rules was not sufficient to set aside a judgment when the creditor had actual notice and failed to object.

## II. Schedules D-H, Creditor Mailing Matrix

- a. Debtor shall use the address appearing on any two or more communications (e.g. billing statement, collection letters, etc.) received in the 90 days prior to filing the bankruptcy case. 90 day period does not apply to creditors who would be in violation of non-bankruptcy law by sending communications, in which case, the address appearing on the two most recent communications shall be used. 11 U.S.C. § 342(c)(2).
  1. In the event that the creditor has not communicated with the debtor twice in the 90 days preceding and the creditor does not fall under § 342(c)(2)(B) – use any known address that can be located: the creditor's registered agent, addresses appearing on pending litigation, or the most recent communication received by the debtor outside of the 90 day period.
  2. Many billing statements and communiqués from creditors have more than one address on them, such as a return address, a payment address, an address for correspondence, or an address specifically for bankruptcy correspondence. When presented with options (and the options are clearly labeled), avoid using payment addresses unless it's your only option, as correspondence sent to payment addresses are routinely discarded. Bankruptcy correspondence addresses are preferred. When in doubt, simply list all of the addresses appearing on the communication.
- b. Creditors may provide preferred addresses to be used in all Chapter 7 and Chapter 13 cases in all bankruptcy courts or in specific bankruptcy courts. They register with the National Creditor Registration Service the preferred address and all addresses that they want to be over-ridden. If address on matrix matches an over-ridden address, the Bankruptcy Noticing Center (BNC) sends notice

to the preferred address instead. 11 U.S.C. § 342(f). BNC mailing is by first class mail, so it cannot satisfy FRBP 7004(h) unless one of the exceptions is in place.

- c. Effective July 12, 2010, BNC will not issue notices to creditor addresses identified as invalid (incomplete address, moved to foreign address, moved and left no forwarding address, forwarding order expired, or post office box closed).
- d. Except as provided for in § 523, a discharge is good against the world, whether a pre-petition debt was scheduled or not. *In re Guseck*, 310 B.R. 400, 402 (Bankr. E.D. Wis. 2004).
  1. **Unscheduled Creditors: Constitutionality of Discharge & Denial of Late-Filed Claims**
  2. Chapter 7: Under 11 U.S.C. § 523(a)(3), unscheduled creditors still have rights to litigate dischargeability of their debt as being non-dischargeable under (a)(2), (a)(4), or (a)(6) (non-dischargeable debts that require judicial determination) (*Guseck*, 404-405).
  3. Chapter 13: unscheduled creditors still have rights to litigate dischargeability of their debt as being non-dischargeable under 11 U.S.C. § 523(a)(2), (a)(4), or (a)(6); additionally, they may seek relief from stay (*In re Wright*, 300 B.R. 453, 463 (Bankr. N.D. Ill. 2003)); and debts “not provided for by the plan” are generally non-dischargeable by virtue of 11 U.S.C. § 1328(a) (*Id.* at 466-467 and *In re Plummer*, 378 B.R. 569, 572 (Bankr. C.D. Ill. 2007)).
- e. Listing the debtor’s lawsuits on the Statement of Financial Affairs alone does not satisfy the requirement under FRBP 2002. Plaintiff/creditors must be listed on a schedule of creditors and the mailing matrix. *Tidwell v. Smith (In re Smith)*, 379 B.R. 315, 321 (Bankr. N.D. Ill. 2007).
- f. Credit reports are excellent for finding long-lost and forgotten debts. Compare the credit report with recently received billing statements. For any that you can match via account numbers, substitute the credit report address with the billing statement address to be compliant under § 342(c)(2).
- g. When listing a debt that is being pursued by an entity that is not the original creditor, list both the original creditor and the new entity, since collection agencies may not be readily distinguishable from junk debt buyers.

### III. Notices After the Initial Filing

- a. In any individual case, a creditor can serve the court and the debtor a notice of a preferred address to be used. That address shall be used in all future notices within 7 days of receipt. 11 U.S.C. § 342(e).
- b. Except in cases where the Trustee has issued a notice of no assets/dividends, and such notice is not later superseded by a contrary notice, a filed proof of claim shall stand as a notice of preferred address from the creditor. Fed. R. Bankr. P. 2002(g)(1).

### IV. Electronic Notices

- a. With the exception of service of process requirements under Fed. R. Bankr. P. 7004, registration to file electronically constitutes consent to receive notice by electronic means and waive service by other means (Eastern District of Wisconsin CM/ECF Administrative Procedures, Pt. III (B), citing Fed. R. Bankr. P. 9036 and Fed. R. Civ. P. 5(b)(2)(D)).
- b. It is the filer’s responsibility to serve a notice by conventional means to any parties entitled to notice who are not registered for electronic notice. In CM/ECF, you can access a list of all parties receiving electronic notices in a case by clicking Utilities >> Mailing Functions >> Mailings >> Mailing Info for a Case (path from Eastern District of Wisconsin’s v. 4.2.0 of CM/ECF).

### V. Proving Adequate Notice in Stay or Discharge Violations

- a. Punitive damages cannot be awarded unless notice requirements of § 342 are followed (except, in the case of improper notices, creditors are deemed notified if they have procedures in place to funnel notices to a person or department, *see* FRBP 2002(g)(5)). 11 U.S.C. § 342(g).
- b. Faxing notice to creditor's attorney-of-record in a post-petition state court claim constitutes adequate notice. *In re Thongta*, 401 B.R. 363, 369 (Bankr. E.D. Wis. 2009).
- c. Although the creditor has a duty to terminate and reverse damages resulting from a stay violation, it could not be sanctioned for willful violation since it was not noticed pursuant to § 342 (it appears that notice was sent to addresses appearing on a credit report). *In re Tillett*, 2010 Bankr. LEXIS 1342 (Bankr. E.D. Va. Apr. 23, 2010).

## VI. Contested Matters

- a. "While no summons is issued and served upon the "defendant" in a contested matter, service of a pleading initiating a contested matter is made in the same manner as service of a summons and complaint in an adversary proceeding." *Dean v. Global Fin. Credit, LLC (In re Dean)*, 359 B.R. 218, 221 (Bankr. C.D. Ill. 2006).
- b. Contested matters include motion to hold someone in contempt (*In re Teknek, LLC*, 512 F.3d 342, 345 (7th Cir. Ill. 2007)), objection to proof of claim (*In re Myron*, 2010 Bankr. LEXIS 285 (Bankr. N.D. Ind. Jan. 20, 2010)), § 722 Redemption (*In re Wright*, 2009 Bankr. LEXIS 271 (Bankr. N.D. Ind. Feb. 17, 2009)), modification of utility service deposit (*In re Martinez*, 2008 Bankr. LEXIS 2293 (Bankr. N.D. Ind. Sept. 5, 2008)), motion to dismiss (*In re Weems*, 359 B.R. 919, 920 (Bankr. N.D. Ind. 2007)), and motion for relief from automatic stay (*Reischel v. Mfrs. & Traders Trust Co.*, 222 Fed. Appx. 521 (7th Cir. Wis. 2007)).
- c. Although a determination of value does not need an adversary proceeding, one is required to strip a wholly unsecured junior mortgage. *In re Ginther*, 427 B.R. 450 (Bankr. N.D. Ill. 2010). Compare to *In re Stassi*, 2009 Bankr. LEXIS 3527 (Bankr. C.D. Ill. Nov. 12, 2009), which suggests Chapter 13 Plan would have been adequate, but only if it had been served pursuant to FRBP 7004.

## VII. Adversary Proceedings

- a. Summons and Complaint shall be served in a manner authorized by Fed. R. Civ. P. 4. Additionally, they may be served by first class prepaid postage as set forth in Fed. R. Bankr. P. 7004.
- b. Individuals: first class mail addressed to their dwelling house or usual place of abode, or place where they regularly conduct business or profession. If the individual is an infant or incompetent, to the dwelling/abode or place of business of the person prescribed by the law of the state in which service is made when an action is brought against the defendant. Fed. R. Bankr. P. 7004(b)(1)-(2).
- c. Domestic or Foreign Corporation, Partnership, or Unincorporated Association: first class mail addressed to an officer, managing agent, general agent, authorized agent by law, or authorized agent by appointment. If agent is authorized by statute and the statute requires, also address to the defendant. Fed. R. Bankr. P. 7004(b)(3).
  - 1. Wisconsin Department of Financial Institutions has a searchable database which can provide registered agents at <https://www.wdfi.org/apps/CorpSearch/Search.aspx?>
  - 2. All companies doing business in Wisconsin are required to register with the DFI and will have a registered agent for service of process on file with the department. Wis. Stat. § 180.1501. However, there are a number of activities that do not constitute business transactions under this section, such as maintaining or defending lawsuits, maintaining bank accounts, selling through independent contractors, lending money or acquiring indebtedness / mortgages / security interests

in property, and owning property. Thus, it is possible for a Wisconsin mortgage loan to be owned and/or serviced by a company that is not required to register to do business in Wisconsin.

3. Additionally, you may encounter a debtor who incurred a debt in a foreign state from a creditor who does not transact business in Wisconsin and is not registered with the DFI. Satisfying Fed. R. Bankr. P. 7004(b)(3) on foreign corporations requires determining which state the corporation is organized under, and searching the corporate records of that state to locate the registered agent. You can find links to most states' databases at <http://www.llrx.com/columns/roundup29.htm>.
4. Service must be sent to a particular individual, not an entire department. "Attn: Bankruptcy Department" does not satisfy FRBP 7004(b)(3). *In re Wright*, 2009 Bankr. LEXIS 271 (Bankr. N.D. Ind. Feb. 17, 2009).
5. "ATTENTION: Highest Ranking Officer, or Managing or General Agent" is acceptable. *In re Speichert*, 2007 Bankr. LEXIS 4543 (Bankr. N.D. Ind. Oct. 3, 2007). Named individuals not necessary for service, so long as the mail is addressed to the attention of the officer or agent by reference to his title. *Moglia v. Lowitz & Sons (In re Outboard Marine Corp.)*, 359 B.R. 893, 900 (Bankr. N.D. Ill. 2007). In fact, addressing an individual by name might create more of a problem for a debtor trying to achieve proper service:

In order for a plaintiff to ascertain an officer or managing or general agent of a corporation, he must do a search of state records. Some corporations do not keep those records updated, and frequently, officers change during a company's fiscal year without the immediate updating of the annual report filed with the secretary of state to reflect those changes. In such a scenario, if a plaintiff was to list "John Doe" as the officer or managing or general agent of a corporation, and John Doe was no longer in that capacity because the corporation failed to update its records, service of process would be defective under this logic. Inaccurate corporate records would unfairly render otherwise adequate and proper service invalid. The Court rejects the argument that Bankruptcy Rule 7004(b)(3) requires a plaintiff to take the extra step of searching state records in order to ascertain the specific name of a corporate officer or managing or general agent, and then serve that individual by name as such officer or agent. *Id.*

6. Service need not be made on an attorney, even if they have entered an appearance. *In re Edmonds*, 2008 Bankr. LEXIS 2503 (Bankr. N.D. Ind. Sept. 12, 2008). Service to an attorney does not meet the requirements of FRBP 7004(b)(3) without evidence that the attorney is appointed by the creditor to accept service. *In re Rae*, 286 B.R. 675, 677 (Bankr. N.D. Ind. 2002).
7. A creditor cannot present an address that notices should be sent to (as is done on the proof of claim form) and then argue it was not properly served when that address is used. *In re Village Craftsman*, 160 B.R. 740, 745 (Bankr. D.N.J. 1993). Noting a distinction between ordinary notices and service of process, Judge Martin held that service of a contested matter is not proper if the address appearing on the creditor's proof of claim is used and that address does not conform to FRBP 7004(b)(3). *In re Sunde*, 2007 Bankr. LEXIS 3704 (Bankr. W.D. Wis. Oct. 2, 2007).

d. The Government

1. United States: first class mail to the clerk of the office of the U.S. attorney in the district the action is brought plus the U.S. Attorney General in Washington, D.C. Fed. R. Bankr. P. 7004(b)(4).
2. Officers and Agencies of the United States: same as (b)(4), and also to the officer or agency. If the agency is a corporation, then same as (b)(3). Fed. R. Bankr. P. 7004(b)(5).
3. State & Municipal Corporations and Other Government Organizations: first class mail as prescribed by state law. Fed. R. Bankr. P. 7004(b)(6). For Wisconsin, see Wis. Stat. § 801.11(3)-(4).

e. Insured Depository Institution (any FDIC-insured bank or savings association).

1. Confirm FDIC-insured status at <http://www3.fdic.gov/idasp/>.
2. Address to an officer of the institution by certified mail, or first class mail to its attorney if the attorney has made an appearance. This requirement can be waived by court order in response to an application, or by the creditor's voluntary waiver. Fed. R. Bankr. P. 7004(h).

3. “While service upon a registered agent may very well satisfy the requirements of [FRBP 7004(b)(3)] with respect to an entity, service upon a registered agent does not constitute service upon an “officer of the institution” as required by [FRBP 7004(h)]. *Stewart v. JPMorgan Chase Bank (In re Stewart)*, 408 B.R. 215, 218 (Bankr. N.D. Ind. 2009).
  4. Wholly-owned subsidiary of an FDIC-insured company which is not itself FDIC-insured does not entitle the subsidiary to heightened notice requirement under FRBP 7004(h). *Fleet Credit Card Servs. v. Tudor (In re Tudor)*, 282 B.R. 546, 550-551 (Bankr. S.D. Ga. 2002).
- f. Filings beyond the initial summons and complaint are governed by Fed. R. Civ. P. 5.

## VIII. Sources of Confusion

- a. Two different companies can have the exact same name if they are organized in different states and the name hasn’t already been trademarked.
- b. Serving companies who seem to have no physical address and exist only in cyberspace.

*A while back, I had a case where my client had obtained a loan from an online cash store, which subsequently violated the stay. The debt appeared on her credit report, but listed no physical address. The company’s website revealed no physical address, or any other clue as to which state the business might be located or registered in. Nor was it listed in the Wisconsin DFI database. I’ve heard similar stories from colleagues. In these frustrating and unfortunate circumstances, the consensus seems to be that you may need to refer your client to someone with investigative powers, such as the FBI or FTC, or the cybercrime division of an appropriate state agency.*

- c. When searching WI DFI database, making sure that you are searching for the right company.

*Searching for “Associated Bank” on the WI DFI web-site yields no results. You have to know to look for “Associated Banc-Corp” or wade through 467 search results for “Associated”.*

- d. Debtor files bankruptcy and properly lists all creditors pursuant to § 342(c)(2). Post-petition, debtor receives a collection letter from one of his creditors in violation of the automatic stay, but the address on the post-petition letter does not match the address appearing on schedules or on pre-petition billing statements. Does the debtor have to “chase down” (provide notice to) each new address before he can prove actual notice and move for sanctions? How can the debtor prove that the creditor at the address on the post-petition letter is the same creditor listed on schedules?
- e. Complex corporate structures – different entities with similar names. The following is a basic corporate structure glossary. There are many names given to different organizational structures, depending on ownership, holdings and purpose. It is important to keep in mind that an organization is either a formally organized entity, or it is not. If it is formally organized, there will be a designated agent for service.

- **Parent.** A formally organized entity that holds an ownership interest in another entity (subsidiary). The Parent company may have its own line of business, which may or may not be related to the business of the subsidiary.
- **Subsidiary.** A formally organized entity that is owned, at least in part, by another company (parent). In large corporate structures, a subsidiary might also be a parent company for another company down the line.
- **Holding Company.** A formally organized entity that exists primarily to own other companies. Similar to a parent company, but usually without its own line of business.
- **Division.** Usually (but not always) an informally organized part of another company. The division may have its own books and records, but is usually not formally organized (no filing with the State). If you are dealing with a company that is called a division, there is usually another company name that you will need to find. For example, “ABC, a division of XYZ Corp.”

- **Shell or Dummy Company.** A formally organized entity that will usually not have any assets of business of its own. These sorts of companies are used to shield information regarding ownership, holdings, etc. It is important to realize that these entities are actual companies, at least on paper. Corporate existence can be challenged based on inadequate capitalization and other grounds, but that is an expensive fight, and may not be relevant from a debtor's standpoint.
  - **Good Standing.** It is useful to determine whether a company is in good standing, either with its state of organization, or in the state(s) where it is registered to do business. While the requirements for maintaining good standing are minimal, they are sometimes overlooked or ignored. If a company is not in good standing, it is technically not able to transact business. While courts will usually allow time for a company to get reinstated, raising the fact that a company is not in good standing might provide additional time in a litigation matter.
- f. When serving a mortgage company on a contested matter or adversary proceeding, it's helpful to know who's who in the industry to know whose conduct is at question or whose rights are sought to be modified.
- **Mortgage Originator.** The lender whose name appears on the mortgage and note (remember, the mortgage establishes the real estate as security for the loan; the note is a promissory note outlining the terms of loan repayment).
  - **Mortgage Holder.** Present owner of the mortgage; has the right to foreclose.
  - **Note Holder.** Present owner of the note; usu. (but not always) the same as the mortgage holder.
  - **Mortgage Servicer.** Party that accepts payment on behalf of the note holder, also responsible for holding / distributing escrow funds.
  - **MERS.** Electronic registry that tracks ownership of mortgages and notes, set-up to reduce costs associated with recording assignments.
  - Not sure who's who in your particular mortgage? Send a Qualified Written Request under RESPA to the mortgage servicer, requesting identification of each party. 12 U.S.C. § 2605(e).

#### IX. Miscellaneous

- a. An attorney who is not certain whether he or she has properly served a creditor may "over-serve" out of an abundance of caution. For example, you may wish to serve a claim objection on the creditor pursuant to Rule 7004, but also serve a copy to the creditor at the address listed on the proof of claim. If a creditor was represented by counsel in a pre-petition state court matter, it might not be a bad idea to send a copy of a notice to the attorney. Excessive service of process is preferable to a deficient one.
- b. Show your work! Just as you would a complex math calculation. If you're not confident that you are serving notice or process to the right party, it might not be a bad idea to make a brief note to the judge in your certificate of service, explaining your rationale, sources, and search parameters. That way, if your service is improper, the error can be more readily recalled and identified. It also shows the judge that you made reasonable calculations to determine the correct party to serve.
- c. Mailing of a properly addressed document with sufficient postage carries with it a presumption of delivery/receipt. This can be rebutted. Defects in the address do not eliminate the presumption, but make rebuttal easier. However, a signed return of service or lack of returned undeliverable mail strengthens the presumption. *Moglia v. King Marine, Inc. (In re Outboard Marine Corp.)*, 369 B.R. 353, 359 (Bankr. N.D. Ill. 2007).
- d. PENDING: Served notice of an objection to proof of claim to BAC Home Loan Servicing, LP via its registered agent pursuant to Fed. R. Bankr. P. 7004(b)(3). As described in (a) above, I also sent notice to the address on the proof of claim and to BAC's attorneys. According to the Wisconsin Dept. of Financial Institutions' website, the department itself was BAC's registered agent. DFI refused to accept

service because a \$10 processing fee was not enclosed. I declined to resend the notice with the fee on the principal that service of process is not a negotiation, and that while it may be reasonable to charge fees to *perform* service of process, that fees to *accept* service of process were unconscionable. I filed a notice of the same with the Court. Result: \_\_\_\_\_

- e. Most districts allow a Motion to Limit Notice or a Motion for Special Matrix, which appears to be born out of Fed. R. Bankr. P. 9007 & 9013. This can help save movants money in postage and printing by restricting notice of motions to affected creditors. Without a doubt, parties adversely affected by a motion must receive notice. By practice, I tend to give notice to favorably affected parties, too. Use common sense when determining if a creditor is affected by your motion or amended plan.
- f. On the other hand, for amended Chapter 13 Plans, Local Rule 3015.2 mandates use of the new model form “Notice and Request to Modify Chapter 13 Plan” which has the FRBP 2002(a)(5) notice embedded in it. There is a limit notice provision embedded at paragraph 2(B) for pre-confirmation amendments, and only adversely-affected creditors need to be noticed (note: the model plan contains the necessary notice to creditors about amendments pursuant to Local Rule 3015(b)). You can limit notice on post-confirmation amendments, too, but the model form is insufficient – you’ll need to file a separate motion. Also worth noting is that Fed. R. Bankr. P. 3015(g) does not distinguish between adversely-affected creditors and favorably-affected creditors, suggesting that you can only limit notice of post-confirmation amendments to completely unaffected creditors.

## STATUTES AND RULES APPENDIX

### **11 U.S.C. § 342 – Notice**

(c)(2)(A) If, within the 90 days before the commencement of a voluntary case, a creditor supplies the debtor in at least 2 communications sent to the debtor with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor shall be sent to such address and shall include such account number.

(c)(2)(B) If a creditor would be in violation of applicable nonbankruptcy law by sending any such communication within such 90-day period and if such creditor supplies the debtor in the last 2 communications with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor shall be sent to such address and shall include such account number.

(e)(1) In a case under chapter 7 or 13 of this title [11 USCS §§ 701 et seq. or 1301 et seq.] of a debtor who is an individual, a creditor at any time may both file with the court and serve on the debtor a notice of address to be used to provide notice in such case to such creditor.

(e)(2) Any notice in such case required to be provided to such creditor by the debtor or the court later than 7 days after the court and the debtor receive such creditor's notice of address, shall be provided to such address.

(f)(1) An entity may file with any bankruptcy court a notice of address to be used by all the bankruptcy courts or by particular bankruptcy courts, as so specified by such entity at the time such notice is filed, to provide notice to such entity in all cases under chapters 7 and 13 [11 USCS §§ 701 et seq. and 1301 et seq.] pending in the courts with respect to which such notice is filed, in which such entity is a creditor.

(f)(2) In any case filed under chapter 7 or 13 [11 USCS §§ 701 et seq. or 1301 et seq.], any notice required to be provided by a court with respect to which a notice is filed under paragraph (1), to such entity later than 30 days after the filing of such notice under paragraph (1) shall be provided to such address unless with respect to a particular case a different address is specified in a notice filed and served in accordance with subsection (e).

(g)(1) Notice provided to a creditor by the debtor or the court other than in accordance with this section (excluding this subsection) shall not be effective notice until such notice is brought to the attention of such creditor. If such creditor designates a person or an organizational subdivision of such creditor to be responsible for receiving notices under this title and establishes reasonable procedures so that such notices receivable by such creditor are to be delivered to such person or such subdivision, then a notice provided to such creditor other than in accordance with this section (excluding this subsection) shall not be considered to have been brought to the attention of such creditor until such notice is received by such person or such subdivision.

(g)(2) A monetary penalty may not be imposed on a creditor for a violation of a stay in effect under section 362(a) [11 USCS § 362(a)] (including a monetary penalty imposed under section 362(k) [11 USCS § 362(k)]) or for failure to comply with section 542 or 543 [11 USCS § 542 or 543] unless the conduct that is the basis of such violation or of such failure occurs after such creditor receives notice effective under this section of the order for relief.

### **Fed. R. Bankr. P. 2002(g) – Addressing Notices**

(1) Notices required to be mailed under Rule 2002 to a creditor, indenture trustee, or equity security holder shall be addressed as such entity or an authorized agent has directed in its last request filed in the particular case. For the purposes of this subdivision--

(A) a proof of claim filed by a creditor or indenture trustee that designates a mailing address constitutes a filed request to mail notices to that address, unless a notice of no dividend has been given under Rule 2002(e) and a later notice of possible dividend under Rule 3002(c)(5) has not been given; and

(B) a proof of interest filed by an equity security holder that designates a mailing address constitutes a filed request to mail notices to that address.

(2) Except as provided in § 342(f) of the Code, if a creditor or indenture trustee has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall 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 under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of equity security holders.

(3) If a 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 name and mailing address that differs from the name and address of the representative included in the list or schedule, unless the court orders otherwise, notices



under Rule 2002 shall be mailed to the representative included in the list or schedules and to the name and address designated in the request or proof of claim.

(4) Notwithstanding Rule 2002(g)(1)-(3), an entity and a notice provider may agree that when the notice provider is directed by the court to give a notice, the notice provider shall give the notice to the entity in the manner agreed to and at the address or addresses the entity supplies to the notice provider. That address is conclusively presumed to be a proper address for the notice. The notice provider's failure to use the supplied address does not invalidate any notice that is otherwise effective under applicable law.

(5) A creditor may treat a notice as not having been brought to the creditor's attention under § 342(g)(1) only if, prior to issuance of the notice, the creditor has filed a statement that designates the name and address of the person or organizational subdivision of the creditor responsible for receiving notices under the Code, and that describes the procedures established by the creditor to cause such notices to be delivered to the designated person or subdivision.

### **Fed. R. Bankr. P. 5003(e) – Records Kept by Clerk / Register of mailing addresses of federal and state governmental units and certain taxing authorities.**

The United States or the state or territory in which the court is located may file a statement designating its mailing address. The United States, state, territory, or local governmental unit responsible for collecting taxes within the district in which the case is pending may also file a statement designating an address for service of requests under § 505(b) of the Code, and the designation shall describe where further information concerning additional requirements for filing such requests may be found. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a register that includes the mailing addresses designated under the first sentence of this subdivision, and a separate register of the addresses designated for the service of requests under § 505(b) of the Code. The clerk is not required to include in any single register more than one mailing address for each department, agency, or instrumentality of the United States or the state or territory. If more than one address for a department, agency, or instrumentality is included in the register, the clerk shall also include information that would enable a user of the register to determine the circumstances when each address is applicable, and mailing notice to only one applicable address is sufficient to provide effective notice. The clerk shall update the register annually, effective January 2 of each year. The mailing address in the register is conclusively presumed to be a proper address for the governmental unit, but the failure to use that mailing address does not invalidate any notice that is otherwise effective under applicable law.

### **Fed. R. Bankr. P. 7004(b) – Adversary Proceedings / Process; Service of Summons, Complaint / Service by first class mail.**

Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)-(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

(2) Upon an infant or an incompetent person, by mailing a copy of the summons and complaint 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 such a defendant in the courts of general jurisdiction of that state. The summons and complaint in that case shall 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.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.

(5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service pursuant to this

subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint 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 such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if a copy of the summons and complaint is mailed to the entity upon whom service is prescribed to be served by any statute of the United States or by the law of the state in which service is made when an action is brought against such a defendant in the court of general jurisdiction of that state.

(8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision.

(9) Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing.

(10) Upon the United States trustee, when the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending.

### **Fed. R. Bankr. P. 7004(h) – Adversary Proceedings / Process; Service of Summons, Complaint / Service of process on an insured depository institution.**

Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless--

- (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
- (2) the court orders otherwise after service upon 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; or
- (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

### **Fed. R. Civ. P. 5(b) – Adversary Proceedings / Service and Filing of Pleadings and Other Papers / Service: How Made**

(1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) Service in General. A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

- (i) 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
- (ii) 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 there;

(C) mailing it to the person's last known address--in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) sending it by electronic means if the person consented in writing--in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person consented to in writing--in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(3) Using Court Facilities. If a local rule so authorizes, a party may use the court's transmission facilities to make service under Rule 5(b)(2)(E).

### **Fed. R. Bankr. P. 9014(b) – General Provisions / Contested Matters / Service**

The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004. Any paper served after the motion shall be served in the manner provided by Rule 5(b) F. R. Civ. P.

### **Fed. R. Bankr. P. 9036 – Notice by Electronic Transmission**

Whenever the clerk or some other person as directed by the court is required to send notice by mail and the entity entitled to receive the notice requests in writing that, instead of notice by mail, all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission, the court may direct the clerk or other person to send the information by such electronic transmission. Notice by electronic means is complete on transmission.

### **Eastern District of Wisconsin Local Rule 2002 – Creditor’s Notices Pursuant to 11 U.S.C. § 342(f)**

Creditors filing notices of preferred addresses pursuant to 11 U.S.C. §342(f) shall file such notices directly with the court’s notice provider as defined in Bankruptcy Rules 9001(9) and 2002(g)(4). Section 342(f) notices filed with the court’s notice provider shall be deemed filed with the court, and need not actually be filed with the court. The clerk shall publish the notice provider’s name and contact information in the Appendix to the Local Rules.

### **Eastern District of Wisconsin Local Rule 3015(b) – Modification of Chapter 13 Plans. Notice of Proposed Modifications.**

Pre-confirmation Chapter 13 amended plans which do not materially adversely affect creditors shall be filed with the Clerk. If notice has previously been given by the Clerk or by the debtor in a prior plan that a possible modification which is not materially adverse to creditors may be filed, no additional notice is required. If notice has previously been given by the Clerk or by the debtor in a prior plan that a possible modification which is not materially adverse to creditors may be filed and the modification is materially adverse to a limited number of creditors notice may be limited to those creditors adversely affected.

### **Wis. Stat. § 180.1501 – Foreign Corporations / Authority to transact business required.**

A foreign corporation may not transact business in this state until it obtains a certificate of authority from the department.

### **Wis. Stat. § 801.11 – Personal Jurisdiction / Manner of Serving Summons**

A court of this state having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in s. 801.05 may exercise personal jurisdiction over a defendant by service of a summons as follows:

(3) STATE. Upon the state, by delivering a copy of the summons and of the complaint to the attorney general or leaving them at the attorney generals' office in the capitol with an assistant or clerk.

(4) OTHER POLITICAL CORPORATIONS OR BODIES POLITIC.

(a) Upon a political corporation or other body politic, by personally serving any of the specified officers, directors, or agents:

1. If the action is against a county, the chairperson of the county board or the county clerk;
2. If against a town, the chairperson or clerk thereof;
3. If against a city, the mayor, city manager or clerk thereof;
4. If against a village, the president or clerk thereof;
5. If against a technical college district, the district board chairperson or secretary thereof;
6. If against a school district or school board, the president or clerk thereof; and
7. If against any other body politic, an officer, director, or managing agent thereof.

(b) In lieu of delivering the copy of the summons to the person specified, the copy may be left in the office of such officer, director or managing agent with the person who is apparently in charge of the office.

## **TABLE OF AUTHORITIES**

Last Shepardized: January 29, 2012

*United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367 (U.S. 2010)

*In re Hanson*, 397 F.3d 482 (7th Cir. Wis. 2005)

*Reischel v. Mfrs. & Traders Trust Co.*, 222 Fed. Appx. 521 (7th Cir. Wis. 2007)

*In re Teknek, LLC*, 512 F.3d 342 (7th Cir. Ill. 2007)

*In re Guseck*, 310 B.R. 400 (Bankr. E.D. Wis. 2004)

*In re Sunde*, 2007 Bankr. LEXIS 3704 (Bankr. W.D. Wis. Oct. 2, 2007)

*In re Thongta*, 401 B.R. 363 (Bankr. E.D. Wis. 2009)

*Dean v. Global Fin. Credit, LLC (In re Dean)*, 359 B.R. 218 (Bankr. C.D. Ill. 2006)

*In re Edmonds*, 2008 Bankr. LEXIS 2503 (Bankr. N.D. Ind. Sept. 12, 2008)

*Fleet Credit Card Servs. v. Tudor (In re Tudor)*, 282 B.R. 546 (Bankr. S.D. Ga. 2002)

*In re Frontzak*, 2009 Bankr. LEXIS 3817 (Bankr. N.D. Ill. Dec. 2, 2009)

*In re Ginther*, 427 B.R. 450 (Bankr. N.D. Ill. 2010)

*In re Martinez*, 2008 Bankr. LEXIS 2293 (Bankr. N.D. Ind. Sept. 5, 2008)

*Moglia v. Lowitz & Sons (In re Outboard Marine Corp.)*, 359 B.R. 893 (Bankr. N.D. Ill. 2007)

*Moglia v. King Marine, Inc. (In re Outboard Marine Corp.)*, 369 B.R. 353 (Bankr. N.D. Ill. 2007)

*In re Myron*, 2010 Bankr. LEXIS 285 (Bankr. N.D. Ind. Jan. 20, 2010)

*In re Plummer*, 378 B.R. 569 (Bankr. C.D. Ill. 2007)

*In re Rae*, 286 B.R. 675 (Bankr. N.D. Ind. 2002)

*In re Speichert*, 2007 Bankr. LEXIS 4543 (Bankr. N.D. Ind. Oct. 3, 2007)

*In re Stassi*, 2009 Bankr. LEXIS 3527 (Bankr. C.D. Ill. Nov. 12, 2009)

*Stewart v. JPMorgan Chase Bank (In re Stewart)*, 408 B.R. 215 (Bankr. N.D. Ind. 2009)

*Tidwell v. Smith (In re Smith)*, 379 B.R. 315 (Bankr. N.D. Ill. 2007)

*In re Tillett*, 2010 Bankr. LEXIS 1342 (Bankr. E.D. Va. Apr. 23, 2010)

*In re Village Craftsman*, 160 B.R. 740 (Bankr. D.N.J. 1993)

*In re Weems*, 359 B.R. 919 (Bankr. N.D. Ind. 2007)

*In re Wright*, 300 B.R. 453 (Bankr. N.D. Ill. 2003)

*In re Wright*, 2009 Bankr. LEXIS 271 (Bankr. N.D. Ind. Feb. 17, 2009)

## **USEFUL LINKS**

<https://www.wdfr.org/apps/CorpSearch/Search.aspx?>

<http://www.llrx.com/columns/roundup29.htm>

<http://www3.fdic.gov/idasp/>